

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

Ann Moehring,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-10-241
)	
Chief Judge of the 16th Judicial Circuit,)	
)	
Respondent)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER
DEFERRING TO ARBITRATION**

On March 31, 2010, Ann Moehring (Charging Party) filed a charge with the State Panel of the Illinois Labor Relations Board (Board), pursuant to the Illinois Labor Relations Act, 5 ILCS 315 (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Section 1200 through 1230 (Rules) alleging that the Chief Judge of the 16th Judicial Circuit (Respondent) had violated Section 10(a) of the Act. After an investigation, the Executive Director of the Board issued a Complaint for Hearing on November 23, 2010, that alleged that the Respondent retaliated against Moehring for her union activities by terminating her in violation of Section 10(a)(2) and (1) of the Act.

I. PRELIMINARY FINDINGS

The Chief Judge of the 16th Judicial Circuit (Respondent) is a public employer within the meaning of Section 3(o) of the Act and is subject to the Act pursuant to Section 20(b) of the Act. Teamsters Local 330 (Local 330 or Union) has been a labor organization within the meaning of Section 3(i) of the Act. Local 330 is the exclusive representative of a bargaining unit comprised of certain of Respondent’s employees, including those in the job title or classification of Adult

Probation Officer (Unit). Local 330 and Respondent have been parties to a collective bargaining agreement (Agreement) for the Unit, with a term of December 1, 2008 to November 30, 2010. The Agreement contains a grievance procedure culminating in binding arbitration. The Charging Party has been a public employee within the meaning of the Act, employed by Respondent in the Adult Probation Officer title.

II. INVESTIGATORY FACTS

In her Complaint, the Charging Party alleges that between 2007 and 2009, she served as a steward for Teamsters Local 330 and, in that capacity, she participated as an observer during a 2008 representation election, participated in negotiations for a successor agreement and filed numerous grievances on behalf of unit members and herself. The Charging Party contends that the Respondent terminated her on October 5, 2009 in retaliation for the above-described activities in violation of Sections 10(a)(2) and (1) of the Act. The Charging Party grieved her termination under the collective bargaining agreement and the parties proceeded to arbitration.

Procedural Motions

On December 30, 2010, the Respondent filed a Motion for Abeyance which I denied on January 14, 2011. I tentatively set hearing dates of May 24 and 25, 2011. On or about May 17, 2011, the Respondent filed a Motion to Postpone and Continue the Hearing Pending Receipt of the Arbitration Award. The Respondent asserted that the arbitrator had informed the parties that he would issue his award in June 2011. The Charging Party responded to the Motion stating that it was prepared to go forward with the hearing before this Board. I granted Respondent's Motion to Postpone and Continue the Hearing.

On June 13, 2011, Arbitrator Steven Bierig issued his award denying Charging Party's grievance contesting her discipline and discharge. The arbitration had occurred on June 3, July 21 and August 5, 2010 and the record consisted of 637 pages of transcript, 35 Employer exhibits

and 16 Union exhibits. In his award, Arbitrator Bierig specifically stated that there was no substantial and reasonable correlation between the Charging Party's union activities and the disciplines imposed on her. He ruled that the Respondent had just cause to suspend Moehring for incidents of insubordination occurring in April and May 2009 and to discharge her for an incident of insubordination that occurred in September 2009.

On or about June 24, 2011, the Respondent filed its Motion to Defer to the Arbitration Award and to Dismiss the Unfair Labor Practice Charge. On or about July 19, 2011, the Charging Party filed its Response to the Respondent's Motion to Defer. The Respondent filed a reply to the Charging Party's Response.

The Arbitration Award

In the 31 page arbitration award issued on June 13, 2011, the arbitrator stated the issue as follows: did the Employer have just cause to issue a 2-day Suspension, a 5-day-suspension and a discharge to Grievant Ann Moehring? Among the contract provisions and related policy provisions the arbitrator cited were Article V of the Agreement on Nondiscrimination which in relevant part is set forth below:

Neither the Employer nor the Union shall interfere with the right of employees covered by this agreement to become or not become members of the Union and there shall be no discrimination against such employees because of lawful Union membership or nonmembership activity or status.

In the statement of facts, the arbitrator recited that Moehring had joined the Union, and that at some point the Employer informed her that it was unhappy with the time she spent out of the office for Union negotiations and also that it kept track of the time spent on Union matters. The arbitrator then noted that Moehring acknowledged that she was not disciplined for attending union meetings. The arbitrator then described in detail the events that resulted in her suspensions and termination. The arbitrator described the Union's arguments in defense of Moehring.

Among those arguments were the contentions that Moehring was disciplined because of her union activity and that the Respondent's actions violated both the contract and the Illinois Public Labor Relations Act.

In his discussion of the issues, the arbitrator decided that Moehring had been insubordinate because she disobeyed a direct order to return a verbal reprimand document to her superior on April 3, 2009, that she disclosed to non-Court Services employees the identity of a juvenile probation defendant in violation of confidentiality policy and that she failed to obey her supervisors' directive to complete a review of her files. The arbitrator then stated that he found no evidence that Moehring was terminated as a result of her Union activities and he further stated that there was

no substantial and reasonable correlation between her Union activities and the disciplines imposed upon her. I cannot find that there is any nexus between [Moehring's] Union activities and the disciplines imposed.

III. ISSUES AND CONTENTIONS

The issue in this case is whether this matter should be deferred to arbitration. The Respondent argues that the matter should be deferred. It notes that the Agreement covering the Unit has a provision prohibiting discrimination based on union membership or union activities. Respondent also notes that prior to her termination, the Charging Party was suspended in April and in May 2009 and that in her grievance, she grieved her suspensions as well as her termination.

The Respondent further argues that this matter should be deferred to arbitration because all of the factors required by Spielberg Manufacturing Co., 112 NLRB 1080 (1955) are present. According to the Respondent, the Charging Party presented substantial evidence of her union activities at the arbitration and argued that the Chief Judge discriminated and/or retaliated against

her because of those activities. Thus, the arbitrator heard and considered the Charging Party's unfair labor practices issues. According to the Respondent, the arbitrator reviewed the evidence and held that Charging Party was not disciplined or discharged because of her union activities.

Secondly, the Respondent argues that there is no evidence that the arbitral proceedings were not fair and regular. According to the Respondent, during three days of arbitration, the Charging Party had the opportunity to present evidence and argument in her favor. Thirdly, the Union and the Respondent agreed to the authority and jurisdiction of the arbitrator and agreed to be bound by the award. I note that the Respondent stated prior to issuance of the award that it intended to abide by the award regardless of the outcome.

Finally, the Respondent argues that the fourth Spielberg factor has been met in that the arbitration award was not clearly repugnant to the purposes and policies of the Act. The Respondent then cites to cases in which the Board has deferred to arbitration in similar circumstances. In City of Peoria, 14 PERI ¶2024 (IL SLRB 1998), the Board ordered deferral to arbitration where the unfair labor practice involved whether the employer reprimanded a police officer based on his union activity or for other reasons and where the pending grievance raised the same issue. In Pace Northwest Division, 10 PERI ¶2023 (IL SLRB 1994), the Board found that deferral was appropriate to resolve the issue of whether an employee's discharge was for just cause. In Corey Jahmal Wiggins and Chicago Transit Authority, 21 PERI 124 (IL LRB-LP 2005), the Board dismissed a complaint after an arbitrator rejected a grievance raising the same issue of retaliation as was alleged in the complaint. In City of Chicago, 10 PERI ¶3011 (IL LLRB GC 1994), the Board deferred to arbitration and dismissed an unfair labor practice alleging unlawful discharge of three firefighters.

The Charging Party argues that the complaint should not be deferred to arbitration because the arbitrator never expressly stated whether the Respondent violated Section 10(a)(1) and 10(a)(2) of the Act and the arbitrator framed the issues as whether Moehring was disciplined for just cause and whether that discipline was appropriate. Charging Party argues that the issue of Moehring's union activity was peripheral at best during the arbitration proceeding and that deferral is not appropriate where the arbitrator has not made factual findings with regard to crucial allegations of the unfair labor practice. The Charging Party further argues that there are exhibits that were not presented at the arbitration that she would have presented at the unfair labor practice hearing that support her theory of discrimination/retaliation. She also claims that there were factual issues articulated in her charge before the Board but not specifically mentioned in the complaint that were not addressed at the arbitration hearing. I note that the factual issues she recited in her response to the Motion to Defer included matters that were outside the six-month limitation period for filing charges and for which a remedy was not available.

IV. DISCUSSION AND ANALYSIS

At issue is whether the Board should defer the complaint in this case to arbitration. Under Section 11(i) of the Act, the Board has discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure if an unfair labor practice involves the interpretation or application of a collective bargaining agreement. The Board follows the National Labor Relations Board's Spielberg standard in cases of post-arbitral deferral. Alton Firefighters Association, IAFF Local 1255 and City of Alton, 22 PERI 102, at 2 (IL LRB-SP 2006) Under Spielberg the Board defers to an arbitration award when: (1) the unfair labor practice issues have been presented to and considered by the arbitrator; (2) the arbitration

proceedings appear to have been fair and regular: (3) all parties to the arbitration agreed to be bound by the award; and (4) the arbitration is not clearly repugnant to the purposes and policies of the Act.

I find that the Spielberg standards have been met in this case. The arbitrator considered whether the Respondent retaliated/discriminated against Moehring based on her union activities and her union status under the anti-discrimination clause of the Agreement. The arbitrator determined that the Respondent did not retaliate or discriminate against Moehring in violation of the Agreement or the Illinois Public Labor Relations Act. Secondly, notwithstanding the Charging Party's argument, there is no evidence that the proceedings were not fair and regular. The mere fact that the Charging Party did not present evidence that she would have introduced at a Board conducted hearing does not render the arbitration proceeding unfair and irregular. There is no showing that the Charging Party was prevented from introducing such evidence at the arbitration proceeding. Thirdly, the Respondent and the Union agreed to be bound by the award. Finally, I do not find that the arbitration award is repugnant to the purposes and policies of the Act inasmuch as the arbitrator determined that Moehring was suspended and discharged for just cause. I conclude that this complaint should be deferred to arbitration under Spielberg.

V. **RECOMMENDED ORDER**

I recommend that the complaint in this case be dismissed.

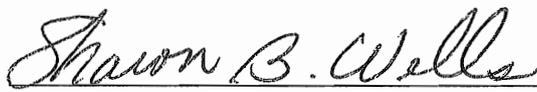
VI. **EXCEPTIONS**

Pursuant to Section 1220.60 of the Rules, parties may file exceptions to the Administrative Law Judge's Recommendation 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, 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. 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 31st day of August, 2011

**Illinois Labor Relations Board
State Panel**


Sharon B. Wells, Administrative Law Judge

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

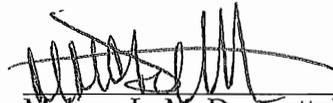
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AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 31st day of August, 2011, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER DEFERRING TO ARBITRATION** 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 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

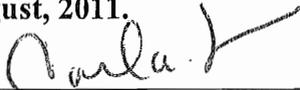
Mr. Steven T. Mann
32114 Village Green Boulevard
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Mr. Jeremy L. Edelson
Mr. Carl Tominberg
LANER MUCHIN
515 North State Street
Suite 2800
Chicago, Illinois 60654



Melissa L. McDermott, ILRB

SUBSCRIBED and SWORN to
Before me this 31st day of
August, 2011.



NOTARY PUBLIC

