

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Countiss Perkins,

Charging Party

and

Chief Judge of the Circuit Court of Cook
County (Cook County Juvenile Temporary
Detention Center),

Respondent

Case No. S-CA-09-225

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 7, 2009, Countiss Perkins (Charging Party) filed an unfair labor practice charge in the above-captioned case with the State 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 (Rules) alleging that the Chief Judge of the Circuit Court of Cook County (Cook County Juvenile Temporary Detention Center) (Respondent) had violated Section 10(a)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on July 29, 2009 the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing.

The Complaint alleged a violation of the Act based on the actions of the Temporary Administrator (TA) of the Cook County Juvenile Temporary Detention Center (JTDC). According to the Complaint, the TA is the Respondent's "agent authorized to act on its behalf." The Respondent denied this allegation of the Complaint. On May 24, 2011, the Administrative Law Judge (ALJ) issued an Interim Order Granting in Part and Denying in Part Charging Party's

Motion to Amend the Complaint. On September 8, 2011, the ALJ issued an Order Bifurcating the Hearing so that the jurisdictional issue set forth below could be resolved before conducting a hearing on the alleged violation of the Act:

whether, at all times material, Earl Dunlop, the Transitional Administrator, has been an agent of Respondent and/or joint employer with Respondent.

The parties stipulated to the authenticity of the nine documents in the record. They fully briefed the issue regarding the TA's status as an agent of Respondent and/or a joint employer with Respondent. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following:

I. BACKGROUND

Named juveniles detained at the JTDC filed a lawsuit in the Federal District Court for Northern Illinois on June 15, 1999 seeking declaratory and injunctive relief under 42 U.S.C. § 1983 to redress violations of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The named plaintiffs and the class they represent sought relief for alleged violations of their rights due to practices and living conditions at the JTDC. The named plaintiffs filed their complaint in federal district court on behalf of themselves and all persons who have been, are, or will be confined at the JTDC. The defendants in the federal lawsuit were Cook County and the superintendent of the JTDC at the time the lawsuit was filed.

In December 2002, the parties entered into a Memorandum of Agreement (MOA) to resolve the lawsuit without an admission of guilt. The MOA stated that its purpose was "to assure that defendants house residents [at the JTDC] in an environment that, at a minimum, is safe and clean, is free from excessive and unfair discipline, and provides adequate care and services, including adequate food, shelter, medical services, mental health care, and provides an adequate environment for educational services."

In furtherance of the MOA, the defendants were made responsible for the creation and implementation of a plan to “describe appropriate hiring standards and procedures as well as a plan for staff training.” The MOA also directed the defendants to “maintain an adequate system of staff oversight and discipline which reasonably assures that the alleged incidents of abuse, neglect, and other staff misconduct are promptly investigated and appropriate action is taken where warranted.” A paragraph of the MOA created independent and impartial monitor(s) to evaluate and report to the parties on implementation and compliance with the MOA.

On August 14, 2007, Judge John A. Nordberg of the Federal District Court for the Northern District of Illinois signed an Agreed Order Appointing a Transitional Administrator in the JTDC. That Agreed Order provided as follows:

Introduction

1. The purpose of this Order is to appoint a Transitional Administrator (TA) with the authority and responsibility to bring the Cook County Juvenile Temporary Detention Center (JTDC) into substantial compliance with the Memorandum of Agreement (MOA), the Agreed Supplemental Order (ASO), and the Modified Implementation Plan (MIP) and, if consistent with Illinois law, to prepare the JTDC for the transition of administrative authority over its operations to the Office of the Chief Judge of the Circuit Court of Cook County.
2. *The TA shall be an agent of this Court* and is specifically appointed with the authority and responsibility to put in place at the JTDC qualified management to implement the requirements of the MOA, the ASO, and the MIP. (Emphasis added).

* * *

4. The Court appoints Mr. Earl L. Dunlop as the TA.

Responsibilities of the TA

5. The TA shall have the following responsibilities.
 - a. To develop and implement systems at the JTDC to achieve substantial compliance with the MOA, the ASO, and the MIP.
 - b. To oversee, supervise, and direct all . . . functions relating to the operation of the JTDC consistent with the authority vested in the position of Superintendent of the JTDC and to restructure the JTDC into an institution that substantially complies with the MOA, the ASO, and the MIP.

* * *

- f. To exercise his authority as TA in a manner consistent with the laws, policies and regulations of Cook County and the law of the State of Illinois. *However, where those laws interfere with the TA's responsibilities set out in this Order, the TA, or either party, may petition the Court to waive any requirements imposed thereby. Should the TA determine that it is necessary for him to bypass any policy or regulation of Cook County, he shall inform the parties who may petition this Court for the appropriate relief. If the parties elect not to petition this Court, the TA shall utilize his discretion to bypass a policy or regulation of Cook County where he believes it is necessary under the circumstances.* (Emphasis added).

Authority Granted to the TA

6. The TA shall have all reasonable powers necessary to bring the JTDC into substantial compliance with the MOA, the ASO, and the MIP, including:
- a. All powers relating to the operation of the JTDC, which in usual circumstances, are exercised by the Superintendent of the JTDC.
* * *
 - b. The power to establish the budget for all functions relating to the operation of the JTDC (JTDC budget) which shall be presented to the Board of Commissioners as part of the annual appropriation process.
* * *
 - c. The power to establish personnel policies; to create, abolish, or transfer positions; and to hire, terminate, promote, transfer, and evaluate management and staff of the JTDC.
 - d. The power to negotiate new contracts and to renegotiate existing contracts, relating to the operation of the JTDC consistent with the provisions of paragraph 5(f).
 - e. The power to retain consultants to assist with bringing the JTDC into substantial compliance with the MOA, the ASO, and the MIP
 - f. The power to restructure and reorganize any management and administrative structures of the JTDC.
* * *
 - i. The power to petition the Court for any additional powers necessary to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP.

* * *

7. Office of the Transitional Administrator

- a. Upon appointment, the TA shall promptly establish an Office of the Transitional Administrator (OTA). The OTA shall include reasonable staff to effectuate this Order.
- b. Cook County shall be responsible for the reasonable expenses incurred in operating the OTA.

* * *

- h. *As this Court's representative, appointed to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP, the TA shall have absolute immunity from liability.*

* * *

12. The Court retains jurisdiction of this matter for all purposes, including the entry of any additional orders necessary to enforce this Order, the MOA, the ASO, or the MIP.

* * *

15. If, for any reason, the TA, referred to in paragraph 4 above, resigns or becomes unavailable to continue, or the parties agree or the Court determines that he should be replaced, the parties will attempt to agree on the identity of a successor TA. If the parties are unable to agree on a successor TA after twenty-one (21) days, each party shall submit to the Court its nomination of one person to assume the appointment of the TA, together with a statement of the reasons that person is qualified to be appointed the TA. The Court will select one of the party's nominees as the TA or, at its discretion, may solicit additional nominees from the parties.

* * *

On May 8, 2008 Judge Nordberg signed an Order which addressed an emergency motion made by the TA. That emergency motion requested to retain a private company to provide temporary security staffing and sought other relief. The Teamsters, Local No. 714, filed objections to that motion. In relevant part, the Order of that date reads as follows:

3. [T]he Court finds that the JTDC is dangerously understaffed and that, as a result of this understaffing, the health and safety of the residents is at risk. This situation constitutes an emergency. The Court also finds that Mr. Dunlop's [the TA] proposed plan to hire temporary security staff and to shift the assignments of some permanent staff to use them more effectively is a reasonable and narrowly-tailored response to the crisis at the JTDC and that it is necessary to bring about compliance with (i) this Court's order of December 2002, approving the Memorandum of Agreement negotiated by the parties; (ii) the Agreed Supplemental Order entered in May 2006; and (iii) the Agreed Order Appointing a Transitional Administrator entered in August 2007. This Court finds that the Union's proposed alternative of putting temporary staff workers into existing vacancies on the day shifts would necessarily increase the danger to both residents and staff because the new workers have not worked at this facility and do not have personal relationships with the residents.

* * *

5. The Court, with the agreement of the TA and the plaintiffs, and without objection from the defendants, therefore grants the TA's Emergency Motion, overrules [Teamsters Local No. 714's] objections, and awards the following relief:

* * *

a. Pursuant to Paragraph 5(f) of this Court's August 14, 2007, Agreed Order Appointing a Transitional Administrator, the Court orders that any and all laws of the State of Illinois and Cook County Ordinances that may in any manner, restrain hinder or prevent the Transitional Administrator from contracting for the temporary services of a private security firm, including Ordinances . . . , are hereby suspended in order to carry out the relief sought in the Emergency Motion.

* * *

c. *The court hereby suspends any and all laws of the State of Illinois and ordinances of the County of Cook that require compliance with any provision of the current Collective Bargaining Agreement ("CBA") between Cook County and [Teamsters Local No. 714], as well as said provisions of the CBA itself, including Section 4.11 [entitled Job Posting and Bidding] of the CBA, to the extent necessary and appropriate in the TA's judgment to provide adequate security and safe conditions in the JTDC.* (Emphasis added).

* * *

On June 22, 2010, Judge James F. Holderman granted the TA's Motion to Modify the federal court's August 14, 2007 Order. That modification provided as follows:

Paragraph 7(h) of the Court's August 14, 2007 Order . . . is hereby deleted and replaced with the following language: "Effective August 14, 2007, the TA and his staff shall have the status of officers and agents of this Court and as such shall be vested with the same immunities as vested with this Court. Also effective August 14, 2007, the County shall indemnify the TA and members of his staff to the same extent that Cook County and/or the Office of the Chief Judge of the Circuit Court of Cook County is obligated to indemnify the Superintendent of the JTDC."

II. DISCUSSION AND ANALYSIS

The Charging Party maintains that the Board has jurisdiction to hear this matter because the TA is an agent of the Respondent and/or the TA and Respondent are joint employers. According to the Charging Party, the TA's designation as an agent of the federal court does not preclude him from also being Respondent's agent in the instant matter before the Board. In addition, the Charging Party contends that both the TA and the Respondent exercise the requisite control over the Charging Party's terms and conditions of employment to be deemed joint

employers. However, a thorough examination of the record demonstrates that the TA is neither Respondent's agent nor its joint employer.

In its decision in Illinois Nurses Association and State of Illinois, Department of Central Management Services (Dep't of Corrections), 4 PERI ¶2034((IL SLRB 1988), the Board recognized that under Illinois law the primary consideration in determining whether an entity is acting as an agent is the nature and degree of control exercised over the work being performed. See Dumas v. Lloyd, 6 Ill. App. 3d 1026, 1029, 286 N.E. 2d 566 (1st Dist. 1972). In particular, the relationship of principal and agent exists if the principal has the right or the duty to supervise and control, and also has the right to terminate the relationship at any time. Hulke v. International Manufacturing, 14 Ill. App. 2d 5, 33, 142 N.E. 2d 717 (2^d Dist. 1957).

Applying this case law to the facts herein, the TA is not an agent of the Respondent since Respondent cannot unilaterally terminate its relationship with the TA. The record shows that the TA was created in August 2007 as an agent of the federal district court. Paragraph 15 of the Agreed Order of August 14, 2007, specifically provides that the defendants in the federal case—Cook County and the Superintendent of the JTDC—must obtain the agreement of the plaintiffs in the federal lawsuit if they want to replace him. As the Charging Party acknowledged in its brief, there is no meaningful distinction between the named defendants in the federal lawsuit and the Respondent in the instant case before the Board. Accordingly, based on the August 2007 Agreed Order, the Respondent lacks the authority to terminate its relationship with the TA. I thus conclude that the TA is not an agent of the Respondent under Illinois law.

Even if the TA were considered an agent of the Respondent pursuant to general agency law in the state, it cannot meet the more demanding agency language in Section 3(o) of the Act. See INA and State of Illinois, Dep't of Central Management Services, (Dep't of Corrections), 4

PERI ¶2034 (IL SLRB 1988). In relevant part, Section 3(o) of the Act defines a public employer as follows:

“public employer” or “employer” means the State of Illinois; any political subdivision of the State, unit of local government or school district; authorities including departments, divisions, bureaus, boards, commissions, or other agencies of the foregoing entities; **and any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees.** (Emphasis added).

The language in bold of this cited excerpt limits coverage of the Act to only those situations where the “agent” acts “on behalf of” the public entity. However, the August 14, 2007 Agreed Order of the federal court plainly states that the TA is the Court’s representative, appointed with the purpose of bringing the JTDC into substantial compliance with the MOA, the ASO, and the MIP. As such, the TA is not “acting on behalf of” the Respondent but rather the federal court which empowered him. Consequently, the TA is not an agent of Respondent within the meaning of Section 3(o) of the Act.

The Charging Party’s argument that the TA is a joint employer with the Respondent is also without merit. Because the TA fails to satisfy the Act’s definition of a “public employer,” it cannot be a joint employer with Respondent. Neither the Board nor the Illinois courts have found a joint employer relationship when the entity with ties to a named respondent was other than a public employer. See American Federation of State, County, and Municipal Employees, Council 31 v. Illinois Labor Relations Board, 216 Ill. 2d 569, 21 PERI ¶171 (2005); INA and State of Illinois, Dep’t of Central Management Services, (Dep’t of Corrections), 4 PERI ¶2034 (IL SLRB 1988).¹

¹ In 1991, the Illinois Appellate Court for the First District vacated its own 1990 decision regarding this Board dismissal, and dismissed the appeal of the Board’s decision for want of jurisdiction. INA v. ISLRB, 244 Ill. App. 3d 1, 9 PERI ¶4013 (1st Dist. 1991).

A brief review of the Act's Section 3(o) definition of public employer confirms that the TA does not meet its requirements. First, the TA is not a subdivision of the State, a unit of local government, or an authority of such an entity. In addition, the TA is not "acting on behalf of" those entities. Instead, the TA was created by a federal district court as its representative and agent to secure substantial compliance with the terms of a settlement in a lawsuit.

The Charging Party's reference to a passage from the Illinois Supreme Court's decision in AFSCME, Council 31 v. ILRB, 216 Ill. 2d 569 (2005), does not support its position that the TA is a joint employer with Respondent. In that case, the Court held that the private entity—thus a non-public employer—and the respondent were not joint employers, and confirmed the Board's decision that it had no jurisdiction to hear the case.

Moreover, the analysis by the state's highest court is inapposite because the facts presented before the Illinois Supreme Court were not similar to those of the instant case. In particular, the employees who were allegedly subject to a joint employer relationship in that case were the *employees of the private entity* with which the respondent, a public employer, was supposedly a joint employer. However, in the case at bar, the employees allegedly subject to a joint employer relationship are *the JTDC employees employed by the Respondent, a public employer*, with whom the TA is supposedly a joint employer.

The determination that the TA is neither an agent of Respondent nor joint employer leads to the inevitable conclusion that the Board is without jurisdiction over the TA or any action of the TA. This conclusion is consistent with the Executive Director's order of April 2009 in Case No. S-CA-09-087 dismissing an unfair labor practice charge for lack of jurisdiction over the TA.

III. CONCLUSIONS OF LAW

The Transitional Administrator is not Respondent's agent, nor a joint employer with the Respondent. Therefore, the Board lacks jurisdiction to hear this case.

IV. RECOMMENDED ORDER

This case is dismissed.

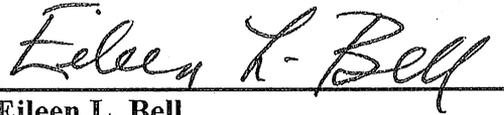
V. EXCEPTIONS

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 26th day of January 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

A handwritten signature in cursive script, reading "Eileen L. Bell", written over a horizontal line.

Eileen L. Bell
Administrative Law Judge

