

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

<b>Tyron McCullough,</b>	)	
	)	
<b>Charging Party</b>	)	
	)	
<b>and</b>	)	<b>Case No. S-CA-11-127</b>
	)	
<b>Harvey Park District,</b>	)	
	)	
<b>Respondent</b>	)	

**ADMINISTRATIVE LAW JUDGE'S  
RECOMMENDED DECISION AND ORDER**

On December 22, 2010, the Charging Party, Tyron McCullough, filed an unfair labor practice charge with the Illinois Labor Relations Board, State Panel (Board) in Case No. S-CA-11-127 alleging that the Respondent, Harvey Park District (District), engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010) as amended, in the above-captioned case. After an investigation conducted pursuant to Section 11(a) of the Act, a Complaint for Hearing alleging a violation of Section 10(a)(1) of the Act was issued on February 24, 2011. On March 16, 2011, the Respondent, through attorney Melissa Knazze, filed a timely Answer to that Complaint.<sup>1</sup>

On April 12, 2011, the undersigned Administrative Law Judge (ALJ) issued an Interim Order granting the Charging Party's Motion to Amend the Complaint.<sup>2</sup> The next day she sent a letter to Knazze by facsimile stating that the Respondent's Answer to the Amended Complaint was due to be filed with the Board and served on the Charging Party no later than the first day of

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<sup>1</sup> Knazze had earlier filed an appearance and email stating that she represented the Respondent.

<sup>2</sup> The original Complaint alleged that on December 17, 2010, the Charging Party was suspended without pay in retaliation for his protected activities. The Amended Complaint included the additional allegation that on February 17, 2011, the Respondent terminated the Charging Party in retaliation for his filing of charge number S-CA-11-127 with the Board on December 22, 2010, the charge which led to the instant case.

hearing, then scheduled for April 21, 2011. The hearing scheduled for April 2011 was cancelled when the ALJ granted Charging Party's Motion for Continuance so that he could obtain an attorney. On April 21, 2011 the ALJ sent a letter to Knazze by facsimile stating that the Respondent's Answer to the Amended Complaint was due to be filed with the Board on or before May 9, 2011 and served on the Charging Party. The letter stated that all of the provisions of 80 Ill. Admin. Code § 1220.40(b) applied.<sup>3</sup>

Respondent did not file its Answer to the Amended Complaint with the Board on or before May 9, 2011, or thereafter. On June 3, 2011, Charging Party sent an email to the ALJ advising that he had returned to work for the Respondent as of May 31, 2011, he was seeking lost wages, and that Knazze was no longer counsel for the Respondent.

On June 6, 2011 the ALJ issued an Order to Show Cause why a default judgment consistent with Section 1220.40(b) of the Board's Rules should not issue. This Order to Show Cause was sent by certified mail to the Respondent Harvey Park District, Respondent's attorney, Knazze, and the Charging Party. On June 9, 2011, a copy of the Order to Show Cause was sent by facsimile to Knazze pursuant to her telephone request stating that she had not received it.

On June 29, 2011 after the ALJ granted an extension of time within which to respond to the Order to Show Cause on behalf of the Harvey Park District, Knazze filed the Respondent's Response. In that document, Knazze maintained that the Respondent had good cause for its failure to answer the Amended Complaint. Specifically, according to the Respondent's Response, its failure to answer the Amended Complaint was due to miscommunication between

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<sup>3</sup> Section 1220.40(b)(3) of the Rules provides the following:  
Parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint. The failure to answer any allegation shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default.

Charging Party, Respondent, and Respondent's attorneys during settlement negotiations. The Respondent's Response included the following statements:

3. During discussions Charging Party stated that he was withdrawing his charge.
4. Charging Party is currently employed by Respondent and is in discussions with one of Respondent's attorneys regarding the formal withdrawal of his charge.

Respondent asked for leave to answer the Amended Charge.

On July 2, 2011, the Charging Party filed his Reply to Respondent's Response to the Order to Show Cause. In that submission, the Charging Party denied that he had made any statement that he was withdrawing his charge as a condition of re-employment with Respondent. He explained that he has not had discussions with anyone—before or after his re-employment with Respondent—about withdrawing his charge. Charging Party asserted that his charge still stands and that he is seeking reimbursement and/or lost wages.

#### **I. DISCUSSION AND ANALYSIS**

After careful consideration, I find that the Respondent's failure to file a timely answer constitutes an admission of the material facts alleged in the Amended Complaint and a waiver of its right to a hearing pursuant to the Board's Rules and Regulations, 80 Ill. Admin. Code §1220.40(b)(3). The Respondent has not shown the existence of "extraordinary circumstances" under §1220.40 (b)(4) to justify its request to file the Answer to the Amended Complaint approximately two months after it was due on May 9, 2011.<sup>4</sup> Nor has the Respondent shown that the provision of the Rules and Regulations requiring the filing of an answer within fifteen days of service of the complaint—§1220.40(b)(1)—is an unreasonable or unnecessarily burdensome rule from which the Board should grant a variance, in accordance with §1200.160.

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<sup>4</sup> Respondent's Response to the Order to Show Cause contends that it had good cause for its failure to answer the Amended Complaint. However, under §1220.40(b)(3), "good cause" is not the standard. Nor has Respondent met that more relaxed standard.

Even assuming there was miscommunication between Charging Party, Respondent, and Respondent's attorneys, Respondent has not established the exigent circumstances that would excuse its failure to file a timely answer to the Amended Complaint. At all times material, the ALJ made it clear that Respondent's Answer to the Amended Complaint was due to be filed on or before May 9, 2011. Specifically, on April 21, 2011 the ALJ sent a letter to Knazze expressly stating this due date. In addition, on May 11, 2011, the ALJ sent an email to the Charging Party, with a copy to Knazze, referencing organizations he could contact in his search for an attorney. On May 24, 2011, the ALJ sent an email to the Charging Party, with a copy to Knazze, asking him to update her at the end of the month on his search for an attorney.

This position that possible settlement of a case does not exempt a respondent from the requirement to answer a complaint is consistent with the rulings of the National Labor Relations Board (NLRB). In numerous decisions, the NLRB has held that anticipated settlement of a case is not an adequate explanation for a respondent's failure to file a timely answer. See e.g., U.S. Telefactores Corp. and Professional, Technical, and Clerical Employees Union, Local 707, 293 NLRB 567, 569 (1989); Sorenson Industries, Inc., and United States Steels Workers of America, Local 5424, and Teamsters, Local 384, 290 NLRB 1132, 1133 (1988).

In light of the foregoing discussion, the Respondent's failure to file an answer cannot be excused, and therefore, I issue this Default Judgment. Accordingly, as provided by Section 1220.40(b)(3) of the Board's Rules, the Respondent is deemed to have admitted the material facts and legal conclusions of the paragraphs added in the Amended Complaint.

## **II. RESPONDENT'S ADMISSIONS**

By failing to file a timely answer, the Respondent has admitted the following facts and legal allegations as stated in the Amended Complaint:

19. On or about February 17, 2011 Respondent terminated the Charging Party.
20. Respondent took the action described in paragraph 19, in retaliation for the Charging Party's filing of charge number S-CA-11-127 on December 22, 2010.
21. By its acts and conduct described in paragraph 20, Respondent violated Sections 10(a)(3) and (1) of the Act.

### **III. CONCLUSIONS OF LAW**

Based on the foregoing, Respondent violated Section 10(a)(3) and (1) of the Act.

Specifically, it discharged Tyron McCullough because he filed an unfair labor practice charge with the Board.

### **IV. RECOMMENDED ORDER**

IT IS HEREBY ORDERED THAT THE Respondent, Harvey Park District, its officers and agents shall:

1. Cease and desist from:
  - a. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
  - a. Effective immediately, rescind the termination of Tyron McCullough issued on or about February 17, 2011, and make him whole for any and all lost wages he suffered from February 17, 2011 until his return to work on May 31, 2011, including back pay plus interest at a rate of seven percent per annum.
  - b. Remove from Tyron McCullough's personnel file any and all documents and references to his termination on or about February 17, 2011.

- c. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto. 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 this Respondent has taken to comply herewith.

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 on this 13<sup>th</sup> day of July 2011.**

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A handwritten signature in cursive script, appearing to read "Eileen L. Bell".

**Eileen L. Bell  
Administrative Law Judge**



# NOTICE TO EMPLOYEES

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## FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board, State Panel, has found that the Harvey Park District has violated the Illinois Public Labor Relations Act, and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join, or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid or protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.

WE WILL, effective immediately, rescind the termination of Tyron McCullough on or about February 17, 2011, and make him whole for any losses he has suffered because of that termination including back pay plus interest at a rate of seven percent per annum calculated from that date through his return to work May 31, 2011.

WE WILL, effective immediately, remove from Tyron McCullough's personnel file all documents and references related to his termination on or about February 17, 2011.

DATE \_\_\_\_\_

\_\_\_\_\_  
Harvey Park District (Employer)

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(Title of Representative)