

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

International Brotherhood of Teamsters,)	
Local 700,)	
)	
Charging Party)	
)	Case No. L-CA-13-027
and)	
)	
Forest Preserve District of Cook County,)	
)	
Respondent)	

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

On September 28, 2012, International Brotherhood of Teamsters, Local 700 (Charging Party or Union), filed an unfair labor charge with the Local Panel of of the Illinois Labor Relations Board (Board), alleging that Forest Preserve District of Cook County (Respondent or District) violated Section 10(a) of the Illinois Public Relations Act (Act), 5 ILCS 315 (2012), as amended. The charges were investigaged in accordance with Section 11 of the Act, and on March 22, 2013, the Board's Executive Director issued a Complaint for Hearing. On April 9, 2013, the Respondent filed an Answer to the Complaint. The case was heard in Chicago, Illinois, on September 26, 2013 by Administrative Law Judge Michelle Owen. At the hearing the Union presented evidence in support of its allegations and both parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. Both parties timely filed post-hearing briefs. Subsequently, this matter was reassigned to the undersigned Administrative Law Judge. After full consideration of the parties' stipulations, motions, evidence, arguments, briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

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, the Respondent has been a unit of government subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5 of the Act.

3. At all times material, the Respondent was subject to the Act pursuant to Section 20(b) thereof.
4. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Charging Party has been the exclusive representative of a historical bargaining unit composed of Respondent's employees holding certain positions (Unit).
6. At all times material, the Charging Party and Respondent were engaged in negotiations over the terms of a collective bargaining agreement to succeed an agreement that expired December 31, 2008 (2008 CBA).
7. On or about February 24, 2012, the Charging Party and Respondent reached tentative agreement over the terms of a successor collective bargaining agreement (Successor Agreement).
8. During the negotiations of the Successor Agreement, the parties continued to operate under the terms of the 2008 CBA.
9. The Successor Agreement was to be effective from January 1, 2009 through December 31, 2012.
10. The Successor Agreement contained across the board salary increases and a salary step schedule applicable Unit members.
11. Sometime after the Union ratified the Successor Agreement and after the Respondent's Board approved the 2012 CBA, the Charging Party and the Respondent began to dispute whether the agreed upon step increase at Step 6 was 1% or 10%.
12. After unsuccessful attempts to resolve the dispute, the parties agreed to submit the issue to an independent Arbitrator for resolution.
13. The Arbitrator conducted an arbitration hearing on November 30, 2012, and issued an Arbitration Award on December 28, 2012.
14. The Respondent filed a Petition to Confirm the Award in the Circuit Court of Cook County (Circuit Court).
15. The Charging Party filed a Motion to Vacate the Award in the Circuit Court.
16. On September 6, 2013, the Circuit Court issued an order within which it denied the Charging Party's Motion to Vacate the Award, and confirmed the Arbitrator's Award.
17. The Charging Party filed a Notice of Appeal in the Illinois Appellate Court appealing the Circuit Court's order.

II. INVESTIGATORY FACTS

The District is a special purpose district obligated to follow the Cook County Code of Ordinances. As a special district of Cook County, the District is required to follow the negotiated pattern of bargaining that the County established with other unions. In 2012,¹ the Union and the District engaged in several meetings to negotiate a successor collective bargaining agreement. These meetings included three official negotiating sessions and at least one unofficial negotiating session. The official bargaining meetings took place on January 18, February 17, and February 24. The unofficial negotiating session took place on or around February 8th.

February 8th unofficial negotiating session

On or around February 8, the Union's Chief Negotiator Barbara Cornett attended an unofficial negotiation session with the Cook County Bureau of Human Resources Bureau Chief Maureen O'Donnell. At this meeting Cornett proposed a salary step increase schedule for all the employment positions within the Unit, and provided a spreadsheet of her proposal, (February 8th step schedule). Cornett proposed a step increase schedule of nine steps consisting of five initial steps followed by four longevity steps. The February 8th step schedule identified the salary each job title would receive at each step. Cornett explained that the salaries on the spreadsheet were based upon the calculations of a ½% salary increase between each of the five initial steps, a 10% increase between the fifth initial step and the first longevity step, and a 1% increase between each of the four longevity steps. O'Donnell laughed at Cornett's calculations and stated that "that was a little rich." O'Donnell stated that the District may not agree to all the terms proposed in the step schedule. Cornett then provided O'Donnell with the electronic file of the February 8th step schedule from a flash drive that O'Donnell downloaded to her laptop computer.

On February 8, O'Donnell's assistant e-mailed the February 8th step schedule to the District's Chief Attorney Dennis White, stating "Please see attached." White then forwarded the step schedule to the District's Chief Financial Officer Mark Thomas, and stated "Attached please find the latest proposal from the [Union] which in excess is to shift the employee members to a wage scale that includes step increases retroactively to January 1, 2009." In a separate conversation, White instructed Thomas to calculate the financial impact the proposed step

¹ All dates occurred in 2012 unless otherwise stated.

increase schedule would have on the District. Based upon the conversation he had with White, Thomas understood that the initial steps had a step increase of ½% and there was a 1% increase between each longevity step. White and Thomas did not specifically discuss the increase between the fifth initial step and the first longevity step. On February 15, Thomas e-mailed White, the District's Superintendent Arnold Randall and the District's outside attorney Hubert Thompson. Thomas informed them that he thought that there was a typo on the February 8th step schedule because "basically at one point [the Union did] some math with a '10%' annual increase when I am assuming they meant to use '1%'."

February 17th negotiating session

The second official bargaining session was held on February 17. Cornett, T.A. Long, Samuel Richardson Jr. and others represented the Union. Keino Robinson, one of the District's Senior Attorneys, White, Thompson, and Randall represented the District. Cornett formally proposed the salary step increase matter and provided a copy of the February 8th step schedule to all the District's representatives. The District did not address CFO Thomas' concern over the 10% "typo" in the Union's calculations in the step schedule.

February 24th negotiating session

The parties held their third official bargaining session on February 24. Cornett, Long, Richardson, Local President William Logan, and Business Representative Ramon Williams represented the Union. Robinson, White, Thompson, and others represented the District. The District presented the step scale spreadsheet (February 24th step schedule) that Thomas and his staff prepared. The formulas and the salaries from the February 24th step schedule were the same formulas and salaries used in the February 8th step schedule. The February 24th step schedule identified the salaries articulated in the February 8th step schedule and included the retroactive cost of each step for each position based upon the increases proposed by the Union. Immediately prior to the meeting, White modified a printed copy of the February 24th step schedule by writing "1%" above the step chart and drawing a line toward the 5th initial step (Step 5) box on the chart, and then made photocopies for distribution at the meeting. At the beginning of the meeting Thompson explained that there was an error at Step 5, "this column should reflect a 1% increase." The Union did not object to Thompson's explanation and the meeting continued. Cornett testified that Thompson informed the Union that the District found

an error in the formulation of the step increase on the excel chart and that she understood Thompson to be referring to the calculation of the 1% increases, but not in the calculation of either the ½% or the 10% increases.

As the meeting progressed the parties reached an agreement on several issues. The parties memorialized any changes to the February 24th step schedule at the bottom of the document. The written changes are as follows: Each job title would receive a 2.25% salary increase retroactive from January 1, 2011. The step schedule would be retroactive upon retirees and employees active at the time of approval. The side letter was to have the “same wording” with a “new signature.” The step scale would not be retroactive for seasonal employees. The step increases would be implemented as of July 1, 2011. Each job title would receive a 3.75% salary increase retroactive from February 1, 2012. Thompson signed the spreadsheet on the District’s behalf, and Logan signed the spreadsheet on the Union’s behalf.

Sometime between February 24 and March 1, Thompson e-mailed Williams and attached what Thompson’s e-mail described as “the revised version of a new collective bargaining agreement [that] contains the tentative agreements to which the parties agreed.” Thompson did not include the agreed upon step schedule. On Thursday, March 1, at 3:02pm Williams asked Thompson for a clean copy of the step schedule so he could present it to the union members for ratification. On March 1, at 3:46pm, Thompson provided Williams with a step increase schedule (March 1st step schedule). The March 1st step schedule calculated the step increase between Step 5 and the first longevity step (Step 6) at 1%. Williams testified that by the time the e-mail arrived he had completed work for the day and did not view the e-mail until after the Union members ratified the Successor Agreement.

The union scheduled a meeting for March 2 at 5pm for the Union members to vote on whether to ratify the Successor Agreement, including the step increase schedule. Williams testified that because the District had not yet complied with his request for a clean copy of the step schedule, he created his own spreadsheet consistent with the formulas used in the February 24th step schedule (March 2nd step schedule) that calculated the step increase between Step 5 and Step 6 at 10%. On March 2, the union’s members voted and ratified the proposed Successor Agreement, including the March 2nd step schedule.

On April 12, Robinson e-mailed Williams the revised copy of the contract and informed Williams that the “only thing you need to add are the wage charts from the excel spreadsheet that

I sent. It should be ready for your signature.” On April 20, Williams informed White that the March 1st step schedule was incorrect and did not match the union’s records. On April 23, Thompson e-mailed Robinson an attachment of the February 24th step schedule and indicated that the spreadsheet reflects “the agreed upon step increase schedule.” On April 27, Lori Boguslawski from the District reviewed the February 24th step schedule, and informed White and Robinson that the February 24th step schedule was based upon the formulas used in the February 8th step schedule which used a 10% increase, and that this was revised in the March 1st step schedule to correctly reflect that the step increase between Step 5 and Step 6 at 1%. On June 15, Robinson forwarded Boguslawski’s e-mail to Williams, and explained that the March 1st step schedule contains the correct formulas. The record does not indicate whether the parties signed a successor collective bargaining agreement, and if they did which step schedule, if any, was included in such agreement.

Arbitration Award

After several discussions the parties were unable to agree as to whether the agreed upon February 24th step schedule indicated a 1% increase between Step 5 and Step 6 or a 10% increase between Step 5 and Step 6. The parties agreed to binding arbitration on the matter. An arbitration hearing was held on November 30, and the Arbitrator issued a decision on December 28. The Arbitrator framed the issue as “[d]id the [District] fail to implement the salary schedule from the current Collective Bargaining Agreement? If not, what is the remedy?” The Arbitrator found that there was no meeting of the minds as to the at-issue step increase, and that there was “no agreement on the 10% step increase and that the appropriate intent was to have a 1% step [increase]” at the at-issue step. As of the hearing date before the Board, Charging Party’s appeal of the Circuit Court’s order affirming the Arbitration Award is pending before the Illinois Appellate Court.

III. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Respondent’s acts and conduct constitute three separate violations of the Act. First, Respondent violated Section 10(a)(7) and 10(a)(1) of the Act by failing and refusing to execute a document memorializing the terms of the tentative agreement reached on February 24. Second, the Respondent violated Section 10(a)(4) and (10)(a)(1) of the Act by failing and refusing to execute a document memorializing the terms of

the tentative agreement reached on February 24. Third, the Respondent violated Section 10(a)(4) and 10(a)(1) by failing and refused to implement all the terms of the Successor Agreement which were reached on February 24.

The Union argues that the District violated Sections 10(a)(4), and 10(a)(7), when it failed to reduce to writing an agreed upon wage scale that included a 10% step increase to writing, and when the District failed to sign such an agreement. The District argues that its actions do not constitute unfair labor practices because the Board is bound by the findings of the Arbitrator who determined that the parties did not agree to the 10% step increase, and that even absent the Arbitrator's determination, the evidence is clear that the parties did not in fact agree to the terms as articulated by the Union.²

IV. DISCUSSION AND ANALYSIS

A. Arbitration Award

The Board is not bound to enforce the Arbitration Award because the Board's authority stems exclusively from the Act, and Sections 7 and 8 of the Act provide that arbitration proceedings are governed by the Uniform Arbitration Act (UAA), 710 ILCS 5/16 (2000), as amended. Under the UAA, all proceedings to compel, stay, vacate, or enforce an arbitration award are through the circuit court. Dep't. Cent Mgmt Serv. v. Am. Fed'n of State, Cnty. & Mun. Employees, AFL-CIO, 222 Ill. App. 3d 678, 682 (1st Dist. 1991). The Illinois Appellate Courts have repeatedly found that while the Board's sister agency, the Illinois Educational Labor Relations Board (IELRB), possesses the authority to review arbitration awards, this Board lacks such authority. Id. at 683-684; Dep't. Cent Mgmt Serv. v. Am. Fed'n of State, Cnty. & Mun. Employees, AFL-CIO, 197 Ill. App. 3d 503, 507 (4th Dist. 1990) (finding that given the similarities in the two statutes, because the Act expressly provides for judicial review of arbitration awards, and the Illinois Educational Labor Relations Act is silent on the matter, IELRB in fact possesses such authority to review arbitration awards).

While not expressly granted, the Board may enforce an arbitration award when a failure to comply with the award falls within the Board's authority. Section 10 of the Act grants the

² The record contains insufficient information for me to reach a finding as to whether the Respondent has or has not implemented the Successor Agreement, and the Charging Party does not address this allegation outside of the Complaint for Hearing, I therefore find that this argument is waived and will only address it in the Conclusions of Law herein.

Board the authority to adjudicate unfair labor practices, the Board does not enforce collective bargaining agreements, but as the Board has frequently stated, “it remains our function to police the collective bargaining process.” City of Clinton (Dr. John Warner Hospital), 29 PERI ¶ 167 (IL LRB-SP 2013); City of Chicago, 14 PERI ¶ 3010 (IL LLRB 1998); Cnty. of Winnebago (Cnty. Clerk and Cnty. Auditor), 7 PERI ¶ 2041 (IL SLRB 1990); Ill. Dep’ts. of Corr. and Cent. Mgmt Serv., 4 PERI ¶ 2043 (ISLRB 1988). As such, while the Board lacks the authority to directly review and enforce a grievance arbitration award, the Board and the Illinois Appellate Court have long held that the Board possesses the authority to review and enforce such an award when it is alleged that a party’s failure to abide by the award constitutes an unfair labor practice within the meaning of the Act because in failing to comply with the award it is also failing to comply with that process by which the award was reached. Dep’t. Cent Mgmt Serv. and Am. Fed’n of State, Cnty. & Mun. Employees, Council 31, 222 Ill. App. 3d 678, 685 (1st Dist. 1991); Cnty. of Tazewell, 19 PERI ¶ 39 (IL LRB-SP 2003); City of Loves Park, 18 PERI ¶ 2073 (IL LRB-SP 2002), *aff’d* City of Loves Park v. Ill. Labor Rel. Bd., Local Panel, 343 Ill. App. 3d 389 (2nd Dist. 2003). The unfair labor practice here stems from the allegation that the District did not implement the terms as agreed to on February 24th, not from either party’s allegation that noncompliance with the Arbitration Award violates the Act. Therefore, the Board is not bound to enforce the Arbitration Award because it lacks the authority to do so in this case.

B. Unfair Labor Practices

Neither the District’s failure to reduce the parties tentative agreement to writing nor its failure to execute such an agreement violated Sections 10(a)(7), 10(a)(4), and 10(a)(1) of the Act. Section 10(a)(7) of the Act states that it is an unfair labor practice for a public employer to “refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement.” Section 10(a)(4) of the Act states, in relevant part, that it is an unfair labor practice for a public employer to “refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit[.]” A public employer’s failure to execute a tentative collective bargaining agreement may constitute a violation of Sections 10(a)(4) and (1) of the Act because “a party’s commitment to live up to its agreements is the cornerstone of good faith bargaining and effective labor relations.” Ill. Dep’ts. of Corr. and Cent. Mgmt Serv., 4 PERI ¶ 2043 (IL SLRB 1988); see Cnty. of Cook and Sheriff of Cook Cnty., 26 PERI ¶ 13 (IL LRB-LP 2010); Cnty. of Cook (Cermak Health Serv.), 10 PERI

¶ 3009 (IL LLRB 1994); Ill. Dep'ts. of Corr. and Cent. Mgmt Serv., 4 PERI ¶ 2043 (IL SLRB 1988); City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988). An employer's refusal to reduce the collective bargaining agreement to writing and its refusal to sign the agreement violates Sections 10(a)(7) and 10(a)(4) of the Act if the employer has agreed to all of the terms of the proposed contract and there has been a meeting of the minds as to the meaning of those terms. Vill. of Frankfurt, 28 PERI ¶ 144 (2012 E.D.); City of Harvey, 18 PERI ¶ 2032 (IL LRB-SP 2002); Cnty. of Cook (Cermak Health Serv.), 10 PERI ¶ 3009 (IL LLRB 1994).

1. agreed upon terms

The terms of the step schedule as agreed to on February 24 are ambiguous because the signed document is ambiguous on its face. A contract term is ambiguous when it is reasonably susceptible to having more than one meaning. City of Northlake v. Ill. Fraternal Order of Police Labor Council, Lodge 18, 333 Ill. App. 3d 329, 338 (1st Dist. 2002). The record evidence contains conflicting evidence as to the terms of tentative agreement. With respect to the step increase schedule, the steps themselves are not identified in specific terms, i.e. 1% increase between the first and second initial step. Rather, the percentage increases are indicated in the amounts themselves, i.e. at Step 1 the Laborer receives an hourly rate of \$18.83, and at Step 2 the Laborer receives an hourly rate of \$18.93. As such, the parties reached an agreement to the actual amounts that would be paid to each employment title at each step increase, as evidenced by the February 24th step schedule that was signed by both parties. However, the 1% written above the Step 5 column is also a term to which the parties agreed, and it is the meaning of this term that is inconsistent with the salary amounts, because the salary increase from Step 4 to Step 5 indicates a ½% increase, but the salary increase from Step 5 to Step 6 indicates a 10% increase. Thus, the meaning of the 1% written over Step 5 is not clearly articulated on the face of the agreement.

2. meeting of the minds

The parties did not reach a meeting of the minds as to the 10% increase from Step 5 to Step 6. The District contends that the parties intended 1% salary increase from Step 5 to Step 6 of the step schedule, and the Union contends that the parties intended a 10% salary increase from Step 5 to Step 6. A meeting of the minds is evidenced by the objective conduct of the parties rather than a party's subjective belief. Paxton-Buckley-Loda Educ. Assoc. v. Ill. Educ'l Labor

Rel. Bd., 304 Ill. App. 3d 343, (4th Dist. 1999); Cnty. of Tazewell, 19 PERI ¶ 39 (IL LRB-SP 2003); City of Chicago (Police Dep't.), 14 PERI ¶ 3010 (IL LLRB 1998). The record indicates that in proposing the February 8th step schedule the Union intentionally proposed a 10% increase between the fifth initial step increase and the first longevity step increase, identified in the February 24th step schedule as Step 5 and Step 6 respectively. At the February 24th meeting, a District representative informed the Union that that “this column should reflect a 1% increase,” handwrote wrote “1%” over the step chart, and drew a line towards Step 5. Based upon those facts, I find that the evidence demonstrates that the District informed the Union that there was an error in the Step 5 formulation, not in the Step 6 formulation, nor any subsequent salaries resulting from such a formulation error. The objective evidence further demonstrates that the District informed the Union that the terms as identified were not in fact the terms that it was proposing, in that the salaries on the spreadsheet were not the actual salaries they were agreeing upon. Thus, I find that there is no objective meeting of the minds as to the salaries of each job title at Step 5 going forward. Therefore, the parties did not have a meeting of the minds that there would be a 10% salary increase at Step 6.

Therefore, because the terms of the agreement are ambiguous and the parties did not have a meeting of the minds as to the meaning of those terms, I find that neither the District’s failure to reduce the tentative agreement reached on February 24 to writing, nor the District’s failure to execute such an agreement violates Sections 10(a)(7), 10(a)(4), or 10(a)(1) of the Act.

V. CONCLUSIONS OF LAW

1. The Respondent did not violate Section 10(a)(7) and 10(a)(1) of the Act by failing and refusing to execute a document memorializing the terms of the tentative agreement reached on February 24, 2014.
2. The Respondent did not violate Section 10(a)(4) and (10)(a)(1) of the Act by failing and refusing to execute a document memorializing the terms of the tentative agreement reached on February 24, 2014.
3. The Respondent did not violate Section 10(a)(4) and 10(a)(1) by failing and refusing to implement all the terms of the Successor Agreement.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that that the complaint be dismissed.

VII. 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, 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 30th day of September, 2014.

**STATE OF ILLINOIS
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LOCAL PANEL**



**Deena Sanceda
Administrative Law Judge**