STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Firefighters, Local 717,	)	
Charging Party	)	
and	)	Case No. S-CA-12-199
Town of Cicero,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 14, 2012, International Association of Firefighters, Local 717 (Charging Party) filed a charge in accordance with Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules) alleging that the Town of Cicero (Respondent) had violated Sections 10(a)(2) and (1) of the Act. The charge was investigated, and on March 25, 2013, the Executive Director of the Board issued a complaint for hearing.

I. BACKGROUND

According to the affidavit of service attached to the complaint, the Board mailed a copy of the complaint to Respondent's attorney, Julie Diemer, by U.S. mail on March 25, 2013.[1] The complaint contained the following statement:

> **RESPONDENT IS HEREBY NOTIFIED** that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code, §§1200 through 1240, it must file an answer to this complaint with Michelle Owen,

[1] At all times material, Attorney Julie Diemer, Del Galdo Law Group, has been the attorney of record for Respondent.

> Illinois Labor Relations Board, 160 N. LaSalle St., Ste. S-400, Chicago, IL 60601, 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.**

Under Section 1200.30(c) of the Rules, the complaint was presumed received three days later, on March 28, 2013. Under Section 1220.40(b) of the Rules, Respondent was required to submit an answer to the complaint within 15 days. A timely answer should have been postmarked by Friday, April 12, 2013. Respondent did not file an answer within the 15 day time limit. On April 19, 2013, I issued to Respondent an order to show cause not later than May 1, 2013, why a default judgment consistent with Section 1220.40(b) of the Rules should not issue. On May 1, 2013, Respondent filed its response to the order to show cause and an answer. In its response, Respondent seeks leave to file a late answer under Section 1220.40(b)(4). In the alternative, Respondent requests that the Board, under Section 1200.160, grant a variance from the 15-day filing requirement in Section 1220.40(b).

Respondent argues that extraordinary circumstances exist in this case warranting leave to file a late answer under Section 1220.40(b)(4) because Respondent was conducting an internal investigation of the allegations contained in the unfair labor practice charge, the outcome of which would determine Respondent's response to the complaint. Respondent states that after receiving the unfair labor practice charge in June 2012, Respondent's internal affairs division began a nine-month long internal investigation into the charge's allegations. Respondent notes that the internal investigation summary report was issued in April 2013, and a recommendation

of discipline was issued on May 1, 2013. Respondent notes that its Fire Marshall has not yet rendered his decision regarding the recommended disciplinary action.

In the alternative, Respondent argues that the Board should grant a variance from the application of Section 1220.40(b)(3), and permit it to file a late answer. Respondent contends that no party would be injured and no prejudice would result by granting Respondent additional time to file an answer because the potential remedy in this case does not involve reinstatement, back pay or other financial remedies, but rather a "cease and desist" order. In addition, Respondent argues that it was unable to formulate responses to each of the allegations contained in the complaint until its internal investigation was resolved. Further, Respondent contends that through its answer and its internal investigation summary report, it has established a meritorious defense or claim to the unfair labor practice charge's allegations, due diligence in investigating the Charging Party's claims, and due diligence in filing an answer "upon conclusion of its internal investigation and review." Finally, Respondent contends that it is in all the parties' best interests to allow Respondent to complete its internal investigation and review of the allegations contained in the unfair labor charge because doing so will "actually aid in a speedier resolution of the case."

II. DISCUSSION AND ANALYSIS

I find Respondent has failed to show that extraordinary circumstances exist to allow for the late filing of an answer, and I deny Respondent's request for a variance to allow it additional time to file an answer.

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.
>
> 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.

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 Dist. v. Ill. Labor Relations Bd., 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale Fire Protection District, 25 PERI ¶136 (IL LRB-SP 2008); Metz v. Ill. State Labor Relations Bd., 231 Ill. App. 3d 1079 (5th Dist. 1992), aff'g Circuit Clerk of St. Clair County, 6 PERI ¶2036 (IL SLRB 1990); Peoria Housing Authority, 11 PERI ¶2033 (IL SLRB 1995); Chicago Housing Authority, 10 PERI ¶3010 (IL LLRB 1994); County of Jackson (Jackson County Nursing Home), 9 PERI ¶2025 (IL SLRB 1993); City of Springfield, Office of Public Utilities, 9 PERI ¶2024 (IL SLRB 1993).

A. Leave to File a Late Answer

Section 1220.40(b)(4) of the Rules allows for late filings caused by extraordinary circumstances by providing, "[l]eave 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." (emphasis added). Illinois courts have held that the default rule does not impinge a party's right to due process where the Board's insistence on strict compliance with the 15-day rule is reasonable, because the rule is triggered by a party's own inaction. Wood Dale, 395 Ill. App. 3d at 528; Metz, 231 Ill. App. 3d at 1093-94.

Respondent argues that extraordinary circumstances exist in this case warranting leave to file a late answer under Section 1220.40(b)(4) because Respondent was conducting an internal investigation of the allegations contained in the unfair labor practice charge the outcome of which would determine the Town's response to the complaint for hearing. Respondent does not allege fraud, concealment by the opposing party, or other grounds traditionally relied upon for equitable relief from judgment. Rather, Respondent asserts that extraordinary circumstances existed because it had not completed its internal investigation. Respondent thus relates a conscious decision not to file. Respondent's internal investigation into the allegations of the complaint merely indicates that it was fully aware that the instant case awaited resolution, and does not justify its failure to file. See City of Kankakee, 17 PERI ¶2013 (IL LRB-SP 2001). While the internal investigation may have been a valid reason for seeking a continuance of the hearing in this matter, there is nothing in Respondent's motion for leave to file an answer that indicates that Respondent could not have filed a timely answer or excuses its failure to file a

timely answer. See Id. I note that prior to the date the answer was due, Respondent did not make a request for an extension of time to file an answer, nor did Respondent inform the Board of its intent to delay filing because of its ongoing internal investigation. Instead, Respondent merely allowed the period for filing an answer to lapse without taking any action even though it was aware of the consequences of not filing a timely answer. Respondent has failed to show that its late filing was due to extraordinary circumstances. Thus, Respondent's request for leave to file a late answer is denied.

B. Request for a Variance

A variance of any provision of the Rules is permitted by Section 1200.160 of the Rules, which states:

> The provisions 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.

All three conditions must be met for the variance to be entertained by the Board. However, even if all three conditions are met, granting a variance remains a matter of the Board's discretion and not a matter of right by the party. City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011).

Here, the first requirement is satisfied because the Section 1220.40(b) rule that a respondent file an answer within 15 days after service of the complaint is not statutorily mandated. The second requirement is satisfied because neither party will be injured merely because Respondent's untimely answer frustrates the public policy favoring the speedy resolution of labor disputes. Cook Cnty. State's Attorney v. Ill. State Labor Relations Bd., 292

Ill. App. 3d 1, 7 (1st Dist. 1997). Prejudice to the parties is less likely where issuance of the complaint has been delayed and other evidence shows that "time was not of the essence" for either the union or the Board prior to the late filing. Id. (delay of answer did not cause more injury than that already suffered, where complaint was issued five months after charge, which itself was filed two months after adverse action). Similar to Cook County State's Attorney, the complaint in this case was not issued until approximately nine months after the charge was filed. Thus, it appears that the delayed answer will not cause more injury to the parties than that already suffered by the parties because of the delayed charge.

However, the third requirement is not satisfied because there is no indication in this case that strict compliance with the time limit for filing an answer would be an unreasonable or unnecessarily burdensome result. A party's excuses, explanations, and mitigating circumstances must be considered in deciding whether strict adherence to the Board's filing rules is unreasonable or unnecessarily burdensome. Wood Dale, 395 Ill. App. 3d at 532-33; Amalgamated Transit Union, Local 241, 29 PERI ¶78 (IL LRB-LP 2012). Denial of a variance is unreasonable and unnecessarily burdensome if the respondent can 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 Cnty. State's Attorney, 292 Ill. App. 3d at 11.

Although arguably Respondent may have a meritorious defense to the charges alleged in the complaint, it has not established that it exercised due diligence in presenting this defense. Respondent argues that it was unable to formulate responses to each of the allegations contained in the complaint until its internal investigation was resolved. However, if, at the time the answer was due, Respondent believed that it did not have sufficient knowledge to admit, deny, or

explain each allegation in the complaint, it could have so stated in an answer. Section 1220.40(b)(1) of the Rules specifically states, "[t]he 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.*" (emphasis added).

Respondent has also not established due diligence in filing an answer and requesting a variance from the Board's Rules more than two weeks after the answer was due, and only after an order to show cause was issued. Wood Dale, 395 Ill. App. 3d at 533 (denial of variance was proper where respondent filed answer 28 days after deadline, did not request variance for another 24 days, and offered no explanation for delay in requesting variance); Cook Cnty. State's Attorney, 292 Ill. App. 3d 1 (variance was proper where respondent filed answer three hours late, and respondent's attorney immediately contacted the Board to request more time to file); First Transit/River Valley Metro, 26 PERI ¶38 (IL LRB-SP 2010), aff'd by unpub. order, 27 PERI ¶61 (3rd Dist. 2011) (denial of variance was proper where respondent filed answer two weeks after deadline, and did not request variance until 25 days after answer was due); Village of Calumet Park, 17 PERI ¶2024 (IL SLRB 2001) aff'd by unpub. order, Docket No. 1-01-1520 (1st Dist. 2000) (denial of variance was proper where respondent filed answer seven weeks after deadline and did not request variance until after an order to show cause was issued). In this case, Respondent failed to contact the Board before the answer's due date to explain why it would not be filing an answer, nor did it immediately contact the Board with an excuse for its missed deadline. Respondent was aware of the allegations in the complaint because it was conducting a nine-month long internal investigation into the allegations in the underlying unfair labor practice

charge. Respondent offers no explanation for the two-week delay in seeking leave to file a late answer and requesting a variance.

Respondent's argument that a variance is warranted because it is in the parties' best interests to allow Respondent to complete its own internal investigation and will "actually aid in a speedier resolution of the case" is without merit. Respondent could have made this argument in a timely filed answer, but it did not. Nothing allows a respondent to simply ignore a complaint because the respondent has not completed its internal investigation of the underlying unfair labor practice charge's allegations. See City of Kankakee, 20 PERI ¶2013.

Respondent did not establish sufficient mitigating circumstances or demonstrate due diligence in asserting a defense, responding to the complaint, requesting leave to file a late answer, or seeking a variance from the Board's filing rules. It is not unreasonable or unduly burdensome to require Respondent to file within the Board's time limits in this case. Without any mitigating circumstances excusing Respondent's untimely answer, a variance is not warranted.[2]

The complaint 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 admitted the material facts and legal conclusions alleged in the complaint, and waived its right to a hearing in this matter. Thus, an order of default is applicable and appropriate.

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[2] Even if the Board were to find, contrary to my findings and conclusions, that all three conditions were met under Section 1200.160, I would not, based upon the alleged facts, exercise such discretion to grant a variance and leave to file a late answer. Any unreasonableness of application or unnecessary burden here is outweighed by the need to consistently apply long-standing rules.

III. RESPONDENT'S ADMISSIONS

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

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) 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 (Unit) composed of Respondent's Fire Department employees.

6. At all times material, Respondent has employed Eric Habercross as a firefighter, and has included him in the Unit.

7. At all times material, Habercross has been a public employee within the meaning of Section 3(n) of the Act.

8. At all times material, Habercross has been active and visible in his support for the Charging Party, including serving as the local union president.

9. At all times material, Deputy Fire Marshall Peter Smith has been an agent of Respondent, authorized to act on its behalf.

10. In or about February 2012 Habercross filed a request for reimbursement and/or payment for medical expenses with Respondent.

11. From in or about February 2012 and continuing thereafter, Smith delayed processing Habercross' request for reimbursement and/or payment as described in paragraph 10.

12. On or about May 18, 2012, Smith initiated disciplinary actions against Habercross concerning an alleged failure to perform assigned duties.

13. On or about May 19, 2012, Smith initiated disciplinary action against Habercross for an alleged improper response to a fire call.

14. Smith took the actions described in paragraphs 11, 12 and 13 in order to retaliate against Habercross for his support for Charging Party as described in paragraph 8.

15. On or about May 31, 2012, Smith and Habercross were in attendance at a meeting of certain of the Respondent's employees.

16. During the May 31, 2012, meeting described above, Smith stated that he had initiated discipline against Habercross because Habercross had filed grievances against Smith.

17. By its acts and conduct as described in paragraph 16, Respondent has interfered with, restrained or coerced employees in the exercise of rights guaranteed by the Act, in violation of Section 10(a)(1) of the Act.

18. By its acts and conduct as described in paragraphs 11, 12, 13 and 14, Respondent has discriminated against a public employee in order to discourage membership in or support for Charging Party, in violation of Section 10(a)(2) and (1) of the Act.

IV. CONCLUSIONS OF LAW

Respondent violated Section 10(a)(1) of the Act when Smith stated that he had initiated discipline against Habercross because Habercross had filed grievances against Smith. Respondent also violated Section 10(a)(2) and (1) of the Act when Smith delayed processing Habercross' request for reimbursement and/or payment for medical expenses, initiated disciplinary action against Habercross concerning an alleged failure to perform assigned duties, and initiated disciplinary action against Habercross for an alleged improper response to a fire call in order to retaliate against Habercross for his support for Charging Party.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, Town of Cicero, its officers and agents shall:

1. Cease and desist from:

(a) retaliating against Eric Habercross, or any of its employees, for engaging in union or protected, concerted activity;

(b) interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act, by disciplining them in retaliation for their exercise of such rights;

(c) in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights under the Act.

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

(a) Make Charging Party, Eric Habercross, and any adversely affected employee whole for all losses incurred as a result of (1) the delay in reimbursement and/or payment for Eric Habercross' medical expenses, (2) the disciplinary actions taken against Eric Habercross on May 18, 2012 and May 19, 2012, and (3) the statements made to Eric Habercross on May 31, 2012 that discipline was initiated against him because he had filed grievances.

(b) Effective immediately, rescind the disciplinary action taken against Eric Habercross on May 18, 2012, and May 19, 2012, without prejudice to his seniority or other rights and privileges.

(c) Remove from all files and records, including Eric Habercross' personnel file, any and all documents and references to the disciplinary action taken against him on May 18, 2012, and May 19, 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.

(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.

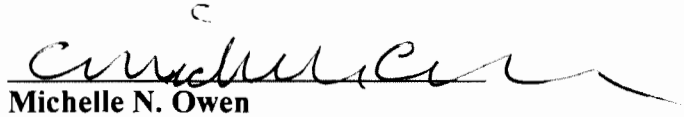
(f) Notify the Board in writing, within 20 days from the date of this Decision and Order, of the steps Respondent has taken to comply herewith.

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 24th day of May, 2013.



Michelle N. Owen
Administrative Law Judge
Illinois Labor Relations Board

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board, State Panel, has found that the Town of Cicero 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 (Act) gives you, as an employee, these rights:

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 cease and desist from retaliating against Eric Habercross, or any employees, for engaging in union or protected, concerted activity.

WE WILL cease and desist interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in the Act by disciplining them in retaliation for the exercise of such rights.

WE WILL cease and desist in any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Act.

WE WILL make Eric Habercross, and any adversely affected employee whole for all losses incurred as a result of (1) the delay in reimbursement and/or payment for Eric Habercross' medical expenses, (2) the disciplinary actions taken against Eric Habercross on May 18, 2012, and May 19, 2012, and (3) the statements made to Eric Habercross on May 31, 2012 that discipline was initiated against him because he had filed grievances.

WE WILL effective immediately, rescind the disciplinary action taken against Eric Habercross on May 18, 2012, and May 19, 2012, without prejudice to his seniority or other rights and privileges.

WE WILL remove from all files and records, including Eric Habercross' personnel file, any and all documents and references to the disciplinary action taken against him on May 18, 2012, and May 19, 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 relief due under the terms of this decision.

This notice shall remain posted for 90 consecutive days at all places where notices to employees are regularly posted.

_____	_____
Date of Posting	Town of Cicero (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.