STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

County of Kane and Kane County Sheriff,	)	
	)	
Charging Parties	)	
	)	
and	)	Case No. S-CB-13-027
	)	
Policemen's Benevolent Labor Committee,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On March 29, 2013, Executive Director Melissa Mlynski dismissed charges filed by the County of Kane and Kane County Sheriff (Charging Parties) against the Policemen's Benevolent Labor Committee (Respondent) alleging a violation of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act). Charging Parties have filed an appeal of that dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). Respondent has not filed a response. Both parties presented oral argument at the Board's July 9, 2013 meeting pursuant to Section 1200.135(a)(3) of the Board's Rules. We remand for further investigation.

The charge alleges a violation of Section 10(b)(4) of the Act, which makes it an unfair labor practice for an exclusive representative

> 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[.]

The factual basis of the allegation was stated as follows:

> The Union unilaterally sought to change the grievance procedure by asserting that minimum manning – a permissive subject of bargaining that was not negotiated and not made part of the labor agreement – was subject to arbitration. On September 1, 2012, the Employer posted shift bid sheets. The Union subsequently grieved the "number of slots" posted and has requested an arbitration panel. As recently as November 2010, the Union submitted a minimum manning proposal during negotiations; the Employer rejected the proposal and responded that minimum manning was a permissive subject of bargaining that the Union could not negotiate to impasse. Further, the Union's August 2012 final offer prior to interest arbitration in August 2012 did not include a minimum manning proposal. Based on management rights, the labor agreement and past practices, the Employer has discretion to determine staffing levels and does so based on operational needs.
>
> Additionally, in September 2012, Union President Regnier advanced a grievance related to denial of holiday time alleging that the Employer should have granted the holiday time because alleged minimum staffing levels had been met. The Union has now advanced the grievance to arbitration and is attempting to arbitrate the issue of staffing levels. Based on management rights, the labor agreement and past practice, the Employer has discretion to vary staffing levels based on operational needs.

Submitted with the charge were copies of two grievance forms, the first completed on September 11, 2012, in which the union stated:

> The bid sheets were put up and the Collective Bargaining agreement (Appendix C) was not followed. Not only the number of slots on the bid sheets but also the shift times and schedules were not as Appendix C has it listed. This is a Mandatory Subject of Bargaining and was not bargained.

Under "relief sought," the grievance stated:

> The bid process should be stopped and the bid sheets should be listed as Appendix C shows. Additional time should be granted to straighten this out, without penalizing the officers.

Additional documents were submitted relating to this grievance, including two letters from the Commander of Corrections. The first advised the union president of the intent to make two evening shift slots vacant and add two slots to the day shift and invited the union to discuss

the change. The second was in direct response to the grievance indicating that the shift bidding sheets would be revised and vacations rebid, thus rendering the grievance moot. It also advised that the "number of slots" was a permissive subject of bargaining that was not subject to grievance and arbitration. It further indicated that the "schedule agreed to in 2010" (presumably schedule C of the CBA) was merely a snapshot of then current staffing intended to illustrate the rotation of days off and had been modified by agreement. The letter noted that the union had abandoned an attempt to include minimum manning proposals in the collective bargaining agreement, and Charging Parties also attached to the charge lists of initial and final union contract proposals. Only the first included "minimum staffing levels" and it had the word "cannot" handwritten behind it. Finally, related to this grievance was a form indicating it had been denied at steps 2 and 3 and that the parties signed their intent to arbitrate.

The second grievance form was submitted by the union president and was dated September 25, 2012 (the same date as the Commander of Corrections' letters). It stated:

> Before 9/15/12 I requested my 1st holidays for the month of October to be 10-21-12. On 9/17/12 I received the response to my request slip stating that day was denied. I asked Lt. Swanson why I did not get that day off and he said that Ofc. Lang received it instead of me. The staffing for 10/21/12 is set at 18 and the staffing on 10/13, 10/24, 10/25 is set at 17 and no overtime posted. On 10/05 and 10/26 the staffing set at 16 with overtime posted for 1 officer bringing the staffing level to 17. My first holiday should be granted.

Under the phrase "relief sought," the grievance stated: "Grant the holiday and establish a consistent staffing level that will be maintained." In a letter dated October 22, 2012, the Commander of Corrections explained his rationale for denying the grievance:

> I fail to see where management violated any terms of the CBA. Management determines the operational and staffing needs of the facility on a daily basis. Prior to 9-15-12, Ofc. Lang and Ofc. Regnier both submitted a request to take a holiday on 10-21-12. Ofc. Lang's holiday request was granted and Ofc. Regnier's request was denied. As stated in Article 15, Section 5 of the CBA, the holiday was

> granted according to classification seniority and a minimum of one (1) person of the officer rank on the shift was granted the holiday for that day.

As with the first, this grievance was denied through step three and the parties signed their intent to arbitrate.

The Executive Director assumed, without deciding, that Charging Parties were correct that minimum manning was a permissive subject of bargaining. She noted Charging Parties alleged that filing the grievances was bad faith bargaining, a repudiation of the collective bargaining agreement, an unlawful change to the status quo, and an unlawful advancement of permissive subjects of bargaining via the grievance procedure. She nevertheless failed to see a viable theory under which the conduct alleged could raise an issue for hearing. She noted that Respondent union could not effectuate a unilateral change in staffing levels or leave requests for bargaining unit members by filing a grievance (distinguishing the only precedential authority cited by Charging Parties, County of Cook v. Licensed Practical Nurses' Association of Ill., 284 Ill. App. 3d 145 (1st Dist. 1996), on this basis as well).[1] She rejected the contention that it is unlawful to advance a grievance on permissive subjects of bargaining, noting that the permissive nature of such a subject means parties could, if they wished, bargain over them and include provisions relating to them in a collective bargaining agreement which could then be grieved. She found the disposition of the grievance ultimately rested with the arbitrator and that, while Charging Parties may be unhappy with the arbitrator's ruling, it does not follow that the filing of the grievance constituted a violation of the Act.

[1] The only other authority cited by Charging Parties was City of Mattoon, 13 PER ¶2004 (ISLRB GC 1997), a declaratory ruling by the Board's General Counsel which the Executive Director correctly noted had no precedential value.

Charging Parties appealed the Executive Director's dismissal, and we granted their request for oral argument. At argument their counsel stated the decision to appeal was precipitated by the fact that still more grievances were being filed in a vein similar to the two considered by the Executive Director. Counsel for Respondent acknowledged that at the time of the oral argument there were a total of eight grievances pending.

While we do not decide whether the charge reviewed and the evidence considered by the Executive Director should necessarily lead to the issuance of a complaint alleging a violation of Section 10(b)(4) of the Act, we are concerned that the form of relief requested in one of the grievances before her seeks a ruling on the number of slots on bid sheets. Consideration of that grievance in combination with the multiplicity of grievances that soon followed suggests a more thorough investigation is warranted. Consequently, we reverse the dismissal and remand for further investigation.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

/s/ Paul S. Besson
Paul S. Besson, Member

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

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on August 13, 2013; written decision issued in Chicago, Illinois on November 22, 2013.

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County of Kane and Kane County Sheriff,	)	
	)	
Charging Parties	)	
	)	Case No. S-CB-13-027
and	)	
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Policemen's Benevolent Labor Committee,	)	
	)	
Respondent	)	

DISMISSAL

On December 13, 2012, the County of Kane and Kane County Sheriff (Charging Parties) filed a charge in Case No. S-CB-13-027 with the State Panel of the Illinois Labor Relations Board (Board), in which they alleged that the Policemen's Benevolent Labor Committee (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act). 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 issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTIES

The Respondent is the exclusive representative of a bargaining unit (Unit) composed of correctional officers employed by the Charging Parties, as certified by the Board in Case No. S-RC-03-023. The Board issued the original certification on December 13, 2002. A corrected certification issued *nunc pro tunc* on November 9, 2005. The charge generally alleges that the Respondent violated Section 10(b)(4) of the Act by initiating and processing a number of grievances relating to staffing levels at the correctional facility. Presumably, these grievances

are being processed under the terms of the prior collective bargaining agreement, since at the time this charge was filed, the parties had not yet executed the successor agreement. According to the Charging Parties, the grievances include topics such as the number of positions available for bids during shift bidding procedures and denial of leave requests based upon the number of persons assigned to a particular shift. It appears that the Respondent initiated the shift bidding grievances in September 2012, after the Charging Parties posted a shift bid sheet with fewer positions on certain shifts than had been the case in prior bids. The leave request grievances came at some point thereafter, as the Respondent took issue with the staffing level justifications used in the denial of Unit employee leave requests. According to the Charging Parties, the Respondent has sought to arbitrate at least the shift bid grievance. The Charging Parties characterize this conduct as an attempt by the Respondent to create minimum manning standards within the workplace.

The Charging Parties assert that the general topic of minimum manning is a permissive subject of bargaining. They also claim that the Respondent made a proposal for minimum manning levels during the course of negotiations for a successor, but later withdrew that proposal prior to proceeding to interest arbitration.[1] Accordingly, they argue that the Respondent's attempts to achieve this goal through the grievance procedure is both bad faith bargaining and a repudiation of the collective bargaining agreement.

By letter dated February 11, 2013, the Board agent assigned to the case requested that the Charging Parties provide some authority in support of the proposition that Respondent's conduct could involve a possible violation of the Act. On February 27, 2013, the Charging Parties filed a

[1] In the position statement filed in support of the charge, the Charging Parties limit the scope of the charge to the Respondent's conduct in filing grievances, and not to issues concerning the later interest arbitration proceeding. However, the text at issue in the shift bid grievance was also an item in contention between the parties in the interest arbitration proceeding.

position statement in response to this request. Therein, it cites two cases in support of its claims. The first is City of Mattoon, 13 PERI ¶2004 (ISLRB GC 1997), a Board General Counsel's declaratory ruling on the topic of minimum manning. The second case cited by the Charging Parties is County of Cook v. Licensed Practical Nurses' Association of Illinois, Div. 1, 284 Ill App. 3d 145 (1st Dist. 1996). This case involves an employer's unilateral implementation of a drug test upon employees returning from leave, and a delay in executing a fully negotiated collective bargaining agreement. The Charging Parties assert that the case supports the proposition that Respondent is unlawfully altering the *status quo* by "filing grievances that would require an arbitrator to read minimum manning into the agreement."

II. DISCUSSION AND ANALYSIS

For the purposes of this investigation, I will assume that the Charging Parties are correct that minimum manning is a permissive subject of bargaining. The Charging Parties take issue with the Respondent's decision to initiate and process the grievances as described above, asserting that the grievances would require the arbitrator to read minimum manning into the agreement. However, Charging Parties fail to articulate a viable theory under which this conduct could raise an issue for hearing. Respondent alleges that filing the grievances is bad faith bargaining, a repudiation of the collective bargaining agreement, an unlawful change to the *status quo*, and an unlawful advancement of permissive subjects of bargaining via the grievance procedure.

It may be possible for a collective bargaining agreement to impose certain duties and responsibilities on a labor organization such that the failure to adhere to those duties and responsibilities represents a repudiation of the agreement or a change in the *status quo*. However, in this case, it is not clear how the filing of grievances fits that mold. There is no

evidence that the Respondent has the ability to effect any unilateral changes in staffing levels or leave requests for Unit employees. The conduct at issue is the Respondent's determination to file a number of grievances in order to advance its interpretation of the relevant collective bargaining agreement. This conduct does not raise an issue of law or fact sufficient to warrant a hearing.

The charge also suggests that it could be unlawful to advance a grievance on a permissive subject of bargaining. Charging Parties cite no authority to support this proposition. Moreover, I note that collective bargaining agreements may include provisions involving permissive subjects; so it would be inconsistent to interpret the Act in a manner that would prohibit grievances over such subjects.

Ultimately, the disposition of the grievance rests with the arbitrator. Charging Parties may well be concerned that an arbitrator could find some merit in the Respondent's contentions. While the Charging Parties would find this outcome more than objectionable, it does not follow that the act of filing a grievance in this matter represents a violation of the Act.

As for the two cases cited by the Charging Parties, the first case, City of Mattoon, *supra*, is a declaratory ruling. Section 1200.143(a)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code, §§1200 through 1240 (Rules) emphasizes that declaratory rulings are advisory and non-binding. Further, the holding in County of Cook, *supra*, seems to have little connection to the instant charge. In that case, the County was found to have committed an unfair labor practice by unilaterally implementing a drug testing policy for employees returning to work from leaves of more than 30 days. During negotiations for a new collective bargaining agreement, the County in that case had made a proposal regarding pre-employment and post-employment drug

testing, but later withdrew its proposal. Subsequently, the County unilaterally implemented the drug testing policy referenced above.

Presumably, the Charging Parties see a parallel with their situation and the County of Cook because the Respondent in the instant case proposed and then withdrew a proposal on minimum manning during the course of negotiations for the successor agreement. However, unlike the employer in County of Cook, the Respondent in this case has not unilaterally changed the *status quo* or implemented a change in terms and conditions of employment.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Parties may appeal this 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 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 Parties must provide a copy 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 be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued in Springfield, Illinois, this 29th day of March, 2013.

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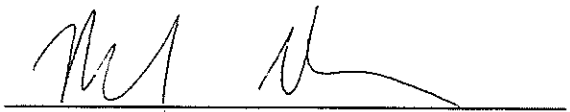

Melissa Mlynski, Executive Director