STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party,	)	
and	)	Case No. L-CA-11-038
County of Cook,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 24, 2011, the American Federation of State, County and Municipal Employees Council 31 (AFSCME or Charging Party), filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Sections 1200 through 1240 (Rules), alleging that the County of Cook (County or Respondent) had violated Sections 10(a)(4) and (2) of the Act by failing to implement pay increases pursuant to an interest arbitration award. The charge was investigated in accordance with Section 11 of the Act and, on April 21, 2001, the Executive Director of the Board issued a Complaint for Hearing.

A hearing was held on September 14, 2011 in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, present evidence, examine witnesses, argue orally and file written briefs.[1] After full consideration of the parties' stipulations,

[1] This case was heard by Administrative Law Judge Sharon Wells and subsequently transferred to the undersigned. I find there is no determination of credibility issues necessary to decide this matter.

evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

1. At all times material, the County of Cook (Respondent) has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, the Respondent has been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.

3. At all times material, the Respondent has been subject to the Act pursuant to Section 20(b) of the Act.

4. At all times material, the American Federation of State, County and Municipal Employees, Council 31 (Charging Party) has been a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit composed of certain of the Respondent's employees, including those in the titles or classifications of Police Officer, Police Sergeant, Correctional Sergeant and Correctional Lieutenant (Units).[2]

6. On or about September 29, 2010, following interest arbitration over wages, Arbitrator Edwin Benn awarded Charging Party's bargaining units wage increases totaling 8.5%.

[2] Each job title or classification is a separate bargaining unit.

7. On or about October 19, 2010, Respondent's governing body voted to ratify and adopt the terms set out in the arbitrator's award referenced in paragraph 6.

II. ISSUES AND CONTENTIONS

At issue in this case is whether the Respondent violated Section 10(a)(4) and (1) of the Act by failing and refusing to implement the interest arbitration award. AFSCME contends that the Respondent violated the Act by failing to implement the terms set forth in Arbitrator Edwin Benn's opinion and award in an interest arbitration between the joint employers, the County of Cook and the Cook County Sheriff, and AFSCME covering police officers, police sergeants, correctional sergeants and correctional lieutenants in four separate bargaining units, and, if so, what is the appropriate remedy. According to AFSCME, although Arbitrator Benn issued his award in September 2010, the wage increases were not fully and finally implemented until April 2011. AFSCME contends that the wage increases should have been implemented during the next pay period after the award issued and the County Board approved the award.

The County contends that the wage increases were implemented for the pay period ending January 30, 2011 and that back pay was paid out in April 2011. The County insists that there was no union animus but merely a delay in implementing the terms of the award. The County contends that the delay in implementation was not unreasonable, that the units have received their increases and that the County has complied with the award.

III. FINDINGS OF FACT

AFSCME has separate collective bargaining agreements for County police officers, police sergeants, correctional sergeants and correctional lieutenants.[3] All of these employees are employed by the County of Cook and Sheriff of Cook County as joint employers.

[3] Police officers and police sergeants are peace officers within the meaning of the Act and correctional sergeants and correctional lieutenants are security employees within the meaning of the Act.

The collective bargaining agreements for all four units expired on November 30, 2008. Negotiations for a successor agreement had begun in September 2008. Negotiations consisted of local negotiations and universal negotiations. For local negotiations, each bargaining unit elected a negotiating committee. Also participating in local negotiations was John DiNicola,[4] a staff representative for AFSCME for six years. The AFSCME team negotiated local issues with the Deputy Counsel for Cook County, Peter Kramer. However, each of the four local units negotiated separately with the Sheriff.

Universal negotiations included the four groups' negotiating committees together with 12 or 13 other AFSCME locals. Universal negotiations addressed global issues such as wages, health insurance, benefits, vacations and other economic issues. Jim Daley, an attorney, represented the County at universal negotiations. Jonathan Rothstein, Director of Human Resources for Cook County, also represented the County at such negotiations.

The parties were not able to reach a final agreement on issues raised during negotiations. In the late winter or early spring of 2010, AFSCME filed a request for interest arbitration. Ed Benn was appointed arbitrator and the arbitration hearing occurred in the spring of 2010. There were two days of informal attempts to achieve a settlement. Then there were three days of formal hearings. As stated above, the arbitration award issued in September 2010. Benn not only considered local issues for each of the four units but universal, that is, economic issues as well.

Benn's award sustained AFSCME's wage proposal which constituted an 8.5 percent wage increase over the four year contract term. Consistent with past practice, increases were awarded as follows:

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[4] DiNicola's duties included negotiating and enforcing collective bargaining agreements on behalf of AFSCME represented employees. DiNicola has been responsible for the four units for about five years.

December 1, 2008	2 percent
December 1, 2009	1 ½ percent
December 1, 2010	2 percent
December 1, 2011	2 percent
June 1, 2012	1 percent

The award also provided that economic terms were retroactive.

According to AFSCME regional director Nefertiti Smith,[5] since she began working for AFSCME in 1995, the County has always taken responsibility for implementing the economic terms of the bargaining agreement.

After AFSCME received the arbitrator's decision, Smith contacted Patricia Davis, the Acting Director of Human Resources for Cook County, and asked when employees would be paid their wage increases. Davis responded that the matter had to be presented to the County Board and gave the date, October 19, 2010, when the matter would be presented at a meeting of the Cook County Board of Commissioners for their approval. The Commissioners voted 16 to 1 to approve the award. Thereafter, Davis met with Roberto Rodriguez, president of AFSCME Local 3692, Vernon Brandon, that local's chief steward, Andy Douvris, from Local 3958 and Jaime Hernandez, president of Local 2226 and Smith, AFSCME's regional director. Davis said she would list on a schedule the wage rates for each respective bargaining unit including the wage increases from the award. DiNicola would then review the information and sign off on

[5] Nefertiti Smith has been employed by AFSCME since 1995. She has been the regional director for about one year. In that position, she oversees staff that represent city, State, county and private agency employees including those employees of Cook County, the Sheriff of Cook County and also employees in14 locals other than the Sheriff's Department, including locals under the Office of the Chief Judge, the Cook County hospital system, the State's Attorney and Assessor's Office. Smith participates in various labor relations meetings such as impact and lay-off meetings. She second chaired universal negotiations for the current contract.

Smith was a staff representative between 1995 and 2010. As a staff representative she negotiated and enforced contracts, and attended arbitrations, grievance meetings, labor relations meetings with City, State and County locals.

those wage rates that were satisfactory. Davis indicated that the wage increases would likely appear in the next paychecks to be issued after the end of October 2010 and the first pay period in November 2010.[6]

DiNicola then went with Davis to her office and received the printout of wage rates with the schedule of wage increases for each of the four units. DiNicola reviewed the information in detail, verified that the amounts were correct and then signed and dated each page of the original and a copy. He returned the documents together with a cover letter to Davis the next day, October 20, 2010.[7] Davis reiterated what she had said the previous day that the wage increases would most likely be in the paycheck for the next pay period. Davis did not thereafter contact DiNicola. However, the wage increases were not paid to bargaining unit employees in the next several pay checks. DiNicola reported that fact to his supervisor, AFSCME regional director Smith.

Smith called Davis more than once to find out the status of the pay increases but Davis did not immediately return her initial calls. Eventually Davis called back and said she did not know the status of the increases. After further calls in November and December, Davis left the County's employ. Then Smith called Rothstein and asked the status of the increase, he said he did not know. Eventually Smith sent Rothstein a letter dated January 7, 201. In the letter, Smith asserted that "[t]he County's refusal to implement the Award in a timely manner represents a clear violation of the law." Smith also asked for an implementation date. Rothstein did not respond to the letter. Thereafter, Smith directed the filing of the instant unfair labor practice charge. The charge was filed on January 24, 2011. In late February, Smith and Rothstein had a

[6] According to Smith, wage increases were usually paid in the next full pay period after the County Board approved the wage package.

[7] In the cover letter, DiNicola wrote, "Please contact my office should you have any questions or concerns with respect to the enclosed."

conversation. Rothstein shrugged his shoulders in response to Smith's inquiry as to the retroactive back pay. DiNicola testified that, at Smith's direction, he spoke to Rothstein in early spring, possibly March 2011 and asked him about the retroactive pay. According to DiNicola, Rothstein indicated that the County would not pay the retroactive amounts. However, DiNicola, admitted at hearing the County did make retroactive payments.

The award provided that the arbitrator retained jurisdiction over disputes arising concerning formulation of the contract terms for the Agreements. However, in AFSCME's view, there was no dispute between the parties concerning formulation of the contract terms of the agreement.

IV. DISCUSSION AND ANALYSIS

At issue in this case is whether the County refused to bargain in violation of Section 10(a)(4) and (1) of the Act when it delayed implementation of pay increases and retroactive pay until February and April 2011 after the County board had approved the interest arbitration award in October 2010. Section 10(a)(4) provides that it is an unfair labor practice for an attorney

> to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative;

The record evidence establishes that the Cook County Board of Commissioners approved the arbitrator's award on October 19, 2010. Patricia Davis, the Acting Director of Human Resources for Cook County met with union representatives after the meeting and informed them that the wage increases would most likely be in the paycheck for the next period. Nefertiti Smith, AFSCME's regional director, testified at the hearing in this case, that in the past, pay increases have been paid in the next full pay period after the County Board approved the wage packages. The County did not implement the wage increases until the February pay check that

covered pay in January 2011. Although AFSCME staff representative DiNicola testified that in March 2011 Jonathan Rothstein, then the Director of Human Services, told him that the County would not make retroactive payments, in April 2011, the County did make such payments. As of the date of the hearing in this case in September 2011, the County had implemented all the wage increases and retroactive pay due under the arbitrator's award.

With respect to this case, two Board decisions are instructive. In Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044 (IL ISLRB 1992), the State Board reversed the ALJ's finding that the Chief Judge violated Section 10(a)(4) and (1) of the Act by failing and refusing to execute a written collective bargaining agreement. The parties had reached a tentative agreement on November 29, 1990, and the union membership ratified the contract on December 5, 1990. Thereafter the Chief Judge's representative was responsible for drafting the written agreement. However, the agreement was not finally signed until February 11, 1991. The Board held that it could not be properly inferred from the delay in signing the agreement alone that the Chief Judge refused to execute the parties' agreement in writing. The Board noted that the Chief Judge never expressly refused to execute the agreement. The Board held that the totality of the Chief's Judge's conduct during the negotiating process must be evaluated in deciding whether the Chief Judge demonstrated an overall unwillingness to execute the agreement. The Board further stated that in cases where delay in the execution of a collective bargaining agreement has been cited in finding a violation, other factors have been present which clearly indicated that the employer had failed to bargain in good faith. Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044, at X-263. In Chief Judge, the Board found no evidence remotely suggesting that the Chief Judge's delay was motivated by a desire to avoid or repudiate the agreement or to undermine the union's status as the exclusive representative of the Chief

Judge's employees. Rather, the undisputed evidence showed that the Chief Judge delayed signing the agreement because it was being reviewed by various offices of the Chief Judge and the County, and that he was fully prepared, following the review, to sign the agreement. Finally, the Board held that although the Chief Judge could possibly have executed the agreement sooner than he did, it did not find his failure to do so indicative of bad faith. Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044, at X-263.

In County of Cook (Department of Central Services), 17 PERI ¶3009 (IL LRB-LP 2001), the Local Panel of the Board reached a different result. The Local Panel found that the Employer violated Section 10(a)(4) and (1) of the Act where it failed to offer a reasonable explanation for its delays and mistakes in implementing a collective bargaining agreement.

In June 1999, the parties reached a tentative collective bargaining agreement which the County approved in August 1999. However, the County did not take any steps to implement the agreement until November 3, 1999, when the County's chief negotiator sent a letter to the head of the County's Bureau of Human Resources stating that the reclassification upgrades that had been agreed upon had been inadvertently overlooked. The chief negotiator asked for assistance in implementing the reclassifications. However, the upgrades were not then made retroactively as the agreement required. It was not until March 2000, that the County began to take the necessary steps to make the upgrades retroactive and it was not until May 15, 2000, that employees received their retroactive upgrades. At the hearing in the case, the County offered no reasonable explanation as to why it took over nine months after it approved the parties' collective bargaining agreement to remit the monies due the union's bargaining unit members other than to recite that errors were made and that the County was a large bureaucracy that had 83 contracts to administer and implement. However, since August 1999, the County failed to

implement pay grade increases and failed to pay retroactive monies due pursuant to the parties' agreement. The Board upheld the ALJ's decision concluding that the employer had violated the Act by withholding two general wage increases which had been budgeted and scheduled prior to the Union's certification as bargaining representative.

In the ALJ's decision on the case, he noted that the Union had been certified by the Board as a bargaining representative on November 18, 1996 and that on November 8, 1996 and July 21, 1997, the union filed charged against the employer alleging refusals to bargain. Subsequently, a complaint for hearing on the consolidated cases was issued and a hearing conducted resulting in a recommended decision finding that the employer had violated Section 10(a)(4) of the Act.

I find that the instant case is akin to Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044. In this case, the wage increases were implemented in the February 2011, paycheck for the pay period ending in January 2011. The earliest the wage increases could have been implemented would have been November 2011. The retroactive pay was implemented in April 2011. Patricia Davis immediately prepared a schedule of the wage rates after the County approved the arbitrator's decision in October 2010 and she never told the Union that the wage increases would not be paid. When the Union later asked when the increases would be paid, she responded that she did not know. Rothstein responded similarly. Although DiNicola testified that Rothstein later told him in March 2011 that the retroactive pay would not be paid, that information was not correct as the retroactive payments were made in the next month, April 2011. It is reasonable to infer that in March 2011, the County was making arrangements to add the retroactive pay to employees' paychecks.

It could be argued that in view of the fact that the County usually implemented wage increases in successor bargaining agreements in the next complete pay period after the County

approved the agreement, that the County committed an unfair labor practice in this case by delaying implementation of the wage increases and retroactive pay from November 2010 to February and April 2011. However, as the Board ruled in Village of Creve Coeur, 3 PERI 2063, at VIII-413 (IL SLRB 1987)

> We therefore do not believe that it is this Board's functions, in an unfair labor practice context, to assume the role of policing collective bargaining agreements, or to allow parties to use the Board's processes to remedy alleged contractual breaches or to obtain specific enforcement of contract terms.

Assuming that the delay in the implementation of the wage increases and retroactive pay may have constituted a contractual breach, I do not find that it constituted a repudiation of the agreement amounting to an unfair labor practice. For that reason, I conclude that the Respondent County did not violate Section 10(a)(4) and (1) of the Act when it delayed implementation of wage increases and retroactive pay to February and April 2011.

V. CONCLUSIONS OF LAW

The Respondent did not violate Section 10(a)(4) and (1) of the Act when it delayed implement of wage increases and retroactive pay to February and April 2011.

VI. RECOMMENDED ORDER

I recommend that the complaint be dismissed.

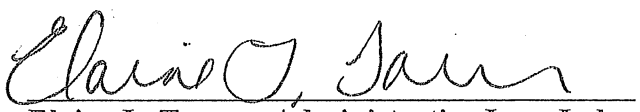
VII. EXCEPTIONS

Pursuant to Section 1220.60 of the Rules, parties may file exceptions to the Administrative Law Judge's Recommendation 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, 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 listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. 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 on this 16th day of May 2012.

Illinois Labor Relations Board
Local Panel



Elaine L. Tarver, Administrative Law Judge

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AFFIDAVIT OF SERVICE

I, Jerald Post, on oath state that I have this 16th day of May, 2012, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER OF THE ILLINOIS LABOR RELATONS 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.

Catherine Struzynski
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SUBSCRIBED and **SWORN** to
before me this **16th day**
of May, 2012.

NOTARY PUBLIC

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
CARLA STONE
MY COMMISSION EXPIRES
OCTOBER 26, 2014