STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Sherise Hogan,	)		
	)		
Charging Party	)		
	)		
and	)	**Case Nos.**	**L-CA-11-059**
	)		**L-CA-11-064**
Chicago Transit Authority,	)		**L-CA-11-065**
	)		**L-CA-11-071**
Respondent	)		
	)		
	)		

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 12 and 26, and June 13, 2011, Sherise Hogan (Charging Party) filed unfair labor practice charges in the above-captioned cases with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules) alleging that the Chicago Transit Authority (Respondent) had violated Sections 10(a)(1) and 10(a)(3) of the Act. The charges were investigated in accordance with Section 11 of the Act and, on July 28, 2011, the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing and Order Consolidating Cases.

After full consideration of the record in these consolidated cases, I recommend the following:

I. FINDINGS OF FACT

In October 2011, after consulting the parties, the Administrative Law Judge (ALJ) scheduled the above-referenced cases for hearing on January 30 and 31, and February 1, 2011.

A conference call between the parties and the ALJ was subsequently held in November 2011 to familiarize the pro se Charging Party with the Board's procedures including its website. In January 2012, a letter was sent to the parties confirming the hearing dates for later that month and February, and describing the information which should be included in the parties' pre-hearing memoranda—a statement of the issues, lists of witnesses and exhibits, and a statement of uncontested facts—due on January 24, 2012.

By agreement between the parties, on January 23, 2012 the scheduled hearing for January and February 2012 was cancelled and rescheduled to April 17, 18 and 19, 2012. Charging Party wanted additional time to obtain representation, and Respondent needed new hearing dates due to witness unavailability. Pre-hearing memoranda were due at the close of business on April 6, 2012.

On April 9, 2012, the ALJ sent an email to the Charging Party stating that she had not yet received her pre-hearing memorandum and asking when it would be filed. On April 10, 2012, the Charging Party responded that the ALJ would receive it the next day. The following day, April 11, 2012, the Charging Party did not file her pre-hearing memorandum but instead emailed over 100 pages of documents. That same day, the ALJ sent an email asking the Charging Party not to send anymore documents prior to the hearing April 17, 18, and 19, 2012, outlining, again, the information that should be in the pre-hearing memorandum and requesting it.

On April 12, 2012, the ALJ sent an email asking the Charging Party to confirm a conference call scheduled for the afternoon of the next day. The Charging Party did not respond to that email. On April 13, 2012, the Charging Party sent an email requesting that the hearing scheduled for April be rescheduled because her named attorney—prior to this instance she did not indicate that she was represented by counsel—had Legionnaires' Disease and Charging Party

had to be tested for it. The Charging Party's email also indicated that she was leaving the office in about ten minutes to undergo that testing. Later that day, the Respondent indicated that he had no objection to the Charging Party's request for a continuance, and filed an Amended Pre-Hearing Memorandum.

On Monday, April 16, 2012, the ALJ sent another email asking the Charging Party to get back to her by the end of the week with her attorney's availability for an August hearing date and attached an appearance form for the attorney to sign and return by April 25, 2012. The Charging Party responded later the afternoon of April 16, 2012, "o.k., let me check on his health." That was the last time that the Charging Party communicated with the ALJ.

On April 26, the ALJ sent another email to the Charging Party asking for her attorney's availability in August, and requested a response by the close of business, May 2, 2012. Subsequently, on May 3, 2012, the ALJ emailed the Charging Party that she had not yet heard from her, and asked for a response by the close of business the next day, May 4, 2012. Finally, on June 22, 2012, the ALJ sent an email to the Charging Party stating that she had been contacting her for weeks to schedule this matter without success, and asked that the Charging Party contact her by the close of business Tuesday, July 26, 2012. The Charging Party has not responded to date.

II. DISCUSSION AND ANALYSIS

The issue presented is whether the ALJ can dismiss the Complaint short of a hearing because the Charging Party has failed to prosecute it. Pursuant to established case law, the Executive Director may dismiss a charge during its investigation because a charging party has failed to comply with a request for evidence in support of a charge. See e.g., Ill. Council of Police and Sheriffs and Village of Maywood, 25 PERI ¶89 (IL LRB-SP 2009); SEIU Local 880 (Kirk, et

al.), 12 PERI ¶2006 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶4008 1996). After a complaint has been issued, Section1220.50 of the Board Rule authorizes the ALJ to dismiss the case for want of prosecution if a charging party fails to appear at the hearing after proper service. Because Section 1200.40(c) authorizes ALJs to "regulate the proceedings of the case, and the conduct of the parties," the ALJ has the authority to dismiss the Complaint under the instant circumstances where the Charging Party has indicated an unwillingness to prosecute her claims. See Michael Hughes and AFSCME, Council 31, 24 PERI (IL LRB ALJ 2009) (ALJ recommends dismissal of complaint before hearing due to charging party's failure to prosecute).

The Act provides a framework for public employees, public employers, and labor organizations to litigate alleged violations of rights established under the Act. As the Board has recognized, the Board does not prosecute unfair labor practice charges but instead relies upon charging parties to pursue their own claims. See Eva Holland-Switchett and Chicago Housing Authority, 4 PERI ¶3020 (IL LLRB 1988). Here, the Charging Party has exhibited an unwillingness to prosecute her claims herself.

The ALJ postponed the hearing originally scheduled in the beginning of 2012 so that the Charging Party could obtain counsel to represent her. In lieu of filing a pre-hearing memorandum as instructed for the April 2012 hearing, the Charging Party submitted scores of documents to the ALJ. Once the ALJ agreed to the Charging Party's request to cancel the April hearing dates on the basis that her purported attorney was ill, the Charging Party ignored the ALJ's repeated attempts to reschedule the hearing The ALJ made these efforts on April 16 and 26, May 3, and June 22, 2012 when she sent email to the Charging Party which remain unanswered to date. Under these circumstances, a reasonable exercise of discretion requires the ALJ to recommend dismissal of the Complaint.

III. CONCLUSIONS OF LAW

The Charging Party has failed to prosecute her claims by not taking part in Board procedures leading to hearing.

IV. RECOMMENDED ORDER

It is hereby recommended that the instant Complaint be dismissed with prejudice.

V. 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 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 16th day of August 2012.

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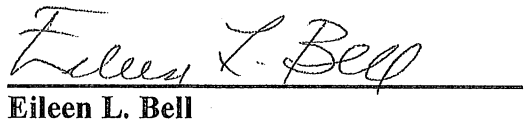

Eileen L. Bell
Administrative Law Judge