

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

International Brotherhood of Electrical Workers, Local 9,)	
)	
Charging Party)	
)	Case No. L-CA-14-012
and)	
)	
City of Chicago,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On August 8, 2013, the International Brotherhood of Electrical Workers, Local 9 (Charging Party) filed a charge in Case No. L-CA-14-012 with the Local Panel of the Illinois Labor Relations Board (Board) alleging that the City of Chicago (Respondent) engaged in an unfair labor practice within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The charge was then investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On January 27, 2014, the Board’s Executive Director issued a Complaint for Hearing. The Respondent filed an answer on February 4, 2014. In that answer, the Respondent contends that the instant matter should be deferred. The Respondent later filed a motion to defer (as well as a motion for variance) on March 4, 2014. The Charging Party responded to the motion to defer on March 14, 2014.

I. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Respondent unlawfully failed and refused to bargain in good faith when it unilaterally changed the manner in which it processes discipline without giving the Charging Party adequate notice or sufficient opportunity to bargain. The discipline policy at issue is established by the parties' collective bargaining agreement (CBA). The Respondent contends that the instant matter should be deferred to the CBA's grievance arbitration procedure. The Charging Party contends that deferral is inappropriate in this instance.

II. DISCUSSION AND ANALYSIS

The decision of whether to defer is governed in part by Section 11(i) of the Act. Pursuant to Section 11(i), if an alleged unfair labor practice involves the interpretation or application of a CBA and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement. To be clear, deferral is discretionary, not mandatory. City of Elgin, 30 PERI ¶8 (IL LRB-SP 2013); Chicago Transit Authority, 1 PERI ¶3004 (IL LLRB 1985). That being said, the Board traditionally makes use of the deferral doctrines of the National Labor Relations Board, which has a well-established policy of deferring cases to grievance arbitration at various stages of the proceedings. County of Cook and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990); Chicago Transit Authority, 1 PERI ¶3004.

The Board generally recognizes three types of deferral, reflecting three different factual scenarios: (1) "Collyer deferral," which concerns pre-arbitral deferral; (2) "Dubo deferral," which concerns deferral to pending arbitration; and (3) "Spielberg deferral," which concerns

post-arbitral deferral. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114 (IL LRB-SP 2003); City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Collyer Insulated Wire, 192 NLRB 837 (1971); Dubo Manufacturing Corporation, 142 NLRB 431 (1963); Spielberg Manufacturing Company, 112 NLRB 1080 (1955). Because it appears that the Charging Party has not initiated a grievance yet, a Collyer analysis is appropriate. City of Elgin, 30 PERI ¶8. Under Collyer, deferral is appropriate where (1) a question of contract interpretation is the center of the dispute, (2) the dispute arises within an established collective bargaining relationship where there is no evidence of enmity by the employer toward the union or employees' rights, and (3) the employer has credibly asserted its willingness to arbitrate the dispute. City of East Moline, 24 PERI ¶34 (IL LRB-SP 2008); Collyer Insulated Wire, 192 NLRB 837.

Here, it is undisputed that the parties have an established bargaining relationship and that their CBA provides the necessary grievance and arbitration machinery. In addition, there have been no allegations of anti-union hostility or animus, and the Respondent unequivocally asserts that it is willing to arbitrate the issue raised by the charge. (I therefore assume that the Respondent is willing to waive any applicable time limits or other procedural barriers.) Thus, the second and third elements of the Collyer test are readily satisfied.

Regarding the remaining element, I note that the Complaint for Hearing centrally emphasizes that the parties' CBA provides an opportunity for employees to dispute allegations of misconduct and seek review of discipline with a department head before the discipline is administered. Moreover, at its core, the Complaint for Hearing alleges that the Respondent unilaterally denied those bargained-for opportunities, and the Charging Party (in its response) ultimately asserts that that denial is a repudiation of the parties' CBA. Those circumstances

plainly indicate that this dispute centers on rights arising under the CBA and the contract language that addresses those rights. See City of Chicago, Department of Health, 7 PERI ¶3022 (IL LLRB 1991); City of Chicago, 6 PERI ¶3022 (IL LLRB 1990); City of Chicago, Chicago Fire Department, 6 PERI ¶3018 (IL LLRB 1990); City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); City of East St. Louis, 3 PERI ¶2011 (IL SLRB 1987); City of Skokie, 29 PERI ¶55 (IL LRB-SP G.C. 2012); City of Chicago, 6 PERI ¶3008 (IL LLRB H.O. 1990). Also, it logically follows that, if an arbitrator determines that no contract breach has occurred, the Board could dismiss the Charging Party's entire repudiation claim without the need for an unfair labor practice hearing. See City of Elgin, 30 PERI ¶8; City of Peoria, 14 PERI ¶2024 (IL SLRB 1998); Pace Northwest Division, 10 PERI ¶2023 (IL LRB-SP 1994); City of Chicago, 3 PERI ¶3007 (IL LLRB 1986). Accordingly, deferral is warranted.

III. ORDER

IT IS HEREBY ORDERED that the Respondent's motion to defer is granted. The Complaint for Hearing in Case No. L-CA-14-012 will be held in abeyance until the parties have fully completed the grievance arbitration process. Within 30 days after the termination of that process, a party may notify the Board of the termination and request that the Board review the award to determine whether to defer to the arbitrator's disposition. A party's request should contain a copy of the award along with a detailed statement of the facts and circumstances bearing on whether the proceedings were fair and regular and whether the award is consistent with the purposes and policies of the Act. If a party fails to make such a request within the time specified, the Board may dismiss the Complaint for Hearing upon request of another party or on the Board's own motion. It is also ordered that the parties inform the Board of any significant

delay in the grievance arbitration process or of any resolution of the matter prior to issuance of an award.

IV. EXCEPTIONS

Pursuant to Section 1200.135 of the Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on July 28, 2014.

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A handwritten signature in cursive script that reads "Martin Kehoe".

Martin Kehoe
Administrative Law Judge