

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

Hazel Crest Professional Firefighters Association, IAFF Local 4087,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-13-005
and	)	
	)	
Village of Hazel Crest,	)	
	)	
Respondent	)	

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

On July 16, 2012, the Hazel Crest Professional Firefighters Association, IAFF Local 4087 (Charging Party or Union) filed an unfair labor practice charge in Case No. S-CA-13-005 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Hazel Crest (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act). Subsequently, the charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On November 28, 2012, the Board’s Executive Director issued a Complaint for Hearing. The case was then heard on February 21, 2013 in Chicago, Illinois by the undersigned Administrative Law Judge. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed on behalf of both parties. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. The parties stipulate and I find that, at all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate and I find that, at all times material, the Respondent has been a unit of local government subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a) of the Act.
3. The parties stipulate and I find that, 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.
4. The parties stipulate and I find that, at all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. The parties stipulate and I find that, at all times material, the Charging Party has been the exclusive representative of a bargaining unit comprised of the Respondent's full-time employees in the job title or classification of firefighter/paramedic and in the ranks of lieutenant and below (Unit).
6. The parties stipulate and I find that the Unit was certified by the Board on April 2, 2001 in Case No. S-RC-01-039.
7. The parties stipulate and I find that, at all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement (CBA) for the Unit, which provides a grievance procedure culminating in arbitration.
8. The parties stipulate and I find that the CBA referenced above expired on April 30, 2012.

## **II. ISSUES AND CONTENTIONS**

The Charging Party contends that the Respondent violated Section 10(a)(1) of the Act when the Respondent ordered the removal of a Union banner from a fire station and the removal of Union stickers from fire department vehicles. The Respondent disputes this contention.

## **III. FINDINGS OF FACT**

During the hearing, Donald Reece, Jr., a lieutenant/paramedic employed by the fire department, testified that, at some point during the fall of 2002, the Union's executive board asked Donald Bettenhausen, an assistant chief of the fire department, for permission to hang a Union banner in the bay of fire station #2 (one of the fire department's two fire stations) and to affix Union stickers to fire department vehicles. According to Reece's testimony, Bettenhausen granted this request.<sup>1</sup> Subsequently, a large banner displaying the name of the Union and its insignia was purchased by the Union and then hung in the bay of fire station #2. Stickers displaying the Union's insignia were also affixed to a number of fire department vehicles.

The Village purchased additional fire department vehicles in 2008. The testimony of Reece and William Wojtanowski, a firefighter/paramedic employed by the fire department, suggests that, at that time, Wojtanowski asked for and was granted permission to affix Union stickers to these additional vehicles by Charles Jackson, the chief of the fire department. However, Jackson testified that Wojtanowski never asked him for his permission to do this. Whether or not Jackson's permission was in fact granted, it is undisputed that Union stickers were affixed to the new vehicles.

---

<sup>1</sup> Bettenhausen is no longer employed by the Village and was not called to provide testimony during the hearing.

On August 15, 2011, James Whigham, Sr. became the village manager. Subsequently, in the fall of 2011, Whigham learned of the Union banner and stickers noted above and started to investigate the propriety of the same. Whigham's investigation included, inter alia, an examination of the parties' CBA, the Village's personnel and municipal codes, and the minutes of five or six years of meetings of the Village's board of trustees. Additionally, during the fall of 2011, Whigham allegedly discussed the Union banner and stickers with Jackson and Samuel Hunter, Jr., a deputy chief of the fire department. Later, in the winter of 2012, Whigham had a related discussion with Robert Palmer, the former village manager. Ultimately, Whigham determined that the Union banner and stickers were inappropriate and should be removed.

On January 27, 2012, Whigham informed Hunter of his determination and instructed Hunter to have the Union banner and stickers removed. Later that day, Hunter ordered Wojtanowski (the Union's president at the time) to remove the Union banner and stickers. Shortly after the order was given, Hunter informed Wojtanowski that the order came from Whigham. In accordance with Hunter's order, the Union banner and stickers were removed.

After the removal, Wojtanowski sent an e-mail to Whigham. In this e-mail, Wojtanowski asked Whigham why having the Union banner in the bay and having Union stickers on fire department vehicles "was such a big deal." Wojtanowski's e-mail also stated that Wojtanowski would like the opportunity to discuss the matter with Whigham if possible. Whigham responded to Wojtanowski's e-mail a few hours later. In his e-mail response, Whigham explained his position and offered to meet with Wojtanowski in order to discuss the matter. Wojtanowski did not accept this offer.<sup>2</sup>

---

<sup>2</sup> No related grievance has been filed.

#### IV. DISCUSSION AND ANALYSIS

The Charging Party alleges that the Respondent violated Section 10(a)(1) of the Act when the Respondent's agents ordered the removal of the Union banner and stickers. Section 10(a)(1) provides, in relevant part, that it shall be an unfair labor practice for an employer or its agents to interfere with, restrain, or coerce its employees in the exercise of rights guaranteed in the Act or to dominate or interfere with the formation, existence, or administration of any labor organization. Understandably, the Charging Party's post-hearing brief centrally contends that the Respondent unlawfully interfered with employees in the exercise of their Section 6 rights, as Section 6 of the Act sets forth the basic statutory expression of the rights guaranteed to public employees.<sup>3</sup> City of Chicago, 20 PERI ¶17 (IL LRB-LP 2003). However, it is ultimately unclear precisely how or which of these protected rights were unlawfully interfered with in this instance. Accordingly, I find that the Charging Party has not demonstrated, by a preponderance of the evidence, that the Respondent violated the Act.

While it is fairly axiomatic that the employees' use of the Union banner and stickers could be considered concerted activity, not all acts done in concert with other employees constitute protected concerted activities. County of Cook, 27 PERI ¶57 (IL LRB-LP 2011); Midstate Telephone Corporation, 262 NLRB 1291, 1297 (1982).<sup>4</sup> In one sense, the right of employees to "display" union insignia at work has often been recognized as a legitimate form of

---

<sup>3</sup> Section 6 of the Act grants public employees the right to "form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, not excluded by Section 4 of [the] Act, and to engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion."

<sup>4</sup> In light of the similar language in parallel sections of the Illinois Public Labor Relations Act, the Illinois Educational Labor Relations Act, and the National Labor Relations Act, I find that certain decisions of the Illinois Educational Labor Relations Board, the National Labor Relations Board, and the federal courts, while not binding on the Board, provide useful guidance in this case. State of Illinois, Departments of Central Management Services and Corrections, 25 PERI ¶12 (IL LRB-SP 2009); Metropolitan Sanitary District of Greater Chicago, 4 PERI ¶3018 (IL LRB 1988); Board of Education of Schaumburg Community Consolidated School District 54 v. Illinois Education Labor Relations Board, 247 Ill. App 3d 439, 455, 616 N.E.2d 1282, 1292 (1st Dist. 1993).

union activity. City of Lake Forest, 29 PERI ¶52 (IL LRB-SP 2012); State of Illinois, Departments of Central Management Services and Corrections, 25 PERI ¶12 (IL LRB-SP 2009); Board of Trustees of the University of Illinois, 15 PERI ¶1053 (IL ELRB 1998); Pleasurecraft Marine Engine Company, 234 NLRB 1216, 1225 (1978). However, this right is not without limits. Meijer, Incorporated v. National Labor Relations Board, 130 F.3d 1209, 1215 (6th Cir. 1997); The Kendall Company, 267 NLRB 963, 965 (1983). Notably, unions have no general statutory right to post union materials on employers' property. Saginaw Control and Engineering, Inc., 339 NLRB 541, 565 (2003).

Employer property rights are significant and due some protection. National Labor Relations Board v. Babcock and Wilcox Company, 351 U.S. 105, 111, 76 S. Ct. 679, 684 (1956). In National Labor Relations Board v. Windemuller Electric, Inc., 34 F.3d 384, 394 (6th Cir.1994), a case in which an employer asked that union stickers be removed from employer-owned hard hats, it was said that employees who are union supporters have no general right to make use of an employer's personal property for the purpose of communicating union messages, as long as the employees can make effective use of their own property for that purpose. In the same case, it was also said that a union has no general right to make use of an employer's real property for the purpose of communicating union messages, as long as the employees are not beyond the reach of reasonable union efforts to communicate with them by means that do not trespass upon the employer's property rights. In sum, the employees did not have an unequivocal right to use the employer's property as "billboards" for the union.

Considering these principles, I note that, in the instant case, the Respondent has evidently made no attempt to block or discourage employees from displaying Union stickers or logos on their own property. Indeed, this alternative sort of display does occur and has been observed by

the Respondent. Additionally, I note that, despite the Respondent's removal order, the Charging Party is able to communicate with its members via a pair of Union bulletin boards hanging in fire station #2.<sup>5</sup> I also suspect that other, conventional methods of communication, such as in-person discussions, mail, telephone calls, and visits to the homes of Union members, are still available as well.

In addition to the principles outlined above, I would note that, while an employer has a general right to safeguard its property from misuse, an employer may not discriminatorily remove union materials while leaving other posted items of a personal and/or non-business nature. Saginaw Control and Engineering, Inc., 339 NLRB at 565; J. C. Penny, Inc., 322 NLRB 238, 239 (1996); Halliburton Services, 265 NLRB 1154, 1184 (1982); Pleasurecraft Marine Engine Company, 234 NLRB at 1225; Standard Oil Company of California, Western Operations, Inc., 168 NLRB 153, 162 (1967). Here, however, it does not appear that the Respondent has done so. In fact, the record presents no evidence that indicates that the Respondent has inconsistently permitted other groups to similarly hang large banners or affix stickers to Village-owned property.

Arguably, the foregoing analysis is somewhat complicated by the fact that the Respondent's past practice was, at least in effect, to permit the display of the Union materials at issue. However, I find that the Respondent's "sudden" concern is fairly easily explained by the relatively simultaneous arrival of Whigham, the clear source of the removal order. I also find that Whigham has fairly consistently presented a sufficiently reasonable justification for his determination that the Union materials were inappropriate and should be removed. Moreover, I am not convinced that Whigham's justification is pretextual.

---

<sup>5</sup> One of the Union bulletin boards is guaranteed by the parties' CBA. According to the CBA, "[t]he Union shall limit all postings to this bulletin board."

**V. CONCLUSIONS OF LAW**

I find that the Charging Party failed to prove, by a preponderance of the evidence, that the Respondent violated Section 10(a)(1) of the Act.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the complaint in this case be dismissed in its entirety.

**VII. 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 10 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 5 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 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 15th day of May, 2013.**

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



---

**Martin Kehoe**  
**Administrative Law Judge**