STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party	)	
and	)	Case No. S-CA-15-058
County of Kankakee and Kankakee County State's Attorney,	)	
Respondents	)	

CORRECTED DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL[1]

On October 30, 2014, Charging Party, American Federation of State, County and Municipal Employees, Council 31, filed an unfair labor practice charge against Respondents County of Kankakee and Kankakee County State's Attorney, in which it alleged that the Respondents violated Section 10(a)(4) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a)(4) (2012), by: 1) direct dealing with a bargaining unit member; 2) providing a wage increase outside the scope of the collective bargaining agreement and without negotiating with the Charging Party; 3) unilaterally implementing changes in health insurance amidst negotiations over a successor collective bargaining agreement and without notice or an opportunity to bargain; and 4) engaging in regressive bargaining and overall bad faith bargaining. The Executive Director issued a complaint regarding the third and fourth allegations, but on January 21, 2015, dismissed the first and second allegations.

The Charging Party filed a timely appeal of the Executive Director's Partial Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Adm. Code

[1] The initial decision listed the wrong date on which the charge was filed and failed to provide the date of the partial dismissal of a portion of that charge

§1200.135(a). The Respondent did not file a response to the appeal. After reviewing the record and appeal, we affirm the Executive Director's Partial Dismissal.

With respect to the first two allegations, which were dismissed by the Executive Director, the charge alleged:

> The Employer has engaged in unlawful direct dealing with bargaining unit employees in the Kankakee State's Attorney's Office. On September 15, 2014, bargaining unit employee Ronda Powell submitted to AFSCME Council 31 Staff Representative Jeff Dexter and AFSCME Local 1874 President Tricia Entwistle-Huntley a one-page proposal with eight contract proposals which she requested that the Union seek for a successor collective bargaining agreement with the County and State's Attorney. One such proposal was to accept the 4% wage increase offered by the Employer. However, the Employer had not at that time made any 4% wage increase proposal. At a bargaining session on September 26, 2014, Assistant State's Attorney Bob McElroy, who acted as the Employer's chief spokesperson in negotiations at that session, presented the Union with an Employer bargaining proposal, and proposed eight proposals. Such eight proposals were identical to the eight proposals presented to the Union by Ronda Powell on September 15, 2014, including the proposal for a 4% wage increase. Bob McElroy, in presenting the proposals to the Union, referred to a one-page proposal which was identical to the one-page proposal submitted to the Union by Ronda Powell on September 15, 2014. Ronda Powell, on October 9, 2014, filed a decertification petition in Case S-RD-15-003.
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> The Employer has engaged in unlawful direct dealing and unilateral action without notice to and bargaining with the Union. At the bargaining session on September 26, 2014, Ronda Powell stated that her current wage rate is $19.69 per hour. Such wage rate is substantially higher than those of similarly situated employees who have been employed by the Employer for a longer period of time, and means that Ronda Powell has been given wage increases substantially in excess of the pay raises set forth in the collective bargaining agreements between the parties. The Employer has never given the Union notice that any bargaining unit employees were being given pay raises in excess of those set forth in the collective bargaining agreement, and, prior to September 26, 2014, the Union had no notice of such fact.

Executive Director's rationale for dismissal

As noted in the charge, Ronda Powell has filed a decertification petition, Case No. S-RD-15-003, and the Executive Director considered evidence submitted in that matter in her determination with respect to this charge. Powell was not only a member of the bargaining unit, but participated in negotiations for a successor bargaining agreement as a member of the union's bargaining team. With respect to the allegation that Powell was being paid more than the collective bargaining agreement would have allowed, the Executive Director referenced a document Powell submitted showing her complete salary history including the fact that she began to earn $19.69 per hour in December 2012 (nearly two years before 2014 negotiations at issue) upon implementation of the then-applicable CBA provision calling for a 4% wage increase. Based on this information, the Executive Director found that Charging Party had failed to provide sufficient evidence to substantiate its claim that Powell was receiving a wage outside the parameters of the collective bargaining agreement salary structure. She found it appropriate to dismiss this aspect of the charge.

Other information submitted shows that in February 2014 (seven months before the events at issue) the union met with its members and distributed an email from union representatives dated November 2013 (ten months before the events at issue) in which the union representatives had proposed a 4% increase. In other words, the 4% increase Powell had proposed to the union representatives in September 2014 was consistent with what the union representatives themselves had proposed ten months before, and need not have originated with the Employer as the Union's charges seem to assume. The Executive Director noted that the Charging Party had provided no other information or documentation with respect to any of the other proposals (most of which merely relate to separation of what had previously been a

combined contract covering two bargaining units) and, finding its information with respect to the 4% increase insufficient, concluded that this aspect of the charge should be dismissed as well.

Charging Party's appeal of the dismissal

Charging party argues that the Executive Director ignored substantial evidence of direct dealing and made what amounts to a credibility determination. It asserts it provided evidence establishing that, at a meeting between the Union representatives and members of the bargaining unit, Powell stated that the bargaining unit (employees of the State's Attorney) wanted to bargain separately from another bargaining unit represented by AFSCME (employees of the Circuit Clerk). Powell also handed the representatives a one-page proposal which included eight items, including a proposal for an additional personal day, and that the term of the contract be for only a single year. It included the proposal for a 4% wage increase referenced by the Executive Director, which was worded as follows: "Accept 4% raise that was offered by County." Charging Party notes that the Employer had made no proposal for a raise at that point in time. However, 11 days later, the Employer submitted both a generalized proposal for the Circuit Clerk bargaining unit, and a specific proposal for the State's Attorney bargaining unit, the latter of which included the identical eight points in the memo Powell had earlier presented to the Union representatives. In fact, the Union's representative averred that, as he presented the Employer's proposals, the Employer's representative read from the identical sheet with eight bullet points (although he refused to give the Union a copy of that sheet). Charging Party points out that Respondent did not deny they were identical. It also argues that Respondent's explanation for the coincidence—that the sheet anonymously appeared on the State's Attorney's desk and that when he gave it to his lead negotiator, the negotiator simply assumed they were his marching orders—strains credulity.

Information from Powell

The Employer did not file a response, but as previously noted, the Executive Director considered information provided by Powell in support of her decertification petition in Case No. S-RD-15-003. In a supplemental response to the incumbent's request to block, Powell stated that she had never calculated her salary on an hourly basis and consequently could not have stated it at a bargaining session as Charging Party alleges. She also states that she has not received a raise in two years (one of her gripes against the union), which tends to negate any implication that the employer was treating her more favorably so that she would undermine the union. She submitted a chart of her hourly wage rates dating back to 1999, which shows she made $18.25 at the time she became a "Grade 3" in January 2011, received 3.75% raise in December 2011, a 4% raise in December 2012, and no raise in December 2013.

With respect to the Charging Party's statement that the employer had never made an offer of a 4% raise at the time Powell's list of proposals included "acceptance" of such an offer, Powell stated: "We had been led to believe at a Union Meeting on February 18, 2014, that the County had expressed interest in extending the contract for one year based on the previous year's (2012) raise (4%)." Powell's submission includes an extensive time line which tends to show deterioration in the relationship between the unit members and the Union. For February 18, 2014, this timeline states: "Meeting at Knights of Columbus re: layoffs (we were given a copy of November 13, 2013, email between Bob [Employer's negotiator] and Jeff [Union's representative]." She submitted that November 13, 2013 email, which includes this sentence: "Therefore the costs for the Employer and the union to agree to extend the current CBA for 1 year and agree to the same wage increase as the 12/01/12 wage increase, would be $28,762.82." Powell also submitted a document showing the 12/01/12 increase had been 4%.

Analysis

We affirm the Executive Director's dismissal of allegations of a wage increase for Powell as well as the allegation of direct dealing. Evidence gathered in investigation suggests that Charging Party's assertion that Powell was given a raise is false, and Charging Party has provided nothing in support of its assertion. Similarly, evidence gathered undermines Charging Party's assertion that Powell had suggested "accepting" a 4% raise the employer had in fact never offered to the bargaining representative. Powell provided an email which strongly suggests the employer had indeed made such an offer to the bargaining representative or at least provides an explanation for her belief that the employer had made such an offer. In either case, Powell's phrasing her 4% proposal as an acceptance of the Employer's offer does not demonstrate that the Employer had been dealing directly with her.

Charging Party understandably questions the State's Attorney's story that he found the eight-point proposal left anonymously on his desk, and then forwarded it to his lead negotiator who simply assumed it was what the Employer wanted. If true (and there is no evidence to the contrary) it may be that Powell submitted her proposal to both her unit's bargaining representative and also to the Employer through this rather backhanded channel. Charging Party quotes from a decision of the Illinois Appellate Court which in turn quotes a U.S. Supreme Court decision for the proposition that an Employer violates its duty to bargain with the bargaining representative even when its direct dealing is initiated by individual employees such as Powell. Bd. of Educ. of Sesser-Valier Cmty. School Dist. No. 196 v. Ill. Educ. Labor Relations Bd., 250 Ill. App. 3d 878, 883 (4th Dist. 1993).[2] However, after Powell initiated things here, the Employer

[2] We quote extensively from this decision:

> If we have failed in the past, we now make clear that an educational employer violates the essential principle of collective bargaining when that employer bargains, or attempts

did not deal directly but continued to bargain with the Charging Party. Even if they were

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to bargain, with an individual employee or employees with respect to wages, hours, and terms or conditions of employment. (See Medo Photo Supply Corp. v. NLRB (1944), 321 U.S. 678, 684, 64 S.Ct. 830, 833, 88 L.Ed. 1007, 1011.) We further hold that payment of retirement contributions is included within terms or conditions of employment.

The rationale for holding so called "*direct dealing*" an unfair labor practice was well stated by the National Labor Relations Board in *Medo.*

"'To permit the employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committees, in spite of the fact that they had not revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed purpose of the Act to avoid-or mitigate.' In these circumstances, *for the respondent to deal directly with its employees was to deny to the Union its statutory status* and was, therefore, a refusal to bargain collectively.

The validity of this conclusion is not altered, as the respondent contends, by the mere fact that the direct dealing emanated from the employees rather than from the respondent. [emphasis added]. The gist of the respondent's violation of the Act is its direct negotiations with the employees after they had designated, and the respondent had recognized, an *exclusive* bargaining representative. It is, therefore, immaterial from whence came the impulse to deal directly." (Emphasis added.) (*In re Medo Photo Supply Corp.* (1942), 43 N.L.R.B. 989, 997-98, quoting *N.L.R.B. v. Acme Air Appliance Co.* (2d Cir.1941), 117 F.2d 417, 420.)

The District contends that it conducted no "negotiations" because it accepted the proposals of Samuels and Simpson without alteration. The District argues that no authority holds that an employer cannot listen to employees without the exclusive representative being present. It further maintains there was no finding by the IELRB, nor were any facts presented by the Association, that the District used this method to secure an advantage in its bargaining relationship.

We conclude that the District here did more than merely listen to the individual employees; it also acted on their requests to affect the terms and conditions of their employment-without notice to and bargaining with the Association-to the economic advantage of the individual employees. The IELRB's analysis of the employer's argument on this point makes clear that **the violation lies in *bypassing the exclusive representative* in dealing directly with individual employees on such matters. [emphasis added]** (8 Pub.Employee Rep. (Ill.) par. 1023, at IX-93 through IX-95.) This bypassing necessarily undermines the Association's status as the exclusive bargaining representative of employees in the bargaining unit when individual employees can, by going directly to the superintendent with a proposal, secure for themselves benefits that the Association did not procure for them. The power to deal with individual members of the Association would give the employer the power to effectively undermine the Association, contrary to the intent of the Act.

Powell's proposals, the Employer brought those proposals to the Charging Party and did not simply implement them as the employer had done in the case relied upon by the Charging Party. Merely receiving this information from Powell is not, in itself, direct dealing. Cf. City of Chicago (Dep't of Health), 10 PERI ¶3031 (IL LLRB 1994) (no violation where employer supplied information directly to employees. Sesser-Valier states that the violation lies in *bypassing* the representative. That did not happen here.

Conclusion

For these reasons, we affirm the Executive Director's partial dismissal.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Albert Washington
Albert Washington, Member

Member Brennwald, concurring in part and dissenting in part:

I concur in the majority's affirmance of the dismissal of the allegation pertaining to Powell's rate of pay, based on the absence of any evidence to support the Charging Party's claim. However, I respectfully disagree with the dismissal of the direct dealing charge.

In support of its direct dealing allegation, Charging Party has presented the following evidence: (1) in a strategy meeting with the Charging Party's representative prior to commencement of bargaining with Respondent for a successor agreement, the bargaining unit employees gave their representative a one-page, eight-point summary of the employees' bargaining objectives, which included a one-year term with a 4% wage increase, and an agreement by the Respondent to negotiate separately from the Circuit Clerk bargaining unit; (2) at a negotiation session eleven days later, in what appears to have been the Respondent's opening

proposal in bargaining for the successor agreement, the Respondent presented to Charging Party a comprehensive package proposal identical to the terms the employees had presented to Charging Party's representative in their strategy meeting, as outlined in their one-page summary, and including a one-year duration with a 4% increase, and an agreement to bargain with the Circuit Clerk unit separately; (3) when presenting its proposal, the Respondent's representative appeared to be referring to a one-page document identical to the summary presented by the unit employees in their strategy meeting with the Charging Party's representative, and Respondent refused to give Charging Party's representative a copy of the document when requested to do so; and (4) the Charging Party had not itself presented the employees' proposals to the Respondent.

As the majority acknowledges, the Respondent has never denied any of these allegations. Although the Respondent did not respond to the appeal, it claimed before the Executive Director that the State's Attorney found the employees' one-page, eight-point summary on his desk, and then, apparently without inquiry as to its origins or meaning, transmitted the document to his bargaining representative. Respondent's bargaining representative then proceeded to present the terms of the document, point-for-point, as the Respondent's own opening proposal, and did so based only on his assumption – the foundation for which is never described by the Respondent – that he was acting in accordance with the State's Attorney's wishes.

In other words, the available, undisputed evidence shows that the Respondent opened bargaining by offering the employees everything they were seeking in negotiations, before the Charging Party itself had proposed those terms. By doing so, at least as far as the employees and the Respondent were concerned, the Respondent obviated the need for further bargaining, or for any substantive input from the Charging Party. It seems to me that the obvious inference to be drawn from this sequence of events is that substantive discussions may have occurred between

the employees and the Respondent, outside the auspices of the Charging Party, before the Respondent presented its proposal to the Charging Party. The Respondent's cryptic explanation does little to negate this inference, and only serves to compel further inquiry.

Therefore, and contrary to the reasoning of the majority, I see all the circumstances of this case as potentially suggestive of more than the "mere receipt of information" from the bargaining unit employees by the Respondent. In my opinion, the evidence offered during the investigation raises a substantial question of fact and law for hearing as to whether the employees and the Respondent in some fashion bypassed the Charging Party and "pre-negotiated" the terms of a successor CBA, and thereby engaged in direct dealing in violation of the Act. Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 684 (1944); Bd. of Educ. of Sesser-Valier Cmty. School Dist. No. 196 v. Ill. Educ. Labor Relations Bd., 250 Ill. App. 3d 878, 883 (4th Dist. 1993).

For all of these reasons, I would reverse the Executive Director's dismissal of the direct dealing charge, and amend the complaint to add that allegation.

/s/ James Q. Brennwald
James Q. Brennwald, Member

Decision made at the State Panel's public meeting held in Chicago, Illinois on March 10, 2015; written decision issued in Chicago, Illinois on March 13, 2015; corrected written decision issued in Chicago, Illinois on March 18, 2015.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31, Charging Party and County of Kankakee and Kankakee County State's Attorney, Respondents	Case No. S-CA-15-058

PARTIAL DISMISSAL

On October 30, 2014, the American Federation of State, County and Municipal Employees, Council 31 (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-15-058, alleging that the County of Kankakee and Kankakee County State's Attorney (Respondents) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended.* After an investigation conducted in accordance with Section 11 of the Act, I determined that a portion of the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this partial dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Respondents are public employers 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 the exclusive representative of a bargaining unit (Unit) in the Kankakee County State's Attorney's

office consisting of employees in the titles of all full time positions including Clerk, Receptionist, Coordinator, Clerk Stenographer, Clerk-Typist, Traffic Supervisor, Juvenile Coordinator, Victim/Witness Coordinator, Paralegal, Grand Jury Coordinator and Interviewer, as certified by the Board in Case Number S-RC-94-123. Charging Party and the Respondents are parties to a collective bargaining agreement (CBA) setting forth the terms and conditions of employment for employees in not only this particular Unit, but also a unit with the Kankakee County Circuit Clerk. The CBA had a term of December 1, 2009 through November 30, 2013. Charging Party and Respondents commenced negotiations for a successor CBA on or about September 22, 2014, and are currently engaged in negotiations for a successor agreement for the units. Charging Party alleges that the Respondents violated Section 10(a)(4) of the Act for the following reasons: (1) engaging in direct dealing with a bargaining unit member; (2) providing a wage increase outside of the scope of the CBA and without negotiating with the Union; (3) unilaterally implementing a change to health insurance amidst negotiations and without any notice or an opportunity to bargain and; (4) engaging in regressive bargaining and overall bad faith bargaining.[1]

Ronda Powell is employed by the Kankakee County State's Attorney and is a member of the Unit.[2] Powell also participated in negotiations for a successor CBA as a member of the Union's bargaining committee. On or about September 12, 2014, Powell requested to meet with Jeff Dexter and Tricia Entwistle-Huntley, representatives of the Union, to discuss contract negotiations. On September 15, 2014, the Union representatives met with Unit employees. During this meeting, Powell presented the Union with a list of proposals on behalf of the Unit

[1] I am issuing a Complaint on the allegations that the Respondents made unilateral changes to the Unit's health insurance plan and engaged in regressive and bad faith bargaining, so those issues will not be addressed in this Partial Dismissal.

[2] Powell is also the petitioner in a decertification petition, S-RD-15-003, filed October 9, 2014. Charging Party has requested that the Board block the decertification election until the instant charge has been resolved. I am issuing a Denial of Request for a Blocking Charge and Direction of Election in that case.

employees, signifying what the Unit wanted in the new CBA. One of the proposals was for a 4% wage increase. Powell encouraged Charging Party to accept a 4% wage increase for the Unit. According to the Charging Party, the Respondents had yet to propose a 4% wage increase to the Union.

During a bargaining session on September 26, 2014, the negotiator for the Respondents presented the same proposals that Powell had presented to the Union, including a 4% wage increase. Charging Party inferred that the Respondents must have circumvented the Union and directly dealt with Powell, since the Respondents' proposals were identical to the proposals Powell presented about 11 days prior.[3]

Respondents deny the allegation of direct dealing, claiming that the proposals in question were left on the desk of the State's Attorney, without his knowledge of where they came from. He in turn provided it to the Respondents' lead negotiator, to present to the Union.

Charging Party also asserts that the Respondents provide a higher wage to Powell than to other similarly situated employees, and that they failed to bargain with the Union over this issue. Specifically, during a bargaining session on September 26, 2014, Powell stated that her wage rate was $19.69 per hour. Charging Party claims that this wage rate is outside of the scope of the CBA. The Respondents deny this allegation as well.

II. DISCUSSION AND ANALYSIS

The Local Panel of 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).

[3] As far as evidence to support the allegation of direct dealing, Charging Party only focuses on the 4% increase.

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.

In the instant case, the Union supports its charge of direct dealing by pointing to the similarities between Powell's proposals, and the proposals presented by Respondents 11 days later. Specifically, the Union focuses on the fact that both proposals include a 4% increase.

As noted above, Powell has filed a decertification petition, S-RD-15-003, and the Union has requested that the Board block the decertification election pending the resolution of this unfair labor practice charge. I find that the information submitted by Powell in S-RD-15-003 is directly relevant to this unfair labor practice charge.

For example, Powell submitted a detailed chart in S-RD-15-003 that outlines her salary since she was hired, all of her anniversary increases and grade increases, which total to $19.69 per hour. Powell reached $19.69 per hour in December of 2012, after Unit members received a 4% raise. Based on this documentation, the Union presented insufficient evidence to substantiate its allegation that Powell is receiving a wage outside the parameters of the CBA salary structure.

Next, Powell submitted documentation to support that on or about February 18, 2014, the Union had a meeting with Unit members and distributed an email dated November 13, 2013 to Unit members. The email is from Dexter to the Respondents, and in it Dexter suggests that the Respondents give "the same wage increase as the 12/01/12 wage increase," which was 4% according to the Article 8 of CBA. This email is important because it demonstrates that it was the Union that originally proposed 4% to the Respondents and that the Union shared this information with the Unit members. Furthermore, all of this pre-dated the list that Powell prepared and presented to the Union in September of 2014. Indeed, this is probably where Powell's idea for a 4% increase originated. The fact that both Powell and Respondents suggest a 4% increase in September of 2014, is not enough to raise a question of direct dealing, when it was the Union that had originally suggested this number to both Unit members and the Respondents.

Other than the 4% proposal, Charging Party did not provide any other information or documentation to support its direct dealing charge. The documentary evidence submitted by Powell effectively negates the Union's allegation that Respondents engaged in direct dealing with Powell. Based on the foregoing, I am unable to find that the Union raises an issue for hearing on its allegations of direct dealing and providing a wage increase outside the scope of the CBA.

III. ORDER

Accordingly, the portion of the charge as described above is hereby dismissed. The Charging Party may appeal this partial dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago,

Illinois, 60601-3103. The appeals must contain detailed reasons in support thereof, and the Charging Party must provide to all other persons or organizations involved in this case at the same time it is served on the Board. The appeals 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 be considered without this statement. If no appeal is received within the time specified, the Dismissal will be final.

Issued at Springfield, Illinois, this 21st day of January, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Melissa Mlynski
Executive Director