

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

Amalgamated Transit Union,)	
Local 241,)	
)	
Charging Party,)	
)	Case No. L-CA-13-003
and)	
)	
Chicago Transit Authority,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On July 9, 2012, Jimmy Battaglia filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in Case No. L-CA-13-003, alleging that the Chicago Transit Authority (Respondent or CTA) 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). On July 22, 2012, the Amalgamated Transit Union, Local 241 (Charging Party or Local 241) made a motion to substitute as Charging Party in this matter. The Respondent did not object and the motion was granted. 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 1240 (Rules). On September 25, 2012, the Board’s Executive Director issued a Complaint for Hearing.

The case was heard on March 13, 2013 in Chicago, Illinois before Administrative Law Judge Michelle Owen.¹ 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.

¹ Judge Owen subsequently left employ with the Board and this case was assigned to me for Recommended Decision and Order.

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

I. PRELIMINARY FINDINGS

The parties stipulate, and I find as follows:

1. At all times material herein, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material herein, the Respondent has been under the jurisdiction of the Local Panel of the Board pursuant to Section 5 of the Act.
3. At all times material herein, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material herein, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's employees, as certified by the Board (Unit).
5. At all times material herein, the Charging Party and Respondent have been parties to a collective bargaining agreement (CBA) setting out terms and conditions of employment for Unit employees.
6. The CBA includes a grievance procedure for the resolution of disputes concerning the application or interpretation of its terms.
7. In or about July 2005, the Charging Party filed grievance no. 05-0238 on behalf of Unit employee Jimmy Battaglia.

II. ISSUES AND CONTENTIONS

The Charging Party contends that the Respondent did not bargain with it in good faith in violation of Section 10(a)(4) of the Act by failing to comply with a grievance settlement agreement. The Respondent disputes this contention.

III. FINDINGS OF FACT

A. The Underlying Grievances

In June 2005, Jimmy Battaglia, a CTA employee and member of Local 241, was suspended without pay for 29 days for falsifying an injury on duty. On July 18, 2005, three

grievances were submitted by the Charging Party on behalf of Battaglia, alleging that he was improperly disciplined. These grievances were denied at Step Two in the grievance process on September 28, 2005. For reasons that are unclear from the record, the Charging Party did not request arbitration, the next step in the grievance process, until September 29, 2009. Once arbitration was requested, the grievances were assigned to the Respondent's attorney Katharine Lunde, who testified that she first received them in late 2010. Equally unclear from the record is why the arbitrator, Arbitrator Wolff, was not informed until May 2011 that he had been selected to hear the case. Battaglia's arbitration was subsequently scheduled to be heard in May 2012. In February 2012, Lunde filed a Motion to Dismiss the arbitration as untimely.²

After receiving the Motion to Dismiss, Arbitrator Wolff issued an interim award in the matter. He agreed that the arbitration was untimely because the arbitration request did not conform to the CBA's timeframe requirements. However, he allowed the hearing to proceed as scheduled to allow the Charging Party to present evidence supporting its claim that it had initially requested arbitration within the proper timeframe.

B. The Settlement Negotiations and Agreement

On the day of the arbitration hearing, prior to its commencement, the Charging Party initiated settlement negotiations with Lunde. Lunde testified that the Charging Party initially requested to settle for a dollar amount that supposedly reflected what Battaglia would have received in disability payments. Lunde did not agree with this amount, and the parties subsequently negotiated that Battaglia would receive a lump-sum payment of \$750 as a

² The parties' CBA states the following in Article 17, Section 1: "If the grievance is not resolved in Step 2... and the Union or the Authority wishes to appeal the grievance, the Union or the Authority may refer the grievance to arbitration within ninety (90) calendar days of receipt of the Authority's written Response provided to the Union at Step 2."

settlement for the grievances. According to Lunde, the \$750 did not reflect payment for anything specific. It was simply a number reached by the parties to dispose of the grievances.

In addition to the Respondent paying Battaglia \$750, the parties also agreed that the settlement amount would be subject to a 25% federal tax withholding rate. The federal taxes, plus any applicable state taxes, were to be the only deductions made on the payment. In most payments issued by the Respondent, deductions are required to be taken as employee contributions to the Retirement Plan for CTA Employees (Pension Plan) and the Retiree Health Care Trust (RHCT).³ The Charging Party led Lunde to believe that it was possible to avoid deducting the typical Pension Plan and RHCT contributions from the settlement payment. This statement turned out to be incorrect, but from the record it appears Lunde relied on the Charging Party's and its lawyer's assertion that it was possible. Lunde did not ensure the accuracy of that claim before agreeing to not withhold Pension Plan and RHCT contributions. The Charging Party and Respondent also agreed that they would jointly execute an agreed order making Arbitrator Wolff's interim award final and precedential. The settlement agreement was fully executed on June 7, 2012. Lunde signed and executed the agreed order on May 31, 2012, but the Charging Party does not appear to have ever done so.

On June 18, 2012, Elvira Beltran, manager in Employee Relations, sent an implementation email requesting that the sum agreed to by the parties be "QuickPaid" to Battaglia by way of the Charging Party. Linda Davis, manager of Payroll Operations, responded that the Payroll Department was required to withhold the Pension Plan and RHCT contributions.

³ The Pension Plan was established in 1949 and "provide[s] retirement allowances in case of old age or disability for the eligible employees of the Chicago Transit Authority." The RHCT was established in 2007 and became effective January 1, 2008. It provides and administers health care benefits for CTA retirees and their dependents and survivors. Both the Pension Plan and the RHCT are funded by contributions from CTA and deductions from CTA employees' pay.

All payments “that are issued by CTA are subject to the pension and the Health Care Trust.” She therefore could not QuickPay the money unless she deducted these amounts.

Lunde testified that she attempted to find a way to avoid having to withhold the Pension Plan and RHCT contributions. Under Illinois law and the CBA, though, the deductions were required to be withheld. 40 ILCS 5/22-101 is the section in the Pension Code which requires Pension Plan contributions, while 40 ILCS 5/22-101B requires the RHCT contributions. Both of these sections are incorporated into the parties’ CBA. Lunde testified that the only way to avoid the unwanted deductions was to either terminate Battaglia or remove him from the CTA retirement plan.

Lunde testified that she was under pressure from the Charging Party to QuickPay the settlement award as soon as possible. She and Davis determined that if they deducted the Pension Plan and RHCT contributions from the \$750 but withheld federal taxes at the normal amount, which was less than 25%, Battaglia would end up with more money than if the settlement agreement was followed. Without informing the Charging Party, Lunde chose to have Battaglia paid in this manner rather than following the settlement agreement. While she did breach the settlement agreement, Lunde avoided violating the law and the parties’ CBA.

C. The Tommy Sams’ Settlement

The Charging Party argues that in January 2012, another CTA employee was able to receive a settlement check without having RHCT contributions deducted. Tommy Sams was underpaid from 2004 through 2008. The Respondent and the Charging Party settled the class action grievance of which he was part, and Sams received backpay for the time he had been underpaid. No RHCT deductions were taken from Sams’ backpay for 2004 through 2007. However, these RHCT contributions were made on his backpay for 2008. This is because the

RHCT went into effect in 2008. Only backpay attributed to wages earned before 2008 was unaffected. Sams' backpay award did have Pension Plan contributions deducted from it for each year the award covered.

IV. DISCUSSION AND ANALYSIS

A. The Alleged Repudiation of the Settlement Agreement

The Charging Party alleges that the Respondent committed an unfair labor practice when it refused to comply with a binding settlement agreement. It is well-settled that the mere breach of a collective bargaining agreement is not an unfair labor practice. Illinois Secretary of State, 28 PERI ¶145 (IL LRB-SP 2012). The failure to abide by a contract is an unfair labor practice only when the breach is so great that it amounts to a repudiation of the entire agreement. Chicago Park District, 16 PERI ¶3005 (IL LLRB G.C. 1999). A single instance of noncompliance is not enough to constitute a repudiation. County of Bureau and Bureau County Sheriff, 29 PERI ¶163 (IL LRB-SP 2013); City of Chicago (Department of Aviation), 13 PERI ¶3014 (IL LLRB 1997). The Board has held that this same principle applies to violations of grievance and unfair labor practice settlement agreements. County of Cook, 11 PERI ¶3021 (IL LLRB 1995); Illinois Department of Corrections and Central Management Services, 4 PERI ¶2043 (IL SLRB 1988). Anything less than a repudiation of an agreement is not an unfair labor practice, but merely a breach of contract case, which cannot be properly brought before the Board. County of Cook and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990), Village of Creve Coeur, 3 PERI ¶2063, supplemental decision at 4 PERI ¶2002 (IL SLRB 1987).

The Charging Party has not sufficiently alleged that the Respondent repudiated the settlement agreement so as to constitute a violation of Section 10(a)(4) of the Act. The evidence proves that the Respondent breached the parties' agreement by withholding Pension

Plan and RHCT contributions from Battaglia's payment. However, this was a minor deviation from the agreed-upon terms and was insufficient to constitute repudiation of the entire agreement. See County of Bureau and Bureau County Sheriff, 29 PERI ¶163 (IL LRB-SP 2013) (employer did not refuse to bargain in good faith when it refused to arbitrate only a single class of grievances); City of Chicago (Department of Aviation), 13 PERI ¶3014 (IL LLRB 1997) (employer's violation of an employee's Weingarten rights was an unfair labor practice but not a 10(a)(4) violation because the evidence showed that the employer failed to afford a union representative in only this one instance); City of Chicago, 10 PERI ¶3002 (IL LLRB 1993) (employer's failure to timely process grievances was possibly a breach of the CBA, but as the delays did not completely prevent the grievance process from taking its course, there was no repudiation of the CBA).

In Chicago Park District, 16 PERI ¶3005 (IL LLRB G.C. 1999), the employer refused to turn over a requested document to the union, allegedly in violation of a settlement agreement. The union claimed that the employer was required under the settlement agreement to produce the document, and failure to do so was a violation of Section 10(a)(4). The ALJ found, and the Board agreed, that even if that document was required to be produced, the failure to do so was not a ULP because this one alleged breach did not amount to a repudiation of the settlement agreement.

Lunde testified, and the uncontroverted evidence tends to show, that Lunde was unaware that the terms to which she agreed were unlawful. When she was informed that the Pension Plan and RHCT deductions had to be made, she contacted multiple people in payroll to try and find a way around the withholdings. With no option but to withhold the Pension Plan and RHCT contributions from Battaglia's award, Lunde and Davis chose to do what they felt was the next

best option. The deductions were withheld, but the federal tax payment was calculated at a lower rate. Battaglia actually received more money under this payment method. The material terms of the settlement agreement were followed and the “breach” was incredibly minor.

Lunde substantially complied with the settlement agreement and deviated from it only due to constraints of law unknown to her at the time she executed the agreement. This is clearly not the type of behavior which shows a complete repudiation of a contract. Compare the Respondent’s conduct in this case with County of Cook (Office of Public Defender), 13 PERI ¶3005 (IL LLRB 1997) (employer failed to implement entire grievance settlement by neither reinstating nor paying backpay to terminated employee, thereby repudiating the settlement agreement); County of Cook, 11 PERI ¶3021 (IL LLRB 1995) (same as Office of Public Defender, supra); City of Markham, 7 PERI ¶2021 (IL SLRB 1991) (employer’s refusal to abide by discipline and grievance provisions of interest arbitration award amounted to a repudiation of the CBA and violated Section 10(a)(4) of the Act); County of Winnebago (County Clerk & County Auditor), 7 PERI ¶2041 (IL SLRB 1990) (employer violated Section 10(a)(4) by failing to pay employees backpay agreed to in a grievance settlement agreement).

Nor is this a case like Illinois Department of Corrections and Central Management Services, 4 PERI ¶2043 (IL SLRB 1988). In that case, the union and the employer had disagreed for some time in regards to the job classification of an employee. The union filed a grievance, and the parties finally came to a consensus on her classification, memorializing it in a settlement agreement. The employee in question was to be reclassified as a “DMO II” as soon as possible. The employer further agreed to make any changes to the employee’s duties to assure she would be so classified. Finally, the employee was to receive backpay for the time she had been misclassified.

When the employer realized that a key piece of equipment for the DMO II job was not available at the employee's workplace, it contacted the union and informed it that a portion of the settlement agreement could not be implemented. It offered to classify the employee as a "DMO I," comply with the backpay portion of the settlement, and allow the grievance to proceed to arbitration. The union refused, alleging that in failing to follow the terms of the settlement agreement, the employer had violated Section 10(a)(4)'s requirement to bargain in good faith. The Board agreed with the union, finding that the refusal to classify the employee at the agreed-upon higher classification was a repudiation of the settlement agreement.

There are several key differences between Department of Corrections and the instant case. First, the parties' settlement in that case was foremost in regards the job classification of the employee. When the employer later stated it could not classify her as a DMO II, it was reneging on the core of the agreement. In the Charging Party's case, the settlement agreement appears from the evidence to be mainly about getting Battaglia a lump sum of money. While it was indeed a part of the settlement agreement to avoid withholding the Pension Plan and RHCT deductions, the Charging Party has failed to show that these terms were such an integral part of the agreement, like the job reclassification in Department of Corrections, that their absence from the implemented agreement shows a complete repudiation on the Respondent's part.

Second, in Department of Corrections, the Board found the employer's excuse, "that the State's own classification system prevents the settlement's implementation," spurious and pretextual. According to the employer, the employee could not be reclassified because a required piece of machinery for the DMO II classification was not available at her worksite. The Board was unconvinced, finding the classification system completely under the employer's control. Additionally, in the settlement agreement, the employer agreed to "make any changes necessary"

to effectuate the agreement. In other words, it was within the employer's power to simply move the required machinery to the employee's worksite, which is the action the employer should have taken initially.

The solution is not so simple in this case. If the Respondent fulfilled its obligation to not withhold Pension Plan and RHCT deductions, the Respondent would have violated Illinois law and the parties' CBA. I do not find that the reasoning behind the Respondent's breach in this case to be "spurious and pretextual" as it was in Department of Corrections. The evidence shows that Lunde made a good faith effort to comply with the terms of the settlement agreement as written. It was only after she had exhausted all her options did she seek alternatives. It is true that Lunde should have immediately informed the Charging Party about the problems with the settlement agreement. However, in spite of this error in judgment, Lunde otherwise worked in good faith to comply with the agreement as best she could within the constraints of the law. Battaglia even received more money in his pocket than he would have under the settlement agreement.

With inadequate evidence of bad faith on the Respondent's part and only a single breach of the settlement agreement,⁴ I cannot find that the Respondent refused to bargain in good faith with the Charging Party. Therefore, the Respondent did not violate Section 10(a)(4) of the Act by withholding the Pension Plan and RHCT contributions from Battaglia's lump sum settlement payment.

⁴ It is worth noting that the Charging Party also failed to comply with a portion of the settlement agreement. The parties agreed that upon execution of the settlement agreement they would contemporaneously execute an agreed order making Arbitrator Wolff's Interim Award final and precedential. The Charging Party's arbitrator, Attorney Huffman-Gottschling, has, from the record, never executed this order.

B. The Required Withholding of RHCT Contributions

Without delving too deeply into both parties' Pension Plan and RHCT obligations under their CBA and Illinois law, I will briefly address the Charging Party's contention that the settlement agreement was enforceable as written. The Charging Party focused the majority of its case-in-chief attempting to prove that the Respondent could have issued Battaglia's money without the RHCT contributions withheld.⁵ It relies on a 2012 grievance settlement awarding backpay to a CTA employee and Local 241 member named Tommy Sams. The Charging Party points out that the backpay award had no RHCT contributions withheld, excepting for the wages Sams should have earned in 2008. It therefore argues that the same could have been done for Battaglia. The Charging Party's point is this: the Respondent did not have to withhold RHCT contributions from Battaglia's payment because the grievances that the settlement covered were filed in 2005, before the RHCT went into effect.

For the Charging Party to succeed with this argument, the \$750 awarded to Battaglia in the settlement must have been to compensate him for payment he should have received prior to the enactment of the RHCT. I do not find this to be the case. Lunde explained that the \$750 was "just a dollar amount" the parties agreed to in settlement negotiations. Lunde was the only witness actually present at that settlement negotiation. The Charging Party did not adequately refute the Respondent's contention that the \$750 was not intended to compensate Battaglia for work performed in 2005. Therefore, I cannot find that it was possible to fulfill the portion of the settlement agreement requiring no RHCT contributions be withheld.⁶

⁵ The Charging Party freely admits that Tommy Sams' backpay award had Pension Plan contributions withheld from it. It has not advanced any argument that Pension Plan contributions could have been avoided in Battaglia's case, save for the fact that it was agreed upon in the settlement agreement.

⁶ Even if it were possible to avoid withholding the RHCT contributions, a failure to do so would still not constitute an unfair labor practice because it was not a significant enough breach to equal a repudiation of the agreement (see discussion, supra).

V. CONCLUSIONS OF LAW

I find that the Respondent did not violate Section 10(a)(4) of the Act when it withheld Pension Plan and RHCT contributions from Jimmy Battaglia's settlement award.

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 those 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 the 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 24th day of December, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kate Vanek

Katherine C. Vanek
Administrative Law Judge