

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

Service Employees International Union,	)	
Local 73, CTW, CLC,	)	
	)	
Charging Party,	)	
	)	Case No. S-CA-14-245
and	)	
	)	
Village of Robbins (Fire Department),	)	
	)	
Respondent.	)	

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

On June 19, 2014, the Service Employees International Union, Local 73, CTW, CLC (Charging Party or Union) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Robbins’ Fire Department (Respondent or Village) had engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act). The Board’s Executive Director investigated the charge 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 January 22, 2015, the Executive Director issued a Complaint for Hearing alleging the Village violated Sections 10(a)(4), (7), and (1) of the Act.

**I. BACKGROUND**

In the Complaint, the Executive Director alleged that the Village violated Sections 10(a)(4), (7) and (1) by refusing to implement an interest arbitration award and refusing to sign the parties’ collective bargaining agreement (CBA). The Complaint also stated that the Village’s 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.**” (emphasis in original); see 80 Ill. Admin. 1220.40(b).

On February 5, 2015, the Village filed its Answer to the Complaint. After reviewing its Answer, I noticed several issues. First, in contrast with the Board’s Rules, the Village had not adequately responded to the Complaint by refusing to answer several allegations. It also instructed me to review certain documents but did not provide them. Most importantly, I found the Village had made several direct admissions including admitting to the critical allegations in the Complaint.

Because of the Village’s apparent admissions, it appeared that a hearing in this matter may no longer be necessary. Therefore, on March 20, 2015, I directed the Village to respond to several questions regarding whether a hearing was necessary. In the Order to Show Cause, I specifically ordered the Village to (1) demonstrate why my factual findings were incorrect; (2) provide copies of any documents it relied upon in its Answer; (3) explain if it was relying on an affirmative defense and why it was not alleged in the Answer; and (4) provide any other bases for why a hearing was necessary. The Village declined to respond to my Order stating in an email “[w]e don’t have anything in addition to what has been submitted to you before.”

## **II. FINDINGS OF FACT**

Given the Village’s responses in its Answer and its refusal to respond to my Order to Show Cause, I find the Village has made the following admissions:

- A. At all times material, the Village has been a public employer within the meaning of Section 3(o) of the Act;

- B. At all times material, the Village has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act;
- C. At all times material, the Village has been subject to the Act, pursuant to Section 20(b) thereof;
- D. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act;
- E. At all times material, the Union represents a bargaining unit (Unit) comprised of all full-time and part-time firefighters, engineers, lieutenants and captains, certified by the Board on November 16, 2010, in Case No. S-RC-11-025;
- F. Arbitrator Edwin Benn issued an interest arbitration award which also incorporated all agreements reached by the parties prior to arbitration;
- G. The Charging Party drafted a collective bargaining agreement (CBA) consistent with an interest arbitration award issued by Arbitrator Edwin Benn; and
- H. The Respondent has refused to sign the CBA and has refused to incorporate the hourly rates awarded by Arbitrator Edwin Benn into the CBA, citing lack of funds.

### **III. DISCUSSION AND ANALYSIS**

The Complaint alleges that the Village violated Sections 10(a)(4), (7), and (1) of the Act when it refused to implement an interest arbitration award and refused to sign the parties' CBA. For the reasons below, I find that the Village violated both Sections of the Act.

#### **A. The Village Violated Section 10(a)(4) of the Act.**

It is well established that an employer's refusal to abide by an unambiguous and undisputed arbitration award or agreement is a breach of the duty to bargain in good faith and a violation of Section 10(a)(4) and (1) of the Act. City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP

2006); City of Markham, 7 PERI ¶ 2021 (IL SLRB 1991). In this case, the Village does not allege that the terms of the award are ambiguous or that it has made a request for judicial review in accordance with Section 14 of the Act. See Ill. Dep'ts of Cen. Mgmt. Servs., (Revenue, Corrections, and Mental Health), 3 PERI ¶ 2033 (IL SLRB 1987) (no violation where award was pending judicial review). Instead the Village states it lacks the funds to implement the interest arbitration award.

Although the case law on this issue is limited, it does not appear that lack of funds, in and of itself, is an adequate defense to a charge of failing to bargain in good faith. City of East St. Louis (Fire Dep't), 30 PERI ¶ 67 (IL LRB-SP 2013). Cf. Vill. of Maywood, 10 PERI ¶ 2045 (IL SLRB ALJ 1994) (non-precedential decision noting “that the prohibition expressed in Section 14(l) of the Act against unilateral changes in mandatory subjects of bargaining during the pendency of arbitration proceedings makes no allowance for unilateral changes due to economic necessity.”); Kewanee Comm. Unit Sch. Dist. No. 229, 4 PERI ¶ 1136 (IELRB 1988) (“An ‘emergency’ defense to a unilateral change exists, however, only in extremely limited circumstances. A defense of necessity requires a showing of an actual emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before the action is taken.”). This seems an even less viable defense for refusing to implement a Section 14 interest arbitration award.

Since firefighters, police officers, and security employees are prohibited from striking, these employees “are afforded access to certain dispute-resolution procedures under [S]ection 14 of the Act.” Dep't of Cent. Mgmt. Servs. (Dep't of Corr.) v. Ill. Labor Relations Bd., State Panel, 373 Ill. App. 3d 242, 244 (4th Dist. 2007). Among other things, Section 14 provides instructions on how to invoke interest arbitration, as well as how to challenge the ultimate award.

Additionally, and of particular significance in this case, Section 14 lists specific factors arbitrators are required to consider when fashioning an award, including *the financial status of the employer*. As such, the Village had the opportunity to demonstrate its economic issues before the arbitrator, and the arbitrator was required to consider them when drafting the award. If the Village believes that the arbitrator exceeded his authority, the proper forum to challenge the award is the circuit court pursuant to the detailed statutory guidelines in Section 14, not the Board.

Again, despite having the opportunity to do so in its Answer and being required to do so by the Order, the Village has not alleged that it has challenged the award in circuit court or that it is undergoing some type of emergency. As such, and based on the Village's admissions, I find that the Village violated Section 10(a)(4) and (1) by refusing to implement the interest arbitration award and sign the CBA incorporating the award.

**B. The Village Violated Section 10(a)(7) of the Act.**

I also find that the Village violated Section 10(a)(7) and (1) of the Act. Section 10(a)(7) states it is an unfair labor practice "to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement." An employer violates 10(a)(7) when it "has agreed to all terms of the proposed contract, where there has been a meeting of the minds, and the employer refuses to reduce the collective bargaining agreement to writing and sign it." City of Harvey, 18 PERI ¶ 2032 (IL LRB-SP 2002) (citing Cnty. of Cook (Cermak Health Servs.), 10 PERI ¶ 3009 (IL LLRB 1994)).

In the instant case, it is uncontested that the Union presented the Village with a contract that incorporated all of their previous agreements and the interest arbitration award, and the Village has refused to sign. As I have already concluded the Village's reasoning for refusing to

incorporate the award is insufficient, it cannot use the same reasoning as a defense for refusing to sign the CBA. Therefore, the Village's conduct also violates Section 10(a)(7) and (1) of the Act.

**IV. CONCLUSIONS OF LAW**

- A. By refusing to implement the arbitration award and sign the parties' collective bargaining agreement, the Village violated Section 10(a)(4) and (1) of the Act.
- B. By refusing to implement the arbitration award and sign the parties' collective bargaining agreement, the Village violated Section 10(a)(7) and (1) of the Act.

**V. RECOMMENDED ORDER**

It is hereby ordered that the Respondent, Village of Robbins, its officers and agents shall:

- A. Cease and desist from:
  - 1. Failing to bargain collectively in good faith with the Service Employees International Union, Local 73, CTW, CLC by refusing to implement the interest arbitration award issued by Arbitrator Edwin Benn and refusing to sign the collective bargaining agreement incorporating that award and all prior agreements;
  - 2. Failing and refusing to bargain collectively in good faith with the Service Employees International Union, Local 73, CTW, CLC in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;
- B. Take the following affirmative actions designed to effectuate the policies of the Act:
  - 1. Sign the collective bargaining agreement reached pursuant to the interest arbitration proceedings which culminated in the arbitration award;

2. Immediately implement all the terms of the interest arbitration award, as well as the resulting collective bargaining agreement;
3. Make whole any employees represented by the Service Employees International Union, Local 73, CTW, CLC who have been adversely affected by the Respondent's failure to implement all the terms of the interest arbitration award and its failure to sign and implement the resulting collective agreement, including back pay plus interest at the rate of seven per cent per annum in accordance with the wage increases provided by that award and agreement as calculated from the effective dates of such increases as provided therein;
4. Preserve and, on request, make available to the Board or its agents for examination and copying all payroll and other records required to calculate the amount of back pay due under the terms of this order;
5. 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 by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced or covered by any other material;
6. Notify the Board in writing, within 20 days from the date of this decision, of the steps the 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 Kathryn Nelson, 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 in Chicago, Illinois on September 1, 2015**

**STATE OF ILLINOIS**

**ILLINOIS LABOR RELATIONS BOARD**

**STATE PANEL**

*/s/ Kelly Coyle* \_\_\_\_\_

**Kelly Coyle**

**Administrative Law Judge**