

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 July 25, 2011, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by PACE South Division (Charging Party) against the Amalgamated Transit Union, Local 1028 (Respondent or Union). Charging Party had alleged violations of Section 10(a)(4) of the Illinois Labor Relations Act, 5 ILCS 315/10(a)(4) (2010) as amended (Act), relating to two incidents occurring after Union membership had rejected a proposed successor agreement, one involving absence of a substantial percentage of employees, and another concerning suggestions employees refuse or cancel overtime assignments.

Charging Party filed a timely appeal pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board. 80 Ill. Admin. Code Parts 1200 through 1240. The Respondent did not file a response. After reviewing the record and the appeal, we reverse the dismissal and remand for the issuance of a complaint for hearing.

Relying on our decision in Village of Skokie, 13 PERI ¶2018 (IL SLRB 1997) (“Skokie I”), the Executive Director found that to demonstrate an unfair labor practice a charging party is required to provide evidence of union threats or intimidation that amount to coercion of the

employees, and that the Charging Party's allegations of union requests to decline voluntary overtime or to withdraw from overtime already scheduled was insufficient. The portion of Skokie I relied upon by the Executive Director discussed the standard applicable with respect to an alleged violation of Section 10(b)(1),¹ but Charging Party disavows a 10(b)(1) charge, stating its charge alleged a violation of Section 10(b)(4).² Skokie I had also included an allegation of a 10(b)(4) violation, but we did not resolve the issue raised by that allegation with reference to evidence concerning union coercion, but on the basis that the charging party had there not presented direct or circumstantial evidence linking the union to the alleged refusal of duty trades, and on the basis that the duty trades were voluntary. In contrast, here, as the charging party points out, there was evidence that union officials asked parties to refuse overtime, that some of the overtime had already been assigned, and that some overtime was a mandatory component of making four-month shift selections. The alleged fact that 60 out of 132 employees were absent on the sixth day after the contract was voted down may also be circumstantial evidence of union involvement given the proximity in time between the two events and the percentage of unit member participation alleged.

We issued another decision concerning the Village of Skokie the year following Skokie I, a decision in which we pronounced that tactics like a promotional exam boycott intended "to

¹ Section 10(b)(1) makes it an unfair labor practice for a labor organization or its agents: to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided, (i) that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein or the determination of fair share payments and (ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

² Section 10(b)(4) makes it 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.

influence the outcome of a negotiations dispute was not in and of itself, inconsistent with the requirements of good faith collective bargaining under the Act.” Village of Skokie, 14 PERI ¶2014 (IL SLRB 1998), aff’d Village of Skokie v. Ill. State Labor Relations Bd., 306 Ill. App. 3d 489 (1st Dist. 1999) (“Skokie II”). In affirming the Board, the appellate court cited National Labor Relations Board precedent for the similar proposition that there is no “lack of good faith bargaining solely because a party employs tactics designed to exert pressure on the other party.” 306 Ill. App. 3d at 494 (citing NLRB v. Ins. Agents Int’l Union, 361 U.S. 477 (1960)).³ However, Skokie II concerned a boycott of promotional exams following a dispute over changes to exam procedures, and participation in those promotional exams was unpaid, voluntary, and not part of assigned job duties and responsibilities. In Skokie II we distinguished cases from other jurisdictions that had found violations, such as Westchester Area School Dist., 9 PPER ¶9095 (PA LRB 1978), where boycotted faculty meetings had been part of the employees’ job duties. The Board recognized that a partial refusal to work constitutes unprotected activity, but distinguished the NLRB decision cited for that proposition, Highlands Hosp., 278 NLRB 1097 (1986), on the basis that the Village of Skokie firefighters were not refusing to perform mandatory job duties or assigned tasks.

Clear from our prior decisions, and particularly from the manner in which Skokie II distinguished authority from other jurisdictions, is that a key consideration in the present case is whether the overtime, which some evidence suggests was declined at the Union’s urging, was part of the employees’ job duties or was instead voluntary. The Executive Director assumed it was voluntary, but the Charging Party asserts it was not, and we find evidence tending to support

³ In a similar vein, the appellate court more recently upheld our determination that a strike authorization vote was protected activity, even where an eventual strike would have been illegal. Chicago Transit Auth. v. Ill. Labor Relations Bd., 386 Ill. App. 3d 556, 567 (1st Dist. 2008).

that claim. While we certainly do not comment on the sufficiency of the evidence to demonstrate a violation of the Act, we find enough to warrant issuance of a complaint. For that reason, we reverse the dismissal and direct that a complaint for hearing be issued alleging a violation or violations of Section 10(b)(4).

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Jacalyne J. Zimmerman, 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 December 6, 2011, written decision issued in Chicago, Illinois on December 30, 2011.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

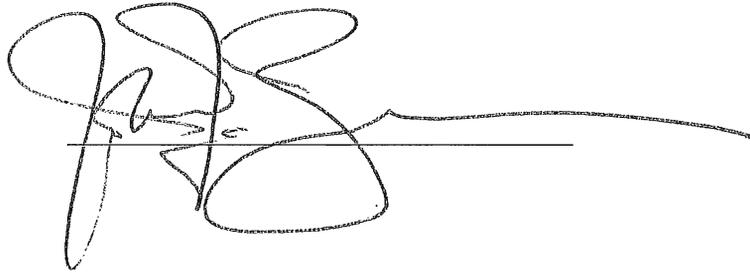
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Labor Organization)

AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 29th day of December, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

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SUBSCRIBED and SWORN to
before me this 29th day
of December 2011.



NOTARY PUBLIC

