

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

City of Springfield,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-14-008
)	
Policemen's Benevolent and Protective)	
Association, Unit No. 5,)	
)	
Respondent)	

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

On November 26, 2014, Executive Director Melissa Mlynski dismissed a charge filed by the City of Springfield (Employer or Charging Party) on October 21, 2013, which alleged that the Policemen's Benevolent and Protective Association, Unit No. 5 (Respondent or Union) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), when it (1) negotiated a memorandum of understanding (MOU) modifying language in the parties' collective bargaining agreement addressing the City's obligation to expunge disciplinary records and when it (2) subsequently refused to renegotiate the agreement after the parties executed it.

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). The Respondent filed a response. After reviewing the record and appeal, we uphold the Executive Director's Dismissal for the reasons stated in that document.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ James Q. Brennwald

James Q. Brennwald, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on February 10, 2015, written decision issued in Chicago, Illinois on February 13, 2015.

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

City of Springfield,

Charging Party

and

Policemen's Benevolent Protection
Association, Unit No. 5,

Respondent

Case No. S-CB-14-008

DISMISSAL

On October 21, 2013, the Charging Party, City of Springfield (City) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CB-14-008, alleging that the Policemen's Benevolent Protection Association, Unit No. 5 (Union or Respondent) violated Section 10(b) 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 the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Charging Party is a public employer within the meaning of Section 3(o) of the Act. The Respondent is a labor organization within the meaning of Section 3(i) of the Act. Charging Party employs Police Officers that are included in a bargaining unit represented by the Respondent. Charging Party and Respondent are parties to a collective bargaining agreement (CBA) that includes a grievance procedure culminating in final and binding arbitration, with a

term of March 1, 2012 through February 28, 2015. This unfair labor practice charge stems from an agreement to modify the language in the CBA with respect to expunging disciplinary records.

Section 14.9 of the current CBA, Limitation on Use of File Material, provides the following:

- A. It is agreed that any material and/or matter not available for inspection, as provided for in Section 14.8 above, shall not be used in any manner or any form adverse to the officer's interests. File material are confidential, but if a bona fide reason arises for the removal of inactive files from the Department, the officer shall be provided with a written notification regarding where the file is located, who has the file, and the reason for its transfer, to the extent allowed by law.
- B. Any record of reprimand punishment may be used for a period of time not to exceed one (1) year (three (3) years in the case of vehicle use violations) and shall thereafter not be used to support or as evidence of adverse employment action.
- C. **Any record of discipline greater than a reprimand shall be expunged five (5) years from the date of suspension.** (Emphasis added.)

On April 25, 2013, the Charging Party and Respondent signed a Memorandum of Understanding (MOU) modifying language found in Section 14.9 of the CBA. The MOU provides¹:

WHEREAS, the City of Springfield ("City") and the PBPA Unit #5 have met and discussed the issues of a change to section 14.9(C) of the Collective Bargaining Agreement, section V(A) of the G.O. Roc #3 Add. #4 and section VII(A) of the G.O. Roc #3 Add. #5 as they relate to the retention of I.A. files and the Early Tracking System; and

WHEREAS, there is a consensus that it is mutually beneficial to reduce the retention period for some I.A. files and the Early Tracking System found in said sections;

THEREFORE, it is agreed to by the Parties as follows:

1. Any record of discipline greater than a reprimand shall be expunged (4) years from the date of suspension, and
2. All files with a finding of Not Sustained, Unfounded or Exonerated shall be expunged four(4) years from the finding, and
3. The general order regarding Early Tracking (G.O. Roc #3 Add. #5) will be changed to reflect a retention period of one year after the

¹ The letters "I.A." refer to Internal Affairs.

month of the incident or the month upon which the incident is brought forward, whichever is longer, for any and all early track files.

The MOU was signed by then Chief of Police Robert Williams and Union Chapter President Don Edwards. The City's then Assistant Corporation Counsel, Geannette Wittendorf, and Deputy Chief Cliff Buscher were also present for the City and attorney Ron Stone was present for the Union.

On May 3, 2013, City Mayor Michael Houston issued an Executive Order that specifies who is authorized to negotiate collective bargaining matters on the City's behalf. The Executive Order provides:

1. Any agreement, contract, letter, memorandum of understanding or any other document relating to any agreement between the City of Springfield and any collective bargaining unit shall include and involve the City's Labor Relations Manager.
2. Any agreement, contract, letter, memorandum of understanding or any other document relating to any agreement between the City of Springfield and any collective bargaining unit shall only be executed by the Mayor after having been reviewed for execution by the responsible Director, the Labor Relations Manager and the Corporation Counsel.
3. The City Council shall receive a report of any executed agreement, contract, letter, memorandum of understanding or any other document relating to any agreement between the City of Springfield and any collective bargaining unit at its next regularly scheduled meeting.
4. All directors and department heads shall immediately institute such procedures and policies to ensure that this Executive Order is followed.

The available evidence indicates that on or about April 11, 2013, the City had received a request for information under the Freedom of Information Act (FOIA) from an individual, and this FOIA request included disciplinary and/or internal affairs records for an employee (or employees) of the Springfield Police Department. Apparently the documents that were subject to that FOIA request were destroyed, which resulted in the individual suing the City.

Sometime after the filing of that lawsuit, and perhaps because of the lawsuit, it came to the attention of the Respondent that certain files that should have been expunged under the CBA (five years after date of suspension) or the MOU (four years after date of suspension) had not been destroyed. On or about October 9, 2013, Respondent filed grievance #13-10-02, citing the City's failure to abide by the CBA and newly negotiated MOU. This grievance is still pending.

According to the Charging Party, destruction of internal affairs and/or disciplinary documents is subject to the local record retention laws and the current retention period is five years. However, the available evidence also suggests that the City's Local Records Commission set the retention period at five years and the Commission has the discretion to reduce the retention period. At some point after the MOU was signed, the Springfield Police Department submitted an application to the Local Records Commission to reduce the retention years from five to four. However, by letter dated June 5, 2013, the Commission deferred the application until the legal issues surrounding the destruction of records were settled between the parties. On April 1, 2014, the Commission denied the application.

In its unfair labor practice charge, the Charging Party alleges that Respondent violated Section 10(b)(4) of the Act when it entered into the MOU. Charging Party asserts that the MOU was not negotiated in good faith, violated Section 7 of the Act as well as the existing law on record retention. Charging Party requests that the Board invalidate the MOU prior to the Respondent attempting to arbitrate enforcement of the MOU.

II. POSITION OF THE PARTIES

As noted above, it is Charging Party's position that the Union bargained in bad faith when it negotiated the MOU. Charging Party asserts that the MOU was signed without the authority of the City's Labor Relations Manager (who negotiated the current CBA), without the

authority of the Mayor, and it was not authorized or ratified by the City Council, the body that ratifies agreements between the parties. Charging Party contends that the Union knew or should have known that it needed ratification from the Mayor and/or City Council because in 2007, the City Council passed an ordinance allowing council members access to records in a Police Officer's personnel file. Respondent filed an unfair labor practice charge challenging this ordinance, particularly as it related to internal affairs files,² as Respondent believed it was a violation of the parties' CBA. In the instant case, Charging Party asserts that Respondent knew it needed authorization from the Mayor and City Council for the MOU to be valid since the City Council passed this other ordinance in 2007. Moreover, Charging Party asserts that while Respondent may have negotiated memorandums of understanding in the past with individuals other than the Mayor and/or City Council, these other memorandums did not extend liability to the City and have dealt mostly with operational issues.

According to the Charging Party, the Union did not request a change to Section 14.9(C) during negotiations for the current CBA, nor did it provide any quid pro quo for the modification found in the MOU. In addition, the Charging Party asserts that the City representatives and the Respondent knew of the pending FOIA request when the MOU was signed.

Charging Party further asserts that Respondent has failed to bargain in good faith as defined in Section 7 of the Act because the MOU involves an illegal subject of bargaining.³

² Case No. S-CA-08-030 was withdrawn on or about April 11, 2013.

³ Section 7 of the Act, Duty to Bargain, states:

A public employer and exclusive representative have the authority and duty to bargain collectively set forth in this Section.

For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to...the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Specifically, the Charging Party argues the local record retention law mandates retention of internal affairs documents for five years. Charging Party alleges that enforcing the MOU as written would violate this law. As such, the Charging Party has requested to renegotiate the MOU with the Respondent multiple times, but the Respondent has refused and insists that the MOU be implemented. The Charging Party believes this is a further example of the Union acting in violation of Section 10(b)(4).

The Respondent denies that it bargained in bad faith when it negotiated the MOU. Respondent asserts that appropriate bargaining agents for the City were present to agree to the MOU and it is not necessary for the Mayor and/or City Council to ratify the MOU. Respondent claims that it has signed multiple memorandum of understanding without the approval of the Mayor or ratification of City Council, including some that were negotiated with the Chief of Police. Respondent asserts that it has always been past practice for memorandums of understanding and amendments to the CBA to be effective immediately, and then presented to the Mayor and City Council at the next contract negotiations to be ratified and included in the successor CBA. To support this position, Respondent provided an e-mail sent on April 25, 2013, from Stone to Wittendorf that reads: "As I always do, I will put this MOU in my future contract issues file for integration into the contract during next formal collective bargaining negotiations."

Respondent also cites the Mayor's May 3, 2013 Executive Order as evidence that, prior to the Order, there was no strict procedure that the parties followed for negotiating memorandum of understanding. While the Executive Order specifies the involvement of the Labor Relations Manager, the Mayor and the City Council, Respondent notes that the Executive Order was issued after the signing of this MOU.

Respondent denies it knew of the pending FOIA request because FOIA requests go through the City. Respondent argues that while the City is obligated to address FOIA requests, the Union has no role concerning the City's FOIA requests.

Respondent stresses that in addition to the Chief, a Deputy Chief and an attorney were present on behalf of the City for the negotiation and/or signing of the MOU. Respondent also points to a memo dated April 30, 2013, where the City's then Corporation Counsel, Mark Cullen, supports the MOU. In this memo, Cullen advised the Mayor of the parties' past history with respect to record retention and further advised that the MOU is consistent with the Illinois Public Labor Relations Act, the City Code and past practice. Respondent claims that it bargained in good faith with the City's representatives and just because the City is unhappy with its representatives, this does not constitute an unfair labor practice by the Union.

Finally, the Respondent asserts that the Charging Party did not offer to renegotiate the MOU, but seeks to nullify the MOU in its totality. Again, the Respondent claims that it has no further obligation to bargain when it already negotiated the MOU in good faith, and the MOU has been valid since the day the parties signed the agreement.

III. DISCUSSION AND ANALYSIS

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 in good faith with a public employer. There is insufficient evidence to raise a question for hearing on a 10(b)(4) violation in this case. Specifically, there is insufficient evidence that the Union acted in bad faith when it negotiated the MOU in question.

I must first note that there is no evidence that the Union was aware of the pending FOIA request when it negotiated this MOU. Furthermore, this MOU was negotiated by representatives

from both parties. There appears to be no dispute that at least three City representatives were involved in the negotiating and/or were present for the signing of this MOU: the Chief of Police, a Deputy Chief and an Assistant Corporation Counsel. The evidence indicates that during the course of negotiations, Charging Party submitted a draft to the Respondent to review, to which Respondent made a counter proposal. As noted above, the parties eventually signed the MOU on April 25, 2013.

The Charging Party essentially argues that the City's representatives in this matter acted without authority when they negotiated and signed this MOU. However, there is insufficient evidence that the Union knew or should have known this. Again, there is evidence that the Union entered into memorandums of understanding with the Chief of Police on occasions prior to this MOU. The Mayor's May 3, 2013 Executive Order now sets forth clear parameters for who must be involved in negotiations on behalf of the City. Yet there is no evidence that the City made any such policy known to the Union prior to the signing of this MOU.

As to the claim that the MOU involves a prohibited subject of bargaining, it is insufficient to raise an issue for hearing. I note that there is nothing inherently illegal about negotiating the removal of disciplinary records. Indeed, the parties included such language in their current CBA. Furthermore, the evidence indicates that the Local Records Commission has the discretion to approve or deny such applications requesting the expunging of records. After signing the MOU, the Springfield Police Department made an application to the Local Records Commission to reduce the standard for expunging disciplinary records from five years to four years. The fact that the Commission ultimately denied this application is insufficient to infer that the Union bargained in bad faith.

In order to issue a complaint for hearing in this matter, I would have to find that the Union's conduct raised a question for hearing under Section 10(b)(4). For all of the reasons set forth above, I find that it does not.

IV. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 26th day of November, 2014.

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



**Melissa Mlynski
Executive Director**