

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

Tyron McCullough,

Charging Party

and

Harvey Park District,

Respondent

Case No. S-CA-12-197-C

S-CA-12-201-C

S-CA-12-211-C

COMPLIANCE ORDER

On September 23, 2013, Charging Party, Tyron McCullough, filed a petition for enforcement with the State Panel of the Illinois Labor Relations Board. In the petition for enforcement, Charging Party requested the Board seek enforcement of its order in the unfair labor practice cases filed against Respondent Employer, Harvey Park District, in Case Nos. S-CA-12-197, S-CA-12-201 and S-CA-12-211. Charging Party alleges Respondent has not complied with the interim order issued on July 22, 2013 by Administrative Law Judge (“ALJ”) Michelle Owen. After an investigation conducted pursuant to the Act and Section 1220.80 of the Board’s Rules and Regulations, 80 Ill. Admin Code Sections 1200-1240, (Rules) the compliance officer hereby directs Respondent to take certain actions to facilitate full compliance.

I. BACKGROUND AND FACTS

On June 18, 2012, Charging Party filed an unfair labor practice charge, in Case No. S-CA-12-197. On June 20, 2012, Charging Party filed an unfair labor practice charge, in Case No. S-CA-12-201. On June 25, 2012, Charging Party filed a charge, in Case No. S-CA-12-211. On January 16, 2013, Charging Party filed amended charges. The charges were investigated in accordance with Section 11 of the Act. On May 29, 2013, a Complaint for Hearing issued

setting the matter for hearing before Administrative Law Judge, Michelle Owen. The complaint alleged that Respondent violated Section 10(a)(3), (2) and (1) of the Act when it failed to pay Charging Party a scheduled salary increase, failed to pay Charging Party for the correct number of hours worked from May 31, 2012 through June 13, 2012, suspended Charging Party without pay on June 20, 2013, suspended Charging Party for five days without pay on August 28, 2012, and suspended Charging Party without pay and pending termination on September 10, 2012.

According to the affidavit of service attached to the complaint, the Board mailed a copy of the complaint to Respondent's attorney by U.S. mail on May 29, 2013. Section 1200.30(c) of the Board's Rules provides that a document is presumed served on a party three days after it is mailed. Service on Respondent was therefore presumed effective on Monday, June 8, 2013. Under Section 1220.40(b) of the Rules, Respondent was required to submit an answer to the complaint within 15 days of service. Thus, a timely answer should have been postmarked by Tuesday, June 18, 2013. Respondent did not file an answer by that date.

On June 29, 2013, Respondent's counsel requested leave to file a late answer, and requested that the Board grant a variance from the 15-day filing requirement in Section 1220.40(b). The Administrative Law Judge issued her Recommended Decision and Order (RDO), July 22, 2013, and found that Respondent failed to show that extraordinary circumstances existed to allow for a late filing of an answer pursuant to Section 1220.40(b)(4), and denied Respondent's request for a variance pursuant to Section 1220.160. On July 22, 2013, in accordance with Board precedent regarding failure to answer the Complaint, ALJ Owen found that Respondent's failure to file an answer to the Complaint due June 18, 2013 waived Respondent's right to a hearing and moreover, was an admission of the material facts alleged in the Complaint. To remedy Respondent's illegal conduct, ALJ Owen ordered Respondent to take the following affirmative action to effectuate the policies of the Act:

- a) Make Tyron McCullough whole for all losses incurred as a result of (1) the failure to

pay McCullough the scheduled salary increase effective with his June 1, 2012 promotion, (2) the failure to pay McCullough the correct number of hours he worked for the period from May 31, 2012 through June 13, 2012, (3) the suspension without pay that McCullough received on June 20, 2012, (4) the suspension for five days without pay that McCullough received on August 28, 2012, and (5) the suspension without pay and pending termination that McCullough received on September 10, 2012.

- b) Effective immediately, rescind the disciplinary action taken against McCullough on June 20, 2012, August 28, 2012, and September 10, 2012, without prejudice to his seniority or other rights and privileges.
- c) Remove from all files and records, including Tyron McCullough's personnel file, any and all documents and references to the disciplinary action taken against him on June 20, 2012, August 28, 2012, and September 10, 2012, and notify him writing that this has been done and that evidence of his unlawful discipline will not be used as a basis for future personnel actions against him.
- 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 analyze the relief due under the terms of this decision.
- 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.

Respondent did not file exceptions to the RDO, and on September 10, 2013, the Illinois Labor Relations Board declined to take the matter up on its own motion. The Board's General Counsel issued an Order stating that the Administrative Law Judge's Recommended Decision and Order was final and binding on the parties.

On September 23, 2013, Charging Party, Tyron McCullough, filed a petition for enforcement of the Board's Order. The enforcement of the petition was assigned to the undersigned compliance officer. McCullough maintains Respondent has failed to: make him whole; offer to return him to his former position; and, has failed to post the required Board Notices. On February 6, 2014, a Board agent contacted Respondent by mail and requested a full written response as to what steps have been taken to comply with the Board's Order. The Respondent was given a February 20, 2014, deadline to submit its response and was informed

that failure to respond would result in an Order directing Respondent the specific actions that would be taken. Respondent did not respond to the Board agent's request, rather on February 19, 2014, Respondent filed a Motion for the Board to Reconsider the September 10, 2013 Default Order of the Illinois Labor Relations Board issued by ALJ Owen. On March 3, 2014, the Board's General Counsel issued an Order denying Respondent's motion for reconsideration. As Respondent failed to provide information requested by the Board's compliance officer, the determination made herein is largely developed from information provided by the Charging Party.

II. DISCUSSION

The general principle underlying this report is simply to restore Charging Party to the position he would have been in absent the commission of the unfair labor practice involving his illegal termination. Under Section 80 Ill. Admin. Code, Section 1220.80 of the Board's Rules, the compliance officer is directed to investigate the Petition for Enforcement and issue an order dismissing the Petition, directing specifically the actions to be taken by Respondent and Charging Party, or set the matter for hearing before an Administrative Law Judge. This approach conforms to those principles enunciated by the Board in several other compliance cases See State of Illinois, Dept. of Corrections, Gerald Morgan, 3 PERI ¶2057, (IL. SLRB 1987); City of Crest Hill, 4 PERI ¶2030 (IL SLRB 1988)).

The Respondent did not produce any information responsive to the Board agent's request as to compliance with the directives set out in the Board's Order. The Respondent's Motion to Reconsider the Board's Order was a legal argument and was not indicative that Respondent agreed or disagreed about whether there had been compliance. Because Respondent failed to provide any evidence, the evidence provided by Charging Party was largely relied on to support a finding that Respondent had not complied with the directives set out in the Board's Order in this matter to make Charging Party whole for its unlawful actions.

III. Backpay

It is well established that the finding of an unfair labor practice is presumptive proof that some backpay is owed. The Lorge School, 355 NLRB No. 94, slip op. at 3 (2010). To accomplish the task of restoring and making Charging Party whole under the Act, the gross backpay has been determined based upon information provided by McCullough. The backpay interest formula in this case was based on a 360 day calendar year with simple interest set at 7% under Section 11(c) of the Act. Interest also accrues with the last day of each calendar year of the backpay period on the amount due and owing for each pay period and continuing until full compliance is reached. Also, since daily fractions occur due to when an employee was terminated and returned, a daily interest rate factor and specific number of days are used to accurately compute interest. Thus the formula used for calculating interest on net backpay is: **Accrued days x Daily Interest rate x Annual Net Back Backpay = Interest.**

a. Correct Number of Hours for May 31, 2012 to June 13, 2012 Time Period

Charging Party first asserts that after he was promoted to maintenance superintendent on June 1, 2012, he was not paid the correct number of hours that he worked from May 31, 2012 to June 13, 2012 in retaliation for his protected activity and the filing of a previous unfair labor practice charge with the Board. In such circumstances, when a compliance investigation is as a result of a default judgment, the Charging Party must present relevant facts to the Board agent investigating compliance to establish what establishes the make whole award. Because Respondent failed to provide any evidence regarding compliance in this regard and Charging Party's evidence was lacking on this point, no backpay will be awarded for the allegation that Charging Party was not paid the correct number of hours for the time period May 31, 2012 to June 13, 2012.

b. Suspension without Pay - June 20, 2013

Charging Party asserts that he was suspended “until further notice” on June 20, 2012. During the investigation, Charging Party initially asserted that the suspension lasted from June 20 through June 25, 2012. However, upon review of the suspension letter sent to Charging Party by the former Director, Brian Ingram, Ingram stated: “Mr. McCullough was suspended with full pay and received full compensation for his time off.” Although this statement, and the letter in general, do not specify the exact timeframe McCullough was suspended for June 20, 2012, it does indicate that he was paid for the time he was off. Charging Party failed to produce any information to the contrary that he was not paid for the days in question and during the investigation he subsequently withdrew the argument. I hereby order that no backpay is warranted for this time period. However, if disciplinary documents exist in McCullough’s personnel file that referenced this incident, the documents shall be removed from his personnel file.

c. August 28, 2012 to September 3, 2014 Suspension

Charging Party asserts that he served a five day suspension commencing on August 28, 2012. Respondent owes Charging Party backpay for these five days. Since McCullough would have worked an eight hour day and was paid at \$20.00 per hour, Respondent owes McCullough \$800.00 in backpay (8 hours x 5 days x \$20.00 per hour = \$800.00). Respondent owes McCullough \$93.00 in interest on the \$800.00 if paid by April 30, 2014.¹ The total backpay with interest for this suspension is \$893.00.

d. September 10, 2012 Termination

When a respondent has unlawfully terminated an employee, the standard remedy is that the employee be offered full reinstatement. The underlying principle is that the employee be

¹ Interest was calculated through April 30, 2014. The exact dollar amount for interest is subject to change based upon when the backpay is paid.

restored to circumstances that existed prior to respondent's unlawful action or that would have been in effect had there been no unlawful action. NLRB Compliance Manual Compliance Proceedings (Part Three) Sec. 10530. Respondent has not offered McCullough reinstatement. Until Respondent offers reinstatement, the total amount of backpay owed to McCullough and interest continues to accrue until a bonafide offer of reinstatement is made. Respondent owes McCullough \$68,160.00 for the time period from September 10, 2012 through April 30, 2014. (3,408 hours of work). Respondent owes \$4,122.52 in interest for the \$68,160.00 in backpay, if paid by April 30, 2014. In addition, until the full amount is paid, interest accrues until such time that the total backpay is restored. The exact dollar amount for interest is subject to change based upon when the backpay is paid in full. Consequently, the interest will continue to run on the total backpay until such date is confirmed. The amount of interest will be higher if the date of payout of the interest is later than April 30, 2014, or lower, if the actual payout of interest is before that date. Respondent is hereby ordered to pay McCullough \$73,175.52 on or by April 30, 2014 (\$800.00 suspension + \$93.00 interest + \$68,160 termination + \$4,122.52 in interest = \$73,175.52).

IV. EXPUNGE PERSONNEL FILES

Because Respondent is currently prohibited from the work site due to his termination, Respondent is hereby directed to make McCullough's personnel file available to him for his review at a time and place convenient to each of the parties. Respondent is directed to inform the undersigned of the date and the location that McCullough and Respondent have agreed upon to review the file. If McCullough finds objectionable material in the files, he is to make known the documents found to be objectionable to Respondent and request the material be removed. If Respondent disagrees and/or refuses to remove the documents then copies of the documents shall be provided to the compliance officer for a determination as to whether they shall be expunged. If Charging Party does not seek to review his personnel file he is directed to inform Respondent

and the compliance officer. Moreover, if Charging Party chooses to review his personnel file, Charging Party is directed to contact the compliance officer within seven days of reviewing his file and identify any objectionable material that is in the file. If Charging Party reviews his personnel file and does not contact the compliance officer within seven days of review of the file, I will accept a motion from Respondent that Charging Party has abandoned his right of review regarding the personnel file.

V. NOTICE POSTING

Respondent has not posted the Board's Notice. I hereby direct Respondent to post the attached Notice. The Notice is to be posted in the work area where McCullough worked, such as next to a time clock or on a bulletin board where notices are normally posted. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by other material. A responsible official of the Harvey Park District must sign and date the Notice(s) before posting them. Respondent is directed to provide to McCullough and the compliance officer a report that includes: a certificate of posting that indicates the date of posting and all locations that the notices were posted. In addition to the initial report, at the end of the posting period Respondent is directed to report to McCullough and the undersigned that the Notices were maintained, and continuously and conspicuously posted for a period of 60 consecutive days.

VI. ORDER

IT IS HEREBY ORDERED that Respondent, within 7 days after service of this Order, shall comply with the above findings and take the actions noted herein to make Charging Party whole for Respondent's unlawful actions. This Order of the Compliance Officer is an intermediate Order that will become final unless the parties file an appeal with the Illinois Labor Relations Board, within seven (7) business days after service of this Order. Any such appeal must be in writing, and directed to Jerald Post, the Board's General Counsel, at the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals

will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeals to this Order are filed, the Order of the Compliance Officer shall become final.

Issued in Springfield, Illinois, this 7th day of April, 2014.

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



**Michael L. Provines
Compliance Officer**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the Harvey Park District 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 protected, concerted activity.
- To engage in self-organization.
- To form, join, or assist 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 NOT retaliate against Tyron McCullough, or any of our other employees, for engaging in union or protected, concerted activity.

WE WILL NOT discriminate against Tyron McCullough, or any of our other employees, for signing or filing an affidavit, petition, or charge or providing any information or testimony under the Act.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights guaranteed them under the Act.

WE WILL rescind the disciplinary action taken against Tyron McCullough on June 20, 2012, August 28, 2012, and September 10, 2012, on May 18, 2012 and May 19, 2012, immediately and without prejudice to his seniority or other rights and privileges.

WE WILL make Tyron McCullough whole for all losses incurred as a result of (1) the failure to pay McCullough the scheduled salary increase effective with his June 1, 2012 promotion, (2) the failure to pay McCullough the correct number of hours he worked for the period from May 31, 2012 through June 13, 2012, (3) the suspension without pay that McCullough received on June 20, 2012, (4) the suspension for five days without pay that McCullough received on August 28, 2012, and (5) the suspension without pay and pending termination that McCullough received on September 10, 2012.

WE WILL expunge from all files and records, including Tyron McCullough's personnel file, any and all documents and references to the disciplinary actions taken against him on June 20, 2012, August 28, 2012, and September 10, 2012, and notify him in writing both that this has been done and that evidence of his unlawful discipline will not be used as a basis for future personnel actions against him.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of relief due under the terms of this decision.

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

Date of Posting

Harvey Park District (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 DEFACE**