STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Springfield Fire Fighters, IAFF, Local 37,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CA-22-049
	)	
City of Springfield,	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 23, 2021, the Springfield Fire Fighters, IAFF, Local 37, (Charging Party) filed an unfair labor practice charge (charge) with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Springfield (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016) as amended (Act). The charge was investigated in accordance with Section 11 of the Act, and on October 11, 2022, the Executive Director of the Board issued a Complaint for Hearing (Complaint). The Complaint contained the following statement:

> **RESPONDENT IS HEREBY NOTIFIED** that within 15 days after service of the complaint upon it, pursuant to Section 1220.40(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300, it must file an answer to this complaint with Michelle Owen, at the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601, or electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations. Respondent must serve a copy of the answer upon Charging Party. Please note that the Board's Rules and Regulations do not allow electronic service of the Answer upon Charging Party. Said answer shall include an express admission, denial, or explanation of each and every allegation of this complaint. Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or conclusions alleged in the allegation. Failure to timely file an answer shall be deemed to be an admission of all material facts or legal conclusions alleged and a waiver of hearing. The filing of any motion or other pleading will not stay the time for filing an answer.

The Affidavit of Service accompanying the Complaint stated that it was served on October 11, 2022, by electronic mail, on counsel for the Respondent, attorney Brandon Woudenberg, City of Springfield, 800 E Monroe St Springfield, IL 62701 Brandon.Woudenberg@springfield.il.us.

As stated in the Complaint, Section 1220.40(b) of the Board's Rules provides that the Respondent was required to submit an answer to the Complaint within 15 days of service. 80 Ill. Admin. Code § 1220.40(b). Section 1200.20(h)(7) of the Rules provides that service by email is deemed complete on the day of transmission. 80 Ill. Admin. Code § 1200.20(h)(7). In computing any period of time prescribed by the Act or Part 1200 of the Rules, "the designated period of time begins to run the day after the act, event, or default and ends on the last day of the period so computed." 80 Ill. Admin. Code § 1200.30(a).

Applying these rules, service of the Complaint on the Respondent was presumed effective on Tuesday, October 11, 2022. The Respondent should have filed an answer within fifteen days of October 11, 2022, in other words, no later than October 26, 2022. However, the Respondent did not file an answer by October 26, 2022.

On November 9, 2022, I issued an Order to Show Cause to the Respondent as to why a default judgment should not issue for the Respondent's failure to file a timely answer. The Respondent's response to the Order to Show Cause was due by close of business on Monday, November 23, 2022. On November 23, 2022, the Respondent filed a response to the Order to Show Cause. The Respondent asserted, in relevant part:

> That prior to the complaint in this case, the City has not received communications on this matter since the initial notice requesting an entry of appearance on December 6th of, 2021. The communication from the Board on December 6th of 2021 indicated that "If the Board agent deems the evidence is sufficient to proceed with the investigations, s/he will contact the Respondent and request a position statement responsive to the issues present in the case." No such request was ever, or has been received by the City for Case No. S-CA-22-049. The board agent made no contact with the City to investigate the matter. …
>
> After receiving the initial allegation, the City met with the Union and picked an arbitrator. In the days before the scheduled arbitration, the City and the Union engaged in formal and informal negotiations to avoid arbitration. During those negotiations, the Union proposed (see Exhibit 1) on May 20, 2020, to create a committee for ambulance policies and operations within the bargaining unit but ultimately agreed to withdraw the request. Both sides were able to come to terms with an additional (4) four-year contract. …
>
> Shortly after agreeing to a new contract, Ms. Angelucci did confirm to the City's Corporation Counsel, Mr. Zerkle, and Assistant Corporation Council, Brandon Woudenberg that she was withdrawing all ULP complaints that she had filed against the City. On more than one occasion, she indicated this.

In its response, the Respondent also included an answer to the Complaint.

On November 30, 2022, I sent an email to counsel for the Respondent and the Charging Party stating:

> I have received the Employer's Response to the Order to Show Cause.
>
> After reviewing the response, it is unclear whether the Employer received the Complaint for hearing on October 11, 2022. Can [counsel for the Respondent] please confirm whether the Employer received a copy of the Complaint for Hearing on October 11, 2022?

That same day, counsel for the Charging Party responded stating:

> We can confirm that both parties received the Complaint for Hearing via email on October 11, 2022. I am attaching a copy of the email that the Union and the City's attorneys received from the Board on that date, as well as a response from Mr. Woudenberg on October 14th, in which he confirmed that the City had received the Complaint. The Union believes that this supports the entry of a default judgment.

Having received no response from the Respondent to my November 30, 2022 inquiry, on December 7, 2022, I sent an email to the parties stating, "If the Employer would like to file a response to my question and the Union's assertions, please do so by Wednesday, December 14, 2022." [Emphasis in original].

That same day, counsel for the Respondent responded to my December 7, 2022 email stating:

> I can confirm that I received an email copy of the complaint on October 11. However, I respectfully request that the answer filed on November 23, as was requested in your rule to show cause should be granted leave and no default be entered.
>
> As I stated in my October 14 email to the parties, the Employer was at a loss as to how such a complaint could be filed given that no position statement or accompanying documentation to support such, as is customary in these instances and as was communicated by the Employer in an email on October 14. In a subsequent email, the charging party requested the agreement I was referring to. While trying to procure that documentation, I received your show cause order and filed a response as directed.
>
> For these reasons, I pray that you will accept my response as filed on the 25th and not enter any default.

I. ISSUES AND CONTENTIONS

The issues are whether a default judgment should issue, whether the Respondent should be granted leave to file a late answer, or whether the Respondent should be granted a variance from the 15-day filing deadline contained in the Board's rules.

The Charging Party contends that a default judgment should issue because the Respondent received service of the Complaint but failed to file a timely answer. The Respondent however requests that it be granted leave to file a late answer because the first communication the Respondent received from the Board after receiving the initial notice requesting an entry of appearance on December 6, 2021, was the Complaint; the Board agent made no contact with the City to investigate the charge; the parties were engaged in settlement discussions related to issues involved in the unfair labor practice charge; and the Charging Party had indicated that it would be withdrawing all unfair labor practice charges against the Respondent.

II. DISCUSSION AND ANALYSIS

A default judgment should issue because the Respondent did not file a timely answer despite receiving the Complaint. The Respondent's requests for leave to file a late answer and implicit request for a variance are denied because the Respondent failed to demonstrate circumstances that would justify granting approval for a late filing or granting a variance from the filing deadline.

Initially, the Respondent does not dispute that it should have filed an answer no later than October 26, 2022, pursuant to the Board's rules, and that it failed to do so. The Board's rules provide that "parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint." 80 Ill. Admin. Code § 1220.40(b)(3). The rules further provide that "[t]he failure to answer any allegation shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default. Filing of a motion will not stay the time for filing an answer." Id. The Board and the courts have strictly construed this rule, consistently holding that a respondent's failure to timely file an answer to a complaint results in an entry of a default judgment against the respondent and admissions of all allegations in the complaint. See Wood Dale Fire Prot. Dist. v. Ill. Labor Relations Bd., 395 Ill. App. 3d 523, 528-30 (2nd Dist. 2009), aff'g Wood Dale Fire Prot. Dist., 25 PERI ¶ 136 (IL LRB-SP 2008); Metz v. Ill. State Labor Relations Bd., 231 Ill. App. 3d

1079, 1093-94 (5th Dist. 1992), aff'g Circuit Clerk of St. Clair Cnty., 6 PERI ¶ 2026 (IL LRB-SP 2001); Vill. of Bradley, 38 PERI ¶ 112 (IL LRB-SP 2022); Peoria Housing Auth., 11 PERI ¶ 2033 (IL SLRB 1995); Chicago Housing Auth., 10 PERI ¶ 3010 (IL LLRB 1994); Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI ¶ 2025 (IL SLRB 1993); City of Springfield, Office of Public Utilities, 9 PERI ¶ 2024 (IL SLRB 1993); Cnty. of Jefferson & Circuit Clerk of Jefferson Cnty., 7 PERI ¶ 2042 n. 4 (IL SLRB 1991); City of Markham, 7 PERI ¶ 2003 (IL SLRB 1990).

As such, the only remaining issues are whether to grant the Respondent leave to file a late answer and whether the Respondent should be granted a variance from the 15-day time limit for filing an answer.

A. Leave to File a Late Answer

The Respondent's request for leave to file a late answer is denied because the Respondent has not demonstrated the existence of extraordinary circumstances necessary to grant leave.

Section 1220.40(b)(4) of the Rules provides that "[l]eave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments." 80 Ill. Admin. Code 1220.40(b)(4). However, the failure of a party's legal representative to meet a deadline due to simple inattention or negligence does not constitute an extraordinary circumstance under Section 1220.40(b)(4). First Transit/River Valley Metro, 26 PERI ¶ 38 (IL LRB-SP 2010), aff'd by unpub. order, 27 PERI ¶ 61 (3rd Dist. 2011); City of Markham, 27 PERI ¶ 7 (IL LRB-SP 2011). Except in narrowly defined circumstances, negligence by a party's attorney does not shield it from the consequence of that negligence. Amalgamated Transit Union, Local 241, 29 PERI ¶ 78 (IL LRB-SP 2012) (citing Wood Dale, 25 PERI ¶ 136 and Bd. of Educ. Thornton Twp. High Sch. Dist. No. 205 v. Ill. Educ. Labor Relations Bd., 235 Ill. App. 3d 724, 730-33 (4th Dist. 1992).

Here, the Respondent fails to show that its late filing is due to fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments. Rather, the Respondent asserts that the first communication the Respondent received from the Board after receiving the initial notice requesting an entry of appearance was the Complaint. However, the Respondent does not cite any authority to support its position that this would constitute an "extraordinary circumstance" justifying the allowance of a late filing within the meaning of the Board's Rules. Rather, the Respondent's failure to file a timely answer appears to

amount to mere attorney inattention or negligence. As such, the Respondent's request for leave to file a late answer is denied.

B. Variance

The Respondent has not expressly requested a variance from the Board's rules, and any implicit request is denied.

Under the Board's rules, the Board may grant a variance from its rules when (1) the provision from which the variance is granted is not statutorily mandated, (2) no party will be injured by the granting of the variance, and (3) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. 80 Ill. Admin. Code § 1200.160.

Here, the first requirement of Section 1200.160 is met because the 15-day filing deadline rule in Section 1220.40(b) of the Board's rules is not statutorily mandated. However, the third requirement is not satisfied. The second requirement need not be addressed because all three requirements must be met for a variance to be entertained by the Board. Indeed, even if all three requirements are met, the granting of a variance remains a matter of the Board's discretion and is not a matter of right by the party. See City of Ottawa, 27 PERI ¶ 6 (IL LRB-SP 2011).

In this case, as to the third requirement, compliance with the time limit for filing an answer is not unreasonable or unnecessarily burdensome under the circumstances because the Respondent has not demonstrated mitigating circumstances that would justify its late answer. The Board must consider the Respondent's explanations, excuses, and mitigating circumstances in determining whether strict adherence to its filing rules would be unreasonable or unnecessarily burdensome. See Wood Dale Fire Protection Dist., 395 Ill. App. 3d at 532-33. Attorney inattention or negligence is insufficient ground for overturning a Board decision denying a variance. See Id. at 530. However, "the negligence of counsel may be excused where mitigating circumstances are present." Cook Cnty. State's Attorney v. Ill. State Labor Relations Bd., 292 Ill. App. 3d 1, 12 (1st Dist. 1997). The Board grants such variances only under exceptional circumstances. Vill. of Calumet Park, 17 PERI ¶ 2024 (IL LRB-SP 2001), aff'd by unpub. order Docket No. 1-01-1520 (1st Dist. 2000); City of Kankakee, 17 PERI ¶ 2013 (IL LRB-SP 2001); City of Chicago Heights, 17 PERI ¶ 2026 (IL LRB-SP 2001).

Here, the Respondent did not exercise diligence in filing the answer or the request for relief because it did not file either until over three weeks past the answer's due date and did so only in

response to an Order to Show Cause. See Wood Dale, 395 Ill. App. 3d at 532-34. Further, the Respondent's contention that the parties had engaged in negotiations and reached an agreement for a successor collective bargaining agreement, and that the Charging Party had on more than one occasion indicated that it would be withdrawing all unfair labor practice charges against the Respondent are insufficient bases for avoiding the application of the default rule. See City of Nokomis, 37 PERI ¶ 6 (IL LRB-SP G.C. 2020) (employer was obligated to file a timely answer even though the parties were engaged in settlement discussions); Town of Cicero, 28 PERI ¶ 112 (IL LRB-SP G.C. 2012) (respondent's belief that resolution of the collective bargaining agreement would likely resolve the unfair labor practice allegations at issue was an insufficient basis for failure to file a timely answer); Harvey Park Dist., 28 PERI ¶ 57 (IL LRB-SP G.C. 2011) (failure to file a timely answer not excusable despite respondent's contention that charging party had stated to respondent that charging party would be withdrawing the charge); City of Harvey (Police Dep't), 33 PERI ¶ 41 (IL LRB-SP G.C. 2016) (employer's expectation that charging party would be withdrawing pending unfair labor practice charges once new collective bargaining agreement was reached insufficient grounds for granting of variance from filing deadline). Additionally, in numerous decisions, the National Labor Relations Board has held that the anticipated settlement of a case is not an adequate explanation for a respondent's failure to file a timely answer. See U.S. Telefactors Corp., 293 NLRB 567, 569 (1989); Sorenson Industries, Inc., 290 NLRB 1132, 1133 (1988). As such, any implicit request for a variance from the Board's Rules is denied.

Therefore, given the Board's strict application of the time limit for filing an answer and the lack of mitigating circumstances, the Respondent has waived its right to a hearing in this matter and has admitted the material factual and legal allegations as stated in the Complaint.

III. RESPONDENT'S ADMISSIONS

By failing to file a timely answer, the Respondent has admitted the following material facts and legal allegations as stated in the Complaint:

1. At all times material, Respondent has been a public employer within the meaning ofSection 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 a labor organization within the meaning

of Section 3(i) of the Act.

4. At all times material, Charging Party has been the exclusive representative of a bargaining unit (Unit) composed of certain of Respondent's employees certified by the Board on May 5, 2016, pursuant to Case No. S-UC-(S)-16-048.[1]
5. On or about September 24, 2021, Charging Party learned that Respondent agreed to supplement the staffing of Basic Life Support (BLS) level transport ambulances with bargaining unit members qualified to perform Advanced Life Support (ALS) and Intermediate Life Support (ILS) level care.
6. BLS level care is traditionally performed by individuals who retain an Emergency Medical Technician-Basic certification (EMT-B), ILS level care is traditionally performed by individuals who retain either an Emergency Medical Technician-Intermediate (EMT-I) or an Advanced Emergency Medical Technician (A-EMT) certification, and ALS level care is traditionally performed by individuals who retain an Emergency Medical Technician- Paramedic certification.
7. Prior to the change, Unit members would perform emergency medical services as needed until the arrival of Respondent's private ambulance service (Ambulance Service).
8. Once the Ambulance Service arrived, Unit members typically ceased performing emergency medical services and the Ambulance Service's employees would take responsibility for patient care, which included caring for the patient while in transport andtransferring patient care to hospital personnel.
9. On occasion, if an incident involved a critical issue such as a cardiac arrest, Unit members could continue care and assist the Ambulance Service employees in a supporting capacity.
10. Following the change, Unit members with EMT-I, A-EMT, or Paramedic certifications would, in part, retain responsibility for patient care, take the lead role in providing medicalcare throughout the transport, and then be responsible for transferring patient care to hospital personnel.
11. Furthermore, Unit members with EMT-I, A-EMT, or Paramedic certifications would be

[1] Case No. S-UC-(s)-16-048 clarified Case No. S-UC-07-072.

responsible for providing this care in each deployment, not just in critical scenarios.

12. Respondent's agreement as described in paragraph 5 altered past practice and changed Unitmembers' terms and conditions of employment.
13. On or about September 28, 2021, Charging Party demanded to bargain the decision and impact of the change.
14. On or about November 9, 2021, due to no response to the initial demand, Charging Party reiterated its demand to bargain.
15. On November 22, 2021, Respondent indicated that the matter was not a mandatory subject of bargaining because it did not directly or indirectly provide ambulance services and because it had no regulatory control over ambulances.
16. On November 24, 2021, Charging Party made a third bargaining demand.
17. In response to the third demand to bargain, Respondent reiterated its November 22, 2021, response as set forth in paragraph 15.
18. On December 6, 2021, Charging Party offered to meet with Respondent to resolve thematter.
19. On December 10, 2021, Charging Party requested to meet with Respondent.
20. To date, Respondent has refused to meet with Charging Party regarding the change described herein.
21. By its acts and conduct as described in paragraphs 12, 14, 15, 17, 18, 19, and 20, Respondent made unilateral changes to a mandatory subject of bargaining without bargaining its decision or the impact of its decision with Charging Party and has refused to bargain the unilateral change and/or its effects with Charging Party, in violation of Sections 10(a)(4) and (1) of the Act.

IV. CONCLUSIONS OF LAW

The Respondent violated Sections 10(a)(4) and (1) of the Act when it made unilateral changes to a mandatory subject of bargaining without bargaining its decision or the impact of its decision with Charging Party and when it refused to bargain the unilateral change and/or its effects with Charging Party.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, its officers, and agents, shall:

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Union, Springfield Fire Fighters, IAFF, Local 37, as the exclusive representative of the bargaining unit composed of certain of Respondent's employees certified by the Board on May 5, 2016, pursuant to Case No. S-UC-(S)-16-048, by making unilateral changes to mandatory subjects of bargaining without bargaining the Respondent's decision or the impact of its decision with the Union.
    b. Failing and refusing to bargain collectively in good faith with the Union by altering past practices and changing members' terms and conditions of employment.
    c. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Bargain collectively in good faith with the Union, Springfield Fire Fighters, IAFF, Local 37, as the exclusive representative of the bargaining unit, composed of certain of Respondent's employees certified by the Board on May 5, 2016, pursuant to Case No. S-UC-(S)-16-048, regarding the agreement to supplement the staffing of Basic Life Support (BLS) level transport ambulances with bargaining unit members qualified to perform Advanced Life Support (ALS) and Intermediate Life Support (ILS) level care.
    b. Restore the status quo by rescinding the agreement to supplement the staffing of BLS level transport ambulances with bargaining unit members qualified to perform ALS and ILS level care.
    c. Make whole members of the bargaining unit for any losses incurred had the Respondent not agreed to supplement the staffing of BLS level transport ambulances with bargaining unit members qualified to perform ALS and ILS level care.
    d. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60

consecutive days. The 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 the steps the Respondent has taken to comply with this order.

VI. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. 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.

Issued at Chicago, Illinois this 6th day of January 2023,

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ *Michelle N. Owen*

Michelle N. Owen
Administrative Law Judge