

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

International Union of Operating Engineers,)	
Local 150,)	
)	
Charging Party,)	
)	Case No. S-CA-17-137
and)	
)	
Algonquin Township Highway Department,)	
)	
Respondent.)	

International Union of Operating Engineers,)	
Local 150,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-18-067
)	
Algonquin Township Road District a/k/a)	
Algonquin Township Highway Department,)	
)	
Respondent.)	

ORDER

On July 1, 2020, Administrative Law Judge Sharon Purcell, on behalf of the Illinois Labor Relations Board, issued a 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 at its October 8, 2020 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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, this 8th day of October 2020.

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

/s/ Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

I. Procedural History

On May 31, 2017, the International Union of Operating Engineers, Local 150 (Union or Charging Party), filed an unfair labor practice charge in case no. S-CA-17-137 alleging that the Algonquin Township Highway Department (Respondent or Highway Department) violated Section 10(a) of the Illinois Public Labor Relations Act (“Act”), 5 ILCS 315/1 *et seq.* (2016), *as amended*. The charge identified Andrew Gasser, Highway Commissioner, as the employer’s representative. An investigation was conducted in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Adm. Code §§ 1200-1300 (“Board’s Rules”), and on

August 21, 2017, the Board's Executive Director issued a Complaint for Hearing. The Complaint alleges that the Highway Department violated Sections 10(a)(4) and (1) of the Act when, in response to grievances filed by the Union over the termination of three employees of the Highway Department who were members of a bargaining unit it represents, the Highway Department repudiated and sought to invalidate the parties' Collective Bargaining Agreement (CBA). The Highway Department did not file an answer to the complaint and the Union filed a motion for default judgment. The Highway Department did not respond to the motion. On September 28, 2017, an Administrative Law Judge (ALJ) for the Board issued a recommended decision and order granting the Union's motion. *Algonquin Twp. Highway Dep't*, 34 PERI ¶ 124 (IL SLRB 2017).

On October 6, 2017, the Highway Department filed a motion to vacate the default claiming that it was not served with the complaint, an argument predicated on its claims that Algonquin Township Road District (Road District) is the proper party to the proceedings and the Highway Department and the Road District are separate entities. On that same date, Local 150 filed a motion to amend the ALJ's recommended decision and order to more accurately identify the Respondent.

On November 13, 2017, the Union filed an unfair labor practice charge in case no. S-CA-18-067 alleging that Respondent Algonquin Township Road District a/k/a Algonquin Township Highway Department violated Sections 10(a)(4) and (1) of the Act when it repudiated the CBA entered into between the Highway Department and the Union. The allegations of the charge are substantially the same as those of case no. S-CA-17-137. And as in that case, this charge identified Andrew Gasser, Highway Commissioner, as the employer's representative. The charge was served by mail to the same address as that to which it was served by mail in the earlier charge.

The Board construed the parties' motions and several additional filings with respect thereto in case no. S-CA-17-137 as the Highway Department's exceptions and the Union's cross-

exceptions. On January 17, 2018, the Board issued its decision and order rejecting the recommended order of default and remanded the matter. *Algonquin Twp. Highway Dep't*, 34 PERI ¶ 124. In so doing, the Board stated that the exceptions focused on the Highway Department's contention that it was not served with the complaint. It explained that the Highway Department's argument was based on its contention that the Board's certification of exclusive representative identities the Algonquin Township Road District as the public employer and it is not the same entity as the Road District, which is the proper party to the unfair labor practice proceedings and to the CBA. The Board explained that the exceptions, while "not particularly persuasive on the issue of whether the Highway Department and the Road District are separate and distinct entities, they, along with the Certification cast just enough doubt as to the identity of the proper respondent in this case." Therefore, the Board declined to accept the ALJ's order of default. The Board stated that rejecting the default judgment "would not only afford a hearing on the proper respondent for this case, especially in light of the description of the employer as the 'Algonquin Township Road District' in the Board's certification of the bargaining unit, but it would also efficiently address the charge filed in case no. S-CA-18-067," which the Union filed while the exceptions were pending.

On February 9, 2018, the Algonquin Township Highway Department filed an answer in case no. S-CA-17-137. The answer was submitted and signed by Robert T. Hanlon.

On February 20, 2018, the Board's Executive Director issued a complaint in case no. S-CA-18-067. The complaint differs from that in Case no. S-CA-17-137 in that the earlier complaint names the Algonquin Township Highway Department as Respondent, while the complaint in case no. S-CA-18-067 names the Algonquin Township Road District a/k/a Algonquin Township

Highway Department as Respondent.¹ Consistent with the complaint issued in case no. S-CA-17-137, the complaint alleges that Respondent violated Section 10(a)(4) and (1) of the Act when it repudiated and sought to invalidate the parties' collective bargaining agreement. The allegations in each complaint are predicated on the same underlying conduct.

On March 7, 2019, an unsigned answer and affidavit of service to the complaint was filed on behalf of "Respondent Algonquin Township Road District and Algonquin Township Highway Department (Respondents)," by and through counsel, Robert T. Hanlon in case no. S-CA-18-067. On March 14, 2019, the Union filed a motion for default judgment in case no. S-CA-18-067. The Union argued that Respondent should be found to have defaulted because on March 7, 2018, it served an unsigned answer and unsigned affidavit of service of the answer in case no. S-CA-18-067. Furthermore, although Respondent represented in the certificate of service that signed copies were to be placed in the U.S. Mail, no signed copies were ever received. Charging Party also asserted that although the complaint names a single employer as Respondent, and alleges a single employer, the unsigned answer refuses to acknowledge the single employer theory. Instead, the unsigned answer identified the Respondent as the Algonquin Township Highway Department and the Algonquin Township Road District. Charging Party argued that Respondent is free to contest the existence of a single employer, but it cannot, through its answer, reformulate the complaint as alleging a claim against two discrete employers. Hanlon filed a response in which he asserted that there is no such entity as Algonquin Township Road District a/k/a Algonquin Township Highway Commission, again maintaining that the Road District and Highway Department are separate governmental units.

¹ Consistent with the complaint issued in case no. S-CA-18-067, "Respondent" in this recommended decision and order refers to the Algonquin Township Road District a/k/a Algonquin Township Highway Department.

On April 8, 2019, I denied the Union's motion for default judgment. I found that Respondent filed an answer in case no. S-CA-18-067 that is substantially the same as that filed on behalf of the Highway Department in case no. S-CA-17-137. And although the latter-issued complaint names Respondent as Algonquin Township Road District a/k/a Algonquin Township Highway Department, the answer to the complaint was filed on behalf of "Respondent Algonquin Township Road District and Algonquin Township Highway Department (Respondents)," by and through counsel, Robert T. Hanlon. Accordingly, whether as a single employer or as separate and distinct entities, the proper entity was served and has both actual and formal notice of the complaint.

At that same time, I consolidated these cases for hearing and decision. Hearing was set for April 29 and 30, 2019. On April 25, 2019, I granted Respondent's motion to continue the hearing. I rescheduled the hearing to June 25 and 26, 2019, and ordered the parties to file their joint prehearing memorandum by June 18, 2019. Only the Union filed a prehearing memorandum. Respondent did not comply with the order to file a joint prehearing memorandum and did not file anything in response to the order.

The Administrative Hearing

The consolidated cases were heard on June 25, 26, and July 2, 2019, by the undersigned. Bryan Diemer and Robert Paszta appeared on behalf of the Union. Robert Hanlon represented that he was appearing on behalf of the Road District, and not the Highway Department. He stated, "to be clear, I filed my appearance and that appearance you have in your file was on behalf of the Road District, not the Highway Department." Tr. June 25, 2019, p. 13. No separate appearance was made at hearing on behalf of the Highway Department. Contrary to Hanlon's representation that he did not represent the Highway Department at hearing, Gasser testified that he believed Hanlon

was representing the Highway Department at hearing. Upon questioning he stated, “[h]e is my attorney for the Highway Department. . . . I’m saying he’s represented me as the highway commissioner, which is part of the Highway Department. He also represents the Road District.” Tr. June 25, 2019, pp. 157-58. When further questioned by counsel for Local 150 as to whether the Highway Department was represented by counsel at hearing, Gasser stated “I know I have counsel. I just don’t know if it’s been filed here or not. . . . For the Highway Department because they are separate units of government.” Tr. June 25, 2019, pp. 161. He stated that he did not instruct Hanlon to appear at hearing on behalf of the Highway Department. When asked who should have been named as Respondent in the complaint, Gasser testified that the Highway Department should have been named as Respondent. Tr. June 25, 2019, pp. 153.

On October 6, 2017, Hanlon filed a “supplemental appearance” in case no. S-CA-17-137 on behalf of the Highway Department. And he filed exceptions therein on behalf of the Highway Department. And on February 9, 2018, he filed an answer to the complaint in that case on behalf of the Highway Department. I find that attorney Hanlon misrepresented his actions before the Board when he stated that as far as he knew the Highway Department did not file an appearance. Hanlon filed an appearance and, after prevailing before the Board on the Highway Department’s exceptions, an answer on behalf of the Highway Department in case no. S-CA-17-137. And he filed both an appearance on behalf of the Road District in case no. S-CA-18-0167 and an answer, albeit unsigned and equivocal as to the entity for which the answer was being filed in an apparent attempt to provide wiggle room to maintain the position that the Road District and Highway Department are separate entities and he was representing only one and not the other. Hanlon knew, or certainly should have known, that he had appeared on behalf of the Highway Department. He

has never corrected or clarified the record to accurately and truthfully reflect his action before the Board in these proceedings.

In any event, as will be explained, the Road District and the Highway Department are one and the same. Therefore, Hanlon's claim regarding Respondent's appearance is of no consequence. He has represented the Road District, which is also known as the Highway Department, throughout these proceedings.

The parties were given a full opportunity to participate, adduce relevant evidence, and examine witnesses. At the close of hearing, the parties agreed to file their written briefs on August 9, 2019.

The Union timely filed its post-hearing brief on that date. Respondent did not. On August 16, 2019, counsel for Respondent requested additional time to file its post-hearing brief on the basis that he had not yet received all of the hearing transcripts from the court reporter service, the water heater had burst in his office limiting his access to necessary files and computer equipment, and he was in court daily. The Union opposed the motion. On August 21, 2019, I granted Respondent an extension of time to August 27, 2019 to file its post-hearing brief. On August 28, 2019, Respondent filed a motion to file its brief instant. The Union opposed the motion. On September 5, 2019, I granted the Respondent's motion for leave to file instant and granted the Union leave to file a response to Respondent's post-hearing brief. The Union filed its response on September 5, 2019.

On September 3, 2019, the Union filed a motion for sanctions against Respondent. Respondent did not file a response to this motion. The Union's motion is granted as discussed below.

And on September 11, 2019, the Union filed a motion to supplement the record with new authority asking that the ALJ take administrative notice of the unpublished order filed on September 10, 2019 by the Illinois Appellate Court, Second District in *James M. Sweeney and Int'l Union of Oper. Eng's, Local 150, AFL-CIO, Plaintiffs-Appellees v. Algonquin Twp. Road Dist., Defendant and Counterplaintiff-Appellant*, 2019 IL App (2d) 19-0026-U. Respondent did not file a response to this motion. As discussed below, the court's order involves the same parties as those in this case and resolves the issue of the validity of the CBA, which the parties herein dispute. Therefore, I grant the Union's motion.

The Parties' State Court Litigation

On June 23, 2017, the Union filed a complaint in the McHenry County Circuit Court against the Road District alleging that the Road District violated the Freedom of Information Act (FOIA) when it denied a request from the Union for all emails to and from Gasser from April 17, 2017, including personal emails used for Township business. On July 3, 2017, the Road District filed a counterclaim to Local 150's action, seeking a declaration that the CBA between the Union and the Road District is invalid. That same date it also filed a petition for a temporary restraining order seeking to enjoin the processing of all grievances to arbitration brought pursuant to the CBA. The Union filed a motion to dismiss the counterclaim. On July 25, 2017, the Union filed a motion to compel arbitration of their grievances pursuant to the Uniform Arbitration Act, 710 ILCS 5/2 (2016).

The circuit court dismissed the counterclaim and later dismissed the Road District's amended counterclaim. On April 14, 2018, the Road District filed a second amended counterclaim. On August 21, 2018, the circuit court dismissed the second amended counterclaim with prejudice. On September 20, 2018, the circuit court granted the Union's motion to compel

arbitration of the grievances. The Road District withdrew the petition for a temporary restraining order.

On March 1, 2019, the circuit court found Gasser in indirect civil contempt of court for failing to participate in the arbitration selection process. The circuit court sanctioned Gasser personally in the amount of \$8,400 for his conduct.

The Road District appealed the circuit court's dismissal of its counterclaim and its order granting the Union's motion to compel arbitration to the Appellate Court of Illinois, Second District. On September 10, 2019, the appellate court issued an unpublished order affirming the circuit court's disposition. *James M. Sweeney and Int'l Union of Oper. Eng's, Local 150, AFL-CIO*, 2019 IL App (2d) 19-0026-U. The appellate court rejected the Road District's argument that the CBA is a sham and an illegally disguised employment contract. *Id.* at ¶¶ 43-44. It noted that the Road District failed to develop the argument or cite any authority or any page in the circuit court record in support of its argument, thereby forfeiting it. The court also affirmed the circuit court's finding that the Township and the Road District are separate entities and the Township Code does not apply to the Road District. *Id.* at ¶¶ 45-46. Therefore, section 85-30 of the Township Code requiring Township Board approval for purchases of services, materials, or supplies in excess of \$20,000, 60 ILCS 1/85-30 (2016), does not apply to the CBA. *Id.*

The court rejected each of the Road District's remaining arguments. It found that the Road District failed to provide adequate argument for its claim that the CBA improperly restricted Gasser's statutory powers as Highway Commissioner and therefore also forfeited that argument. *Id.* at ¶ 48. The appellate court affirmed the circuit court's dismissal of the Road District's claim that the CBA was the result of improper direct dealing between the Road District and Local 150. *Id.* at ¶¶ 50-52. It concluded that the claim alleged that former Highway Commissioner Miller

failed to bargain in good faith in violation of Section 10(a)(1) and (4) of the Act, and the Union failed to bargain in good faith in violation of Section 10(b)(1) and (4) of the Act. *Id.* It agreed with the circuit court that the Board has exclusive jurisdiction over such unfair labor practice claims and the circuit court lacked jurisdiction to hear them. *Id.*

The appellate court also rejected the Road District's claims that the CBA was an overt act in furtherance of a conspiracy and the CBA was a conspiracy in furtherance of other overt acts. *Id.* at ¶¶ 60-61. The court held that CBAs are not inherently unlawful and the Road District's argument that the CBA was unlawful failed. *Id.* The court further rejected the claim of the Road District that Miller committed constructive fraud by refusing to bargain in good faith and by executing the CBA. *Id.* at ¶¶ 63-66. And it rejected the argument that Miller committed conversion by, through the CBA, giving family members who were employed by the Road District, and giving Union members, control over millions of dollars of funds and equipment. *Id.* at ¶¶ 68-69. The court rejected the Road District's claim that Miller committed official misconduct through the totality of his behavior in concert with the Union, including through a provision of the CBA which provides cell phones to employees. *Id.* at ¶¶ 71-73. The court noted that this claim depended on the Road District's argument that Miller did not have authority to enter into a CBA that extended beyond his term as Highway Commission. *Id.* Moreover, the Road District failed to present a developed and supporting argument, thereby forfeiting this claim. And its allegations of misconduct were conclusory and insufficient to support a motion to dismiss. *Id.*

Additionally, the appellate court denied the Road District's request to reverse the circuit court's order compelling arbitration. The appellate court stated, "[b]ecause we concluded that the court properly dismissed defendants' first and second amended counterclaims, there is no basis to conclude the CBA was invalid." *Id.* at ¶ 78.

The appellate court sanctioned the Road District by striking pages from its brief for misstating portions of the Union’s brief. The court stated, “[w]hether intended or not, these are false statements represented as direct quotations attributed to the opposing party.” *Id.* at ¶ 92. It admonished the Road District’s counsel to adhere to his ethical obligations of candor and diligence under the Illinois Rules of Professional Conduct and to the court’s rules governing briefs.

II. Issues

1. Did the Road District violate Section 10(a)(4), and derivatively, Section 10(a)(1), by repudiating and seeking to invalidate the CBA in response to grievances filed by the Union on behalf of bargaining unit members it represents?

2. Should the Road District be sanctioned for making denials without reasonable cause and for engaging in frivolous litigation?

III. The Parties’ Contentions

The complaints in these consolidated cases allege that Respondent Algonquin Road District a/k/a Algonquin Highway Department violated Sections 10(a)(4) and (1) of the Act when Highway Commissioner Gasser issued a letter to the Union stating that the CBA executed by former Highway Commissioner Robert Miller was invalid and when the Road District filed a petition for a temporary restraining order in the circuit court seeking to prevent arbitration proceedings on grievances the Union filed on behalf of its bargaining unit members. The Union contends that Respondent violated Section 10(a)(4) and (a) (1) of the Act when it repudiated the parties’ CBA and refused to arbitrate the grievances it filed after Highway Commissioner Andrew Gasser terminated the three Road District employees. The Union states that the Road District does not deny that it repudiated the CBA and refused to arbitrate the grievances.

Respondent asserts that the issues before the Board in this matter are whether the Road District is a separate entity from the Highway Department and, if so, whether it committed an

unfair labor practice when Gasser terminated three employees on his first morning in office as Highway Commissioner or when it hired non-bargaining unit employees. And it asserts that whether the Union timely filed its unfair labor practice charge against the correct entity is at issue, but it presents no argument with respect to this claim. The Respondent argues that the Highway Department and the Road District are separate entities and there is no such entity as the Algonquin Township Road District a/k/a Algonquin Township Highway Department. According to Respondent, the Highway Department is a department of Algonquin Township (Township) and Highway Commissioner Gasser is its sole employee. Respondent also asserts that Gasser was elected by the people of Algonquin Township to clean house and apparently, therefore, as Highway Commissioner he need not comply with the Act's statutory requirements.

After full consideration of the parties' evidence, arguments, and upon the entire record of this case, I recommend the following.

IV. Findings of Fact

Algonquin Township is a unit of local government under the Constitution of the State of Illinois. Ill. Const. 1970, art. VII, § 5, and is governed by the Illinois Township Code (Township Code). 60 ILCS 1/1-1 *et seq.* Pursuant to the provisions of the Township Code, the Township has a supervisor, assessor, clerk, and four trustees, who are elected officials. 60 ILCS 1/50-40 (2016); 60 ILCS 1/77-5 (2016).

The Algonquin Township Road District was created pursuant to and operates under the Illinois Highway Code (Highway Code). 605 ILCS 5/6-101 *et seq.* (2016). Under the Highway Code, a township is designated a Road District for purposes of construction, repair, maintenance, financing, and supervision of the Township's roads. 605 ILCS 5/6-102 (2016). Township road districts are governmental entities separate and distinct from the township. The

Highway Code provides for the election of a Highway Commissioner to head each Road District and provides that the Highway Commissioner is an officer of the Township. 605 ILCS 5/6-112 (2016). Accordingly, the Road District is under the general supervision of a Highway Commissioner. 605 ILCS 5/6-201 *et seq.* (2016). The Highway Code governs the powers and duties of township highway commissioners. *Id.* At the time of the hearing, the Algonquin Township Road District had eleven full-time employees, whom Gasser oversaw as Highway Commissioner.

The Road District leases buildings located on Northwest Highway in Crystal Lake from the Township. The marquee located at the entrance to the Road District campus displays a logo identifying it as the Highway Department. The office of the Highway Commissioner is located on that campus. The door to the Highway Commissioner's office displays a logo for the "Highway Department." The same logo is also displayed on the Road District's garage at that same location, in which the trucks and heavy equipment that the Road District employees use to maintain the township's road are stored. The Road District's trucks and heavy equipment also carry the Highway Department logo as do the shirts, jackets, hats, and vests worn by the Road District's employees while on duty.

Local 150 is a labor organization as defined in Section 3(i) of the Act. 5 ILCS 315/3(i) (2016). On April 10, 2017, the Board certified Local 150 as the exclusive representative of a bargaining unit of all employees of the Road District in the job titles of Highway Worker, Laborer, Foreman, and Mechanic. On April 25, 2017, Local 150 and the Road District executed a collective bargaining agreement effective May 1, 2017 through April 30, 2022, governing the bargaining unit. Local 150 business agent James Sweeney and its Business Representative, Richard Fahey,

signed the CBA on behalf of the Union. Robert Miller, who was Highway Commissioner until May 14, 2017, signed the CBA on behalf of the Road District.

In early 2017, Andrew Gasser was elected to the office of Highway Commissioner. He was sworn into office as Highway Commissioner on Sunday, May 14, 2017. Gasser testified that he is in charge of the Township Highway Department and that he is its lone employee. According to Gasser, the Township Highway Department is separate and distinct from the Road District. He explained that he was not hired by any official at the Township but by the Township voters who elected him as Highway Commissioner. He testified that he also is in charge of the Road District and that he was at the hearing in his capacity as the Highway Commissioner of Algonquin Township. He stated that as Highway Commissioner he has the authority to hire and fire Road District employees and to set their wages and benefits.

At 6:35 a.m. on Monday, May 15, 2017, which was five minutes after the start of their shift, Gasser gave Road District employees Derek Lee, Nick Chirikos, and Andrew Rosencrans each a notice reading “[y]our services are no longer needed at Algonquin Township Highway Department. Your employment is now terminated.” Gasser signed each notice as Algonquin Township Highway Commissioner. He testified that he terminated the employees because in his opinion the office was overstaffed and because they had been given Road District cellphones for which they were not paying. He also stated that he terminated Lee because of a report printed in a local newspaper in 2008 or 2009 that Lee had been observed firing a semiautomatic weapon in an area behind the Road District offices. He testified that he terminated Chirikos because he did not have a required commercial drivers’ license (CDL). At that time, Gasser did not know what job positions each of those employees held, did not know that the employees had been given

cellphones, had not asked Chirikos if he possessed a CDL, and never asked Lee anything about the newspaper report.

Local 150 filed grievances on behalf of the terminated employees alleging that they were fired without just cause. On May 23, 2017, Gasser responded in a letter to Local 150. The letter, which was printed on Highway Department letterhead, stated:

The people of Algonquin Township never granted Robert Miller the authority to bind Algonquin Township to a contract extending beyond the term of his office and to one requiring a tax levy. The people spoke in Algonquin Township to reject prior management of the Highway Department when they elected me to the office of Highway Commissioner. As conveyed to you on March 15, 2017, on behalf of the Algonquin Township Highway Department, I repudiate any agreement having been executed by Robert Miller.

Gasser testified that Miller, as Highway Commissioner, could not enter into a contract valued over \$20,000 without Township Board approval and the Township Board never ratified the CBA. He also testified that the Highway Commissioner cannot enter into a contract that extends beyond his term of office and, therefore, the CBA that Miller signed on behalf of the Road District was invalid. He stated that after he took office, he spent approximately 100 hours reviewing paper and electronic records. He testified that he did not find a copy of a CBA among the records but did find a copy of it in the employees' break room.

Gasser testified that he repudiated the CBA between Local 150 and the Highway Department and did not repudiate a CBA with the Road District. Tr. 201, 221. He also testified that he did not know where the CBA between the Highway Department and Local 150 was, and he repudiated the CBA that identified the parties as Local 150 and the Road District. Tr. 221. He explained, "I think that's where it was all conglomerated together." *Id.*

V. Discussion and Analysis

A. The Board Has Jurisdiction Over the Allegations that Respondent's Conduct Violated Sections 10(a)(4) and (a)(1) of the Act.

The Road District contends that the Board must dismiss the Union's unfair labor practice charge because it does not have jurisdiction over the Algonquin Township Highway Department. The Road District argues that the Union never named the correct party as Respondent. It states that the Board certified only a bargaining unit of employees of the Road District but that the Union did not file a charge against the Road District as employer. Rather, the Union filed its first charge against Algonquin Township Highway Department as the employer and filed its second charge against the Algonquin Township Road District a/k/a Algonquin Township Highway Department. It asserts that the Road District and the Highway Department are separate entities. According to the Road District, the Highway Department is a department within the Township and there is no such entity as the Algonquin Township Road District a/k/a Algonquin Township Highway Department.

As stated above, the Board certified Local 150 as the exclusive representative of the bargaining unit of Road District employees on April 10, 2017. The Road District points out that the Board certification of the bargaining unit identifies the employer as the Road District, not as the Highway Department. However, the complaint does not name the Road District as Respondent and therefore, according to the Road District, the wrong Respondent was named and the Board lacks jurisdiction over this dispute. The Road District also asserts that the Board lacks jurisdiction over the Highway Department because it has only one employee – Highway Commissioner Andrew Gasser – whose terms of employment and salary are set by statute and because the Board cannot certify a bargaining unit consisting of one employee. Therefore, according to the Road

District, “the concept that the Highway Department is an employer of a bargaining unit is an illusion.”

The Road District’s arguments that the Board lacks jurisdiction over this unfair labor practice charge must be rejected as lacking merit entirely. Indeed, the incoherence of the Road District’s position is reflected in Gasser’s testimony at hearing, as follows:

Counsel for Union: You are an elected public official?

A: Yes.

Q: In 2017 you ran for office of highway commissioner of Algonquin Township Road District; is that true?

A: Yes.

Q: And that was the only office you ran for at the time?

A: The only one.

....

Q: And you prevailed in that election?

A: Yes.

....

Q: May 15th was a Monday and your first workday as highway commissioner of Algonquin Township Road District?

A. At the Highway Department, yes.

Q: At the Road District?

A. I’m actually an employee of the Highway Department.

....

Q: Your position here on the oath of office says the office of the highway commissioner of Algonquin Township Road District. Is that your position?

A: I’m the commissioner of the Road District, but I get paid through the Highway Department.

Q: Just so the record is clear, the office of highway commissioner of Algonquin Township Road District is your position?

A: Correct

.

Tr. June 25, 2019, pp. 25-28.

Gasser’s testimony continued:

Counsel for the Union: Who is in charge of the Highway Department?

A: I am.

Q: Who could have authorized Mr. Hanlon to accept service on behalf of the Highway Department?

A. Me.

Q: Now, you told us earlier that you were the highway commissioner of the Road District?

A: I am.

Q: And that was the only election you won?
A: I'm an employee of the Township, which is the Highway Department.
Q: So were you – who hired you?
A: The voters.
Q: So nobody within the Township hired you as an employee?
A: The voters hired me inside the Township.
Q: You won an election; I understand that.
A: Correct.
Q: And you're – upon being elected – you were elected in the position of highway commissioner of the Algonquin Township Road District, correct?
A: Uh-huh.
Q: And you didn't win any other elections?
A: No.
Q: Okay. One position. I'm sure that's enough for any individual.
A: Some people do more than one.
Q: But you only did one?
A: I only did one.
Q: And the Township didn't hire you for any other position within Township government?
A: What do you mean by "the Township"?
Q: So the Township hires employees?
A: They do –

Tr. June 25, 2019, pp. 62-63.

And further:

Counsel for the Union: How many employees does the Highway Department have?
A: One
Q: Who is that?
A: Me and that's – I'm a Township officer.
Q: So you're an officer of the Township by virtue of your election?
A: Correct.
Q: And that's the election to the highway commissioner of the Road District?
A: Correct.
Q: . . . Did anybody offer you employment as a Highway Department employee?
A: No.
Q: So your only – you only come to the Township by virtue of winning an election?
A: Correct.
Q: Okay. And that election was to the position of Highway Commissioner of the Road District?
A: I was elected as a Township officer as the highway commissioner.
Q: Of the Road District?
A: Correct.

Tr. June 25, 2019, pp. 68-69.

When questioned by Union counsel about why, in the answer filed in case no. S-CA-18-067, Respondent denied the complaint's allegation that the Road District is a public employer, Gasser testified:

A: The Road District is not a public employer – or no – I'm sorry – the Highway Department is not a public employer, the Road District.

Q: So just so I'm clear, you believe the Road District is a public employer?

A: Yeah.

Q: And you believe that the Highway Department is not a public employer?

A: Correct.

Q: And you're the one employee of the Highway Department?

A: Correct.

Q: And so you believe that they are a nonpublic employer?

A: I didn't say that. I'm just part of the Township. I'm not part of the Road District.

Q: So it's your position that the Road District is a public employer?

A: Of me. I'm the only Road District employee that there is. My check comes from the supervisor's office.

Tr. June 25, 2019, pp. 77-78.

He further testified:

Counsel for the Road District: And could you explain to this Court how the Road District is different from the Highway Department?

A: The Road District is different from the Highway Department in that the Highway Department is attached to the township, and I'm the only person in the Highway Department and – so that I can get paid by statute by the township. That's my understanding of how that is.

Q: So that as the – the Road District is created by a statute, right?

A: Yes, sir.

Q: And the township is a separate unit of government, right?

A: Yes, sir.

Q: I think we actually may even be in agreement with Local 150. So does the township have a website?

A: They do.

Q: Do they list the Highway Department?

A: Yes, they do.

Q: And does the Highway Department got a picture of your face on it?

A: It does.

Tr. July 2, 2019, pp. 32-33.

Counsel for the Union: Now, you testified that the Road District has a logo?

A: Yes, it does.

Q: Can you describe that?

A: It just says Algonquin Township Road District with a truck on it.

Q. Where is that found?

....

A. We just have a logo. We never used it.

Q. You don't use that logo?

A. No.

Q. So you use the Highway Department logo in its stead?

A. Yes, sir.

Tr. July 2, 2019, pp. 60-61.

Gasser's testimony regarding his role as Highway Commissioner is never, at any point, less incoherent than that illustrated above. It seems to be the Road District's position that: (1) the marquee, garage, equipment, employee garb, letterhead, and Highway Commissioner's office all display a "Highway Department" logo; and (2) the salaries of the Road District's employees are paid by the Road District but the Highway Commissioner is paid from the Township budget; (3) therefore, there is a Highway Department that is part of the Township, Gasser is its lone employee, and it is separate from the Road District. Unsurprisingly, there is no evidence that supports this position. Moreover, each of the Road District's odd claims regarding the status of the Highway Commissioner as a Township official but not "part of the Road District" obviously is incorrect and, at the least, inconsistent with the law. The Highway Code, which governs the Road District, provides:

In each road district, except in a county unit road district and except in municipalities that have been created a road district, there shall be elected a highway commissioner in the manner provided in this Code.

The highway commissioner of each road district comprised of a single township is an officer of that township.

605 ILCS 5/6-112.

As Highway Commissioner of the Road District, not only is Gasser "part of" the Road District, he is, in fact, its elected officer with statutory duties and authority. Gasser correctly stated that he is a Township official, but he is so by virtue of his election as Highway Commissioner of

the Road District. He was elected pursuant to the provisions of the Highway Code to head the Road District and that statute makes the Highway Commissioner a Township officer. The statute does not provide the least basis for his bald assertion that he is not part of the Road District or that the Township hired him as its sole employee of an entity designated the Highway Department. And the Road District has not identified any Township Code provision that does so.

Furthermore, with respect to the Highway Commissioner's salary, the Highway Code provides:

The compensation of the highway commissioner shall be paid from the general township fund in districts comprised of a single township and shall be paid from the regular road fund in all other districts having highway commissioners; however, in districts comprised of a single township, a portion (not exceeding 50%) of the highway commissioner's salary may be paid from the corporate road and bridge fund or the permanent road fund if approved by the township board and the highway commissioner.

605 ILCS 5/6-207 (2016) (emphasis added).

Gasser, as Highway Commissioner, is paid from Township funds in the manner the General Assembly directs in the Highway Code. *See Road Dist. No. 6 v. Tygett*, 226 Ill. App. 95, 96 (4th Dist. 1922) (citations omitted) (“municipal corporations are subject to legislative control and may be changed, modified, enlarged, restrained or abolished at the pleasure of the legislature. Having that power the public, county and township funds are under legislative control.”). The Road District points to no authority in the Highway Code, Township Code, or elsewhere that remotely suggests that by controlling the township's funds in this manner, the legislature also created a Township Highway Department of which the Highway Commissioner is the sole employee. Even if Gasser sincerely believes he is the sole employee of a Township department designated the Highway Department because he is paid from general township funds, his belief cannot, and of course does not, make it so.

To support its assertion that Gasser is the sole employee of a separate entity called the Algonquin Township Highway Department, the Road District, citing *Burnidge Bros. Almora Hts., Inc. v. Wiese*, 142 Ill. App. 3d 486, 492 (2d Dist. 1986), relies on the appellate court’s instruction that “the highway commissioner is both the office and the officer; he is an officer of the township, which is a separate and distinct municipal corporation with no power or authority over roads, and he is a quasi-public corporation having jurisdiction over township roads with the power to do those things necessary to perform the statutory duties enjoined upon it by law.” (Emphasis added). The Road District’s point in relying on the court’s holding in this regard is not clear. There is no dispute that the Road District is separate and distinct from the Township.

And it is true that Illinois courts have held that the highway commissioner is a quasi-corporation created by statute and as such, is separate and distinct from the town or township. *Mathew v. Town of Algonquin*, 3 Ill. App. 3d 429, 433-34 (2d Dist. 1972) (“[a] township commissioner has been held to be a township officer entitled to payment from town funds, but a township is a separate and distinct municipal corporation with no power or authority over roads, and the highway commissioner is a Quasi-public corporation having jurisdiction over township roads. The implication . . . is that the ‘highway commissioner’ is both the office and the officer, he can sue and be sued.”) (internal citations omitted); *Roesch-Zeller, Inc. v. Hollembeak*, 5 Ill. App. 2d 94, 107 (3rd Dist. 1955) (“The highway commissioner is a quasi public corporation and is charged with the duty of maintaining the highways in the township – his contracts are authorized by the statute and his business as such is separate and distinct from the affairs of the town or township.”); *Euziere v. Highway Comm’r of Town of Rockville*, 346 Ill. 131, 134-35 (1931) (“A quasi public corporation has the implied power to make the contracts necessary to enable it to exercise the powers conferred and to perform the duties enjoined upon it by law.”).

Indeed, the court has “recognized the status of a township highway commissioner as a quasi-public corporation – an entity created for the purpose of, and charged with the duty of, maintaining certain roads and bridges.” *Blazer v. Highway Comm’r of Marengo Twp.*, 93 Ill. App. 2d 89, 96 (1968). In *Burnidge Bros.*, the court simply articulates that, as an elected official, the Highway Commissioner is a Township officer *and* is separate and distinct from the Township, and it is not the Township but the Highway Commissioner of the Road District who has jurisdiction over and responsibility for the Township’s roads.

These holdings undermine the Road District’s position that Gasser is an employee of a department within the Township called the Highway Department and not part of the Road District. As the court has plainly stated, “[t]he office of township highway commissioner is an elected one, functioning separately as a distinct entity from the township board of trustees.” *Dist. 925, Serv. Emps. Int’l Union v. Ill. State Labor Relations Bd.*, 168 Ill. App. 3d 1026, 1030 (1st Dist. 1988) (citing *Buccieri v. Wayne Twp.*, 111 Ill. App. 3d 396 (2d Dist. 1982)). As a Township official, Gasser is on the same footing as other Township elected officials. He was not hired by any Township official and cannot be fired by any Township official. Rather, he serves at the will of the Township’s voters and his duties and authority are as set forth in the Highway Code; he is not subject to direction by any Township official. For instance, no Township official has authority to direct him to perform any task as Highway Commissioner, hire or fire Road District employees or set their wages and other terms and conditions of employment at any particular level, or supervise Road District employees in a particular manner. Township officials cannot change his statutory authority and duties. And although he claims to be the sole employee of the Highway Department, he did not identify any title he carries other than Highway Commissioner of the Road District –

the office he holds by virtue of his election. There is no basis for concluding that Gasser's status is anything but that of an elected official of the Road District.

The evidence is that the Highway Commissioner performs the duties prescribed by the Highway Code as the elected head of the Road District. As explained above, there is no evidence that Gasser performs any other duties attached to a separate Highway Department. A logo identifying the Highway Department is affixed to the Road District's campus marquee and its garage, the Highway Commissioner's office located on the Road District campus, Road District employee work attire, and stationary used by the Highway Commissioner. There is no reason to believe that if the logo was removed from the Road District's campus, equipment, employee apparel, stationery, and the Highway Commissioner's office, the Highway Commissioner's status and duties and the duties performed by the Road District employees he oversees would change in any way.

Moreover, Gasser's actions demonstrate that he knows that the Highway Department simply is the designation that the Road District presents to the public and under which it operates. In the written notices of termination, Gasser informed the three Road District employees that their "services are no longer needed at Algonquin Township Highway Department." His wording makes sense if he recognizes that the Highway Department is the Road District or if, contrary to his testimony, he is not the sole employee of a separate entity called the Highway Department. There is no explanation for why Gasser stated that the three Road District's employees' services were no longer needed at the Highway Department if, indeed, he is the Highway Department's sole employee. If as he testified, as Highway Commissioner he is part of a separate Highway Department and not part of the Road District, the Road District should have, and presumably could

have, provided the basis for Gasser's authority to terminate Road District employees. It did not do so. Plainly, it could not do so.

Similarly, on Highway Department letterhead, Gasser informed the Union that he was repudiating "any agreement having been executed by Robert Miller." Miller signed the CBA on behalf of the Road District. At hearing, Gasser confusedly testified that he only repudiated the CBA to which the Highway Department was a party and then testified that he repudiated the CBA between the Union and the Road District. At hearing, he tried to explain his failure to keep the story straight by stating, "I think that's where it was all conglomerated together." But there was no such conglomeration. There were never two CBAs. There is one CBA: that between the Union and the Road District, which also identifies itself as the Highway Department.

At worst, the naming of the Respondent in these consolidated cases constitutes misnomer. The test in cases of misnomer is whether the party sued is the real party in interest. *Borkoski v. Tumulty*, 52 Ill. App. 3d 839, 842 (3d Dist. 1977). Here, the real party in interest, the Road District, was not prejudiced in any way, first, by its designation as the Algonquin Township Highway Department, and, then, by its designation as the Algonquin Township Road District a/k/a Algonquin Township Highway Department. There is no question that the Road District was given and took the opportunity to present a defense to the unfair labor practice charge. Whether identified as the Algonquin Township Road District, the Algonquin Township Highway Department, or the Algonquin Township Road District a/k/a Algonquin Township Highway Department, the Road District clearly received and responded to both complaints. Indeed, in its post-hearing brief, the Road District states, "the respondents each have answered the complaint." See Respondent's Post-Hearing Brief at p. 3.

Following the ALJ's recommendation that default be entered against the Road District in case no. S-CA-17-137, Respondent successfully sought the Board's review and, consequently, was given the opportunity to fully present its claim that there exist two separate entities – the Road District and the Highway Department, and to defend against the charge that it unlawfully repudiated the CBA. The Road District participated in the administrative hearing in which it had the opportunity to examine the Union's witnesses and present its own witnesses. The Road District chose to call Highway Commissioner Gasser to testify on its behalf. Although the Road District did not file its post-hearing brief on the date it was due or request an extension of time to file, I permitted it to file its brief late. The Road District was afforded every opportunity to present evidence and argument on its position that it is not the Highway Department and to defend against the unfair labor practice charge, and it participated fully in these proceedings. The proper party was served and participated in the proceedings. It can identify no prejudice that it suffered. Contrary to the Road District's arguments, the Board has jurisdiction to decide this unfair labor practice charge.

B. The Road District Committed an Unfair Labor Practice When, In Response to the Grievances the Union Filed Over the Termination of Three Bargaining Unit Members, Highway Commissioner Gasser Repudiated and Sought to Invalidate the CBA In Violation of Section 10(a)(4) and (a)(1) of the Act.

Under the Act, it is an unfair labor practice for an employer or its agents to do the following:

- (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act . . . ;

* * *

- (4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative[.]”

5 ILCS 315/10(a)(1), (4) (2016).

As the Board has explained,

A respondent repudiates its collective bargaining obligation when its conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working. *City of Loves Park v. Illinois Labor Relations Board State Panel*, 343 Ill. App. 3d 389, 395 (2d Dist. 2003), citing *City of Collinsville*, 16 PERI ¶ 155 (IL SLRB 2000)², *aff'd City of Collinsville v. Illinois State Labor Relations Board*, 329 Ill. App. 3d 409 (5th Dist. 2002).

Cook Cnty. and Sheriff of Cook Cnty., 34 PERI ¶ 72 (IL LRB-LP 2017). The Board further stated, “where a party’s failure to abide by such an agreement is so egregious and lacking in good faith as to amount to a repudiation of the collective bargaining *process*, its conduct will be deemed a violation of the statutory obligation to bargain in good faith.” *Id.* (citing, *inter alia*, *State of Ill., Dep’t of Cent. Mgmt. Serv. (Env’tl Prot. Agency)*, 14 PERI ¶ 2005 (IL SLRB 1997)) (emphasis in original). For the following reasons, I find that the Road District violated Section 10(a)(4) and, derivatively, (a)(1), when it repudiated the CBA and sought to have it declared invalid in response to the Union’s grievances.

- i. The CBA Entered into Between the Road District and the Union Is Valid and the Road District is Estopped from Arguing that It Is Not Valid.

In its post-hearing brief, the Road District notes that it asked the circuit court of McHenry County to declare the CBA null and void. And throughout the hearing in these consolidated cases, Gasser referred to the CBA as the “purported” CBA. As described above, the circuit court dismissed the Road District’s action and the appellate court affirmed the circuit court’s dismissal, rejecting each of the claims of invalidity of the CBA made by the Road District. The appellate court held, “*there is no basis to conclude the CBA was invalid.*” *Id.* at ¶ 78 (emphasis added). In so doing, the court held that in the state court litigation Gasser and the Road District forfeited their arguments that (1) the CBA illegally restricted Gasser’s statutory authority as Highway

² The correct cite for this case is 16 PERI ¶ 2026 (IL SLRB 2000).

Commissioner; (2) the CBA constituted a sham and illegally disguised employment contract (*id.* at ¶¶ 43-44); and (3) former Highway Commissioner Miller, in concert with the Union, committed official misconduct through the totality of his behavior including by agreeing to a provision of the CBA which provides cell phones to employees. And the court rejected their claims that (1) under section 85-30 of the Township Code the CBA is invalid because the Township Board did not approve it (*id.* at ¶¶ 43-44); (2) the CBA constituted an overt act in furtherance of a conspiracy and the CBA was a conspiracy in furtherance of other overt acts; (3) Miller committed constructive fraud by refusing to bargain in good faith and by executing the CBA; and (4) Miller committed conversion by, through the CBA, giving family members who were employed by the Road District and giving Union members control over millions of dollars of funds and equipment.

A prior judgment is binding in a subsequent action under the doctrines of res judicata or collateral estoppel. The res judicata doctrine provides that “a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to all rights of the parties and as to them, operates as an absolute bar to a subsequent action involving the *same* claim, demand or cause of action.” *Housing Auth. for La Salle Cnty. v. Young Men’s Christian Ass’n*, 101 Ill. 2d 246, 251-52 (1984) (emphasis in original). The doctrine of collateral estoppel applies to bar relitigation of a claim or issue which has been litigated in a prior proceeding. *Id.* at 251. Collateral estoppel bars relitigation of an issue if (1) the same issue was actually or necessarily decided by a court of competent jurisdiction in a prior proceeding, (2) the prior and present proceedings involved the same parties, and (3) the party to be collaterally estopped had a full and fair opportunity to contest the issue in the earlier proceeding. *Cnty. of Rock Island*, 14 PERI ¶ 2029 (IL SLRB 1998), *aff’d*, *Grchan v. Ill. State Labor Relations Bd.*, 315 Ill. App. 3d 459 (3rd Dist. 2000) (*citing A.W. Wendell & Sons, Inc. v. Qazi*, 254 Ill. App. 3d 97 (2d Dist. 1993), and *Powers v. Arachnid, Inc.*, 248 Ill.

App. 3d 134 (2d Dist. 1993). The issue decided in the prior adjudication must be identical to the issue presented in the subsequent case, and it must have been conclusively decided; if any uncertainty exists, estoppel will not be applied. *Cnty. of Rock Island*, 14 PERI ¶ 2029. “When properly applied, collateral estoppel or issue preclusion promotes fairness and judicial economy by preventing relitigation in one suit of an identical issue already resolved against the party against whom the bar is sought.” *Kessinger v. Grefco, Inc.*, 173 Ill. 2d 447, 460 (1996).

Applying the factors for collateral estoppel, I conclude that the Road District is estopped from arguing that the CBA is invalid. Here, (1) the Road District challenges the validity of the CBA between it and the Union; (2) the appellate court’s order holding that there is no basis on which to find the CBA invalid was a final determination on the merits of the issue of the CBA’s validity; and (3) Respondent Road District was a party to the state court litigation, having sought there a declaration that the CBA was illegal and invalid. Further, the Road District had a full and fair opportunity to litigate the issue of the CBA’s validity in the state court litigation.

The appellate court rejected each of the Road District’s bases for arguing the CBA’s invalidity and its order precludes the Road District from relitigating the validity of the CBA in this unfair labor practice proceeding.³ The Road District has not presented any argument here that it did not, or could not have, presented to the circuit court. The issue of the CBA’s validity has been finally settled by the court. The CBA governing the terms and conditions of the Road District employees is valid and it was valid at the time that Gasser provided the Union with his notice that he was repudiating it.

³ As explained, the appellate court also affirmed the circuit court’s dismissal of the Road District’s and Gasser’s claim that the CBA was the result of improper direct dealing between the Road District and Local 150, violations of Section 10(a)(1) and (4) and Section 10(b)(1) and (4) of the Act. The appellate court agreed with the circuit court that the Board has exclusive jurisdiction over those unfair labor practice claims and the circuit court lacked jurisdiction to hear them. The Road District did not file any unfair labor practice charge against the Union and those issues are not in dispute here and are not herein addressed.

ii. The Road District Repudiated the CBA.

There is no question that Gasser, in his capacity as Highway Commissioner of the Road District, repudiated the CBA. In response to the grievances the Union filed on behalf of the three employees Gasser terminated on his first morning in office as Highway Commissioner, Gasser sent the Union a letter on Highway Department letterhead in which he stated, “on behalf of the Algonquin Township Highway Department, I repudiate any agreement having been executed by Robert Miller.” In its counterclaim to the FOIA action in the circuit court, the Road District represented that “[p]rior to taking office and after taking office Andrew Gasser articulated to Local 150 and others that he would repudiate any purported labor agreement extending into his term of office prior to May 1, 2017” and “[a]fter taking office Andrew Gasser repudiated any purported agreement with Local 150.” *See* Union Ex. 13, p. 7 ¶¶ 28, 29. At hearing, Gasser testified that he did not repudiate an agreement with the Road District but that he repudiated the Union agreement with the Highway Department. On the heels of that statement, he pivoted to testifying that he repudiated the CBA with the Road District, explaining that it was “all conglomerated.” The Road District has never articulated any basis for its assertion that there is another CBA between the Union and the separate Township “Highway Department” that employs only Gasser it has conjured. That is because there is none. As there is no Township Highway Department of which Gasser is the sole employee and there is only one CBA, there was no conglomeration as asserted by Gasser.

Rather, as explained, Gasser serves as Highway Commissioner of the Road District, which identifies itself to the public as the Highway Department. There is one CBA. The Road District and the Union are parties to that CBA, which governs the terms and conditions of the Road District’s employees. Gasser testified that he repudiated the CBA. In his letter to the Union

responding to its grievances, he claimed that Miller could not bind the Road District to a contract extending beyond his term as Highway Commissioner and therefore the CBA was invalid, and he repudiated it. But as the court held, the CBA is valid. The Highway Commissioner's conduct repudiating a valid CBA between the Road District and the Union, and the Road District's efforts to invalidate the CBA, evidenced total disregard for the collective bargaining process, an outright refusal to abide by the contract, and prevented the grievance process from working. By this conduct, the Road District violated Section 10(a)(4) and, derivatively, (a)(1) of the Act. *City of Loves Park*, 343 Ill. App. 3d at 395.

In its post-hearing brief and affirmative defenses, the Road District argues that Gasser had just cause to terminate the three employees and did so for legitimate economic reasons. The Union disputes those arguments. However, the complaint alleges that the Road District violated the Act when Gasser, in response to the Union's grievances over the terminations and its demand for arbitration, informed the Union that it was repudiating the CBA and then filed an action in the circuit court to prevent arbitration proceedings. Whether the Road District terminated the three employees for just cause and a legitimate economic reason is not a defense to the repudiation, in whole, of the CBA. Accordingly, this recommended decision and order does not address these arguments.

The Road District also argues that the CBA is a "bad document" in that the description of the bargaining unit it contains is limited to job titles and not scope of work. This argument apparently is aimed at defending against a charge that the Road District violated the Act by direct dealing with the employees and hiring non-bargaining unit employees. However, that conduct is not at issue here either. And although Gasser testified that he hired employees without notice to or bargaining with the Union and gave the employees new job titles and dealt directly with all the

employees with respect to their wages and benefits, the Union has not pursued charges connected with these representations. Therefore, this recommended decision and order does not address the Road District's arguments concerning Gasser's hiring of employees.

C. Charging Party's Request for Sanctions

Finally, the Union seeks sanctions against the Road District and its counsel pursuant to Section 11(c) of the Act. 5 ILCS 315/11(c). Section 11 (c) of the Act provides that the Board has discretion to include an appropriate sanction in its order if (1) a party has made allegations or denials without reasonable cause and found to be untrue, or (2) has engaged in frivolous litigation for the purposes of delay or needless increase in the cost of litigation. *Id.* The test for determining whether a party has made factual assertions which were untrue and made without reasonable cause is an objective one of reasonableness under the circumstances. *City of Bloomington*, 26 PERI ¶ 99 (IL LRB-SP 2010); *Chi. Transit Auth.*, 16 PERI ¶ 3021 (IL LLRB 2000); *Chi. Transit Auth.*, 15 PERI ¶ 3018 (IL LLRB 1999); *Cnty. of Rock Island and Sheriff of Rock Island Cnty.*, 14 PERI ¶ 2029 (IL SLRB 1998). The test for determining whether a party has engaged in frivolous litigation is whether the party's defenses to the charge were not made in good faith or did not represent a "debatable" position. *Chi. Transit Auth.*, 16 PERI ¶ 3021; *Cnty. of Cook*, 15 PERI ¶ 3001 (IL LLRB 1998); *City of Markham*, 11 PERI ¶ 2019 (IL SLRB 1995). An attorney's subjective good faith or "honest belief" that his assertion was well grounded in fact is not sufficient. Rather, both client and counsel must make reasonable inquiry into the facts and law before asserting an allegation or defense. *Cnty. of Rock Island and Sheriff of Rock Island Cnty.*, 14 PERI ¶ 2029. The courts view a party's legal arguments in the context of all its submissions. *Wood Dale Fire Protection Dist. v. Ill. Labor Relations Bd., State Panel*, 395 Ill. App. 3d 523, 535-36 (2d Dist. 2009). They have held the imposition of sanctions to be inappropriate, even where the Respondent

has taken a legal position that is incorrect in the face of non-debatable black letter law, so long as the Respondent's remaining arguments and submissions to the Board are supportable. *Id.*

The party seeking the imposition of sanctions has the burden of proving that sanctions are appropriate. *Id.* Sanctions may include an admonition or reprimand; striking offending allegations or denials; an order to pay the other party's reasonable expenses including costs and reasonable attorney's fees or an appropriate portion thereof, and/or any other appropriate sanction. 5 ILCS 315/11(c); 80 Ill. Admin. Code § 1220.90; *Wood Dale Fire Protection Dist.*, 395 Ill. App. 3d at 534. Sanctions are to be awarded against a party or parties to the proceeding. 5 ILCS 315/11(c); 80 Ill. Admin. Code § 1220.90; *Wood Dale Fire Protection Dist.*, 395 Ill. App. 3d at 534. On that basis, the Union's motion is denied insofar as it seeks sanctions against Hanlon and Gasser personally.

The Union requested sanctions on several bases. It argues that in its answers to complaint's⁴ allegations, Respondent made the following denials which are untrue and made without reasonable cause: (1) the denial that the Road District is a public employer within the meaning of the Act (Answer to ¶ 1 of the Complaint); (2) the denial that the Board has jurisdiction over the Union's unfair labor practice charge (Answer to ¶ 2 of the Complaint); (3) the denial that Local 150 is a labor organization within the meaning of the Act (Answer to ¶ 3 of the Complaint); (4) the denial that the Board is the exclusive bargaining representative of the bargaining unit of Road District employees in the job title or classification of Highway Worker, Laborer, Foreman, and Mechanic (Answer to ¶ 4 of the Complaint); (5) the denial that Robert Miller, as Highway Commissioner, was an agent for the Road District and authorized to act on its behalf (Answer to ¶ 5 of the Complaint); (6) the denial that the Board certified Local 150 as the exclusive representative

⁴ The testimony at hearing focused on the complaint allegations and Respondent's answers thereto in case no. S-CA-18-067, which are substantially the same as those in case no. S-CA-17-137.

of the bargaining unit on April 10, 2017 (Answer to ¶ 7 of the Complaint); (7) the denial that Local 150 and Miller, on behalf of the Road District, executed a CBA on April 25, 2017 (Answer to ¶ 8 of the Complaint); (8) the denial that Gasser terminated three bargaining unit members on May 15, 2017 (Answer to ¶ 9 of the Complaint); (9) the denial that the grievances filed by Local 150 on behalf of the terminated employees were not resolved at the lower steps of the grievance procedure (Answer to ¶ 11 of the Complaint); (10) the denial that the Union and the Road District were parties to a CBA while admitting that Gasser repudiated the “purported” CBA (Answer to ¶ 12 of the Complaint); (11) the denial that the Road District filed a petition for a temporary restraining order in the McHenry County Circuit Court to prevent arbitration proceedings (Answer to ¶ 13 of the Complaint); (12) the denial that the Road District repudiated the parties’ CBA (Answer to ¶ 14 of the Complaint); (13) the denial that the allegations of the two complaints are identical (Answer to ¶ 15 of the Complaint).

Additionally, in response to the Union’s assertion at hearing on June 25, 2019, that the Road District had not complied with a subpoena duces tecum issued prior to hearing, the Road District’s attorney, Robert Hanlon, falsely represented that Gasser would testify that on June 24, 2019, he tendered subpoenaed documents to Union business agent Fahy at the Township offices. And the Union asserts that Gasser submitted a false affidavit in support of Respondent’s exceptions in case no. S-CA-17-137. The Union explains that on October 5, 2017, Gasser executed the affidavit in which he attested that he was familiar with the records of the Road District and the Highway Department and no complaint was contained in those records. However, at hearing Gasser testified that the records are kept at the Clerk’s office to which he had not had access since June 5, 2017, two months before the complaint issued in that case and four months before he executed the affidavit in which he attested to his familiarity with the records and what they contain.

The Union further states that the Road District made a charade of the proceedings as demonstrated by its conduct throughout the litigation. The Union explains that after the complaint issued in case no. S-CA-18-067 and the cases were consolidated and set for hearing, the Road District abandoned positions it took in its exceptions to the RDO in case no. S-17-CA-137. The Union points out that in its exceptions the named Respondent, the Highway Department, asserted that the Road District was the proper party. Then in its affirmative defenses to the complaint in case no. S-CA-18-067, Respondent asserted that the wrong party was named in that complaint and, then, at hearing Gasser testified that the Highway Department, not the Road District, should have been named as Respondent. The Union further states that the Road District, in its exceptions, stated that if the Board rejected the RDO it would present a defense on the merits, but it has not done so. Additionally, at hearing, Gasser and Hanlon could not agree on whether the Highway Department had counsel present. Moreover, Hanlon failed to participate in prehearing procedures and thereby failed to identify or take any position on the issues in dispute, and in its answer to the complaints Respondent did not deny the allegation that its conduct violated the Act (Complaint ¶ 16). Finally, the Road District missed two deadlines for filing its post-hearing brief.

The Union asks that the Board sanction the Road District by (1) striking the false denials from its answers to the complaints, and (2) ordering it to pay the Union's expenses, including reasonable attorney fees. The Union also asks that the Board reprimand Gasser and Hanlon and for any other relief appropriate under the circumstances.

The Road District did not respond to the Union's motion for sanctions. In its post-hearing brief, it provided a limited response to the Union's argument in its post-hearing brief for the imposition of sanctions against the Road District. First, the Road District attributes Hanlon's statement at hearing concerning its failure to comply with the subpoena duces tecum to human

error. And with respect to the Union's contention that the Road District made false denials to the allegations without reasonable cause, I read the Road District's response thereto as arguing that the denials were truthful in light of its defenses that there exists the Road District and a separate Highway Department, the CBA was invalid, and the proper party was never named as Respondent.

But as explained above, the Road District's defenses are wholly without merit and not debatable. It is clear from the evidence that Highway Commissioner Gasser never intended to comply with the CBA and held the Act's collective bargaining rights and duties in disregard. The Highway Commissioner's disregard for the requirements of the Act are illustrated by the Road District's theory that the previous Highway Commissioner was prohibited from executing on behalf of the Road District a CBA that extended beyond his term, a theory for which it provided no support. Gasser testified that other Highway Commissioners from other jurisdictions told him the Highway Commissioner could not agree to a contract that extends beyond his term. There is no evidence that with respect to collective bargaining agreements any of these individuals had the requisite knowledge to make Gasser's reliance on their opinions reasonable.

The Act prohibits such agreements when the public employer is a constitutional officer. See 5 ILCS 315/21.5 (2016). Beyond that exception, a public employer is bound by a CBA entered into by the office-holder's predecessor. *State's Attorney of Johnson Cnty.*, 21 PERI ¶ 176 (IL LRB-SP 2005) ("the employer in this case is the State's Attorney, not the individual office holder, and Charging Party's contention that all continuing contracts are invalidated by a change in officeholder is patently ridiculous, as it would throw government into chaos"). A party has a duty of good faith in pleading facts and presenting legal argument. See 5 ILCS 315/11. The Road District identifies no Board or court decision supporting its position but relied on Gasser's

inquiries, demonstrating its lack of good faith. It is evident from the record that Gasser made no effort, much less reasonable effort, to learn the rights granted and duties imposed by the Act.

Given its lack of regard for the collective bargaining process and its statutory obligations under the Act, the Road District advanced non-meritorious defenses that could not and did not present any debatable position. Therefore, sanctions are appropriate.

The record contains ample evidence that, proceeding on the non-meritorious defenses that the CBA was not valid and that there exists two separate government entities – the Road District and the Highway Department, the Respondent made false denials without reasonable cause, including its denials that: the Road District is a public employer within the meaning of the Act; the Union is a labor organization within the meaning of the Act; the Union is the exclusive bargaining representative of a bargaining unit of Road District employees; the Board has jurisdiction over this collective bargaining dispute; the Board certified the bargaining unit on April 10, 2017; former Highway Commissioner Miller was authorized to act on behalf of the Road District; the Road District and the Union are parties to the CBA executed on April 25, 2017; Gasser terminated the three bargaining unit employees on May 15, 2017; the grievances the Union filed on the employees' behalf were not resolved at the lower levels of the grievance process; the Road District filed a petition for a temporary restraining order in the McHenry County Circuit Court seeking to prevent arbitration proceedings; and the Road District repudiated the CBA.

Indeed, it can safely be said that the Road District made no effort to truthfully answer the allegations, even where they involve easily ascertainable fact. At hearing, the Road District tried to cast the allegations as either too hyper-technical or too poorly drawn for Gasser to understand and accurately answer. For instance, Gasser testified that he understood the allegation that the Board certified the bargaining unit as referring to the Township Board. However, as the Union

pointed out, the face of the complaint explains that the Illinois Labor Relations Board is referred to therein as the Board. Nowhere in the complaint is it indicated that “Board” refers to the Township Board. And Gasser testified that he denied the allegation that the Road District filed a “Petition for Restraining Order in McHenry County Circuit Court to prevent arbitration proceedings” because the title of the petition that it filed was “Verified Petition for Temporary Restraining Order Enjoining All Arbitration Pursuant to the Purported Collective Bargaining Agreement Until the Validity of the Purported Agreement is Determined.” He also stated at hearing that he did not think Local 150 was the exclusive representative of Road District employees because he hired non-bargaining unit employees and because he dealt directly with the employees instead of with the Union. But he also admitted that he made no effort to learn if Local 150 was the certified exclusive representative of the bargaining unit as alleged in the complaint. Gasser testified that he denied terminating three bargaining unit members because he did not know if they were in the bargaining unit. But he did not make any effort to learn so. And there is no cogent explanation for the denial that the grievances were not settled at the lower levels of the grievance procedure when, clearly, the Union had requested their arbitration. Respondent’s denials to the complaint lacked reasonable cause.

Additionally, I find that, as the Union alleged, the Road District changed its position with respect to who the complaint should have named as Respondent. In the hearing, Gasser testified that the Highway Department should have been named as Respondent in case no. S-CA-18-067. However, in its exceptions to the ALJ’s RDO in case no. S-CA-17-137, Respondent, which the complaint in that case identified as the Highway Department, took the position that the Road District, not the Highway Department, should have been named as Respondent. *See* Respondent Exception No. 7 (“The Highway Department excepts to the ALJ’s failure to find that, subject to

the invalidity of the CBA, it is the Road District, not the Highway Department, which would be the proper party.”). The Road District has not offered any explanation for its contradictory positions nor indicated which statement is true. Nor can it do so. As explained, the Road District and the Highway Department are one and the same, and the Road District’s argument that there exists a separate Township department called the Highway Department is wholly without merit. Accordingly, this conduct warrants sanctions.

I grant the request for sanctions with respect to Gasser’s affidavit in which he attested that the complaint in case no. S-CA-17-137 was not contained in the records of the Road District, with which he was familiar and with respect to Hanlon’s statement at trial concerning Gasser’s compliance with the Board-issued subpoena duces tecum. As the Union points out, in support of Respondent’s exceptions asking the Board to reject the ALJ’s recommendation of default in case no. S-CA-17-137, Gasser submitted an affidavit executed on October 5, 2017, in which he attested that he was familiar with the records of the Road District and the Highway Department and that those records did not contain the complaint issued in that case. However, at hearing he testified that he did not have access to those records for the prior four months – that is, since June 2017. But Gasser did not explain how he could have known that the complaint was not contained in the records at the time he attested to that knowledge in October 2017, and also not have had access to the records for the four months prior to October 2017, that is since June 2017. Both statements cannot be true. Therefore, Gasser either falsely testified in his affidavit when he denied that the records contained the complaint or at hearing when he denied having access to the records.

When it remanded case no. S-CA-17-137 to a hearing officer, the Board stated, “[t]he Highway Department’s 75 exceptions focus on one general theme: the Board should reject the ALJ’s recommendation for default judgment because the Highway Department was not served

with the Complaint.” *Algonquin Twp. Highway Dep’t*, 34 PERI ¶ 124. In rejecting the recommended default, the Board further stated, “the Gasser Affidavit cited by the Highway Department in its exceptions fails to compel reversal of the ALJ’s recommendations.” Although Gasser’s representations in the affidavit were not of consequence with respect to the Board’s decision on the exceptions, the affidavit was submitted in furtherance of Respondent’s effort to convince the Board to reject the recommended default. Therefore, the request for sanctions is granted with respect to this conduct.

With respect to Hanlon’s statement at hearing regarding the Road District’s failure to respond to the Board-issued subpoena duces tecum, Hanlon inaccurately stated what Gasser would testify to regarding his production of documents to Local 150’s agent. At hearing, Hanlon stated “if Mr. Gasser is called as a witness, he will testify that he tendered those documents to the business agent of Local 150.” But Gasser did not so testify. In its post-hearing brief, the Road District attributes this statement to human error. On its own, this circumstance is not so concerning as it is possible that counsel at the time misunderstood what transpired with respect to the subpoena. However, in its post-hearing brief the Road District defends against the Union’s argument for sanctions by misquoting and mischaracterizing the hearing transcript. Therein, the Road District represents that Hanlon stated at hearing that Gasser would “likely testify” that he provided the documents to Local 150’s business agent and Gasser would testify that he provided the documents in response to a FOIA request but was mistaken as to whom he provided them. As the Union notes, the Road District’s brief does not provide any citation for what it claims took place at hearing. In fact, the Road District’s brief inserts the word “likely” where it does not exist in the transcript. Standing alone, I would be hesitant to find this conduct sanctionable. But in my review of the transcript, I did not discover any testimony by Gasser in which he explained that he provided

the documents through a FOIA request. Rather, in the truncated hearing on June 26, 2019, Hanlon stated that Gasser “was prepared to testify the same material was tendered to Mr. Lahy, the business representative pursuant to the FOIA request.” The submission of these statements in the Road District’s brief conduct only further underlines the lack of credibility of Gasser and of Hanlon throughout these proceedings, not in any way aiding the Road District’s case, and warrants sanction. The Act and the Board’s Rules provide for sanctions on the parties only and does not give it the authority to sanction a party’s counsel or representative personally. Therefore, I find that this conduct warrants sanctions against the Road District, on whose behalf these representations were made.

For the above reasons, I find the Road District’s defenses in this case were not made in good faith and did not represent a “debatable” position, and it made denials without reasonable cause and found to be untrue. Accordingly, pursuant to Section 11 of the Act and Section 1220.90 of the Rules and Regulations, I grant the Union’s request to strike the denials made without reasonable cause and found to be untrue and also grant its request for costs and reasonable attorney’s fees as a sanction.⁵

VI. Conclusions of Law

Respondent, Algonquin Township Road District, violated Section 10(a)(4) and, derivatively, (a)(1) of the Act when it repudiated and sought to invalidate, in whole, the parties collective bargaining agreement in response to grievances filed by Local 150 on behalf of its bargaining unit members.

VII. Recommended Order

The Road District is hereby ordered to:

⁵ If the parties cannot agree to an amount which represents reasonable attorney’s fees, this amount will be determined through compliance proceedings.

1. Cease and desist from:
 - a) Failing and refusing to bargain in good faith with International Union of Operating Engineers, Local 150, AFL-CIO.
 - b) Repudiating the collective bargaining agreement with the effective date of May 1, 2017, between Algonquin Township Road District a/k/a Algonquin Township Highway Department and International Union of Operating Engineers, Local 150, AFL-CIO.
 - c) In any like manner restraining or coercing employees in the exercise of the rights guaranteed them by the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Bargain collectively in good faith with the International Union of Operating Engineers, Local 150 by abiding by the terms of the parties' collective bargaining agreement, including its grievance procedure provision.
 - b) Make whole all employees covered by the terms of parties' collective bargaining agreement for losses incurred as a result of the violation of Section 10(a)(4) and (a)(1) by Respondent Algonquin Road District a/k/a Algonquin Township Highway Department as found herein, including lost wages and benefits, with interest computed at the Act's statutory rate of seven percent per annum.
 - c) Reimburse the Union for its costs and reasonable attorney's fees in pursuing this matter.
 - d) Post for 60 consecutive days, at all locations where such informational notices are posted, copies of the Notice attached to this document. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
 - e) Notify the Board in writing, within 20 days from the date of this decision, of what steps 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 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-

exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on July1, 2020

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

/s/ Sharon Purcell _____
**Sharon Purcell
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-17-137 and S-CA-18-067

Respondent Algonquin Township Road District a/k/a Algonquin Township Highway Department violated Section 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act and it is ordered to post this Notice. Respondent hereby notifies you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, Respondent shall:

1. Cease and desist from:
 - a) Failing and refusing to bargain in good faith with Charging Party International Union of Operating Engineers, Local 150.
 - b) Repudiating the collective bargaining agreement with the effective date of May 1, 2017, between Respondent and International Union of Operating Engineers, Local 150, AFL-CIO.
 - c) In any like manner restraining or coercing employees in the exercise of the rights guaranteed them by the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Bargain collectively in good faith with the International Union of Operating Engineers, Local 150 by abiding by the terms of the parties' collective bargaining agreement, including its grievance procedure provision.
 - b) Make whole all employees covered by the terms of the parties' collective bargaining agreement for losses incurred as a result of the violation of Section 10(a)(4) and (a)(1) by Respondent as found herein, including lost wages and benefits, with interest computed at the Act's statutory rate of seven percent per annum.
 - c) Reimburse the Union for its costs and reasonable attorney's fees in pursuing this matter.
 - d) Post for 60 consecutive days, at all locations where such informational notices are posted, copies of the Notice attached to this document. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
 - e) Notify the Board in writing, within 20 days from the date of this decision, of what steps Respondent has taken to comply herewith.

DATE _____

Algonquin Road Township District a/k/a Algonquin
Township Highway Department
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
