STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Keith D. Collins,	)	
	)	
Charging Party	)	
	)	Case No. L-CA-12-060
and	)	
	)	
Chicago Transit Authority,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 9, 2012, Keith D. Collins (Charging Party), a member of the bargaining unit represented by the Amalgamated Transit Union, Local 241 (ATU), filed an unfair labor practice charge 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 Board's Rules and Regulations, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The charge was investigated in accordance with Section 11 of the Act, and on August 30, 2013, the Board's Executive Director issued a complaint for hearing.[1] The complaint alleges that Chicago Transit Authority (Respondent) violated Section 10(a)(1) of the Act when it issued Charging Party a one-day suspension because he was actively and visibly opposed to the ATU and because

[1] The Executive Director by order dated August 10, 2012 held a portion of the charge in abeyance pending resolution of a pending grievance. The order required Respondent to notify the Board and Charging Party of the final disposition of the grievance within 30 days of the completion of the grievance process. It also indicated that if Respondent failed to give the required notice, a complaint for hearing would issue upon request by the Charging Party. By letter dated February 28, 2013, Charging Party advised the Board that he had received notice that the relevant grievance had been settled by Respondent and ATU. Charging Party provided the Board with a letter dated December 5, 2012, signed by CTA Manager Elvira Beltran, and addressed to representatives of ATU, outlining the terms of the settlement. The Executive Director noted that the document, on its face, appeared to confirm the resolution of the grievance. Charging Party requested that a complaint for hearing be issued in this case. Accordingly, the Executive Director reopened the charge and issued a complaint for hearing.

he distributed materials to other employees and union members regarding his opposition to the ATU.

I. BACKGROUND

According to the affidavit of service attached to the complaint for hearing, the Board mailed a copy of the complaint to Respondent's attorney by U.S. mail on August 30, 2013.[2] The complaint contained the following statement:

> **RESPONDENT IS HEREBY NOTIFIED** that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code, §§1200-1240, it must file an answer to this complaint with Michelle Owen, Illinois Labor Relations Board, 160 N. LaSalle St., Ste. S-400, Chicago, IL 60601 and serve a copy thereof upon the Charging Party within 15 days after service of the complaint upon it. Said answer shall include an express admission, denial or explanation of each and every allegation of this complaint. **Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or conclusions alleged in the allegation. Failure to timely file an answer shall be deemed an admission of all material facts or legal conclusions alleged and a waiver of hearing. The filing of any motion or other pleading will not stay the time for filing an answer.**

Section 1200.30(c) of the Rules provides that a document is presumed served on a party three days after it is mailed. Service on Respondent was therefore presumed effective on Wednesday, September 4, 2013. Under Section 1220.40(b) of the Rules Respondent was required to submit an answer to the complaint within 15 days of service. Thus, a timely answer should have been postmarked by Thursday, September 19, 2013. Respondent did not file an answer by that date.

On October 11, 2013, I issued to Respondent an Order to Show Cause not later than October 23, 2013, why a default judgment consistent with Section 1220.40(b) of the Rules should not issue. On October 17, 2013, Respondent filed its response to the Order and its

[2] At all times material, Attorney David Montgomery has been the attorney of record for Respondent.

answer. In its response, Respondent requests that the Board allow it to file its answer to the complaint and affirmative defenses.

Respondent asserts that on September 19, 2013, Mr. Montgomery was ready to sign the CTA's answer to the complaint for hearing and affirmative defenses. On that same day, Respondent contends that Mr. Montgomery asked another CTA attorney, Brian Pilon, if he would like to handle the case under Mr. Montgomery's supervision. Mr. Pilon reportedly agreed to handle the case. Respondent maintains that on September 19, 2013, Mr. Montgomery added Mr. Pilon's name to what he thought was the answer to complaint for hearing and affirmative defenses in this case, Case No. L-CA-12-060, signed the document and caused it to be filed with the Board. Respondent contends that on October 15, 2013, CTA received the Board's Order to Show Cause. Upon checking the file, Respondent maintains, Mr. Montgomery learned that he accidentally added Mr. Pilon's name to and printed the answer to complaint for hearing and affirmative defenses for Case No. L-CA-13-003, Amalgamated Transit Union, Local 241 and Chicago Transit Authority, a matter that has already gone to hearing before the Board. The Respondent contends that it unintentionally re-filed its answer in Case No. L-CA-13-003, instead of filing its answer in Case No. L-CA-12-060.

II. DISCUSSION AND ANALYSIS

The issue is whether the Board should grant Respondent leave to file a late answer pursuant to Section 1220.40(b)(4), or a variance from the application of Section 1220.40(b)(3) pursuant to Section 1200.160.

Section 1220.40(b) of the Board's Rules provides that:

> Whenever the Executive Director issues a complaint for hearing, the respondent shall file an answer within 15 days after service of the complaint and deliver a copy to the charging party by ordinary mail to the address set forth in the

complaint. Answers shall be filed with the Board with attention to the designated Administrative Law Judge.

1) The answer shall include a specific admission, denial or explanation of each allegation or issue of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the circumstances of the allegation.

2) The answer shall also include a specific, detailed statement of any affirmative defenses.

3) Parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint. The failure to answer any allegation shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default. Filing of a motion will not stay the time for filing an answer.

This rule has been strictly construed by the Board and courts, which have consistently held that a respondent's failure to timely file an answer to a complaint results in admissions of all allegations in the complaint and an entry of default judgment. Wood Dale Fire Prot. Dist. v. Ill. Labor Relations Bd., 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale Fire Prot. Dist., 25 PERI ¶136 (IL LRB-SP 2008); Metz v. Ill. State Labor Relations Bd., 231 Ill. App. 3d 1079 (5th Dist. 1992), aff'g Circuit Clerk of St. Clair Cnty., 6 PERI ¶2036 (IL SLRB 1990); Peoria Hous. Auth., 11 PERI ¶2033 (IL SLRB 1995); Chicago Hous. Auth., 10 PERI ¶3010 (IL LLRB 1994); Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI ¶2025 (IL SLRB 1993); City of Springfield, Office of Pub. Utils., 9 PERI ¶2024 (IL SLRB 1993).

A. Leave to File a Late Answer

Section 1220.40(b)(4) of the Rules provides that "[l]eave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments."

Respondent argues that it unintentionally re-filed its answer in another Board case, instead of filing its answer in this case. Respondent does not allege fraud, concealment, or other grounds traditionally relied upon for equitable relief from judgments. The failure of a party's legal representative to meet a deadline due to simple inattention does not constitute an extraordinary circumstance under Section 1220.40(b)(4). First Transit/River Valley Metro, 26 PERI ¶38 (IL LRB-SP 2010), aff'd by unpub. order, 27 PERI ¶61 (Ill. App. Ct., 3rd Dist., 2011); City of Markham, 27 PERI ¶7 (IL LRB-SP 2011). Except in narrowly defined circumstances, negligence by a party's attorney does not shield it from the consequence of that negligence. Amalgamated Transit Union, Local 241, 29 PERI ¶78 (LRB-SP 2012) (citing Wood Dale, 25 PERI ¶136, and Bd. of Educ. Thornton Twp. High Sch. Dist. No. 205 v. Ill. Educ. Labor Relations Bd., 235 Ill. App. 3d 724, 730-31 (4th Dist. 1992)). There is nothing in Respondent's response to the Order to Show Cause that indicates that Respondent could not have filed a timely answer, or excuses its failure to file a timely answer. Respondent has not show any mitigating circumstances establishing that the late filing was due to extraordinary circumstances. Respondent's failure to file a timely answer was based on simple inattentiveness, not extraordinary circumstances. Therefore, Respondent's request for leave to file a late answer is denied.

B. Request for a Variance

A variance of any provision of the Rules is permitted by Section 1200.160, which states:

> The provisions of this part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:
> a) The provision from which the variance is granted is not statutorily mandated;
> b) No party will be injured by the granting of the variance; and
> c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

All three prongs must be satisfied for the variance to be entertained by the Board. However, even if all three prongs are met, granting a variance remains a matter of the Board's discretion and not a matter of right by the party. City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011). The Appellate Court has found that strict adherence to a rule is unreasonable and unnecessarily burdensome if the respondent can show (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim in the original action; and (3) due diligence in filing the petition for relief. Cook Cnty. State's Attorney v. Ill. State Labor Relations Bd., 292 Ill. App. 3d 1, 11 (1st Dist. 1997). A party's excuses, explanations, and mitigating circumstances must also be considered in deciding whether strict adherence to the rule would be unreasonable or unnecessarily burdensome. Wood Dale, 395 Ill. App. 3d at 532-33; Amalgamated Transit Union, Local 241, 29 PERI ¶78 (IL LRB-LP 2012).

Here, the first requirement of Section 1200.160 is met because the 15-day filing rule in Section 1220.40(b) is not statutorily mandated. The second requirement is satisfied because neither party will be injured merely because Respondent's untimely answer frustrates the public policy favoring the speedy resolution of labor disputes. Cook Cnty. State's Attorney, 292 Ill. App. 3d at 7. Prejudice to the parties is less likely where issuance of the complaint has been delayed and other evidence shows that "time was not of the essence" for either the union or the Board prior to the late filing. Id. (delay of answer did not cause more injury than that already suffered, where complaint was issued five months after charge, which itself was filed two months after adverse action). Similar to Cook County State's Attorney, the complaint in this case was not issued until over a year after the charge was filed. Thus, it appears that the delayed answer will not cause more injury to the parties than that already suffered by the parties because of the delayed charge.

However, the third element is not satisfied because strict compliance with the time limit for filing an answer is not unreasonable or unnecessarily burdensome under the circumstances in this case. Respondent contends that it was unable to file a timely answer because it mistakenly believed that it had already filed its answer in this case. Thus, the failure of Respondent to file a timely answer appears to be due to simple inattentiveness, which is not a sufficient ground to overturn a Board decision denying a variance. Wood Dale, 395 Ill. App. 3d at 530. Further, the Board has upheld default judgments in other similar circumstances. See Vill. of Dolton, 17 PERI ¶2017 (IL LRB-SP 2001) (answer late due to docketing error arising from office personnel changes); City of Markham, 17 PERI ¶2036 (IL LRB-SP 2001) (answer late due to attorney misreading due date for answer); Vill. of Maywood, 21 PERI ¶147 (IL LRB-SP ALJ 2005) (answer late due to office turmoil).

Respondent has not shown that the rule requiring timely filing of an answer is, in this case, unreasonable or unnecessarily burdensome. Without any sufficient mitigating circumstances excusing Respondent's untimely answer, a variance is not warranted.[3] The complaint fully informed Respondent of the required filing period for an answer and the consequences for not complying. As noted previously, the Board has consistently held that an entry of default judgment is appropriate in such circumstances. Thus, I find that Respondent has admitted the material facts and legal conclusions alleged in the complaint, and waived its right to a hearing in this matter.

[3] Even if the Board were to find that all three conditions were met under Section 1200.160, I would not, based upon the alleged facts, exercise such discretion to grant a variance and leave to file a late answer. The need to consistently apply long-standing rules outweighs any unreasonableness of application or unnecessary burden in this case.

III. RESPONDENT'S ADMISSIONS

By failing to file an answer, Respondent has admitted the following material facts and legal allegations as stated in the complaint:

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

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

3. At all times material, Respondent employed the Charging Party as a Bus Operator.

4. At all times material, the Charging Party has been a public employee within the meaning of Section 3(n) of the Act.

5. At all times material, the ATU has been a labor organization within the meaning of Section 3(i) of the Act.

6. At all times material, the Charging Party has been included in a bargaining unit represented by the ATU.

7. At all times material, the Charging Party has been active and visible in his opposition to the ATU.

8. On or about April 19, 2012, the Charging Party distributed materials regarding his opposition to the ATU to other employees and union members in the employee break room at the 103rd Street Garage.

9. Distributing material regarding opposition to a union is concerted activity protected by the Act.

10. On or about April 30, 2012, Respondent issued Charging Party a one-day suspension for his conduct as described in paragraph 8.

11. The Respondent took the actions described in paragraph 10 in order to retaliate against the Charging Party for his protected activities as described in paragraphs 7 and 8.

12. The Respondent took the actions described in paragraph 10 in order to retaliate against the Charging Party for his opposition to the ATU as described in paragraphs 7 and 8.

13. By its acts and conduct as described in paragraphs 10, 11, and 12, the Respondent has interfered with, restrained, or coerced employees in the exercise of rights guaranteed by the Act, in violation of Section 10(a)(1) of the Act.

IV. CONCLUSIONS OF LAW

Respondent violated Section 10(a)(1) of the Act when it issued Charging Party a one-day suspension because he was actively and visibly opposed to the ATU and because he distributed materials to other employees and union members regarding his opposition to the ATU.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, Chicago Transit Authority, its officers and agents shall:

1. Cease and desist from:
(a) retaliating against Keith D. Collins, or any of its employees, for engaging in union or protected, concerted activity;

(b) retaliating against Keith D. Collins, or any of its employees, because they are actively and visibly opposed to the ATU;

(c) retaliating against Keith D. Collins, or any of its employee, for distributing materials regarding their opposition to the ATU to other employees and union members;

(c) in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights under the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:
(a) Make Keith D. Collins whole for all losses incurred as a result of the one-day suspension issued to him on April 30, 2012.

(b) Effective immediately, rescind the disciplinary action taken against Keith D. Collins on April 30, 2012, without prejudice to his seniority or other rights and privileges.

(c) Remove from all files and records, including Keith D. Collin's personnel file, any and all documents and references to the disciplinary action taken against him on April 30, 2012, and notify him in writing both that this has been done and that evidence of his unlawful discipline will not be used as a basis for future personnel actions against him.

(d) Preserve, and upon request, make available to the Board or its agents for examination and copying all records, reports and other documents necessary to analyze the relief due under the terms of this decision.

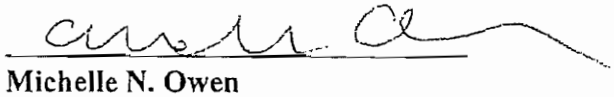
(e) Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Board in writing, within 20 days from the date of this Decision and Order, of the steps Respondent has taken to comply herewith.

VI. 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 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 Chicago, Illinois, this 22nd day of October, 2013.



Michelle N. Owen
Administrative Law Judge
Illinois Labor Relations Board