

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

Service Employees International Union,	)	
Local 73,	)	
	)	
Charging Party	)	
	)	Case No. L-CA-12-062
and	)	
	)	
County of Cook,	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On April 19, 2012, Service Employees International Union, Local 73 (Charging Party, Union, or Local 73) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in Case No. L-CA-12-062, alleging that the County of Cook (Respondent or County) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), as amended (Act). Subsequently, 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 1300 (Rules). On August 14, 2012, the Board’s Executive Director issued a Complaint for Hearing.

The case was heard on June 19, June 20, July 15, and July 16, 2013 in Chicago, Illinois before Administrative Law Judge (ALJ) Michelle Owen.<sup>1</sup> At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both parties timely filed briefs.

After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

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<sup>1</sup> ALJ Owen subsequently left employ with the Board and this case was assigned to me for Recommended Decision and Order.

**I. PRELIMINARY FINDINGS**

The parties stipulate, and I find as follows:

- A. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
- B. At all times material, Respondent has been subject to the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.
- C. At all times material, Respondent has been subject to the Act pursuant to Section 20(b) thereof.
- D. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
- E. At all times material, Charging Party has been the exclusive representative of a bargaining unit comprised of certain of Respondent's employees, including those employees in its Health and Hospital System, holding the job title or classification of Mental Health Specialist Senior (MHS Senior) and Mental Health Specialist II (MHS II) (Unit).
- F. At all times material, Local 73 and Respondent have been parties to a collective bargaining agreement (CBA) that provides a grievance procedure culminating in arbitration.
- G. At all times material, Warren Batts was an agent of Respondent, authorized to act on its behalf.
- H. At all times material, Respondent employed Doctor Ramanathan Raju in the title of Chief Operating Officer, Cook County Health and Hospital Systems (CCHHS).<sup>2</sup>
- I. At all times material, Dr. Raju was an agent of Respondent, authorized to act on its behalf.
- J. At all times material, Respondent employed Doctor Michael Puisis in the title of Chief Operating Officer, Cermak Health Services of Cook County.
- K. At all times material, Dr. Puisis was an agent of Respondent, authorized to act on its behalf.

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<sup>2</sup> The Complaint for Hearing and the Respondent's Answer, from which these stipulations are taken, states that Dr. Raju is the COO of CCHHS. The record indicates, however, that Dr. Raju is actually the CEO of CCHHS.

- L. At all times material, Borita Berry, who has been employed by Respondent as a MHS II, has been a public employee within the meaning of Section 3(n) of the Act, and has been a member of the Unit.
- M. Since on or about November 21, 2012, Unit employees are required to have applied for acceptance into a Master's Degree program by February 15, 2012, and be enrolled in the program by August 1, 2012, and must complete the program with the conferring of a Master's Degree by June 2015.
- N. On or about April 2, 2012, Berry was laid off because she allegedly failed to comply with the requirements described in subsection M.

## **II. ISSUES AND CONTENTIONS**

The Charging Party contends that the Respondent violated Section 10(a)(4) and (1) of the Act when unilaterally imposed new licensing and educational requirements for Unit employees holding the job title or classification of MHS II or MHS Senior. The Respondent disputes this contention. In addition, the Respondent argues that the Charging Party was untimely in its filing of the underlying unfair labor practice charge.

## **III. FINDINGS OF FACT**

### **A. Cook County Jail and the MHS IIs and MHS Seniors**

Cook County Jail (CCJ) is the largest single-site jail and second largest mental health facility in the United States. It houses on average more than 9,000 detainees, both male and female, most of whom are awaiting trial on criminal charges. Detainees who enter the jail are screened for mental health issues before being placed in the general population. Prior to 2010, these screenings, among other mental health services, were performed by MHS IIs and MHS Seniors.

MHS IIs and MHS Seniors are mental health professionals employed by the County. A MHS Senior has seniority over a MHS II based solely on the additional years of employment he or she may have. Their job descriptions require a bachelor's degree in a related field and two

years of relevant experience. No additional educational or licensure requirements are necessary, although some MHS IIs and MHS Seniors do have advanced degrees and licenses. MHS IIs and MHS Seniors have to be supervised by licensed psychiatrists and psychologists in the performance of their job duties.

**B. The Federal Investigation, Litigation, and Agreed Order**

In February 2007, the United States Department of Justice (DOJ) informed the County that it intended to investigate the conditions at CCJ. The DOJ issued its report in July 2008. Among the problems addressed in the DOJ's report was the "inadequate mental health care" provided at CCJ. The report stated

The policy governing the CCJ mental health screening process is completely inadequate. Insufficiently trained MHSs perform mental health intake screening at CCJ. This screening is not accomplished under appropriate medical supervision. The system allows technicians, who are not adequately or appropriately trained in detecting mental illness, to query inmates and detainees regarding their mental health history.

The "MHSs" referred to in the report are the MHS IIs and MHS Seniors. According to the DOJ, the fact that these employees were undertrained and undereducated led to violations of detainees' constitutional rights.

The United States, by Attorney General Eric Holder, filed a complaint in the United States District Court for the Northern District of Illinois against the County and others in May 2010. The United States, in its complaint against the County, accepted the DOJ's report and reached the same conclusion regarding the mental health care at CCJ.

Toward the end of May 2010, the parties to the federal suit finalized an Agreed Order, entered by Judge Virginia Kendall. This Agreed Order detailed substantive requirements to be made at CCJ by the County. The Agreed Order does not require specific licensure and educational requirements for the mental health professionals working at the jail. It does,

however, require CCJ to “provide adequate services to address the serious medical and mental health needs of all inmates,” partially through the development and use of “an adequate written staffing plan and sufficient staffing levels of health care staff to provide care for inmates’ serious health needs.” The best methods of reaching these mandates were to be determined by the County.

The Agreed Order also required that a panel of Monitors oversee and issue reports on CCJ’s ongoing work towards compliance with the Agreed Order. Dr. Ronald Shansky was the Medical Monitor and Dr. Jeffery Metzner was the Mental Health Monitor. The Monitor reports were to be issued “four months after the effective date of the Agreed Order, and then every six months thereafter.” All of these reports were required to be filed with Judge Kendall and became public record as soon as they were so filed.

### **C. Cook County’s Plan for Compliance**

Cook County hired Dr. Puisis as Chief Operating Officer of Cermak Health Services (Cermak) in 2009.<sup>3</sup> He was brought on staff to help CCJ remedy its problems, and was part of the team that negotiated the Agreed Order. Dr. Puisis also created staffing plans to address the mental health care problems at the jail, as was required under the Agreed Order. His initial decision was that all mental health care providers would be employed by the County. Prior to this change, the licensed psychiatrists and psychologists working at the jail were employed by Isaac Ray, a company that subcontracted with the County. Their subordinates, the MHS IIs and MHS Seniors, were employed directly by Cermak, and therefore the County.

By June 2010, Dr. Puisis had decided that CCJ should have an all-licensed mental health staff. He presented to his superiors the plan of eliminating the MHS II and MHS Senior positions

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<sup>3</sup> Cermak is the arm of the Cook County Health and Hospital System that provides medical and mental health care to detainees at CCJ.

over a period of two years. A new classification, MHS III,<sup>4</sup> would be created and the MHS IIs and MHS Seniors would be laid off. MHS IIIs would be required to hold a Master's degree in Social Work, Counseling, Clinical Psychology, or Counseling Psychology. They also would be required to be licensed in Illinois as a licensed professional counselor (LPC), licensed clinical professional counselor (LCPC), licensed social worker (LSW), licensed clinical social worker, (LCSW), or licensed clinical psychologist. Dr. Puisis' superiors approved of this plan, and posting for the new MHS III classification occurred by July 2010.

On September 24, 2010, Dr. Metzner's initial Monitor Report was filed in federal court. Among other findings, Dr. Metzner's Report reviewed Dr. Puisis' approved decision to transition to an all-licensed staff in mental health care services. Dr. Metzner stated, "The 63 unlicensed mental health specialist positions will be converted to 53 licensed mental health specialist positions." He also reiterated this finding in charts attached to his Report. Also on September 24, 2010, Dr. Shansky filed his initial Report with the court. In that document, he too notes the shift from an unlicensed mental health care staff to an all-licensed staff.

#### **D. Timeline of Events**

On October 6, 2010, the decision to transition to an all-licensed mental health care staff was discussed at a monthly Cermak staff meeting. While the County had yet to inform the Union of its plan, it had already notified the MHS IIs and MHS Seniors "that the goal was to transition to an all-licensed mental health staff." The MHS IIs and MHS Seniors who were present at this meeting called the Union afterwards, worried that their jobs might be at risk. On November 3,

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<sup>4</sup> An MHS III position did exist prior to Dr. Puisis' tenure. However, it was a non-bargaining unit supervisory position with only one employee. The decision was made to use an existing job title and create a new job description for it, rather than go through the long and difficult process of creating a completely new job title.

2010, a similar meeting took place, with the County reiterating its plan, and the MHS IIs and MHS Seniors calling the Union after the meeting.

On October 29, 2010, Leonard Simpson, the Union's Director of Cook County Division, sent an email to the County regarding the unit placement of the MHS IIIs. Mr. Simpson's email noted that the only differences between the MHS IIIs and the MHS IIs and Seniors were the additional educational and licensure requirements for the MHS IIIs. He stated that as the exclusive bargaining representative of the MHS series and because of the CBA between the parties, "this subject was to be discussed with the Union as outlined in Article V, section 5.2 of the [CBA]." Mr. Simpson reiterated this point later in the same email saying, "The addition of the new requirement is a major alteration to the existing job classification and again, by contract, the Cermak administration was to engage in discussions with us about the alteration of the classification."

On November 1, 2010, the Union filed a unit clarification petition with the Board requesting to add the newly-created MHS III position to its bargaining unit which already included the MHS IIs and MHS Seniors. The Certification of Unit Clarification was issued on April 26, 2011.

In or about November 2010, it is uncontroverted that the following people met: Union President Christine Boardman, Union Vice-President Betty Boles, and Dr. Puisis.<sup>5</sup> The accounts of what was said at this meeting differ. The County states that it met with the Union "about the staffing plan to eliminate the unlicensed MHS IIs and MHS Seniors in favor of an all-licensed and better educated MHS III classification and to lay off all employees in the MHS II and MHS Senior classifications." Dr. Puisis, according to the County, refused to budge from this position,

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<sup>5</sup> Each party's witnesses testified that other people were present, but these three were the only people whom everyone agrees were present.

although he did suggest that if the MHS IIs and MHS Seniors returned to school, they might be able to qualify to be hired as MHS IIIs.

Ms. Boardman testified that the issue of laying off the MHS IIs and MHS Seniors only came up “briefly.” She stated that she inquired about a “rumor” circulating amongst the MHS IIs and MHS Seniors concerning additional educational requirements for these employees. According to Ms. Boardman, Dr. Puisis “said at that time that he had not yet made that decision, but he believed that the Department of Justice was going to require such changes.”

On December 10, 2010, the County filed a Status Report and Response to the Monitors’ Reports with the court. This document contains a timeline for implementing the program for transitioning to an all-licensed mental health staff. Part of this timeline includes “impact bargaining” with the Union and “no less than 3-week notice of lay-off for current staff.” The exact language from the County’s timeline was used in Dr. Metzner’s second Monitor Report, which was filed in court on December 21, 2010.

On February 15, 2011, the parties met for CBA negotiations.<sup>6</sup> At this meeting, Ms. Boardman brought up the threat of layoffs for the MHS IIs and MHS Seniors if these employees did not meet the education and licensing requirements of the MHS IIIs. Another meeting also occurred around this time where the topic of MHS IIs and MHS Seniors was specifically addressed. Present at this second meeting were Ms. Boardman, Ms. Boles, Dr. Puisis, Deborah Tate, head of Human Resources at CCHHS, Marsha Ross-Jackson, a representative of the County, Anthony Tedeschi, and William Foley<sup>7</sup>, officials at CCHHS.<sup>8</sup> At this meeting, the Union “again asked as to what the intention was going to be... regarding [the MHS II’s and MHS

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<sup>6</sup> Negotiations for the 2008-2012 universal and local contracts began in early 2009 and were ongoing throughout this timeline of events.

<sup>7</sup> Mr. Foley resigned his position in the spring of 2011 and was replaced shortly thereafter by Dr. Raju.

<sup>8</sup> Again, these are the people whom both parties’ witnesses have as present.

Seniors’] requirements.” The County stated that it believed that the DOJ required additional licensure for Mental Health Specialists, which is why it was laying off the unlicensed MHS IIs and MHS Seniors and hiring licensed MHS IIIs.

Ms. Boardman disagreed with this characterization. She testified that by that meeting, she had obtained a copy of the DOJ report. Nowhere in this report, she stated, was a requirement from the DOJ that Cermak transition to an all-licensed staff. Additionally, Ms. Boardman alleged at this meeting that “requiring additional education or licensure of the [MHS] IIs or Seniors... was a mandatory subject of bargaining.” The County responded that legally there were certain areas where only a licensed MHS could make decisions regarding detainees.

In April 2011, Ms. Boardman met with Thomas Luetkemeyer, the lead attorney for the County’s negotiations team. Ms. Boardman testified that she stated to Mr. Luetkemeyer, “What is it that your client doesn’t get about that this is a mandatory subject of bargaining? They just can’t implement it.”

From March through August of 2011, the parties continued to discuss the changes occurring in the mental health program at Cermak as they negotiated the 2008-2012 CBAs. The Union’s primary concern during these months was that the transition from an unlicensed to licensed staff was a mandatory subject of bargaining, and that the County was refusing to bargain over this issue. In her notes summarizing the Union’s bargaining positions during contract negotiations, Ms. Boardman cited one of the issues to be resolved was “attempts to eliminate MHS II positions without agreement.” Additionally, the Union was concerned about the cost of obtaining a Master’s degree for those MHS IIs and MHS Seniors who wished to avoid layoff. Finally, the Union repeatedly stated that there was no requirement in the DOJ report which required an all-licensed staff.

On July 17, 2011,<sup>9</sup> Ms. Boardman received a copy of Dr. Metzner's third Monitor Report.<sup>10</sup> Nowhere in this document, Ms. Boardman testified, was a requirement that there be a transition to an all-licensed staff, nor did it state that "Mental Health Specialist IIs and Seniors cannot perform their job." However, Dr. Metzner's Report does state the following:

Three of the 11 Mental Health Specialist III individuals that were hired were current staff.... Of the remaining unlicensed mental health specialist staff (5 of the original 38 were licensed), there are around 10 or so that are in the process of obtaining their license as either LCSW, LCPC or LPC... The remaining individuals will not be able to qualify for a MHS III position and may have no alternative but to face eventual lay-off as there is insufficient funding to maintain a dual workforce to include unlicensed staff.

On August 1, 2011, MHS II and MHS Senior employees sent a letter to Cook County Board President Toni Preckwinkle. The letter described the "proposed termination of 34 Mental Health Specialist IIs and Seniors at Cermak." The letter also stated that the MHS IIs and MHS Seniors believed that Dr. Puisis was planning on replacing all of the MHS IIs and MHS Seniors with MHS IIIs. Finally, the letter requested that Ms. Preckwinkle "look into the replacement of present staff with an all licensed staff." In closing, the MHS IIs and MHS Seniors gave both Ms. Boardman's and Ms. Boles' contact information. The letter was read aloud to the CCHHS Board of Directors on August 26, 2011.

On August 2, 2011, Ms. Boardman and Ms. Boles met with Dr. Puisis, Ms. Ross-Jackson, Mr. Luetkemeyer, and Phyllis Woods, Labor Relations Analyst for the County. Dr. Puisis again stated that Cermak was transitioning to an all-licensed staff. He also offered the possibility that some MHS IIs and MHS Seniors could continue to work while they obtained the

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<sup>9</sup> Dr. Metzner's June 2011 Monitor Report was dated June 13, 2011, submitted to Judge Kendall on August 29, 2011, but was not filed until May 14, 2012. However, evidence submitted by both parties shows that Ms. Boardman was emailed the Report on July 17, 2011.

<sup>10</sup> The Monitor Reports all include the portions of the Agreed Order which are relevant to that Monitor's findings. The Reports also include all of the prior Reports' compliance findings. For example, the third Mental Health Monitor Report includes Dr. Metzner's June 2010 assessments, the November 8, 2010 Cermak status updates, Dr. Metzner's December 2010 assessments, and his June 2011 Status Report.

educational and licensure requirements to become MHS IIIs and thereby avoid layoff. The Union stated it wanted a mixture of staff, both licensed and unlicensed, working at Cermak. Mr. Luetkemeyer informed the Union that the County had decided to transition to an all-licensed staff.

On August 23, 2011, Mr. Simpson emailed Ms. Boardman and Ms. Boles about “outstanding issues in the hospital” which the Union was still trying to address. He stated in the email that Dr. Metzner’s report did not require an all-licensed staff, but that Dr. Puisis was intent on replacing the MHS IIs and MHS Seniors and replacing them with MHS IIIs.

On September 15, 2011, the parties met at a collective bargaining session where the issue of the MHS IIs and MHS Seniors arose again. Mr. Luetkemeyer informed the Union again that if an MHS II or MHS Senior was pursuing licensure to become an MHS III, he or she could remain employed and avoid layoff.

On September 18, 2011, the initial draft budget for fiscal year 2012 was introduced to the CCHHS Board. This budget proposed the elimination of 23 MHS II and MHS Senior positions. The Union successfully fought to have these positions restored to the final budget through political pressure.

By October 13, 2011, Dr. Puisis realized that the hiring of the MHS IIIs had not progressed as efficiently as expected. If the MHS III positions were not filled quickly, Cermak’s mental health services would be severely understaffed. The evidence indicates that Dr. Puisis therefore did not strenuously object to the returning of the 23 eliminated MHS positions to the CCHHS fiscal year 2012 budget. However, in Dr. Metzner’s fourth Monitor Report,<sup>11</sup> he indicated that the all-licensed staffing plan needed to be implemented so that “many of the

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<sup>11</sup> This report was submitted on November 21, 2011, but was not filed in court until May 14, 2012.

provisions of the Agreed Order relevant to the mental health system” could be properly implemented.

On November 21, 2011, the MHS IIs and MHS Seniors were sent letters detailing the updated plan regarding the transition to an all-licensed staff. The letter reiterated the plan to transition to an all-licensed staff. It also noted that a pathway to licensure had been created, allowing those MHS IIs and MHS Seniors who wished to avoid layoffs to obtain the necessary credentials. The letter detailed the pathway and closed with the instruction that failure to obtain the educational and licensing requirements to be an MHS III would result in termination. The original deadline to apply to a Master’s degree program and avoid layoff was February 15, 2012. After Ms. Boardman told the County that most Master’s degree programs’ application deadlines were the end of February, the County pushed back its deadline to March 1, 2012.

From December 2011 through June 2012, the parties engaged in collective bargaining negotiations regarding the universal and local contracts. Throughout these negotiations, the transition to an all-licensed mental health services staff at Cermak was repeatedly discussed. The Union lists the issues it wished to bargain over as “(1) the County’s decision to eliminate the [MHS II and MHS Senior] positions, (2) hiring IIIs in their place, (3) reimbursement for tuition expenses incurred by the Mental Health Specialists, and (4) a transition plan for the [MHS IIs and MHS Seniors] who obtained the required licensure to automatically become IIIs.” The Union alleges that the County refused to address any of the above concerns.

Conversely, the County described its efforts to “get an appropriate program started at Chicago State University” specifically for MHS IIs and MHS Seniors. It also alleges that it was trying to secure grant money for tuition reimbursement, among other attempts to try and reduce the costs of returning to school and/or obtaining licensure. These attempts were unsuccessful.

However, the parties did reach an agreement regarding the new CBA on June 7, 2012. The Union's members ratified the new CBA on June 13, 2012.

On March 15, 2012, Borita Berry, the only MHS II who, at the time, had not applied to a Master's degree program, was informed that her position had been eliminated. Prior to hearing, five additional MHS IIs and/or MHS Seniors had been laid off for the same reason.

On April 19, 2012, the Union filed the underlying unfair labor practice charge against the County.

After the Union's membership ratified the new CBA, the County and Union continued to discuss the transition to an all-licensed staff and the pathway for MHS IIs and MHS Seniors interested in pursuing the educational and licensure requirements to be an MHS III. On August 21, 2012, the parties met at the offices of the Chicago Federation of Labor (CFL). The testimony regarding this meeting differs substantially. According to the Union, Dr. Raju was extremely sympathetic to all of the MHS IIs and MHS Seniors. He allegedly stated that he did not understand why Cermak could not have a mixture of a licensed and unlicensed mental health staff. He asked for letters from MHS IIs and MHS Seniors seeking exemptions from licensure. In these letters, the MHS IIs and MHS Seniors described why obtaining the necessary educational and licensing requirements was a hardship. He also allegedly stated that the layoffs of unlicensed MHS IIs and MHS Seniors was to be put on hold pending his review of the requests for exemption. However, after receiving 23 hardship letters, Dr. Raju allegedly changed his mind and would no longer be reading or responding to any of the letters. The original plan requiring licensure or facing layoff was reinstated.

The County states that Dr. Raju had previously expressed his support for an all-licensed staff to Dr. Metzner. At the CFL meeting, Dr. Raju allegedly stated that it "made no sense to

have MHS IIs and MHS Seniors, who require supervision, in addition to MHS IIIs, who do not.” While the County agrees that Dr. Raju was indeed sympathetic to the hardships the unlicensed MHSs might encounter, he was firm that the decision to transition to an all-licensed staff had been made. It was not fair, he said, to allow some people to not follow the established pathway when others were already in the process of obtaining licensure. Even after his explanation, though, unlicensed MHSs wrote letters to Dr. Raju requesting that the license-or-layoff plan be waived for them due to alleged hardships.

On November 19, 2012, the County submitted to the Union a draft Memorandum of Agreement (MOA). This MOA detailed the County’s plan to promote MHS IIs and MHS Seniors to the MHS III positions upon licensure. The Union did not agree to the MOA. It argues that the MOA was submitted in bad faith and was an example of regressive bargaining. Furthermore, the Union alleges that the MOA is the only written proposal ever tendered to it by the County regarding the MHS IIs and MHS Seniors.

#### **IV. DISCUSSION AND ANALYSIS**

##### **A. The Charge is Untimely<sup>12</sup>**

Before addressing the merits of the Union’s Complaint, it must first be determined whether the Union timely filed its unfair labor practice charge. Section 11(a) of the Act states that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board.” The six-month period begins to run when the charging party knew or reasonably should have known of the facts underlying the unfair labor practice charge. Jones v. Ill. Educ. Labor Rel. Bd., 272 Ill. App. 3d 612, 620, 650 N.E.2d

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<sup>12</sup> In this analysis, in order to adequately address the preliminary timeliness issue, I assume that the allegation of unilateral changes to educational and licensure requirements to the MHS II and MHS Senior classifications could be sustained. However, as discussed ante, the evidence does not support this contention.

1092, 1098 (1st Dist. 1995). Filing a charge within this statute of limitations is a prerequisite to the Board reaching the merits of a charging party's allegation. Village of Dolton, 17 PERI ¶2017 (IL LRB-SP 2001). It is not a waivable affirmative defense because it is a limitation on the Board's jurisdiction. Id.

The sole allegation in the Complaint in this case is that the County "unilaterally imposed new licensing and educational requirements" for MHS IIs and MHS Seniors. Putting aside for the moment that this is not in fact what the County did, the Union's charge, brought on April 19, 2012, is untimely.

#### **1. Events Triggering the Statute of Limitations**

While I agree that the November 21, 2011 letter to the MHS IIs and MHS Seniors was a notice of the planned layoffs, I also believe the Union knew or should have known of the County's decision to transition to an all-licensed staff prior to this date. The Union should have known about the creation of the MHS III position by July 2010, when it was first posted. And the evidence clearly establishes that the Union absolutely knew of the position and its education and license requirements by October 2010, when Mr. Simpson sent his email regarding the Union's representation status of the MHS IIIs. Additionally, the record shows that Union members in MHS II and MHS Senior classifications were informed by the County at meetings on October 6 and November 3, 2010 that Cermak would have only an all-licensed staff. These members contacted the Union after each meeting, fearing they would lose their jobs. This began a year-long period of discussions between the Union and the County during which the evidence indicates that it became clear to the Union that Cermak would only be employing MHS IIIs in the very near future.

The County remained adamant on its position to require an all-licensed staff throughout contract negotiations as well. The Union was well-aware of this stance. It continually made CBA approval contingent on the County's acquiescence to saving the MHS IIs' and MHS Seniors' jobs. The County did eventually agree to a pathway to licensure for the affected employees. This agreement to allow MHS IIs and MHS Seniors to continue working while obtaining the necessary requirements to be an MHS III does not change the fact that the Union knew the County was planning and actually implementing the transition to an all-licensed staff.

The initial budget proposal, introduced on September 18, 2011, is another clear example of the Union's knowledge regarding the County's plan to eliminate the MHS IIs and MHS Seniors in favor of an all-licensed staff of MHS IIIs. The MHS IIs and MHS Seniors had been eliminated completely from Cermak's proposed budget. The Union was ultimately successful in restoring these positions to the fiscal year 2012 budget. However, as the Union points out in its post-hearing brief, this restoration did not come about through bargaining with the County. The point remains that it was absolutely clear at this point what the County's intentions regarding the MHS IIs and MHS Seniors were, and those intentions were to eliminate the positions.

## **2. The Court Documents**

Additional support for imputing knowledge on the Union is found in Ms. Boardman's testimony regarding the Agreed Order's requirements. Ms. Boardman obtained a copy of Dr. Metzner's third Monitor Report by July 17, 2011. As noted earlier, this Report contains the relevant portions of the Agreed Order and all of Dr. Metzner's prior assessments and Reports. While the Union uses this document to prove that no mandate requiring licensure existed in the Agreed Order, I find that it also put the Union on notice of the changes that the County was implementing. The Union cannot claim it conclusively knew that no licensure requirement

existed in the Agreed Order but not be aware of the County's decision to lay off the MHS IIs and MHS Seniors, which was clearly stated in the Monitor Report it possessed.

The Union argues in its post-hearing brief that it cannot have been expected to know the contents of documents filed with the court when it was not a party to those proceedings. However, Ms. Boardman testified that she was aware that the County was under an ongoing requirement to comply with the Agreed Order and that one of the areas criticized by the DOJ report was Cermak's mental health care staff. The Union's members and their non-licensure were, fairly or not, listed as reasons why detainees' constitutional rights were being violated. It is unreasonable to believe that important documents which discussed the Union's members and their job statuses were not read by Union officials, and I find the Union's contention that it was under no obligation to read the court documents unconvincing.

The Union also alleges in its post-hearing brief that it did not have constructive notice of the court documents because it was never provided them by the County. I find this reasoning unpersuasive for two reasons. First, the Union admitted that by July 17, 2011, it had copies of the DOJ report and Dr. Metzner's third Monitor Report, which also contained all the information from the prior Report. The Union cannot claim it could not read what the County refused to provide, if it actually possessed at least some of the requested documents. Second, I agree with the County that it is hard to believe that the Union was unaware that these documents were all public record. By October 2011, the DOJ Report, the complaint filed by Attorney General Holder, the Agreed Order, and Dr. Metzner's first and second Monitor Reports were all filed with the court and accessible as public record easily accessible via the court's electronic document retrieval site. At least one of the Union's lawyers must have known of this online document-retrieval system. While I find that the County's alleged refusal to provide the Union

with requested court documents was discourteous, I also find that the Union cannot then refuse to exercise diligence on its own part in retrieving the documents it needed.

### **3. The County's Shifting Reasoning for Its Decision**

Furthermore, the County's reasoning behind eliminating the MHS IIs and MHS Seniors is irrelevant to the Union's knowledge. The Union, throughout the hearing and in its post-hearing brief, emphasized the fact that the County originally told the Union that it believed the Agreed Order required an all-licensed staff. The Union had been aware of this allegation by the County since at least the November 2010 meeting. The Union's position was consistently that the Agreed Order did not require such a staffing composition. After being forced to admit as much, the Union alleges, the County then began claiming that the staffing change was a management right.

I do not believe the change in the County's basis for laying off the MHS IIs and MHS Seniors left the Union uncertain of the County's final plan. The Union knew or should have known that this was the County's ultimate goal from day one. The Union certainly acted as if it believed the County would lay off the MHS IIs and MHS Seniors. Indeed, Ms. Boardman testified that at meetings in both February and April 2011, she expressed the Union's position that the County could not implement the transition without bargaining with the Union. Its proffered reasoning behind the change aside, the evidence establishes that the County never wavered from its decision to transition to an all-licensed staff, and the Union knew or should have known of that decision. See City of Chicago, 30 PERI 126 (IL LRB-LP 2013) (City never withdrew from its position that it had no duty to bargain with the Union, and therefore no conflicting signals were sent which would have tolled the statute of limitations.)

#### 4. Conclusion

The Union filed its unfair labor practice charge on April 19, 2012. In order for the charge to be timely filed, the Union could not have been aware of the County's intent to transition to an all-licensed staff of MHS IIIs, without bargaining over this move with the Union, before October 19, 2011. The key events and notifications discussed above, in addition to the other facts which do not require repeating in this analysis, conclusively establish that the Union knew or should have known of the plan to layoff the MHS IIs and MHS Seniors prior to October 19, 2011. Therefore, I find that the Union's unfair labor practice charge, even if it could be sustained, was untimely and must be dismissed.

#### B. The Union failed to prove the allegations as set forth in the Complaint

I have already determined that the Union was untimely in its filing of the underlying charge. However, if the Board finds that the Union did not have actual or constructive knowledge of the events underlying the charge before October 19, 2011, I recommend in the alternative that the Complaint be dismissed because the Union did not prove the allegations as set forth in the Complaint.

As the Charging Party, it is the Union's burden to prove the allegations as set forth in the Complaint for Hearing. City of Evanston, 29 PERI ¶162 (IL LRB-SP 2013), Village of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010). The sole allegation in the Complaint is that the County violated Section 10(a)(4) and (1) of the Act when it "unilaterally imposed new licensing and educational requirements for Unit employees holding the job title or classification of Mental Health Specialist Senior and Mental Health Specialist II" and refused to bargain over those changes. However, the record conclusively shows that no new education and licensure requirements were imposed on MHS IIs and MHS Seniors.

In 2010, the County made changes to only one title that is relevant to this case: the MHS III classification. The old MHS III classification was a supervisory job title that was held by one non-bargaining unit employee. Instead of creating an entirely new classification, Dr. Puisis testified without contradiction that the County simply changed the job description for an existing classification. The new MHS III position had specific educational and licensure requirements, and it was to be the only MHS classification employed by Cermak once the reorganization of CCJ's healthcare system was completed.

The Union argues that the MHS IIs and MHS Seniors' job classifications were unilaterally changed when the County gave them the option of being laid off when their job classification was eliminated or going back to school to obtain the necessary credentials to become an MHS III. However, no changes to the MHS II and MHS Senior job classifications were ever made by the County. The County's plan was to eliminate the MHS II and MHS Senior classifications entirely, not impose new educational and licensure requirements on the employees in those jobs. It was the choice of each individual employee: accept layoff when his or her job was eliminated, or return to school and obtain the necessary credentials to possibly become an MHS III.

There was never any testimony or evidence that the MHS II and MHS Senior job classifications were changed in any way. Instead, the record indicates that once the Union realized these two classifications were going to be eliminated and the employees in these positions laid off, the Union began searching for ways to save these employees' jobs. The evidence shows that the County never wavered from its decision to transition to an all-licensed mental health care staff at Cermak. It did, however, eventually decide to allow employees who

would otherwise be laid off to continue working while obtaining the necessary education and licensure requirements so that they could qualify to work in the new MHS III classification.

The fact that it took the County longer to implement its transition to the all-licensed staff than originally anticipated does not change this analysis. The evidence shows that the MHS IIs and MHS Seniors were retained longer than originally anticipated because the County was having difficulty hiring the requisite number of MHS IIIs. The evidence also indicates that many of the MHS IIs and MHS Seniors were interested in continuing to work at Cermak in a similar capacity. The County therefore allowed them to retain their current jobs if they followed the pathway to licensure the County had implemented. The pathway to licensure was never a unilateral change to the MHS IIs' and MHS Seniors' educational and licensure requirements. It was actually a way for the MHS IIs and MHS Seniors to keep their current employment while obtaining the necessary credentials to be hired as MHS IIIs.

Based on the complete absence of any evidence that the County changed the education and licensure requirements for the MHS II and MHS Senior classifications, I find that the County did not violate Section 10(a)(4) and (1).

**V. CONCLUSIONS OF LAW**

I find that Union did not file its unfair labor practice charge within six months of when it knew or should have known of the conduct underlying the charge. I also find that, should the Board disagree and find the charge was timely filed, that the County did not violate Section 10(a)(4) and (1) of the Act based on the conduct alleged in the Complaint for Hearing. Because of these conclusions, I do not reach any of the other arguments advanced by the parties.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the Complaint be dismissed.

## **VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, the 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 any 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 recommendation. Within seven 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. 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. 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 30th day of April, 2015.**

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

***Kate Vanek***

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**Katherine C. Vanek  
Administrative Law Judge**