

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Tri-State Professional Firefighters Union)	
Local 3165, IAFF,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-15-033
)	
)	
Tri-State Fire Protection District,)	
)	
Respondent.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On September 18, 2014, the Tri-State Professional Firefighters Union, Local 3165, Int'l Association of Firefighters (Charging Party or Union) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board alleging that the Tri-State Fire Protection District (Employer or District), committed multiple unfair labor practices in violation of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (Act).¹ After investigation, Executive Director Melissa Mlynski dismissed the charge in its entirety, having determined that Charging Party failed to raise an issue of law or fact sufficient to warrant a hearing. Charging Party filed a timely appeal and the District filed its response, which included a motion for sanctions.

As the Executive Director noted in the Dismissal, up to that point, there had been a complex and significant recent history between the Charging Party and Respondent (collectively, Parties) that is intertwined with this Decision. In very brief summary, in the course of 2012 negotiations for a successor collective bargaining agreement, the District filed an

¹ The charge was later amended on March 22, 2015.

unfair labor practice charge contending that the Union refused to bargain in good faith. That Charge went to hearing before Administrative Law Judge Martin Kehoe, who issued a Recommended Decision and Order (RDO) in favor of the District (Kehoe RDO) and, in November 2014, the Board affirmed ALJ Kehoe's RDO. Among other things, the Board's Order included an order for the Union to resume bargaining, at the request of the District.

During the pendency of the District's unfair labor practice charge, the Union invoked interest arbitration, which culminated in an award issued by Arbitrator Hill (Hill Award). Based on the Hill Award, the Union drafted a successor collective bargaining agreement, which the District refused to execute. In the interim, the Union appealed the Board's Decision that upheld ALJ Kehoe's RDO and further ordered the Union to bargain in good faith. On September 30, 2015, the Appellate Court issued a 44-page unpublished decision affirming the Board's Order directing the Union to return to the bargaining table. The Union subsequently petitioned the Supreme Court for further review of this decision. Among other things, the Union also filed an action in the Circuit Court of DuPage County to enforce the Hill Award.²

We took up Charging Party's appeal of the Executive Director's Dismissal at our meeting on October 6, 2015, and by oral decision, we affirmed the Executive Director's Dismissal for the reasons stated therein. We did not, however, address Respondent's motion for sanctions, and this case was subsequently re-scheduled for our November 17, 2015 meeting. Just prior to commencing the November meeting, we were informed that Respondent was in the process of retaining new counsel and would likely withdraw the sanctions motion. In order to facilitate an amicable resolution of the matter, we again re-scheduled this case for our December 15, 2015 Board Meeting for the sole purpose of fully resolving the pending

² The Union also filed a declaratory judgment action against the District in DuPage County on another matter involving the same bargaining unit.

sanctions motion.

Prior to the December Board Meeting, the then attorney of record for the District, who had filed the sanctions motion, withdrew as counsel and a new firm filed a motion for substitution of counsel along with its appearance. The District's new counsel also filed a motion to withdraw the sanctions motion. Our General Counsel granted both motions; however, the matter remained on our agenda for December for the limited purpose of the General Counsel's formally advising the Board that the sanctions motion had been withdrawn, in order to bring closure to the only remaining aspect of this case still pending before the Board at that time.

Shortly before the December 15, 2015 meeting, the Parties filed a *Joint Motion to Set Aside The Board's Oral Decision Issued On October 6, 2015, And For Charging Party's Withdrawal of Charge*. By their Joint Motion, the Parties sought the Union's withdrawal of the underlying charge, notwithstanding that by prior oral decision, we voted to affirm the Executive Director's Dismissal of same. In support of their motion, the Parties indicated that they proposed to end all ongoing matters between them that pertain to or derive from the Kehoe RDO and the Hill Award. Importantly, under the proposed agreement, the Parties' would accept the Hill Award, thus obfuscating further contract negotiations and the likely possibility of additional unfair labor practice charges, and mooted the action in DuPage County to enforce the Hill Award as well as the District's compliance action also pending before the Board. Further, the Union agreed to withdraw its petition to the Supreme Court for further review of the Appellate Court decision emanating from the Kehoe RDO.

Part and parcel with this entire agreement was our allowing the Union to withdraw the charge that the Executive Director dismissed previously, which we voted to affirm at our October meeting. We note that the Joint Motion does not state that the Parties would not go

forward with the proposed agreement if the Board did not permit the Union to withdraw the charge. Moreover, we think it highly unlikely that this entire agreement between the Parties rests on our granting this motion, particularly as the Parties have already taken steps toward effectuating some of the terms of the agreement. Nonetheless, we are moved to act by the prospect of ensuring full resolution of the dispute between the Parties and facilitating the achievement of labor peace in what has been an extraordinarily contentious and litigious relationship for over two years. We note, in particular, that as consequence of the factious relationship that has existed between the Parties, considerable resources ranging from our investigators to the Supreme Court have been used, if not squandered.

To be clear, we view this decision as an extraordinary and limited remedy and do not invite an expansion. Moreover, we underscore that parties covered by our Act should not view this decision as an invitation to take their disputes to the Board, fight to the edge, and presume that they will be able to avoid a negative Board decision by withdrawing their charge after the Board has reached an oral decision. We take this action because we are persuaded that several immediate and significant benefits will flow from the Parties' agreement and to avoid even the possibility of impeding that agreement. Importantly, we anticipate that his agreement will mark an important step toward labor harmony between these Parties.

Therefore, for the reasons stated herein, we grant the Parties' Joint Motion and we set aside our oral decision of October 6, 2015, affirming the Executive Director's Dismissal and we permit Charging Party to withdraw its original charge.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ Michael G. Coli

Michael G. Coli, Member

/s/ John R. Samolis

John R. Samolis, Member

/s/ Keith A. Snyder

Keith A. Snyder, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on December 15, 2015,
written decision issued in Chicago, Illinois on March 8, 2016.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Tri-State Professional Firefighters Union,
Local 3165, Int'l Association of Firefighters,

Charging Party

and

Tri-State Fire Protection District,

Respondent

Case No. S-CA-15-033

DISMISSAL

On September 18, 2014,¹ the Tri-State Professional Firefighters Union, Local 3165, Int'l Association of Firefighters (Charging Party or Union), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-15-033, alleging that the Respondent, Tri-State Fire Protection District (Employer or District), violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014). After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Respondent is a public employer within the meaning of Section 3(o) of the Act. The Charging Party is a labor organization within the meaning of Section 3(i) of the Act, and is the exclusive representative of a bargaining unit (Unit) consisting of all full-time sworn or

¹ The charge was subsequently amended on January 22, 2015, to include additional allegations.

commissioned Firefighters/Emergency Medical Technicians, Firefighters/Paramedics, Engineers, Lieutenants and Battalion Chiefs employed by the Respondent. In this unfair labor practice charge, the Union alleges that the District violated Sections 10(a)(1), (2), (3), (4) and (7) of the Act.

It is important to review certain background events to understand the context in which the Union filed this charge. Charging Party and Respondent were parties to a collective bargaining agreement (CBA) that expired on May 31, 2012. Negotiations for a successor CBA began in April of 2012. The District filed an unfair labor practice charge against the Union on January 23, 2013, in Case No. S-CB-13-033. On March 14, 2014, Administrative Law Judge (ALJ) Martin Kehoe issued a Recommended Decision and Order (RDO) in the case finding that the Union failed and refused to bargain in good faith in violation of the Act. Both parties filed exceptions to this RDO.²

In April of 2014, the parties proceeded to interest arbitration before Arbitrator Marvin Hill. Two proposals were held in abeyance pending the outcome of the Union's Petition for Declaratory Ruling that was filed on April 14, 2014, in Case No. S-DR-14-001. The first involved the Employer's proposal on probationary period and the second involved the Employer's proposal on promotion. Apparently, the parties decided that the Union would be responsible for requesting hearing dates from the arbitrator to resolve these two issues once the parties received the Declaratory Ruling. On June 23, 2014, the General Counsel issued a Declaratory Ruling, finding that the Employer's promotion proposal is a permissive subject of bargaining, but referred the Employer's probationary period proposal to the parties and the interest arbitration process due to an unresolved issue of interpretation. Arbitrator Hill issued an

² Even though it prevailed in the case, the District took issue with certain aspects of the RDO including the ALJ's recommended remedy.

interest arbitration award (Award) on July 26, 2014. The Award did not address the two proposals that had been held in abeyance.

Shortly thereafter, on August 12, 2014, the Board upheld the ALJ's RDO with modifications. These modifications included an affirmative duty to resume good faith bargaining upon the request of the District. The Board's decision was issued on November 7, 2014, and included an order for the Union to "resume bargaining in good faith over all terms of the successor bargaining agreement pending as of the time of mediation in August 2013 with the understanding that there is no prohibition against the parties' agreeing to terms previously agreed to during or following prior mediation or against agreeing to terms formerly imposed pursuant to interest arbitration" at the request of the District. Tri-State Fire Protection District and Tri-State Professional Firefighters Union, Local 3165, 31 PERI ¶ 78 (ILRB-SP 2014).

On or about September 8, 2014, counsel for the Union became aware that the District, specifically Chief Mancione (Chief), had made appointments to non-bargaining unit Deputy Chief positions, without notifying the Union. The Union believed that these appointments were made in violation of the Fire Protection District Act, 70 ILCS 705 (2014). Counsel for the Charging Party sent a letter to the Board of Fire Commissioners requesting an explanation as to how the appointments were made, and explaining why the Union believed the appointments were erroneous. That same day, the Union's Local President asked the Chief when employees would be receiving their wage increases pursuant to the Award. The Chief responded on September 9, 2014, via email, indicating that the Award was not final since some issues were still pending and because of the Board's ruling in S-CB-13-033. The Chief further indicated that under the circumstances, "any wage increases established by that award cannot be implemented."

On September 16, 2014, the Chief e-mailed a letter to all District employees, including those outside of the Unit. (See Attachment A) The letter was titled "Status update" and began with the following:

It has been brought to my attention by several Bargaining Unit members that inaccurate information has been given regarding contract negotiations between the District and the Union and about the successor contract. I am writing to correct that misinformation and to set the record straight.

The letter then summarized events that occurred during the parties' negotiations for a successor contract. The Chief concludes the letter with the following: "Please continue to ask questions from myself or your Union. This will only strengthen your ability to make educated decisions."

Charging Party claims that the letter provided incorrect information, contains an implied threat of reprisal or promise of benefit, was sent in retaliation for Union counsel questioning the appointment of the new Deputy Chiefs and invites members to deal directly with the District. Charging Party asserts that the Respondent implied a threat of reprisal or promise of benefit in the letter by indicating that the reason the Unit members have not received their wage increase was due to the fact their Union had not requested additional hearing dates before the arbitrator concerning the two outstanding issues. Charging Party argues that the Employer is essentially telling the Unit it is the Union's fault they have not received their wage increases. Charging Party points out that the letter repeatedly uses the phrase "your Union" to imply that the Union has taken actions that have negatively impacted the Unit. Charging Party asserts that the letter undermines the Union's role as the exclusive representative, discourages union membership and coerces employees in their right to select a bargaining representative by painting the Union in a negative light. Charging Party asserts that the Respondent's distribution of the letter violated Sections 10(a)(1), (2) and (4) of the Act.

In the amended charge, Charging Party raises the following additional allegations. On February 27, 2014, the parties entered into Ground Rules governing interest arbitration. The Ground Rules provide that the arbitrator had jurisdiction and authority to rule on mandatory subjects of bargaining, the parties agree to waive any defense or right to claim that the arbitrator lacks jurisdiction and authority to make a retroactive award, no additional issues could be presented by either party for interest arbitration and final proposals could not be altered. Charging Party asserts that it has provided Respondent with a draft of a final CBA to be signed by the Respondent. This draft incorporates the arbitrator's rulings in the Award. Respondent has refused to sign the CBA and has instead requested to meet with the Union for further negotiations. Charging Party asserts that the District's conduct is in repudiation of the Ground Rules, and in violation of Sections 10(a)(4) and 10(a)(7) of the Act.

Next, on or about January 9, 2015, the Respondent informed the Charging Party that Lieutenants Brian Simandl and Scott Campbell would be serving as Acting Battalion Chiefs. Charging Party claims that these appointments/selections, which were made without notice to the Union, were in violation of Sections 10(a)(1), (2), (3) and (4) of the Act. Charging Party asserts that the Respondent took this action in retaliation for the Union filing grievances, filing the instant unfair labor practice charge, filing a Complaint for Declaratory Judgment in October 2014 to determine whether the Deputy Chief appointments were lawful,³ filing a Petition for Administrative Review⁴ in November 2014 to reverse the Board's decision in Case No. S-CB-13-033 and filing a complaint in court to enforce the Award.⁵

³ Tri-State Professional Firefighters, Local 3165, IAFF v. Tri-State Fire Protection District, et al., Case No. 2014MR001483 (Cir. Ct. DuPage Co. filed October 10, 2014).

⁴ Tri-State Professional Firefighters Union, Local 3165, IAFF v. Illinois Labor Relations Bd., et al., No. 1-14-3418 (1st Dist. Filed November 18, 2014).

⁵ Tri-State Professional Firefighters Local 3165, Int'l Association of Firefighters v. Tri-State Fire Protection District, No. 2014L001170 (Cir. Ct. DuPage Co. filed November 19, 2014).

On January 12, 2015, representatives of the Respondent approached Firefighters Daniel Niemeyer and Kevin Arias to assume the role of Acting Lieutenant. Niemeyer declined, but Arias accepted. Charging Party claims that it is the past practice of the parties for the Union to be notified of these types of changes, and to be invited and present at the meeting where decisions like these take place. Yet this time the Union was not invited or notified. Charging Party asserts that the meeting that took place on January 12, 2015, constitutes direct dealing, in violation of Sections 10(a)(1) and 10(a)(4).

Charging Party also alleges that in or around October 2014, the Chief made a comment to a Unit member that things could be different if the Unit had a different Union President. Charging Party further alleges that at a Christmas Party, the Chief made a comment about there being “different” people to which someone asked if he meant the Union President. The Chief replied “yes” to that question.⁶

Finally, on January 14, 2015, the Respondent filed a charge against the Charging Party, in Case No. S-CB-15-013. Charging Party asserts that this charge was filed in retaliation for the Union’s concerted and protected activity as previously mentioned. Charging Party asserts that the filing is in violation of Sections 10(a)(1), (2) and (3) of the Act.

II. DISCUSSION AND ANALYSIS

The September 16, 2014 Letter

The Union asserts that the District violated Sections 10(a)(1), (2) and (4) of the Act when the Chief emailed a letter to Unit and non-bargaining unit staff on September 16, 2014, concerning negotiations for a successor CBA. I find that this allegation fails to raise an issue for hearing and must be dismissed.

⁶ Charging Party did not provide any additional details or evidence to explain this allegation.

Section 10(a)(1) of the Act provides that it shall be an unfair labor practice for an employer or its agents to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in the Act. A violation of Section 10(a)(1) is generally found where it is shown by a preponderance of the evidence that a public employer has engaged in conduct which reasonably tends to interfere with, restrain or coerce employees in the free exercise of rights guaranteed in the Act. Illinois Department of Central Management Services, 16 PERI ¶2018 (IL SLRB G.C. 2000). In cases where the charging party is alleging retaliation for protected activity, the 10(a)(1) analysis is conducted in the same manner as a 10(a)(2) violation.

Section 10(a)(2) of the Act provides, in part, that it shall be an unfair labor practice for an employer or its agents to “discriminate in regard to hire or tenure of employment or any terms or condition of employment in order to encourage or discourage membership in or other support for any labor organization.” To establish a prima facie case in support of an alleged violation of Section 10(a)(2), Charging Party must, at the investigative stage, provide a showing that (1) the employee engaged in union and/or protected, concerted activity; (2) that the employer knew of this conduct; and (3) that the employer took an adverse employment action against the employee, in whole or in part, because of anti-union animus, or that the protected conduct was a substantial or motivating factor in the adverse action. City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335, 345 (1989). There must be a causal connection between the employer’s adverse employment action and the protected concerted activity. See Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993).

The letter at issue does not raise a question for hearing under Section 10(a)(1) or (2). The letter essentially summarizes, albeit from the Chief’s perspective, the parties’ negotiations for a successor contract. While the Charging Party takes issue with some of the Chief’s statements, it

appears to be more of a difference of opinion between the parties rather than the Chief providing false or misleading information. For example, Charging Party argues that it was inaccurate for the Chief to claim that the Board upheld the ALJ's RDO before the Board actually issued its modified and final, written decision.⁷ This is too insignificant of a discrepancy to constitute misinformation. Furthermore, while the overall tone of the letter, with its repeated use of the phrase "your union," is arguably a bit contemptuous, this is not enough to violate the Act. Section 10(c) of the Act states:

The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

Based on Section 10(c), a public employer is not precluded from communicating to employees in non-coercive terms. Even if the Chief is offering or expressing an opinion in this letter that does not reflect favorably upon the Union, I do not find that the letter is coercive. It does not contain a threat of reprisal or force nor does it contain a promise of benefit. The Union asserts that the letter implies that employees have nothing to gain from collective bargaining or representation by the Union. While the Chief appears to be expressing some frustration over what has occurred between the parties with respect to bargaining the successor contract, I find that the letter does not offer an inducement to employees to withdraw from the Unit.

Furthermore, while there is ample evidence that the Union has engaged in protected activity and that the District was aware of this activity, Charging Party has failed to establish that Respondent took an adverse employment action in retaliation for the Union's activity. The letter itself does not constitute an adverse employment action. To the extent that the Union argues that

⁷ The Chief's letter was written after the Board made its oral ruling on S-CB-13-033 at the August 2014 Board meeting, but before the Board issued its written decision.

the withholding of the wage increase is an adverse employment action, this too fails to raise an issue for hearing. There is insufficient evidence that the District is refusing to implement the wage increases in retaliation for the Union's protected activity. Instead, it is clear that the parties fundamentally disagree as to whether they are bound by the Award. The Respondent is relying, at least in part, upon the Board's ruling in S-CB-13-033 as grounds for not implementing the Award. I find this reliance to be justified. The remedy the Board awarded in S-CB-13-033 clearly allows the District to demand further bargaining on the successor CBA.

Finally, I find that the letter does not raise an issue for hearing under Section 10(a)(4) of the Act. Section 10(a)(4) makes it an unfair labor practice for a public employer to refuse to bargain collectively in good faith with a labor organization designated as the exclusive representative of a bargaining unit. A public employer violates this duty to bargain in good faith when it engages in direct dealing with bargaining unit employees. However, the Board has indicated that, in and of itself, direct communication by the employer with individual employees does not violate Section 10(a)(4) of the Act. American Federation of State, County and Municipal Employees, Council 31 and City of Chicago (Department of Health), 10 PERI ¶ 3031 (IL LLRB 1994) (City of Chicago).

The Board in that case agreed with National Labor Relations Board precedent that communication with employees is unlawful when the context of the conversation is not to inform employees but rather to have the effect of coercing the employees from exercising their right to bargain through the representative of their choosing. Id. (citing Huck Manufacturing Company and National Labor Relations Board, 693 F.2d 1176, 1182 (5th Cir. 1982), and Wantagh Auto Sales, Inc. and Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, 177 NLRB 150, 153 (1969)). The Board identified examples of illegal

direct communication which included: efforts at reaching a separate agreement with employees; enlisting support of employees through threats of reprisal or promises of benefit and; inducing employees to withdraw from the union.

Based on the foregoing, the Chief's act of communicating directly with employees, in and of itself, is not enough to raise a question for hearing under Section 10(a)(4). Turning to the content of the letter, I find insufficient evidence of direct dealing. The letter in question concludes with an invitation for employees to "continue to ask questions from myself or your Union..." An invitation to "ask questions" is not, *per se*, evidence of direct dealing and there is no evidence that any direct dealing between Respondent and Unit members took place. Furthermore, at no point does the letter suggest that the employees should avoid talking to the Union nor does it direct employees to discuss workplace issues exclusively with management. As such, there is insufficient evidence that the District engaged in direct dealing with employees.

The District's Refusal to Sign the CBA

The Union asserts that the District violated Sections 10(a)(4) and (7) of the Act by refusing to sign the CBA and implement the Interest Arbitration Award. I find that this allegation fails to raise an issue for hearing and must be dismissed.

Section 10(a)(7) of the Act makes it an unfair labor practice for an employer "to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement." A public employer violates Sections 10(a)(4) and (7) by refusing to implement an interest arbitration award and refusing to sign a collective bargaining agreement. Harvey Firemen's Association, Local 471, IAFF and City of Harvey, 18 PERI ¶ 2032, (ILRB-SP 2002).

Charging Party has drafted a successor CBA in accordance with the Award and has requested multiple times that Respondent sign it. Respondent has not signed the CBA and has

requested to resume bargaining. Charging Party asserts the actions taken by the Respondent, or lack thereof, are in violation of the Act. However, as noted above, in refusing to sign the CBA and implement the Award, the Respondent is relying, at least in part, on the Board's ruling in S-CB-13-033. In order to remedy the unfair labor practice found in that case, the Board explicitly permitted the District the discretion to demand that the parties resume bargaining, despite the issuance of the Award.

Charging Party asserts that the parties agreed to Ground Rules prior to interest arbitration and that Respondent violated those Ground Rules when it refused to implement the Award and requested to continue bargaining for a successor CBA. Again, the Ground Rules were signed before the Board directed the parties engage in further bargaining if requested by the District. I cannot find that the Respondent violated the Act by availing itself of a remedy explicitly provided by the Board.

Designation of Acting Battalion Chief(s) and Acting Lieutenant

The Union asserts that the Respondent violated Sections 10(a)(1)(2)(3) and (4) of the Act when it offered employees the position of Acting Battalion Chief and Acting Lieutenant, both Unit positions. Again I find that this allegation does not raise an issue for hearing.

As noted above, in order to establish a violation of Section 10(a)(1) or (2), the Union would have to provide some evidence that the Respondent took an adverse employment action in retaliation for protected concerted activity. Similarly, Section 10(a)(3) of the Act provides that "it shall be an unfair labor practice for an employer or its agents to discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition or charge, or provided any information or testimony under this Act." The same analysis applied to a Section 10(a)(2) allegation applies to a 10(a)(3) allegation, except that the Charging Party must

demonstrate that it engaged in the particular protected activity described in Section 10(a)(3) of the Act. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (citing City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 345 (1989) and applying the court's 10(a)(2) analysis to 10(a)(3)).

Once again there is ample evidence that the Union engaged in protected activity and that it participated in activity before this Board. There is also ample evidence that the District knew of this activity. Even if I assume that the designations to Acting Battalion Chief and Acting Lieutenant constitute an adverse employment action, a finding for which there is very little basis, the District has failed to provide sufficient evidence that the District made these designations in retaliation for the Union's activity. For example, there is no evidence or even assertion that employees who had been visibly engaged in union activity were bypassed for the Acting positions. Without any evidence establishing a connection between the protected activity and the Respondent's appointments, there is insufficient evidence of a violation of Section 10(a)(1),(2) or (3) to warrant a hearing in this matter.

I also find insufficient evidence that the Respondent violated Section 10(a)(4). It is well established that a public employer violates its obligation to bargain in good faith, and therefore violates Section 10(a)(4) of the Act, when it makes a unilateral change to a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, its employees' exclusive bargaining representative. County of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996).

According to Respondent, the appointment of new Deputy Chiefs prompted the need to designate an Acting Lieutenant and an Acting Battalion Chief. I will assume for the purpose of this investigation that designating Unit members to work outside of their classification is a

mandatory subject of bargaining. However, Respondent asserts that the parties already bargained this topic and there is language in the parties' CBA that authorizes the Respondent's actions. Specifically, Respondent cites Appendix A of the CBA, which provides:

WORKING OUT-OF-CLASSIFICATION

An acting officer will be designated for each officer rank and shift to work out-of-classification in the event of the absence of a regular officer. The acting officer will be the platoon member who is currently ranked on a valid promotional eligibility list for the rank, or the senior shift member who participated in the most recent promotional examination for the position.

Charging Party argues that Respondent violated the Act because it failed, for the first time, to give the Union notice of the appointments and an opportunity to be present and/or because it offered the Acting position of Lieutenant directly to Unit employees thereby engaging in direct dealing.

First I must note that the WORKING OUT-OF-CLASSIFICATION language does not specifically address whether the Employer is required to give notice to the Union or whether the Employer is prohibited from speaking directly to employees about designation to an out-of-classification position. More importantly, the Union's allegation with respect to these out-of-classification designations is, at best, a potential violation of the CBA.

In addition to the Appendix language cited above, the topic of working out-of-classification is also covered in the CBA, Article VIII, Wages, Section 8.5 Work Out-of-Classification, which provides:

An employee who is required by a Chief Officer to accept responsibilities and carry out the duties of a position or rank above that which he normally holds shall be paid at the same rate of pay for that position or rank for all time worked while so acting in that position or rank. The District agrees to continue the practice in effect on the effective date of this Agreement with respect to assigning employees to

fill vacancies in officer's ranks. However, when an officer is excused from duty and no hire back is available in accordance with the hire back procedures, a second acting officer will be utilized in accordance with Appendix A.

Whether or not the Respondent's conduct in making these designations was authorized by the CBA is a matter of contract interpretation and enforcement. The Board has long held that it is not in the Board's functions "to remedy alleged contractual breaches or to obtain specific enforcement of contract terms." Village of Creve Coeur, 3 PERI ¶ 2063 (ISLRB 1987). Accordingly, this allegation must be dismissed.

The Chief's Comments about the Local Union President

Charging Party asserts that the Chief's comments about the Local Union President, as mentioned in the investigatory facts, chill the rights of the Union and Unit members to engage in protected, concerted activity. In support of this allegation, Charging Party asserts that the Chief made a comment to a Unit member that things could be different if the Unit had a different Union President and made a comment at a Christmas party about there being "different" people, which was apparently a reference to the Local Union President. There are very little details supporting or explaining this particular allegation. As such, the available evidence does not support a finding that the Chief made a threat of force or reprisal or that the Chief made a promise of benefit when talking about the Local Union President. Nor does the available evidence indicate that the Chief made statements that would coerce or restrain employees from engaging in rights protected by the Act. Finally, there is no evidence that the Chief took any retaliatory action against the Local Union President. I find that this allegation fails to raise an issue for hearing.

The District Filing an Unfair Labor Practice Charge Against the Union

As noted above, the District filed an unfair labor practice charge against the Union on January 14, 2015, in Case No. S-CB-15-013.⁸ Charging Party claims that the District filed the charge in retaliation for the Union filing the instant charge with the Board. This claim must be rejected.

The Board has found that “given the remedial purposes and policies underlying the Act’s unfair labor practice provisions, public policy mandates that employers, employees and labor unions covered by the Act not be discouraged from availing themselves of those procedures. This legislative policy would be undermined if, as Charging Parties allege in this case, the mere act of filing such a charge could be the basis for a violation of the Act.” Illinois Fraternal Order of Police Labor Council and County of Rock Island and Rock Island County Sherriff, 13 PERI ¶ 2043 (ILRB-SP 1997). In the instant case, Charging Party has provided insufficient evidence to support its claim that the District’s filing of an unfair labor practice charge violated the Act.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not

⁸ Simultaneous with the issuance of this Dismissal, the undersigned is issuing a Complaint for Hearing in Case No. S-CB-15-013.

be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 23rd day of July, 2015.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

A handwritten signature in black ink, appearing to read 'Melissa Mlynski', written over a horizontal line.

**Melissa Mlynski
Executive Director**



OPERATIONS

Fire Suppression & Rescue

All members

September 15, 2014

Memorandum 14-001; Status update

It has been brought to my attention by several Bargaining Unit members that inaccurate information has been given regarding contract negotiations between the District and the Union and about the successor contract. I am writing to correct that misinformation and to set the record straight.

Your contract expired May 31, 2012. Well in advance of that date, the District contacted your Union and attempted to set dates for bargaining. It took weeks to schedule our first bargaining session. Throughout the rest of 2012, and into 2013, the District repeatedly sent dates to your Union for negotiations. The District repeatedly offered to meet and to bargain. This effort was ignored.

Both the District and the Union have to bargain in good faith. That means both sides have to have people at the table who can reach an agreement. Your Union President told us at the table that he could not agree to anything, and your Union's attorney said that every tentative agreement had to receive her approval first.

Your Union engaged in bad faith bargaining. The District filed an unfair labor practice charge (ULP charge) against the Union. An administrative law judge (ALJ) agreed with the District. You can get a copy of his decision on-line: <http://www.state.il.us/ilrb/subsections/decision/index.asp>. It is listed under "ALJ decisions" and it issued May 14, 2014. The Case Number is S-CB-13-033.

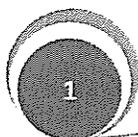
Your Union demanded interest arbitration—despite the fact that they didn't engage in good faith bargaining at the table. Under the law (the Illinois Public Labor Relations Act), the District was required to participate in the interest arbitration. All along, the District wanted to negotiate this contract at the table.

Arbitrator Marvin Hill issued an interest arbitration award on July 26, 2014. You can get a copy of his decision on-line: <http://www.state.il.us/ilrb/subsections/arbitration/index.asp>.

The interest arbitration award is not final because your Union raised two issues (probationary period and promotions) that Arbitrator Hill did not decide. He didn't decide them because your Union filed a petition with the Illinois Labor Relations Board (the ILRB) and argued that the District's proposals on those issues weren't negotiable. Your Union largely did not win that argument. You can get a copy of the ILRB general counsel's ruling on your Union's petition on-line:

<http://www.state.il.us/ilrb/subsections/arbitration/index.asp>. It's listed under "Board decisions" and it issued June 23, 2014. The Case Number is S-DR-14-001.

In addition, your Union has said that it was going to demand additional hearing dates before Arbitrator Hill to decide those last two issues. Despite saying this, your Union has not made any request for hearing dates. Until those last two issues—your Union's issues—are decided, the interest arbitration award is not final.



Attachment A



OPERATIONS

Fire Suppression & Rescue

It is my understanding that your Union talked to you about the interest arbitration award. It is also my understanding that questions have been asked about when you will receive salary increases. Even if your Union finally requests those hearing dates, presents evidence and makes arguments, and even if Arbitrator Hill issues a decision on those last two issues—your Union's issues—the interest arbitration award, and the entire successor contract, has to be submitted to the Board of Trustees for approval.

Your Union appealed the ALJ's decision that I mentioned earlier. On August 12, 2014, at a public meeting, the ILRB rejected your Union's arguments on appeal. The ILRB also found that your Union's conduct was unlawful. The ILRB, however, went a step further than the ALJ and issued an affirmative bargaining order to your Union. The ILRB also ordered that, at the District's request, the parties have to return to the bargaining table—where they may eventually agree to what the interest arbitrator awarded, but are not required to do that. The District is currently awaiting the ILRB's written decision.

It is imperative that accurate and consistent communications exists for both sides to build a healthy relationship. I, and your Senior Staff, are more than willing to work towards an agreement that is fair for the taxpayers and the membership but will require an open dialog and a willingness to resolve past issues. Please continue to ask questions from myself and your Union. This will only strengthen your ability to make educated decisions.

Chief Jack L. Mancione