

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

Tyron McCullough,	)	
	)	
Charging Party,	)	
	)	Case Nos. S-CA-12-197-C <sup>1</sup>
and	)	S-CA-12-201-C
	)	S-CA-12-211-C
Harvey Park District,	)	
	)	
Respondent	)	

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

On September 23, 2013, Charging Party, Tyron McCullough, filed a Petition for Enforcement (Petition) with the Illinois Labor Relations Board (Board). In the Petition, McCullough requested enforcement of the Board’s Final Order in Case Nos. S-CA-12-197, S-CA-12-201, and S-CA-12-211, where the Board ordered Respondent, Harvey Park District (Park District) to take specific actions to effectuate the policies of the Illinois Public Relations Act (Act), 5 ILCS 315 (2012), *as amended*. The Petition was investigated pursuant to the Act and Section 1220.80 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Sections 1200-1240 (Rules). On April 7, 2014, Compliance Officer, Michael Provines issued a Compliance Order in the above-captioned cases directing the Park District to take actions to facilitate full compliance with the Board’s Final Order. On April 11, 2014, the Park District filed objections to the Compliance Order, and on April 14, 2014, McCullough filed a response to the objections. Pursuant to Section 1220.80(f) of the Rules, a hearing was held in the form of written briefs submitted on May 29, 2014 and June 2, 2014, through which both parties were given the opportunity to participate, adduce evidence, present witness affidavits, and present legal arguments. After full consideration of the relevant evidence, arguments, briefs, and upon the entire record of the above-captioned case, I recommend the following:

**I. BACKGROUND**

On June 18, 2012, McCullough filed an unfair labor practice charge in Case No. S-CA-12-197. On June 20, 2012, McCullough filed an unfair labor practice charge in Case No. S-CA-

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<sup>1</sup> In all of its filings in the above-captioned case, the Park District identifies the case nos. incorrectly as the unfair labor practice case nos. The unfair labor practice cases concluded with the Board’s Final Order, and the at-issue case is the Park District’s compliance with the Board’s Final Order. Although the only distinction between the case nos. is the “-C” at the end of the compliance case no., the compliance case is not a continuance of the unfair labor practices cases, they are are different cases.

12-201. On June 25, 2012, McCullough filed an unfair labor practice charge in Case No. S-CA-12-211. The charges alleged that the Park District had engaged in unfair labor practices within the meaning of Section 10(a) of the Act. The charges were investigated in accordance with Section 11 of the Act. On May 29, 2013, the Board's Executive Director consolidated the three unfair labor practice charges and issued a consolidated Complaint for Hearing (Complaint), setting the matter before Administrative Law Judge Michelle Owen (ALJ Owen). The Complaint alleged that the Park District violated Sections 10(a)(1), (2) and (3) of the Act. Section 1220.40(b) of the Rules required the Park District to answer the Complaint within 15 days of service. See 80 Ill. Admin. Code Section 1220.40. A timely answer was required to be postmarked by June 18, 2013. On June 29, 2013, the Park District's counsel requested leave to file a late answer, and requested that the Board grant a variance from the 15-day filing requirement in the Rules.

On July 22, 2013, ALJ Owen, on behalf of the Board issued a Recommend Decision and Order (RDO), in which she found that the Park District failed to show that extraordinary circumstances existed to allow for a late filing of an answer to the Complaint and denied the Park District's request for a variance. She found that because the Park District failed to file a timely answer, the Park District waived its right to a hearing, and that this failure resulted in the admission of the material facts alleged the Complaint. As such, ALJ Owen found that the Park District violated Sections 10(a)(1), (2) and (3) of the Act. As a remedy to its unlawful conduct, ALJ Owen ordered the Park District to take specific affirmative actions to effectuate the policies of the Act. Neither party filed timely exceptions to the RDO, and the Board declined to take the matter up on its own motion. Accordingly, on September 10, 2013, pursuant Section 1220.135(b)(5) of the Rules, the Board's General Counsel issued an Order stating that the parties have waived their exceptions to the RDO and memorialized ALJ Owen's RDO as final and binding upon the parties.<sup>2</sup>

On September 23, 2013, pursuant to Sections 11(f) and 11(g) of the Act and 1220.80 of the Rules, McCullough filed a Petition for Enforcement, in which McCullough contended that the Park District failed to take the actions required by the Board's Final Order. The Petition was assigned to Compliance Officer Provines for investigation. On February 6, 2014, a Board agent contacted the Park District requesting that it inform the Board what steps, if any, it had taken to

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<sup>2</sup> ALJ Owen's RDO will hereinafter be referred to as the "Board's Final Order."

comply with the Board's Final Order, and that it provide the agent with this information by . February 26, 2014. The Park District did not comply with the Board agent's request for information in the at-issue case. Instead, on February 19, 2014, the Park District filed a motion in the underlying unfair labor practice cases, requesting that the Board reconsider the Board's Final Order. On March 3, 2014, the Board's General Counsel denied the Park District's motion for reconsideration. On April 7, 2014, Compliance Officer Provines issued a Compliance Order in the above-captioned cases directing the Park District to take actions to facilitate full compliance with the Board's Final Order.

## **II. ISSUES AND CONTENTIONS**

The central matter before the Board is whether the Park District has complied with the Board's Final Order that was issued in the unfair labor practice cases. The Park District argues that it is not required to comply because the Board did not have subject matter jurisdiction over the unfair labor practice cases, and that consequently the Board's subsequent Compliance Order in which it instructed the Park District to comply with the Board's Final Order is void and should be vacated. The Park District argues that the Board acted without jurisdiction because McCullough holds a supervisory position, and therefore lacked standing to bring the unfair labor practice charges before the Board. The Park District argues that only public employees can bring such charges, and provides documentation to support its position that McCullough is a supervisor rather than a public employee within the meaning of the Act. McCullough argues that his protection as a public employee is an allegation in the Complaint for Hearing, and the Park District's failure to file a timely answer resulted in the admission of the material facts alleged the Complaint. McCullough also argues that the evidence the Park District submitted in support of the contention that he is a supervisor does not in fact support this contention.

## **III. DISCUSSION AND ANALYSIS**

The Park District has not complied with the Board's Final Order. Although the term "jurisdiction" is not strictly applicable to an administrative agency such as the Board, the Illinois Supreme Court has held that the term may be used to designate an administrative agency with its authority to act. *Alvarado v. Indus. Comm'n.*, 216 Ill.2d 547, 554 (2007). In the administrative law context, the term "jurisdiction" has three aspects: (1) personal jurisdiction over the parties; (2) subject-matter jurisdiction over the general class of cases in which the at-issue case belongs;

and (3) an agency's scope of authority under its enabling statute. Bus. & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n, 136 Ill. 2d 192, 243 (1989); Cnty. Unit School Dist. No. 5 v. Ill. Educ. Labor Rel. Bd., No. 4-13-0294, 2014 WL 2535338, at \*8 (4th Dist. Ill App. June 5, 2014); Armstead v. Sheahan, 298 Ill. App. 3d 892, 895 (1st Dist. 1998). The Board possesses subject matter jurisdiction over matters relating to collective bargaining, including unfair labor practice charges alleging that a public employer has discriminated against a public employee because of the employee's participation in activities protected by the Act. Cnty. of Rock Island, 14 PERI ¶2029 (IL SLRB 1998), *aff'd*, Grchan v. Ill. Labor Rel. Bd., 315 Ill. App. 3d 459 (3rd Dist. 2000).

The Board determined that McCullough had standing to bring unfair labor charges. The Park District argues that McCullough lacked standing because the McCullough was a supervisor as defined by Section 3(r)<sup>3</sup> of the Act, and only a public employee as defined by Section 3(n)<sup>4</sup> has standing to bring an unfair labor practice charge before the Board. The doctrine of standing exists to ensure that courts and administrative agencies decide only actual, specific controversies. Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill. 2d 141, 147 (1997). To have standing a party must possess a real interest in the action and its outcome. Underground Contractors Ass'n v. City of Chicago, 66 Ill. 2d 371, 376 (1977). In order to have standing to bring an unfair labor practice charge before the Board, Section 10 of the Act must be applicable to the charging party. See 5 ILC 315/10. Generally, Section 10 of the Act does not protect a supervisor against retaliation by an employer because of the supervisor's union or protected activity. But see Forest Pres. Dist. of Cook Cnty., 5 PERI ¶3002 (IL LLRB 1988)(adopting the National Labor Relations Board's rationale in finding that under specific circumstances an employer's conduct toward a supervisor can constitute an unfair labor practice); State of Ill. Dep't Cent. Mgmt. Serv., 4 PERI ¶2004 (IL SLRB 1987); Vill. of Barrington Hills (Police Dep't.), 29 PERI ¶98 IL LRB-SP ALJ 2012); City of Chicago, Mayor's Office of Emp't. and Training, 4 PERI ¶3005 (IL LLRB ALJ

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<sup>3</sup> A supervisor is an "employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires consistent use of independent judgment. Except with respect to police employment, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding." 5 ILCS 315/3(r).

<sup>4</sup> A public employee is "any individual employed by a public employer, . . . excluding . . . supervisors except as provided in this Act." 5 ILCS 315/3(n).

1988). The Complaint specifically alleged “[A]t all times material, Charging Party, Tyron McCullough, was a public employee within the meaning of Section 3(n) of the Act.” Since the Park District failed to file a timely Answer to the Complaint, it waived its right to a hearing, and this failure resulted in the admission of the material facts alleged the Complaint. See Wood Dale Fire Prot. Dist. v. Ill. Labor Rel. Bd., 395 Ill. App. 3d 523 (2nd Dist. 2009), *aff’g* Wood Dale Fire Prot. Dist., 25 PERI ¶136 (IL LRB-SP 2008); Metz v. Ill. State Labor Rel. Bd., 231 Ill. App. 3d 1079 (5th Dist. 1992); First Transit/River Vall. Metro, 26 PERI ¶38 (IL LRB-SP 2010). Accordingly, the Board’s Final Order identified that McCullough was a public employee within the meaning of Section 3(n) of the Act, and this public employee status provided McCullough with standing to bring unfair labor practice charges before the Board.

However, the Park District has not waived the issue of whether the Board possessed subject matter jurisdiction in the underlying unfair labor practice cases. McCullough’s standing as a public employee is a question of fact, but it is also a basis in which the Board possessed subject matter jurisdiction, and jurisdictional matters are not subject to waiver. See Bd. of Trustees of S. Ill. Univ. at Edwardsville, 19 PERI ¶16 (IL ELRB E.D. 2003)(dismissing an unfair labor charge because the Illinois Educational Labor Relations Board’s (IELRB) Executive Director determined that the IELRB lacked subject matter jurisdiction because the charging party was a “peace officer” who was excluded from the definition of “educational employee” articulated in the Illinois Educational Labor Relations Act (IELRA) and thus lacked standing to bring the charge); Henriksen v. Ill. Racing Bd., 293 Ill. App. 3d 569, 571 (1st Dist. 1997)(noting that parties may object to jurisdiction at any time though the parties first raised the issue of the Illinois Racing Board’s jurisdiction for the first time on appeal to the Appellate Court). Thus, the Park District’s failure to deny the allegation in the Complaint that McCullough was a public employee does not constitute waiver.

The Board’s Final Order in the unfair labor practice cases is not subject to collateral attack in this proceeding. The Board’s final orders are subject to direct judicial review by the Appellate Court. 5 ILCS 315/11(e); Laborer’s Int’l Union of N. Am. v. Ill. State Labor Rel. Bd., 154 Ill. App. 3d 1045, 1050 (1987); see Bd. of Trustees of the Univ. of Ill. v. Ill. Labor Rel. Bd., 224 Ill. 2d 88, 97-98, (2007). A decision rendered by an administrative agency that lacks jurisdiction over the parties or the subject matter, or a decision that is beyond the statutory authority of the administrative agency, is void and can be collaterally attacked in any court, at

any time. Wabash Cnty. v. Ill. Mun. Ret. Fund, 408 Ill. App. 3d 924, 929 (2nd Dist. 2011); Bd. of Educ. of City of Chicago v. Bd. of Tr. of Pub. Sch. Teachers' Pen. and Ret. Fund of Chicago, 395 Ill. App. 3d 735, 739 (1st Dist. 2009). The Board is an administrative agency, not a court. See Lynch v. Dep't of Transp., 2012 IL App (4th) 111040 (finding that the State Law Immunity Act immunized the state from being sued in court did not apply to complaints filed before the Human Rights Commission because the Commission was an administrative agency, not a court). As such, a collateral attack upon an underlying order before the same administrative agency that issued the underlying order is improper. McLean Cnty. Unit Dist. 5, a/k/a Bd. of Educ. of McLean Cnty. Unit Dist. 5, 29 PERI ¶174 (IELRB 2013)(finding that because the IELRB issued a final order certifying a union as the employees' bargaining agent and the employer had not sought administrative review of that decision, a collateral attack of the union's standing to bring an unfair labor practice before the IELRB was improper) *rev'd. on other grounds* Cmty. Unit School Dist. No. 5 v. Ill. Educ. Labor Rel. Bd., No. 4-13-0294, 2014 WL 2535338, at \*8-9 (affirming the IELRB's jurisdiction, but reversing the IELRB's finding that the employer committed an unfair labor practice). In issuing the Board's Final Order, the Board implicitly determined that it possessed the jurisdictional authority to determine the unfair labor practice cases. The Appellate Court has not overturned the Board's Final Order through judicial review, and the Park District has not collaterally attacked the Board's Final Order in any court. Pursuant to the Board's Final Order in Case Nos. S-CA-12-197, S-CA-112-201, S-CA12-211, at all times material, McCullough was a public employee within the meaning of the Act, and the Board possessed subject matter jurisdiction to decide the unfair labor practice charges McCullough brought against the Park District.

There are no remaining issues for resolution through the Board's compliance proceeding. Since the question of McCullough's standing as a public employee is not properly before me, I make no findings regarding the factual allegations presented in the Park District's brief, and for that reason have not included those alleged facts in this recommended decision and order. Pursuant to the Rules, objections to the Compliance Order are to specifically identify the finding, order, or omission to which the party objects. See Rules Section 1220.80(e)(1). "Any objection to a finding, order or omission not specifically urged shall be deemed waived." Rules Section 1220.80(f). The Park District does not object to any of the Compliance Officer's findings, but only to the Compliance Officer's authority to issue the Compliance Order on the basis that the

Board's Final Order is void. As I have already determined that this objection is improper, and there are no objections to any findings, I interpret any such arguments waived and will address neither the Compliance Officer's findings nor any orders based upon those findings.

**IV. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that Harvey Park District comply with the Compliance Order as written, modified only to reflect the additional accrual of backpay and the additional accrual of interest on all awards due to Tyron McCullough.

**V. EXCEPTIONS**

Pursuant to Section 1200.135 of the Rules, parties may file exceptions to the Administrative Law Judge's Recommended Compliance Decision and Order in 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 this Recommendation. Within seven 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, IL 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 of 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 16th day of July, 2014.**

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



**Deena Sanceda  
Administrative Law Judge**