

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

Diana Caloca,)	
)	
Charging Party,)	
)	
and)	Case No. S-CB-15-028
)	
Chicago Newspaper Guild, Local 34071,)	
)	
Respondent.)	

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

On April 17, 2015, Charging Party Diana Caloca (Charging Party or Caloca) filed an unfair labor practice charge in the above-captioned case alleging that the Chicago Newspaper Guild, Local 34071 (Union or Guild) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended. Following the Union’s offer of a comprehensive settlement, Executive Director Melissa Mlynski determined there were no issues of law or fact warranting a hearing. On November 30, 2015, the Executive Director issued an Order Directing Unilateral Settlement, which effectively dismissed the instant Charge. The Charging Party filed a timely appeal pursuant to Section 1200.135(a) of the Board’s Rules and Regulations, 80 Ill. Admin. Code § 1200.135(a), and the Union filed a response. After reviewing the record and appeal, we affirm the Executive Director’s Order for the following reasons.

I. Executive Director has the Authority to Order Unilateral Settlement.

Whether we have the authority to grant unilateral settlement is a matter of first impression.¹ Both the National Labor Relations Board (NLRB) and the Illinois Educational Labor Relations

¹ The Administrative Law Judge (ALJ) in Chi. Transit Auth., 31 PERI ¶ 40 (IL LRB-LP ALJ 2012), addressed the question of whether we have the authority to grant unilateral settlement and concluded that

Board (IELRB) have the authority to grant and recognize the usefulness of unilateral settlements. See Comme'ns Workers of Am., AFL-CIO, Local 9403 (Pac. Bell), 322 NLRB 142 (1996); Sandwich Comm. Unit Sch. Dist. No. 430, 17 PERI ¶ 1051 (IL ELRB 2001). In concluding it had the authority to grant unilateral settlement, the IELRB noted “[t]he Executive Director’s authority to issue complaints and to dismiss charges implicitly includes the authority to dismiss a charge when the charged party has agreed to a settlement which adequately remedies the misconduct alleged.” DeKalb Comm. Unit Sch. Dist. No. 428, 5 PERI ¶ 1192 (IELRB 1987). Additionally, the Appellate Court has approved the IELRB’s use of unilateral settlements. Coon v. Ill. Educ. Labor Relations Bd., 267 Ill. App. 3d 669, 671 (4th Dist. 1994).

As to our own authority, similarly to the IELRB, we have the statutory duty to investigate an unfair labor practice charge and issue a complaint if “the charge involves a dispositive issue of law or fact,” and have delegated this authority to our Executive Director. Compare 5 ILCS 315/11, and 80 Ill. Admin. Code § 1220.40, with 115 ILCS 5/15, and 80 Ill. Admin. Code § 1120.30. Given these parallels, we find it difficult to fathom that our own Executive Director has less authority than her IELRB counterpart. Accordingly, we find that the Executive Director can direct unilateral settlement if the settlement adequately remedies the alleged misconduct.

II. The Unilateral Settlement is Adequate and the Charging Party’s Appeal has no Merit.

We now turn to whether the unilateral settlement in this case adequately remedies Caloca’s charge. Although not binding, we find the IELRB’s case law helpful in our analysis. “In order to be approved, a unilateral settlement need not completely recompense the charging party . . . Instead, the standard is whether the settlement ‘adequately remedies’ the alleged misconduct.” Sandwich Comm. Unit Sch. Dist. No. 430, 17 PERI ¶ 1051 (IELRB 2001). Factors the IELRB considers when deciding whether to approve a settlement proposal include (1) the risks of prolonged litigation; (2)

such a remedy is within our authority. However, as no party filed exceptions in that case, the question never reached us and the ALJ’s decision stands as non-precedential.

the ability to restore “collective bargaining harmony;” (3) the conservation of Board resources; and (4) the merits of the case. *Id.* Applying these factors to the instant matter, the Executive Director properly concluded that the unilateral settlement proffered by the Union is adequate under the circumstances presented in this case.

Caloca raises two objections to the settlement and the Executive Director’s Order. First, Caloca contends that the settlement is inadequate because it only refunds her dues from the six months preceding her charge and does not refund her all of the dues she paid during her 10-year Union membership. This argument is unavailing. It is well established that the six-month limitation period in Section 11(a) of the Act is jurisdictional. *See* 5 ILCS 315/11(a); *Vill. of Dolton*, 17 PERI ¶ 2017; *see also* *Charleston Cmty. Unit School Dist. No. 1 v. Ill. Educ. Labor Rel. Bd.*, 203 Ill. App. 3d 619 (4th Dist. 1990) (finding IELRB’s similar six-month limitations period was jurisdictional). Thus, Caloca’s remedy is statutorily limited to a refund of her dues paid in the six months preceding the filing of her Charge.

Lastly, in her second objection, Caloca contends the settlement is inadequate because it fails to reprimand the Union official she alleged was responsible for her harassment. However, Caloca misapprehends the scope of our authority. We cannot, as Caloca requests, require a party to discipline an individual union official, much less a former union official. Furthermore, we believe that the cease and desist provision of the settlement sufficiently addresses these allegations of Caloca’s Charge. As noted above, the proposed settlement need not be perfect or complete. The proper inquiry is whether the proposed settlement provides adequate relief. We find that it does. Therefore, we affirm the Executive Director’s Order Directing Unilateral Settlement.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

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

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on January 12, 2016, written decision issued in Chicago, Illinois on January 29, 2016.

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

Diana Caloca,

Charging Party

and

Chicago Newspaper Guild, Local 34071

Respondent

Case No. S-CB-15-028

EXECUTIVE DIRECTOR'S ORDER DIRECTING UNILATERAL SETTLEMENT

On April 17, 2015, Charging Party, Diana Caloca, filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CB-15-028, alleging that Respondent, the Chicago Newspaper Guild, Local 34071 (Guild or Union), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. I have determined that, in light of the Respondent's offer of a comprehensive settlement, there are no remaining issues of law or fact that warrant a hearing, and hereby issue this order directing a unilateral settlement for the reasons set forth below.

I. INVESTIGATION

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) that includes full-time and per diem Court Interpreters employed by the Chief Judge of the Circuit Court of Cook County (Chief Judge or Employer). At all times material, the Charging Party is a public employee within the meaning of Section 3(n) of the Act, employed by the Chief Judge as full-time Court Interpreter.

In this charge, Caloca alleges that on or about April 16, 2015, she called the Union looking for information on fair share dues. She claims that the representative¹ told her that the County² “does not have” fair share dues payments available and refused to give her any requested information on fair share payments. Caloca also feels that certain Union officials are bullying and intimidating her.

Caloca states that on or about February 10, 2015, she was discussing a news article regarding fair share with coworkers, Jose Rochel, Union Steward/Secretary, and Grace Catania, Union Chairwoman. Caloca claims she said to Rochel and Catania that “the thing about fair share is that the Union still has to represent us.” It was at this point that Rochel allegedly became “irate and furious” towards Caloca and said “the Union will not represent you.” A heated discussion ensued in which Caloca felt intimidated and bullied in regard to the issue of switching to fair share. Caloca claims it was at this point that she turned to Catania and said “that’s the reason I want to leave the Union,” which was a reference to Rochel’s behavior. Catania allegedly responded to Caloca by saying “we can’t do anything about [Rochel] that’s management’s responsibility.” Caloca responded by saying “but he is a Union Steward and he can do this?” Caloca states that since the incident described above, she has not been on speaking terms with Rochel and that the office environment is not good.

Upon receipt of the unfair labor practice charges referenced herein, the Guild requested that the Board hold the investigation of the unfair labor practice charge in abeyance while it attempted to reach a mutually satisfactory resolution with the Charging Party.³ A Board mediator attempted to aid the parties in resolving the disputes, but the parties were unable to reach a voluntary settlement. In a letter dated September 2, 2015, Respondent filed a request that

¹ Presumably Caloca is referring to Craig Rosenbaum, Executive Director of the Chicago Newspaper Guild.

² The Charging Party’s employer is actually the Chief Judge not the County.

³ As a general policy, the Board encourages the voluntary settlement of charges as it is viewed as an effective means to improve the parties’ relationship and focus Board resources on other cases.

the Board dismiss the unfair labor practice charge pursuant to a Unilateral Settlement that would secure complete relief and make Charging Party whole.⁴

II. POSITIONS OF THE PARTIES

The terms of the Respondent's settlement offer as proposed in the September 2, 2015, letter are as follows:

The Chicago News Guild will pay [Diana Caloca] back pay (including interest) all fair share fee dues paid for the past 6 months from dates prior to [Caloca] filing [her unfair labor practice charge on] April 17, 2015. The Guild will post a standard cease and desist order in prominent places for sixty (60) days where notices are normally posted for bargaining unit employees. In addition, the Guild will mail a notice advising bargaining unit employees of their "Hudson rights" to become nonmembers, they will have the right to object to the portion of the agency fee that relates to non-chargeable expenditures and to have their agency fee reduced by the non-chargeable percentage. Thereafter, employees who choose to become non-members will become agency fee payers. The agency fee will be 1.8% of wages. If an agency fee payer submits a timely objection, he or she will pay the reduced fee of 1.52%. The latter rate reflects a reduction in the agency fee based on the non-chargeable percentages of 28.37% for the CWA and 11.19% for the Guild. Objectors will be given an opportunity to dispute the calculation of the fee. Any timely challenges will be processed to arbitration.

The Guild contends that this settlement offer provides the same remedy that would be available to Charging Party should she prevail at hearing. Charging Party rejected both the initial and the amended settlement offer, and instead wants to pursue her case before the Board.

Specifically, Caloca indicates that she rejects the Guild's settlement offer because it does not contemplate fees she paid starting from the initiation/founding of the Guild approximately 10 years ago. Caloca claims that the dues have accumulated to an amount that far exceeds the six month backpay proposal. Caloca adds that she was never informed of her right to fair share and that the agency fee reduction from 1.8% to 1.52% is inadequate and should be reduced further. Caloca also objects to the proposal because it does not address her allegation that she was

⁴ Charging Party was copied on this correspondence.

harassed and bullied by Union Steward Rochel. Caloca alleges that Rochel was completely unprofessional to her when discussing the fair share issue and that he responded to her inquiries by stating in a harsh and abrasive tone that “your fair share will never happen.” Caloca asserts that Rochel never explained his position nor did he seem to know himself that the fair share accommodation even existed. Caloca claims Rochel intimidated her and created a hostile environment in the workplace.

On November 24, 2015, the Respondent amended its settlement offer to include a specific reference in the settlement that the Guild shall cease and desist from retaliating against Diana Caloca or any member/non-member of the Guild for exercising their rights as guaranteed under the Illinois Public Labor Relations Act. Caloca rejected the proposed settlement.

III. DISCUSSION AND ANALYSIS

The purposes of the Act are not furthered if the Board expends funds on an administrative hearing when the best possible remedy that can be obtained by a party prevailing at the hearing is being offered to that party in a settlement. There is case law that supports the acceptance of unilateral settlements over a charging party’s objection, given the appropriate circumstances.

The Illinois Educational Labor Relations Board (IELRB) has a long history of routinely dismissing fair share fee objections, via acceptance of a unilateral settlement, when the exclusive representative agrees to return the fair share fees that have been collected, including the interest those fees have earned. See, e.g. Sandwich Community Unit School District No. 430, 17 PERI ¶ 1051 (IL ELRB 2001); Minooka Community Consolidated School District 201, 9 PERI ¶ 1005 (IL ELRB 1992); DeKalb Unit School District 428, 5 PERI ¶ 1192 (IL ELRB 1987). In reviewing a unilateral settlement adopted by the IELRB, an Illinois Appellate Court noted that “[u]nilateral settlement is an accepted labor practice, as indicated by the National Labor

Relations Act.” Coon v. IELRB, 267 Ill.App.3d 669, 671, 642 N.E.2d 1358, 1360 (4th Dist. 1994), citing 29 U.S.C. §§ 151 through 169 (1988).⁵

In 2010, the IELRB explained that the Executive Director’s authority to issue complaints and to dismiss charges and complaints implicitly includes the authority to dismiss a charge or complaint when the charged party has agreed to a settlement that adequately remedies the alleged misconduct. SIUC Faculty Association, IEA-NEA, and Board of Trustees, Southern Illinois University at Carbondale, 26 PERI ¶ 53 (IL ELRB 2010).

Under IELRB case law, the appropriate standard in assessing a proposed unilateral settlement is whether the proposed settlement provides adequate relief, not complete relief, to a charging party. Id. Factors to be considered include the following: the risks involved in protracted litigation, early restoration of collective bargaining harmony, conservation of Board resources, and an evaluation of the factual and legal merits of a case. Id.

Applying these factors to the case at hand, I have determined that a unilateral settlement is appropriate. The Respondent has proposed a complete settlement of the charges. Respondent agrees to post a Board prepared Notice to Employees and agrees to return to Charging Party all Union dues Charging Party paid for the six months prior to the filing of her charge, including interest, up to the date the Notice to Employees is posted. The Respondent also agrees to mail a notice advising bargaining unit employees of their right to Union membership or non-membership. Further, as set forth in the Unilateral Settlement Statement, if Charging Party becomes a non-member, she will have the right to object to a portion of the fees and have her agency fees reduced by the amount of non-chargeable expenditures. Objectors will be given the opportunity to dispute the calculation of the fee, and timely fee objections will be processed to

⁵ Unilateral settlements of cases pending before the Board are far less common. However, in a non-precedential decision, an Administrative Law Judge for the Board accepted a unilateral settlement in Chicago Transit Authority, 31 PERI ¶ 40 (IL LRB-LP ALJ 2012).

arbitration. Finally, to address Caloca's alleged harassment allegation, the Respondent has agreed to include a specific reference in the settlement that it shall cease and desist from retaliating against the Charging Party or any member/non-member of the Guild for exercising their rights as guaranteed under the Act.

Charging Party objects to the settlement, at least in part, because it does not include a full refund of all the Union dues she has paid for the past 10 years. Charging Party's position reflects a misunderstanding of the remedial powers of this Board. Charging Party did not file her unfair labor practice charge until April 17, 2015. Section 11(a) of the Act states that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...." A respondent must only address acts falling within the six month period prior to the filing of the charge and the Board can only provide remedies for matters falling within the six month period prior to the filing of the charge. The Board limits remedy to the six months prior to the date on which the charge is filed because the Act's six-month limitation period is jurisdictional and cannot be waived. Fraternal Order of Police, Lodge 7 (Wayne Harej), 29 PERI 53 (IL LRB-SP 2012); Fraternal Order of Police, Lodge 7 (Shawn Hallinan), 30 PERI 196 (IL LRB-SP 2001); City of Dolton, 17 PERI ¶2017 (IL LRB-SP 2001), (citing Charleston Comm. Unit School Dist No. 1 v. Ill. Educ. Labor Rel. Bd., 203 Ill. App. 3d 619 (4th Dist. 1990))(finding that Section 11(a)'s six-month limitation period is jurisdictional). As such, the Union's willingness to refund to Charging Party all dues paid within the six months prior to the filing of her charge constitutes a full refund under the Board's remedial powers.

Despite the Charging Party's refusal to accept the Union's settlement offer, I find that the request for a Unilateral Settlement fully addresses all aspects of the charge. As such, there remain no issues of law or fact that warrant a hearing.

IV. ORDER

Accordingly, the proposed Unilateral Settlement as set forth in Attachment A, is hereby approved. I recommend that this matter be dismissed in its entirety pending Respondent Chicago Newspaper Guild, Local 34071's submission of adequate proof that it has implemented or made a good faith effort to implement the terms of its offer of settlement and the provisions set forth in the Unilateral Settlement Statement (Attachment A). Should Respondent Chicago Newspaper Guild, Local 34071 fail to submit such proof within 30 days of receipt of this Order Directing Unilateral Settlement, a complaint for hearing will be issued in this instant case.

This order may be appealed to the Board any time within 10 calendar days of service hereof.⁶ The appeal must be in writing, contain the case caption and number, and 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 be served upon all other parties at the same time that it is served upon the Board. A statement asserting that all other parties have been served must accompany an appeal, or the Board will not consider it. If the Board does not receive an appeal within the specified time, this order shall become final and binding upon the parties to this matter.

Issued in Springfield, Illinois, this 30th day of November, 2015.

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



**Melissa Mlynski
Executive Director**

⁶ An appeal of this Order will toll the 30 days that the Union has to provide proof of compliance.

ATTACHMENT A:

UNILATERAL SETTLEMENT STATEMENT

WHEREAS, the Charging Party has filed an unfair labor practice charge against the Chicago Newspaper Guild, Local 34071 (Guild) alleging that the Guild engaged in conduct that interfered with, restrained, and coerced bargaining unit employees in their exercise of rights guaranteed under the Illinois Public Labor Relations Act (Act), and said charges were given the Case Number S-CB-15-028; and

WHEREAS, the Charging Party and the Guild had discussions with a mediator from Illinois Labor Relations Board (Board) staff to settle and resolve the issues raised in the said unfair labor practice charges; and

WHEREAS, the parties have failed to agree on the terms of such a settlement; and

WHEREAS, the Executive Director of the Board has determined that it is in the best interests of the parties and of the public generally that a unilateral settlement be imposed in this matter so that the parties may avoid costly litigation of the unfair labor practice charges and the damage that such litigation may cause to the parties relationship;

NOW, THEREFORE, in light of the foregoing, the Executive Director of the Illinois Labor Relations Board hereby imposes the following unilateral settlement on Respondent:

1. The Guild shall post the attached notice for sixty (60) consecutive calendar days at all places where notices to bargaining unit members are regularly posted to resolve the charges in Case No. S-CB-15-028.

2. The Guild shall cease and desist from retaliating against Diana Caloca or any member/non-member of the Guild for exercising their rights as guaranteed under the Illinois Public Labor Relations Act.

3. The Guild shall pay Charging Party backpay (including interest) for all union dues paid for the past six (6) months from the date prior to the Charging Party filing her charge on April 17, 2015, and going forward to the date the aforementioned notice is posted.

4. The Guild shall notify in writing all bargaining unit employees of their right (1) to be, or to remain, a non-member, and (2) of the rights of non-members to object to paying for union activities not germane to the Guild's duties as bargaining agent and to obtain a reduction in fees for such activities. This notice must include sufficient information to enable employees to decide whether to object, as well as a description of any internal union procedures for filing objections.

5. The Guild shall cease and desist from failing to inform employees whom it seeks to obligate to pay dues and fees under a union-security clause of their rights to be and remain non-members, and of the right of non-members to object to paying for union activities not germane to the Guild's duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

6. Employees who choose to become non-members will become agency fee payers.

7. Objectors will be given an opportunity to dispute the calculation of the fee. Any timely challenges will be processed to arbitration.

8. The Guild shall notify the Board in writing, within 30 days from the date of this Order, of the steps it has taken to comply herewith.

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

This Notice is posted pursuant to an Order of the Illinois Labor Relations Board (Board) in the matter of Board Case No. S-CB-15-028, Diana Caloca and the Chicago Newspaper Guild, Local 34071.

The Illinois Labor Relations Board, State Panel is charged with protecting the rights established under the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), *as amended*. The Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization;
- To form, join or assist unions;
- To bargain collectively through a representative of your own choosing;
- To act together with other employees to bargain collectively or for other mutual aid or protection;
- To refrain from these activities.

Accordingly, we ensure you that:

WE WILL, cease and desist from retaliating against any member/non-member of the Guild for exercising their rights as guaranteed under the Illinois Public Labor Relations Act.

WE WILL, not engage in any actions that interfere with, restrain or coerce our members or fair share non-members with respect to these rights, and more specifically:

WE WILL, not threaten to refuse to represent members who seek to become fair share non-members and/or file fair share fee challenges and/or otherwise exercise their rights under the Illinois Public Labor Relations Act.

WE WILL NOT, fail to inform employees we seek to obligate to pay dues and fees under a union-security clause, of their rights to be and remain non-members, and of the right of non-members to object to paying for union activities not germane to the Guild's duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

WE WILL, notify in writing all bargaining unit employees of their right (1) to be, or to remain, a non-member, and (2) of the rights of non-members, to object to paying for union activities not germane to the Guild's duties as bargaining agent and to obtain a reduction in fees for such activities. This notice must include sufficient information to enable employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL, cease and desist in any like or related manner from interfering with restraining or coercing you in the exercise of your rights guaranteed by the Illinois Public Labor Relations Act.

Date: _____

Chicago Newspaper Guild, Local 34071
(Union)

(Representative)

(Title)

This Notice shall remain prominently posted for sixty (60) consecutive calendar days at all places where notices to our bargaining unit members are regularly posted and in the event defaced, shall be timely replaced with an unaltered copy.

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
