STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Village of Oak Lawn,	)	
	)	
Charging Party	)	
	)	**Case No. S-CB-12-017**
and	)	
	)	
Oak Lawn Professional Firefighters Ass'n, Local 3405, Int'l Ass'n of Fire Fighters,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 21, 2011, the Village of Oak Lawn (Charging Party or Village) filed a Charge pursuant to Section 11 of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010) as amended, alleging that the Oak Lawn Professional Firefighters Association, Local 3405, International Association of Fire Fighters (Respondent or Union) had violated Section 10(a)(4) and (1) of the Act by failing and refusing to bargain in good faith from August 11, 2011. The Charge was investigated in accordance with Section 11 of the Act, and on April 17, 2012, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing.

On May 2, 2012, the Respondent filed its Answer denying the alleged violations and also filed a Motion to Dismiss. Respondent's Motion to Dismiss was based on two arguments: 1) that it had no obligation to bargain; and 2) any alleged failure to bargain was moot. The parties fully briefed the Motion to Dismiss. After carefully considering the parties' evidence and arguments, I recommend the following:[1]

[1] The evidence was attached to the Charge and the parties' briefs filed in support of, and in opposition to, the Motion to Dismiss.

I. BACKGROUND

The material facts are not in dispute. The Charging Party and the Respondent are parties to a collective bargaining agreement (Agreement) effective from January 1, 2007 through December 31, 2010 for a bargaining unit consisting of Fire Department employees in the rank of firefighter, engineer and lieutenant, but excluding all employees above the rank of lieutenant. Section 11.5 of the Agreement, entitled "Termination," provides as follows:

> This Agreement shall be effective January 1, 2007, and shall remain in full force and effect until 11:59 p.m., December 31, 2010. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing at least sixty (60) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations will begin *no later than* thirty (30) days prior to the anniversary date . . . . (Emphasis added).

Neither party notified the other prior to the expiration of the Agreement that it wanted to open negotiations to modify its terms. The Agreement automatically renewed for one year, effective through December 31, 2011.

Initially in 2011, the parties were engaged in informal discussions. On August 11, 2011, George Sheets, Chief of the Village's Fire and Emergency Medical Services, sent Scott Tsilis, President of the Respondent Union, what he described as "the Village's 'formal' demand to bargain" with the Respondent. On August 15, 2011, the Charging Party sent another email to Union President Tsilis which provided that "the Village will at your request suspend any further negotiations until 2012."

On August 16, 2011, the President of the Union sent an email to Chief Sheets which outlined that neither party had reopened the Agreement prior to its expiration on December 31, 2010, and thus, by its own terms, the Agreement automatically extended until December 31, 2011. Further, the email asked Chief Sheets whether he intended his email of August 11, 2011 to

serve as the Village's "formal" demand to bargain with the Union for a new agreement effective January 1, 2012.[2] Union President Tsilis' email concluded by stating that if such was the intent, there was no need to schedule bargaining "at this time" since the Union's "obligation is to begin negotiations no later than 30 days prior to January 1, 2012."

On August 18, 2011, Chief Sheets sent a letter to Union President Tsilis. The email recited that the parties had been engaging in unsuccessful, "informal" negotiations for a successor Agreement. The Chief ended his email by stating the September dates when the Village was available for negotiations, and asked Union President Tsilis to inform him by the close of business, August 23, 2011, of the Union's availability for negotiations.

On September 30, 2011, Village Manager Larry Deetjen sent a letter to Lisa Moss, counsel for the Union, which identified itself in the subject matter line as the "Village's Third Formal Demand to Bargain" for a successor agreement with the Union. The letter again referenced the parties' past attempts at informal negotiations, and referred to the Act as requiring the parties to bargain in good faith. Further, the letter provided that it served as another demand that the Union begin negotiations for a successor agreement, listed dates in late October and early November 2011 when the Village was available for negotiations, and asked the Union to let the Village know by October 7, 2011 when it was available to do so.

On October 21, 2011, the Village filed a Charge in the instant case alleging that the Union had failed and refused to bargain in violation of the Act. After the Board issued a Complaint in this matter, on May 2, 2012 the Union filed an Answer denying the bargaining violation and simultaneously filed a Motion to Dismiss the Complaint. In support of that motion, the Union contends that when the Agreement, originally due to expire at the close of December

[2] Union President Tsilis' August 16, 2011 email mistakenly refers to September 11, 2011 rather than to August 11, 2011.

31, 2010, rolled over for another year until the last minute of December 31, 2011, it had no duty to bargain with the Village at the time of its August 2011 demands to bargain. In support of this position, the Union cites Section 11.5, "Termination," of the parties' Agreement, as well as its Section 11.3 "Entire Agreement" clause.[3] Section 11.3 provides as follows:

> *This Agreement constitutes the entire Agreement between the parties and concludes negotiating on any subject, whether included in this Agreement or not,* for the duration of this Agreement, except that the parties recognize their legal obligations to engage in impact bargaining and this provision shall not be construed so as to preclude negotiations with the Village, including representatives of the Board of Fire and Police Commissioners on issues regarding the Fire Department Promotion Act, 50 ILCS 742/1 et seq. as amended from time to time. (Emphasis added in Respondent's Motion).

The Union argues that, other than potential impact bargaining and negotiation of any issue pertaining to the Fire Department Promotion Act, the execution of the Agreement due to expire at the close of 2011 concluded the parties' obligations to bargain over all matters for the term of the contract.

Regarding negotiation of a successor agreement to start January 1, 2012, the Union emphasizes that it complied with the bargaining obligation which the Agreement imposes. In particular, the Union maintains that it has satisfied Section 11.5 of the Agreement which requires the parties to begin negotiations for a successor agreement "*no later than*" thirty days prior to the December 31, 2011 anniversary date—or December 1, 2011—of the parties' Agreement. The Union points out that on October 31, 2011, its counsel sent a letter to the Village's counsel to serve as notice of its intent to modify the Agreement due to expire at the end of 2011, and requested dates to begin negotiations over the terms of a successor to become effective January 1, 2012. The Union explains that the Village responded in a letter dated November 4, 2011 acknowledging receipt of its letter dated October 31, and stating that it would follow-up next

[3] Section 11.5, "Termination," is provided supra at p. 3.

week with correspondence indicating the dates when the Village was available for negotiations for a successor agreement. As additional evidence of the Union's compliance with its bargaining obligation, the Union submits an email dated November 17, 2011 from the Village's counsel to that of the Union indicating that the Village has accepted the date of December 22 to begin negotiations.

In addition to asserting its compliance with the Agreement's provisions regarding negotiations for a successor, the Union maintains that Chief Sheets waived bargaining in his August 15, 2011 email to Union President Tsilis. In that correspondence, Chief Sheets stated that "the Village will at your request suspend any further negotiations until 2012." Further, the Union argues that the subject matter of the underlying Charge is moot because the parties have been engaged in negotiations for a successor agreement since December 2011.

By contrast, the Charging Party Village maintains that the Motion to Dismiss should be denied as the Complaint sets forth sufficient facts showing the Union's violation of its duty to bargain within the meaning of the Act. The Village argues that after August 11, 2011 when it made its first formal demand to start negotiations for a successor to the roll-over Agreement expiring at the end of the year, the Union had a duty to begin bargaining with it *prior* to December 1, 2011. Instead, the Village contends, the Union responded to its formal bargaining demand by incorrectly stating that it had no duty to bargain at that time since the roll over Agreement would expire within four months. The Village emphasizes that it made two additional formal demands to bargain—one on August 18 and the other on September 30, 2011—both of which were met by the same erroneous Union response: it had no duty to bargain.

The Village argues that both the Act and the Agreement require the Union to begin negotiations for a successor agreement at the time of the Village's formal demands to bargain. The Village emphasizes that Section 7 of the Act requires parties to bargain in good faith, including the obligation to meet to negotiate "at reasonable times." [4] Further, the Village argues that neither the language of the Agreement nor that of the Act prohibit the parties from beginning negotiations for a successor contract sooner than thirty (30) days from expiration of the agreement in effect. As the Village maintains, if either party demanded to reopen negotiations prior to expiration of the Agreement, both parties would have an obligation to begin negotiations "at least more" than thirty (30) days prior to the expiration of the Agreement. The Village contends that the Union violated the Act each time it refused the Village's formal demand to bargain, first on August 11, 2011, then on August 18, 2011, and finally on September 30, 2011.

Further, the Village adamantly denies that it "waived its right to bargain in 2011 over a successor to the roll over" Agreement expiring at the close of December 31, 2011. The Village points out that the Union's waiver argument is based on a single line of the Chief's August 15,

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[4] Section 7 of the Act, entitled "Duty to bargain," provides, in part, as follows:

> A public employer and the exclusive representative have the authority and the duty to bargain collectively set forth in this Section.
>
> For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees *to meet at reasonable times* . . . .
>
> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment . . . .
>
> The duty "to bargain collectively" shall also include negotiations as to the terms of a collective bargaining agreement . . . .
>
> The duty "to bargain collectively" shall also mean that no party to a collective bargaining contract shall terminate or modify such contract, unless the party desiring such termination or modification:
>
> 1) serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof . . . . (Emphasis added).

2011 email which, when read in the proper context, refers to suspension of only informal negotiations, not formal negotiations which were the subject of the Village's bargaining demands.

Additionally, the Village insists that the instant matter is not moot. While the Village does not dispute that the parties were engaged in negotiations for a successor contract at the time it filed its Response to the Motion to Dismiss, the Village maintains that the Board can remedy the Union's past refusals to bargain in good faith so that future violations of the Act are prevented. In particular, the Village argues that the Board could issue an order that the Union cease and desist from refusing to bargain in the future, as well as order the Union to post an appropriate notice in an effort to avoid further violations of the Act.

II. DISCUSSION AND ANALYSIS

The Union's Motion to Dismiss the Complaint presents a basic question: whether the Act imposes a duty to bargain on the Union for a successor agreement to that expiring December 31, 2011 earlier than December 1, 2011. While the Union maintains that the Act required it to commence negotiations on December 1, 2011, the Village argues that the Union violated the Act by refusing to meet sooner pursuant to its formal bargaining demands of August and September 2011. In light of the parties' negotiating responsibilities documented in their Agreement, I find the Act did not impose a duty to bargain for a successor agreement prior to December 1, 2011. Therefore, the Motion to Dismiss is granted.

Section 7 of the Act requires a public employer and the exclusive representative to negotiate the terms of a collective bargaining agreement. While it defines the latest point in time by which either party must give written notice to the other of its intent to modify the contract, it contains no express statement as to when the negotiations must begin. The Charging Party is

correct that a party must "meet at reasonable times" in order to satisfy the duty to bargain under the Act, but Section 11.5 of the parties' Agreement is a guide as to what is reasonable. The language of Section 11.5 reads, in part, as follows: "[i]n the event that [written] notice [of intent to modify the Agreement] is given, negotiations will begin *no later than* thirty (30) days prior to the anniversary date." This wording which the parties chose to use in their Agreement imposes an obligation on both of them to begin negotiations at the latest on December 1, 2011. While the parties comply with that provision if they agree to negotiate at an earlier date, it does not require them to do so. Consequently, the Respondent did not violate its duty to bargain under the Act when it refused the Charging Party's demands to bargain a successor agreement to the one expiring on December 31, 2011.

The Board's decision in Metropolitan Alliance of Police, Chapter 222 and Cook County and Cook County Sheriff, 25 PERI ¶42 (IL LRB-LP 2009), addresses a similar situation and supports granting the Motion to Dismiss in the instant dispute. In that case, the Board affirmed the Executive Director's dismissal of a union's charge that an employer, by its conduct in negotiations for a successor agreement, refused to bargain in violation of the Act. More specifically, the employer's conduct alleged to violate the Act—its ignoring initial bargaining demands, cancellation of some negotiating sessions, failure to submit a wage proposal and refusal to join in a request for mediation—took place *before* the parties' agreement required a demand for negotiations to occur.[5] In explaining its dismissal of the charge, the Board observed that "the Act does not specify any particular time for negotiations to commence" and the actions of the employer did not violate the parties' agreement.

[5]The mediation referenced in this precedent is described in Section 14 of the Act regarding security employees, peace officers and fire fighters. That section provides, in relevant part, that "unless the parties mutually agree to some other time, mediation shall commence 30 days prior to the expiration date of such agreement." Section 1230.60(a)(1) of the Board's Rules mirrors this statutory provision. 80 Ill. Admin. Code §1230.60.

Applying the Board's ruling in MAP and Cook County Sheriff, 25 PERI ¶42 (IL LRB-LP 2009), the instant dispute must be dismissed before hearing. The Respondent's refusal to commence negotiations at a date earlier than the parties' Agreement provides complies with the Act, a statute which does not expressly state when bargaining must begin.

However, neither of the other grounds which the Union advances for its Motion to Dismiss—waiver and mootness—support dismissal of the claim. If the Act imposed a duty to bargain for a successor agreement weeks earlier than the first meeting in December 2011, there would be sufficient evidence to warrant a hearing on the issue of whether the Village had waived such an obligation in Chief Sheets' email of August 15, 2011.

Similarly, a complaint alleging violation of the Act's duty to bargain is not rendered moot simply because a respondent complies with its bargaining obligations at a later time. See Policemen's Benevolent Labor Committee and City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011). Although the facts show that the Union and the Village began ongoing negotiations in December 2011, the Board could remedy a prior bargaining violation of the Act by issuing a cease and desist order and requiring an appropriate posting. This conclusion is consistent with holdings of the National Labor Relations Board regarding respondents' claims of "mootness" in unfair labor practice cases. See e.g., Nucor Corporation and United Steelworkers of America, AFL-CIO, 230 NLRB 297 (1977); Denmac Corporation and Hotel, Motel, Restaurant and Club Employees Union, Local 750, 175 NLRB 474 (1969).

III. CONCLUSIONS OF LAW

The Respondent did not refuse to bargain in good faith in violation of the Act.

IV. RECOMMENDED ORDER

It is hereby ordered that the Complaint be dismissed.

V. 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 on this 4th day of September 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

Eileen L. Bell

Eileen L. Bell
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Village of Oak Lawn, Charging Party And Oak Lawn Professional Firefighters Association, Local 3405, International Association of Fire Fighters, Respondent	)	Case No. S-CB-12-017

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 4th day of SEPTEMBER, 2012, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

Mr. Paul O'Grady
Peterson, Johnson & Murray
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Melissa L. McDermott, ILRB

SUBSCRIBED and **SWORN** to
Before me this 4th day of
September, 2012.

NOTARY PUBLIC

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
CARLA STONE
MY COMMISSION EXPIRES
OCTOBER 25, 2014