

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

David Evans, III,	)	
	)	
Charging Party,	)	
	)	Case No. L-CA-20-044
and	)	
	)	
County of Cook and Sheriff of Cook County,	)	
	)	
Respondents.	)	

**ORDER**

On September 29, 2021, Administrative Law Judge Donald Anderson, on behalf of the Illinois Labor Relations Board, issued an Amended Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge’s Recommendation during the time allotted, and the Board, having reviewed the matter, declined to take it up on its own motion at its November 18, 2021 public meeting.

**THEREFORE**, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

**Issued in Chicago, Illinois, on November 18, 2021.**

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

*/s/ Helen J. Kim* \_\_\_\_\_  
**Helen J. Kim**  
**General Counsel**

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

David Evans III,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-20-044
	)	
County of Cook and	)	
Sheriff of Cook County,	)	
	)	
Respondents.	)	

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

**I. INTRODUCTION**

On March 17, 2020, the Charging Party, David Evans III, (“the Charging Party” or “Evans”) filed an unfair labor practice charge (the “Charge”) with the Illinois Labor Relations Board’s Local Panel alleging that the Respondents, County of Cook and Sheriff of Cook County (“the Respondents,” or “the Sheriff”) engaged in unfair labor practices within the meaning of Sections 10(a)(1) and (2) of the Illinois Public Labor Relations Act (“the Act”), 5 ILCS 315, as amended. The Charge alleges that Respondents violated the aforementioned sections of the Act when the Sheriff took adverse action against the Charging Party based on his participation in protected concerted activity and his status as the first Black person to serve as Chief Union Steward for a bargaining unit represented by Teamsters Local 700 (“the Union”).

On October 19, 2020, the Board’s Executive Director dismissed the Charge on the ground that the available evidence failed to indicate a causal connection between the Charging Party’s participation in protected activity and Respondents’ actions against him. The Executive Director asserted that the evidence failed to indicate that Respondents’ actions were part of a pattern of adverse action against employees who participate in union activity, that the adverse

actions were disproportionate because of Charging Party's protected activity or status as Chief Steward, or that Respondents gave inconsistent explanations for the adverse actions in question. The Executive Director also observed that the Board lacks jurisdiction to proceed on the basis of Charging Party's racial bias allegations. On October 29, 2020, the Charging Party appealed the Executive Director's dismissal.

On March 15, 2021, the Board's Local Panel issued a Decision and Order reversing the dismissal of the Charge and remanding the matter to the Executive Director for issuance of a complaint. On March 30, 2021, the Executive Director issued a Complaint for Hearing ("the Complaint") alleging that the Respondents interfered with, restrained or coerced a public employee in the exercise of rights guaranteed by the Act, in violation of Section 10(a)(1) of the Act and that the Respondents took adverse action against the Charging Party for engaging in concerted protected activity in order to discourage union membership or support in violation of Section 10(a)(2) of the Act.

The Board's service sheet shows that the Complaint for Hearing was served upon attorney Jay Rahman of the Cook County State's Attorney's Office, for the Respondents, and Cass T. Casper, attorney for the Charging Party. The address shown on the Board's service sheet for attorney Casper was "Cass T. Casper, Talon Law LLC, 105 W. Madison St., Ste. 1350, Chicago, IL 60602."

Under Section 1220.40(b) of the Board's Rules, an Answer to the Complaint ("Answer") was due to be filed by the Respondents within 15 days after service of the Complaint, which under the Board's service rules would have been on or about April 19, 2021. No Answer was filed within the time provided by the Board's Rules.

On May 13, 2021, I issued an Order to Show Cause why an Order of Default should not be entered against the Respondents and in favor of the Charging Party. On May 24, 2021, the Respondents submitted a Response to the Order to Show Cause together with an Answer and Objections to the Complaint for Hearing.

In their Response to the Order to Show Cause, the Respondents asserted that their attorneys were not aware that a Complaint had been filed until they received the Order to Show Cause, assertedly because attorney Rahman did not receive scanned copies of the Complaint while working remotely. Accordingly, the Respondents requested a variance from the 15-day time limit for answering the Complaint and sought leave to file their Answer and Objections *instanter*.

On June 4, 2021, I issued an Order Ruling on Respondents' Request for Variance and Direction of Hearing, allowing the filing of the Answer. On June 7, 2021, the Charging Party, by attorney Casper, filed a Motion to Reconsider the ALJ's Ruling, asserting, with documentary support, that he and attorney Nicollette Haines had filed a Notice of Appearance with the Board on February 15, 2021, listing their address as "Disparti Law Group, 121 W. Wacker Dr., Ste. 2100, Chicago, IL 60601." Accordingly, attorney Casper asserted that he had never received notice of any of the documents relating to Respondents' motion for leave to file a late Answer to the Complaint, and therefore did not have an opportunity to respond to the Respondents' Request prior to the issuance of a ruling on the request. Respondents then filed a Response in Opposition to the Motion to Reconsider on June 14, 2021.

Upon review of the Board's Rules, it became evident that the Rules contain no provision for reconsideration of a ruling by an ALJ of the Board. Therefore, in order to avoid either a possible violation of the Board's Rules or a possible violation of procedural due process

attributable to defective service, the June 4 Ruling was vacated, and the Charging Party's Motion to Reconsider was treated as a response to the Respondents' Motion.

On July 1, 2021, I issued an Order Granting Leave to File Answer *Instantly*.

Acknowledging the Charging Party's contention that the Board has held in several cases that the statutory timely filing requirement should be strictly construed, I nevertheless ruled that the late filing was excused under the "extraordinary circumstances" provision of Section 1220.40(b)(4) of the Board's Rules. In so ruling, I relied in part on the Supreme Court's Order dealing with the subject of trial continuances in the Illinois circuit courts during the COVID-19 pandemic, wherein the Court referred to the "state of emergency" declared by the Governor of Illinois during these *extraordinary circumstances*" (emphasis added). Treating this as a definitive application of the term "extraordinary circumstances" under Section 1220.40(b), I ruled that "[i]t would be unreasonable to enter an order of default, depriving the Respondents of the opportunity to defend themselves against a Complaint issued nearly a year after the Charge, because of an error or omission arising out of the remote working options and requirements instituted in response to the extraordinary circumstances of the COVID-19 pandemic."

On August 27, 2021, the Respondents filed a Motion for Deferral of this proceeding pending the resolution of a grievance allegedly filed on behalf of the Charging Party pursuant to the grievance and arbitration procedure contained in the collective bargaining agreement between the Respondents and Teamsters Local 700 ("Local 700"), the exclusive representative of the bargaining unit to which the Charging Party belongs. On September 10, 2021, the Charging Party filed a Response to Respondents' Motion, opposing deferral and requesting that the matter be set for hearing on the allegations contained in the Complaint.

## **II. CONTENTIONS OF THE PARTIES**

The Complaint alleges that the Respondents violated Section 10(a)(1) of the Act by virtue of having disciplined the Charging Party for actions occurring on March 11, 2020 at the office of Executive Director Michael Miller. The Respondents contend that the disciplinary action is also the subject of a grievance filed on March 18, 2020 alleging that the discipline was imposed without just cause and in violation of Articles II, III, XIV, XV Section 15.3(G) of the collective bargaining agreement between the Respondents and Local 700. The Respondents contend, therefore, that the matter should be deferred to arbitration “because the dispute in the arbitration is the same as in Charging Party’s proposed amended complaint.”

The Charging Party opposes deferral on the ground that he “neither filed nor authorized a grievance to be filed over the discipline he received.” In addition, the Charging Party has submitted an affidavit alleging facts and circumstances evidencing hostility against him on the part of officials of Local 700, including:

- Removal from his elected position as Chief Steward in April of 2020 because of having filed a lawsuit under the provisions of the federal Fair Labor Standards Act seeking overtime pay for officers during the pandemic;
- Charging Party’s involvement in an attempt during 2020 and 2021 to secure replacement of Local 700 with the Front Line Labor Alliance, Chapter 10 (“the FLLA”), as the bargaining representative for the Cook County Department of Corrections Officers’ Union (“the CCDCO”);
- Expulsion from membership in Local 700 in July of 2021 because of Charging Party’s efforts to replace Local 700 with the FLLA.

- Experiencing “tremendous verbal abuse, intimidating conduct, in-person and cyberbullying to me and my attorney and the FLLA and supporters from this Teamsters Local 700 administration before and during the FLLA campaign...”, with the result that “I do not want this Teamsters representing me in any grievance or arbitration, ever.”

### **III. PROCEDURAL POSTURE**

The Motion for Deferral and the Motion for Leave to File a Reply are governed by Section 11(i) of the Act and Sections 1220.65 and 1200.45 of the Board’s Rules. Consistent with Section 11(i) of the Act, Section 1220.65 of the Board’s Rules provides that “[t]he Board, on its own motion or the motion of a party, may defer the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in a collective bargaining agreement.” A party’s motion to defer may be made to the Board agent investigating the charge at any time during the investigation, or it may be made within 25 days after the issuance of a complaint for hearing. If, as in this case, the motion to defer is made after the issuance of the complaint, the motion is directed to the Administrative Law Judge assigned to the case and the Administrative Law Judge is to rule on the motion in accordance with Section 1200.45. A party may appeal the Administrative Law Judge’s ruling in accordance with Section 1200.135(b).

Because, unlike other motions made to the Administrative Law Judge following the issuance of a complaint for hearing, a ruling on a motion to defer is appealable to the Board, the ruling on the Respondent’s Motion to Defer is styled as a Recommended Decision and Order.

#### IV. DISCUSSION AND ANALYSIS

*The Motion for Deferral is denied.*

##### A. **Deferral Standards**

In *PACE Northwest Division*, 10 PERI ¶ 2023 (IL SLRB 1994) (“*PACE Northwest*”), the Board stated that “the policy of deferral, as enunciated in Section 11(i) of the Act, ... stands as a recognition of the fact that the collective bargaining relationship between parties subject to the Act is best nurtured by encouraging them to resolve their disputes, whenever possible through their voluntary and agreed upon grievance and arbitration procedure.” In furtherance of this objective, the Board has adopted the three primary deferral policies adopted by the National Labor Relations Board – post-arbitration deferral under *Spielberg Manufacturing Corp.*, 112 NLRB 1080 (1955) (“*Spielberg*”), deferral to pending arbitration under *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963) (“*Dubo*”), and deferral to potential arbitration not yet initiated under *Collyer Insulated Wire*, 192 NLRB 837 (1971) (“*Collyer*”). *City of Mt. Vernon*, 4 PERI ¶ 2006 (IL SLRB 1988); *State of Illinois, Department of Central Management Services (Department of Human Services)*, 19 PERI ¶ 114 (IL LRB 2003).

This case involves a *Dubo*-type deferral, in light of the fact that a grievance dealing with the subject-matter of the Charge allegedly has been filed. The Board has determined that a *Dubo* deferral is appropriate if (1) the parties have already submitted their dispute to the grievance arbitration process; (2) the process culminates in final and binding arbitration; and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. *PACE Northwest*. The Respondents contend that these requirements have been met.

The Charging Party contends, in response, that the requirements for a *Dubo* deferral have not been met. He states that he has “neither filed nor authorized a grievance to be filed over the

discipline he received” and denies that recourse to the grievance and arbitration procedure established by the collective bargaining agreement between the Respondents and Local 700 will resolve the dispute between the Respondents and the Charging Party. He contends that, if the Respondents’ Motion were granted, “he would be forced to have a union that just expelled him from membership in July 2021” serve as his advocate in an arbitration proceeding.

**B. Procedural Requirements**

Before discussing the application of the substantive deferral standards in this case, it is necessary to discuss the procedural requirements. Under Board Rule 1220.65(b), once a complaint has been issued, a party may file a motion to defer the resolution of the unfair labor practice charge to the grievance and arbitration procedure “within 25 days after the issuance of a complaint for hearing.” The Respondents’ Motion was not filed within this time period, nor did the Respondents seek a variance from Section 1220.65(b), which could have been sought under Section 1200.60.

Even had the Respondents sought a variance under Rule 1200.60, they would not have met the requirements of the Rule. Section 1200.60 provides that a variance may be granted by the Board if 1) the provision in question is not statutorily mandated, 2) the variance from the rule will not injure any party, and 3) it would be unreasonable or unnecessary to apply the rule in the particular case at hand. In this case, I find that the second and third of the variance requirements would not have been met, in that the facts derived from the Charging Party’s Affidavit show injury to the Charging Party if the matter were deferred. In addition, the alleged grievance shows an incident date of March 11, 2020 and a first submission date of March 18, 2021, or more than a year after the date of the incident. The lapse of time between the date of the incident and the date of the grievance calls into question the *bona fides* of the grievance. Moreover, even

allowing for this lapse, the alleged grievance was filed prior to the issuance of the Complaint and could have been the basis for a deferral motion within the period allowed by Board Rule 1220.65(b). Because Respondents' Motion was untimely under Rule 1220.65(b), therefore, it is denied on procedural grounds.

### **C. Substantive Requirements**

The Motion also is denied on substantive grounds. The first of the *Dubo* requirements is that the *parties* have submitted their dispute to the grievance and arbitration procedure. The *parties* in this case are David Evans and the Respondents. Even assuming that the March 18, 2021 grievance was *bona fide*, it was submitted by Local 700, not David Evans. Moreover, David Evans has denied that he submitted, or authorized the submission of, the grievance. The first *Dubo* requirement, therefore, is not met.

The third of the *Dubo* requirements is that there be a reasonable chance that the grievance and arbitration process will resolve the dispute. This requirement, too, is not met. While it is true that Local 700 has a duty to represent the Charging Party fairly in the grievance procedure, and would be guilty of an unfair labor practice if it did not, *see Metropolitan Alliance of Police v. State of Illinois Labor Relations Board*, 345 Ill.App.3d 579 (1<sup>st</sup> Dist. 2003), the hostility between Local 700 and the Charging Party, as evidenced by the adverse actions taken against Evans by Local 700, raises serious questions as to whether the dispute could be resolved in a grievance and arbitration procedure controlled by Local 700 and the Respondents. In addition, there is no evidence that the grievance has progressed beyond its having been filed.

For the reasons set forth above, the Respondents' Motion for Deferral is denied on both procedural and substantive grounds.

#### **IV. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the Respondents' Motion for Deferral is denied. The case will be set for hearing on the allegations in the Complaint.

#### **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 Recommended Decision and Order. Within seven 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, or to the Board's designated email address for electronic filings at [ILRB.Filing@illinois.gov](mailto:ILRB.Filing@illinois.gov). All filings must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions, responses, cross-exceptions, and cross-responses sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions, responses, cross-exceptions, and cross-responses have been provided to them. The exceptions, responses, cross-exceptions, and cross-responses 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 this 29th day of September, 2021**

*Donald W Anderson*

---

Donald W. Anderson  
Administrative Law Judge

Illinois Labor Relations Board  
160 N. LaSalle Street, Suite S-400  
Chicago, Illinois 60601-3103  
(312) 793-6400