

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

American Federation of State, County and)
Municipal Employees, Council 31,)
)
Charging Party)
)
and)
)
City of Clinton (Dr. John Warner Hospital),)
)
Respondent)

Case No. S-CA-11-148

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On April 26, 2011, the American Federation of State, County and Municipal Employees, Council 31 (Charging Party or Union), filed an unfair labor practice charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the City of Clinton, Dr. John Warner Hospital (Respondent), violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. The charge was investigated in accordance with Section 11 of the Act, and, on July 19, 2011, the Board’s Executive Director issued a Complaint for Hearing. The parties submitted a stipulated record in lieu of hearing as well as briefs arguing their respective positions. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 5(a) and 20(b) of the Act.
2. The parties stipulate, and I find, that the Charging Party is a labor organization within the meaning of Section 3(i) of the Act.

3. The parties stipulate, and I find, that the Respondent is a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate, and I find, that the Respondent is subject to the jurisdiction of the Board's state panel pursuant to Section 5(a-5) of the Act.

II. ISSUES AND CONTENTIONS

The Charging Party alleges that Respondent has engaged in an unfair labor practice in violation of Sections 10(a)(1) and (4) of the Act by failing and/or refusing to reinstate employee Mike Short pursuant to a grievance resolution between the parties. Respondent alleges that Short was not able to return to work within the meaning of the grievance resolution and therefore maintains that it has not violated the Act with respect to the Charging Party's complaint.

III. FINDINGS OF FACT

The parties have submitted a stipulated record for consideration in this case. The stipulations of the parties reveal the following relevant facts.

AFSCME Council 31 is the exclusive representative of a bargaining unit comprised of employees of Respondent occupying maintenance and custodial titles, known as bargaining unit "C". The Union and Respondent have been parties to a collective bargaining agreement for bargaining unit C. Respondent employed Mike Short, a public employee who was a member of the unit, as a maintenance employee.

In August 2010, Short's residence was searched subject to a search warrant. Short was subsequently arrested, and a criminal complaint was filed against him on September 20, 2010. Short was charged with: unlawful possession of cannabis with intent to deliver; unlawful possession of a controlled substance; unlawful possession of cannabis sativa plant; unlawful use of weapons; unlawful use of a dangerous place for the commission of cannabis offenses and

possession of firearms without requisite firearms owners identification. On or about September 1, 2010, Respondent terminated Short's employment. The Union filed a grievance on or about September 1, 2010, regarding Short's termination, alleging that he was discharged without just cause. On or about September 2, 2010, Respondent denied the grievance. On or about September 21, 2010, the parties conducted a "Step III" grievance hearing before the Administrator for Respondent. Pursuant to this hearing, the parties reached a grievance resolution providing that Short would be placed on administrative leave without pay pending criminal charges against him. The grievance resolution further provided: "Grievant's employment status shall be terminated on April 1, 2011, should he fail or be unable to return to work at that time." On or about March 29, 2011, all state criminal charges filed against Short were dismissed.¹

On March 22, 2012, the United States Department of Justice confirmed that, pursuant to a DEA Diversion computation charge, shortages of drugs reported at Dr. John Warner Hospital were inventoried as being recorded during a search warrant at Short's residence on August 24, 2010. On May 25, 2012, the Department of Justice confirmed that Short is and remains the subject of an active continuing investigation into illegal activities related to state charges of manufacture and possession of cannabis and other controlled substances. The Department of Justice further confirmed the state charges against Short were dismissed in 2011 specifically to allow the federal investigation to continue.

Respondent operates the sole medical hospital and rural health facility for the residents of the City of Clinton and County of DeWitt, with the City of Clinton serving as the county seat, with an approximate population of 7,400 residents. Respondent is located in the central rural

¹ While the parties' stipulations state that this dismissal was "with prejudice," the court docket, as provided by the parties in their exhibits, indicates that the dismissal was "without prejudice."

part of the State of Illinois. Respondent's licensure to provide medical/hospital services to the community may be in jeopardy should Respondent reinstate Short.

To date, there is no pending indictment against Short. From April 1, 2011, to the time of the stipulations, Respondent has failed and/or refused to return Short to work.

IV. DISCUSSION AND ANALYSIS

The Complaint issued against Respondent alleges violations of Sections 10(a)(4) and (1) of the Act. Those sections provide, in pertinent part:

(a) It shall be an unfair labor practice for an employer or its agents: (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay...(4) 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[.]

At the heart of Charging Party's complaint is the allegation that Respondent's refusal or failure to abide by the terms of the September 2010 grievance resolution is a violation of the Respondent's duty to bargain in good faith, in violation of the Act.²

Decisions arising pursuant to the Act have long held that "a party's 'refusal to abide by a grievance settlement, the terms of which are undisputed and unambiguous, is a breach of [the collective bargaining] process.'" County of Tazewell and Sheriff of Tazewell County, 19 PERI ¶39 (ILRB-SP 2003), quoting Illinois Departments of Corrections and Central Management Services, 4 PERI ¶2043; see also Chicago Transit Authority, 16 PERI ¶3021 (IL LLRB 2000);

² While Respondent's brief argues that the Union's complaint should fail because the Union did not show evidence of anti-union animus on the part of Respondent, this is not required for a showing that the Respondent failed to bargain in good faith under the terms of the Act. See, e.g., City of Burbank, 4 PERI ¶2048 (IL SLRB 1988) (providing framework for failure to bargain claim but including no requisite showing of specific anti-union animus). To the extent that Respondent includes this analysis in response to the inclusion of Section 10(a)(1) in the Complaint, it is undisputed by the parties that Short was discharged in conjunction with the discovery of drugs and illegal substances at his residence. Charging Party does not appear to allege that Short was discharged based on engaging in protected union activity; therefore, the analysis proffered by Respondent is not applicable here.

City of Harvey, 13 PERI ¶2031 (IL SLRB 1997); County of Cook (Public Defender), 13 PERI ¶3005 (IL LLRB 1997); County of Cook, 11 PERI ¶3021 (IL LLRB 1995); County of Winnebago (County Clerk and Auditor), 7 PERI ¶2041 (IL SLRB 1990). Generally, in order for the Charging Party to demonstrate that the Respondent violated the Act when it refused to implement a grievance settlement, it must demonstrate that there was a “meeting of the minds” as to the settlement. City of Chicago (Police Department), 14 PERI ¶3010 (IL LLRB 1998); City of Burbank, 4 PERI ¶2048 (IL SLRB 1988). A meeting of the minds is evidenced by the objective conduct of the parties rather than a party’s subjective belief. City of Chicago, 14 PERI ¶3010. In order to establish that the parties reached a binding agreement, the Charging Party must demonstrate that the parties assented to “the same things in the same sense on all of its essential terms and conditions.” Id.

In this case, the Respondent alleges that it has abided by the terms of the settlement because Short was, under the terms of the settlement, “unable” to return to work on April 1, 2011, due to an ongoing federal investigation into the items found during the search warrant of his residence. The Respondent does not specifically allege that the grievance settlement was ambiguous or that the parties did not reach a meeting of the minds on the terms of the settlement. However, Respondent does allege that the term “unable” in the settlement agreement should be extended to foreclose Short from returning to work at the hospital where Short is still under federal investigation and where returning him to work has potential consequences for the hospital’s licensing. To the extent that Respondent hereby disputes the settlement agreement as ambiguous or alleges that a meeting of the minds did not occur, the parties’ actions in reaching the settlement agreement must be examined.

From the evidence presented by the parties in the stipulated record, it appears that the parties agreed to the settlement resolution that was reached pursuant to Short's discharge for cause and subsequent grievance. What is perhaps more notable is the evidence that is missing from the record in this case. Specifically, there is no evidence showing the date on which the Respondent became aware for the first time that Short was the subject of a federal investigation or that the State charges against him were dismissed to allow the federal investigation to proceed. The stipulations similarly do not indicate when the Respondent became aware for the first time that, allegedly, drugs reported in the hospital's shortages were found at Short's residence during the search warrant. The evidence shows that Respondent knew these two pieces of information at least by May 25, 2012, and March 22, 2012, respectively. However, there is no evidence beyond argument by Respondent that its decision not to return Short to work on April 11, 2011, was based on these two facts. Therefore, if there is no evidence the Respondent knew these facts at the time it entered into the grievance resolution regarding Short's termination, there is also no evidence supporting Respondent's proffered construction of the word "unable" to include an inability based on the federal investigation or alleged discovery of the drug shortages. At the time of the grievance resolution, Respondent was obviously aware that the search warrant on Short's residence had uncovered at least some illegal drugs. Short was subsequently criminally charged in State court regarding the results of the search warrant, but the criminal charges did not list drugs purportedly belonging to the hospital as one of the charges against Short. Even the charges against Short by Respondent with regard to his termination do not mention that drug shortages from the hospital were allegedly found at Short's residence, nor do the charges indicate that Short was under federal investigation. These facts further support a finding that the hospital

did not know this information at the time it entered into the settlement regarding Short's termination.

The evidence before me demonstrates that the Union's construction of the term "unable" in the grievance resolution is accurate given the evidence that Respondent did not know about the drug shortage discovery or the federal investigation at the time the settlement was reached. The objective conduct of both parties indicates that the parties meant the grievance resolution to foreclose a return to work by Short either if he should fail to return of his own accord, or if the State charges against him had not been satisfactorily resolved in his favor by April 1, 2011. Indeed, given the present posture of the Respondent with regard to Short's potential return to work, it is difficult for me to conceive of a situation where the Respondent would have agreed to such a grievance resolution had it known about the alleged drug shortage recovery and/or the federal investigation pending on Short. Ironically, it is this very lack of knowledge on the part of Respondent that supports the Union's contention regarding the meaning of the settlement agreement. I find that there was a meeting of the minds with regard to the grievance resolution and that the resolution was not ambiguous given the evidence before me. Therefore, I find that the Respondent has refused and/or failed to comply with an unambiguous settlement agreement.

The Respondent also urges consideration of public policy as support for its position that it should not be required to reinstate Short. The Illinois Appellate Court has held that arbitration awards that contravene public policy may be vacated. Department of Central Management Services v. AFSCME, 221 Ill. App. 3d 678, 686-687 (1st Dist 1991). In order to be vacated, an arbitrator's interpretation of the contract must violate an explicit, defined public policy. Id. at 687. "[T]he reinstatement of an employee who has violated an important public policy does not necessarily itself violate public policy." City of Highland Park v. Teamster Local Union 714,

357 Ill. App. 3d 453, 462 (2nd Dist. 2005). Further, “absent an explicit legal prohibition against the reinstatement, there must be some well-defined and dominant policy, not merely a value judgment or notion of the public interest, that implicitly forbids the employee’s reinstatement.” Id. With regard to health care, for example, Illinois courts have recognized a public policy favoring provision of medical care to injured persons. See, e.g., Carter Coal v. Human Rights Comm’n, 261 Ill. App. 3d 1, 12 (5th Dist. 1994); Thomas v. Zamberletti, 134 Ill. App. 3d 387, 390 (4th Dist. 1985). Moreover, statutory provisions, such as the Illinois Rural/Downstate Health Act, 410 ILCS 65/1 et seq. (2010), support public policy favoring provision of medical care in rural areas. Even more generally, the preamble to the Illinois Constitution lists one of the reasons for its establishment as the goal “to provide for the health, safety and welfare of the people[.]”

The stipulated evidence in this case notes that the licensure of Respondent, a hospital providing health care for the City of Clinton and County of DeWitt, could be in jeopardy should the Respondent reinstate Short. The concerns of Respondent with its continued ability to provide medical care to its clients are understandable and reasonable. However, even the stipulations in this case are equivocal. It is not clear what impact, if any, Short’s reinstatement pursuant to the settlement agreement, would *actually* have on the hospital’s licensure. There is no evidence before me showing the potential consequences of Short’s reinstatement on the hospital’s ability to provide health care services. Absent such evidence, I do not find that there is a public policy clearly prohibiting Short’s reinstatement.

In addition, the Appellate Court’s consideration of public policy with regard to vacating arbitration awards involves situations where, by definition, an arbitrator has made a decision pursuant to arbitration proceedings between the parties and has subjected the parties to an award

based on those proceedings. This is not the case with regard to Short, where the parties voluntarily agreed to a resolution whereby it was possible that, even given the charges against him, Short could be returned to work at the hospital. If the hospital was unaware of the additional allegations against Short at the time the settlement was reached – i.e., that he was alleged to have been in possession of the hospital’s drug shortages of a variety of controlled substances – but subsequently became aware of such information, it is possible that the hospital could have returned Short to work pursuant to the settlement agreement and then either taken disciplinary action based on the new information or placed him on administrative leave pending the federal investigation. However, this is not the situation before me at this time. Instead, the Respondent chose to simply refuse or fail to reinstate Short pursuant to the settlement agreement without demonstrating a valid reason for that action at the time it was taken. Therefore, I must conclude that the Respondent engaged in an unfair labor practice when it refused to bargain in good faith by refusing to abide by the terms of an unambiguous and undisputed grievance settlement.

V. CONCLUSIONS OF LAW

I find that the Charging Party has proved by a preponderance of the evidence that the Respondent engaged in an unfair labor practice pursuant to Sections 10(a)(4) and (1) of the Act, as alleged in the complaint.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, its officers and agents, shall:

1. Cease and desist from:
 - a. Failing and refusing to bargain collectively in good faith with the Charging Party, AFSCME Council 31, as the exclusive representative of a bargaining unit composed of maintenance and custodial employees, by failing and/or refusing to return Mike Short to work pursuant to the September 2010 grievance resolution.
 - b. In any like or related matter, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Reinstate Mike Short to his position with Dr. John Warner Hospital as provided in the September 2010 grievance resolution between the parties, immediately and without prejudice to his seniority or other rights and privileges.
 - b. Make Short whole for all losses he incurred as a result of Respondent's failure to reinstate him, from April 1, 2011, up to the date of his reinstatement, including back pay with interest computed at the rate of seven percent per annum as allowed by the Act.
 - c. Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 90 consecutive days. Respondent will take

reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.

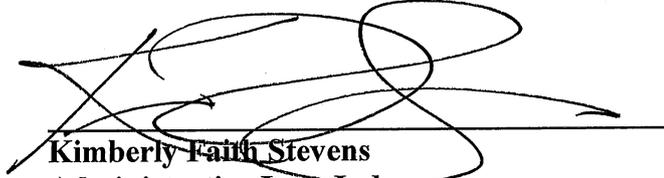
- d. Notify the Board in writing, within 20 days from the date of this Decision, of the steps Respondent has taken to comply herewith.

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 this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 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 General Counsel of the Illinois Labor Relations Board, 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 Springfield, Illinois, this 15th day of November, 2012.

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



**Kimberly Faith Stevens
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the City of Clinton, Dr. John Warner Hospital, 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 protected, concerted activity.

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 or refuse to bargain collectively in good faith with AFSCME Council 31 as the exclusive representative of a bargaining unit composed of maintenance and custodial employees, by failing and/or refusing to return Mike Short to work pursuant to the September 2010 grievance resolution.

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

WE WILL reinstate Mike Short to his position with Dr. John Warner Hospital as provided in the September 2010 grievance resolution between the parties, immediately and without prejudice to his seniority or other rights and privileges.

WE WILL make Short whole for all losses he incurred as a result of Respondent's failure to reinstate him, from April 1, 2011, up to the date of his reinstatement, including back pay with interest computed at the rate of seven percent per annum as allowed by the Act.

This notice shall remain posted for 90 consecutive days at all places where notices to our bargaining unit members are regularly posted.

Date: _____

City of Clinton, Dr. John Warner Hospital
(Employer)