

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

Skokie Firefighters, Local 3033,)	
International Association of Fire Fighters,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-13-115
)	
Village of Skokie,)	
)	
Employer)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On February 14, 2013, the Skokie Firefighters, Local 3033, International Association of Fire Fighters (Charging Party, Union) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240, alleging that the Village of Skokie (Respondent, Village) violated Sections 10(a)(4) and 10(a)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on May 20, 2013, the Board’s Executive Director issued a Complaint for Hearing.

A hearing was held before the undersigned on August 26, 2013, in the Board’s Chicago office. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties’ stipulations, evidence, arguments, and upon the entire record of this case, I recommend the following.

I. **PRELIMINARY FINDINGS**

The parties stipulate, and I find:

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act;
2. At all times material, the Respondent has been subject to the jurisdiction of the Board’s State Panel pursuant to Section 5(a-5) of the Act;

3. 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; and
4. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

In September 2011, the Respondent announced that it would begin the examination process to create a hiring list for entry-level firefighters. As part of this process, the Respondent issued a two-and-one-third page document explaining the testing process and candidate requirements. This document provided that candidates would be required to enter into a “Separation from Employment-Reimbursement Agreement” prior to their appointment and swearing in as firefighters. On July 5, 2012, the Respondent hired John Hoffman as a firefighter. As a newly-hired firefighter, Hoffman was required to sign a “Candidate Reimbursement Agreement” agreeing to reimburse the Village in the amount of up to \$1,740 for expenses incurred during the candidate selection process, \$3,000 for the expense of attending Fire/Police Academy, \$1,000 for department operations training, and \$260 for equipment, supplies, and clothing in the event that he left employment with the Department prior to the completion of 48 months of service. The Charging Party alleges that the Respondent, in taking these actions, violated Sections 10(a)(4) and 10(a)(1) of the Act by: (1) changing conditions of employment during the pendency of interest arbitration proceedings; (2) failing to provide the Charging Party with notice and an opportunity to bargain over the implementation of the reimbursement agreement; and (3) bypassing the exclusive representative and dealing directly with a public employee.

The Respondent concedes that it implemented the requirement that new hires sign the reimbursement agreement, and further admits that the reimbursement agreement concerns a mandatory subject of bargaining. However, it nonetheless argues that the instant charge should be dismissed because: (1) the charge was not filed within six months of the time the Charging Party knew or reasonably should have know of the alleged unfair labor practice; and (2) the Respondent has not breached its duty to bargain in good faith over mandatory subjects of bargaining because the Charging Party has yet to demand bargaining over the implementation of the reimbursement agreement.

III. FINDINGS OF FACT

The Union is the exclusive representative of a bargaining unit consisting of all employees of the Village in the positions of sworn full-time firefighter or fire lieutenant, including those assigned as paramedics. The parties are subject to a collective bargaining agreement covering the unit effective May 1, 2009, to April 30, 2010.¹ In or before February 2010, the parties commenced negotiations for a successor collective bargaining agreement. On or about February 19, 2010, the Village and Union filed jointly with the Board a request for a mediation panel, thereby commencing interest arbitration proceedings under Section 14 of the Act.

Distribution of Information in the Department

Fire Chief Ralph Czerwinski instituted an administrative roll call summary process by memorandum of December 3, 2007. This memorandum states that a report containing information on department operations, fire prevention, special notices, and reminders will be distributed to officers each business day. The memorandum further provides that officers are expected to open and review the administrative roll call summary each of the two days they are off prior to a shift. The officers who testified stated that their practice is to review each summary and present it at the daily 8:00 a.m. roll call meeting. Both incoming and out-going shifts are present at these meetings. The officers' practice is generally to read shorter passages verbatim, and summarize the remaining information. Some officers also make the report available for employees at their station following the roll call meeting.

Each station also has a clipboard—a 2-ring binder posted on a wall of the station on which pertinent information is posted. Information is added consecutively, with new information being posted atop prior information. Some stations have multiple clipboards.

2011 Entry-Level Firefighter Examinations

The Village last held firefighter entry exams in 2007. At the time of the 2007 exams, candidates were required to have a high school degree or a general equivalency diploma (GED). The Village has also historically required all new employees to sign an agreement providing for payroll deductions for the cost of a new employee's uniforms. At the hearing in this matter, the Village submitted a sample of the uniform reimbursement agreement. This agreement provides

¹ The parties' collective bargaining agreement contains an evergreen clause which provides that the agreement remains in effect after the expiration date until a new agreement is reached unless either party gives at least ten days' written notice of its desire to terminate the agreement. Respondent states that neither party had given such notice at the time of the hearing in this matter.

that newly-hired firefighters can elect to purchase their own initial issue of uniforms or elect an optional, interest-free 12-month loan for the Department's purchase of those items. By signing the agreement, a newly-hired firefighter authorizes a deduction of \$50 per pay period to reimburse the Village for its purchase.

In September 2011, the Village announced that it would be seeking candidates for entry-level firefighter/paramedic positions. The deadline to submit applications for the testing process was October 17, 2011; the written exam was scheduled for November 19, 2011.

On September 9, 2011, Czerwinski sent out an administrative roll call summary. In the special notice section of this roll call summary there was a portion of bold font titled "Firefighter/Paramedic Entry Level Exam- Skokie Fire Department." The summary indicated that this information should be read at roll call from September 10, 2011 to September 15, 2011, and mentioned at roll call until October 17, 2011. The summary also recited that applications were available online and that information regarding the process was available on the Village's website and department clipboards. Finally, the summary stated that the email included an attachment that was to be posted to the clipboards. Czerwinski had to send the September 9, 2011, roll call summary email twice because his initial email did not include the attachment. The properties tab for Czerwinski's September 9, 2011, email demonstrates that the summary was delivered to then-Union President Lieutenant Robert Gaseor and read by subsequent President Lieutenant Mark Larson at their password-protected Village email accounts.

The attached two-and-one-third page memorandum (Memorandum) detailed the firefighter/paramedic testing process and the requirements for candidates. The process differed in some respects from the 2007 process, notably by a new educational requirement of 60 hours of college credit, firefighter certification, or four years active military; and by the requirement that candidates enter into an employment of relatives agreement." Both of these requirements were listed on the first page of the document. The second page detailed the manner in which candidates would be processed, culminating in entering into a "Separation from Employment-Reimbursement Agreement" immediately before appointment and swearing in. The Memorandum was posted on department clipboards and available online at the Village's website. Czerwinski testified that, following the posting, several members of the bargaining unit approached him with concerns about the new educational requirements and the employment of relatives agreement.

Following the November 19, 2011, written exam, the Village hired new firefighters beginning in April 2012. During orientation, these firefighters signed documents labeled “Candidate Reimbursement Agreement” (Agreement). The Agreement recited that the Village incurs substantial expenses in selecting and training candidates and providing uniforms, and that the Village does not realize the value of its investment if a candidate resigns or is terminated within the first four years of employment. The Agreement thus provides that a candidate will reimburse the Village for the actual expenses of his or her selection evaluations, fire academy attendance, department training, and uniform, up to \$6,000, if he or she leaves employment within the first 24 months. The Agreement further provided that the reimbursement obligation will decrease by 1/24 for each month of service complete after 24 months. Finally, the Agreement states that a candidate is eligible for a payment plan lasting up to nine months in the event his or her obligation exceeded \$1,000.

John Hoffman was hired as an entry-level firefighter on July 5, 2012. He signed an Agreement on that day. On February 7, 2013, Hoffman voluntarily resigned his employment, effective February 22, 2013. The actual cost related to Hoffman’s selection and training under the Agreement came to \$5,911. Though Hoffman requested to pay off the amount in eight payments of \$300 followed by a final payment of \$3,511 in the ninth month, the Department approved a plan under which Hoffman would make eight payments of \$689.08, followed by a ninth payment of \$689.06. At the time of hearing in this matter, Hoffman had made two payments.

Union Executive Board’s Knowledge of the Agreement

In September and October 2011, the Union’s Executive Board consisted of President Gaseor, Vice-President Stanley Goolish, Secretary-Treasurer Joseph Raclawski, and Recording Secretary David Norris. Of these, only Gaseor held the rank of officer; the remaining Board members were all firefighters. To prepare for the hearing in the matter, the Village reviewed its personnel records to determine which members of the Executive Board were on duty from September 9, 2011, when the Village announced plans to hold firefighter entry-level exams, and October 17, 2011, when candidate applications were due. All but Norris were on duty for at least one shift between September 9, 2011, and September 15, 2011. During this time period, the daily roll call summary instructed officers to read the information regarding testing at roll call meetings; as an officer, Gaseor would have been on the distribution list for the emailed roll call

summary for these days. Further, each member of the Executive Board was on duty for at least one shift between September 16, 2011, and October 17, 2011. During this time period, the examination process was to be mentioned at each roll call meeting. Despite this, both Gaseor and Norris testified that they did not know the Village had instituted the Candidate Reimbursement Agreement until they learned about it in connection with Hoffman's resignation.

It was late January or early February 2013 when Hoffman began discussing his desire to resign with his superiors. Testimony indicated that Hoffman spoke with Czerwinski, who tried to encourage Hoffman and address any issues he might be having. At this meeting, Czerwinski told Hoffman he would not act on Hoffman's desire to resign until he received a formal letter of resignation. In the meantime, Czerwinski encouraged Hoffman to discuss the issue with his peers and superiors. At some point, Hoffman was informed that he may owe a substantial amount of money to the Department pursuant to the Agreement.

A Lieutenant who was present at the meeting with Czerwinski telephoned Norris after the meeting to say they had discussed Hoffman's desire to resign and the fact that Hoffman may owe money under the Agreement. According to Norris, this Lieutenant stated that he had seen the agreement but did not have a copy of it. Norris stated that he spoke to Larson, who became Union President in January 2012, about Hoffman's desire to resign and the Agreement in the following days.

At the January 30, 2013, meeting of the Union's Executive Board, it was brought to Larson's attention that Hoffman wanted to resign. Larson spoke to Czerwinski about it the next day, and Czerwinski again indicated that Hoffman could owe a substantial sum under the Agreement. Larson asked for a copy of the Agreement. Czerwinski said providing a copy was not a problem, but the two continued their conversation and Larson left the meeting without a copy.

On February 2, 2013, Norris met with Czerwinski in his office and asked for a copy of the Agreement signed by Hoffman. Czerwinski said he would provide a copy, but Norris left the meeting without it.

On February 4, 2013, Larson went back to Czerwinski's office for a copy of the Agreement. Initially, Czerwinski indicated that he did not have the Agreement. Then, as Larson was walking away, Czerwinski called him back to his office and provided Larson with a copy.

Larson faxed the Executive Board a copy of the Agreement that day. The Executive Board reviewed the Agreement, spoke with counsel, and authorized the filing of the instant charge.

Though each was aware of the 2011 entry-level firefighter examinations, Norris, Larson, and Gaseor each testified that they merely skimmed the Memorandum. As current firefighters who did not know any potential candidates, Norris and Gaseor felt that the information in the Memorandum was not pertinent to them. Further, both stated that they felt that the information was not pertinent in their positions as Union officers because the Village is not obligated to bargain over the selection of new employees.

IV. **DISCUSSION AND ANALYSIS**

The instant charge is untimely filed. Pursuant to Section 11(a) of the Act, “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice.” The six month limitations period begins to run when a charging party has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. Illinois State Labor Relations Board, 206 Ill. App. 3d 327, 335 (4th Dist. 1990).

I credit the testimony of the Union’s officers that they had no actual knowledge of the Agreement prior to February 2013. However, the Village disseminated the Memorandum detailing the testing process and candidate requirements for its entry-level firefighter exams beginning September 9, 2011. The Union President received the email with the Memorandum attached. Moreover, it was an expectation of his job duties that he would read the roll call summary report, and he was in no way prevented from doing so. The Memorandum was also posted in the Department’s stations for members of the bargaining unit to review. Circumstantial evidence strongly suggests that they did so—Czerwinski testified both that bargaining unit members approached him with concerns about the education requirements and employment of relatives agreement detailed in the requirements, and that he was unaware of any source from which they would have received this information other than the Memorandum. Finally, I reject the Union’s contention that the language regarding the “Separation from Employment-Reimbursement Agreement” was ambiguous because it could have referred to the longstanding practice of reimbursing the Village for the cost of uniforms through a payroll deduction. The record indicates that the payroll deduction for reimbursement of uniforms was not triggered by a

firefighter's separation from employment. Therefore, the language used in the Memorandum suggests a new form of reimbursement that is triggered by separation from employment—i.e., not the uniform reimbursement agreement. I conclude that the Charging Party should reasonably have known of the Respondent's actions which allegedly constitute a violation of the Act when its agents received the Memorandum in September 2011 which indicated that newly-hired firefighters would be required to enter into a Separation from Employment-Reimbursement Agreement.

V. **CONCLUSIONS OF LAW**

The charge in this matter is untimely where it was filed more than six months after the Respondent should have known of the actions which constitute the alleged unfair labor practices.

VI. **RECOMMENDED ORDER**

In light of the above findings and conclusions, I hereby recommend that the complaint 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 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 22nd day of August, 2014

**STATE OF ILLINOIS
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Heather R. Sidwell

**Heather R. Sidwell
Administrative Law Judge**