

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

Laborers International Union of North America,)	
Local 773,)	
)	
Charging Party,)	
)	Case No. S-CA-20-094
and)	
)	
County of Union and Treasurer of Union County,)	
)	
Respondents.)	

ORDER

On September 23, 2021, Administrative Law Judge Matthew Nagy, 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 Decision and Order during the time allotted, and the Board, having reviewed the matter, declined to take it up on its own motion at its October 21, 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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
STATE PANEL**

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

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Laborers International Union of North America,)	
Local 773,)	
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Charging Party,)	
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and,)	Case No. S-CA-20-094
)	
)	
County of Union and Treasurer of Union County,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On February 18, 2020, Charging Party, Laborers International Union of North America, Local 773 (Charging Party or Union) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (ILRB or Board), alleging that Respondent, County of Union and Treasurer of Union County (Respondent or County) violated Section 10(a)(4) of the Illinois Public Labor Relations Act (Act). The charge was investigated in accordance with Section 11 of the Act and on September 2, 2020, the Board’s Executive Director issued a Complaint for Hearing, alleging that Respondent violated Section 10(a)(4) of the Act by directly dealing with one of Charging Party’s bargaining unit members.

A hearing was held on April 6, 2021 virtually over Cisco WebEx before the undersigned Administrative Law Judge. During hearing, all parties were given an opportunity to call, examine, and cross-examine witnesses; introduce documentary evidence; and present arguments. Both parties filed post-hearing briefs in lieu of closing arguments. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, Charging Party has been the exclusive representative of a bargaining unit (Unit) composed of Respondent's employees in the Union County Treasurer's Office as certified by the Board on December 4, 1995 in Case No. S-RC-96-018, and Charging Party and Respondent are parties to a collective bargaining agreement (CBA) for the Unit which contains a grievance resolution procedure that culminates in final and binding arbitration.¹
4. Heather Barrow is employed by the Respondent and is a member of the Unit as described in paragraph 3.
5. On May 6, 2019, Respondent and Barrow entered into a Memorandum of Understanding.
6. In December 2019, Charging Party sent Respondent a Freedom of Information (FOIA) request for Unit members' salaries.

II. FINDINGS OF FACT

Charles Ferguson (Ferguson) is employed by Charging Party as Field Representative. In that capacity, Ferguson is assigned certain bargaining units, one of which is the unit of Respondent's employees certified by the Board in S-RC-96-018. In that case, the Board certified the Charging Party as the exclusive representative of all full-time and permanent part-time employees in the Union County Treasurer's office, excluding: the Chief Deputy Treasurer, as confidential; any elected officials; and any supervisory, confidential or managerial employees as defined under the Act. At all times material, Heather Barrow (Barrow) was employed by the Respondent as Deputy Treasurer and was a member of the Union's bargaining unit.

¹ The parties' stipulations, listed in the parties' Joint Pre-Hearing Memorandum, lists the certification as S-RC-96-016. I take administrative notice that the correct case number is S-RC-96-018.

Ferguson was involved in the negotiations of the most recent collective bargaining agreement (CBA) between the Union and the County, which has effective dates of December 1, 2017 to November 30, 2020. Article 2 of that CBA provides that the contract covers all full-time employees of the Union County Treasurer's Office, excluding the Treasurer and any supervisory, managerial, or confidential employees. Ferguson testified that Barrow was a bargaining unit member covered by the CBA.

At some point in May 2019, the County entered into a Memorandum of Understanding (MOU) with Barrow, whereby it agreed to pay Barrow an annual stipend of \$4,500, paid bi-weekly, in exchange for Barrow performing the duties of Grant Compliance Clerk. The MOU provided that these duties would be performed "aside from and in addition to her regular duties covered by the" CBA. The MOU also provided that the Grant Compliance Clerk "shall not be considered covered" by the CBA, and that the County Board, through the County Administrator, would have direct oversight of the performance of Grant Compliance Clerk.

At some point, Ferguson sent a Freedom of Information Act (FOIA) request to the County for the wage information of a number of County employees. In the responsive materials, Ferguson noticed a \$4,500 stipend for Barrow. Ferguson subsequently filed additional FOIA requests and, from those requests, learned about the MOU in approximately January of 2020. Ferguson testified that he did not negotiate or bargain the terms of the MOU, nor was the MOU ever presented to him. Moreover, he testified that no one from the County, including the two signatories to the MOU on behalf of the County—Angie Johnson on behalf of the County Board and County Treasurer Leigh Burns—ever contacted him about giving Barrow Grant Compliance Clerk duties, about the stipend, or about the substance of the MOU generally. Ferguson also testified that, to his knowledge, no one from the County contacted anyone from the Union regarding the MOU, since if they did, he would have been made aware of it.

Angie Johnson (Johnson) is employed by the County as County Administrator, a position she has held since 2016. In that capacity, Johnson works directly for the County's Board and has several responsibilities, including grant compliance. She testified that the Grant Compliance Clerk is responsible for the oversight of the grants within the County. Johnson testified that she approached Barrow directly in or about May of 2019 and offered her the position of Grant Compliance Clerk, which Barrow subsequently accepted. Johnson stated that Barrow has been Grant Compliance Clerk since May of 2019, and she is the only person who holds that position. Johnson conceded that she did not notify the Union about the MOU or about anything having to do with the Grant Compliance Clerk position. Johnson also clarified that the bi-weekly payments of Barrow's annual \$4,500 stipend are listed on a separate line item on her pay stub, apart from her hourly wage.

Leigh Burns (Burns) is the County's Treasurer. She testified that although she signed the MOU as County Treasurer, she was not involved in the hiring of Barrow for the Grant Compliance Clerk position, nor did she negotiate the terms of the MOU with Barrow. Johnson testified the County had Burns sign off on the MOU for several reasons. First, Johnson noted that the County's budget had already been approved by the County's Board at that point, and consequently, Burns had to give permission to redirect a portion of the Treasurer's Office budget back to the County in order fund the Grant Compliance Clerk position. Second, Johnson wanted Burns to sign off on the MOU to ensure that Barrow would not be penalized if she needed to discuss grant compliance matters during her normal working hours.

Barrow works as Deputy Treasurer on set schedule of 8 a.m. to 4 p.m five days a week, with an hour unpaid lunch, for a total of 35 hours a week. Both Barrow and Johnson estimated that Barrow spends approximately five hours a week on grant compliance issues. Barrow testified that she fits in her Grant Compliance Clerk duties during her shift as Deputy Treasurer wherever she can, and that some days she may have to work past her standard shift, such as during the County's auditing period.

III. ISSUE AND CONTENTIONS

The sole issue in this case is whether the Respondent engaged in direct dealing with Barrow in violation of Section 10(a)(4) and 10(a)(1) of the Act. The Union asserts that the MOU plainly impacts the wages and terms and conditions of Barrow's employment, as Barrow is receiving \$4,500 in compensation for the work, which was re-routed from the Treasurer's Office. In addition, it avers that the record evidence plainly demonstrates that the County did not first contact the Union before negotiating or executing the MOU with Barrow. It also argues that the fact that the duties of Grant Compliance Clerk have never been performed by bargaining unit employees is immaterial to the analysis, and further, that Barrow performs her Grant Compliance Clerk duties during her work shift as Deputy Treasurer.

The County argues that the fact that the Grant Compliance Clerk reports to the County Board, and not to the Treasurer's office, means that it had no obligation to bargain the terms of the MOU with the Union. Moreover, it asserts that to find that the County violated the Act in this case would be tantamount to prohibiting unionized employees from accepting secondary employment.

IV. DISCUSSION AND ANALYSIS

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer or its agents to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit. 5 ILCS 315/10(a)(4). The

extent of the duty to bargain referred to in Section 10(a)(4) is further delineated in Section 7 of the Act, which reads, in part, as follows:

For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment

In Clerk of the Circuit Court of Cook County, 7 PERI 2019 (IL SLRB 1991), the Board noted that inherent in the duty to bargain under the Act is the requirement that the employer recognize that the union is the entity with whom it must deal in conducting negotiations. Therefore, a public employer violates Section 10(a)(4) of the Act when it bargains directly or indirectly with employees in a union's bargaining unit. Id. Here, it is not disputed that Barrow's job title is included in the Union's bargaining unit and was so included at the time the County negotiated the MOU with her. It is also undisputed that the County never gave the Union notice or an opportunity to bargain the terms of the MOU before it was executed.

Moreover, the MOU plainly impacts Barrow's wages, hours, and working conditions. A matter concerns "wages, hours and terms and conditions of employment" if it "(1) involves a departure from previously established operating practices, (2) effects a change in the conditions of employment, or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit." Int'l Bhd. of Teamsters, Local 700 v. ILRB, 2017 IL App (1st) 152993, ¶ 33 (holding that a sheriff's order stating that employees may not associate with individuals who were gang members, was a mandatory subject of bargaining); County of Cook v. ILRB, 2017 IL App (1st) 153015, ¶ 46 (holding that a sheriff's order modifying its existing secondary employee policy was a mandatory subject of bargaining). Changes to work assignments involve a departure from previously established operating practices, and therefore affect employees' terms and conditions of employment when the change (1) involves a transfer of bargaining unit work outside the bargaining unit, (2) involves an increase in workload, or (3) expands the scope of employees' existing job functions. Chicago Transit Auth., 34 PERI ¶ 1 (IL LRB-LP 2017); Vill. of Bensenville, 14 PERI ¶2042 (IL SLRB 1998).

Here, the MOU represents a departure from previously established operating practices because it both increased Barrow's workload and expanded the scope of her job functions. Prior to the MOU, she had no grant compliance duties; after the MOU, she did. Barrow herself testified

that she performs these grant compliance duties during her standard shift, and that sometimes those duties cause her to work beyond her standard shift. In addition, the County provided Barrow \$4,500 in total annual compensation, which was in addition to what the Union negotiated for her job title. Finally, the MOU establishes that Barrow will report to a different supervisor, the County Administrator, for these grant compliance duties. Thus, the MOU plainly impacts Barrow's wages, hours, and terms and conditions of employment.

As the Union correctly points out, it is immaterial for the purposes of the direct dealing analysis that Barrow has acquiesced to this arrangement; the Illinois Appellate Court, in interpreting an analogous provision in the Illinois Educational Labor Relations Act, has made clear that the gist of the direct dealing violation is an employer's "direct negotiations with the employees after they had designated, and the respondent had recognized, an exclusive bargaining representative." Board of Educ. of Sesser-Valier CUSD 196 v. IELRB, 250 Ill. App. 3d 878, 883 (4th Dist 1993)(quoting Medo Photo Supply Corp. v. NLRB, 321 U.S. 678 (1944)). This conclusion would be the same even if Barrow had initiated the conversation with the County about taking the Grant Compliance Clerk duties. See id. ("[t]he validity of this conclusion is not altered . . . by the mere fact that the direct dealing emanated from the employee[] rather than from the respondent.")²

The County's argument that the County Board had no obligation to bargain with the Union regarding the MOU because the bargaining obligation was only between the Union and the Treasurer's Office, is unavailing. First, the Board's certification of the bargaining unit lists the employer as "County of Union *and* Union County Treasurer" (emphasis added). What is more, Article 1 of the CBA, entitled "PARTIES TO AGREEMENT," list the parties to the contract as the Union and "the Union County Treasurer *together with* the County of Union" (emphasis added). Even more, the County Treasurer was a signatory to the MOU. Finally, one of the factors considered by the Board when determining whether two entities are joint employers include "the authority to tax and raise funds and to approve budgets and grant financing." County of Will v. ISLRB, 220 Ill. App. 3d 62, 65 (3rd Dist. 1991), (citing County of Kane v. IISLRB, 165 Ill. App. 3d 614 (2nd Dist. 1988)). Here, Johnson testified that the County Board had approves the budget for the County and its offices, including the Treasurer. As such, the County Board was obligated to bargain with the Union when negotiating the MOU.

To state it plain: "the violation lies in bypassing the exclusive representative in dealing directly with individual employees" on matters relating to their wages, hours, and terms and conditions of employment. Sesser-Valier, 250 Ill. App. 3d at 884. Here, the Respondent

² The Act provides that decisions of the IELRB shall be considered by the State Panel. 5 ILCS 315/15.1. Moreover, Illinois courts have indicated that rulings of the National Labor Relations Board are persuasive authority for construing similar statutory provisions in the Act. City of Burbank, 128 Ill.2d 335, 538 N.E.2d 1146, 1149 (1989).

impermissibly negotiated an executed the MOU with an employee in the Union’s bargaining unit—which affected that employee’s wages, hours, and working conditions—without first giving the Union notice or an opportunity to bargain the same. This direct dealing runs afoul of the Respondent’s obligation to bargain in good faith, in violation of the Act.

V. CONCLUSIONS OF LAW

The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act when it engaged in direct dealing with an employee in Charging Party’s bargaining unit.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, County of Union and Union County Treasurer, its officers and agents shall:

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with the Charging Party with respect to wages, hours, and other terms and conditions of employment of its bargaining unit’s members.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.

- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Restore the *status quo ante* as it existed prior to the execution of the MOU in May 2019.

 - b) Upon request, resume bargaining in good faith over all the items which relate to the wages, hours, or terms and conditions of employment—including staffing of machines—of the members of the Union’s bargaining unit.

 - c) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

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 in 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 this decision. 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 General Counsel of the Illinois Labor Relations Board, 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 in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. All filing 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 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.

Dated: **September 23, 2021**

Issued: Springfield, Illinois

Illinois Labor Relations Board
801 S. 7th Street, Suite 1200A
Springfield, Illinois 62703

/s/ Matthew S. Nagy

Matthew S. Nagy
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

**Case No. S-CA-20-094 (Laborers International Union of North America,
Local 773/County of Union and Treasurer of Union County)**

The Respondent, County of Union and Treasurer of Union County (County), violated Section 10(a)(4) and 10(a)(1) of the Act when it engaged in direct dealing with an employee in Laborers International Union of North America, Local 773 (Charging Party)'s bargaining unit by bargaining a Memorandum of Understanding (MOU) with that employee.

IT IS HEREBY ORDERED that the Respondent, County of Union and Union County Treasurer, its officers and agents shall:

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with the Charging Party with respect to wages, hours, and other terms and conditions of employment of its bargaining unit's members.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.

- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Restore the *status quo ante* as it existed prior to the execution of the MOU in May 2019.

 - b) Upon request, resume bargaining in good faith over all the items which relate to the wages, hours, or terms and conditions of employment of the members of the Charging Party's bargaining unit.

 - c) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

Date: _____ County of Union and Treasurer of Union County
(Employer)

This notice shall remain posted for 60 consecutive days at all places where notices to our bargaining unit members are regularly posted.

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(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.**
