

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Council of Police,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-12-093
)	
Village of Dixmoor,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On December 20, 2011, 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 Dixmoor (Respondent) violated Section 10(a) of the Act. The charges were investigated in accordance with Section 11 of the Act and, on March 29, 2012, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing alleging that Respondent committed an unfair labor practice, violating Sections 10(a)(4) and (1) of the Act.

I. BACKGROUND

On March 29, 2012 the Complaint for Hearing was issued on the Respondent addressed to Village President Keevan Grimmett at 170 West 145th Street, Dixmoor, Illinois 60426. Pursuant to Section 1200.30(c) of the Rules, the Complaint was presumed received by the Respondent three days later. Because the three days were intercepted by a weekend, according to Section 1200.30(a), the time period automatically extended to the next business day and therefore the Complaint was presumed received by Tuesday, April 3, 2012. 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 April 18, 2012. The Complaint contained the following statement warning Respondent of its obligation to timely answer:

RESPONDENT IS HEREBY NOTIFIED that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, it must file an answer to this Complaint and serve a copy thereof upon the Charging Party within 15 days of the 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 an admission of all material facts or legal conclusions alleged, and a waiver of hearing. The filing of any motions or other pleadings will not stay the time for filing an Answer.

To date, the Respondent has not filed its Answer. On May 8, 2012, the undersigned issued an Order to Show Cause ordering the Respondent to show, by May 22, 2012, why a default judgment, consistent with Section 1220.40(b) of the Rules, should not issue. The order was sent by U.S. Mail to Village President Keevan Grimmett and Attorney for the Village Bettie Lewis at 170 West 145th Street, Dixmoor, Illinois 60426. The order is presumed received by Friday, May 11, 2012, and to date the Respondent has not responded. On May 23, 2012, the Charging Party filed its Motion for Default Judgment Pursuant to an Order to Show Cause.

II. DISCUSSION AND ANALYSIS

Section 1220.40(b)(4) of the Rules provide that "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 standard requires a showing of unfair, unjust, or unconscionable circumstances; that there are meritorious defenses;

and that the respondent was diligent in protecting its rights. City of Chicago v. Central National Bank, 134 Ill. App. 3d 22 (1st Dist. 1985).

In the alternative, the Board may grant it a variance from the application of Section 1220.40(b)(3)¹ when all three prongs of Section 1200.160 are met. Section 1200.160 provides the following:

The provision of this Part or 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.

The Appellate Court also found that the denial of a variance would be unreasonable and unnecessarily burdensome if the defendant could show (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim in the original action; and (3) due diligence in filing the petition for relief. Cook County State's Attorney v. Illinois Labor Relations Board, 292 Ill. App. 3d 1, 11 (1st Dist. 1997).

None of these prerequisites are present herein. The Respondent has not responded to the Order to Show Cause and therefore has failed to allege a reason for its failure to submit its Answer to the Complaint. 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 the admission of all allegations in the complaint and an entry of a default ruling. Accordingly, the Respondent has waived its right to a hearing in this matter and admitted the material factual and legal allegations contained in the Complaint for Hearing. Wood Dale Fire Protection District v. Illinois Labor Relations Board, 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale

¹ Section 1220.40(b)(3) was previously 1220.40(c)(3) which was amended at 27 Ill. Reg. 7436, effective May 1, 2003.

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); Peoria Housing Authority, 11 PERI ¶ 2033 (IL SLRB 1995); Chicago Housing Authority, 10 PERI ¶ 3010 (IL LLRB 1994).

III. 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, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
3. At all times material, the Respondent has been a unit of local government subject to the jurisdiction of the Board pursuant to Section 5(a) of the Act.
4. At all times material, the Charging Party has been a labor organization as defined in Section 3(i) of the Act.
5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's employees, as certified by the Board on May 10, 2010, in Case No. S-RC-10-105 (Unit).
6. In or about November 2011, the Charging Party requested that the Respondent commence negotiations for an initial collective bargaining agreement (Agreement) for the Unit's employees.
7. On or about January 23, 2012, representatives of the Charging Party and Respondent commenced negotiations for an Agreement.
8. Since on or about January 23, 2012, the Respondent has failed and refused to continue negotiations for an Agreement.

9. By its acts and conduct as described in paragraph 8, 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.

IV. CONCLUSIONS OF LAW

Respondent violated Section 10(a)(4) and (1) of the Act by failing and refusing to continue negotiations for an Agreement with the Charging Party.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the VILLAGE OF DIXMOOR, its officers and agents shall:

Cease and desist from:

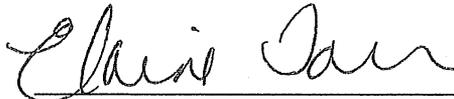
1. Failing to and refusing to negotiate the initial collective bargaining agreement for the unit certified by the Board in Case No. S-RC-10-105.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Notify the Charging Party that it will not refuse to continue negotiations for the Agreement.
 - b) Continue the negotiations for the collective bargaining agreement.
 - 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.

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, this 5th day of June, 2012.



Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-12-093

The State Panel of the Illinois Labor Relations Board has found that the Village of Dixmoor 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, on request, bargain collectively in good faith as required by law with the Illinois Council of Police, as the exclusive representative of the bargaining unit, as certified by the Board in Case No. S-RC-10-105.

WE WILL, make the members of the bargaining unit, as certified by the Board in Case No. S-RC-10-105, whole for any losses they suffered with respect to the failure to bargain.

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

Date of Posting

Village of Dixmoor (Employer)

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.**

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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)
And)
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Village of Dixmoor,)
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Respondent)

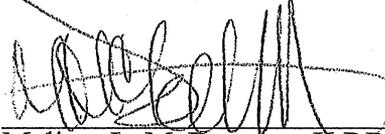
Case No. S-CA-12-093

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 5th day of JUNE, 2012, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** 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 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

Ms. Bettie Lewis
Mr. Keevan Grimmett
Village of Dixmoor
170 North 145th Street
Dixmoor, Illinois 60426

Mr. Richard Blass
Illinois Council of Police
770 North Church Street
Suite H
Elmhurst, Illinois 60126



Melissa L. McDermott, ILRB

SUBSCRIBED and SWORN to
Before me this 5th day of
June, 2012,



NOTARY PUBLIC

