

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

National Nurses Organizing)	
Committee/California Nurses)	
Association, (NNOC/CNA),)	
)	
Charging Party)	Case No. L-CA-06-079
)	
)	
and)	
)	
Cook County Bureau of Health Services,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On March 15, 2006, National Nurses Organizing Committee/California Nurses Association (NNOC) filed a charge with the Illinois Labor Relations Board’s Local Panel (Board) alleging that the Cook County Bureau of Health Services (County) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on February 27, 2007, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing. A hearing was conducted and concluded on August 1, 2007, in Chicago, Illinois, at which time NNOC presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. The County is a public employer within the meaning of Section 3(o) of the Act.

2. The County is a unit of local government under the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
3. The County is a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. NNOC is a labor organization within the meaning of Section 3(i) of the Act.
5. NNOC has been the exclusive bargaining representative of a bargaining unit (Unit) composed of the County's employees as certified by the Board on May, 23, 2005 in Case No. S-RC-05-002.
6. At all times material, the County and NNOC have been parties to a collective bargaining agreement (Agreement), setting out the terms and conditions of employment for the Unit.
7. The Agreement contains a grievance procedure culminating in binding arbitration.
8. At all times material, the following individual has occupied the position opposite his name and has been the County's agent, authorized to act on its behalf:

James Dyson Manager of Labor Relations

II. ISSUES AND CONTENTIONS

The issue is whether the County violated Section 10(a)(4) and (1) of the Act by refusing to provide NNOC with requested employee attendance records and attendance-related disciplinary records.

NNOC claims that the information at issue was relevant and necessary for it to perform its duty as the exclusive representative of bargaining unit employees.¹ NNOC further argues that the Illinois Personnel Records Review Act does not excuse the County from providing the requested information. Finally, NNOC notes that the record does not reflect the County's assertion that it provided NNOC with some of the requested information at hearing and that, accordingly, the case is not moot with respect to those documents.

¹ The County moved to strike NNOC's post-hearing brief as untimely because it was filed five days late. That motion is denied because I find there is no prejudice to the County in accepting the late brief. Contrary to the County's assertions, NNOC did not draft a reply brief. Not only did counsel swear that she filed her brief before reading the County's own, the format and content of her brief support her assertion. See, Central City Education Association, IEA-NEA, 4 PERI ¶ 1111 (IELRB 1988)(no prejudice in accepting union's late brief where Union Counsel testified that she did not read Respondent's brief until she had mailed her own).

The County argues that the information sought by NNOC was neither relevant nor necessary. The County further asserts that it provided some of the requested information at hearing and that the case is moot with respect to that information. Finally, the County argues that it was prohibited from disclosing the requested information under the Illinois Personnel Records and Review Act.

III. FINDINGS OF FACT

The NNOC-Cook County contract states that “all discipline shall be given only for just cause” and that “the level of disciplinary action and/or degree shall be appropriate to the infraction, including, if appropriate, in consideration of...County practice in similar cases.” Appendix D, Sec. II C.

On March 8, 2006², the County issued Victoria Gillespie, an employee in the Adult Emergency Room (AER) of Stroger Hospital, a Notice of Predisciplinary Hearing for repeated tardiness and absenteeism. The purpose of a predisciplinary hearing is for the County to discuss its disciplinary charges with the employee in question. The hearing determines whether the charges against the employee are sustained. The County issues no discipline at the hearing itself.

Gillespie’s notice stated that she had been tardy 26 times. It further stated that she could be subject to disciplinary action up to and including discharge if the charges were sustained. Finally, the Notice informed Gillespie that “as a union employee, she [was] entitled to union representation.”

Corey Lanham, NNOC labor organizer, was assigned to represent Gillespie at the hearing. On March 13, 2006, Lanham mailed and hand-delivered a request to James Dyson, Manager of Labor Relations for Stroger Hospital, for the following information:

- (1) Gillespie’s attendance record;
- (2) The tardiness/absenteeism records of all AER bargaining unit employees over the past 12 months and
- (3) The names of all AER employees disciplined for tardiness/absenteeism within the past 12 months, dates and descriptions of each discipline, the amount of tardiness that led to each discipline, and a description of the original discipline and any changes in discipline as a result of the grievance procedure.

² All dates are in 2006 unless otherwise noted.

Dyson was unsure as to whether he was permitted to disclose parts two and three of NNOC's request. Accordingly, he sought the advice of the County's Labor Relations attorney, Jonathan Rothstein, who counseled against disclosure of those parts. Dyson never offered to redact the records to remove the employees' names. NNOC did not request redacted records, either.

On March 14, Lanham asked Dyson whether NNOC would receive the requested information in time for Gillespie's pre-disciplinary hearing, scheduled for the following day. Dyson stated that the Union was not entitled to any of the requested information. Dyson did not provide a reason for denying the request, nor did he distinguish between the enumerated requests.

Lanham testified that NNOC required Gillespie's records to confirm the County's assertion that Gillespie accumulated 26 occurrences of tardiness. He also testified that NNOC needed the remaining information to ensure that all AER bargaining unit members who were disciplined for tardiness were treated equally.

On August 6, after the record closed, I received a letter from the County asserting that it had presented NNOC with documents in response to part one of NNOC's request. Those documents were attached to the letter. The letter was cc-ed to NNOC's counsel. The documents were also attached to the County's post-hearing brief. The brief included a certificate of service stating that the document was served on NNOC's counsel.

IV. DISCUSSION AND ANALYSIS

1. Mootness

The County correctly argues that this matter is moot with respect to documents it has already produced.

A claim is moot when no actual controversy exists or events occur which make it impossible for a court to grant effectual relief. Dixon v. Chicago & North Western Transportation Co., 151 Ill. 2d 108, 116, 176 Ill. Dec. 6, 601 N.E.2d 704 (1992); La Salle National Bank v. Chicago, 3 Ill. 2d 375, 378-79 (1954). Actions will be dismissed as moot once the charging party has secured what was originally sought. Katherine M. v. Ryder, 254 Ill. App. 3d 479, 486 (1993).

Here, NNOC made a three-part information request seeking (1) Victoria Gillespie's attendance records, (2) unit employee attendance records and (3) attendance-related disciplinary records. NNOC received documents responsive to part one of its requests because they were attached to the County's post-hearing brief, served on NNOC's counsel on September 12, 2007. Thus, the matter is moot with respect to Victoria Gillespie's attendance records, the documents NNOC sought and received.

2. Information request

The duty to bargain collectively in good faith requires public employers to provide information within their control to exclusive bargaining representatives when the information is relevant and necessary for the exclusive representative to properly discharge its statutory duty. County of Champaign, 19 PERI ¶ 73 (IL SLRB 2003); Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1993);, aff'd Vill. of Franklin Park v ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994). Also see Water Pipe Extension Bureau of Engineering, Laborers Local 1092 v. City of Chicago, 195 Ill. App. 3d 50 (1st Dist. 1990); NLRB v. Truitt Mfg. Co., 315 U.S. 149 (1956).

The standard for judging whether a particular request is relevant and necessary is whether, based on a liberal discovery-type standard, the requested information is related to the union's function as the employee's bargaining representative and whether the information appears to be reasonably necessary for the performance of that function. State of Illinois, Dep't of Cent. Mgmt. Serv., 9 PERI ¶ 2032 (IL SLRB 1993); NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). For example, employers are obligated to provide the union with information that is relevant and necessary for the union to police and administer a labor contract. City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015 (IL LLRB 1996); See also, Water Pipe Extension Bureau, 195 Ill. App. 3d at 58 (information which would assist the unions in determining whether to file a grievance is relevant).

Here, the requested unit employee attendance records and attendance-related disciplinary records are relevant and necessary for NNOC to discharge its statutory obligations. NNOC needed the information to ensure that the County's course of disciplinary action was "appropriate to the infraction" and based on comparative evidence (i.e. unit practices in similar cases"), pursuant to the contract. See, NNOC/County CBA, Appendix D, Sec. II C.

Contrary to the County's assertions, it is irrelevant that NNOC requested the documents before the County had imposed discipline because NNOC needed the documents to adequately represent Gillespie at her pre-disciplinary hearing. The pre-disciplinary hearing necessarily impacts the County's future disciplinary action (or inaction) because it determines whether the disciplinary charges are sustained. Accordingly, NNOC could not effectively act as Gillespie's representative and ensure a just determination regarding future discipline without the requested information.

Finally, the Illinois Personnel Record and Review Act (IPRRA) does not prohibit disclosure of the requested information in this case, as the County argues.³ 820 ILCS 40/10 (2010). The IPRRA states that "the right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to...(d) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a *clearly unwarranted invasion* of the other person's privacy." (emphasis added). In essence, the IPRRA sets forth a test to determine whether certain employee information must be held confidential. However, under the Illinois Public Labor Relations Act, the party asserting a confidentiality request has the burden of proof. City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015 (IL LLRB 1996). Here, the County did not demonstrate that disclosure of attendance and attendance-related disciplinary records would cause a clearly unwarranted invasion of any employee's privacy. Instead, the County merely cited the IPRRA and asserted that it applied to the information requested by NNOC; the County categorically failed to "adduce any facts to prove" that the information was, in fact, confidential under the IPRRA. City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015 (IL LLRB 1996) (finding employer's denial of employee test results paired with names and race was not justified based on confidentiality where City merely asserted it had a personnel rule prohibiting the disclosure of the test results and did not otherwise "adduce facts to prove" that the information was confidential). Thus, the County cannot rely on the IPRRA to defend its failure to provide the requested information.

³ In relevant part, this information included the tardiness/absenteeism records of all AER bargaining unit employees, names of all AER employees disciplined for tardiness/absenteeism, dates and descriptions of each discipline, and the amount of tardiness that led to each discipline.

V. CONCLUSIONS OF LAW

Respondent, Cook County Bureau of Health Services, violated Section 10(a)(4) and (1) of the Act when it refused to provide NNOC with the following information:

1. The tardiness/absenteeism records of all AER bargaining unit employees over the prior 12 months and
2. The names of all AER employees disciplined for tardiness/absenteeism within the prior 12 months, dates and descriptions of each discipline, the amount of tardiness that led to each discipline, and a description of the original discipline and any changes in discipline as a result of the grievance procedure.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Cook County Bureau of Health Services, its officers and agents shall:

Cease and desist from

1. Failing to supply information to the National Nurses Organizing Committee (NNOC) relevant and necessary for NNOC to properly discharge its statutory duty.
2. Take the following affirmative action:
 - i. Provide the following information, correct as of March 2006:
 1. The tardiness/absenteeism records of all AER bargaining unit employees over the prior 12 months and
 2. The names of all AER employees disciplined for tardiness/absenteeism within the prior 12 months, dates and descriptions of each discipline, the amount of tardiness that led to each discipline, and a description of the original discipline and any changes in discipline as a result of the grievance procedure.
 - ii. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive

days. Reasonable steps shall be taken to ensure that these notices are not altered, defaced or covered by any other material.

- iii. Notify the Board in writing, within 20 days from the date of this decision, of what steps the Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 12th day of August, 2011

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



**Philip M. Kazanjian
Administrative Law Judge**

NOTICE

The Illinois Labor Relations Board, Local Panel, has found that the County of Cook has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

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 and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing to supply information requested by the National Nurses Organizing Committee that is relevant and necessary for NNOC to properly discharge its statutory duty.

WE WILL cease and desist from in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.

WE WILL supply the following information, correct as of March 2006:

- The tardiness/absenteeism records of all AER bargaining unit employees over the prior 12 months and
- The names of all AER employees disciplined for tardiness/absenteeism within the prior 12 months, dates and descriptions of each discipline, the amount of tardiness that led to each discipline, and a description of the original discipline and any changes in discipline as a result of the grievance procedure.

DATE _____

County of Cook
(Employer)

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

National Nurses Organizing,)
Committee/California Nurses)
Association, (NNOC/CNA))
)
Charging Party)
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and)
)
County of Cook Bureau of Health Services,)
)
Respondent)

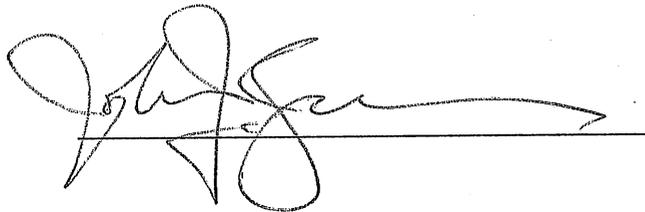
Case Nos. L-CA-06-079

AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 12th day of August, 2011, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL 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.

Jane Lawhorn
NNOC/CNA
2000 Franklin Street, Suite 300
Oakland, CA 94612

Patricia Fallon
Gregory Vaci
Cook County State's Attorney Office
500 Richard J Daley Center
Chicago, Illinois 60602



SUBSCRIBED and SWORN to
before me this **12th day**
of **August, 2011.**



NOTARY PUBLIC

