

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

Illinois Council of Police,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-12-031
)	
Village of Willow Springs,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 2, 2011, the Illinois Council of Police (Charging Party) filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Parts 1200 through 1240 (Rules) alleging that the Village of Willow Springs (Respondent) had violated Sections 10(a)(4) and (1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on November 17, 2011, the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing.

According to the affidavit of service attached to the Complaint, a copy of the Complaint was mailed to Alan Nowaczyk, Mayor of Willow Springs, by U.S. Mail on November 17, 2011. Pursuant to Section 1200.30(c) of the Rules, the Complaint was presumed received three days later. Because the third day fell on a Sunday, according to Section 1200.30(a), the time period automatically extended to the next business day and was presumed received by Monday, November 21, 2011. Pursuant to Section 1220.40(b) of the Rules, the Respondent was required to submit its Answer to the Complaint within 15 days. Thus, a timely answer by the Respondent should have been postmarked by December 6, 2011. However, the Respondent did not file an

answer. On December 15, the undersigned issued an order directing the Respondent to show cause not later than December 23, 2011 why a default judgment consistent with Section 1220.40(b) of the Board's Rules should not issue. On December 22, 2011, the Respondent filed its Motion to Vacate Default Judgment¹ and Answer to Charge Filed by Charging Party. On December 27, 2011, the Charging Party filed its Motion for Default Judgment.

I. DISCUSSION AND ANALYSIS

The issue presented in this case is whether the Respondent's failure to file an answer within 15 days of service of the Complaint constitutes an admission of the material facts and legal conclusions alleged in the Complaint and a waiver of a hearing pursuant to the Rules and Regulations of the Illinois Labor Relations Board.

Section 1220.40(b) of the Board's Rules provides that:

Whenever the Executive Director issues a complaint for hearing, the respondent shall file an answer within 15 days after service of the complaint and deliver a copy to the charging party by ordinary mail to the address set forth in the complaint. Answers shall be filed with the Board with attention to the designated Administrative Law Judge.

1) The answer shall include a specific admission, denial or explanation of each allegation or issue of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the circumstances of the allegation.

2) The answer shall also include a specific, detailed statement of any affirmative defenses.

¹ Although the undersigned issued an order to show cause why default should not issue, the Respondent responded consistent with a default being issued and requested to vacate the default. However, the undersigned viewed the response as an answer to the order to show cause.

3) 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. Filing of a motion will not stay the time for filing an answer.

4) 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 relief from judgments.

This rule has been strictly construed by the Board and courts, which consistently have held that a respondent's failure to timely file an answer to a complaint results in a default judgment. Metz v. Illinois State Labor Relations Board, 231 Ill. App. 3d 1079, 8 PERI ¶ 4019 (5th Dist. 1992), aff'g St. Clair. County (Circuit Clerk), 6 PERI ¶2036 (IL SLRB 1990); Peoria Housing Authority, 11 PERI ¶ 2033 (IL SLRB 1995); Chicago Housing Authority, 10 PERI ¶ 3010 (IL LLRB 1994).

The Respondent's argument for vacating default judgment is as follows: The parties have been involved in negotiations for the last 12 months and as a part of negotiations both parties agreed that all pending grievances and/or unfair labor practices would be withdrawn by the Charging Party if an agreement was reached. This Complaint for Hearing was issued one day prior to the parties' last negotiation session where the Charging Party issued its last best offer. The Respondent informed the Charging Party that its offer would have to go before the Respondent's Board for approval on December 8, 2011. Because the Respondent was hopeful that its Board would accept the offer, and due to the Respondent's significant financial shortfalls, it did not file its Answer to the Complaint. On December 8, 2011 the Respondent's Board rejected the Charging Party's last best offer and therefore the Charging Party did not withdraw its charge against the Respondent in this matter. The Respondent acknowledges that it should

have apprised the Administrative Law Judge of the status of negotiations, the parties' agreement to withdraw all claims and the Villages finances and asks that any default judgments be vacated.

I find that the Respondent has not provided a satisfactory explanation for its failure to timely answer the Complaint. The Respondent does not explain why it did not request an extension of time to file an answer prior to the Respondent's Board making a decision on the Charging Party's last best offer. Although understanding, the fact that the Respondent is in a financial bind and did not want to incur additional litigation expenses is not an extraordinary circumstance to grant the Respondent leave to file a late answer. I also do not find that this is a case where a variance in the rules should be granted under Section 1200.160 as the Appellate Court ruled in Cook County State's Attorney v. Illinois State Labor Relations Board, 292 Ill. App. 3d 1 (1st Dist. 1997). Section 1200.160 provides that the Board's rules may be waived or suspended when it finds that the provision from which the variance is granted is not statutorily mandated, no party will be injured by granting the variance and the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. I find that the Respondent has not shown due diligence in filing its Answer where it does not deny having knowledge of the Complaint for Hearing, decided not to ask for an extension to file and admitted to failing to appraise the Administrative Law Judge of its "extraordinary" circumstances prior to the Answer becoming due, and failing to file its Answer even after an order for show cause was issued.

In light of the above, it must be concluded that the Respondent was fully informed of the required filing period of an answer and the consequences for not complying. Given the Board's strict application of the time limit for filing an Answer, I find that the Respondent has waived its

right to a hearing in this matter and has admitted the material factual and legal allegations as stated in the Complaint.

II. RESPONDENT'S ADMISSIONS

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

1. At all times material herein, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material herein, the Respondent has been a unit of local government subject to the jurisdiction of the Board pursuant to Section 5 of the Act.
3. At all times material herein, 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 herein, the Charging Party has been a labor organization as defined in Section 3(i) of the Act.
5. At all times material herein, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's full-time police officers in the rank of Patrol Officer and Corporal, as originally certified by the Board on April 23, 2003, in Case No. S-RC-083 (Patrol Officer Unit).
6. At all times material herein, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's full-time police officers in the rank of Sergeant, as certified by the Board on February 16, 2011, in Case No. S-RC-11-053 (Sergeant Unit).
7. At all times material herein, the Respondent has employed persons in the title of part-time Police Officer, with incumbents in that title deemed excluded from either the Patrol Officer Unit or the Sergeant Unit.
8. In or after February 2011, the Respondent created the position of Commander, with incumbents in that title deemed excluded from either the Patrol Officer Unit or the Sergeant Unit.
9. In or after February 2011, the Respondent transferred duties and assignments previously performed by employees in the Patrol Officer Unit to employees in the title of part-time Police Officer.
10. In or after February 2011, the Respondent transferred duties and assignments previously performed by employees in the Sergeant Unit to employees in the title of Commander.

11. This decision to transfer duties performed by bargaining unit employees to non-bargaining unit employees, and the effects thereof, involves wages, hours or working conditions within the meaning of Section 7 of the Act, and are thereby mandatory subjects of bargaining.

12. The Respondent took the actions described in paragraphs 9 and 10 without providing notice or the opportunity to bargain to the Charging Party over either the decision or the effects of the decision to implement the reduction in force.

13. By its acts and conduct as described in paragraphs 9, 10 and 12, the Respondent has failed and refused to bargain in good faith with the Charging Party, in violation of Section 10(a)(4) and (1) of the Act.

III. CONCLUSIONS OF LAW

The Respondent, by refusing to negotiate the transfer of duties and assignments previously performed by employees in the Sergeant Unit and Patrol Officer Unit, it has failed and refused to bargain in good faith in violation of Section 10(a)(4) and (1) of the Act.

IV. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Village of Willow Springs, its officers and agents shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

(b) Transferring duties and assignments of members of the Sergeant and Patrol Officer Units without bargaining in good faith with the Illinois Council of Police.

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

(a) On request, bargain with the Illinois Council of Police, with respect to the transfer of duties and assignments of employees in the Sergeants and Patrol Officer Units.

(b) On request, make the members of the Respondent's Sergeant and Patrol Officer Units represented by the Illinois Council of Police, whole for any losses they suffered by reason of the Respondent's failure to bargain with respect to the transfer of duties and assignments.

(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 60 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 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, this 6th day of January, 2012.

Elaine L. Tarver

Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board

