STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

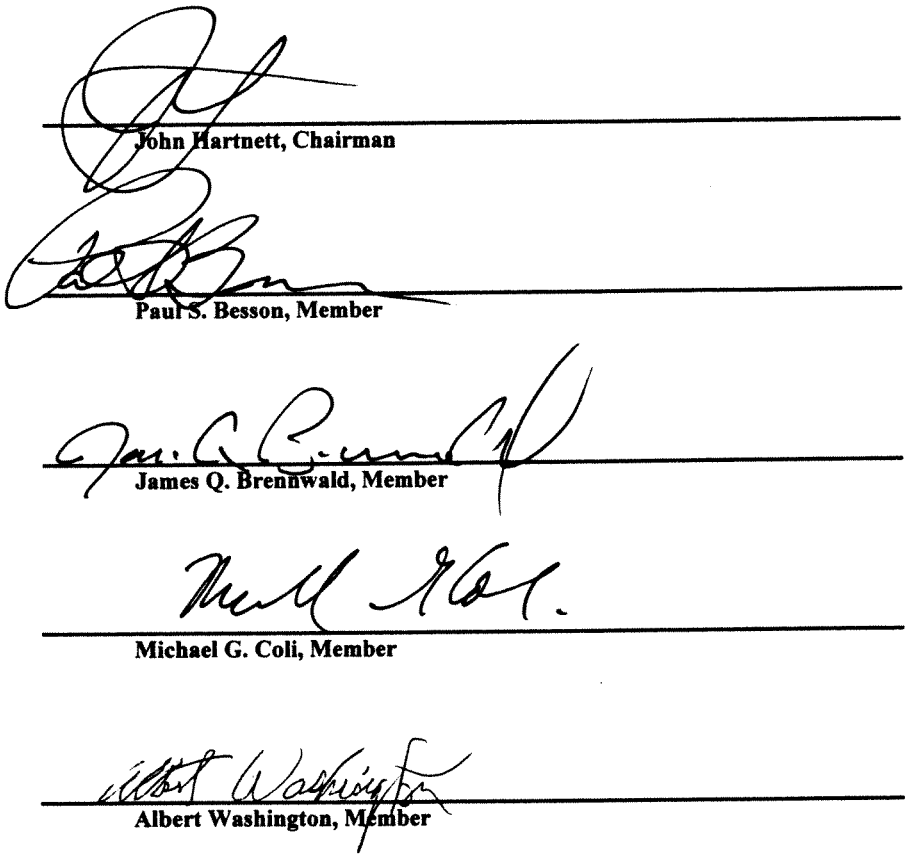
Pace South Division,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-09-009
	)	
Amalgamated Transit Union,	)	
Local 1028,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On December 17, 2012, Administrative Law Judge Anna Hamburg-Gal issued a Recommended Decision and Order in the above-captioned case, recommending that the Illinois Labor Relations Board, State Panel (Board) find that the Amalgamated Transit Union, Local 1028 (Respondent) did not violate Section 10(b)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), by organizing and/or encouraging Pace South Division (Charging Party) bus operators to participate in a strike or work stoppage, failing to provide Charging Party with the statutorily required notice of intent to strike, or repudiating the no-strike clause of the parties' collective bargaining agreement.

Charging Party filed timely exceptions to the Recommended Decision and Order pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. Respondent filed a timely response. After reviewing the record and exceptions we adopt the Administrative Law Judge's Recommended Decision and Order.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



John Hartnett, Chairman

Paul S. Besson, Member

James Q. Brennwald, Member

Michael G. Coli, Member

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on May 16, 2013, written decision issued at Chicago, Illinois, May 24, 2013.

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Amalgamated Transit Union, Local 1028,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 19, 2008, Pace South Division (Charging Party or Pace) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the Amalgamated Transit Union, Local 1028 (Respondent or Union) engaged in unfair labor practices within the meaning of Section 10(b)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on April 17, 2012, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on August 24, 2012, in Chicago, Illinois, at which time Pace presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, Pace has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Pace has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a) of the Act.
3. At all times material, Pace has been subject to the Act pursuant to Section 20(b) thereof.

4. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative for a bargaining unit of Charging Party's employees, including bus operators.
6. At all times material, Pace and the Union were, and are, parties to a collective bargaining agreement ("Agreement") that established the terms and conditions of employment for certain Pace employees, including bus operators.
7. The applicable Agreement has effective dates of April 1, 2006, through March 31, 2010.
8. At all times material, Junius Matthews has been President of the Union. He was elected in January 2007 and has been President since that date. As such, Matthews was an agent authorized to act on the Union's behalf.
9. Kenneth Leggs became a steward and a member of the Union's Executive Board in January 2007.
10. Article 3 of the parties' agreement prohibits strikes, slow-downs or other such work stoppages.
11. By at least on or about August 12, 2008, the Union did not provide Pace with a five-day notice of intent to strike.
12. By at least on or about August 12, 2008, the parties had participated in mediation.

II. ISSUES AND CONTENTIONS

The issues are (1) whether the Union violated Section 17 of the Act when its agents allegedly telephoned members of the bargaining unit telling them to participate in a strike or work stoppage in or about August 2008, told bargaining unit members to remove their names from the scheduled overtime sign-up list in support of the Union's rejection of the tentative agreement between the Union and Pace in or about September 2008, and failed to provide Pace with five days notice of employees' intent to strike, prior to striking; and (2) whether the Union, by that same conduct, violated Section 10(b)(4) of the Act and allegedly repudiated the no-strike clause (Article 3) of the parties' collective bargaining agreement.

First, the Union argues that Pace has not met its burden to prove that the Union violated the Act by engaging in an unlawful strike on August 18, 2008, because it did not prove that the

high absenteeism on that date was attributable to the Union or that any Union agent promoted, encouraged, or condoned the employees' actions. The Union concedes that the high absenteeism might suggest that employees acted concertedly but not that the Union was responsible for their decision.

Second, the Union argues that Pace did not meet its burden of proving that the Union violated the Act by engaging in an unlawful strike sometime in September when employees' names appeared crossed off on the overtime list because Pace did not prove that Union Executive Board Member Kenneth Leggs told employees to remove their names from the list. Instead, Pace merely presented evidence that Leggs *asked* one employee to do so. Further, the Union notes that Pace did not demonstrate than any employee acted on Leggs' request or that employees actually sought to remove their names from that list. In the alternative, the Union asserts that Leggs's statements should not be imputed to the Union because Leggs had neither actual nor apparent authority to speak on the Union's behalf.

In addition, the Union contends that even if Pace proved that the Union caused the employees to remove their names from the overtime list in September, the Union did not violate the Act because that overtime was voluntary. While the Union concedes that some overtime at Pace is mandatory, the Union notes that no employee failed to perform such mandatory overtime.

Third, the Union asserts that even if the Board determined that the Union violated Section 17 of the Act by engaging in unlawful work stoppages, such conduct is not itself grounds for remedial action because (i) there is no basis for concluding that a technical violation of Section 17 of the Act gives rise to union liability for an unfair labor practice and because (ii) the complaint does not allege that the Union violated Section 10(b)(4) of the Act by virtue of violating Section 17 of the Act.

Finally, the Union asserts that it did not violate Section 10(b)(4) of the Act by repudiating Article 3 of the collective bargaining agreement because it was not responsible for conduct alleged above. Further, the Union contends that it could not have repudiated the collective bargaining agreement because the agreement had expired prior to the alleged work stoppages and because there is no evidence that the parties had an oral understanding that the contract would remain in effect post-expiration. Lastly, the Union notes that a union's exertion of pressure on the employer does not alone indicate a general lack of good faith bargaining.

Pace counters that it presented sufficient circumstantial evidence to establish a prima facie case that the Union illegally caused a strike on August 18, 2008, in violation of Section 17 of the Act. First, Pace asserts that Union officials must have organized the strike because an unprecedented number of employees (62) called off work that day in close proximity to the Union's rejection of the parties' tentative agreement. Pace cites labor arbitration cases for the proposition that an employer is required only to establish a prima facie case based upon circumstantial evidence which would lead a reasonable person to conclude that the employees' actions are more probably concerted than not. In this case, Pace contends that it met that burden because "it strains credulity and common sense to imagine that such a widespread work stoppage could have been planned without" the Union's knowledge. Next, Pace argues that union agents' statements to employees in September that "we're not doing overtime for Pace" and that employees should take their names off the overtime sign-up list show that the Union caused the earlier August 18, 2008, work stoppage. Finally, Pace contends that the Union must have known that employees would call off work on August 18, 2008, because Union President Matthews failed to investigate why 62 Pace employees had called in sick on the same day.

Similarly, Pace asserts that the Union likewise violated Section 17 of the Act sometime in September 2008, when Union agents contacted several employees and told them not to work overtime in order to show their support for the Union's rejection of the parties' tentative agreement. Pace urges the Board to make credibility findings in its favor.

Next Pace argues that the Union violated Section 10(b)(4) of the Act because it repudiated Article 3 of the collective bargaining agreement by engaging in a strike and because, under NLRB case law, any strike in violation of statutory requirements such as those in Section 17 of the Act constitutes an unfair labor practice. Finally, Pace requests that the Board conduct a hearing on the issue of Pace's damages resulting from the alleged illegal action.

III. FINDINGS OF FACT

1. Structure of the Union

The Union is governed by an Executive Board which is comprised of the President, Vice President, Recording Secretary, Financial Secretary, and three Executive Board Officers who are Union members from each garage represented by the Union. The Executive Board supervises and manages the Union's affairs.

The Executive Board Officers are voted into their position by the membership. They hold no other office within the Union. While Executive Board Officers also function as union stewards, the position of union steward is not an official Union position. The President appoints the Executive Board Officers to perform their different duties. As stewards, they file and investigate grievances and sit in on grievance and disciplinary hearings. The Union's constitution and by-laws provide that Executive Board Officers cannot speak on behalf of the Union unless they have the President's permission and authority. As such, Executive Board Officers may only reach an agreement with Pace management if the President has granted them the authority to do so; they do not have authority to settle grievances. Nevertheless, Executive Board Officers regularly deal with Pace Regional Manager Cecil Crum on behalf of the Union.

Union President Junius Matthews testified that Executive Board Officers have never spoken to Pace management on behalf of the Union without his authority. However, Matthews never defined the parameters of Executive Board Members' authority in writing for Pace management. No Union officer ever informed Crum that Executive Board Officers have no authority to deal with Crum on behalf of the Union.

2. Overtime procedures

Overtime at Pace may be voluntary or mandatory. Overtime is mandatory when the overtime is attached to an operator's scheduled run. Under those circumstances, when the employee is already at work and driving a bus, Pace may order an operator to work that overtime.

Overtime is voluntary when drivers sign up for overtime using the Regular Day Off (RDO) list, also known as the Extra Work Book. Drivers sign that list to work on their day off or to work additional hours on days when they are scheduled to drive. Drivers who place their names in on the RDO list signify that they want to work overtime. Ordinarily, only approximately 1-2% of operators decline overtime once they sign up for it. However, Pace cannot force employees to take overtime even if those employees have signed up for overtime on the RDO list. Employees who sign the RDO list have the right to decline overtime even though they have signed up for it. Pace cannot take adverse action against employees for declining that overtime.

3. Events of August and September 2008

The parties' collective bargaining agreement expired in March 2006. Crum testified that the contract was still in effect after its expiration because the Union and management had an oral agreement to carry over the contract until the parties had negotiated a new contract. In August 2008, Pace and the Union reached a tentative agreement on their contract. Around August 12, 2008, the Union voted to reject the tentative agreement.

Pace operator Diana Craig testified that on August 17, 2008, she received a text message from her co-worker Chrystal King. King is a member of the unit but is not an elected Union official, has never served on any bargaining committees, and is not an officer or agent of the Union. The message text stated, "if you have FMLA we are having a call-off for tomorrow morning." The text referenced that plan as the "blue flu." Craig further testified that she received a phone call from King later that evening in which King stated, "we're going to call off tomorrow, so call off, you know. Would you participate turning down the contract?" According to Craig, King stated that Craig should not come to work the next day because "they" wanted to turn down the contract.

King testified that she never called or texted Craig in August 2008, never told any employee to take FMLA leave if they had available leave time, never mentioned the blue flu to Craig, and did not even have Craig's phone number. King further testified that no one from the Union asked her to contact any of the Union members to tell them to stay off of work and that King herself was on vacation on August 18, 2009. Craig went to work the next day despite the alleged communications.

Matthews testified that, prior to August 18, 2008, neither he nor any other member of the Executive Board authorized stewards to tell Union members that they should not work overtime or that they should not show up for work.

At around midnight on August 17, 2008, Deryl Oliver Assistant Superintendent at Pace, received a phone call from dispatch. Dispatch informed Oliver that Pace was receiving calls ("call-offs") from drivers reporting that they would not come to work the following day. Oliver immediately went in to work to determine the number of operators who had called off.

Once at work, Oliver called Pace Superintendent Jerry Trennert[1], and Crum to inform them of the call-offs and to tell them that Pace would miss many trips as a result.

Oliver telephoned certain individuals who customarily like to fill runs when Pace offers them. She also called individuals whose names appeared on the RDO list. However, many employees failed to answer their phones and many employees declined the offered overtime. Oliver testified that the circumstances on August 18, 2008, were unusual because even Pace's "old timers," the dedicated employees who arrive early for work and always show up, did not come to work.

That day, Crum called Executive Board Officer Kenneth Leggs on the phone. Crum told Leggs about the high absenteeism and informed Leggs that Crum was holding the Union responsible for the high absenteeism. Leggs replied that he did not know what was going on and that he was off that day performing Union business. Crum stated that he was not authorizing any Union employee to be off work for Union business and that if Leggs did not show up for work Pace would consider it an instance of absence. Crum asked Leggs to contact employees and encourage them to return to work.

Crum also called Union president Matthews who was on a vacation in Charleston, South Carolina, which he had planned nine months earlier. Crum left a message on Matthews's cell phone voice mail but eventually spoke with Matthews in person on the phone.[2]

Pace Executive Director T.J. Ross and Executive Deputy Director of Revenue Services Melinda Metzger also called Matthews on a conference call that day. Ross explained that operators had not come in to work. Metzger stated that Matthews needed to return to Chicago immediately. Matthews informed them that he was out of town and could not come back right away. Metzger responded that Matthews was the Union president and that he needed to come back to do something about the situation. Matthews denied knowing what had occurred at Pace and offered to call other Union officers to inquire about the matter.

Matthews then called a number of individuals connected with the Union but was only able to reach Leggs. Matthews told Leggs to call operators to determine what had occurred and to do whatever was needed to get employees back to work. Matthews asked Pace management's

[1] According to Pace, this name was misspelled in the transcript as Tranerd.
[2] Crum does not remember having spoken with Matthews directly.

permission to allow Leggs to come onto Pace property and make phone calls to employees. Matthews informed Leggs once he had received that permission.

Leggs arrived at Pace offices in the mid-afternoon on August 18, 2008. By that time, Pace had already missed a majority of its runs. Crum testified that he saw Leggs on his cell phone, but stated that he did not know whether Leggs had in fact called employees.

That same day, Metzger wrote a letter to Matthews, Executive Board Member Leggs, Union Recording Secretary Petra Hall, and Executive Board Member Alondro Willis concerning the high absenteeism on August 18, 2008. The letter informed the Union that the high absenteeism constituted an illegal strike. It demanded that the Union inform its members that it did not sanction or support this illegal action and that participation in such action would subject them to discipline up to and including discharge. It further informed the Union that Pace would pursue all remedies and damages available to it.

On August 18, 2008, Vice President of the local union Brandyee Brothers, wrote a letter to Metzger in response. The letter asserted that the Union did not sanction the employees at Pace to call in sick. The letter apologized for the actions taken by its members.[3]

By the end of the day on August 18, 2008, 62 operators had called off work. Crum investigated Pace's attendance history from the prior three months. On average, eight drivers call off on Mondays. On August 18, 2008, however, approximately 40-50% of Pace's operators did not show up for work. As such, the number of call-offs that occurred on August 18, 2008, was unusual. Because of the call-offs, Pace did not have enough operators to cover its runs. However, no operator refused mandatory overtime.[4] Prior to August 18, 2008, Crum did not receive any notice from the Union that there would be heavy absenteeism on that date.

Crum testified that Pace did not discipline employees for their absenteeism on August 18, 2008, because Pace wanted to reach a contract agreement with the Union and Crum believed that disciplining employees for their conduct would make things worse.

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[3] The letter also noted that the Executive Board was informed of the ratification vote and of the fact that Pace would tell the Union of its future intentions after September 3, 2008.

[4] Crum testified that he did not make overtime mandatory on August 18 for any employee who was not already at work.

4. Events of September 2008

Pace operator Diana Craig testified that on September 8, 2008, Union steward Kenneth Leggs contacted her by phone. According to Craig, Leggs said "we're asking people not to work overtime" to show that "we were going to turn down the contract." Leggs never directed Craig not to work overtime. Craig worked overtime on that date.

Similarly, Pace bus operator Phyllis Lightfoot testified that in September 2008, Union President Junius Matthews called Lightfoot when she was at home. Lightfoot testified that Matthew's said "we're not doing overtime for Pace." Lightfoot worked overtime despite her conversation with Matthews. Pace asked Lightfoot to give a report of that phone call. The report reflects Lightfoot's testimony.

Matthews testified that he never instructed Lightfoot not to perform overtime. Although he admitted that he called Lightfoot, he asserted that he did not discuss overtime with her and instead spoke with Lightfoot about her altercation with a passenger on a bus which occurred on June 21, 2008.[5] I credit Lightfoot's testimony based on her demeanor.

Sometime in 2008, Lightfoot noticed that operators names where crossed off the overtime sign-up sheet. The names had not been crossed out the night before. Lightfoot did not know who had crossed the names off the list. When Lightfoot came in to work the next afternoon, her coworker Deryl Oliver called her on the phone and told her that "they done scratched everyone's name out except yours."

No employees refused to perform mandatory overtime in September 2008. Pace did not discipline any employee for refusing to work additional overtime.

IV. DISCUSSION AND ANALYSIS

1. Absences on August 18, 2008

The Union did not violate Sections 17 and 10(b)(4) of the Act on August 18, 2008, by striking without providing Pace with the requisite five-days notice of its intent to strike because Pace has not proven by a preponderance of the evidence that the Union was responsible for its members failure to show up for work that day.

[5] Lightfoot was unsure as to the date of the altercation, but Crum testified with more specificity on this point. Accordingly, I adopt Crum's estimation of the date.

Section 17 of the Act permits public employees to strike as long as they are not security employees, peace officers, fire fighters, and paramedics employed by fire departments and fire protection districts. 5 ILCS 315/17 (2010). However, public employees may strike only if the following five conditions are met: (1) the employees are represented by a union, (2) the collective bargaining agreement between the employer and the union either does not prohibit the strike or has expired, (3) the employer and the union have not mutually agreed to submit the disputed issues to final and binding arbitration, (4) the union has requested, and the parties have used, mediation to try and resolve the dispute, and (5) the union has given five days advance notice to the employer of its intent to strike. Id.

In contrast, Section 10(b)(4) of the Act provides that "it shall be an unfair labor practice for a labor organization or its agents to refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of this Act as the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(b) (4) (2010). In cases of an alleged unlawful work stoppage, the Board has held that a Union's conduct violates Section 10(b)(4) of the Act when it effects a unilateral change in terms and conditions of employment. Vill. of Skokie (Skokie II), 14 PERI ¶ 2014 (IL SLRB 1998) aff'd 306 Ill. App. 3d 489 (1st Dist. 1999) (finding no unilateral change where employees refused to perform voluntary services).

To prove a violation of either section of the Act, an employer must demonstrate that (1) the Union was responsible for its members' conduct and (2) that the Union members' conduct constituted a strike as defined by the Board's case law. United Mine Workers Dist. No. 6 (Consolidation Coal), 217 NLRB 541 FN 1 (1975); Vill. of Skokie (Skokie II), 14 PERI ¶ 2014 (IL SLRB 1998) aff'd 306 Ill. App. 3d 489 (1st Dist. 1999). Notably, a union is not automatically responsible for the strike action of its membership. United Mine Workers Dist. No. 6 (Consolidation Coal), 217 NLRB at FN 1. For responsibility to attach, the union must have called, adopted, encouraged, ratified, or prolonged the continuation of the strike. Id. The National Labor Relations Board considers all circumstances attendant to a work stoppage to determine a union's liability for its members' actions and it may find a union responsible for a work stoppage even absent direct evidence that the union instigated, endorsed, or ratified the strike. Id. at 555. However, the mere fact that employees are organized does not alone demonstrate that the union authorized the strike or concerted action. Id. While a mass quitting

by an *entire* group of represented employees supplies persuasive evidence to support an inference that the cessation of work was the outcome of strike or concerted action aimed at a common objective, the employer must nevertheless establish union responsibility by an "independent showing." Id. at FN35 (discussing, Roane Anderson Co., 82 NLRB 696 n. 9 (1949)). In other words, the employer cannot prevail simply by demonstrating that rank and file union members engaged in the conduct at issue because the union is a separate entity from its members and its members are not its agents. Id. Rather, officials must have "participated in, ordered or authorized the conduct." Id. (citing, New Power Wire and Electric Corp. and P & L Services, Inc. v. N.L.R.B., 340 F.2d 71, 72 (C.A. 2, 1965) (addressing unlawful conduct on a picket line in violation of Section 8(b)(1)(A) of the NLRA).[6]

Here, there is insufficient evidence to demonstrate Union responsibility for the August 18, 2008, absences because there is no direct evidence of Union involvement, because there is little circumstantial evidence of the same, and because the Union sought to disavow or mitigate the effects of the work stoppage.

First, there is no direct evidence that the Union ordered the alleged strike. Notably, no witness testified that any Union agent asked employees to stay off from work on August 18, 2008.[7] Contrary to Pace's contention, the fact that union member King called and texted union member Craig to inform her of a planned call-off does not show the Union caused the strike, even though King referenced the Union-Pace contract in her communications, because King is not a Union agent or officer and there is no indication that King spoke with the Union's authority or on its behalf. Indeed, King expressly testified that no one from the Union asked her to contact any Union members to tell them to stay off work.[8] See Vill. of Skokie (Skokie I), 13 PERI ¶ 2018 (IL SLRB 1997) (no issues of fact raised concerning Union responsibility for employees' refusal to perform duty trades found where Charging Party did not identify the source of the alleged threat and where there was nothing to connect the statement to any officer or agent of the Union).

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[6] Contrary to Pace's contention, labor arbitration cases provide neither binding nor persuasive precedent in this forum.

[7] Contrary to Pace contention, employees' failure to perform overtime on that August 18, 2008, as requested by Pace, cannot constitute an unlawful work stoppage because performance of such overtime was voluntary and no employees refused to perform mandatory overtime on that date. See discussion infra.

[8] This testimony is uncontradicted.

Contrary to Pace's contention, Union agents' statements to employees, made in September, encouraging them to refuse overtime, cannot demonstrate that the Union was responsible for the August walkout because Union agents made those statements after the walkout occurred.

Similarly, there is no evidence that Union officers or stewards participated in the work stoppage. Executive Board Member Leggs did not call in sick or use any FMLA time on August 18. Although Leggs initially sought to perform Union duties on that date, he ultimately arrived at work as directed. In addition, although Union President Matthews did not come to work on August 18, Pace has not demonstrated that his absence was related to other employees' absences or related to the Union's rejection of Pace's tentative agreement because Matthew had planned his out-of-state vacation nine months earlier, long before the Union rejected Pace's proposal. Thus, Pace has not demonstrated that any Union official or Union agent participated in the work stoppage. Vill. of Skokie (Skokie I), 13 PERI ¶ 2018 (IL SLRB 1997) (no Union responsibility for resignations found where only one Union officer participated); Kraemer & Sons, Inc., 203 NLRB 739 (1973) (finding no Union responsibility even when union steward participated in the strike where steward was merely an employee of the employer with limited authority and had no authority to call a strike on the union's behalf).

Second, the circumstantial evidence here is insufficient to demonstrate that the Union was responsible for the work stoppage. First, the fact that Pace experienced an unprecedented number of absences on August 18, 2008, does not show that the Union was responsible for the walkout, even though it indicates that the employees may have acted in concert. See Vill. of Skokie (Skokie I), 13 PERI ¶ 2018 (IL SLRB 1997) (mere fact that employer experienced mass resignations did not indicate Union responsibility sufficient to raise issues of fact for hearing where there was no large participation by union officers and where some of the resignations occurred after the parties had reached agreement on the contract); United Mine Workers Dist. No. 6 (Consolidation Coal), 217 NLRB at FN 35 (while "mass quitting alone supplies persuasive evidence, sufficient in the absence of a plausible and adequate contrary explanation to support an inference that the cessation of work was… the outcome of concerted action aimed at a common objective," such evidence goes to "whether a mass quitting was collective rather than individual action, and not to the question of union responsibility"); Southeast Idaho Building & Construction Trades Council (Westinghouse Electric), 164 NLRB 773 FN 2 (1967) (rejecting

presumption or *per se* rule comparable to *res ipsa loquitur* that a Union is responsible for a mass walkout unless it proves otherwise).

Further, the percentage of employees absent with respect to the workforce as a whole (40-50%) was not so high in this case as to compel the conclusion that employees could not have organized themselves without the union's help. But see Roane Anderson Co., 82 NLRB 696 n. 9 (1949) (finding union responsible for work stoppage where more than 100 employees, representing substantially all the members of an organized group, elected practically simultaneously either to resign their jobs or to fail to report for work, where no particular incident had occurred that might impel a group of employees suddenly to decide to quit on that account, where Union manager informed certain employees that the Union wanted them to quit, and where individual union members testified that they did not personally want to quit).

Third, the timing of the work stoppage with respect to the Union's rejection of the parties' tentative agreement similarly does not provide the requisite causal connection between Union action and its members' conduct. Instead, it only provides a plausible motive for employees to take concerted action and does not shed light on whether the Union sanctioned or encouraged its members' conduct. United Mine Workers Dist. No. 6 (Consolidation Coal), 217 NLRB at FN 1 (evidence that the Union called, adopted, encouraged ratified, or prolonged the strike, is required before responsibility attaches).

Finally, there is evidence that the Union disavowed the walkout instead of ratifying it. First, Local Vice President Brothers apologized to Executive Deputy Director Metzger for the actions taken by its members and asserted that the Union did not sanction members to call in sick. Further, Union President Matthews, upon learning of the walkout, instructed Leggs to call operators and ask them to come in to work. Id. (finding no Union responsibility where officials of the Local promptly, upon the inception of the work stoppage, began to take action directed towards bringing the walkout to a quick end); See also Kraemer & Sons, Inc., 203 NLRB 739 (1973) (no Union ratification of strike where Union's business agent upon learning of the strike dispatched an employee as an emissary to order the strikers back to work).

Contrary to Pace's contention, Matthews's failure to ask Pace management why 62 employees did not show up to work does not demonstrate that the Union ratified employees' conduct nor does it compel a finding that Matthews already knew what had occurred, particularly in light of Matthews's testimony that he did not know.

Thus, the Union did not violate Sections 17 or 10(b)(4) of the Act when its members called off from work on August 18, 2008, because the Union did not orchestrate or ratify the strike and was not responsible for its members' actions.

2. Refusal to perform overtime in September 2008

The Union did not violate Sections 10(b)(4) or 17 of the Act when its alleged agents told bargaining unit members to remove their names from the scheduled overtime sign-up sheet sometime in September 2008 because employees performed all mandatory overtime and declined only voluntary overtime.

The key consideration in resolving this dispute is whether Pace employees refused to perform voluntary work or instead refused mandatory work that was part of their job duties. Pace South Division, 28 PERI ¶ 88 (IL LRB-SP 2011). If the overtime at issue is mandatory, then employees' union-induced refusal to accept those overtime assignments constitutes an unprotected refusal to perform work in violation of Section 10(b)(4) of the Act. Pace South Division, 28 PERI ¶ 88 (IL LRB-SP 2011); Vill. of Skokie (Skokie II), 14 PERI ¶ 2014 (IL SLRB 1998) aff'd 306 Ill. App. 3d 489 (1st Dist. 1999). The National Labor Relations Board has condemned such partial work stoppages because "to countenance [them] would be to allow... employees ...to unilaterally determine conditions of employment." Id. (citing Valley City Furniture Co., 110 NLRB 1589, 1594-95 (1954), enfd., 230 F.2d 947 (6th Cir. 1956)). However, if such overtime is voluntary, employees' union-induced refusal to perform that overtime does not violate Section 10(b)(4) of the Act because employees' failure to participate in voluntary and uncompensated job-related functions which are not part of their required job duties "[does] not amount to a unilateral change in terms and conditions of employment." Id. (firefighters' boycott of a promotional exam did not violate the Act where firefighters' participation in promotional activities was unpaid, voluntary, and not part of their assigned job duties and responsibilities) (citing Vill. of Skokie (Skokie I), 13 PERI ¶ 2018 (IL SLRB 1997). Notably, the Board has also rejected the proposition that a "labor organization's use of pressure tactics...to influence the employer in a collective bargaining dispute is inconsistent with the duty to bargain in good faith." Id.

Similarly, a Union's failure to comply with the requirements of Section 17 of the Act prior to engaging in a concerted refusal to perform voluntary work cannot support a finding that

a union violated that section of the Act because such refusal to work does not constitute a strike. Id. (finding sections 14 and 17 of the Act were not "intended to establish a blanket prohibition against all concerted activities by protective service employees" and instead served only to "protect the public from the interruption or termination of essential government services" which did not include those services that employees performed voluntarily). In contrast, a Union's failure to comply with the requirements of Section 17 of the Act prior to engaging in a concerted refusal to perform mandatory work does support a finding that the union violated that section of the Act because such refusal to work is a strike. Id.

Here, the Union did not engage in a work stoppage in violation of Sections 10(b)(4) and 17 of the Act, even though Matthews told employees "we're not doing overtime for Pace," because no employees refused to perform mandatory overtime. Chicago Transit Auth. v. Ill. Labor Rel. Bd., 386 Ill. App. 3d 556, 567 (1st. Dist. 2008) (no violation of Section 17 or 10(b)(4) of the Act found where employees did not actually strike and merely threatened to do so).

Further, the Union did not violate the Act by causing an unlawful work stoppage when employees declined other types of overtime, even though Executive Board Member Leggs asked employees to remove their names from the overtime sign-up list, because employees signed the list voluntarily and could decline overtime after they had signed up for it.[9] First, employees did not engage in a work stoppage when they removed their names from the overtime list because employees are not required to sign the list and because Pace does not compensate employees for doing so. Vill. of Skokie (Skokie I), 13 PERI ¶ 2018 (IL SLRB 1997) (employees' refusal of duty trades did not violate the Act where decision to undertake duty trades was voluntary and unpaid, even though employer compensated employees for performing their coworkers' duties once the duties had been traded). Second, employees who signed up on that list did not engage in a work stoppage when they declined Pace's offer of overtime because employees have the absolute right to decline overtime when Pace offers it, even if they signed up for it, and Pace may not discipline employees for making that choice. Vill. of Skokie (Skokie II), 14 PERI ¶ 2014 (1998) aff'd 306 Ill. App. 3d 489 (1st Dist. 1999)(firefighters' alleged concerted refusal to participate in promotional exams did not violate the Act where the activity was unpaid, voluntary, and not part of their assigned job duties and responsibilities). Thus, the Union did not

[9] Accordingly, it is unnecessary to determine whether Leggs was the Union's agent, authorized to speak on its behalf.

violate the Act by engaging in an unlawful work stoppage because employees declined to perform only voluntary duties and not mandatory ones.

Moreover, the Union did not violate Section 10(b)(4) of the Act, even if it spurred the employees' decision to decline such voluntary overtime, because a Union does not act unlawfully merely by using an economic pressure tactic aimed at influencing the employer in a collective bargaining dispute when there is no other evidence that the Union failed to bargain in good faith. Id., see also Local 220, Int'l Union of Electrical, Radio and Machine Workers (Package Machinery Co.), 127 NLRB 1514 (1960)(Union's direction to employee to refuse to work overtime did not violate Section 8(b)(3) of the Act, even though it constituted economic pressure to compel agreement to a bargaining contract, in the absence of any indication that the Union did not otherwise fulfill its statutory duty to bargain); Chicago Transit Auth. v. Ill. Labor Rel. Bd., 386 Ill. App. 3d 556, 567 (1st Dist. 2008)(although an employer and a union are both obligated under the Act to bargain in good faith, both parties may, without violating their duty to bargain, exert economic pressure on each other in an effort to secure agreement to each others' bargaining proposals; Union's threat to engage in a strike did not violate Section 10(b)(4) of the Act).

Thus, the Union did not violate the Act when Matthews told an employee not to perform overtime and when Leggs told bargaining unit members to remove their names from the overtime sign-up list.

3. Alleged Repudiation of the Contract

Assuming, *arguendo*, that the parties agreed to extend their contract past its expiration date, the Union did not violate Section 10(b)(4) of the Act by repudiating the no-strike clause of that agreement because the Union did not strike within the meaning of the Act when its members failed to show up to work on August 18, 2008 and when they then refused to perform voluntary overtime on that date and in September 2008, as set forth above.[10]

[10] For this reason, it is unnecessary to determine whether the parties agreed to extend the contract past its expiration date.

V. CONCLUSIONS OF LAW

1. Respondent did not violate Sections 10(b)(4) and 17 of the Act when it instructed employees to remove their names from the overtime signup list.
2. Respondent did not violate Sections 10(b)(4) and 17 of the Act by failing to give Pace the requisite five-day notice of intent to strike.
3. Respondent did not repudiate Article 3 of the collective bargaining agreement in violation of Section 10(b)(4).

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the instant complaint be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 17th day of December, 2012

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge