

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

City of Rockford,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-14-033
)	
Policemen's Benevolent and Protective)	
Association,)	
)	
Respondent)	

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

On October 21, 2014, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the unfair labor practice charge filed by the City of Rockford (Charging Party) in the above-captioned case. The charge alleged that the Policemen's Benevolent and Protective Association (Respondent or Union) violated Sections 10(b)(1) and (2) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012) when it filed a complaint with the City's Board of Fire and Police Commissioners alleging that the City's Chief of Police, Chester Epperson, violated various departmental rules.

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 no response. After reviewing the record and appeal, we uphold the Executive Director's Dismissal for the reasons stated therein.

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 December 16, 2014,
written decision issued in Chicago, Illinois on December 22, 2014.

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

City of Rockford,

Charging Party

and

Policemen's Benevolent and Protective
Association,

Respondent

Case No. S-CB-14-033

DISMISSAL

On June 16, 2014, the City of Rockford (City or Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CB-14-033, alleging that the Policemen's Benevolent Protective Association (Union or Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012) *as amended*. Charging Party amended its charge on June 20, 2014. 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 AND POSITION OF THE CHARGING PARTY

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 and the exclusive representative of a bargaining unit (Unit) consisting of all sworn personnel in the City's Police Department from the rank of Patrol Officer to the rank of Sergeant. Charging

Party and Respondent are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that the Respondent violated Sections 10(b)(1) and (2) of the Act when it filed a complaint with the City's Board of Fire and Police Commissioners (Board of Commissioners) alleging that Chester Epperson, the City's Chief of Police, violated various departmental rules. In the complaint, the Union seeks to have the Board of Commissioners review Chief Epperson's conduct during an incident that occurred on October 30, 2013.

Terrence Peterson, President of the Union's Unit 6, filed the complaint with the Board of Commissioners on or about June 4, 2014. In the complaint, it is alleged that on October 30, 2013, Chief Epperson interfered with three City Police Officers as they were conducting a "welfare check" on a residence.

Charging Party asserts that this complaint was a direct violation of the collective bargaining agreement because the CBA outlines the usage of the grievance procedure regarding "any dispute or complaint concerning the interpretation of, application of, or compliance with, the terms of this Agreement." Charging Party asserts that the issue the Union has with the Chief of Police is really a matter concerning the interpretation, application, and/or compliance with the CBA, and thus, it should have been resolved via the grievance process.

Charging Party asserts that in the October 30, 2013 incident referred to in the complaint, Chief Epperson invoked his management rights as outlined in the CBA Article I, Section 1.2. Specifically, Chief Epperson was invoking the right to "direct, plan, control, and determine the operations of the Police Department..." Charging Party believes that if Respondent had an issue with the Chief exercising his rights under the Management Rights clause, Respondent had an obligation to file a grievance and not a complaint with the Board of Commissioners. Because

Party and Respondent are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that the Respondent violated Sections 10(b)(1) and (2) of Act when it filed a complaint with the City's Board of Fire and Police Commissioners (Board of Commissioners) alleging that Chester Epperson, the City's Chief of Police, violated various departmental rules. In the complaint, the Union seeks to have the Board of Commissioners review Chief Epperson's conduct during an incident that occurred on October 30, 2013.

Terrence Peterson, President of the Union's Unit 6, filed the complaint with the Board of Commissioners on or about June 4, 2014. In the complaint, it is alleged that on October 30, 2013, Chief Epperson interfered with three City Police Officers as they were conducting a "welfare check" on a residence.

Charging Party asserts that this complaint was a direct violation of the collective bargaining agreement because the CBA outlines the usage of the grievance procedure regarding "any dispute or complaint concerning the interpretation of, application of, or compliance with, the terms of this Agreement." Charging Party asserts that the issue the Union has with the Chief of Police is really a matter concerning the interpretation, application, and/or compliance with the CBA, and thus, it should have been resolved via the grievance process.

Charging Party asserts that in the October 30, 2013 incident referred to in the complaint, Chief Epperson invoked his management rights as outlined in the CBA Article I, Section 1.2. Specifically, Chief Epperson was invoking the right to "direct, plan, control, and determine the operations of the Police Department..." Charging Party believes that if Respondent had an issue with the Chief exercising his rights under the Management Rights clause, Respondent had an obligation to file a grievance and not a complaint with the Board of Commissioners. Because

Respondent did not file a grievance and follow the procedure set forth in the CBA, Charging Party asserts that Respondent has repudiated the contract.

Charging Party further contends that Respondent has violated Section 10(b)(1) because it is an unfair labor practice to restrain or coerce public employees in the exercise of the rights guaranteed in the Act. The Charging Party argues that the Chief, as a public employee, has been impacted by the Union's decision to not use the negotiated grievance procedure. Additionally, Charging Party claims that Respondent has restrained or coerced the Charging Party in the processing of a grievance and has violated Section 10(b)(2) of the Act. Charging Party asserts that had a grievance been filed, the City and the Union could have submitted the grievance to arbitration for a resolution of this matter.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce public employees in the exercise of the rights guaranteed in this Act. The Board has previously held that a public employer lacks standing to bring a Section 10(b)(1) charge. Village of Barrington Hills, 29 PERI ¶ 51(ILRB-SP 2012).

While not specifically addressing the standing issue, Charging Party asserts that as a public employee, the Chief has been impacted by the Union's decision not to utilize the grievance procedure, and that this violates Section 10(b)(1). Section 3(n) of the Act defines the term "public employee" or "employee" for the purposes of the Act. This definition specifically excludes "managerial employees", "confidential employees" and "supervisors."¹ Charging Party presented no evidence or argument to support its assertion that the Chief of Police is a public employee under the Act. Furthermore, even assuming, for the purpose of this case, that

¹The term "managerial employee" is defined in Section 3(j) of the Act. The term "confidential employee" is defined in Section 3(c) of the Act. The term "supervisor" is defined in Section 3(r) of the Act.

Epperson is a public employee under the Act, the Charging Party has presented no evidence that he was “restrained or coerced” in his exercise of rights under the Act by the Union’s decision not to file a grievance over the October 30, 2013 incident. For all of these reasons, this aspect of the charge must be dismissed.

Section 10(b)(2) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce a public employer in the selection of its representatives. In support of its charge, the City cites City of Loves Park, 19 PERI ¶ 155 (IL App. 2nd Dist. 2003), where the court held:

When an employer's conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct constitutes repudiation and violates section 10(a)(4).

Charging Party is essentially arguing that the Union repudiated the CBA by refusing to file a grievance over the October 30, 2013 incident and instead pursuing a complaint with the Board of Commissioners. The City also relies upon the decision in Grchan v. Illinois State Labor Relations Board, 315 Ill. App. 3d 459 (IL. App. 3rd Dist, 2000), to support its request that the Union be directed to follow the grievance procedure in the CBA. In Grchan, the court held that proceedings before the Sheriff’s Merit Commission did not have any preclusive effect on proceedings before the Board. The court in Grchan further upheld the Board’s determination that the sheriff and the county in that case violated the Act by retaliating against an employee for his protected activity.

Neither of these cases supports the Charging Party’s position. Neither case can be read to support the argument that the Union violated the Act by pursuing a complaint against the Chief of Police with the Board of Commissioners. Nor can these cases be read to support the argument that the Union violated the Act by choosing not to file a grievance over the October 30,

2013 incident. The evidence submitted is simply not sufficient to claim a repudiation of the CBA or a violation of the Act.

By filing this Complaint with the Board of Commissioners, the Union is essentially alleging that the Chief of Police has engaged in conduct that violates departmental rules. Whether this complaint has any merit, or whether it is properly before the Board of Commissioners, is a matter for the Board of Commissioners to decide. However, I can find no support in the Act or in the case law to indicate that the Union's actions in this case violate the Act.

III. 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 21st day of October, 2014.

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



Melissa Mlynski, Executive Director