

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

Megan Curry,)	
)	
Charging Party,)	
)	
and)	Case No. L-CB-13-007
)	
Fraternal Order of Police, Lodge 7,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On July 31, 2012, Megan S.W. Curry (Charging Party) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) 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, alleging that the Fraternal Order of Police, Lodge 7 (Respondent) violated Section 10(b)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on September 10, 2012, the Executive Director of the Illinois Labor Relations Board dismissed the charges. The Charging Party filed timely exceptions, and by an order of December 29, 2012, the Board remanded this matter for consideration of whether the Respondent failed to provide the Charging Party with an accounting of its fair share fee calculations as required under Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986). Following an investigation into these allegations in accordance with Section 11 of the Act, the Board’s Executive Director issued a Complaint for Hearing on March 22, 2013.

The parties provided a stipulated record in lieu of hearing, and each filed timely position statements. 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, as follows:

1. At all times material hereto, the Respondent has been a labor organization within the meaning of Section 3(i) of the Act; and

2. At all times material hereto, the Charging Party has been a public employee within the meaning of Section 3(n) of the Act;

II. ISSUES AND CONTENTIONS

The Charging Party was expelled from membership in the Respondent labor organization and thus became a fair share member of the bargaining unit. The Charging Party alleges that, though she requested information concerning the manner in which the Respondent's fair share dues are calculated and the method by which she could object to those calculations, the Respondent failed or refused to provide her with this information until May 10, 2013, five days before the instant charge was scheduled to proceed to hearing. In doing so, the Charging Party argues, the Respondent failed to meet the requirements set forth by the Supreme Court in Chicago Teacher's Union v. Hudson, *supra*, in violation of Section 10(b)(1) of the Act.

The Respondent argues that the Charging Party's expulsion from membership was rescinded, thus voiding her fair share member status. The Respondent urges the Board to consider this rescission to be the full relief to which the Charging Party is entitled.

III. FINDINGS OF FACT

The parties have stipulated to the following facts:

At all times material, Megan S.W. Curry has been a public employee employed by the City of Chicago Police Department (Employer). On or about December 16, 2012, Curry was promoted to the rank of Police Sergeant. Prior to her promotion, and during the period of time relevant to this charge, Curry was employed in the rank of Police Officer.

At all times material, the Respondent has been the exclusive bargaining representative of a bargaining unit that includes employees in the rank of Police Officer employed by the Employer. Prior to her December 16, 2012, promotion, Curry was a member of this bargaining unit. The Respondent and the Employer are subject to a collective bargaining agreement setting out the terms and conditions of employment for members of the bargaining unit. This agreement includes a fair share agreement within the meaning of Section 3(g) of the Act that provides for a payroll deduction of fair share fees for bargaining unit members who are not members of the Respondent.

Prior to July 2012, Curry was a member of the Respondent labor organization. On July 12, 2012, the Respondent issued an order expelling Curry from membership. That order was rescinded at the Respondent's August 7, 2012, meeting after it was determined that Curry had

not received proper notice prior to her expulsion. Curry was informed of this rescission on August 20, 2012, and was notified at that time that she was again considered a member of the Respondent.

During the period from her July 12, 2012, expulsion to August 20, 2012, when Curry was notified of her reinstatement, Curry was a fair share member. As a result, Curry was a fair share member during some or all of the pay period for the pay dates of July 16, August 1, August 16, and September 1, 2012. Pursuant to the agreement between the Respondent and the Employer, on each pay date the Employer must deduct full dues in the amount of \$21.75 from the wages of members of the Respondent and fair share dues in the amount of \$12.00 from the wages of non-members. On each of the relevant pay dates full dues rather than fair share dues were deducted from Curry's wages.

As a result of the Respondent's order of expulsion Curry was a fair share member of the bargaining unit represented by the Respondent for 40 days. Curry requested information from the Respondent about the basis for the calculation of the fair share dues paid by fair share members. On May 10, 2013, more than nine months after the instant charge was filed and ten months after Curry was expelled from membership, the Respondent provided Curry with its notice provided to fair share fee payers. This notice included the Respondent's computations used to determine the amount of the fair share fee dues paid by fair share fee payers.

IV. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides that it is an unfair labor practice for a labor organization or its agents to restrain or coerce public employees in the exercise of rights guaranteed by the Act. 5 ILCS 315/10(b)(1) (2010). While the Act permits an exclusive bargaining representative and an employer to enter into a fair share agreement requiring members of the bargaining unit who are not members of the labor organization to pay their proportionate share of the costs of collective bargaining, contract administration, and pursuing matters affecting wages, hours, and other conditions of employment, the fee required of these fair share members may not include any contribution for the election or support of any candidate for political office. 5 ILCS 315/3(g) (2010) and 5 ILCS 315/6(a) (2010).

In addition to the Act's express limitations on fair share fees, fair share agreements must contain certain procedural safeguards designed to protect a fair share member's First Amendment rights. In Aboud v. Detroit Board of Education, 431 U.S. 209 (1977), the Supreme

Court determined that, while there is no constitutional barrier to fair share agreements between public employers and exclusive bargaining representatives, a labor organization cannot collect any fees for the support of ideological causes not germane to its duties as a collective bargaining agent under such an agreement. Because such fair share agreements may impact a dissenting employee's freedom to associate for the advancement of ideas or to refrain from doing so, fair share agreements must be designed with procedural safeguards to provide fair share fee payers a fair opportunity to identify the impact of a fair share agreement on their constitutional interests and to assert a meritorious First Amendment claim. Chicago Teacher's Union v. Hudson, 475 U.S. at 303. Therefore, the Supreme Court determined in Hudson that a labor organization must provide fair share members with an adequate explanation of the basis for the fair share fee and a reasonably prompt opportunity to challenge the amount of the fee. Id. at 310. Additionally, a fair share payer's interests are not sufficiently protected if he or she is required to make an objection in order to receive information regarding the basis for the fair share fee. Id. at 306. This explanation must be provided prior to the time the fee is exacted, allowing sufficient time for fee payers to determine whether or not to object to the fair share fee before that fee is collected by a labor organization. Combined Counties Police Association, (Edward Schlecter), 6 PERI ¶ 2019 (IL SLRB 1990) (citing Tierney v. City of Toledo, 824 F.2d 1497 (6th Cir. 1987), Gilpin v. AFSCME, 643 F. Supp. 733 (C.D. Ill. 1986), aff'd 875 F.2d 1310 (7th Cir. 1989)).

In this case, Respondent concedes that it failed to provide Curry with the notice required under Hudson.¹ However, it argues that the legal effect of rescinding its expulsion order was to void Curry's expulsion. Additionally, the Respondent alleges that the Charging Party was not denied any benefits of union membership during the period of her expulsion, with the exception of being denied entry into the meeting at which she was expelled from membership. Therefore, the Respondent requests that its rescission of Curry's expulsion be the just and equitable resolution of this charge.² However, this is not the full relief which the Charging Party has requested, nor the relief to which she is entitled.

¹ In its Answer to the Complaint for Hearing in this matter, Respondent initially argued that Curry was not a fair share payer because she was improperly charged the full membership fee during the 40 day period in which she was not a member of the Respondent labor organization. However, the Respondent has since stipulated to Curry's fair share member status, and it is thus clear that she was entitled to notice under Hudson.

² The Respondent also argues that it rescinded Curry's expulsion prior to the filing of this charge, thus demonstrating its efforts to void Curry's fair share member status before her complaint to the Board. However, it is clear that this charge, filed July 31, 2012, was filed a full seven days prior to any action on the Respondent's part to rescind Curry's expulsion.

The concern that a fair share member may be required to finance union activity that he or she is not entitled to benefit from did not give rise to the concerns addressed in Hudson; Respondent's argument that Curry was not denied any benefit of union membership while she was a fair share member is thus not relevant to this charge. Instead, the safeguards provided for in Hudson, in particular the notice required to fair share fee payers, are designed to allow fair share members to determine the effect a fair share agreement between their government employer and a labor organization may have on their First Amendment interests. While Curry's expulsion from union membership and resulting fair share member status were not voluntary, upon becoming a fair share member she was nonetheless constitutionally entitled to the information necessary to determine the impact of the Respondent's fair share fee requirements on her right to associate or refrain from association. Because these notice requirements are designed to allow fair share members to determine whether their fees are being used to support a labor organization's ideological activity not germane to its collective bargaining duties, the fact that Curry was charged the full member dues for each relevant pay period is of particular concern. Not only was she deprived of the required notice, but the additional \$9.75 withheld from her wages during the four pay periods at issue arguably was not part of Curry's proportional share of chargeable expenses.

Without providing the required notice, the Respondent was not entitled to collect fair share fees from the Charging Party. Therefore, the Charging Party is entitled to a refund of the fees collected while she was a fair share member of the bargaining unit.

V. **CONCLUSIONS OF LAW**

The Respondent violated Section 10(b)(1) of the Act by collecting fair share fees from the Charging Party under its agreement with the Employer without providing the Charging Party with notice of the basis for the calculation of the fair share fee as required by the Act.

VI. **RECOMMENDED ORDER**

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

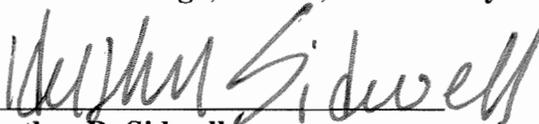
1. Cease and desist from restraining and coercing public employees in the exercise of the rights guaranteed by the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:

- a. Refund to the Charging Party a sum in the amount of all the fair share fee monies collected from the Charging Party under the relevant fair share fee agreement plus interest at a rate of 7% per annum;
- b. Post the attached notice at all places ordinarily used by the Fraternal Order of Police, Lodge 7, to communicate information to the bargaining unit employees at issue;
- c. Notify the Board in 30 days from the date of this decision of the steps taken to comply with this recommended order.

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 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 2nd day of July, 2013,



Heather R. Sidwell
Administrative Law Judge
Illinois Labor Relations Board

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

L-CB-13-007

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 Megan S.W. Curry per the collective bargaining agreement with the City of Chicago until such time as we have provided Megan S.W. Curry with information concerning the manner in which we have calculated the fair share fee assessment, as paid by Megan S.W. Curry, and until we have provided Megan S.W. Curry with information concerning the manner by which she may object to the fair share fee calculation.

WE WILL provide Megan S.W. Curry with information concerning the manner in which we have calculated the fair share fee assessment, as paid by Megan S.W. Curry, and provide Megan S.W. Curry with information concerning the manner by which she 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 Megan S.W. Curry until such time as the directive in the paragraph above has been followed.

WE WILL refund to Megan S.W. Curry a sum in the amount of all her fair share monies collected from July 16, 2012, to September 1, 2012, plus any interest on those fees if they were held in escrow by Respondent.

DATE _____

Fraternal Order of Police, Lodge 7
(Union)

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