

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

Service Employees International Union,)	
Local 73,)	
)	
Charging Party)	
)	
and)	Case Nos. S-CA-12-047
)	S-CA-12-049
)	
Village of Dixmoor,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 22, 2011, Service Employees International Union, Local 73 (Charging Party) filed charges 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 Dixmoor (Respondent) had violated Sections 10(a)(4) and (1) of the Act.¹ The charges were investigated in accordance with Section 11 of the Act and on January 31, 2012, the Executive Director of the Illinois Labor Relations Board issued Complaints for Hearing.

I. BACKGROUND

According to the Affidavits of Service attached to the Complaints, the Board mailed a copy of the Complaints to Linda Gant, Village of Dixmoor, by U.S. Mail on January 31, 2012.² Pursuant to Section 1200.30(c) of the Rules, the Complaints were presumed received three days

¹ The Complaint for Hearing in S-CA-12-047 and the Complaint for Hearing in S-CA-12-049 inadvertently stated that the charges were filed on September 22, 2010. The charges were in fact filed on September 22, 2011.

² Linda Gant is the Director of Human Resources for the Village of Dixmoor.

later, on February 2, 2012. Pursuant to Section 1220.40(b) of the Rules, Respondent was required to submit its Answers to the Complaints within 15 days. Thus, timely answers by Respondent should have been postmarked by February 17, 2012. However, Respondent did not file answers. On February 22, 2012, the undersigned issued to Respondent an Order to Show Cause not later than March 2, 2012 why a default judgment consistent with Section 1220.40(b) of the Board's Rules should not issue.³ Respondent has failed to respond to the Order to Show Cause.

II. DISCUSSION AND ANALYSIS

The issue in this case is whether Respondent's failure to file answers within 15 days of service of the Complaints constitutes an admission of the material facts and legal conclusions alleged in the Complaints 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.

³ The undersigned inadvertently stated that the response was due on March 2, 2011. However, throughout the remainder of the Order and the Affidavit of Service, the correct year (2012) was used.

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

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 have consistently held that a respondent's failure to timely file an answer to a complaint results in admissions of all allegations in the complaint and an entry of default judgment. Wood Dale Fire Protection District v. Illinois Labor Relations Board, 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale Professional Firefighters Association, Local 3594, 25 PERI ¶136 (IL LRB-SP 2008); Metz v. Illinois State Labor Relations Board, 231 Ill. App. 3d 1079 (5th Dist. 1992), aff'g St. Clair County (Circuit Clerk), 6 PERI ¶2036 (IL SLRB 1990); Chief Judge of the Circuit Court of Cook County, 27 PERI ¶63 (IL LRB-SP 2011).

Respondent has failed to file an answer to the Complaints. It has also failed to respond to the Order to Show Cause. It has not presented an argument that under the Board's Rules in Section 1220.40(b) default should not result in these circumstances. Respondent has also not sought leave to file late answers as provided under Section 1220.40(b)(4). As previously noted, that provision states that "[l]eave to file a late answer shall" be granted only if "the late filing is due to extraordinary circumstances" such as "fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments." Respondent has made no such request for leave.

The Complaints fully informed Respondent of the required filing period for an answer and the consequences for not complying. As previously noted, the Board has consistently held that an entry of default judgment is appropriate in such circumstances. Therefore, I find that Respondent has waived its right to a hearing in this matter and has admitted the material facts and legal conclusions alleged in the Complaints. Thus, an Order of Default is applicable and appropriate.

III. RESPONDENT'S ADMISSIONS

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

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) of the Act.
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, Charging Party has been the exclusive representative of a bargaining unit comprised of all persons employed by the Village of Dixmoor in the following titles or ranks: Firefighter, Firefighter/EMT, EMT/Paramedic, Lieutenant/Paramedic, Captain/Paramedics; as certified by the Board on October 16, 2003, in Case No. S-RC-03-119 (Firefighter Unit).
6. At all times material, the Union and Respondent were parties to a collective bargaining agreement (Firefighter CBA) for the Firefighter Unit, with a term ending October 31, 2012.
7. At all times material, the parties' Firefighter CBA contained a provision which provided that if the Village granted another employee bargaining unit a wage increase or bonus greater than that received by the Firefighter Unit in its Firefighter CBA, then the Village would grant Firefighter Unit employees the difference.

8. On or about July 1, 2011, the Village granted a bargaining unit of its police officers a 3% wage increase retroactive to July 1, 2010.
9. The increase the Village granted its police officers, as described in paragraph 8, was greater than that received by the Firefighter Unit in its Firefighter CBA.
10. Because the increase the Village granted its police officers, as described in paragraph 8, was greater than that received by the Firefighter Unit in its Firefighter CBA, on several occasions in July and August 2011, the Union requested that the Village grant the difference to Firefighter Unit employees, pursuant to the provision in the parties' Firefighter CBA, referenced in paragraph 7.
11. In July 2011, Respondent refused to implement the pay increase due Firefighter Unit employees pursuant to the provision in the parties' Firefighter CBA, referenced in paragraph 7.
12. In August 2011, Respondent refused to implement the pay increase due Firefighter Unit employees pursuant to the provision in the parties' Firefighter CBA, referenced in paragraph 7.
13. By its acts and conduct as described in paragraphs 11 and 12, Respondent repudiated or renounced the terms of the Firefighter CBA.
14. By its acts and conduct as described in paragraphs 13, 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.
15. At all times material, Charging Party has been the exclusive representative of a bargaining unit comprised of all persons employed full-time by the Village of Dixmoor in the following classification or title: General Laborer; as certified by the Board on July 27, 2005, in Case No. S-RC-05-101 (General Laborer Unit).
16. At all times material, the Union and Village have been parties to a collective bargaining agreement (General Laborer CBA) for the General Laborer Unit, with a term ending May 31, 2009.
17. On or about April 2010, the parties commenced bargaining a successor General Laborer CBA.
18. On or about January 2011, the Union and Village reached a tentative agreement on a successor General Laborer CBA.
19. On or about January 2011, General Laborer Unit employees declined to ratify the successor General Laborer CBA, referenced in paragraph 18.
20. On numerous occasions between January and August 2011, the Union requested that the Village resume their negotiations on a successor General Laborer CBA.

21. From January 2011 to date, the Village has failed and/or refused to respond to the Union's requests, referenced in paragraph 20.

22. By its acts and conduct as described in paragraph 21, 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.

IV. CONCLUSIONS OF LAW

Respondent, by repudiating or renouncing the terms of the parties' Firefighter CBA, has failed and refused to bargain in good faith in violation of Section 10(a)(4) and (1) of the Act.

Respondent, by failing and or refusing to respond to the Union's requests to resume negotiations on a successor General Laborer CBA, has failed and refused to bargain in good faith in violation of Section 10(a)(4) and (1) of the Act.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Village of Dixmoor, 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) Repudiating or renouncing the terms of the parties' Firefighter CBA;

(c) Failing and or refusing to respond to the Union's requests to resume negotiations on a successor General Laborer CBA;

(d) Failing and refusing to bargain in good faith with the Charging Party, Service Employees International Union, Local 73, as to decisions that affect Firefighter Unit and General Laborer Unit employees' wages, hours or terms and conditions of employment, as may be required by the Act.

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

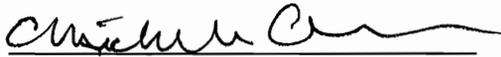
- (a) Implement the pay increase due Firefighter Unit employees pursuant to the provision in the parties' Firefighter CBA.
- (b) Make the members of the Respondent's Firefighter Unit represented by the Service Employees International Union, Local 73, whole for any losses they suffered by reason of the Respondent's failure to implement the pay increase due Firefighter Unit employees, including back pay plus interest at a rate of seven percent per annum.
- (c) Preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of back pay and terms and conditions of the Firefighter Unit pay increase as set forth in this Decision.
- (d) Resume negotiations and bargain with the Service Employees International Union, Local 73, with respect to the successor General Laborer CBA.
- (e) 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.
- (f) Notify the Board in writing, within 20 days from the date of this Decision, of the steps 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 Springfield, Illinois, this 7th day of March, 2012.



Michelle N. Owen
Administrative Law Judge
Illinois Labor Relations Board

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Service Employees International Union,
Local 73,

Charging Party

and

Village of Dixmoor,

Employer

Case Nos. S-CA-12-047
S-CA-12-049

DATE OF
MAILING: March 7, 2012

AFFIDAVIT OF SERVICE

I, Lori Novak, on oath, state that I have served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

Annie Varkey
SEIU Local 73
300 South Ashland, Suite 400
Chicago, IL 60607

Linda Gant
Village of Dixmoor
170 W. 145th St.
Dixmoor, IL 60426

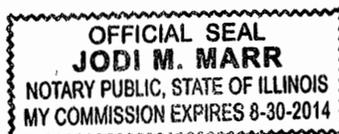
Lori Novak

Lori Novak

SUBSCRIBED and SWORN to
before me, March 7, 2012

Jodi M. Marr

NOTARY PUBLIC



NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

IT IS HEREBY ORDERED that the Respondent, Village of Dixmoor, 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. Repudiating or renouncing the terms of the parties' Firefighter CBA;
 - c. Failing and or refusing to respond to the Union's requests to resume negotiations on a successor General Laborer CBA;
 - d. Failing and refusing to bargain in good faith with the Charging Party, Service Employees International Union, Local 73, as to decisions that affect Firefighter Unit and General Laborer Unit employees' wages, hours or terms and conditions of employment, as may be required by the Act. .
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Implement the pay increase due Firefighter Unit employees pursuant to the provision in the parties' Firefighter CBA.
 - b. Make the members of the Respondent's Firefighter Unit represented by the Service Employees International Union, Local 73, whole for any losses they suffered by reason of the Respondent's failure to implement the pay increase due Firefighter Unit employees, including back pay plus interest at a rate of seven percent per annum.
 - c. Preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of back pay and terms and conditions of the Firefighter Unit pay increase as set forth in this Decision.
 - d. Resume negotiations and bargain with the Service Employees International Union, Local 73, with respect to the successor General Laborer CBA.

This notice shall remain posted for 60 consecutive days at all places where notices to our bargaining unit members are regularly posted.

Date: _____

Village of Dixmoor
(Employer)