

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

Tri-State Fire Protection District,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-13-033
)	
Tri-State Professional Firefighters Union,)	
Local 3165, IAFF,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On January 23, 2013, the Tri-State Fire Protection District (District) filed a charge in Case No. S-CB-13-033 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Tri-State Professional Firefighters Union, Local 3165, IAFF (Union) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The District amended the charge on April 11, 2013. 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 May 24, 2013, the Board’s Executive Director issued a Complaint for Hearing.

The case was heard on September 19 and 20 and October 1, 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 Union has been a labor organization within the meaning of Section 3(i) of the Act.
2. The parties stipulate and I find that, at all times material, the Union has been the exclusive representative of a bargaining unit comprised of the District's full-time sworn or commissioned employees in the job classifications or ranks of: firefighter/emergency medical technician, firefighter/paramedic, engineer, lieutenant, and battalion chief (Unit).
3. The parties stipulate and I find that, at all times material, the District has been a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate and I find that, the District has been subject to the State Panel of the Board pursuant to Section 5 of the Act.
5. The parties stipulate and I find that, at all times material, the District has been subject to the Act pursuant to Section 20(b) of the Act.
6. The parties stipulate and I find that, at all times material, the District and the Union have been parties to a collective bargaining agreement (CBA) governing the Unit, with a term ending May 31, 2012.
7. The parties stipulate and I find that, at all times material, Donald Bulat had been employed by the District as a firefighter, and is a member of the Unit.
8. The parties stipulate and I find that, at all times material, Bulat has been a public employee within the meaning of Section 3(n) of the Act.

9. The parties stipulate and I find that, at all times material, Bulat has served as president of the Union, and has been an agent of the Union authorized to act on its behalf, including, but not limited to, serving on its negotiating team for a successor to the CBA.
10. The parties stipulate and I find that, at all times material, David Mayotte has been employed by the District as a firefighter, and is a member of the Unit.
11. The parties stipulate and I find that, at all times material, Mayotte has been a public employee within the meaning of Section 3(n) of the Act.
12. The parties stipulate and I find that, at all times material, each of the following individuals has occupied the position opposite his or her name:

Michelle Gibson – Fire Chief
Jack Mancione – Deputy Fire Chief
Debbi Gergits – District Finance Director

II. ISSUES AND CONTENTIONS

The Complaint for Hearing contends that the Union failed and refused to bargain in good faith in violation of Section 10(b)(4) of the Act when the Union (1) failed and refused to meet at reasonable times and places for the purpose of negotiating a successor CBA, (2) failed to appoint representatives with sufficient authority to negotiate a successor CBA in good faith, and (3) failed and refused to abide by a grievance settlement. The Union denies those contentions and contends (1) that the Complaint for Hearing is procedurally defective as it contains allegations outside the Board's six-month statute of limitations and (2) that the Complaint for Hearing should be dismissed as moot because the remedy sought would be ineffectual.

III. FINDINGS OF FACT

As indicated, the parties are subject to a CBA that expired on May 31, 2012. They are currently negotiating a successor CBA. During the negotiations, Chief Michelle Gibson has functioned as the District's chief spokesperson and Jennifer Dunn has been the District's attorney. Donald Bulat, the Union's president, initially functioned as the Union's chief spokesperson. As noted below, that role was later delegated to Lisa Moss, the Union's attorney.

On January 16, 2012, Gibson sent Bulat an e-mail asking for possible bargaining session dates. Bulat responded to her e-mail on January 17, 2012, but he did not provide dates as requested. Later, on March 5, 2012, Gibson offered Bulat March 16, 19, and 23, 2012. (March 16 and 19, 2012 were black shift dates.¹) On March 13, 2012, Gibson indicated a preference for April 3, 2012 (a black shift date). The next day, Bulat indicated that the Union's bargaining team was okay with that date. In a separate March 13, 2012 e-mail, Bulat told Gibson that black shift dates were preferable for the Union's bargaining team (as none of the team's members were assigned to that shift) and asked Gibson for dates after March 23, 2012. In a March 15, 2012 e-mail, Gibson offered April 18, 24, and 30, 2012 (three black shift dates). Bulat did not respond.

As scheduled, the parties had their first bargaining session on April 3, 2012. During the session, the two bargaining teams discussed ground rules for negotiations, caucus times, who would serve as each team's chief spokesperson, and tentative agreements. The Union also suggested that each team have tentative agreements reviewed by its respective attorney before those agreements were entered into. The District did not agree with that suggestion.

In an April 19, 2012 e-mail, Bulat informed Gibson that the Union's initial proposal was still being completed, sought dates in the first two weeks of May of 2012, and asked for the

¹ The District has three separate shifts: black shift, gold shift, and red shift. All of the Union's bargaining team members are assigned to either the gold or the red shift. Generally, the District does not allow members of the Union's negotiation team to attend bargaining sessions while on duty.

parties' "revised ground rules." On April 24, 2012, Gibson sent Bulat an e-mail offering May 4, 7, 8, 10, 11, 15, 16, 17, and 18, 2012. (May 15 and 18, 2012 were black shift dates.) Bulat did not respond. On May 14, 2012, Dunn sent Moss the ground rules that were developed during the April 3, 2012 bargaining session. On July 5, 2012, the Union gave the District its opening contract proposals, which "included both economic and non-economic items."

On July 18, 2012, Gibson sent an e-mail to Bulat offering August 13, 23, 29, and 31, 2012. (August 13 and 31, 2012 were black shift dates.) It also asked for updates regarding the ground rules. The next day, Bulat indicated he would check on dates and asked if the District had a contract proposal for the Union to review. On July 26, 2012, Bulat informed Gibson that the Union was available on August 13, 2012. Later that day, Moss sent an e-mail to Dunn indicating that the Union intended to sign the ground rules with several "understandings" at the next bargaining session. In the same e-mail, Moss also stated that the Union would not tentatively agree to "any item" until she could review it.

The second negotiation session occurred on August 13, 2012. During that session, the ground rules were discussed but not "executed" and Gibson asked about the Union's ability to enter into a tentative agreement. In response, Bulat suggested that he could tentatively agree to some items, but some subjects would have to go through Moss. Later in the session, Bulat changed his position and indicated that he would not agree to anything. The Union then walked the District through the Union's contract proposals.

On August 31, 2012, Gibson sent an e-mail to Bulat offering September 10, 12, and 14, 2012. (September 12, 2012 was a black shift date.) Those dates were rejected. On September 6, 2012, Gibson provided additional dates of September 24, 25, and 26, 2012. (September 24, 2012 was a black shift date.) Bulat did not respond. In a September 11, 2012 e-mail, Gibson

reiterated to Bulat that September 25 and 26, 2012 were available, offered September 27, 2012 (a black shift date), and indicated that September 24, 2012 was no longer available for the District. On September 19, 2012, Bulat informed Gibson that September 27, 2012 was his team's preferred day. In a September 20, 2012 e-mail, Gibson confirmed the September 27, 2012 date, asked Bulat to confirm that he received the e-mail, and asked the Union to consider October 12, 15, 16, 22, and 23, 2012. (October 12 and 15, 2012 were black shift dates.) Bulat did not respond.

The third bargaining session occurred on September 27, 2012. In that session, the parties decided that the next bargaining session would occur on October 15, 2012. They also signed a set of ground rules, but Bulat indicated that the Union would nevertheless need to run the ground rules by Moss before it could agree to them. In addition, the District presented its "operational proposal" and offered to change some contract language in accordance with a prior Union request. The Union, however, refused to tentatively agree to its own proposed change. During the same session, it was also once again noted that the Union's team preferred black shift dates.² In response, Gibson suggested that the Union's team members could trade shifts.

On September 28, 2012, Gibson sent Bulat a copy of the "executed ground rules" of the September 27, 2012 session and, in another e-mail, offered October 25, 26, 30, and 31 and November 1, 2, 6, 7, 8, 9, 13, 14, 16, 26, 2012. (October 30, November 2, 8, 14, and 16, 2012 were black shift dates.) Bulat did not respond. Later, in an October 8, 2012 e-mail, Gibson asked Bulat about those dates again and asked him to be prepared to agree to additional dates during the next bargaining session. Gibson also asked for a response by October 10, 2012, but did not receive one.

² Gibson denies that the Union reiterated its preference for black shift dates during the September 27, 2012 bargaining session.

The fourth bargaining session occurred on October 15, 2012. During the session, the District presented its “financial proposal” to the Union’s team in detail and attempted to explain the District’s financial challenges. The Union also agreed to three of the dates previously offered by Gibson.

Later, on October 25, 2012, Bulat presented Gibson with a Freedom of Information Act request seeking a range of documents related to the District’s October 15, 2012 presentation. Once received, Bulat sent those documents to the Union’s parent office to be audited. That audit was later completed in the middle of November 2012.

On October 28, 2012, David Basek, originally a non-Unit employee, was demoted from division chief to lieutenant (Basek’s “last tested rank”) and, as a result, was placed in the Unit “with seniority.” Essentially, the change meant that there would eventually be an extra lieutenant (or five lieutenants to cover just four stations during a shift). Around that time, Deputy Chief Jack Mancione met with Battalion Chief Mark Reynolds (a Unit member), and the two determined that Basek would fill in for Lieutenant Link, who was “on long-term layup” at the time. (That agreement was not put in writing.) The Union filed a related grievance on November 5, 2012. It is currently scheduled for arbitration.

The fifth bargaining session occurred on November 2, 2012. During the session, the parties mostly discussed the Unit’s “27-day pay cycle.” In addition, the District presented an insurance proposal and also proposed two “simple” tentative agreements. One of the two concerned layoffs and another concerned nondiscrimination. Both were “executed” during the session. During the same session, Bulat indicated that the District’s insurance proposal would have to be reviewed, as it was purportedly “tied to other things.” That proposal had originally been the Union’s. At the end of the November 2, 2012 session, Gibson offered the Union several

additional bargaining session dates in December 2012. (Of those offered, December 5, 11, 14, and 17, 2012 were black shift dates.) The Union did not respond at the time.

In a November 9, 2012 e-mail, Bulat informed Gibson that he would not be available for the scheduled November 14, 2012 bargaining session but confirmed the November 26, 2012 date. Bulat did not explain why he cancelled that session. Subsequently, in a pair of November 20, 2012 e-mails, Bulat also cancelled the scheduled November 26, 2012 session without explanation, indicated that the next day the Union's team could meet was December 11, 2012, and noted that the Union's team was "researching some items." Bulat did not indicate what those items were.

In the middle of November 2012, some Union members met with representatives of Gallagher-Basset, an insurance company, in order to find alternative insurance plans. Gallagher-Basset's representatives eventually told the Union they needed stop loss numbers and other information that only the District could provide. Later, Bulat asked Gibson to provide that information.

In a November 29, 2012 e-mail, Gibson proposed December 12, 13, 17, and 21, 2012 and January 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29, 30, and 31, 2013 as potential dates. (December 17, 2012 and January 10, 16, 22, 25, 28, and 31, 2013 were black shift dates.) On December 3, 2012, Gibson asked Bulat to get back to her about those dates and reminded Bulat of the bargaining session scheduled for December 11, 2012. On December 7, 2012, Bulat cancelled the scheduled December 11, 2012 session because the Union was unprepared. The next day, Bulat informed Gibson via e-mail that the Union's team was also available on January 10, 22, 28, and 31, 2013. Gibson confirmed all of those dates in a December 10, 2012 e-mail. Subsequently, in a January 9, 2013 e-mail, Gibson reminded Bulat and others of the scheduled

January 10, 2013 session. A half an hour after that e-mail was sent, Bulat cancelled that session as well, as he had forgotten he would be on vacation that day. He also confirmed the January 22, 2013 date.

On December 19, 2012, Link was cleared to return to duty. Shortly after his return, Link served as a “floating lieutenant.” In late January of 2012, Link, who had previously agreed to the arrangement, determined that he no longer wished to fill that role and, instead, wanted a permanent position. Mancione took Link’s preference under consideration.

On January 21, 2013, representatives from the District and the Union met with Gallagher-Basset’s representatives. During that meeting, it quickly became clear that Gallagher-Basset simply wanted to replace the District’s broker. The District was not interested in doing so, and stopped the meeting after a half an hour.

The parties had a sixth bargaining session on January 22, 2013. During that session, the parties discussed dates for future bargaining sessions and confirmed they would meet again on January 28 and 31, 2013. Bulat also offered additional dates. That same day, Gibson and Bulat signed the tentative agreements regarding the existing CBA’s layoff language and non-discrimination policy. Bulat did not submit the two tentative agreements for Moss’ review and did not discuss them with her.

On January 23, 2013, Bulat informed Gibson that the Union’s bargaining team would only be available on January 28 and February 12, 2013. Later that day, Gibson confirmed that the Union was keeping the January 28, 2013 date, was cancelling the scheduled January 31, 2013 session, and was scheduling a February 28, 2013 session. The Union did not indicate why it had cancelled the January 31, 2013 session.

As noted above, the District also filed its initial unfair labor practice charge on January 23, 2012. In response, Bulat sent Gibson an e-mail on January 25, 2013 which indicated that, because of the District's charge, the Union would be bringing in Moss for the remainder of the negotiations. The e-mail further noted that Moss was unavailable on January 28, 2013 and thus the Union was cancelling that date's session. On February 7, 2013, Bulat also cancelled the scheduled February 12, 2013 session for the same reason. That same day, Moss sent Dunn an e-mail confirming that she would be handling the Union's negotiations from then on and asked Dunn whether March 8, 2013 was an acceptable date.

On March 4, 2013, David Mayotte, a Union steward, filed Grievance #13-003. That grievance concerned the assignments of Lieutenants Heisen, Just, and Link that resulted from Basek's demotion and asserted that Basek should be the floating lieutenant. Gibson conducted the affiliated grievance meeting with Mayotte on March 13, 2013. Later, on March 22, 2013, Gibson met with Mayotte again to discuss the grievance further. According to Gibson, during that meeting, Mayotte recommended that Jeffery Kier should be the floating lieutenant because Kier was the least senior lieutenant.³ On March 23, 2013, Gibson formally denied Grievance #13-003 as untimely, but indicated that she was still interested in resolving the issue. According to Gibson, on March 25, 2013, she informed Mayotte that she agreed with Mayotte's recommendation regarding Kier, thereby resolving Grievance #13-003.⁴ The alleged agreement, which was later implemented by Gibson on March 27, 2013, was not signed or formally reduced to writing.

³ Mayotte denies that he made that suggestion.

⁴ Mayotte denies that they reached an agreement.

The parties' bargaining teams met again on March 8 and April 4, 2013. Although Moss was in attendance, no tentative agreements were reached during those sessions. Subsequently, the Union initiated efforts to bring in a mediator.

Another grievance – Grievance #13-005 – was filed on April 5, 2013 by Matthew McClenning, another Union steward. In short, it decried Kier being made the floating lieutenant and sought to have him return to his prior assignment. The affiliated grievance meeting occurred on April 17, 2013 and Gibson later issued the District's formal response on April 29, 2013. In it, Gibson denied the grievance and indicated that McClenning apologized during the April 17, 2013 grievance meeting, acknowledged that the District and the Union had an earlier agreement, and stated to Gibson that the Union had no good answer regarding the grievance, that the current arrangement caused a wrinkle in seniority, and that Kier did not agree with the agreement.⁵

The Union did not demand arbitration for Grievance #13-005. However, on April 10, 2013, the Union did invoke arbitration for the prior grievance – Grievance #13-003. Later, on April 18, 2013, Bulat sent Gibson an e-mail asserting that no one is authorized to reach grievance settlements without the prior approval of the Union's executive board and the signatures of Bulat, the Union's vice president, or an "assigned designee."

IV. DISCUSSION AND ANALYSIS

Is the Complaint for Hearing procedurally defective?

The Union contends that the Complaint for Hearing is procedurally defective because it contains allegations outside the Board's six-month statute of limitations. Specifically, the Union notes that Section 11(a) of the Act states, in part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the

⁵ McClenning disputes the accuracy of Gibson's summary.

Board,” and argues that, for that reason, “the Board is precluded from analyzing the merits of any charges that occur outside that statutory window.” It also argues that those portions of the Complaint which contain impermissible allegations should be stricken and that any evidence related to those allegations should be disregarded. In my judgment, that argument, though valid to a degree, ultimately misses the mark.

The District’s initial charge was filed on January 23, 2013, and I would grant that it generally follows that a complaint cannot be issued for an unfair labor practice that occurred more than six months before that date. Moreover, it is clear that some of the events recounted by the Complaint for Hearing occurred outside of that statutory window. However, the Complaint for Hearing also plainly advances charges that allegedly occurred (at least in part) during the limitations period. Further, those charges cannot be understood in a vacuum. In my view, the earlier events must be utilized to shed light on the true character of matters occurring within the actionable period. See City of Mattoon, 11 PERI ¶2016 (IL SLRB 1995); Village of Elk Grove, 6 PERI ¶2048 (IL SLRB 1990); City of Burbank, 4 PERI ¶2048 (IL SLRB 1988); Crane Company, 244 NLRB 103, 110 (1979); Gagnon Planting and Manufacturing Company, 97 NLRB 104, 106 (1951). Section 11(a) enacts a statute of limitations, not a rule of evidence. See Forest Preserve District of Cook County, 5 PERI ¶3002 (IL LLRB 1988); National Labor Relations Board v. Clausen, 188 F.2d 439, 443 (3rd Cir. 1951). In addition, as the remaining language of Section 11(a) clarifies, the issue is not whether the District filed its charge with six months of the events alleged, but whether the date it filed was more than six months after it knew or reasonably should have known that the Union had committed a chargeable offense. Moore v. Illinois State Labor Relations Board, 206 Ill. App. 3d 327, 564 N.E.2d 213 (4th Dist. 1990); Amalgamated Transit Union, Local 241, 26 PERI ¶57 (IL LRB-LP 2010).

Did the Union unlawfully fail and refuse to meet at reasonable times?

The Complaint for Hearing alleges that the Union violated Section 10(b)(4) of the Act, which provides, in part, that it is an unfair labor practice for a labor organization or its agents to refuse to bargain in good faith with a public employer. The duty to bargain in good faith requires negotiating parties to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement. City of Mattoon, 11 PERI ¶2016; City of Burbank, 4 PERI ¶2048.⁶ Generally, to do that, each party must at least meet at reasonable times during contract negotiations. See Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013); Springfield Housing Authority, 9 PERI ¶2003 (IL SLRB 1992); County of Cook and Sheriff of Cook County, 6 PERI ¶3021 (IL LLRB 1990); County of Vermilion, 3 PERI ¶2004 (IL SLRB 1986); Board of Trustees of University of Illinois at Urbana-Champaign, 9 PERI ¶1008 (IL ELRB E.D. 1992); Crane Company, 244 NLRB 103, 111 (1979); KFXM Broadcasting Company, 183 NLRB 1187, 1201 (1970). The Complaint for Hearing alleges that the Union failed and refused to do so.

To determine whether the Union met at reasonable times and bargained in good faith, this analysis must consider all of the relevant facts in the record (i.e., “the totality of the conduct”). City of Mattoon, 11 PERI ¶2016; County of Cook and Sheriff of Cook County, 6 PERI ¶3021; City of Burbank, 4 PERI ¶2048. The overall record indicates that, over the course of about a year, the District’s chief spokesperson offered the Union’s bargaining team dozens of potential bargaining session dates. It also appears that, during the same period, the Union’s chief spokespeople only offered several dates of their own. Additionally, Bulat routinely failed to respond to the inquiries of the District’s chief spokesperson, regularly cancelled scheduled

⁶ It has also been said that the duty to bargain in good faith requires each party to have an open mind and commit a sincere effort to reach an agreement. Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013); County of Cook and Sheriff of Cook County, 6 PERI ¶3021 (IL LLRB 1990).

bargaining sessions without explanation, and ultimately only agreed to and appeared at just a small handful of sessions. In my view, such negative, uncooperative conduct unreasonably impeded the bargaining process and frustrated negotiations so as to evidence a lack of regard for the bargaining obligation. See County of Cook and Sheriff of Cook County, 6 PERI ¶3021; National Labor Relations Board v. Southern Transport, Inc., 343 F.2d 448, 560 (8th Cir. 1965); KFXM Broadcasting Company, 183 NLRB at 1201.

Regarding this issue, the Union observes that many of the dates offered by the District were gold or red shift dates rather than the preferred black shift dates, but that observation, though notable, is no defense to a Section 10(b)(4) charge. Significantly, passively waiting for the other party to make all requests for bargaining sessions is not bargaining in good faith. See Southern Transport, Inc., 145 NLRB 615, 622 (1963); Exchange Parts Company, 139 NLRB 710, 714 (1962). In addition, while the District did indeed offer a number of gold and red shift dates, it is clear that it also offered a substantial number of black shift dates. Moreover, the record indicates that the members of the Union's bargaining team could trade (and have traded) shifts with colleagues if necessary, and, in any case, it is unclear why the Union could only negotiate via its black shift members. Though I might sympathize with the Union's preference to a degree, it was nevertheless incumbent on the Union to provide representatives who could conduct negotiations as required by the Act. A party may not divest itself of its legal obligation by shifting responsibility to any particular representatives. See City of Burbank, 4 PERI ¶2048; Barclay Caterers, Inc., 308 NLRB 1025, 1035 (1992); Crane Company, 244 NLRB at 111; Franklin Equipment Company, Inc., 194 NLRB 643, 645 (1972); Diamond Construction Company, Inc., 163 NLRB 161, 175 (1967); Southern Transport, Inc., 145 NLRB at 622; Insulating Fabricators, Inc., 144 NLRB 1325, 1328 (1963).

Did the Union unlawfully fail to appoint representatives with sufficient authority?

The degree of authority possessed by negotiators is another factor which may be considered in determining whether a party bargained in good faith. Broadly speaking, good faith bargaining requires that an individual negotiating on behalf of a principal be vested with authority to participate in “effective collective bargaining.” Village of Maywood, 10 PERI ¶2018 (IL SLRB 1994); County of Woodford and the Woodford County Sheriff, 8 PERI ¶2019 (IL SLRB 1992); State of Illinois, Department of Central Management Services (Department of Corrections), 6 PERI ¶2038 (IL SLRB 1990); City of Burbank, 4 PERI ¶2048. Further, the negotiators a party sends to bargaining sessions must generally be able to speak for that party if meaningful bargaining is to take place. See Village of Maywood, 10 PERI ¶2018; National Labor Relations Board v. Alterman Transport Lines, Inc., 587 F.2d 212, 226 (5th Cir. 1979).

The Complaint for Hearing contends that the Union failed to designate representatives with the sort of authority required by the Act. The Union disputes that contention and, in its brief, asserts that its bargaining team “had full authority to reach agreements” and “had full authority to execute agreements at the table without the assistance of its legal counsel.” Those assertions, however, are not fully supported by the overall record.

As noted, in a July 26, 2012 e-mail, Moss (the Union’s attorney) stated that the Union would not tentatively agree to “any item” until she could review it. That policy was essentially echoed by Bulat during the second and third bargaining sessions and in an October 1, 2012 e-mail and generally appears to have been the Union’s approach for quite some time. Moss was not present during the parties’ first six bargaining sessions, so it generally follows that, at least during those sessions, the Union’s representatives could not have tentatively agreed to any of the District’s proposals. With very few minor exceptions, that arrangement has evidently born

awkward, inefficient results, including at least one noteworthy instance in which the Union's bargaining team could not even tentatively agree to one of the Union's own proposals at the bargaining table. In the absence of a compelling explanation, that sort of outcome can be taken as an indication of a lack of proper intent and good faith in collective bargaining. See National Labor Relations Board v. Montgomery Ward & Co., 133 F.2d 676, 683 (9th Cir. 1943); Great Southern Trucking Co. v. National Labor Relations Board, 127 F.2d 180, 185 (4th Cir. 1942); National Labor Relations Board v. Highland Park Mfg. Co., 110 F.2d 632, 637 (4th Cir. 1940); S-B Manufacturing Co., Ltd., 270 NLRB 485, 491 (1984); Manor Mining and Contracting Corporation, 197 NLRB 1057, 1059 (1972). A negotiating party must treat bargaining sessions as something more than an exchange of ideas. City of Burbank, 4 PERI ¶2048; see Billups Western Petroleum Company, 169 NLRB 964, 970 (1968); Colony Furniture Company, 144 NLRB 1582, 1589 (1963).

It has also been stated that a bargaining principal is entitled, in the interest of bona fide bargaining, to something more than an ambiguous definition of the bargaining authority of his or her opposite in negotiations. See Borg Compressed Steel Corporation, 165 NLRB 394, 400 (1967); Colony Furniture Company, 144 NLRB at 1588. I consider the fairly ambiguous authority of the Union's bargaining team an additional element indicating a lack of good faith.

I highlight the August 13, 2012 negotiation session in particular. Testimony indicates that, during that session, Bulat stated that he would be able to tentatively agree to "some easy things, not logistical things, and that anything logistical would have to go through [the Union's] attorney." Allegedly, shortly after making that statement, Bulat changed his mind and stated that the Union's team would not agree to anything. In my view, that kind of behavior negates the bargaining process and is inconsistent with good faith collective bargaining.

Did the Union unlawfully fail and refuse to abide by a grievance settlement?

A party's bold face refusal to abide by a grievance settlement, the terms of which are undisputed and unambiguous, is also a breach of the good faith standard and constitutes a violation of Section 10(b)(4) of the Act. City of Clinton (Dr. John Warner Hospital), 29 PERI ¶167 (IL LRB-SP 2013), aff'd, 2014 IL App (4th) 130304-U; State of Illinois, Department of Central Management Services (Department of Corrections), 6 PERI ¶2038; State of Illinois, Departments of Corrections and Central Management Services, 4 PERI ¶2043 (IL SLRB 1988). Ordinarily, to determine whether that has occurred, it must first be determined whether there was a "meeting of the minds" as to the alleged agreement. That is determined by the parties' objective conduct rather than any party's subjective belief. Furthermore, in order to establish that there was a binding agreement, it is necessary that the parties truly assented to the same things in the same sense on all of its essential terms and contentions. Illinois Fraternal Order of Police Labor Council, 19 PERI ¶39 (IL LRB-SP 2003); City of Chicago (Police Department), 14 PERI ¶3010 (IL LLRB 1998).

Before continuing, however, I note that the Complaint for Hearing effectively alleges that, on March 25, 2013, Gibson and Mayotte reached an agreement that resolved Grievance #13-003. It also contends that the Union unlawfully reneged on that agreement when it demanded arbitration of the grievance on April 10, 2013. In response, the Union asserts that no settlement was reached and that, in any case, Mayotte did not have the authority to settle a grievance.

In general, an agent is deemed to have the authority to bind his or her principal in the absence of clear notice to the contrary, and that principle bears the consequences of the failure to timely advise that the agent lacks authority. See City of Burbank v. Illinois State Labor

Relations Board, 185 Ill. App. 3d 997, 1003, 541 N.E.2d 1259, 1264 (1st Dist. 1989); Village of Maywood, 10 PERI ¶2018; Medical Towers Limited, 285 NLRB 1011, 1014 (1987). Further, “apparent authority” may be found where the principal takes some action or permits the agent to do something which reasonably leads another to believe that the agent had the authority he is purported to have. See City of Burbank, 185 Ill. App. 3d at 1003, 541 N.E.2d at 1264; Village of Maywood, 10 PERI ¶2018; County of Jackson, 9 PERI ¶2040 (IL SLRB 1993).

At all times material, Mayotte has been a Union steward. According to the latest CBA, the parties can conduct off the record discussions regarding grievances and those discussions can end in settlement. Normally, one could reasonably assume that a steward, especially one who regularly processes grievances and attends formal grievance meetings, could engage in such discussions. Moreover, the record does not indicate that the District has ever expressly been advised that Mayotte or another Union agent could not, and it appears that some grievance-related matters are resolved informally. Under those circumstances, I find that Mayotte was at least clothed with apparent authority to reach a settlement with Gibson. I am not dissuaded by the fact that, traditionally, Mayotte has not done so, or by the fact that grievance settlements are regularly reduced to writing and signed.

I would also grant that Gibson’s objective conduct suggests that, at least in her mind, an agreement had been reached. I note, for example, Gibson’s March 27, 2013 e-mail that reassigns the lieutenants in accordance with the alleged agreement. That action, however, is clearly at odds with the April 5, 2013 filing of Grievance #13-005 (which denounces Gibson’s change) and moving Grievance #13-003 to arbitration on April 10, 2013. Further, during the hearing, Mayotte consistently denied suggesting that Kier should float and denied reaching an agreement with Gibson. In other words, there is little agreement in the record. I also find it fairly difficult

to conclude that the parties assented to the same things in the same sense when the alleged agreement was never signed or even reduced to writing. See County of Lake and Sheriff of Lake County, 29 PERI ¶165 (IL LRB-SP 2013); City of Chicago (Police Department), 14 PERI ¶3010. Given the ambiguous evidence before me, I cannot find that there has been a meeting of the minds or a binding agreement.

Should the Complaint for Hearing be dismissed as moot?

Based on the foregoing, I conclude that the Union unlawfully failed and refused to bargain in good faith. Generally, in refusal to bargain cases, the violating party is ordered to cease and desist from bargaining in bad faith, and to commence good faith negotiations. State of Illinois, Departments of Central Management Services and Corrections, 23 PERI ¶112 (IL LRB-SP 2007); City of Burbank, 4 PERI ¶2048. The Union argues that, even if the above conclusion is proper, no remedy is available because the parties are currently awaiting the appointment of an arbitrator to conduct interest arbitration. It also argues that the Complaint for Hearing should be dismissed as moot because the remedy sought would be ineffectual. I reject those arguments.

I would concede that the Board largely has no duty to give opinions about moot issues. Chicago City Bank & Trust Co. v. Board of Education of City of Chicago, 386 Ill. 508, 520, 54 N.E.2d 498, 504 (1944); State of Illinois, Department of Central Management Services and Bethel New Life, Inc., 9 PERI ¶2035 (IL SLRB 1993); Cook County Bureau of Health Services, 28 PERI ¶76 (IL LRB-LP G.C. 2011). However, negotiating in good faith at a later point in time does not necessarily obviate or render moot bargaining in bad faith at an earlier point in time. I also note that these parties have an ongoing relationship, and that the record does not address which issues will be presented to the arbitrator. City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011); see DeKalb Community Unit School District No. 428, 5 PERI ¶1144 (IL ELRB 1989); Wilmette

School District No. 39, 4 PERI ¶1038 (IL ELRB 1988); Mt. Vernon School District #80, 11 PERI ¶1013 (IL ELRB 1995); Board of Trustees of the University of Illinois, 22 PERI ¶147 (IL ELRB ALJ 2006); Dake Structural and Rebar Company, 293 NLRB 649, 653 (1989) (A party's voluntary termination of wrongful conduct will justify dismissal on the grounds of mootness only if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.). Further, the Board can still require the Union to post a notice. Illinois State Employees Association, 7 PERI ¶2015 (IL SLRB 1991). Accordingly, I will not dismiss the Complaint for Hearing.

V. CONCLUSIONS OF LAW

I find that the Union failed and refused to bargain in good faith in violation of Section 10(b)(4) of the Act when it failed and refused to meet at reasonable times and places for the purpose of negotiating a successor CBA and failed to appoint representatives with sufficient authority to negotiate a successor CBA in good faith.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, the Tri-State Professional Firefighters Union, Local 3165, IAFF, shall:

1. Cease and desist from failing and refusing to bargain collectively with the Tri-State Fire Protection District with respect to wages, hours, and other terms and conditions of employment.
2. Take the following affirmative action designed to effectuate the policies of the Act:

- (a) post, at all places where notices to Tri-State Fire Protection District employees and Tri-State Professional Firefighters Union, Local 3165, IAFF members are ordinarily 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. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other materials.
- (b) notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.

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 in Chicago, Illinois this 14th day of March 2014.

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

A handwritten signature in cursive script that reads "Martin Kehoe". The signature is written in black ink and is positioned above a horizontal line.

Martin Kehoe
Administrative Law Judge