

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

Markham Professional Firefighters	)	
Association, IAFF, Local 3209,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CA-09-001-C
	)	
City of Markham,	)	
	)	
Respondent	)	

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

On July 7, 2008, the Markham Professional Firefighters Association, IAFF, Local 3209 (Union or Charging Party) filed an unfair labor practice charge against the City of Markham (City or Respondent) with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City had committed unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5ILCS 315 (2010). In that underlying case, the Union alleged that on or about January 3, 2008, and continuing thereafter, the City failed to remit to the Union dues and fair share fees collected through payroll deductions; that on January 21, 2008, Respondent issued an unsatisfactory performance rating to firefighter lieutenant George Hopman and denied Hopman and firefighter lieutenant Scott Adams additional duties as fire inspectors; and that on or about February 27, 2008, the City denied the Union’s request to keep a union file cabinet in Fire Station No. 2.

I. BACKGROUND

After a hearing on the complaint, Administrative Law Judge (ALJ) Ellen Strizak, in a Recommended Decision and Order (Order), issued May 29, 2009, determined that the City had engaged in unfair labor practices and recommended the following remedies:

Expunge from all files and records, including George Hopman's personnel file, any and all references to Hopman's evaluation for the period of January 2007 to December 2007 and notify Hopman in writing that this had been done and that evidence of the unlawful evaluation will not be used as a basis for future personnel actions against him.

Timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3209 as provided for in the collective bargaining agreement.

Pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.

Rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the Markham Professional Firefighters Association, IAFF Local 3209 to return the Union file cabinet to that location.

Neither party filed exceptions to the Order and, on August 26, 2009, the Board issued a General Counsel order in the case stating that the decision was final and binding on the parties. On September 3, 2009, the Union requested that the City comply with the Order and specifically referred to the remittance of dues and restoration of the Union file cabinet. On October 29, 2009, the Union petitioned the Board for enforcement of the Order and specifically the enforcement provisions of the Order described above. On February 2, 2010, the Union notified the Board that the City had failed to comply with the Order.

However, on May 21, 2010, the Union informed the Board that the City had complied with the Order with respect to Hopman and, also, the placement of the file cabinet but that the City continued to fail to timely remit union dues as the Order required. On June 1, 2010, the Union informed the Board that although the Order required the City to return the file cabinet to Station No. 2, the Union was willing to accept placement of the cabinet at Station No. 3. The

letter did not state a specific location at Station No. 3. On July 20, 2010, the Board's compliance officer issued a compliance order requiring the Respondent to fully comply with the Order and specifically comply with the remitting of dues and fair share fees.

On July 30, 2010, Respondent filed a report of compliance stating it realized it had not made timely payments or paid interest on prior late payments. The City also stated that "[f]or accounting reasons, the City of Markham has found it impossible to consistently comply with this express language of the [Agreement]" requiring that dues be remitted within ten days of each payday.

On September 17, 2010, the City remitted to the Union a check for \$137.82 for interest on dues untimely remitted and a check in the amount of \$1,890 for September 2010 dues. On September 27, 2010, the undersigned ALJ issued a Notice of a Hearing to be held on October 13, 2010, on the compliance issues. On October 1, 2010, the City filed a Motion to Vacate Compliance Hearing asserting it was in compliance with the Order although admitting that it had not made timely payments or paid interest on certain prior late payments. The City further asserted that it had fully complied with the Order and that a compliance hearing was unnecessary. The Union responded to the Motion, stating its opposition.

On October 7, 2010, the Union filed a Motion to Amend Issues for Compliance Hearing, contending that its acceptance of placement of the cabinet in Station No.3 was based on its belief that the cabinet would be placed in an office area. Instead, the Union asserted that the City had insisted that the cabinet be placed in the bay area of Station No. 3. The Union also contended that the City failed to timely remit union dues.

II. ISSUES AND CONTENTIONS

At issue in this case is whether the Respondent complied with the Order pursuant to the decision in the underlying unfair labor practice Case No. S-CA-09-001. At the hearing on the compliance issue held on October 13, 2010, I addressed two procedural issues: the City's Motion to Vacate the Compliance Hearing because the City allegedly had complied with the Order in Case No. S-CA-09-001, and the Union's Motion to Amend Issues for Compliance Hearing to state that the Respondent had not restored a file cabinet to Station No. 2. I denied the motion to vacate the hearing but granted the motion to amend the complaint. The City had objected to the Motion to Amend on the bases that the file cabinet issue had not been addressed in the compliance report and that the City had not had an opportunity to investigate that matter. I hereby reaffirm my rulings on both those matters. Further, allowing the City to delay consideration of the file cabinet issue because it had not investigated that matter would needlessly and unnecessarily delay the proceedings in this matter.

III. FINDINGS OF FACT

With respect to union dues and fair share fees, Section 3.2 of the collective bargaining agreement (Agreement) between the parties, effective May 1, 2006 to April 30, 2010,¹ provides in pertinent part as follows:

During the term of this Agreement the Employer agrees to make a payroll deduction each pay period of Union dues, fair share fee, initiation fee, and assessment(s), in the amount certified to be current by the Secretary-Treasurer of the Union, from the pay of those employees covered by this Agreement who individually request in writing that such deductions be made. The total amount of the deductions shall be remitted to the Union no later than ten (10) days after the deduction is made by the Employer.

Michael Giuseffi, employed by the City as a firefighter EMT since October 1, 2002, is the Union's steward and secretary/treasurer.² As Union treasurer, Giuseffi handles the Union's

¹ The current agreement has been extended for one year.

finances. He receives money tendered to the Union. The Union receives dues and fees from the City deposited into the Union's bank account and a receipt, specifically a business check stub, sent by mail, as well as a bank deposit slip for the Union's checking account. Dues and fees are withheld on pay days and City employees are paid every two weeks. The bank mails the check stubs and deposit slips to the City which then mails them to the Union. The check stub indicates the period for which the moneys are tendered and the amount paid. The deposit slip indicates the day the moneys were deposited.

The Union introduced into evidence certain deposit receipts (C. P. Ex. No. 2) dated as follows in the amounts indicated:

February 18, 2009	\$1,855
March 12, 2009	\$1,470
April 10, 2009	\$1,470
May 2, 2009	\$1,470
August 13, 2009	\$1,470
September 3, 2009	\$1,470
October 10, 2009	\$2,940
November 7, 2009	\$2,415
December 9, 2009	\$1,890
January 13, 2010	\$1,890
February 13, 2010	\$1,890
April 1, 2010	\$1,890
May 5, 2010	\$2,835
June 10, 2010	\$1,890
July 8, 2010	\$1,890
September 16, 2010	\$1,890
September 18, 2010	\$2,027.82

I note that in its Motion to Vacate Compliance Hearing, the City alleged the following

For May 2009, it paid the Union \$2,205 on June 29, 2009
 For June 2009, it paid the Union \$1,470 on June 29, 2009
 For July 2009, it paid the Union \$1,470 on August 31, 2009
 For August 2009, it paid the Union \$1,470 on September 21, 2009
 For September 2009, it paid the Union \$2, 940 on October 7, 2009
 For October 2009, it paid the Union \$2,415, on November 5, 2009
 For November 2009, it paid the Union \$1,890 on December 7, 2009

² Giuseffi has been a steward since 2004 and Union secretary/treasurer since 2008.

For December 2009, it paid the Union \$1,890 on January 11, 2010
For January 2010, it paid the Union \$1,890 on February 10, 2010
For February 2010, it paid the Union \$1,890 on March 9, 2010
For March 2010, it paid the Union \$1,890 on March 29, 2010
For April 2010, it paid the Union \$2,835 on May 5, 2010
For May 2010, it paid the Union \$1,890 on June 7, 2010
For June 2010, it paid the Union \$1,890 on July 7, 2010
For July 2010, it paid the Union \$1,890 on August 16, 2010

Thus, by the City's own admissions, it remitted union dues and fair share fees on a monthly basis rather than within ten days of deducting those amounts from employees' biweekly paychecks.

The Union also introduced into evidence its exhibit No. 4 indicating the dates of paychecks, the remittance date which it defined as the date the City issued a dues check to the Union,³ the deposit date to the Union's bank account, the number of days the remittance was late and the amount remitted. According to Exhibit 4 stating the 45 payment dates, the City made tardy payments 42 times between January 9, 2009 and September 17, 2010. When deposits were late, Giuseffi would so inform the Union president, George Hopman.

The Union File Cabinet

George Hopman, a firefighter lieutenant has been employed by the City since April 1, 1987, and has been a lieutenant since 1995. He is a shift commander. Hopman has also been president of the Local for eight years and, in that position, he is in charge of negotiations and contract enforcement.

The Union maintains a file cabinet to store its records. The cabinet contains past legal decisions, contracts, bank records and office supplies. Approximately three years prior to the hearing in this case, there was a fire in the front office at Station 2 where the cabinet had been stored in an office area. After the fire, the cabinet and anything else that could be salvaged was

³ The dates were taken from the City's Motion to Vacate Compliance Hearing.

moved to the bay area in Station 2 for a period of time. Currently, in that now refurbished station, there are two office areas in which computers as well as beds are located. Prior to the fire, the cabinet was located in an area with two desks and three or four file cabinets. There is still an office area with room sufficient to accommodate the file cabinet. However, the room where the file cabinet had been located now has two beds but not two desks. The union file cabinet is presently located at Hopman's house.

Sometime after the decision in the underlying case issued, and about a year before the instant hearing, Hopman had a telephone conversation with the fire department's deputy chief. The deputy chief indicated to Hopman that he (the deputy chief) and the chief had previously decided that the only place that would accommodate the union file cabinet was the engine room at Station 3. The engine room or engine bay is the area where the engines are housed. The Union first agreed to place its cabinet in an office area in Station 3.⁴ Hopman did not agree to place the cabinet in the engine bay area at Station 3 because it and its contents could get wet when the firefighters used water to clean the engines, walls and floor in the bay area. Such cleaning occurs as often as daily for the engines, three times a week for the floor, and once a month for the walls. Further, no file cabinets are located in the bay area of Station 3. The Union changed its position with respect to locating the file cabinet in Station 3 because the City was not complying with the RDO with respect to dues and the Union decided it would seek to enforce the Order as written. According to Hopman, the City has never offered to let the Union return its file cabinet to Station 2.

The Deduction and Remittance of Union Dues

⁴ According to Hopman, the bay area at Station 3 is 60 feet long by 40 feet wide. Firemen sleep in an area separate from the bay. The cabinet, which is about four feet high, a foot and a half wide and three feet deep, could fit in the sleeping area but not the kitchen.

Rashonda Lewis, employed by the City as a payroll clerk since January 2006, processes the payroll for all City employees on a biweekly basis. Department heads submit their payrolls to Lewis, who enters the data into the ADP system. ADP is a private payroll service that has a contract with the Respondent. ADP processes and prints out payroll checks at an off-site location. For each payroll, ADP deducts union dues and fair share fees and remits them to the Union. The City provides ADP with the hours worked by employees, their names and the amount of pay that is due. The City receives a payroll report on how much is deducted from each employee's pay and a record of those deductions is given to employees on a monthly basis. Lewis submits the payroll on Wednesdays and receives the report from ADP on Fridays, together with the payroll checks. The ADP report includes the amount of dues or fees deducted. Lewis makes a copy of the information from the report that she needs, and then, on a monthly basis, she issues remittance checks that she sends to Bank Financial.⁵ The City mayor and the City treasurer sign the remittance checks.

The City does not deposit the checks directly into the Union's bank account. Also, the checks are not necessarily mailed on the dates reflected on the faces of the checks because City officials have to sign them.

Lewis testified at the compliance hearing in this case that she could send such remittance checks every two weeks. Lewis also testified that she never told the Union that she could not comply with the requirement to remit dues within 10 days of withholding them from employees' paychecks.

At the compliance hearing, Lewis recalled a conversation that she had with her supervisor, City treasurer Karen Kohn in September 2009, regarding the advanced payment of

⁵ Lewis also sends remittance checks to AFLAC, MetLife, the police and fire pension systems and the police union.

union dues for the Fire Department because of the contract's ten day requirement. Lewis believed she was to remit the dues together with an advanced payment at that particular time.

IV. DISCUSSION AND ANALYSIS

The City argues that by September 2010, it was in compliance with the Order and thus a compliance hearing was unnecessary. It contends that the only remaining issue was whether it had complied with that part of the order requiring timely remission of union dues and interest payments. The City further argues that the compliance issue had been resolved by the time of the hearing and that it has at all times been willing to cooperate and comply with the original Order. It contends that it mistakenly believed it had made timely payments when it made an advance payment in October 2009. It claims that the Union did not offer a clear explanation as to why it insisted on a hearing even though the City admitted that its payments were not timely. The City claims that the Union's contention that the City was repeatedly late remitting dues was "completely without merit."

The City further argues that that the Union erred in assuming that the City was responsible for directly mailing deposits to the Union. In fact, the City submitted the deposits to the Bank which, in turn, deposited the amounts to the Union's account. The City insists that any additional delay in posting the deposit was not its fault. The City argues that the Agreement did not require the Union to receive the remitted dues within 10 days.

The City also argues that the Union should not have been permitted to reopen the issue of the placement of the file cabinet because the Compliance Order had indicated that the City had satisfactorily complied with that part of the Order and the matter had been resolved.

I reject the City's arguments. The City was not in compliance with that part of the Order directing that it remit dues and fair share fees in a timely manner and pay interest on late dues.

The City itself admitted that its payments were not timely. The Agreement requires that dues be remitted within ten days of their deduction from employees' paychecks. By remitting dues on a monthly basis, the City obviously could not be remitting dues within ten days of each biweekly paycheck. Further, the City's claim that it could not pay dues pursuant to the Agreement fails because its own witness, Rashonda Lewis, testified that she could have remitted dues biweekly rather than monthly. I note that the City did not file exceptions to the Order or thereafter allege that it was impossible for it to remit dues on a biweekly basis, and the City made no motion to modify the Order in that respect. For these reasons, I conclude that the City failed to remit dues in a timely manner and to pay interest on late dues paid in 2008 as required by the Order.

The File Cabinet

I similarly find that the City failed to comply with the Order regarding the file cabinet. When the Compliance Officer wrote in his report that the City had complied with the Order's directive to rescind the removal of the file cabinet from Station No. 2, it was based on the premise that the City would locate the cabinet in an area of Station No. 3 acceptable to the Union. The Union established at hearing that the bay area of Station No. 3 was not an acceptable area because the cabinet and its content were likely to get wet due to the use of water in the bay area to clean walls, floors and engines. Since there was no agreement as to the precise area to locate the cabinet in Station No. 3, I conclude that the City failed to restore the cabinet as required by the Order.

The Sanctions Issue

Section 11(c) of the Act provides that the Board has discretion to order sanctions if a party has made allegations without reasonable cause and found to be untrue, or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. The test for determining whether a party has made actual assertions which were untrue and made without reasonable cause is an objective one of reasonableness under the circumstances. Amalgamated Transit Union, Local 241 and Chicago Transit Authority, 19 PERI 12, at p. 31 (IL LRB-LP 2003). The Board has held that whether a party has engaged in frivolous litigation must be determined based on whether its defenses to the charge were made in good faith or represented a debatable position. Chicago Transit Authority, 19 PERI 12, at p. 31.

In its Motion for Sanctions, the Union argues that the City both made an allegation or denial without reasonable cause and found to be untrue and has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. The Order provided that the City timely remit dues as provided by the Agreement which, in turn, provides that the total amount of deductions shall be remitted to the Union no later than ten days after the deduction is made by the Employer. In its opening statement, the City admitted it did not remit a check within ten days of deducting dues and also asserted that its accounting system precluded it from complying with the Agreement's requirement to remit dues within 10 days. However, during the hearing, the City's own witness testified that she could remit dues within ten days. Thus, the Union argues that the City's allegation that it could not comply with the Agreement was untrue.

Further, the City took no action to comply with the Order even after issuance of the General Counsel order on August 26, 2009, after receipt of the Union's September 3, 2009, request for compliance, and the Union's October 29, 2009 compliance petition. The City did not

respond to the Compliance Officer's letter of April 13, 2010. It was not until July 2010, that the City responded to the compliance complaints asserting that it was impossible to comply with the language in the Agreement requiring remission of dues within ten days of each payday.

The Union alleges that since January 2009, the City remitted late 39 of 45 payments.⁶ According to the Union, in 2009, 24 of 26 payments were late and since May 29, 2009 when the Order was issued, the City remitted payments late for 28 of 34 pay periods. The City also failed to remit interest payment for late dues in 2008, an omission the City described as an oversight.

The Union requests the Board issue an order directing the City to pay the Union's reasonable attorney's fees resulting from the City's allegation or denial without reasonable cause and found to be untrue and for engaging in frivolous litigation, including the costs related to its preparation of the compliance petition, its preparation for and litigation of the compliance hearing, its preparation of the post hearing brief and the preparation of the Motion for Sanctions.

In my opinion, the Union has established that the City made a statement without reasonable cause and found to be untrue. The City stated that it was impossible for it to comply with the Agreement's requirement that union dues and fair share fees be remitted to the Union within ten days of their deduction from employees' paychecks. The City's own witness testified that she could remit union dues biweekly. The City's statement was not only false, the City provided no explanation as to why it believed it could not remit dues biweekly and its position was thus not debatable. Further, the City's posture in this case resulted in unnecessary litigation. Given that the City admitted that it did not comply with the Order, the Union should not have had to invoke Board procedures to get the City to comply with the Order. I infer that the City's

⁶ According to the Charging Party's Ex. No. 4, the City was late 42 or 45 times. I find it unnecessary to resolve this inconsistency as it is clear that the City was late in remitting dues the majority of the time.

actions were not only frivolous but caused unnecessary delay in the enforcement of the Order. Therefore, I find sanctions are warranted for that reason.

V. CONCLUSIONS OF LAW

The City of Markham failed to comply with the Order in Case No. S-CA-09-001 in that it failed to

Timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3209 as provided for in the collective bargaining agreement.

Pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.

Rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the Markham Professional Firefighters Association, IAFF Local 3209 to return the Union file cabinet to that location.

VI. RECOMMENDED ORDER

I recommend that the Respondent, the City of Markham, its officers and agents, shall

1. Cease and desist from
 - a. Failing to timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF, Local 3209 as provided for in the collective bargaining agreement.
 - b. Failing to pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.

- c. Failing to rescind the unilateral directive to remove the Union file cabinet from Station No. 2.
 - d. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
 - a. Timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF, Local 3209 as provided for in the collective bargaining agreement.
 - b. Pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.
 - c. Rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the Markham Professional Firefighters Association, IAFF Local 3209 to return the Union file cabinet to that location.
 - d. Reimburse the Markham Professional Firefighters Association, IAFF Local 3209, for its costs and reasonable attorney's fees incurred in litigating the issue of whether the Respondent complied with the Order in Case No. S-CA-09-001 for the Union's costs and reasonable attorney's fees including the costs related to its preparation of the compliance petition, its preparation for and litigation of the compliance hearing, its preparation of the post hearing brief and the preparation of the Motion for Sanctions.
 - e. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice

shall be posted, after being duly signed by the Respondent, in conspicuous places for a period of 60 consecutive days. The Respondent shall take reasonable efforts to ensure that the notices are not altered, defaced or covered by other material.

- f. Notify the Board in writing, within 20 days from the date of this decision, of the steps that the Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the 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 those 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 Board's General Counsel, 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 in 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 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 on this 23rd day of September, 2011.

**Illinois Labor Relations Board
State Panel**

**Sharon B. Wells
Administrative Law Judge**

The Illinois Labor Relations Board has found that the City of Markham has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act gives you, as an employee, these rights:

To engage in self-organization.

To form, join, or help 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 or protection.

And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT fail to timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3290 as provided for in the collective bargaining agreement.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights under the Act.

WE WILL timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3209 as provided for in the collective bargaining agreement.

WE WILL pay interest on all dues which have been deducted since January 22, 2008, and have been remitted late.

WE WILL rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the Markham Professional Firefighters Association, IAFF Local 3209 to return the Union file cabinet to that location.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

Date of Posting

City of Markham (Employer)