

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Brotherhood of Teamsters)	
Local 700,)	
)	
Charging Party)	
)	Case No. S-CA-09-115
and)	S-CA-10-057
)	S-CA-10-105
Lake County Circuit Clerk,)	S-CA-10-107
)	
Respondent)	

**CORRECTED ADMINISTRATIVE LAW JUDGE'S RECOMMENDED
DECISION AND ORDER¹**

On November 17, 2008, International Brotherhood of Teamsters Local 700 (formerly Local 714) (Charging Party or Union) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CA-09-115, alleging that the Lake County Circuit Clerk (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) 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). On August 4, 2009 the Charging Party filed a charge in Case No. S-CA-10-057 with the Board alleging that Respondent engaged in further unfair labor practices within the meaning of the Act , and filed similar charges of unfair labor practices on October 8, 2009 in Case No. S-CA-10-105 and October 15, 2009 in Case No. S-CA-10-107. These charges were investigated pursuant to Section 11 of the Act and on January 25, 2010, the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing and Order Consolidating Cases.

¹ Recommended Decision and Order corrected to include remedy of extension of one year certification period by 11 months.

On September 29, 2009, Rebecca Cook filed a Decertification Petition (Petition) in Case No. S-RD-10-005 with the Board seeking an election to determine whether the employees in the bargaining unit desired to continue representation by the Charging Party. On October 21, 2009, the Charging Party requested the Board dismiss the petition because of the pending unfair labor practice charges against the Respondent. On January 10, 2010 the Executive Director issued an Order Blocking Decertification Election effectively holding the petition in abeyance until the pending charges were resolved.

On July 2, 2010, the Charging Party withdrew its charges in Case Nos. S-CA- 09-115 and S-CA-10-105. A hearing in this case was held on March 14, 2012, in the Chicago offices of the Illinois Labor Relations Board at which time the Charging Party also withdrew its charges in Case No. S-CA-10-107 leaving only the charges in Case. No. S-CA-10-057 for resolution. The Charging Party presented evidence in support of the allegations, and all parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs. 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, the Lake County Circuit Clerk (Respondent) has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a) of the Act.
3. At all times material, the Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. At all times material, International Brotherhood of Teamsters, Local 700 (Charging Party) has been a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material, Charging Party has been the exclusive representative of the bargaining unit composed of Respondent's employees including those employed in the job title of Principal Clerk.
6. The Charging Party was certified by the Board on September 26, 2008, in Case No. S-RC-08-115, as the exclusive representative for the bargaining unit.
7. The parties are negotiating their initial collective bargaining agreement.
8. At all times material, Sally Coffelt has occupied the title of Lake County Circuit Clerk and has been an agent of Respondent authorized to act on its behalf.
9. The initial negotiation session between Respondent and Charging Party occurred on November 12, 2008.
10. The parties have participated in subsequent negotiation sessions on December 4, 2008, January 7, 2009, January 22, 2009, February 11, 2009, April 15, 2009, June 2, 2009, July 15, 2009, July 22, 2009, August 11, 2009, September 1, 2009, September 28, 2009, October 19, 2009, December 7, 2009, and February 2, 2010.
11. The only issues for hearing relate to the charges filed in Case No. S-CA-10-057, as all other charges were withdrawn by the Charging Party.

II. ISSUES AND CONTENTIONS

The Charging Party argues that the Respondent failed to bargain in good faith on a mandatory subject of bargaining by engaging in surface bargaining. More specifically, the Charging Party argues that the Respondent refused to negotiate any form of a fair share clause for non-members, thus violating the Act.

The Respondent denies that it violated the Act, and maintains that it intended on reaching an agreement when negotiating the collective bargaining agreement. The Respondent argues that its position on the fair share clause was merely hard-bargaining and did not reach the level of bad faith or surface bargaining.

III. FINDINGS OF FACT

Lake County Circuit Court Clerk (Respondent) employs approximately 150 employees. Of those, approximately 127 positions are in the in bargaining unit although all positions within

the unit are not filled. Management and supervisors are excluded, but every other position is in the bargaining unit. The Respondent has offices located in Waukegan, Park City, Round Lake, and Mundelein and a Juvenile Center in Vernon Hills. Sally Coffelt has been the Clerk of Lake County for 32 years. It is an elected position. Her office is located in the Waukegan Courthouse. She has never laid-off any personnel.

The Union and Respondent are negotiating its initial collective bargaining contract. The Board certified the Union as the exclusive representative of the bargaining unit on September 26, 2008. The Union and Respondent have been negotiating since November 12, 2008. The Charging Party's witness, Barbara Cornett, gave a detailed account of the negotiations between the parties. Cornett is employed by the Charging Party as a Business Representative and she handles grievances, labor management meetings, meets with the members of the bargaining unit and participates in negotiations for bargaining units. She was present at every meeting between the parties. The Union presented its first proposal on November 12, 2008, which was based on language contained in other contracts the Union currently had in place with other bargaining groups of the Respondent's.

The parties met on December 4, 2008, and the Respondent admitted receiving the Union's correspondence including information regarding raises for employees and cost of insurance. The Union expressed its desire to negotiate over wages instead of the Respondent implementing them as they would have in the past. The parties reached tentative agreements on secondary employment, authorization of contract, a savings clause, an article on indemnification and a preamble.

On December 7, 2008, the Respondent submitted its proposal, omitting a fair share clause. The fair share provision was discussed and management felt that employees not in the

union should not have to pay fair share dues as it would be a financial hardship. The Union offered two ways to ease management's concerns by offering to provide the showing of support by those who signed cards to show that most bargaining unit employees were in favor of joining the Union. The Union also proposed to negotiate a fair wage. The Clerk, Sally Coffelt appeared to be angry and left the session. Coffelt later testified that she was upset because she felt Cornet was being antagonistic, mean and abusive toward her for no reason.

On January 9, 2009, the Union submitted its counterproposal. The parties negotiated to reach a compromise on temporary employees being laid-off before regular employees. They also discussed the fair share clause.

On February 11, 2009, the Union submitted another counterproposal and the parties reached tentative agreements on two more proposals. The next meeting was on April 15, 2009 where the Respondent submitted its counterproposal, and consistent with its first, omitted a fair share clause.

On July 16, 2009, the Union submitted its proposal and the parties reached more tentative agreements. At this meeting the Union provided cards to show that it was representing a vast majority of the membership and offered to give the clerk ability to decide the amount of dues fair share employees would pay. The Respondent did not change its position on the fair share clause.

On July 22, 2009, the parties met again and discussed all open items. These open items included the language regarding the fair share clause. The next meeting was held August 11, 2009. The Respondent made concessions on some tentative agreements and these changes included merit increases, temporary employees and lay-offs. There were no concessions regarding the fair share clause.

Prior to the parties meeting on September 1, 2009, the parties agreed to use a mediator at the next meeting. A mediator was present at this meeting. The Union wanted face to face meeting, but the Respondent preferred a handwritten proposal instead. The parties did not negotiate that day.

On September 28, 2009, the parties met again with the mediator present. The parties went over a list of "open items". More tentative agreements were reached and the Union tried to offer proposals on the fair share clause to no avail. On October 19, 2009, the Union submitted a proposal modifying language in the layoff and fair share clauses. The Union's proposal reduced fair share fees for those experiencing economic hardships. According to the Union, the Respondent rejected both.

On December 7, 2009, the Respondent implemented wage increases based on merit to no objections by the Union. This was also the last day of negotiation sessions. The Union then filed the unfair labor practice charges that resulted in this case.

According to the Respondent, it has always negotiated with the intention of reaching an agreement. The Respondent has never refused to meet and has always actively participated in negotiations. The Respondent characterizes its stand on the fair share agreement as hard bargaining arguing that that is not a violation of the Act. Sally Coffelt testified that the fair share clause was a major stumbling block for negotiations. Coffelt did not agree to a fair share provision because she felt that it was a personal choice and would be a hardship on individuals. She also reasoned that if you want to join the union, you should be allowed to, but if you did not want to join the union you should not be forced to pay.

IV. DISCUSSION

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer or its agents “to refuse to bargain 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.” The duty to bargain is defined in Section 7 of the Act, which provides in relevant part:

A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section. For the purposes of this Act, “to bargain collectively” means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

In this case, the Charging Party alleges that the Respondent has failed to bargain in good faith with the Charging Party during their negotiations of the initial collective bargaining agreement because the Respondent refused to negotiate a fair share provision. It shall be an unfair labor practice for an employer or its agents to refuse to bargain collectively in good faith with a labor organization under Section 10(a)(4) of the Act. 5 ILCS 315/10(a)(4) (2010). Bargaining does not mean a formal meeting where each side maintains a “take -it -or- leave- it” attitude; good-faith bargaining presupposes an open mind and a sincere intent and effort to find common ground and desire to reach an ultimate agreement. Service Employees International Union, Local 73 v. Illinois Educational Labor Relations Board, 153 Ill. App. 3d 744, 751 (4th Dist. 1987); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); City of Springfield, 6 PERI ¶

2051 (IL SLRB 1990); City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988) (citing NLRB v. Montgomery Ward and Co., 133 F.2d 676, 686 (9th Cir. 1943)).

In determining whether a party has fulfilled its duty to bargain in good faith, the Board looks to the totality of circumstances. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); City of Springfield, 6 PERI ¶ 2051 (IL SLRB 1990); City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988). Conduct indicative of a failure to bargain in good faith may include delaying tactics, failure to appoint an agent with sufficient authority to engage in meaningful bargaining, withdrawal from tentative agreements and attempting to bypass the union and bargain directly with employees. County of Woodford and Woodford County Sheriff, 8 PERI ¶ 2019 (IL SLRB 1992).

The Union specifically argues that the Respondent's refusal to negotiate its proposal on fair share resulted in "surface bargaining." Surface bargaining occurs when a party's actions appear to be good-faith collective bargaining but where the party is only going through the motions of bargaining. See American Federation of State, County & Municipal Employees, Council 31, AFL-CIO v. Illinois State Labor Relations Board, 187 Ill. App. 3d 585, 590 (4th Dist. 1989).

Here, the Respondent failed and refused to bargain the fair share clause. In its first proposal, the Union included a fair share clause. As early as December 7, 2009, the Respondent refused to agree to a fair share clause because the Clerk felt that contracting employees to pay fair share dues when they opt out of the Union was a financial hardship she was unwilling to impose. In response, the Union agreed to provide evidence that it had a majority support from bargaining unit members and offered to negotiate the amount of fair share dues employees would have to pay. During future negotiation sessions, the Union provided evidence of majority support and also agreed to allow the Respondent to decide how much in fair share dues

nonmembers would have to pay. Lastly, the Union submitted another proposal on October 19, 2009, offering a waiver of fair share dues to nonmembers who demonstrate an economic hardship. To all of these concessions, the Respondent stood firm on its decision not to add a fair share clause to the collective bargaining agreement.

The Respondent argues that its position was merely hard-bargaining. Because the Respondent actively negotiated most of the terms of the contract, it believes that it has not violated the Act. It is true that the obligation to bargain in good faith “does not compel either party to agree to a proposal or require the making of a concession” and that the National Labor Relations Board (NLRB) and federal courts have construed identical language in the National Labor Relations Act, 29 U.S.C. § 151 et seq., to mean that “[a]n adamant insistence upon a bargaining position is not of itself a refusal to bargain in good faith.” Neon Sign Corp. v. NLRB, 602 F.2d 1203, 102 LRRM 2485, 2487 (5th Cir. 1979), citing Chevron Oil Co., Standard Oil Co. of Texas Division v. NLRB, 442 F.2d 1067 (5th Cir. 1971); NLRB v. American National Insurance Company, 343 U.S. 395, 402, 404 (1952); NLRB v. Tomco Communications, Inc., 567 F.2d 871, 97 LRRM 2660, 2663 (9th Cir. 1978); and NLRB v. Herman Sausage Company, 275 F.2d 229 (5th Cir. 1960).

However, the Respondent does have an obligation to “intend” to reach an agreement. Since the time in which the fair share clause was initially introduced, the Respondent’s actions indicate that it never intended to negotiate the clause. The Union attempted to address the Respondent’s concerns and the Respondent refused to even consider any other option other than no fair share clause at all. The Respondent’s intentions were clear when Coffelt stated once again, at the hearing, that she was concerned with individuals ability to pay fair share fees when they have opted out of the Union. This was merely a restatement of the Respondent’s position as

early as December 7, 2008, when the Union initially introduced the clause. The Respondent stood firm in its position, never offered a counter offer to the clause or considered other proposals made by the Union that addressed its concerns. These acts are considered a violation of the Act. (Chicago Typographical Union, 15 PERI ¶ 3008, (LLRB 1999) (the board found that the Employer breached its duty to bargain in good faith by maintaining a pre-determined position on wages and job classifications and by refusing to make any reasonable attempt to bargain over those subjects).

The evidence in this case, however, is not one of hard-bargaining over fair share clause but one of no bargaining at all. Through almost a year of negotiations beginning in December 2008, the Respondent held a pre-determined position and merely refused to bargain over the fair share clause. By this conduct, the Respondent has breached its duty to bargain in good faith in violation of Section 10(a)(4) and (1) of the Act.

V. CONCLUSIONS OF LAW

The Respondent violated Section 10(a)(4) and (1) of the Act by failing to bargain in good faith with the Charging Party over a fair share clause in the collective bargaining agreement. In addition to an order that the Respondent cease and desist from such conduct and bargain in good faith with the Charging Party, a remedy must take into account that the Respondent's misconduct occurred during the one year period after the Charging Party was certified as the representative of the petitioned-for employees. That one year certification period is provided by Section 1210.70(a)(2) of the Rules and, in cases such as this, it is appropriate to extend the certification year for that period of time the Respondent has refused to bargain. City of Chicago, 3 PERI ¶ 3017 (IL LLRB 1987); Peoria Housing Authority, 11 PERI ¶ 2033 (IL SLRB 1995); County of Vermillion, 3 PERI ¶ 2004 (IL SLRB 1986).

The Charging Party was certified on September 26, 2008, and the parties first met to bargain on November 12, 2008. Finding that the Respondent failed to bargain from the date of the parties' first meeting, it is recommended that the certification year be extended 11 months beginning from the date the Respondent commences to bargain in good faith with the Charging Party.

VI. RECOMMENDED ORDER

The Board's policy in unfair labor practice cases is to order a make-whole remedy and restore the status quo ante, that is, place the parties in the same position they would have been in had the unfair labor practice not been committed. Village of Dolton, 17 PERI ¶ 2017 (IL LRB-SP 2001). On the basis of the foregoing findings of fact, conclusions of law, and the entire record, issuance of the following Order is recommended:

IT IS HEREBY ORDERED that the Respondent, Lake County Circuit Clerk, its officers and agents shall:

1. Cease and desist from:

- a. Refusing to bargain collectively in good faith by failing to negotiate a fair share clause within the collective bargaining agreement.
- b. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.

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

- a. On request, bargain collectively in good faith with the International Brotherhood of Teamsters, Local 700, as the bargaining unit's exclusive representative, with respect to a fair share clause within the collective bargaining agreement.

- b. Extend the initial year of certification for a period of eleven months beginning from the date the Respondent commences bargaining in good faith.
- c. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to ensure that these notices are not altered, defaced or covered by any other material.
- d. Notify the Board in writing, within 20 days from the date of this decision, of what steps the 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 the 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 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 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 5th day of November, 2012

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Elaine L. Tarver, Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Brotherhood of Teamsters)
Local 700,)
)
Charging Party)
)
and)
)
Lake County Circuit Clerk,)
)
Respondent)

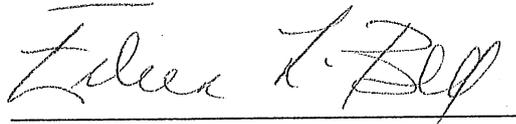
Case Nos. S-CA-09-115
S-CA-10-057
S-CA-10-105
S-CA-10-107

AFFIDAVIT OF SERVICE

I, Eileen L. Bell, on oath state that I have this 5th day of November, 2012, served the attached CORRECTED ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Lynn Himes
Paul Ciastko
Scariano, Himes & Petrarca
Two Prudential Plaza, Suite 3100
180 N. Stetson
Chicago, IL 60601

Michael Jacobs
Teamsters Local 700
1300 W Higgins Rd., Suite 301
Park Ridge, IL 60068



SUBSCRIBED and SWORN to
before me this 5th day
of November 2012.



NOTARY PUBLIC

