

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

Illinois Council of Police,)	
)	
Charging Party)	
)	Case No. S-CA-12-145-C
and)	
)	
Village of Lyons,)	
)	
Respondent)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED COMPLIANCE
DECISION AND ORDER**

On April 5, 2012, the Illinois Council of Police (Charging Party or Union) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Village of Lyons (Respondent or City) engaged in unfair labor practices within the meaning of Sections 10(a)(4), (2), and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2012), as amended. The charge was investigated in accordance with Section 11 of the Act and on December 18, 2012, the Board’s Executive Director issued a Complaint for Hearing.

On October 28, 2013, Administrative Law Judge (ALJ) Martin Kehoe issued a Recommended Decision and Order (RDO) holding that the Village violated Sections 10(a)(4) and (1) of the Act when it abolished the rank of Commander and replaced it with the rank of Deputy Chief, without providing the Union notice and an opportunity to bargain. In the underlying case, the Respondent formulated an undisclosed plan to eliminate the bargaining unit, comprised of three Commanders, by creating a non-union Deputy Chief position, hiring two Commanders as Deputy Chiefs, and demoting the third to Sergeant. On April 4, 2012, the Respondent passed an ordinance which abolished the rank of Commander and replaced it with the rank of Deputy Chief. The ordinance achieved full force and effect from the moment of its passage. The ALJ determined that the Respondent violated the Act when it passed the ordinance, even though bargaining unit Commanders still retained their rank, benefits, and work, as of the hearing date. He reasoned that the “sudden creation of the Deputy Chief position, filled or unfilled at the moment, was...a substantial change in the status quo.” Consequently, the ALJ directed the Respondent to:

1. Cease and desist from
 - (a) Implementing or giving effect to the Village's April 4, 2012 ordinance regarding the reorganization of the police department;
 - (b) Failing and refusing to bargain in good faith with the Union as to changes set forth in the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village's Commanders;
 - (c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
 - (a) Rescind any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village's Commanders made on or after April 4, 2012 and any other such changes made thereafter;
 - (b) Make whole any employees in the bargaining unit represented by the Union for all losses incurred as a result of any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of those employees, including back pay plus interest at seven percent per annum, as allowed by the Act;
 - (c) Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours, or terms or conditions of employment of employees represented by the Union and, upon request of the Union, bargain in good faith over those changes;
 - (d) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to calculate the amount of back pay due under the terms of this decision;
 - (e) Post, at all places where notices to employees are regularly 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. The Village 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 order of the steps the Village has taken to comply herewith.

No party filed exceptions to the ALJ's RDO and on January 17, 2014 the General Counsel finalized it as non-precedential and binding on the parties.

On December 18, 2013, the Union filed a petition seeking enforcement of the ALJ's RDO. The Union asserted that the Respondent failed to post the notice and failed to rescind the ordinance. It also requested sanctions. The Board's Compliance Officer, Michael Provines, investigated the matter.

On April 11, 2014, the Compliance Officer issued a Compliance Order. In relevant part, he determined that the Respondent did not comply with the ALJ's decision because the Respondent did not rescind the ordinance. He rejected the Respondent's assertion that the RDO did not require the Respondent to take such action. Instead, he observed that the Order directed the Respondent to rescind the changes to bargaining unit members' terms and conditions of employment resulting from its unlawful enactment of the ordinance.¹ He reasoned that the Respondent's enactment of the ordinance qualified as one such change because it created the Deputy Chief position and, according to the ALJ, substantially altered the status quo irrespective of its application to bargaining unit members.

On April 21, 2014, the Respondent appealed the Compliance Order on the grounds that the Compliance Officer misinterpreted and misapplied the language of the RDO. The Respondent argues that the ALJ did not order the Respondent to rescind the ordinance. First, it argues that the ALJ merely ordered the Respondent to cease and desist from implementing it and to rescind any changes made pursuant to the ordinance which affect employees' terms and conditions of employment. Next, the Respondent asserts that the Order presumes the continued existence of the ordinance by requiring the Respondent to take certain "affirmative actions...prior to implementation." Finally, the Respondent asserts that it is beyond the Board's authority to order the Respondent to rescind the ordinance.

I. DISCUSSION AND ANALYSIS

The Compliance Officer correctly determined that the RDO requires the Respondent to rescind the ordinance. Further, it is within the Board's authority to order such a remedy.

The ALJ effectively required the Respondent to rescind the ordinance when he ordered the Respondent to cease and desist from giving it effect. The ordinance maintains its force and effect as long as it exists on the books; it became effective as soon as it passed and is not rendered void by the Respondent's mere failure to enforce it. Nolan v. City of Granite City, 162 Ill. App. 3d 187, 188 (5th Dist. 1987) (An ordinance is not rendered void by failure of the municipality to enforce it). Consequently, the Respondent cannot adhere to the ALJ's order by ignoring the ordinance because the Respondent gives the ordinance effect simply by preserving

¹ In fact, the Order requires the Respondent to "rescind any changes made *pursuant to* the...ordinance" that affect employees' terms and conditions of employment. (emphasis added)

its existence. Instead, the Respondent must rescind the ordinance to “cease...giving it effect,” as the ALJ ordered. In light of this analysis, it is immaterial that the ALJ declined to phrase this requirement separately as an affirmative action.

Further, it is proper to interpret the language of the Order as requiring the Respondent to rescind the ordinance because that reading gives meaning to all of the Order’s language. Here, the order distinguishes between the Respondent’s implementation and effectuation of the ordinance: the Respondent shall “cease and desist from implementing [it] or giving [it] effect.” The instant interpretation reflects this distinction by respectively requiring the Respondent to cease applying the ordinance to bargaining unit members (implementing it) and to cease maintaining it on the books (giving it effect). By contrast, the Respondent’s reading equates the Order’s implementation with its effectuation and thereby improperly reads the Order to include duplicative language. Harris Bank of Roselle v. Vill. of Mettawa, 243 Ill. App. 3d 103, 115 (2nd Dist. 1993) (fundamental tenet of statutory construction requires courts to give meaning to each word and not to presume that the statute contains surplusage); Smith v. Burkitt, 342 Ill. App. 3d 365 (5th Dist. 2003) (applying same tenet to contract interpretation).

Contrary to the Respondent’s assertion, the Order does not presume the continued existence of the ordinance. The ALJ’s instruction, which requires the Respondent to give notice to the Union “prior to implementation,” does not refer to implementation of the ordinance. Rather, it refers broadly to the implementation of “any proposed changes that affect [bargaining unit members’] wages, hours or terms or conditions of employment.”

Finally, it is within the Board’s authority to order the Respondent to rescind the ordinance because that order restores the status quo ante. The standard remedy in an unfair labor practice case is to make the charging party whole and to restore the status quo ante by placing the parties in the same position they would have been in, had the unfair labor practice not been committed. Sheriff of Jackson Cnty. v. Ill. State Labor Rel. Bd., 302 Ill. App. 3d 411, 415-416 (5th Dist. 2007); Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); See e.g. Vill. of Dolton, 17 PERI ¶ 2017 (IL LRB-SP 2001); Vill. of Hartford, 4 PERI ¶ 2047 (IL SLRB 1988); Vill. of Glendale Heights, 1 PERI ¶ 2019 (IL SLRB 1985), *aff’d* by unpub. order, 3 PERI ¶ 4016 (1987). The order to rescind the ordinance restores the status quo ante because the ordinance’s passage constituted an unlawful unilateral change and its mandated repeal reverses that change. See City of Chicago (Dep’t of Police), 21 PERI ¶ 83 (IL LRB-LP 2005) (ordering Respondent to

rescind an ordinance and intergovernmental agreements entered into pursuant to the ordinance to remedy an unlawful unilateral change) aff'd by unpub ord. no. 1-05-1713 (1st Dist. 2006); City of Freeport, 3 PERI ¶ 2046 (IL SLRB 1987) (ordering Respondent to rescind an ordinance, unilaterally imposed, which reduced number of lieutenants and changed their duties).

In sum, the Compliance Officer correctly determined that the RDO requires the Respondent to rescind the ordinance.

II. CONCLUSIONS OF LAW

The Compliance Officer properly determined that the RDO required the Respondent to rescind the ordinance.

III. RECOMMENDED ORDER

I recommend that the Respondent comply with the Compliance Order as written.

IV. 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 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 Chicago, Illinois this 12th day of May, 2014

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**