STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Shawn Hallinan,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-002
	)	
Fraternal Order of Police, Lodge 7,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 9, 2012, Shawn Hallinan (Charging Party) filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board 80 Ill. Admin. Code, parts 1200 through 1240 (Rules) alleging that Fraternal Order of Police, Lodge 7 (Respondent) violated Section 10(b)(1) of the Act by failing and refusing to provide Charging Party with information concerning the manner in which it has calculated the fair share fee assessment as paid by Charging Party and by failing and refusing to provide Charging Party with information concerning the manner by which he may object to the fair share fee calculation. The charges were investigated in accordance with Section 11 of the Act and, on September 25, 2012, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing. A hearing was conducted on March 6, 2013, in Chicago, Illinois, at which time the Charging Party presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs.

At hearing, the Respondent admitted all allegations in the complaint. The Charging Party then moved for sanctions and called witnesses in support of its position. The parties agreed to brief the issue of sanctions. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The Respondent has admitted all allegations in the complaint.
2. These admissions include the following material facts and legal allegations as stated in the Complaint:
    1) At all times material herein, Respondent has been a labor organization within the meaning of Section 3(i) of the Act.
    2) At all times material herein, City of Chicago (City) has employed the Charging Party as a police officer.
    3) At all times material herein, the Charging Party has been a public employee within the meaning of Section 3(n) of the Act.
    4) At all times material herein, the Charging Party has been a member of a bargaining unit composed of City employees (Unit).
    5) At all times material herein, the Respondent has been the exclusive representative of the Unit.
    6) At all times material herein, the City and Respondent have been parties to collective bargaining agreements (Agreements) setting out terms and conditions of employment for employees within the Unit, including the Charging Party.
    7) The Agreements described in paragraph [6] include, *inter alia*, payroll deduction of fair share fees from Unit employees who are not members of the Respondent.
    8) In or about 2006, the Respondent expelled the Charging Party as a member of the organization.
    9) By its acts and conduct as described in paragraph 8, the Charging Party became a fair share fee payer.
    10) Since in or about 2006, the Respondent has received fair share fees from the Charging Party by means of payroll deduction as provided in the Agreements.
    11) Since in or about 2006, and continuing thereafter, the Respondent has failed and refused to provide the Charging Party with information concerning the

manner in which it has calculated the fair share fee assessment as paid by the Charging Party.

12) Since in or about 2006, the Respondent has failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation resulting in the assessment as paid by the Charging Party.

13) By its acts and conduct as described in paragraphs 11 and 12, the Respondent has interfered with the exercise of rights guaranteed public employees by the Act, in violation of Section 10(b)(1) of the Act.

II. ISSUES AND CONTENSIONS

The issue is whether the Board should sanction the Respondent for denying allegations in its answer which it subsequently admitted to be true at hearing.

The Charging Party argues that the Board should award reasonable attorney's fees, incurred from the date of Respondent's Answer (October 5, 2012), because the Respondent made three false denials without justification and acted in bad faith by allegedly litigating two other cases on similarly false grounds.[1] The Charging Party contends that failure to award sanctions here would "encourage unions and employers to engage in bad faith conduct that increases...costs to individuals who assert their basic workplace rights."

The Respondent argues that sanctions are not warranted in this case because it has consistently tried to settle the matter by offering the Charging Party the original relief he sought in his charge. Further, the Respondent distinguishes the cases cited by the Charging Party in support of his motion for sanctions on the basis that Respondent's admittedly false statements do not amount to "relentless, repeated fraud," or a blatant long-term refusal to honor an ALJ order.

III. FACTS

On July 9, 2012, the Charging Party filed its charge against the Respondent. On July 11, 2012, Clarke Devereux, attorney for the Respondent, sent a letter to a Board investigator which

[1] The Charging Party also notes that the Respondent forcibly made the charging parties in those cases fair share members.

stated that the Respondent had offered to settle the matter but that counsel for the Charging Party had not responded to the Respondent's offer. The Respondent included its July 9, 2012, settlement offer in its correspondence to the Board. The letter stated that the Respondent could provide the Charging Party with the fair share information referenced in the charge. It did not offer a reimbursement of any fair share fees. Respondent's letter to the Board, however, stated that "the Lodge will make further attempt to settle this matter by offering to refund the Charging Party's fair share fees with interest for the year of 2012 in which he complained of his fair share assessment."

The letter to the Board further asserted that the Charging Party's allegations did not rise to an unfair labor practice because the Charging Party "never objected to nor requested an accounting of how the Lodge calculated the fair share fee nor [had he] ever complained about not having received such an accounting." The Respondent concluded that if the Charging Party had "simply made a request, he would have been provided with the information in question."

The Board reassigned the case to a different Board investigator. On August 1, 2012, the Respondent sent a letter to the new investigator repeating the assertions it made in its prior letter and adding that the Charging Party had not responded to the Respondent's initial offer to settle. The Respondent further cited precedent[2] that the Board can properly dismiss a fair share fee objection when a complete refund, plus interest, is tendered by the exclusive representative to the objector as a unilateral settlement.

On October 5, 2012, the Respondent filed its answer to the Complaint for Hearing and denied the following three allegations:

11. Since in or about 2006, and continuing thereafter, the Respondent has failed and refused to provide the Charging Party with information concerning the manner in which it has calculated the fair share fee assessment as paid by the Charging Party.
12. Since in or about 2006, the Respondent has failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation resulting in the assessment as paid by the Charging Party.

[2] Coon v. Ill. Educ. Labor Rel. Bd., 267 Ill. App. 3d 669, 671 (4th Dist. 1991).

13. By its acts and conduct as described in paragraphs 11 and 12, the Respondent has interfered with the exercise of rights guaranteed public employees by the Act, in violation of Section 10(b)(1) of the Act.

On March 6, 2013, the Respondent attended the Board's hearing and admitted all allegations in the complaint. At hearing, the parties stipulated that the remedy would include a refund of all fair-share fees paid by the Charging Party between November 1, 2005 and December 31, 2012.[3] The stipulation did not include interest.

In its opening statement, the Respondent asserted that it had been "ready, willing, and able" to refund the Charging Party's fair share fees since the Charging Party filed its charge. The Respondent did not make a settlement offer on the record. The parties indicated that they sought a Board order to dispose of the case. Respondent further asserted that that it sent the Charging Party's counsel a letter, dated July 9, 2012, "offering a full refund in the matter [and] offering a full inspection of [its] books." Contrary to the Respondent's assertion, that letter does not offer a full refund (or any refund) of Charging Party's fair share fees.

The Charging Party called Union Treasurer John Capparelli as a witness. Capparelli stated that he works with the Respondent's accountant to calculate fair share fees. He further suggested that he was responsible for sending the Charging Party a notice as to how he could object to the calculation of his fair share dues, but stated that he did not do so.[4]

On March 12, 2013, the Charging Party made an offer of settlement. That same day, the Respondent rejected it. On April 8, 2013, the Respondent informed the Board that it would not settle the case. Specifically, Respondent's attorney stated that "the FOP would not be accepting [Charging Party attorney] Mr. [Mike] Persoon's settlement offer and will not be making a counter-offer. Based on that, we would not be pursuing a settlement in the above."

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[3] For the reasons noted below, the Board cannot award such a broad remedy. The parties could have agreed to settle the case according to those stipulated terms; however, they did not do so.

[4] **Q:** Do you know if at any time the FOP has sent [Charging Party] Mr. Hallinan a notice as to how he can object to the calculation of his fair share dues? [Charging Party attorney Mike Persoon]
A: No, I haven't. [Capparelli]

IV. DISCUSSION AND ANALYSIS

The Charging Party's Motion for Sanctions is granted for Respondent's two denials of fact but not for Respondent's denial of a legal conclusion.

Section 11(c) of the Act provides that the Board has discretion to include an appropriate sanction in its order if a party has made allegations or denials without reasonable cause and found to be untrue, or has engaged in frivolous litigation for the purposes of delay or needless increase in the cost of litigation. The test for determining whether a party has made factual assertions which were untrue and made without reasonable cause is an objective one of reasonableness under the circumstances. Chicago Transit Auth., 16 PERI ¶ 3021 (IL LLRB 1999); Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999); Cnty. of Rock Island, 14 PERI ¶ 2029 (IL SLRB 1998), aff'd, 315 Ill. App. 3d 459 (3rd Dist. 2000). The test for determining whether a party has engaged in frivolous litigation is whether the party's defenses to the charge were not made in good faith or did not represent a "debatable" position. Chicago Transit Auth., 16 PERI ¶ 3021 (IL LLRB 1999); Cnty. of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty., 12 PERI ¶ 3008 (IL LLRB 1996); City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995). The only stated basis for sanctions in this case is the Respondent's denial of allegations in the complaint which the Respondent later admitted were true.

Sanctions are warranted here because the Respondent denied the allegation that it failed and refused to provide the Charging Party with information concerning Respondent's fair share fee calculation at a time when it knew such denials were false and because it made that denial without reasonable cause. First, the Respondent's correspondence to the Board indicates that on July 11, 2012, Respondent's counsel understood that the Respondent had not provided the Charging Party with information concerning the manner in which it calculated Charging Party's fair share fee assessment, even though it denied the same on October 12, 2012, when it filed its Answer. Specifically, on July 11, 2012 the Respondent admitted that it had not provided the Charging Party with such information and defended its failure by asserting that if the Charging Party had "made…a complaint or request, he would have been provided with the information in question." Thus, Respondent denied an allegation when it knew that denial was false.

Second, the Respondent should be sanctioned for this denial, even though the Respondent implies that it never expressly "refused" a request for such information, because the Respondent had no reasonable cause to deny the allegation in light of the case law and the language of the

complaint. Indeed, both the case law and the complaint show that the paragraph denied by the Respondent cannot be read to allege that the Respondent affirmatively denied the Charging Party's request.[5] First, case law demonstrates that this complaint cannot be construed as requiring the Charging Party to have made a request for that information because it provides that a Respondent-union violates the Act when it exacts fair share fees without informing payers how they were calculated, regardless of whether the fair share fee payers asked for that information. See Chicago Teachers Union v. Hudson, 475 U.S. 292, 306 (1986) (a Union cannot "require employees to object in order to receive information" while "leaving them in the dark about the source of the figure for the agency fee"); Combined Counties Police Ass'n (Schlechter), 6 PERI ¶ 2019 (IL SLRB 1990)(notice required by the Act concerning the manner in which a union calculates its fair share fees "must be given prior to the time the fee is exacted").

Next, the complaint's language shows that it cannot be read to allege that Respondent refused to provide the Charging Party such information, upon the Charging Party's request for it, because the Charging Party can prove the Respondent violated the Act under the instant complaint without demonstrating that the Respondent denied Charging Party's affirmative request. To illustrate, a charging party must prove all allegations in the complaint to prevail. If a complaint does not contain a specific factual allegation, then the charging party need not prove it. Here, the Charging Party need not prove that he made a request for fair share fee information because the complaint does not allege that he did. The Complaint therefore cannot be read to allege that Respondent refused to provide the Charging Party such information upon the Charging Party's request for it because it does not require the Charging Party to prove he ever made such a request. Thus, the Respondent should be sanctioned for its denial because the Respondent knew, at the time it answered the complaint, that it did not furnish the Charging Party with the fair share fee information and had no reasonable cause to deny its refusal.

Similarly, sanctions are warranted because the Respondent falsely denied, without reasonable cause, that it failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation. Here, the Respondent possessed correction information pertaining to that answer at the pleading stage, which was readily available to the Respondent without serious investigation or factual development,

[5] Respondent's correspondence to the Board states that the Charging Party had "never objected to nor requested an accounting of how the Lodge calculated the fair share fee" and that he had never "complained about not having received such an accounting."

because it was known to individuals at the top of the Respondent's hierarchy. Cnty. of Bureau and Bureau Cnty. Sheriff, 29 PERI ¶ 163 (IL LRB-SP 2013) (awarding sanctions for Respondent's false denial concerning its knowledge of Charging Party's protected activity where named Respondent, the sheriff, testified that he knew of Charging Party's protected activity at the time it occurred); but see, City of Bloomington, 26 PERI ¶ 99 (IL LRB-SP 2010) (granting leeway when respondent made clearly false denials, not debatable after a full factual development at hearing, when there were limits on the information available at the early stages of the adjudicative process). Indeed, Union Treasurer John Capparelli, an agent and officer of the Respondent-union—the very the individual who calculated the fair share fee—testified at hearing that he never sent the Charging Party such a notice. Thus, the Respondent had no reasonable cause to deny the allegation that it failed to provide the Charging Party with information concerning the manner by which he could object to the fee calculation.

Contrary to the Respondent's assertion, the Respondent's alleged attempt to settle this case is not a mitigating circumstance which renders sanctions inappropriate because the Respondent has cited no case law which supports that proposition.[6]

However, contrary to the Charging Party's contention, the Respondent did not make an untrue factual assertion without reasonable cause when it denied interfering with the exercise of rights guaranteed public employees by the Act, in violation of Section 10(b)(1) of the Act, because that statement was legal and not factual in nature. The Board's case law suggests that any untrue allegations or denials sufficient to support the imposition of sanctions must address issues of fact rather than issues of law. See Chicago Transit Auth., 19 PERI ¶ 12 (IL LRB-LP 2003) (addressing allegedly untrue "factual assertions" when ruling on a motion for sanctions), see also Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 (IL SLRB 1998), but see Wood Dale Fire Protection Dist. v. Ill. Labor Rel. Bd., 395 Ill. App. 3d 523, 535-36 (2nd Dist. 2009) (Court analyzed Respondent's assertion that its failure to file a timely answer

[6] Notably, even if such offers of settlement did mitigate a respondent's false denials in some cases, they should not do so here because the Respondent both misrepresented the nature of its settlement offer on the record and later revoked its offer altogether. First, the Respondent misrepresented the nature of its settlement offer by asserting it had offered the Charging Party a refund of its fair share fees. In fact, the Board's record reflects that the Respondent did not offer the Charging Party any money and only invited the Charging Party to inspect the Respondent's books. Second, the Respondent revoked its offer after the hearing in an April 8, 2013 email and affirmatively stated it would not settle the case. Thus, the Respondent's offers of settlement should not affect the Board's determination on the issue of sanctions.

did not constitute an admission of the legal conclusions in the complaint under the frivolous litigation prong of section 11(c)). Indeed, the fact that Section 11(c) already provides a separate avenue by which the Board may examine a party's legal assertions further suggests that the Act's drafters intended that "allegations or denials" made without reasonable cause include factual allegations and denials, but not legal ones. Here, Respondent's denial does not warrant the imposition of sanctions because its allegedly untrue assertion concerning the violation of Section 10(b)(1) sets forth a legal conclusion and is not an untrue statement of fact.

Thus, the Charging Party's Motion for Sanctions is granted in part and denied in part.

V. CONCLUSIONS OF LAW

1. Respondent violated Section 10(b)(1) of the Act by failing and refusing to provide the Charging Party with information concerning the manner in which it has calculated the fair share fee assessment as paid by the Charging Party and by failing and refusing to provide the Charging Party with information concerning the manner by which he may object to the fee calculation resulting in the assessment as paid by the Charging Party.
2. Charging Party's Motion for Sanctions is granted for Respondent's denial of the allegation that it "failed and refused to provide the Charging Party with information concerning the manner in which it has calculated the fair share fee assessment as paid by the Charging Party."
3. Charging Party's Motion for Sanctions is granted for Respondent's denial of the allegation that it "failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation."
4. Charging Party's Motion for Sanctions is denied with respect to Respondent's denial of the allegation that it violated Section 10(b)(1) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Fraternal Order of Police, Lodge 7, its officers and agents shall:

1. Cease and desist from:

    a. Restraining and coercing public employees in the exercise of the rights guaranteed by the Act.

    b. Collecting or receiving fair share fees deducted by the City of Chicago from the Charging Party per the collective bargaining agreement with the City of Chicago until such time as the Respondent has provided the Charging Party with information concerning the manner in which it has calculated the fair share fee assessment, as paid by the Charging Party, and until the Respondent has provided the Charging Party with information concerning the manner by which he may object to the fair share fee calculation.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

    a. Provide the Charging Party with information concerning the manner in which it has calculated the fair share fee assessment, as paid by the Charging Party, and provide the Charging Party with information concerning the manner by which he may object to the fair share fee calculation.

    b. Notify the City of Chicago to cease the deduction of fair share fees from Charging Party until such time as the directive in paragraph (a) above has been followed.

    c. Refund to the Charging Party a sum in the amount of all his fair share monies collected after January 11, 2012,[7] a date six months prior to the date on which the charge was filed, plus any interest on those fees if they were held in escrow by Respondent.[8]

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[7] The Board must limit the remedy to the time period after six months prior to the date on which the charge was filed because the Act's six-month limitation period is jurisdictional and cannot be waived. See City of Dolton, 17 PERI ¶ 2017 (IL SLRB 2001), (citing Charleston Comm. Unit School Dist No. 1 v. Ill. Educ. Labor Rel. Bd., 203 Ill. App. 3d 619 (4th Dist. 1990))(finding that Section 11(a)'s six-month limitation period is jurisdictional), overruling Combined Counties Police Assoc. (Slechter), 6 PERI ¶ 2019 (IL SLRB 1990) (rejecting Respondent's argument to limit remedy to time period after six-month limitation period only because Board found limitation period waived).

[8] The Board has stated that "while Section 11(c) of the Act authorizes the Board to order backpay with seven percent interest, there is no similar express authorization with respect to an ordered refund of fair share fees and we cannot find that the legislature intended to do so." See, Am. Fed. of State, Cnty. and Mun. Empl., Council 31 (McMann), 8 PERI ¶ 2050 (IL SLRB 1992) (7% interest on improperly assessed

d. Reimburse the Charging Party for his reasonable expenses, including costs and reasonable attorney's fees, incurred in preparing to litigate the factual issues of (1) whether Respondent failed and refused to provide the Charging Party with information concerning the manner in which it has calculated the Charging Party's fair share fee assessment and (2) whether Respondent failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation resulting in the assessment as paid by the Charging Party, and in seeking sanctions against the Respondent under Section 11(c) of the Act.

e. 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.

f. Notify the Board in writing, within 20 days from the date of this Decision, of the steps Respondent has taken to comply herewith.

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 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

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fair share fees was denied, but interest earned on those fees while held in escrow by Respondent was granted).

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 1st day of July, 2013

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

L-CB-13-002

The Illinois Labor Relations Board, Local Panel, has found that the Fraternal Order of Police, Lodge 7, has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from in any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.

WE WILL cease and desist from collecting or receiving fair share fees deducted by the City of Chicago from the Shawn Hallinan per the collective bargaining agreement with the City of Chicago until such time as we have provided Shawn Hallinan with information concerning the manner in which we have calculated the fair share fee assessment, as paid by Shawn Hallinan, and until we have provided Shawn Hallinan with information concerning the manner by which he may object to the fair share fee calculation.

WE WILL provide Shawn Hallinan with information concerning the manner in which we have calculated the fair share fee assessment, as paid by Shawn Hallinan, and provide Shawn Hallinan with information concerning the manner by which he may object to the fair share fee calculation.

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

WE WILL notify the City of Chicago to cease the deduction of fair share fees from Shawn Hallinan until such time as the directive in the paragraph above has been followed.

WE WILL refund to Shawn Hallinan a sum in the amount of all his fair share monies collected after January 11, 2012, a date six months prior to the date on which the charge was filed, plus any interest on those fees if they were held in escrow by Respondent.

WE WILL reimburse the Shawn Hallinan for his reasonable expenses, including costs and reasonable attorney's fees, incurred in preparing to litigate the factual issues of (1) whether Respondent failed and refused to provide the Charging Party with information concerning the manner in which it has calculated the Charging Party's fair share fee assessment and (2) whether Respondent failed and refused to provide the Charging Party with information concerning the manner by which he may object to the fee calculation resulting in the assessment as paid by the Charging Party, and in seeking sanctions against the Respondent under Section 11(c) of the Act.

DATE _____

_____

Fraternal Order of Police, Lodge 7

(Union)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

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Chicago, Illinois 60601-3103
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