

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Fire Fighters,)	
Local 717,)	
)	
Charging Party)	
)	Case No. S-CA-11-175
and)	
)	
Town of Cicero,)	
Respondent)	

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

On February 10, 2011, the International Association of Fire Fighters, Local 717 (Charging Party) filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), alleging that the Town of Cicero (Respondent) had violated Section 10(a)(1) by interfering with, restraining or coercing public employees in the exercise of their rights guaranteed in the Act, Section 10(a)(2) and (1) of the Act by discriminating in the terms and conditions of employment to discourage membership in or other support for any labor organization, and Section 10(a)(4) and (1) by failing and refusing to bargain in good faith. The charges were investigated in accordance with Section 11 of the Act, and on June 17, 2011, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing.

The Complaint contained the following statement:

RESPONDENT IS HEREBY NOTIFIED that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200-1240, it must file an answer to this complaint and serve a copy thereof upon Charging Party within 15 days after service of the complaint upon it. Said answer shall include an express admission, denial or explanation of each and every allegation of this complaint. Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or

conclusions alleged in the allegation. Failure to timely file an answer shall be deemed to be an admission of all material facts or legal conclusions alleged and a waiver of hearing. The filing of any motion or other pleading will not stay the time for filing an answer. (Emphasis in original).

I. **BACKGROUND**

According to the affidavit of service attached to the Complaint, the Board mailed a copy of the Complaint to the parties' attorneys by post-paid certified U.S. Mail on June 17, 2011, a Friday. Specifically, the affidavit of service identified J. Dale Berry of the law firm of Cornfield and Feldman as Charging Party's attorney, and identified Respondent's attorney as Holly Tomchey of the Del Galdo Law Group. Pursuant to Section 1200.30(c) of the Rules, the Complaint was presumably received three days later. Because intervening Saturdays and Sundays do not count under Section 1200.30(b), that day was determined to be June 22, 2011. The Answer should have thus been filed 15 days after said date, by the close of business July 7, 2011. As explained below, the Answer was not even tendered for filing until November 4, 2011.

On September 8, 2011, Charging Party filed a Motion for Default in the instant case. That Motion was served on Tomchey at the address for the Del Galdo Law Group, 1441 South Harlem Avenue in Berwyn, the same address that the complaint was served on the Respondent. In particular, Charging Party moved the undersigned Administrative Law Judge (ALJ) to enter an Order deeming all matters alleged in the Complaint for Hearing in Case No. S-CA-11-175 as admitted by Respondent Town of Cicero due to its failure to file a timely answer to the Complaint. Tomchey did not respond to that Motion.

On September 26, 2011, the undersigned ALJ issued an Order to Show Cause to Respondent. The affidavit of service attached to that Order provides that it was sent by U.S. mail to Tomchey and asked Respondent to show cause why a default judgment consistent with Section 1220.40(b)

of the Board's Rules should not issue, and set a due date of the close of business on October 5, 2011. Tomchey did not file a Response to the Order to Show Cause dated September 26, 2011.

Upon learning that the case file did not contain a formal appearance from Tomchey, the undersigned issued a second Order to Show Cause to the Respondent on October 26, 2011. The affidavit of service for this second Order to Show Cause indicates that it was sent in the U.S. mail to Larry Dominic, Cicero Town president, with a copy of the Complaint enclosed. It ordered Respondent, by the close of business November 4, 2011, to show cause why a default judgment consistent with Section 1220.40(b) of the Board's Rules should not issue.

On November 4, 2011, Tomchey filed the Response of Respondent, the Town of Cicero, to the Order to Show Cause issued October 26, 2011. That Response, in part, is set forth below:

Through the clerical oversight of the undersigned an answer to the underlying charge was not filed in a timely manner. The undersigned takes full responsibility for the failure to file but respectfully explains the reasons for said failure below. A copy of the answer the undersigned seeks leaves (sic) to file is attached hereto as Exhibit A.

At the time the answer was due to be filed the undersigned was struggling with a cancer scare regarding her toddler son as well as the brain surgery of her aunt. Further the undersigned believed the issues in the charge were being resolved by the Union and the Respondent.

Respondent's Response adds that most of the issues in the unfair labor practice (ULP) charge had been resolved and that those remaining were close to being solved.¹ In closing, the document contains the words "Respectfully Submitted, The Town of Cicero." It then is signed by Tomchey, and the description following her signature is "Assistant Town of Cicero Attorney."

On November 16, 2011 the Charging Party filed its Response to Respondent's Response to the Order to Show Cause issued October 26, 2011. In that document, the Charging Party first

¹In Tomchey's Response to the Order to Show Cause and the subsequent Reply which she submitted on behalf of the Town of Cicero, she uses the term "charge" to refer to the Complaint which the Board issued after investigation of the Charging Party's ULP charge.

points out that the Respondent failed to file a timely answer to the Complaint within 15 days after its service in compliance with the governing Board's Rule, 80 Ill. Admin. Code §1220.40(b). Further, Charging Party notes that Respondent did not contact its counsel to request an extension of time to file an answer or seek a stay of the unfair labor practice complaint pending contract negotiations. As a consequence of the Respondent's failure to file a timely answer to the Complaint, the Charging Party contends that Section 1220.40(b)(3) of the Board's Rules require that Respondent be deemed to have admitted the material facts and legal conclusions alleged in the Complaint, termination of the proceedings and entry of a default order.

Charging Party maintains that strict adherence to the Board Rule requiring default for Respondent's failure to timely file an answer would be reasonable. Charging Party asserts that the Respondent's failure to adhere to the 15 day time limit is due to a careless oversight, and contends that its explanations for its inaction are untruthful and inconsistent. Moreover, Charging Party points out that none of the facts which Respondent offers are attributable to fraud, collusion or other extraordinary circumstances which authorize an Administrative Law Judge to grant leave to file an answer late.

Charging Party first challenges the accuracy of Respondent's claim in its Response to the Order to Show Cause that she was "struggling with a cancer scare regarding her toddler son." Specifically, Charging Party's Response to Respondent's Response to the Order to Show Cause attached an email which Tomchey sent on February 3, 2011 to Andrew Epstein and copied to J.D. Berry, both attorneys at Cornfield and Feldman representing the Charging Party in this matter and in negotiations for a successor collective bargaining agreement (CBA) with Respondent. That email from Tomchey, sent in response to Epstein's email of two weeks earlier documenting the Charging Party's several unsuccessful attempts to contact Respondent to

schedule the interest arbitration, explained that she had been “dealing with the cancer scare” of her toddler son. The email continued by noting that she received positive news the week before, and asked the Charging Party to propose some dates for the interest arbitration. While Tomchey’s email recognized that “we are not out of the woods yet,” she wrote that “things are looking good.”

The Charging Party next introduced facts which questioned Tomchey’s statement in her Response to the Order to Show Cause of October 26, 2011 that the parties had settled their collective bargaining agreement. Relying on the affidavit of the Union president who is a member of the negotiating committee, the Charging Party contends that the parties have not fully settled their collective bargaining agreement negotiations. In particular, Charging Party maintains that two critical issues remain unresolved and are within the jurisdiction of the interest arbitrator: 1) the job classification of the position of Executive Assistant, also known as Administrative Assistant, to the Fire Marshal; and 2) the effects of changes to Respondent’s health care insurance plan for retired bargaining unit members.

The Charging Party pointed out that it has sustained additional prejudice or injury due to the Respondent’s delay in answering the Complaint. Specifically, the Charging Party contends that Respondent violated the Act on September 12, 2011 when it demoted Theodore Peszynski to a 24 hour shift lieutenant from his position as Administrative Assistant to the Fire Marshal, and on September 14, 2011 when it removed his Cicero Police Department Arson Unit Badge. The Charging Party seeks all appropriate remedies in accordance with Section 11(c) of the Act.

On December 2, 2011, Tomchey filed Respondent’s Reply to Charging Party’s Response to Respondent’s Response to the Order to Show cause issued October 26, 2011. In that document, the Respondent explains that from November 2009 to May 2011 the parties

negotiated a successor CBA to the one which expired in December 2009. The Respondent submits that in May 2011 the parties settled the new collective bargaining agreement the morning of interest arbitration, "reserving" the three following sections: 1) changes in retiree health insurance; 2) on the job injuries; and 3) the Administrative Assistant position. Respondent indicates that the new CBA covers the time period of January 1, 2010 through December 31, 2012, and by July 2011 it was ratified by the Charging Party, adopted by the Respondent and implemented.

The Respondent adds that during negotiations for the collective bargaining agreement, the parties discussed many of the issues raised in the unfair labor practice charge at issue. Further, the Respondent's Reply states that "the undersigned [Tomchey] truly believed the parties were working towards resolving all outstanding issues during the negotiation and subsequent settlement of the CBA and any that remained would be resolved with the settlement of the three (3) remaining sections."

Respondent's Reply also indicates that the Charging Party filed a grievance against the Respondent on November 21, 2011. Respondent maintains that this grievance raises some of the same issues that are set forth in the charge in the case at bar. Respondent's Reply attaches that grievance as well as Respondent's November 30, 2011 response to that grievance which invited the Charging Party to contact it to discuss any unresolved issues. Respondent's Reply indicates that the Charging Party would like to meet and discuss matters with it during early December 2011. Respondent's Reply states that it is hopeful that such a meeting of the parties will lead to a resolution of the remaining issues in the charge in the instant case as well as those in the grievance.

Respondent's Reply requests that the ALJ grant it leave to file its answer to the Complaint, allow the parties to reach settlement, and, if unable to do so by the end of the year, litigate the merits of the Complaint. Under Tomchey's signature, Respondent's Reply states "One of the attorneys for the Town of Cicero," and the name of Tomchey's law firm, the Del Galdo Law Group, LLC, is modified by the words "Attorneys for the Respondent." Respondent's Reply is silent about the health issues of Tomchey's relatives which were presented in Respondent's Response to the Order to Show Cause as partial explanations for the Respondent's failure to file a timely Answer.

II. 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 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). Accordingly, I grant the Charging Party's Motion for default, and deny the Respondent's Motion for Leave to File its Answer *Instanter*. The Respondent has not shown the existence of "extraordinary circumstances" under Section 1220.40 (b)(4), the more onerous option available to Respondent facing default, to justify its request to file an Answer to the Complaint nearly four months after issuance of the Complaint. Nor has the Respondent shown that, pursuant to Section 1200.160 of its Rules, the Board should grant a variance from the provisions of Sections 1220.40(b)(1) and (2) requiring it to file an answer 15 days after service of the complaint.

The facts in this case do not establish the existence of "extraordinary circumstances" pursuant to Section 1220.40(b)(4) which authorize the ALJ to grant leave to file a late answer.²

² Section 1220.40(b)(2)(4) provides in relevant part:

Leave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to *extraordinary circumstances* which will include, among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable re-

In Respondent's Response to the second Order to Show Cause issued October 26, 2011, Tomchey explains that she failed to file a timely answer because she was struggling with the serious health concerns of family members at the time the answer was due.³ However, in February 2011, Tomchey had told Charging Party's attorneys in an email that "things were looking good" regarding the health of the same individual that she cited as a reason for her failure to timely file the answer. Thus, by the time the answer was due to be filed five months later in July 2011, Tomchey's health scare was already months passed. Confirming this conclusion, Tomchey subsequently filed a Reply to the Order to Show Cause which no longer cited any family members' health concerns to explain Respondent's conduct. Rather, the Respondent admits that its conduct was due to a "clerical oversight."

In addition, the facts of this case do not demonstrate that a variance, pursuant to Section 1200.160, should be granted from the Board's Rules under Section 1220.40(b) requiring the filing of a timely answer.⁴ Where the Respondent has not requested a variance, none is appropriate. Even if the Board were to consider the granting of a variance in this case, two of the three conditions necessary for a variance do not exist. In particular, the facts already show that the Charging Party has sustained prejudice. First, as the Charging Party points out, it experienced an injury when, effective September 14, 2011, Respondent transferred Peszynski to a position as a 24 hour shift lieutenant from his position of Administrative Assistant to the Fire

lief from judgments. (Emphasis added).

³ Since the Complaint was issued on June 17, 2011, presuming receipt in three days, the Answer was due on July 8, 2011.

⁴ Section 1200.160 provides in relevant part:

The provision of this Part of 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

Marshal, and again that same day when it removed Peszynski's Cicero Police Department Arson Unit Badge. Consequently, where Respondent delayed filing of its answer for *approximately four months* after the Complaint was issued, and Respondent intensified its actions against a bargaining unit member named in the complaint, there is evidence of prejudice to the Charging Party.

Moreover, the facts do not show how application of the default rule would be unreasonable or unnecessarily burdensome for Respondent. See Wood Dale Fire Protection District v. ILRB, State Panel, 395 Ill. App.3d 523, 349, 916 N.E.2d 1229 (2^d Dist. 2009). Indeed, even after the first Order to Show Cause issued at the end of September 2011 alerted the Respondent of its failure, the Respondent did not seek leave to file its Answer late until it responded to the second Order to Show Cause more than a month later. Because the Charging Party provided an email from Tomchey that showed the health scare regarding a relative had been favorably resolved months before the Complaint at bar was issued, there were no longer any mitigating circumstances to consider at the time that the Respondent failed to file an Answer to the Complaint.

The Respondent's position that it believed that resolution of the collective bargaining agreement would likely resolve the unfair labor practice allegations at issue is an insufficient basis for avoiding application of the default rule. 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. Telefactories 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).

Finally, at all times material, Tomchey was acting as the legal representative of the Town of Cicero. While the first Order to Show Cause was sent to Tomchey rather than the Town of Cicero, the undersigned subsequently learned that Tomchey had not filed a Notice of Appearance. After the undersigned sent out a second Order to Show Cause to the Town of Cicero rather than Tomchey, the latter filed a Response to the Order to Show Cause. Consequently, the Town of Cicero *must have* given the Order to Show Cause to Tomchey as its attorney. In that Response, Tomchey admits that the failure to file a timely answer was her responsibility. The Response which Tomchey filed did not contain any qualifying language limiting the time of her representation. The facts show that she had been representing Respondent in February 2011 during negotiations for a successor collective bargaining agreement, well before the Board issued the Complaint at issue in June 2011.

III. RESPONDENT'S ADMISSIONS

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

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act.
3. At all times material, Respondent has been subject to the Act, pursuant to Section 20(b) thereof.
4. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative of a bargaining unit comprised of persons employed by Respondent in various firefighter ranks or titles, as certified by the Board on January 11, 1991, in Case No. S-RC-91-031 (Unit).

6. At all times material, Charging Party and Respondent have been parties to a collective bargaining agreement (CBA) for the Unit.
7. At all times material, Respondent employed George Gregory in the rank or title of Fire Marshal.
8. At all times material, Gregory was an agent of Respondent, authorized to act on its behalf.
9. At all times material, Respondent employed James Klosak in the rank or title of Inspector General.
10. At all times material, Klosak was an agent of Respondent, authorized to act on its behalf.
11. At all times material, Respondent employed Christopher Gomez in the rank or title of Assistant to the Inspector General.
12. At all times material, Gomez was an agent of Respondent, authorized to act on its behalf.
13. At all times material, Respondent employed Eric Habercross in the rank or title of Lieutenant.
14. At all times material, Habercross was a public employee within the meaning of Section 3(n) of the Act.
15. At all times material, Habercross was a member of the Unit.
16. At all times material, Habercross was the local Union president.
17. At all times material, Respondent employed Theodore Peszynski in the rank or title of Lieutenant.
18. At all times material, Peszynski held the position and performed the duties of executive assistant to the fire marshal.
19. At all times material, Peszynski was a public employee within the meaning of Section 3(n) of the Act.
20. At all times material, Peszynski was a member of the Unit.
21. At all times material, Peszynski had an eight hour work schedule with no specifically designated start and end times.

22. At all times material, Respondent afforded Peszynski flexibility in completing his work hours.
23. At all times material, Peszynski (sic) job duties, in part, entailed investigating arson fires.
24. At all times material, Peszynski (sic) job duties, in part, entailed the verification and submission to Respondent, of Unit employees' work hours.
25. At all times material, Respondent employed Frankl Rand in the rank or title of Lieutenant.
26. At all times material, Rand was a public employee within the meaning of Section 3(n) of the Act.
27. At all times material, Rand was a member of the Unit.
28. At all times material, Respondent employed Chad Harvey in the rank or title of Lieutenant.
29. At all times material, Harvey was a public employee within the meaning of Section 3(n) of the Act.
30. At all times material, Harvey was a member of the Unit.
31. At all times material, Respondent employed Mike Vilumus in the rank or title of Lieutenant.
32. At all times material, Vilumus was am public employee within the meaning of Section 3(n) of the Act.
33. At all times material, Vilumus was a member of the Unit.
34. At all times material, Respondent has had mounted video cameras in and around fire stations to record footage of areas inside and immediately adjacent thereto.
35. At all times material, one of the video cameras referenced in paragraph 34, recorded footage of the area where Respondent required employees to sign in and out for each workday.
36. On or about August 26, 2010, Klosak initiated an investigation of Peszynski for falsifying employee sign-in sheets on August 23 and 24, 2010.

37. On or about August 26, 2010, Klosak began interviewing Peszynski to elicit information pertaining to the perceived misconduct referenced in paragraph 36.
38. Peszynski reasonably believed that disciplinary action might result from the August 26 interview referenced in paragraph 37.
39. Peszynski requested union representation at the August 26 interview referenced in paragraph 37.
40. On or about August 26, 2010, Respondent removed from Peszynski, that portion of his job duties that entailed the verification and submission to it, of Unit employees' work hours.
41. At all times material prior to approximately August 26, 2010, Respondent assigned the duties entailing the verification and submission of Unit employees' work hours, exclusively to Unit employees.
42. On or about August 26, 2010, Respondent assigned that portion of Peszynski's job duties that entailed the verification and submission to it, of Unit employees' work hours, to a non-Unit employee.
43. Respondent implemented the changes described in paragraphs 40 and 42, without notice to the Union or offering it an opportunity to bargain.
44. The transfer of duties performed by Unit employees to non-Unit employees involves wages, hours or working conditions within the meaning of Section 7 of the Act, and is thereby a mandatory subject of bargaining.
45. On or about September 11, 2010, Respondent altered Peszynski's job duties in that it removed his arson investigation responsibilities.
46. Respondent took the actions described in paragraphs 40 and 45, in retaliation for Peszynski's actions referenced in paragraph 39.
47. In September 2010, the Union requested that Respondent provide it with Unit employees' daily sign-in sheets for a period of time including August 23 and 24, 2010.
48. In September 2010, the Union requested that Respondent provide it with recorded video footage of the area where Respondent required employees to sign in and out for each weekday, for specific dates.
49. In October 2010, the Union requested that Respondent provide it with a copy of Gomez' job description.

50. The information requested by the Union, as referenced in paragraph 47, is directly related to the Union's function as a bargaining representative.
51. The information requested by the Union, as referenced in paragraph 48, is directly related to the Union's function as a bargaining representative.
52. The information requested by the Union, as referenced in paragraph 49, is directly related to the Union's function as a bargaining representative.
53. The information requested by the Union, as referenced in paragraph 47, is reasonably necessary for the performance of the Union's function as a bargaining representative.
54. The information requested by the Union, as referenced in paragraph 48, is reasonably necessary for the performance of the Union's function as a bargaining representative.
55. The information requested by the Union, as referenced in paragraph 49, is reasonably necessary for the performance of the Union's function as a bargaining representative.
56. From September 2010, to date, Respondent has failed and/or refused to provide the Union the information it requested, as referenced in paragraphs 47 and 48.
57. From October 2010, to date, Respondent has failed and/or refused to provide the Union the information it requested, as referenced in paragraph 49.
58. On or about January 19, 2011, Klosak initiated an investigation of Peszynski, regarding charges of misconduct.
59. On or about January 19, 2011, Klosak initiated an investigation of Rand, regarding charges of misconduct.
60. On or about January 19, 2011, Klosak initiated an investigation of Harvey, regarding charges of misconduct.
61. On or about January 19, 2011, Peszynski, Rand, and Harvey contacted the Union, seeking representation for any questioning in connection with the investigation referenced respectively in paragraphs 58, 59, and 60.
62. On or about January 19, 2011, the Union, at the behest of Peszynski, Rand, and Harvey, notified Klosak that they would not consent to be questioned in connection with the investigations referenced respectively in paragraphs 58, 59, and 60, unless accompanied by Union representatives.

63. On or about January 19, 2011, Klosak upgraded the charges referenced in paragraphs 58, 59, and 60, against, respectively, Peszynski, Rand, and Harvey.
64. Respondent took the actions described in paragraph 63, in retaliation for the actions of Peszynski, Rand, and Harvey, as referenced in paragraph 61.
65. In January 2011, Habercross filed a complaint with Klosak and Gomez, in their official capacities, regarding the actions of one of Respondent's employees, Isabella Delgadillo.
66. In or about January or February 2011, Klosak and Gomez declined to pursue the complaint referenced in paragraph 65.
67. Respondent took the action described in paragraph 66, because of Habercross' activities as local Union president.
68. Respondent took the action described in paragraph 66, in order to discourage support for the Union by members of the Unit.
69. On or about February 11, 2011, Gomez said to Vilumus that if he complained to the Union about him or his actions, he (Gomez) would make sure Vilumus loses his job.
70. By its acts and conduct as described in paragraphs 40, 42, 43, 56, and 57, Respondent violated Section 10(a)(4) and (1) of the Act.
71. By its acts and conduct as described in paragraphs 67 and 68, Respondent violated Section 10(a)(2) and (1) of the Act.
72. By its acts and conduct as described in paragraphs 46, 64, and 69, Respondent violated Section 10(a)(1) of the Act.

IV. CONCLUSIONS OF LAW

Based on the foregoing, the Respondent violated Section 10(a)(4), and (1) of the Act when it removed a portion of Lieutenant (Lt.) Theodore Peszynski's duties concerning verification and submission to it of bargaining employees' work hours and reassigned them to a non-bargaining unit employee without notice to the Union or offering it an opportunity to bargain, and failed and/or refused to provide the Union with information that it requested. The Respondent also violated Section 10(a)(2) and (1) of the Act when its Inspector General,

James Klosak, and Assistant Inspector General, Christopher Gomez, declined to pursue a complaint which Lt. Eric Habercross, Union president, filed against one of the Respondent's employees. In addition, the Respondent violated Section 10(a)(1) of the Act when it removed from Lt. Peszynski the job duties described above and those concerning arson investigation, when it upgraded the charges in the investigations of Lts. Peszynski, Rand, and Harvey, respectively, for alleged misconduct, and when Gomez threatened Lt. Mike Vilumus with loss of his job if he complained about the former's actions.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED THAT THE Respondent, the Town of Cicero, 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. Reinstate Peszynski to his former position as Administrative Assistant to the Fire Marshal; rescind the removal of Peszynski's duties concerning verification and submission to Respondent of bargaining unit employees' work hours; rescind the removal of Peszynski's arson investigation duties; make Peszynski whole for any losses he suffered as a result of the change in his position from the Fire Marshal's Administrative Assistant to a 24 hour shift lieutenant, including back pay plus interest at a rate of seven percent per annum; and return Peszynski's Cicero Police Department Arson Unit Badge.

- b. Provide the Charging Party with the information requested—bargaining unit employees' time sheets for a period of time including August 23 and 24, 2010, video footage, for specific dates, of the area where employees are required to sign in and out, and a copy of Gomez' job description.
- c. Investigate the complaint which Habercross made against one of Respondent's employees that Klosack and Gomez had previously declined to pursue.
- d. Return the charges in the investigations initiated on January 19, 2011 against bargaining-unit members Peszynski, Rand and Harvey to their original allegations, rather than the charges that were upgraded due to the protected activity of these bargaining unit members
- e. 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.
- f. Notify the Board in writing, within 20 days from the date of this decision, of what steps this Respondent has taken to comply herewith.

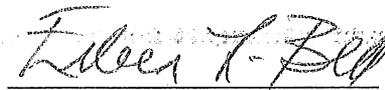
VI. EXCEPTIONS

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 15th day of December 2011.

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



**Eileen L. Bell
Administrative Law Judge**

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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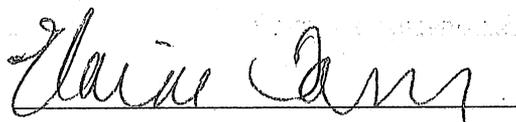
AFFIDAVIT OF SERVICE

I, Elaine Tarver, on oath state that I have this 15th day of December, 2011, served the attached **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.

J. Dale Berry
Cornfield & Feldman
25 E Washington Street, Suite 1400
Chicago, IL 60602

Holly Tomchey
Del Galdo Law Group
1441 S Harlem Ave
Berwyn, IL 60402

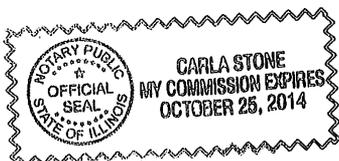
Larry Dominic
Cicero Town President
4949 W Cermak Road
Cicero, IL 60804



SUBSCRIBED and SWORN to
before me this 15th day
of December 2011.



NOTARY PUBLIC



NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the Town of Cicero 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 cease and desist from in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in the Act.

WE WILL reinstate Lt. Peszynski to his former position of Administrative Assistant to the Fire Marshal; rescind the removal of Lt. Peszynski's duties concerning verification and submission of the work hours of bargaining unit employees and arson investigations; make Lt. Peszynski whole for any losses he suffered as a result of the change in his position, including back pay plus interest at a rate of seven percent per annum; and return Lt. Peszynski's Cicero Police Department Arson Unit Badge.

WE WILL provide the Union, IAFF Local No. 717, with the information requested: bargaining unit employees' time-sheets for a period of time including August 23 and 24, 2010; video footage, for specific dates, of the area where employees are required to sign in and out; and a copy of Assistant Inspector General Gomez' job description

WE WILL investigate the complaint which Lt. Habercross made against one of the Town of Cicero's employees that Inspector General Klosack and Gomez had previously declined to pursue.

WE WILL return the charges in the investigations initiated on January 19, 2011 against bargaining unit members Peszynski, Rand and Harvey to their original allegations rather than those subsequently upgraded.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

Date of Posting

Town of Cicero (Employer)

(Title of Representative)

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.**