

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

1/6/12

Darryl Spratt,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-09-066
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 30, 2009, Darryl Spratt (Charging Party) filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Parts 1200 through 1240 (Rules) alleging that the Amalgamated Transit Union (Respondent or Union) violated Section 10(b) of the Act. The charges were investigated in accordance with Section 11 of the Act and, on August 24, 2011, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing alleging that Respondent committed an unfair labor practice, violating Section 10(b)(1) of the Act.

I. BACKGROUND

On August 24, 2011 the Complaint for Hearing was issued on the Union addressed to the then president of the Union/Business Agent, Darrell Jefferson at 20 South Clark Street, Suite 850, Chicago, Illinois 60603. Pursuant to Section 1200.30(c) of the Rules, the Complaint was presumed received by the Union, three days later. Because the third day fell on a Saturday, according to Section 1200.30(a), the time period automatically extended to the next business day which was Monday, August 29, 2011. Pursuant to Section 1220.40(b) of the Rules, the Union

was required to submit its Answer to the Complaint within 15 days. Thus, a timely answer by the Union should have been postmarked by September 13, 2011. However, the Union did not file its Answer until December 1, 2011. The Complaint contained the following statement:

RESPONDENT IS HEREBY NOTIFIED that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, it must file an answer to this Complaint and serve a copy thereof upon the Charging Party within 15 days of the service of the Complaint upon it. Said Answer shall include an express admission, denial or explanation of each and every allegation of this Complaint. Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or conclusions alleged in the allegation. Failure to timely file an answer shall be deemed an admission of all material facts or legal conclusions alleged, and a waiver of hearing. The filing of any motions or other pleadings will not stay the time for filing an Answer.

On November 16, 2011, the undersigned issued an Order to Show Cause ordering the Union to show why a default judgment, consistent with Section 1220.40(b) of the Rules, should not issue. In its response, the Union's representative states that prior to August 6, 2011 the attorneys at Jacobs, Burns, Orlove & Hernandez represented the Union for approximately seven years. On August 6, 2011 the Union terminated this law firm and retained attorney Marty Stack as its in-house counsel. On September 12, 2011 the Union's parent labor organization, Amalgamated Transit Union International (International), imposed trusteeship on the Union. International suspended all Local 241 officers and appointed two International Vice-Presidents to manage the Union's affairs. It was not until October 5, 2011 that International terminated Marty Stack and rehired the attorneys at Jacobs, Burns, Orlove & Hernandez to represent the Union.

The Respondent states that neither the Union nor its current firm representatives were aware that a Complaint for Hearing had been issued or that prior counsel Marty Stack had not answered the complaint until it received the order to show cause. Respondent argues that Marty Stack's negligence should not be imputed on the Union. The Union argues that the Union was

placed in trusteeship the day the answer was due,¹ and both instances are extraordinary and mitigating circumstances warranting the Board to grant the Union leave to file a late Answer.

Lastly, the Union contends that in the alternative, pursuant to Section 1200.160 of the Rules and for the same reasons above, the Board should grant the Union a variance from the application of Section 1220.40(b)(3), and permit it to file a late Answer.

II. DISCUSSION AND ANALYSIS

The Union's arguments lack merit. Section 1220.40(b)(4) of the Rules provide that "leave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include, among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments." This standard requires a showing of unfair, unjust, or unconscionable circumstances; that there are meritorious defenses; and that the respondent was diligent in protecting its rights. City of Chicago v. Central National Bank, 134 Ill.App.3d 22 (1st Dist. 1985). None of these prerequisites are present herein.

The Union argues that Marty Stack's negligence should not be imputed on the Union and his negligence coupled with the timing of the trusteeship constitutes extraordinary circumstances. The Union contends that the Appellate Court has held that although a party is normally bound by the negligence of its legal counsel which resulted in a default judgment, a court may refuse to impute such negligence to the petitioner when mitigating circumstances are present. Lammert v. Lammert Industries, Inc., 46 Ill. App. 3d 667, 674 (1st Dist. 1977) citing Department of Public Works and Buildings v. O'hare International Bank, 44 Ill. App. 3d 934 (1st Dist. 1976); Mieszkowski v. Norville, 61 Ill. App. 2d 289 (2d Dist. 1965).

¹ The Answer was actually due September 13, 2011

Here the negligence does not reside with the Union's former counsel Marty Stack. Instead, the Board directed all communications to Union's President Darrell Jefferson. Also the timing of the trusteeship is unpersuasive as mitigating circumstances. Although the Union officers were suspended September 12, 2011, the Union was aware of the Complaint for Hearing approximately 13 days prior to the trusteeship. Once the trusteeship was imposed, the Union had an additional two days to contact the Board and seek an extension in filing its answer. Lastly, the Union was not diligent in protecting its rights as it did not file its Answer to the Complaint until December 1, 2011, only after the undersigned issued an Order to Show Cause.

In the alternative, the Respondent argues that the Board may grant the Union a variance from the application of Section 1220.40(b)(3)² when all three prongs of Section 1200.160 are met. Section 1200.160 provides the following:

The provision of this Part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

The Appellate Court also found that the denial of a variance would be unreasonable and unnecessarily burdensome if the defendant could show (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim in the original action; and (3) due diligence in filing the petition for relief. Cook County State's Attorney v. Illinois Labor Relations Board, 292 Ill.App.3d 1, 11 (1st Dist. 1997).

The first requirement of the variance test has been met. The filing deadline of Section 1220.40 is not statutorily mandated. Cook County, 292 Ill.App.3d at 7. The Respondent also

² Section 1220.40(b)(3) was previously 1220.40(c)(3) which was amended at 27 Ill. Reg. 7436, effective May 1, 2003.

argues that the granting of a variance would not prejudice the Charging Party, and that, under the mitigating circumstances of this case, it would be unreasonable to apply Section 1220.40(b)(3).

The second requirement is also satisfied because neither party would be injured by granting of the variance. Prejudice is less likely where issuance of the Complaint is significantly delayed and other evidence shows that “time was not of the essence for either the Union or the Board prior to the late filing.” Cook County State's Attorney v. Illinois State Labor Relations Board, 292 Ill. App. 3d 1, 6 (1st Dist. 1997) (where the Answer was filed three hours late and the Board issued the Complaint for Hearing almost five months after the union filed its charge and holding that an additional delay of less than a day was not likely to prejudice the plaintiff in any way). Similarly, the Complaint in this case was issued more than two years after the charge was filed and there was also no evidence that the Charging Party wanted urgency in resolving the issue. City of Ottawa, 27 PERI ¶ 6 (IL SLRB 2011) (even where the ALJ considered public policy encouraging speedy resolution of labor disputes, the Board adopted ALJ' s reasoning that such a policy alone could not signify prejudice where the party did not allege it). Therefore, there is no injury to the Charging Party in granting a variance in this matter.

However, the third variance requirement has not been met. The Respondent provides no evidence that applying the rule in this case is unreasonable or unnecessarily burdensome. The Union has neither demonstrated mitigating circumstances which would justify its late answer nor shown diligence in responding to the Complaint for Hearing or in seeking a variance from the Board's filing rules.

Again, the Union contends that it was not aware that a Complaint for Hearing had been issued and that its former counsel was negligent. However, the Complaint for Hearing was

served on the Union President along with every other document issued in this case including the Order to Show Cause by which the Union's representatives now respond. As such, the negligence in failing to file its Answer resides with the Union.

Moreover, a party cannot satisfy the third requirement where it was neither diligent in filing its answer nor diligent in seeking a variance. Wood Dale Fire Protection District v ILRB, 395 Ill. App. 3d 523, 533 (2nd Dist. 2009) (denial of variance proper where respondent filed late answer, did not request a variance for 24 days, offered counsel's negligence for its untimely answer and gave no explanation for delay in requesting the variance); First Transit/River Valley Metro, 26 PERI ¶ 38 (IL SLRB 2010) aff'd by unpub. order, Docket No. 3-10-0435 (3rd Dist. 2011); Village of Calumet Park, 17 PERI ¶ 2024 (IL SLRB 2001) aff'd by unpub. order, Docket No. 1-01-1520 (1st Dist. 2000) (variance denied where Respondent failed to file a timely answer and failed to request a variance until ALJ issued an Order to Show Cause, seven weeks later); City of Chicago Heights, 17 PERI ¶ 2026 (IL SLRB 2001) (variance denied where leave to file late answer was two weeks late).

This case is consistent with the above-mentioned decisions. The Union's answer was approximately three months late, along with its request for a variance. The Union relies on Cook County State's Attorney for the proposition that the Board is expressly permitted to waive its rules and should do so in this case. Cook County State's Attorney, 292 Ill. App. 3d at 8. The circumstances in Cook County State's Attorney are readily distinguishable because the answer in that case was filed only three hours late and the ALJ was aware of the recent changes in the attorneys handling the case. Here, the Answer was filed approximately three months late and the Union did not contact the undersigned regarding the changes in the handling of the case or to seek an extension.

The Union has not alleged a compelling reason for the delay and cannot demonstrate that the rule from which the variance is sought is, in this particular case, unreasonable or unnecessarily burdensome, and thus, cannot meet Section 1200.160(c). Accordingly, the Union waived its right to a hearing in this matter and admitted the material factual and legal allegations contained in the Complaint for Hearing. Metz v. Illinois State Labor Relations Board, 231 Ill. App. 3d 1079 (5th Dist. 1992), aff'g St. Clair County (Circuit Clerk), 6 PERI ¶ 2036 (IL SLRB 1990); Peoria Housing Authority, 11 PERI ¶ 2033 (IL SLRB 1995); Chicago Housing Authority, 10 PERI ¶ 3010 (IL LLRB 1994).

III. RESPONDENT'S ADMISSIONS

By failing to file a timely answer, the Respondent has admitted the following material facts and legal allegations as stated in the Complaint.

1. At all times material herein, the Chicago Transit Authority has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material herein, the CTA has been a unit of local government subject to the jurisdiction of the Board pursuant to Section 5(a) of the Act.
3. At all times material herein, the CTA has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. At all times material herein, the ATU, Local 241 (Respondent) has been a labor organization as defined in Section 3(i) of the Act.
5. At all times material herein, the Respondent has been the exclusive bargaining representative of persons employed by the CTA in various job classifications including that of Bus Operator. (Unit).
6. At all times material, the Local 241 and the CTA have been parties to a collective bargaining for the unit.
7. At all times material, the CTA has employed Spratt in the job classification of Bus Operator.

8. At all times material, Charging Party has been a public employee within the meaning of Section 3(n) of the Act.
9. At all times material, Charging Party has been a member of the Union.
10. At all times material, Darrell Jefferson has been the local Union president.
11. At all times material, Jefferson was Respondent's agent, authorized to act on its behalf.
12. In or about May 2005, Charging Party supported Michael Burton when he ran against Jefferson for the post of local Union president.
13. On or about December 19, 2007, the CTA terminated Spratt's employment.
14. On or about December 31, 2007, Respondent filed a grievance on Charging Party's behalf challenging the termination of his employment.
15. On or about January 15, 2008, Jefferson received notice from the CTA that it had denied the grievance.
16. Between December 2007 and June 2009, Spratt contacted Jefferson on numerous occasions to inquire as to the status of the grievance.
17. On the numerous occasions Spratt contacted Jefferson between December 2007 and June 2009, in every such instance, Jefferson told Spratt that there was nothing to report, the grievance was still pending.
18. In or around October 2009, Charging Party met with Jefferson.
19. During the meeting referenced in paragraph 18, Spratt inquired as to the status of the grievance referenced in paragraph 14.
20. During the meeting referenced in paragraph 18, in response to Spratt's inquiry referenced in paragraph 19, Jefferson told Spratt that because he supported Burton in the race for Union president, as referenced in paragraph 12, Charging Party has "a lot of making-up to do" before the Union would advance his grievance.
21. From on or about January 15, 2008 to date, Respondent has refused to advance Spratt's termination grievance as referenced in paragraph 14.

22. Respondent refused to advance Spratt's termination grievance referenced in paragraph 14 because of an in retaliation for Spratt's support for Burton in the election for local Union president.

23. By its acts and conduct described in paragraphs 21 and 22, Respondent violated Section 10(b)(1) of the Act.

IV. CONCLUSIONS OF LAW

Respondent violated Section 10(b)(1) of the Act by failing and refusing to advance Charging Party's grievance in retaliation for supporting a presidential candidate against Local 241 president, Darrell Jefferson.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the AMALGAMATED TRANSIT UNION, LOCAL 241, its officers and agents shall:

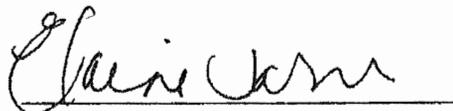
Cease and desist from:

1. Retaliating against public employees in the exercise of their rights guaranteed in the Act by failing to advance their grievances.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Notify the Charging Party that it will not refuse to advance his grievance in retaliation for engaging in protected union activities.
 - b) Advance Charging Party's grievance to arbitration in accordance with the grievance procedures in the collective bargaining agreement.
 - c) Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
 - d) Notify the Board in writing, within 20 days from the date of this Decision, of the steps Respondent has taken to comply herewith.

VI. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 6th day of January, 2012.



**Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board**