

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

George Fielder,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-12-052
)	
City of Chicago,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On March 9, 2012, George Fielder (Charging Party) filed an unfair labor practice charge in Case No. L-CA-12-052 with the Local Panel of the Illinois Labor Relations Board (Board) alleging that the City of Chicago (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On January 23, 2013, the Board’s Executive Director issued a Complaint for Hearing. The Respondent filed an answer to the Complaint for Hearing on February 11, 2013. In its answer, the Respondent asserts, in part, that the resolution of this matter should be deferred to grievance arbitration. The Charging Party did not respond to the Respondent’s deferral request.¹

¹ Parties have the right to request deferral of unfair labor practice charges to the parties’ grievance arbitration procedure under Section 1220.65(b) of the Rules. Part of the Respondent’s February 11, 2013 answer is such a request. According to Section 1220.65(d) of the Rules, if a motion to defer the resolution of an unfair labor practice charge is made after the issuance of a complaint for hearing, the Administrative Law Judge shall rule on that motion in accordance with Section 1200.45 of the Rules. I, the undersigned Administrative Law Judge, believe that a hearing on the deferral issue is not warranted and will, instead, administratively decide the initial question of deferral. See City of Mt. Vernon, 4 PERI ¶2011 (IL SLRB 1988). As outlined below, parties may appeal the Administrative Law Judge’s ruling on the motion to defer in accordance with Section 1200.135(b) of the Rules.

I. DISCUSSION AND ANALYSIS

The central issue to be addressed by this Recommended Decision and Order concerns whether to grant the Respondent's request to defer the processing of the Complaint for Hearing to the relevant contractual grievance and arbitration procedures. The decision of whether to defer an unfair labor practice complaint to grievance arbitration is governed, in part, by Section 11(i) of the Act. Pursuant to Section 11(i), if an alleged unfair labor practice involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement. In accordance with this Section, the Board has adopted a discretionary policy limiting the circumstances under which the Board will determine the merits of an unfair labor practice charge which also may be a contract violation. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114 (IL LRB-SP 2003); Chicago Transit Authority, 1 PERI ¶3004 (IL LLRB 1985).

Over time, the Board has adopted standards for exercising its discretionary deferral authority. Traditionally, the Board makes use of the deferral doctrines of the National Labor Relations Board (NLRB), which has a well-established policy of deferring cases to grievance arbitration at various stages of the proceedings. County of Cook and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990); Chicago Transit Authority, 1 PERI ¶3004. In accordance with the NLRB's policy, the Board has generally recognized three types of deferral, reflecting three different factual scenarios: (1) "Collyer deferral," which concerns pre-arbitral deferral; (2) "Dubo deferral," which concerns deferral to pending arbitration; and (3) "Spielberg deferral," which concerns post-arbitral deferral. State of Illinois, Department of Central Management

Services (Department of Human Services), 19 PERI ¶114; City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Collyer Insulated Wire, 192 NLRB 837 (1971); Dubo Manufacturing Corporation, 142 NLRB 431 (1963); Spielberg Manufacturing Company, 112 NLRB 1080 (1955). In all these lead cases, there is a general recognition that the bargaining process is best served by encouraging parties to resolve their disputes, when possible, through their negotiated grievance arbitration procedures. City of East Peoria, 24 PERI ¶91 (IL LRB-SP 2008).²

The Charging Party is employed by the Respondent and is a member of a bargaining unit represented by the American Federation of State, County and Municipal Employees, Council 31 (Union). Article 21 of the collective bargaining procedure (CBA) that binds the Respondent and the Union outlines detailed procedures for filing grievances and, when appropriate, advancing those grievances to arbitration. The Charging Party (or the Union) filed a grievance pursuant to this portion of the CBA on February 10, 2012. The Charging Party's grievance centrally contends that the Respondent violated the CBA and "Illinois Labor Law" when it "refused/denied" the Charging Party "the right to evoke his Weingarten rights."³ The grievance also alleges that the Respondent "threatened the [Charging Party] with insubordination by use of coercion and intimidation if he did not participate" in a discussion during a meeting the Charging Party was asked to attend.

Under these circumstances, it is fairly clear that Dubo deferral standards should be considered. In such instances, deferral to grievance arbitration is appropriate where (1) the

² This policy is also embodied in Section 8 of the Act, which mandates the inclusion of a grievance and arbitration procedure unless the parties expressly agree otherwise. See City of Mt. Vernon, 4 PERI ¶2011.

³ Broadly speaking, in National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), the United States Supreme Court held that an employer's denial of an employee's request that a union representative be present during an investigatory interview which the employee reasonably believes might result in disciplinary action constitutes an unfair labor practice. See County of Cook, Cook County Sheriff, 5 PERI ¶3001 (IL LLRB H.O. 1988). The Board has adopted this Weingarten doctrine and has determined that a violation of an employee's Weingarten rights amounts to a violation of the Act. City of Highland Park, 15 PERI ¶2004 (IL SLRB 1999); Village of Streamwood, 12 PERI ¶2021 (IL SLRB 1996); State of Illinois, Departments of Central Management Services and Corrections, 1 PERI ¶2020 (IL SLRB 1985).

parties have already voluntarily submitted their dispute to their agreed-upon grievance arbitration procedure, (2) that procedure culminates in final and binding arbitration, and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114; PACE Northwest Division, 10 PERI ¶2023 (IL SLRB 1994); City of Mt. Vernon, 4 PERI ¶2006; Dubo Manufacturing Corporation, 142 NLRB 431. Given the circumstances already outlined above, it is clear that the first two prongs are satisfied in this instance. Accordingly, the remainder of this analysis will seek to determine whether the third Dubo deferral prong is also satisfied.

The Complaint for Hearing ultimately contends that the Respondent interfered with, restrained, or coerced a public employee in the exercise of his rights guaranteed in the Act in violation of Section 10(a)(1) of the Act when the Respondent’s representatives, allegedly in retaliation for the Charging Party initially requesting and subsequently insisting on having Union representation, told the Charging Party that his continued insistence on having Union representation was insubordination. At the same time, the Charging Party’s grievance contends that the Respondent, inter alia, violated Article 24 of the CBA. Notably, Section 24.2 of the CBA, which is housed within Article 24, states, in relevant part, that the Respondent agrees that “no employee shall be discriminated against, intimidated, restrained or coerced in the exercise of any rights granted by the Labor Relations Act.”

The factual parallels among the two claims are readily apparent. Ultimately, I am also reasonably convinced that, in this context, the kind of activity protected by Article 24 of the CBA is sufficiently similar to the activity protected by Section 10(a)(1) of the Act. It is worth highlighting the fact that the Charging Party’s grievance specifically references his Weingarten

rights and the Respondent's purported violation of the Act. To some extent, this could reasonably suggest that the Charging Party apparently considers the issue to be covered by the contractual grievance arbitration procedure. Moreover, I have found no contractual language or other evidence which would permit me to say with positive assurance that the CBA's grievance arbitration procedure is not susceptible to an interpretation that covers the asserted dispute. See Hoffman Air & Filtration Systems, Division of Clarkson Industries, Inc., 312 NLRB 349, 353 (1993). I also observe that the Respondent has generally expressed a willingness to consider the Charging Party's grievance in accordance with the relevant grievance arbitration procedures. In fact, the Respondent has asserted without contradiction that it anticipates that the parties will schedule a formal grievance meeting "in the near future." Thus, I find that the central allegations of the Complaint for Hearing could appear to be encompassed by or cognizable under the grievance arbitration procedures of the CBA.

Assuming that the Charging Party (or the Union) will continue to pursue his grievance as presented and presuming that Article 24 will properly be considered by the parties to the CBA and, if appropriate, an arbitrator, I find that a fair argument can be made that there is at least a "reasonable chance" that the grievance arbitration process will resolve the dispute presented by the Complaint for Hearing. To this extent, I find that the third and final Dubo deferral prong has also been satisfied. Consequently, I recommend that the Board utilize its discretionary deferral policy in this instance.

Concluding, I note that this determination is not a dismissal. By deferring the Complaint for Hearing in this way, the Board is merely holding the charge in abeyance, retaining jurisdiction until the parties fully exhaust the grievance arbitration process. If the Charging Party still believes that the Board should review the statutory issues raised by the Complaint for

Hearing upon termination of the grievance arbitration process, he may then simply petition the Board accordingly. See PACE Northwest Division, 10 PERI ¶2023; State of Illinois, Department of Central Management Services, 29 PERI ¶39 (IL LRB-SP G.C. 2012); City of Springfield, 28 PERI ¶56 (IL LRB-SP G.C. 2011).

II. ORDER

IT IS HEREBY ORDERED that the Respondent's deferral request is granted.

III. EXCEPTIONS

Pursuant to Section 1200.135 of the 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 10 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 5 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 General Counsel of the Illinois Labor Relations Board 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 Springfield, Illinois, this 20th day of March, 2013.

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A handwritten signature in cursive script that reads "Martin Kehoe". The signature is written in black ink and is positioned above a horizontal line.

Martin Kehoe
Administrative Law Judge