

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Teamsters, Local Union #916,)		
)		
Charging Party)		
)		
and)	Case No.	S-CA-09-248
)		
State of Illinois, Department of)		
Central Management Services)		
(Department of Transportation),)		
)		
Respondent)		

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 1, 2009, Teamsters, Local Union #916 (Charging Party) filed an unfair labor practice charge in Case No. S-CA-09-248 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the State of Illinois, Department of Central Management Services, Department of Transportation (Respondent or IDOT) violated Sections 10(a)(4) and (1) of the Illinois Public Relations Act, 5 ILCS 315 (2010), as amended (Act). The charge was investigated in accordance with Section 11 of the Act and, on July 23, 2009, the Board’s Executive Director issued a Complaint for Hearing. The parties agreed to waive a hearing in this matter in lieu of stipulated facts and other evidence. After full consideration of the parties’ stipulations, evidence, objections, arguments, and briefs, and upon the entire record of the case, I recommend the following.¹

¹ The case was initially assigned to Administrative Law Judge (ALJ) Sylvia Rios. On March 1, 2010, it was reassigned to ALJ Joseph Tansino. On May 26, 2010, the parties submitted a document to ALJ Tansino entitled “Revised Joint Stipulation of Facts and Exhibits”, which contained stipulated facts and exhibits, as well as Charging Party’s objections to those facts and exhibits. On June 3, 2010, ALJ Tansino granted Charging Party’s request to strike Section E and its corresponding exhibits from the “Revised” stipulations. ALJ Tansino also granted Respondent leave to file a separate submission of facts and exhibits, which were previously included in Section E of the “Revised” stipulations. In addition, he

I. PRELIMINARY FINDINGS

The parties stipulated to the following:

1. At all times material herein, Respondent has been a public employer within the meaning of Sections 3(o) of the Act.
2. At all times material herein, Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a) of the Act.
3. At all times material herein, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The first issue is whether the unfair labor practice charge was timely filed. Respondent argues that the charge was untimely filed. Charging Party argues that the charge was timely filed. Additionally, Charging Party asserts that Respondent waived its timeliness argument.

The second issue is whether Respondent violated Section 10(a)(4) and (1) of the Act by refusing to provide Charging Party with requested information. The information that Respondent failed to produce is a history of all racial discrimination and/or harassment allegations made by a particular bargaining unit employee. Charging Party argues that the information was relevant and necessary for it to defend another bargaining unit employee in a grievance dispute involving charges of racial discrimination and harassment. Charging Party contends that the Illinois Freedom of Information Act exemptions, the confidentiality

directed Respondent to file an addendum to the "Revised" stipulations to include relevant chapters of Respondent's personnel policy. On June 4, 2010, Respondent filed its "Employer's Submission of Facts and Exhibits" and "Addendum to Revised Joint Stipulation of Facts and Exhibits." On July 16, 2010, Charging Party submitted its brief. On September 14, 2010, Respondent submitted its brief. On October 13, 2010, Charging Party submitted its reply brief. In August 2011, the case was reassigned to the undersigned ALJ.

requirements in the Illinois Human Rights Act, and Respondent's personnel policy do not excuse Respondent from providing the requested information. Finally, Charging Party asserts that Respondent did not use good faith in its alleged attempt to accommodate Charging Party.

Respondent maintains the requested information is not relevant or necessary for Charging Party to carry out its representative function. Further, Respondent asserts it is precluded from disclosing and/or not required to disclose the information due to Illinois Freedom of Information Act exemptions, the confidentiality requirements in the Illinois Human Rights Act, and Respondent's personnel policy. Moreover, Respondent claims that it is not required to produce the information because it has a legitimate confidentiality interest, which outweighs Charging Party's need for the information. In addition, Respondent argues it used good faith in trying to accommodate Charging Party's request. Finally, Respondent claims that the matter is moot because the requested information has been provided to Charging Party.

III. STIPULATED FACTS

Michael Rentschler and Elmer Taborn are employed as highway maintainers for Respondent. Rentschler and Taborn are members of the bargaining unit represented by Charging Party. In October 2007, Taborn filed a complaint with Respondent alleging that some of his co-employees, including Rentschler, were subjecting him to racially discriminatory conduct and had created a hostile working environment. On November 2007, Taborn filed charges of racial discrimination with the Illinois Department of Human Rights, which were automatically cross-filed with the United States Equal Employment Opportunity Commission. Taborn also filed similar charges against other employees in March 2007, June 2008, and February 2009 with the Illinois Department of Human Rights.

On June 4, 2008, Respondent conducted investigatory interviews of Rentschler and two of his co-workers, Robert Lynch and Steve Farmer. On August 5, 2008, Charging Party sent an information request to Respondent. The letter stated:

We have been apprised that Mr. Elmer Taborn has once again filed allegations alleging various charges of discrimination against certain employees of IDOT, all of whom are members of the bargaining unit represented by Teamsters Local #916. As you are aware, Mr. Taborn has previously filed such charges with the Illinois Human Rights Department and a Fact Finding Conference is presently scheduled for August 14, 2008. We believe the new allegations purportedly filed by Mr. Taborn are relevant as to the charges previously filed against his co-employees. Thus, by means of this correspondence, this law firm, on behalf of Teamsters' Local #916, respectfully requests that any and all allegations leveled by Mr. Taborn against his co-employees who are members of the bargaining unit represented by Teamsters' Local #916 be provided to this office. Indeed, if the stance of the Illinois Department of Transportation is that these charges or allegations are confidential in nature, would you please cite the statutory and/or regulatory provision the Department relies upon in asserting such confidentiality. I would request that you provide this information to this office within (5) days of your receipt of this correspondence. Should we not hear from you, we will take the appropriate action necessary to protect the rights of the employees accused.

On March 2, 2009, Charging Party again sent a letter requesting information. The letter stated:

Because the Local Union has recently received indications that new, additional adverse employment actions are being contemplated by IDOT against members of the bargaining unit represented by Teamsters' Local #916, purportedly due to the allegations previously made by Mr. Elmer Taborn, the Local Union believes that it is imperative to review the history of the (racial discrimination and/or harassment) accusations made by Mr. Taborn against co-employees of IDOT, (racial discrimination and/or harassment) allegations made against management personnel of IDOT, (racial discrimination and/or harassment) allegations made against the Department itself, and/or (racial discrimination and/or harassment) allegations made against any other individual or entity while Mr. Taborn has been an employee of the State of Illinois . . . we are respectfully requesting any and all documentation possessed by the Illinois Department of Transportation pertaining to said type of accusations having been made by Mr. Taborn during his employment tenure with the State of Illinois. Note that we have previously made a modified version of this request to the Illinois Department of Transportation back in August, 2008, but we have not yet received any response. . . Thus, we are renewing that request and further requesting that said documentation and

information be provided to this law firm within ten (10) days of your receipt of this correspondence. Note that should the Department believe that any of the documentation or correspondence requested herein contain information that is of a confidential or proprietary interest, the Local Union has no objection to IDOT expurgating the specific information prior to forwarding the same to this office . .

On March 19, 2009, Charging Party sent a letter to Respondent requesting a response to its March 2, 2009 information request. On March 26, 2009, Charging Party sent a letter to Respondent, which renewed its information request. On March 26, 2009, Respondent sent a letter to Charging Party denying the information request, stating:

The documents that your letter requests are records that IDOT is precluded from disclosing to anyone due to the confidentiality provision of the Illinois Human Rights Act (775 ILCS 5/7A-102(B)). This provision makes the type of documents that you are seeking confidential unless their release is agreed to by both parties, in this case Mr. Taborn and IDOT. Further, since these matters involve information obtained through an ongoing administrative investigation, IDOT is not able to provide the records under the Illinois Freedom of Information Act.

On April 6, 2009, Charging Party sent a letter to Respondent, which again renewed its request for information.

On May 14, 2009, Rentschler was directed to attend a pre-disciplinary hearing set for May 20, 2009, and advised that he was entitled to union representation. In May 2009, prior to the May 20, 2009 pre-disciplinary hearing, Respondent provided Charging Party and Rentschler with a redacted version of the September 3, 2008 IDOT investigation memorandum, which related to Taborn's allegations of harassment by Rentschler. Except for Rentschler, employee names were redacted.

At the May 20, 2009 pre-disciplinary hearing, Charging Party and Rentschler were provided with a statement of charges. On June 1, 2009, Respondent's Deputy Director of Highways, mailed a letter to Charging Party and Rentschler notifying Rentschler that he was suspended without pay for ten days effective at the close of business June 7, 2009.

On May 27, 2009, Charging Party filed a grievance asserting that IDOT had violated the collective bargaining agreement by not producing the requested documents. Charging Party did not proceed to arbitration on this grievance.

On June 1, 2009, Charging Party filed this unfair labor practice charge with the Board requesting, *inter alia*: “any and all documents previously delineated within said correspondence and facsimile pertaining to the prior accusations of unlawful discrimination purportedly perpetrated by co-employees of Elmer Taborn.”

On June 2, 2009, Charging Party filed a grievance on behalf of Rentschler alleging that his suspension was in violation of the collective bargaining agreement. On July 23, 2009, the parties agreed to proceed to arbitration. The parties have mutually continued this arbitration.

On March 26, 2010, Respondent provided Charging Party with an unredacted copy of the September 3, 2008 IDOT investigation memorandum. On April 9, 2010, Respondent gave Charging Party a redacted copy of IDOT’s October 27, 2008 Civil Rights Committee’s Report to IDOT Secretary Sees. During the week of April 29, 2010, Respondent gave Charging Party an unredacted copy of the June 4, 2008 investigatory interview with Rentschler and redacted copies of the June 4, 2008 IDOT investigatory interviews with Lynch and Farmer.

IV. DISCUSSION AND ANALYSIS

A. Timeliness

Respondent asserts the unfair labor practice charge was untimely filed and thus the complaint must be dismissed. Charging Party asserts Respondent waived the timeliness argument because Respondent did not raise the argument until it filed its brief. In addition, Charging Party asserts that even if the argument was not waived, the unfair labor practice was

timely filed. I find that the timeliness argument was not waived and the unfair labor practice was timely filed.

1. Waiver

Section 11(a) of the Act states, in relevant part, that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board . . . unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice.” Section 1220.40(c)(2) of the Rules states:

Whenever a complaint for hearing is issued, the respondent must file an answer within 15 days after service of the complaint . . . 2) The answer shall also include a specific, detailed statement of any affirmative defenses including, but not limited to, allegations that the violation occurred more than six months before the charge was filed.

Respondent asserts that the complaint should be dismissed as untimely because the alleged misconduct occurred on August 5, 2008, when Charging Party made its original information request, more than six months prior to the charge filing. Charging Party in turn argues that Respondent waived the timeliness argument because it did not raise the argument as an affirmative defense in its answer to the complaint or through an amended answer, but instead, first raised this argument in its post-hearing brief. Charging Party cites Combined Counties Police Association (Slechter), 6 PERI ¶ 2019 (IL SLRB 1990), and City of Highland Park, 16 PERI ¶ 2005 (IL SLRB ALJ 2000), for the proposition that the language of Section 11(a) is a procedural requirement, which if not raised as an affirmative defense is waived.

Charging Party is correct in noting that in Slechter, the Board, in following National Labor Relations Board precedent, determined that the six-month statute of limitations was procedural, not jurisdictional, and could be subject to waiver. 6 PERI ¶ 2019. However, in City of Dolton, the Board reversed Slechter finding that the six-month statute of limitation period is

jurisdictional, not procedural, as the Illinois Appellate Court had found in a case involving identical language in the Illinois Educational Labor Relations Act. City of Dolton, 17 PERI ¶ 2017 (IL SLRB 2001), citing Charleston Community Unit School Dist. No. 1 v. Illinois Educational Labor Relations Board, 203 Ill. App. 3d 619 (4th Dist. 1990). Since Section 11(a)'s six-month limitation period is jurisdictional, it is not subject to waiver and a party need not raise it as an affirmative defense. City of Dolton, 17 PERI ¶ 2017. Therefore, Respondent has not waived its claim that the charge is untimely.

2. Timely Charge

Respondent has the burden of proving that the charge is untimely. Sheriff of Jackson County, 14 PERI ¶ 2009 (IL SLRB 1998); County of Cook, 4 PERI ¶ 3012 (IL LLRB 1988). Therefore, Respondent must establish, by a preponderance of the evidence, that the charge was not filed and served within six months of when Charging Party knew or reasonably should have known of, the alleged unlawful conduct. City of St. Charles, 23 PERI ¶ 50, (IL LRB-SP 2007); Moore v. Illinois State Labor Relations Board, 206 Ill. App. 3d 327 (4th Dist. 1990); Service Employees International Union, Local 46 (Evans), 16 PERI ¶ 3020 (IL LLRB 2000).

Respondent argues that the six month limitations period began to run on August 5, 2008, the date Charging Party made its original information request to Respondent. Charging Party argues that the limitations period began to run on June 1, 2009, the date Rentschler was first issued discipline.

I find that the limitations period began to run on March 26, 2009, when Respondent sent a letter to Charging Party stating that it was refusing to provide the requested information. On that date, Charging Party was put on notice that Respondent did not intend to fulfill its request.

The sixth month limitations period began on March 26, 2009. The unfair labor practice charge was filed on June 1, 2009 and, thus, was timely filed.

B. Information Request

1. Relevant and Necessary

Respondent asserts that the information requested was not relevant and necessary for Charging Party to fulfill its statutory duty. Charging Party asserts it was relevant and necessary because it involved a bargaining unit employee's grievance.

Under Section 10(a)(4), it is an unfair labor practice for a public employer "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." Parties to a collective bargaining relationship have a duty to share information with one another when that information is important to the parties' abilities to fulfill their bargaining roles, including the processing of grievances. City of Chicago (Chicago Fire Department), 12 PERI ¶ 3015 (IL LLRB 1996), citing Chicago Transit Authority, 4 PERI ¶ 3013 (IL LLRB 1988) and State of Illinois (Department of Central Management Services), 9 PERI ¶ 2032 (IL SLRB 1993). The duty to bargain in good faith requires employers to provide information within their control to exclusive bargaining representatives where the information is relevant and necessary in order that the exclusive representative may properly discharge its statutory duty. County of Champaign, 19 PERI ¶ 73 (IL LRB-SP 2003); Village of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1993), aff'd sub nom Village of Franklin Park v. Illinois State Labor Relations Board, 265 Ill. App. 3d 997 (1st Dist. 1994.)

A violation of 10(a)(4) and (1) is found where (1) the employer has failed to act in good faith, or (2) the employer's failure to produce the requested information has meaningfully interfered with the union's ability to fulfill its role as a bargaining representative. City of Bloomington, 19 ¶ PERI 11 (IL LRB-SP 2003), citing Chicago Transit Authority, 4 PERI ¶ 3013. The requested information must be directly related to the union's function as a bargaining representative and reasonably necessary for the performance of that function. Id. Relevance is determined by a discovery standard, not a trial type standard and thus "a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process." City of Chicago, 23 PERI ¶ 120 (IL LRB-LP 2007), citing Proctor & Gamble Manufacturing Co. v. NLRB, 603 F.2d 1310, 1315 (8th Cir. 1979).

Here, Respondent maintains that the requested information regarding Taborn's discrimination and harassment allegations was not relevant or necessary for Charging Party to carry out its representative function. I disagree. The Board has held that "it is unquestionably crucial to the policies of the Act that parties comply expeditiously and in good faith with each other's legitimate requests for grievance-related information." Chicago Transit Authority, 4 PERI ¶ 3013; see also State of Illinois, Department of Central Management Services, 9 PERI ¶ 2032. In this case, Charging Party sought information to investigate bargaining unit member Rentschler's suspension for allegedly harassing Taborn and defend Rentschler in the resulting grievance dispute. In addition, the Board has held that investigative reports, created in response to an employee's alleged misconduct, which may contain the investigator's report of what witnesses stated during the investigation, must be disclosed absent a particularized showing by the employer of an overriding need to maintain confidentiality. County of Cook, Oak Forest Hospital, 8 PERI ¶ 3004 (IL LLRB 1992), aff'd sub nom County of Cook v. Illinois Local Labor

Relations Board, 266 Ill. App. 3d 53 (1st Dist. 1994). Thus, the information Charging Party requested was presumptively relevant and necessary.

2. Affirmative Defense

Respondent asserts that the information is precluded from disclosure due to the Illinois Freedom of Information Act, the Illinois Human Rights Act, and Respondent's personnel policies.² I find that the requested information is not precluded from disclosure.

Although information pertaining to terms and conditions of employment for employees is presumptively relevant; certain affirmative defenses, including the confidentiality of the requested information or employee privacy, are taken into consideration. City of Chicago, 23 PERI ¶ 120; Chicago Transit Authority, 4 PERI ¶ 3013. The party asserting a confidentiality defense has the burden of proof. City of Chicago (Chicago Fire Department), 12 PERI ¶ 3015.³ Information must be produced if its necessity to the representative for statutory purposes outweighs the legitimate interests of the employer in controlling access to the information. Chicago Transit Authority, 4 PERI ¶ 3013, citing City of Chicago, 4 PERI ¶ 3025 (IL LLRB 1988).

² Respondent also argues that the requested information is not relevant because the evidence *would* be barred at arbitration by the collateral source evidence rule and/or barred because it is not proper character evidence. Respondent cites Young v. James Green Management, Inc., 327 F.3d 616 (7th Cir. 2003), which states, "[a] matter is collateral if it could not have been introduced into evidence for any purpose other than contradiction." This argument is entirely speculative. It is based upon what may or may not happen at a future arbitration. In addition, Respondent did not provide any support for the proposition that an employer's duty to provide information within its control to the exclusive bargaining representatives is dispensed with if the information may potentially be barred by the collateral source evidence rule and/or is not proper character evidence. Thus, I find this argument without merit.

³ Respondent cites City of Rockford, 8 PERI ¶ 2014 (IL SLRB 1992), for the proposition that a charging party has the burden of proof as to the confidential nature of information. Initially, I note that this is a Hearing Officer's Recommended Decision and Order, and thus it is non-precedential. Nevertheless, City of Rockford, does state that "the burden of proof as to the confidential nature of that information is upon the charging party." The decision cites Washington Gas Light Co., 273 NLRB 116 (1984) and McDonnell Douglas Corp., 224 NLRB 881 (1976) for this proposition. However, it appears that the Hearing Officer inadvertently used the word "Charging Party" instead of "Respondent", because both of those NLRB decisions clearly state that the party asserting the claim of confidentiality, Respondent in this case, has the burden of proof.

a. Illinois Freedom of Information Act

Initially, Respondent maintains that it has a confidentiality interest stemming from the exemptions in the Illinois Freedom of Information Act. 5 ILCS 140/7 (2010).⁴ Respondent argues that it was not required to produce the information to Charging Party because the information was exempt from disclosure under the Illinois Freedom of Information Act. However, Respondent did not provide any support for its proposition that it was prohibited from providing information to Charging Party due to Illinois Freedom of Information Act requirements. Moreover, the fact that information may be exempt from public disclosure under a state's "freedom of information" law, does not mean that an employer cannot be required under applicable labor law to provide the information to a union to which it owes a duty to bargain. See Wayne County, 23 MPER ¶ 43 (Michigan Employment Relations Commission 2010); County of Yates, 27 PERI ¶ 3080 (NY PERB 1994); United States Postal Service, 305 NLRB 997 (1991). Thus, I find Respondent's argument without merit.

⁴ The Illinois Freedom of Information Act provides that the following is exempt from disclosure:

- (a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law. . .
- (c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. . . .
- (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, . . . , but only to the extent the disclosure would:
 - (i) Interfere with pending or actually an reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request; . . .
 - (iv) Unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies

b. Illinois Human Rights Act

Respondent next argues that it is precluded from providing the requested information due to confidentiality requirements in the Illinois Human Rights Act. 775 ILCS 5 (2010).

Section 2-105(B)(4)(e) of the Illinois Human Rights Act states:

Any representative of an employee who is present with the consent of the employee, shall not, during or after termination of the relationship permitted by this Section with the State employee, use or reveal any information obtained during the course of the meeting, investigation, negotiation, conference or other proceeding without the consent of the complaining party and any State employee who is the subject of the proceeding and pursuant to rules and regulations governing confidentiality of such information as promulgated by the appropriate State agency. Intentional or reckless disclosure of information in violation of these confidentiality requirements shall constitute a Class B misdemeanor.

Section 7A-102(D)(1) states:

Each charge shall be the subject of a report to the Director. The report shall be a confidential document subject to review by the Director, authorized Department employees, the parties, and, where indicated by this Act, members of the Commission or their designated hearing officers.

Section 7A-102(B) states:

The Department shall, within 10 days of the date on which the charge was filed, serve a copy of the charge on the respondent. This period shall not be construed to be jurisdictional. The charging party and the respondent may each file a position statement and other materials with the Department regarding the charge of alleged discrimination within 60 days of receipt of the notice of the charge. The position statements and other materials filed shall remain confidential unless otherwise agreed to by the party providing the information and shall not be served on or made available to the other party during pendency of a charge with the Department.

Section 775 ILCS 5/2-105(B)(4)(e) refers to “any representative of an employee.”

Respondent does not provide any support for the assertion that this section refers to anyone besides a “representative of an employee.” Respondent does not maintain that it is a representative of an employee in this matter. Section 775 ILCS 5/7A-102(D)(1) refers to the

report given to the Director of the Illinois Department of Human Rights. Charging Party has not requested that report.

Section 7A-102(B) refers to information, reports, and materials filed with the Illinois Department of Human Rights. Respondent provides no support for its argument that information, reports, and materials filed with IDOT and/or IDOT's own internal investigations are encompassed by the Illinois Department of Human Rights confidentiality requirements. Charging Party here sought information that was filed and/or provided to IDOT, not information that was filed by Taborn with the Illinois Department of Human Rights. In sum, Respondent has failed to demonstrate that the information was, in fact, confidential under the Illinois Human Rights Act.

c. IDOT Personnel Policy

Regarding confidentiality, IDOT Personnel Policy states that:

The existence of and an employee's participation in an internal administrative investigation is strictly confidential, with exception of disclosures made to those on a need-to-know basis during the course of a *subsequent disciplinary proceeding*. Revealing the existence of an investigation, its contents, or the identity of an employee who is the target of an investigation could result in discipline up to and including discharge, with the exception of disclosures made to those on a need-to-know basis *during the course of a subsequent disciplinary proceeding, or otherwise required by law*. An investigation shall be conducted within the parameters of the provisions of *any applicable collective bargaining agreement as well as employee rights afforded by state and federal laws*.

(emphasis added).

Respondent's personnel policy regarding confidentiality specifically excludes "disclosures made to those on a need-to-know basis during the course of a subsequent disciplinary proceeding." In this case, Rentschler was directed to attend a pre-disciplinary hearing on May 20, 2009. Thus, Charging Party sought the information within the course of a

subsequent disciplinary proceeding, in turn satisfying the exception for disclosures made during the course of a subsequent disciplinary proceeding. The exception would have also been satisfied for copies of all previous racial and harassment allegations made by Taborn during his employment with Respondent, copies of any interviews conducted during the investigations into those allegations, and copies of any of Respondent's Civil Rights Committee Reports given to IDOT's Secretary regarding those allegations, since this information was also sought during the course of Rentschler's subsequent disciplinary proceeding. Thus, I find that Respondent's personnel policy does not preclude the requested information from disclosure.⁵

3. Balancing Test

Respondent argues that release of the information may result in adverse actions, including harassment of the complainant and witnesses. Respondent argues that disclosure of the documents is precluded by a public policy interest against retaliation for filing charges of discrimination. A refusal to supply requested information may be justified by a showing of violent, harassing or unlawful conduct, or a showing of clear and present danger. Electrical Workers IBEW Local 794 (Apple City Electric), 275 NLRB 1290 (1985), NLRB v. A.S. Abell Co., 624 F. 2d 506 (4th Cir. 1980). In this case, I do not find support in the record for Respondent's concerns about employee harassment. Respondent has failed to establish that there is a clear and present danger justifying the refusal of the information. Thus, I find that Charging Party's need for the information outweighs Respondent's interest in controlling access to the information.

⁵ Respondent also argued that Charging Party should be estopped from proceeding with this unfair labor practice charge. Respondent argues that because Charging Party failed to proceed to arbitration on its information request grievance, Charging Party has thereby effectively withdrawn the grievance, and should be barred from proceeding on this unfair labor practice. Respondent provides no support for this proposition. Thus, I find it without merit.

C. Mootness and Accommodation

Respondent claims that the matter is moot because it has given Charging Party all the information required of it. I find that the claim is not moot with respect to the documents Respondent has not produced.

A claim is moot when no actual controversy exists, where issues have ceased to exist, or where events occur which make it impossible for a court to grant effectual relief. Department of Central Management Services and Bethel New Life, Inc., 9 PERI ¶ 2035 (IL SLRB 1993), citing Wheatley v. Board of Education of Township High School District, 99 Ill. 2d 481 (1984); Dixon v. Chicago & North Western Transportation Co., 151 Ill. 2d 108 (1992). A claim will be dismissed as moot once the charging party has secured what was originally sought. Katherine M. v. Ryder, 254 Ill. App. 3d 479, 486 (1st Dist. 1993).

Here, Charging Party made an information request seeking: “any and all documentation possessed by the Illinois Department of Transportation pertaining to said type of accusations having been made by Mr. Taborn during his employment tenure with the State of Illinois.” Respondent has provided Charging Party with an unredacted copy of the September 3, 2008 investigation memorandum, an unredacted copy of the June 4, 2008 Respondent’s investigatory interview with Rentschler, a redacted copy of the June 4, 2008 investigatory interviews with Lynch and Farmer, and a redacted copy of the October 27, 2008 Respondent’s Civil Rights Committee’s Report to Respondent Secretary Sees. Thus, this matter is moot with respect to the information Respondent has already produced. See City of Bloomington, 19 PERI ¶ 11; Cook County Bureau of Health Services, 28 PERI ¶ 76 (IL LRB-LP ALJ 2011). However, Respondent has not produced all the information that Charging Party was entitled to by law: copies of all racial and harassment allegations made by Taborn during his employment with

Respondent, including the names of employees referenced therein, copies of the interviews conducted during the investigations into those allegations, and copies of the Civil Rights Committee's Reports given to the IDOT Secretary regarding those allegations. Thus, the matter is not moot with respect to that information.

Respondent argues it acted in good faith in trying to accommodate Charging Party's request. Charging Party asserts that whether Respondent attempted to accommodate Charging Party is not at issue in this proceeding. Charging Party further claims that Respondent's alleged attempts at accommodation discussed in settlement discussions and proposals exchanged between the parties are confidential. I find that there is no need to determine whether or not the alleged settlement discussion and proposals are confidential. Respondent has not shown that the information sought is itself confidential and therefore, Respondent's claim that it has made good faith attempts to reasonably accommodate is irrelevant as no accommodation is necessary or required. Respondent only need provide Charging Party with all the information to which it is entitled by law.

D. Sanctions

Charging Party argues that it should be awarded costs and attorney's fees for two reasons. First, Charging Party argues that sanctions should be awarded because it was forced to address Respondent's "timeliness" issue. Charging Party argues that if Respondent had "done even a modicum of research prior to raising the 'timeliness' issue at this late stage of litigation, it would have easily discovered that its timeliness argument had been waived." Charging Party claims that raising the issue "manifests a disregard by IDOT of proper litigation tactics and calls for the imposition of sanctions." Second, Charging Party argues that sanctions should be ordered because Respondent "willfully and without reasonable rationale" refused to provide the

requested information. Charging Party argues that sanctions should be ordered because “[o]therwise, the means of obtaining such requisite information from the public employer is too time consuming and too expensive so as to deprive the Union of a practical ability to properly and appropriately represent Aaron Rentschler.”

Section 11(c) of the Act provides that the Board has discretion to include an appropriate sanction, which may include an order to pay the other parties’ reasonable expenses including costs and reasonable attorney’s fees, if the other 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 without reasonable cause is an objective one, one of reasonableness under the circumstances. County of Rock Island and Sheriff of Rock Island County, 14 PERI ¶ 2029 (IL SLRB 1998), aff’d sub nom Grchan v. Illinois State Labor Relations Board, 315 Ill. App. 3d 459 (3rd Dist. 2000); Wood Dale Fire Protection District, 25 PERI ¶ 136 (IL LRB-SP 2008), rev’d in part sub nom Wood Dale Fire Protection District v. Illinois Labor Relations Board, State Panel, 395 Ill. App. 3d 523 (2nd Dist. 2009).

First, having found Respondent properly raised the issue of timeliness, Respondent cannot be subject to sanctions for doing so. As previously stated, the Act’s statute of limitations requirement is jurisdictional, and not a waivable affirmative defense, and therefore it is an issue in every case before the Board. Village of Dolton, 17 PERI ¶ 2017. Second, although Respondent’s arguments did not prevail, those arguments are reasonable responses to an alleged Section 10(a)(4) violation for failure to provide information. In Wood Dale Fire Protection District v. Illinois Labor Relations Board, the court reversed the Board’s finding of sanctions against the Employer finding that although an employer’s arguments were unsuccessful, they

were “at least debatable” and the employer’s pursuit of those was not unreasonable or evidence of bad faith. 395 Ill. App. 3d 523. I find that Respondent’s arguments and defenses are debatable and thus do not evidence unreasonableness. In addition, there is insufficient evidence to determine that Respondent has made any allegations or denials without reasonable cause or has engaged in frivolous litigation. Thus, an order to award sanctions is unwarranted.

V. CONCLUSIONS OF LAW

Respondent, State of Illinois, Department of Central Management Services (Department of Transportation), violated Section 10(a)(4) and (1) of the Act, when it refused to supply to Charging Party the following information:

1. Copies of all racial and harassment allegations made by Elmer Taborn during his employment with Respondent, including the names of employees referenced therein, copies of the interviews conducted during the investigations into those allegations, and copies of the Civil Rights Committee’s Reports given to the IDOT Secretary regarding those allegations.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, State of Illinois, Department of Central Management Services (Department of Transportation), its officers and agents shall

Cease and desist from:

1. failing to supply information to Teamsters, Local Union No. 916 relevant and necessary for Teamsters, Local Union No. 916 to properly discharge its statutory duty as exclusive representative of Respondent’s employees.

Take the following affirmative action designed to effectuate the policies of the Act:

1. Provide Teamsters, Local Union No. 916 with the following information:
 - a. copies of all racial and harassment allegations made by Taborn during his employment with Respondent, including the names of employees referenced therein, copies of the interviews conducted during the investigations into those allegations, and copies of the Civil Rights Committee's Reports given to the Secretary of IDOT regarding those allegations.
2. Post, for 90 consecutive days, at all places where notices to employees of Respondent are ordinarily posted, signed copies of the attached notice. Respondent shall take reasonable steps to ensure that these notices are not altered, defaced, or covered by any other material.
3. Notify the Board in writing, within 20 days from the date of this decision, of what steps Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant 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. 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 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 on this 10th day of August, 2012.

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



**Michelle N. Owen
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the State of Illinois, Department of Central Management Services (Department of Transportation) 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 gives you, as an employee, these rights:

- To engage in self-organization.
- To form, join, or help 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 or protection.
- And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT fail to supply information to Teamsters, Local Union No. 916 relevant and necessary for Teamsters, Local Union No. 916 to properly discharge its statutory duty as exclusive representative.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights under the Act.

This notice shall remain posted for 90 consecutive days at all places where notices to employees are regularly posted.

Date of Posting

State of Illinois, Department of Central
Management Services (Employer)

ILLINOIS LABOR RELATIONS BOARD

320 West Washington, Suite 500
Springfield, Illinois 62701
(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.**
