

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

International Brotherhood of Teamsters,)	
Local 700,)	
)	
Charging Party)	
)	Case Nos. S-CA-10-213
and)	S-CA-12-137
)	
Chief Judge of the)	
Circuit Court of Cook County,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On March 3, 2010, the International Brotherhood of Teamsters Local 700 (Charging Party or Union) filed a charge in Case No. S-CA-10-213 with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Chief Judge of the Circuit Court of Cook County (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The Union alleged that the Respondent repudiated the parties’ collective bargaining agreement by implementing a policy of refusing to arbitrate disciplinary grievances involving penalties other than discharge. The charge was investigated in accordance with Section 11 of the Act. On May 5, 2011, the Board’s Executive Director issued a Complaint for Hearing.

On March 30, 2012, the Union filed a charge in Case No. S-CA-12-137 with the Board alleging that the Respondent repudiated the parties’ collective bargaining agreement by implementing a policy of refusing to arbitrate grievances involving the termination of unit employees.

On June 24, 2013, the Executive Director issued an Order holding Case No. S-CA-12-137 in abeyance pending the final disposition of certain matters pending before the United State Court of Appeals for the Seventh Circuit in Jimmy Doe v. Cook County, No. 10-2746 (7th Cir.).¹ The

¹ The Court’s decision is set forth here: Doe v. Cook County, Illinois, 798 F.3d 558 (7th Cir. 2015).

Executive Director's abeyance order explained the background of the Jimmy Doe case and its relevance to the charges as follows:

On June 15, 1999, named juveniles detained at the [Cook County Temporary Juvenile Detention Center] JTDC filed a lawsuit in the Federal District Court for the Northern District of Illinois. On August 14, 2007, Judge John Nordberg signed an agreed order appointing Earl Dunlap as the Transitional Administrator (TA) of the JTDC. The agreed order and subsequent orders designated the TA as an agent of the court, provided him with the same immunity as the court, and granted him broad powers to bring the JTDC into compliance with certain constitutional standards. In an order dated June 23, 2010, the District Court approved the TA's plan to force incumbent employees to re-qualify for employment. This prompted the Teamsters to appeal to the U.S. Court of Appeals for the Seventh Circuit. Jimmy Doe v. Cook County, No. 10-2746 (7th Cir.). This case involves significant issues regarding the validity of the District Court's orders.

....

[T]he ultimate disposition of this case will turn on the extent to which the various aspects of an employment relationship are controlled by the Chief Judge and the TA....[T]he Board's ability to fully examine the events surrounding this charge and the employment relationships at issue, as well as the Board's ability to order forms of relief, if appropriate, may be impacted by the order issued by the District Court[, which is] currently under consideration by the Court of Appeals.

The Executive Director also noted that the Board similarly held in abeyance a related case pending the Seventh Circuit's resolution of the Jimmy Doe matter. See Chief Judge of the Circuit Court of Cook County (Cook County Juvenile Temporary Detention Center) ("Countiss Perkins"), 29 PERI ¶ 34 (IL LRB-SP 2012) (remanding case for hearing on issue of Chief Judge's control over employees' terms and conditions of employment, but holding the case in abeyance pending resolution of the appeal in the Seventh Circuit).²

On August 17, 2016, the Executive Director issued a Complaint in Case No. S-CA-12-137 and consolidated that case with Case No. S-CA-10-213. The Union requested that I delay the scheduling of hearing dates in the matter due to personnel changes. In December 2016, I scheduled the hearing at the Union's request.

A hearing was conducted on April 6 and 7, 2017, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.

² This case settled after a hearing on the merits, but before the issuance of a Recommended Decision and Order.

The parties filed timely post-hearing briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act.
2. The Respondent is a public employer within the meaning of Section 3(o) of the Act, as a unit of local government.
3. At all times material, the Respondent has been subject to the Act, pursuant to Section 20(b) of the Act.
4. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all relevant times, the Union has been an exclusive representative within the meaning of Section 3(f) of the IPLRA of a Unit composed of various job classifications covered under the Collective Bargaining Agreement executed between the County of Cook and Teamsters Local 714.
6. Until May 2015, Earl Dunlap served as the Transitional Administrator of the Cook County Temporary Juvenile Detention Center (JTDC), having been so appointed pursuant to federal court order, Case No. 99 C 3945, by Judge John Nordberg on August 14, 2007.
7. The parties agree to the admission of testimony (and related transcripts) from the hearing in Countiss Perkins and Chief Judge of the Circuit Court of Cook County, Case No. S-CA-09-225.
8. The parties agree to the admission of previously admitted exhibits from the hearing in Countiss Perkins and Chief Judge of the Circuit Court of Cook County, Case No. S-CA-09-225.

II. ISSUES AND CONTENTIONS

The issues, as set forth in the complaints, are whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly refused to arbitrate disciplinary grievances involving penalties other than termination, and later refused to arbitrate even termination grievances. However, the threshold issue is whether the Board can find the Respondent liable for unfair labor practices when the alleged unlawful acts were committed during the tenure of the federally-appointed Transitional Administrator (TA), and arguably by the TA himself. Also at issue is the Union's motion to amend the complaint to include an allegation that the Respondent violated Sections 10(a)(4) and (1) of the Act by refusing to arbitrate grievances following the TA's removal but before the parties executed a collective bargaining agreement.

The Union contends that the Respondent is liable for unfair labor practices based on its refusals to arbitrate grievances during the TA's tenure because the Respondent and the TA were joint employers. The legislature transferred authority over the JTDC from the County to the Respondent during the TA's tenure, and the Chief Judge admitted that he had authority to appoint a superintendent for the JTDC at that time. In addition, the Respondent maintained control over employees' terms and conditions of employment during the TA's appointment: it agreed to arbitrate some grievances, its representatives were involved in the grievance and discipline process, it participated in panel interviews for JTDC hires, and it was the primary bargaining entity with the Union. The Union argues that the Respondent's reservation of the right to exercise authority over employees' terms and conditions of employment renders it a joint employer, even though it may not have exercised that right.

In the alternative, the Union asserts that the Respondent is liable for the TA's actions because the TA was an agent of the Respondent.

On the merits, the Union asserts that the Respondent's refusal to arbitrate grievances, during the TA's tenure, constitutes a repudiation of the Respondent's collective bargaining obligation because the Respondent was a successor in interest to the Union's collective bargaining agreement with the County. The Union also contends that the Respondent violated the Act by refusing to arbitrate grievances during the period after the TA's removal but before the parties' execution of their collective bargaining agreement because the contract between the County and the Union remained in effect, and the Respondent was bound by it.

The Respondent asserts that the complaints must be dismissed because the TA refused to arbitrate grievances, not the Respondent, and there is no basis on which to impute liability from the TA to the Respondent. The TA was not a joint employer with the Respondent and was not the Respondent's agent. The Respondent did not share the TA's power to hire, fire, discipline, promote or demote, the Respondent handled arbitrations only for a limited period of time, and the Respondent had no control over the TA's actions.

Finally, the Respondent contends that it did not violate the Act, following the TA's removal, by refusing to arbitrate grievances before the parties entered into a collective bargaining agreement. The Respondent denies it had an obligation to arbitrate grievances, reasoning that it was not a party to the agreement between the Union and the County and that it was not bound by the agreement as a successor employer to the County. The Respondent also notes that it did agree to arbitrate those grievances that arose from its own employment decisions rather than those made by the TA.

III. FINDINGS OF FACT

1. Background and Detailed History of Federal Litigation³

Named juveniles detained at the JTDC filed a lawsuit in the Federal District Court for Northern Illinois on June 15, 1999, seeking declaratory and injunctive relief under 42 U.S.C. § 1983 to redress violations of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The named plaintiffs and the class they represent sought relief for alleged violations of their rights due to practices and living conditions at the JTDC. The named plaintiffs filed their complaint in federal district court on behalf of themselves and all persons who have been, are, or will be confined at the JTDC. The defendants in the federal lawsuit were Cook County and the superintendent of the JTDC at the time the lawsuit was filed.

In December 2002, the parties entered into a Memorandum of Agreement (MOA) to resolve the lawsuit without an admission of guilt. The MOA stated that its purpose was "to assure that defendants house residents [at the JTDC] in an environment that, at a minimum, is safe and clean, is free from excessive and unfair discipline, and provides adequate care and services,

³ The first four paragraphs of this section are quoted from a decision drafted by ALJ Eileen Bell. Countiss Perkins, 29 PERI ¶ 34. They are accurate.

including adequate food, shelter, medical services, mental health care, and provides an adequate environment for educational services.”

In furtherance of the MOA, the defendants were made responsible for the creation and implementation of a plan to “describe appropriate hiring standards and procedures as well as a plan for staff training.” The MOA also directed the defendants to “maintain an adequate system of staff oversight and discipline which reasonably assures that the alleged incidents of abuse, neglect, and other staff misconduct are promptly investigated and appropriate action is taken where warranted.” A paragraph of the MOA created independent and impartial monitor(s) to evaluate and report to the parties on implementation and compliance with the MOA.

On August 14, 2007, Judge John A. Nordberg of the Federal District Court for the Northern District of Illinois signed an Agreed Order Appointing a Transitional Administrator in the JTDC. That Agreed Order provided the following:

Introduction

1. The purpose of this Order is to appoint a Transitional Administrator (TA) with the authority and responsibility to bring the Cook County Juvenile Temporary Detention Center (JTDC) into substantial compliance with the Memorandum of Agreement (MOA), the Agreed Supplemental Order (ASO), and the Modified Implementation Plan (MIP) and, if consistent with Illinois law, to prepare the JTDC for the transition of administrative authority over its operations to the Office of the Chief Judge of the Circuit Court of Cook County.

2. The TA shall be an agent of this Court and is specifically appointed with the authority and responsibility to put in place at the JTDC qualified management to implement the requirements of the MOA, the ASO, and the MIP.

* * *

4. The Court appoints Mr. Earl L. Dunlap as the TA.

Responsibilities of the TA

5. The TA shall have the following responsibilities:

a. To develop and implement systems at the JTDC to achieve substantial compliance with the MOA, the ASO, and the MIP.

b. To oversee, supervise, and direct all...functions relating to the operation of the JTDC consistent with the authority vested in the position of Superintendent of the JTDC and to restructure the JTDC into an institution that substantially complies with the MOA, the ASO, and the MIP.

* * *

f. To exercise his authority as TA in a manner consistent with the laws, policies and regulations of Cook County and the law of the State of Illinois. However, where

those laws interfere with the TA's responsibilities set out in this Order, the TA, or either party, may petition the Court to waive any requirements imposed thereby. Should the TA determine that it is necessary for him to bypass any policy or regulation of Cook County, he shall inform the parties who may petition this Court for the appropriate relief. If the parties elect not to petition this Court, the TA shall utilize his discretion to bypass a policy or regulation of Cook County where he believes it is necessary under the circumstances.

Authority Granted to the TA

6. The TA shall have all reasonable powers necessary to bring the JTDC into substantial compliance with the MOA, the ASO, and the MIP, including:

a. All powers relating to the operation of the JTDC, which in usual circumstances, are exercised by the Superintendent of the JTDC.

* * *

b. The power to establish the budget for all functions relating to the operation of the JTDC (JTDC budget) which shall be presented to the Board of Commissioners as part of the annual appropriation process.

* * *

c. The power to establish personnel policies; to create, abolish, or transfer positions; and to hire, terminate, promote, transfer, and evaluate management and staff of the JTDC.

d. The power to negotiate new contracts and to renegotiate existing contracts, relating to the operation of the JTDC consistent with the provisions of paragraph 5(f).

e. The power to retain consultants to assist with bringing the JTDC into substantial compliance with the MOA, the ASO, and the MIP

f. The power to restructure and reorganize any management and administrative structures of the JTDC.

* * *

i. The power to petition the Court for any additional powers necessary to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP.

* * *

7. Office of the Transitional Administrator

a. Upon appointment, the TA shall promptly establish an Office of the Transitional Administrator (OTA). The OTA shall include reasonable staff to effectuate this Order.

b. Cook County shall be responsible for the reasonable expenses incurred in operating the OTA.

* * *

h. As this Court's representative, appointed to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP, the TA shall have absolute immunity from liability.

* * *

11. Transition of Authority and Termination of the Appointment of the Transitional Administrator

a. The appointment of the TA shall be subject to dissolution by agreement of the parties or upon a showing of substantial compliance to this Court with the terms of the MOA, ASO, MIP and this Agreed Order.

b. In the event pending legislation (House Bill 236) is signed by the Governor of the State of Illinois and becomes law transferring administrative authority of the JTDC to the Office of the Chief Judge of the Circuit Court of Cook County (Chief Judge), the following duties and responsibilities of the TA shall be triggered:

* * *

ii. After consultation with the Chief Judge and with the Chief Judge's prior approval, if the TA determines that any function of the JTDC can be transitioned to the Chief Judge and administered in accordance with the terms of the MOA, ASO and MIP, the TA shall transfer administrative and operational authority of the subject JTDC function to the Chief Judge. If a function transferred to the Chief Judge ceases to comply with the terms of the MOA, ASO or MIP, the TA, in his discretion, may resume administrative and operational authority over the transferred function.

12. The Court retains jurisdiction of this matter for all purposes, including the entry of any additional orders necessary to enforce this Order, the MOA, the ASO, or the MIP.

* * *

15. If, for any reason, the TA, referred to in paragraph 4 above, resigns or becomes unavailable to continue, or the parties agree or the Court determines that he should be replaced, the parties will attempt to agree on the identity of a successor TA. If the parties are unable to agree on a successor TA after twenty-one (21) days, each party shall submit to the Court its nomination of one person to assume the appointment of the TA, together with a statement of the reasons that person is qualified to be appointed the TA. The Court will select one of the party's nominees as the TA or, at its discretion, may solicit additional nominees from the parties.

* * *

On May 8, 2008, Judge John A. Nordberg issued an order in Jimmy Doe v. Cook County, Case No. 99 C 3945, granting the TA's Emergency Motion, in which the TA requested to retain a private company to provide temporary security staffing and sought other relief. The Teamsters, Local No. 714, filed objections to that motion. In relevant part, the Order of that date reads as follows:

2. [T]he Court finds that the JTDC is dangerously understaffed and that, as a result of this understaffing, the health and safety of the residents is at risk. This situation constitutes an emergency. The Court also finds that Mr. Dunlap's [the TA] proposed plan to hire temporary security staff and to shift the assignments of some permanent staff to use them more effectively is a reasonable and narrowly-tailored response to the crisis at the

JTDC and that it is necessary to bring about compliance with (i) this Court's order of December 2002, approving the Memorandum of Agreement negotiated by the parties; (ii) the Agreed Supplemental Order entered in May 2006; and (iii) the Agreed Order Appointing a Transitional Administrator entered in August 2007. This Court finds that the Union's proposed alternative of putting temporary staff workers into existing vacancies on the day shifts would necessarily increase the danger to both residents and staff because the new workers have not worked at this facility and do not have personal relationships with the residents.

* * *

5. The Court, with the agreement of the TA and the plaintiffs, and without objection from the defendants, therefore grants the TA's Emergency Motion, overrules [Teamsters Local 714's] objections, and awards the following relief:

* * *

a. Pursuant to Paragraph 5(f) of this Court's August 14, 2007, Agreed Order Appointing a Transitional Administrator, the Court orders that any and all laws of the State of Illinois and Cook County Ordinances that may in any manner, restrain hinder or prevent the Transitional Administrator from contracting for the temporary services of a private security firm, including Ordinances . . . , are hereby suspended in order to carry out the relief sought in the Emergency Motion.

* * *

c. The court hereby suspends any and all laws of the State of Illinois and ordinances of the County of Cook that require compliance with any provision of the current Collective Bargaining Agreement ("CBA") between Cook County and [Teamsters Local 714], as well as said provisions of the CBA itself, including Section 4.11 [entitled Job Posting and Bidding] of the CBA, to the extent necessary and appropriate in the TA's judgment to provide adequate security and safe conditions in the JTDC.

On March 12, 2009, Judge James F. Holderman approved an Agreed Order in Jimmy Doe v. Cook County, Case No. 99 C 3945. In that order, the JTDC agreed to reinstate three employees. The Order also stated the following in relevant part:

9. The following sentence shall be added to Paragraph 5.C of the Court's May 8, 2008, Order: "Nothing in this paragraph suspends any laws or ordinances requiring compliance with provisions of the CBA involving employee discipline or discharge arising from alleged abuse, neglect, or similar misconduct."

On May 29, 2009, Judge James F. Holderman issued an Agreed Order, upon Teamsters Local 714's Motion for Relief Under Federal Rule of Civil Procedure 60(b)(5). It provides the following in relevant part:

1. Irrespective of whether such actions would be authorized by this Court's May 8, 2008 Order, the Transitional Administrator ("TA") shall comply with Paragraph 5.f. of the August 14, 2007

Agreed Order Appointing A Transitional Administrator with respect to the TA's actions after entry of this Order that affects terms and conditions of employment for JTDC employees represented for bargaining purposes by Intervenor Local 714.

* * *

4. Local 714 shall not file any further motion with this Court seeking relief for actions by the TA with respect to:

a. Establishment of, and staffing selection and assignments for, the JTDC residential Centers to the extent consistent with the TA's actions previously undertaken prior to April 1, 2009 to establish and staff the Phoenix and Wings Centers;

b. Use of subcontracted security and janitorial staff, and resulting reassignment of JTDC staff, for purposes already in effect as of March 17, 2009, and without material increase in the number of such subcontracted staff expended for each such purpose; and

c. Use of subcontracted staff, as necessary and without limitation, to fill vacancies caused by the unavailability of Local 714-represented staff.

5. Nothing in this Order limits Local 714 or the Chief Judge of the Circuit Court of Cook County from making proposals for a labor agreement, or from entering into a labor agreement, which may conflict with or require adjustments in the above terms; nor does this Order restrict the TA from seeking relief from such labor agreement terms with this Court.

In October 2009, the TA proposed a reorganization of the JTDC and a staffing plan. The TA proposed to reorganize the JTDC into five divisions, staffed by personnel who could each perform the functions of guard, psychologist, and teacher. The personnel would have training and educational credentials superior to the staff then on hand. The TA simultaneously proposed to terminate the employment of the JTDC's approximately 225 union-represented direct-care employees and require them to reapply for the new positions, if they wished to continue working at the JTDC. The TA estimated that 180 of the 225 employees would be disqualified from employment because the new position required a bachelor's degree, which these employees did not possess.⁴

On June 22, 2010, Judge James F. Holderman granted a motion filed by the TA to Modify the federal court's August 14, 2007 Order. That modification provided as follows:

Paragraph 7(h) of the Court's August 14, 2007 Order...is hereby deleted and replaced with the following language: "Effective August 14, 2007, the TA and his staff shall have the

⁴ This description is drawn from the Seventh Circuit Decision that reviewed Judge Holderman's later Order of June 23, 2010, which approved the plan. Doe v. Cook County, Illinois, 798 F.3d 558, 561 (7th Cir. 2015).

status of officers and agents of this Court and as such shall be vested with the same immunities as vested with this Court. Also effective August 14, 2007, the County shall indemnify the TA and members of his staff to the same extent that Cook County and/or the Office of the Chief Judge of the Circuit Court of Cook County is obligated to indemnify the Superintendent of the JTDC.

On June 23, 2010, Judge James F. Holderman issued a Memorandum Opinion and Order, which approved the TA's proposed staffing plan in its entirety. In so holding, the judge rejected the Union's objections to the TA's proposal to create new job descriptions for direct care workers at the JTDC and to the TA's proposal to require incumbent direct care workers to reapply for these new positions.

The Union appealed Judge Holderman's June 23, 2010, ruling to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit held oral argument on the case on February 17, 2011, but issued its decision four years later.

On May 15, 2015, Judge Holderman issued a concluding order in Jimmy Doe v. Cook County, Case No. 99 C 3945. It provided that Earl Dunlap's appointment as TA would terminate effective May 20, 2015. It further provided that Dunlap would work as a Court Appointed Expert to the JTDC and perform on-site visits for three months after his termination of appointment.

On August 17, 2015, the Seventh Circuit reversed Judge Holderman's June 23, 2010, Order approving the TA's proposed staffing plan. Doe v. Cook County, Illinois, 798 F.3d 558, 566, 569 (7th Cir. 2015). The Court described the plan as one in which the TA "proposed to abrogate all of the Union's rights by firing its members and hiring a wholly new staff without regard to state labor laws or the existing collective bargaining agreement...." Doe, 798 F.3d at 566 (7th Cir. 2015). In reversing the plan, Court reasoned that the Judge erred in issuing an order that permitted the TA to bypass state employment law. Id. at 567.

3. Facts Underlying the Charges

a. Bargaining History of the Teamsters and Cook County and the Respondent Judge

The International Brotherhood of Teamsters, Local 714, and the County of Cook were parties to a collective bargaining agreement (CBA) with effective dates of December 1, 2004 to November 30, 2008. The agreement set forth the terms and conditions of employment for employees at the JTDC in the following titles: Barber (Cosmetologist, Cook II, Custodial Worker II & III, Food Service Worker I, Housekeeper II, Laundry Worker II, Recreational Worker II,

Juvenile Detention Counselor II, & III, Telephone Operator III, Security Officer/JTDC, Security officer II & III.

The agreement provides that it automatically renews from year to year after its expiration date unless “either party gives written notice to the other no less than ninety calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify or terminate [the] Agreement.” It further provides that “in the event such written notice is given by either party, this Agreement shall continue to remain in effect after the expiration date until a new Agreement has been reached or either party shall give the other party five (5) calendar days written notice of cancellation thereafter.” Neither the County nor the Union gave notice of intent to modify or terminate the agreement.

The contract contains a grievance procedure that culminates in final and binding arbitration. There are four steps in the contractual grievance procedure. The first step grievance is heard by the member’s immediate supervisor. The second step is an appeal of the immediate supervisor’s decision. The third step is heard by a hearing officer. The fourth step is heard by an independent arbitrator.

Teamsters Local 700 became the successor in interest to Teamsters Local 714, and the ILRB amended the Union’s certification on March 25, 2011 to reflect this change in Case No. S-AC-11-041.

- b. The Federal Court Appoints the Transitional Administrator and the Legislature Transfers Operational Control Over the JTDC From Cook County to the Office of the Chief Judge

On August 14, 2007, the federal court appointed Earl Dunlap as Transitional Administrator (TA) of the JTDC. That year, the TA appointed Brenda Welch as Deputy TA. Welch was responsible for the oversight and direction of the day-to-day responsibilities of the JTDC.

In 2008, the legislature enacted Public Act 95-194 of the Illinois General Assembly, effective January 1, 2008, to amend Section 3 of the County Shelter Care and Detention Home Act (55 ILCS 75/3). Through that legislation, the legislature transferred administrative control over the JTDC from Cook County to the Office of the Chief Judge (OCJ), the Respondent.

The OCJ’s Human Resource Administrator, Bruce Wisniewski, testified that the JTDC did not immediately come within the actual control of the Respondent because the TA ran the JTDC.

Chief Judge Evans's affidavit confirms this statement. Chief Judge Evans's affidavit provides that as of the date of the affidavit (October 20, 2014) no part of the JTDC's transition of operational control from Cook County to the Office of the Chief Judge had yet occurred. He stated that he had no control, supervision or oversight over the management, administrative, financial, contractual, personnel, security, housing, custodial, purchasing, maintenance, technology health services, mental health services, food and laundry service, recreation, educational, and programmatic functions relating to the operation of the JTDC.

4. The Respondent Invites the Union to Bargain a Contract

On February 4, 2008, Chief Judge Evans sent Union representative Aurelio Garcia a letter, referencing the legislature's amendment to the County Shelter Care and Detention Home Act and acknowledging its effective date, January 1, 2008. He stated that as of that date, he was authorized to appoint a superintendent of the JTDC and that, upon doing so, the Respondent Chief Judge would replace Cook County as the employer of all JTDC personnel. The letter stated the following in relevant part:

As you may know, Public Act 95-194 of the Illinois General Assembly, effective January 1, 2008, has amended Section 3 of the County Shelter Care and Detention Home Act (55 ILCS 75/3), so as to give my Office administrative control of the Cook County Juvenile Temporary Detention Center. The Act provides that, as of January 1, the Chief Judge is authorized to appoint an administrator to henceforth serve as the JTDC's Superintendent, and also "shall appoint all other necessary personnel of the" JTDC. 55 ILCS 75/3(b). I anticipate exercising this statutory authority in the very near future, and believe that when I do so, the Office of the Chief Judge effectively will become the employer of all JTDC personnel, replacing the County of Cook in that regard.

I am aware that Teamsters Local 714 represents a bargaining unit of Juvenile Detention Counselors and other employees of the JTDC under a labor agreement with Cook County that is effective through November 30, 2008. That agreement covers other, non-JTDC employees of Cook County. Please be assured that, upon replacing the County as the employer of JTDC personnel, I intended to recognize Teamsters Local 714 as the continuing representative of the subject bargaining unit. My Office is also prepared to immediately commence bargaining with the Union for the provisions of a new labor agreement, replacing the agreement with Cook County. I will not, however, simply adopt the existing agreement for the remainder of its duration for a variety of reasons, including that the existing Agreement covers other employees who will not become employees of my office, and I believe at least certain provisions of the agreement require negotiation and should not be continued as is.

Accordingly, I invite Teamsters Local 714 to contact Mr. Bruce Wisniewski at your earliest convenience to discuss arrangements for negotiating a new agreement with my Office covering the JTDC employees whom you represent.

When the Chief Judge sent this letter, he anticipated that the TA would shortly transfer control over the JTDC to the Office of the Chief Judge. No such swift transfer occurred.

5. The Respondent Negotiates with the Charging Party Union and AFSCME

Sometime after February 2008,⁵ the Respondent and the Union began negotiations for a collective bargaining agreement. The Respondent sought to negotiate a contract with the Teamsters that would take effect when the Respondent took over the facility from the TA. Wisniewski was the employer's representative throughout negotiations. Robert Bloch represented the Union. Union representative and Youth Development Specialist (YDS) George Sanchez was a member of the Union's bargaining team.⁶

The Respondent and the Teamsters met between 18 and 25 times for negotiations between 2008 and 2010. The Respondent asked the TA to attend meetings at the Union's request. The TA was present for approximately half of the meetings, to explain his reform efforts to the Union and the Respondent. During this time, the Respondent and the Union reached tentative agreements on their contract related to overtime, the preamble, and Article 1. However, negotiations ultimately broke down. The TA played a minimal role in negotiations. The TA did not have a role in approving the tentative agreements before the Respondent and the Union signed them.

In 2008, the Respondent also sought to bargain a contract with AFSCME, another representative of employees at the JTDC. Wisniewski testified that negotiations with AFSCME broke down because the parties could not agree on the contract's duration clause. The Respondent wanted the agreement to take effect when the Respondent took over operational control of the JTDC from the TA, while AFSCME wanted the agreement to have retroactive effect to 2008.

6. The TA Receives Court Approval to Suspend Provisions of the CBA between the Union and the County

⁵ Union Representative George Sanchez testified that negotiations began sometime in 2009.

⁶ In 20010, Sanchez assumed the position of Chief Union Steward.

On May 8, 2008, the TA received approval from the federal court to suspend certain provisions of the collective bargaining agreement between the Union and the County, including Section 4.11, relating to job postings and biddings. Specifically, the Court's Order provided the following:

The Court hereby suspends any and all laws of the State of Illinois and ordinances of the County of Cook that require compliance with any provisions of the Current Collective Bargaining Agreement ("CBA") between Cook County and the Union, as well as said provisions of the CBA itself, including Section 4.11 of the CBA, to the extent necessary and appropriate in the TA's judgment to provide adequate security and safe conditions at the JTDC.

The TA did not request a hearing before the Federal Court to suspend any other provisions of the 2004-2008 CBA between the Teamsters and the County.

7. The Respondent Defers Appointment of Superintendent and ILRB Amends the Certification to List the Respondent as the Employer of Teamsters-Represented JTDC Employees

Around June 30, 2008, the Chief Judge announced that he would defer appointment of a Superintendent to avoid interfering with the TA's mandate to implement programs and procedures intended to bring the JTDC into compliance with the MOA and the MIP.

On September 8, 2008, the County of Cook filed a Petition to Amend Certification with both the State and Local Panels of the Board in Case No. L-AC-09-001. It sought to "[a]mend [the] [c]ertification to name as Employer the Chief Judge of the Circuit Court of Cook County, in place of the County of Cook."

On December 23, 2008, the Board's Executive Director issued an Amendment to Certification in Case NO. L-CA-09-001. The amendment lists the Chief Judge of the Circuit Court of Cook County as Successor Employer to the County of Cook of JTDC employees represented by the Teamsters Local 714.

8. The TA Assumes Responsibility for Reviewing Third Step Grievances

On July 20, 2009, the TA sent a letter to Wisniewski. The letter stated that starting on September 1, 2009, the JTDC would be employing an updated grievance procedure that "more closely complie[d] with both the Teamsters Local 714 and AFSCME collective bargaining

agreements.” Specifically, the “JTDC [would] be enforcing all steps of the grievance procedures specified in the respective collective bargaining agreements.” In addition, the TA noted that, “[a]s the Office of the Chief Judge has not assumed operational control of the facility, the Office of the Transitional Administrator will hear all third step grievances.” Chief Judge Evans’s affidavit similarly states that the TA expressly informed the Chief Judge’s Human Resources Department that its input with regard to labor and employment relations was neither required nor permitted by the orders in place in the federal litigation.

On August 27, 2009, Wisniewski sent a letter to Union business agent Garcia that stated the following: “In the absence yet of an agreement covering the JTDC employees to which the Chief Judge [Respondent] is a party, and where the actions at issue have been taken by the Transitional Administrator rather than the Chief Judge, the Chief Judge will review each grievance forwarded by the Union which the Union seeks to arbitrate to identify the cases the Chief Judge agrees to arbitrate.” In that letter, the Respondent agreed to arbitrate four grievances, but refused to arbitrate another six grievances. It also withdrew its agreement to arbitrate three other grievances.

On September 10, 2009, Wisniewski sent Garcia a follow-up letter to his August 27, 2009 letter, noting that the Respondent had received additional requests to arbitrate grievances. It stated “these notices have been reviewed, and this is to inform you that the employer does not agree to arbitrate the following grievances.” The letter listed the names of three grievants. Wisniewski suggested that the Respondent had received all the grievances referenced in the September 10 letter prior to September 1, 2009, because he stated that the Respondent did not receive any more grievances after that date.

Beginning sometime in 2009, the TA refused to arbitrate all grievances, except for termination grievances. However, the TA followed the grievance procedure as outlined in the 2004-2008 agreement between the Teamsters and the County in all other respects.⁷

In late 2009 or early 2010, the TA mandated that grievances would proceed directly to the third step because only the OTA could make adjustments and changes to discipline, as it was the OTA that issued the discipline. TA Dunlap stated that the OTA never negotiated or signed off on the contracts with the Unions and that the authority granted to him by the federal court superseded

⁷ By agreement the TA and the Union changed some of the time limits for filing certain types of grievances.

the contracts. The TA told Burger that he, the TA, could ignore the collective bargaining agreement.

In Spring 2010, the TA appointed Bruce Burger to the position of Deputy TA and assigned him to conduct both pre-disciplinary meetings and the third step grievance hearings. The Union filed grievances over the assignment of overtime (Section 3.4), callback procedures (Section 3.6), employee rights investigative interview (Section 14.2), general disciplinary matters (Section 14.1), seniority provisions (Section 4.2), Holidays (Article 6), and Welfare benefits (Article 8). Burger granted grievances regarding overtime and callback procedures, but denied all other types of grievances. When Burger denied the grievances, he did so on the grounds that there was no contract violation.

Between 2010 and 2012, Chief Union Steward Sanchez attended approximately five labor management meetings with the TA on behalf of the Union.⁸ Article 2 of the 2004-2008 contract between the County and the Union requires labor management meetings. At these meetings, the TA complained that arbitrators were biased in favor of the union.

On March 1, 2012, Deputy Executive Director over Administrative and Legal Services, Teresa Abreu, drafted a letter on the TA's behalf that notified the union that the TA would no longer arbitrate any terminations. The TA signed the letter and sent it the Union representative Nathaniel Hall.

9. Additional Negotiations Between the Respondent and the Union

At the end of 2013 or the beginning of 2014, the Union and the Respondent recommenced negotiations for a collective bargaining agreement. They met approximately three or four times. Keven Camden was counsel for the Union. Wisniewski was chief spokesperson for the Respondent and Stuart Garbutt was counsel for the Respondent. Deputy TAs Welch and Burger were also present, but merely observed. In December 2013, the Union asked the OTA not to attend negotiations. Neither Wisniewski nor Garbutt ever informed the Union that they lacked authority to enter into an agreement with the Union. The parties again stopped negotiating because bargaining was unproductive.

⁸ Sanchez attended a total of approximately 40 labor management meetings since the Federal Court's appointment of the OTA.

10. Control Over Employee's Terms and Conditions of Employment During the TA's Tenure – A Summary

a. Wages

Cook County pays Union-represented employees at the JTDC. Sometime during the TA's tenure at the JTDC, the TA reclassified the Juvenile Detention Counselor (JDC) position to the position of Youth Development Specialist (YDS), which included a \$3000 increase in pay.

b. Hours, Overtime, and Shift Assignments

The TA had authority to assign overtime and to make or modify shift assignments. The TA's overtime and shift assignment process tracked Section 4.10 of the 2004-2008 CBA between the Teamsters and the County, which provides that seniority shall govern the selection over overtime assignments. Around 2009 or 2010, the TA changed the hours of the YDS position from eight hours a day to eight and a half hours.

c. Grievances

Starting in 2008, Keith Sevcik, an agent of the Respondent, heard third step grievances in the Respondent's office, but denied them all.

On August 29, 2009, the Respondent agreed to arbitrate grievances on a case by case basis. The Respondent maintained correspondence with the Union concerning case-by-case arbitration of grievances until September 10, 2009, but received no new grievances after September 1, 2009. The Respondent then arbitrated at least three of the grievances it agreed, during that time, to arbitrate. Although no employee from the Office of the Chief Judge attended the arbitrations, an Assistant State's Attorney litigated the case for the Respondent.

d. Discipline

The Respondent was not involved in imposing discipline until May 2015, after the federal court issued its concluding order in the Jimmy Doe case.

In April 2009, the TA hired Bruce Burger as a pre-disciplinary hearing officer.⁹ The purpose of pre-disciplinary hearings is to determine whether the employee violated the employer's policies or rules. Burger reviewed the disciplinary case and made a recommendation to the TA on the employee's discipline. The TA made the final decision on discipline.

e. Hiring

The TA hired an outside consultant to make recommendations on hiring. The TA made the final decision on all hires recommended by the consultant.

In cases where the TA sought to hire a high-level employee, such as a Deputy Executive Director, an individual from the Office of the Chief Judge sometimes participated on the interview panel.¹⁰ For lower-level employees, the individual from the Office of the Chief Judge merely observed. The TA made the final decision on all hires.

f. Rules and Policies

The Office of the Chief Judge played no role in the creation of policies at the JTDC between 2009 and 2012. The TA used the Modified Implementation Plan (MIP) created in the Jimmy Doe case, to develop policies and procedures. The JTDC's subject matter experts drafted policies based on the MIP, and the JTDC's legal counsel reviewed the policies. The TA made final decisions on whether to approve and adopt the policies. Members of the TA's office sometimes asked the Chief Judge's staff about existing policies. However, neither the TA nor his staff consulted with the Chief Judge regarding employment and personnel policies, or protocols that the TA established or followed at the JTDC.

a. The Premises

⁹ It is unclear who served as pre-disciplinary hearing officer prior to this date, although Burger had performed the job.

¹⁰ The TA hired JTDC General Counsel Teresa Abreu, but Abreu did not meet with Chief Judge Evans or one of his designees before the TA hired her. She also did not meet with the Chief Judge or any of his designees before the TA appointed her to the position of Acting Executive Director.

Cook County owns the building that the JTDC uses to house juvenile detainees, which is located at 1100 South Hamilton. JTDC employees have worked in the building since it was constructed in 1973.

b. The JTDC Budget

The County's budget year is December 1 to November 30. JTDC Deputy Executive Director Abreu was responsible for producing a draft budget for the JTDC. The TA had final approval over the proposed budget. Abreu then presented the JTDC's budget to the County Board Finance Committee on behalf of the TA, without the aid of the Chief Judge. The Office of the Chief Judge had no involvement in creating the budget for the JTDC. The Office of the Chief Judge played no role in Abreu's presentation to the County Commissioners on what she believed the budget should be.

11. Removal of the TA and Subsequent Actions of the Respondent

On May 15, 2015, Judge James F. Holderman issued a concluding order in the Jimmy Doe case. It provided that Earl Dunlap's appointment as TA would terminate effective May 20, 2015. It further provided that Dunlap would work as a Court Appointed Expert to the JTDC and perform on-site visits for three months after his termination of appointment.

On May 20, 2015, the Chief Judge appointed Leonard Dixon as Superintendent of the JTDC. Burger continued to hear third step grievances. After September 20, 2015, JTDC Superintendent Leonard Dixon delegated to Burger the authority to make final decisions on the grievances.

In late May or June 2015, the Respondent and the Union began negotiating again. No member of the OTA was present during these negotiations.

Sometime between May 20, 2015 and June 19, 2015, the Union submitted requests to the Respondent to arbitrate grievances.¹¹ On June 19, 2015, JTDC Superintendent Dixon, on behalf of the Chief Judge, sent the Union response letters that stated the following in relevant part: "Mr. Dixon/OCJ is a new employer and will not proceed with arbitrations until a Collective Bargaining

¹¹ The Chief Judge sent the same letter to other collective bargaining representatives of JTDC employees including AFSCME Local 1767 and AFSMCE Local 3696.

Agreement in signed between the Union and the OCJ.” The parties termed this letter a “waiver letter.” Dixon abided by the established grievance procedure that existed in the contract negotiated between the Union and the County in other respects. He simply refused to arbitrate grievances.

The parties reached an agreement on a contract in late April 2016, but did not yet execute it at the time.

On April 8, 2016, Union business representative Ramon Williams sent JTDC Labor Relations Analyst II Louise Akins a letter that requested to arbitrate five grievances “pursuant to the terms of the Collective Bargaining Agreement between Teamsters Local Union #700, the Chief Judge of Cook County, and the County of Cook.”

On April 12, 2016, Akins replied with an email directing the Union to see an attached letter from JTDC Superintendent Leonard Dixon to the Union, the same letter the Respondent first issued to Union on June 19, 2015, which stated that the Respondent refused to arbitrate the grievances.

The Union made similar demands to arbitrate other grievances on May 10 and 26, and on June 24, 2016. Akins responded with the same June 19, 2015 letter, and similarly refused to arbitrate these grievances. Six of the grievances listed in the May 10 request were filed in 2016, as indicated by the grievances’ numbers. The first two digits of the grievance number are “16,” and Sanchez testified that these initial numbers indicate the year in which the grievant initiated the grievance. However, it is unclear whether the grievances filed in 2015 were filed before or after the TA’s removal.

On July 25, 2016, the parties executed the agreement they reached in April 2016. The parties did not incorporate into their contract the tentative agreements they had reached between 2008 and 2010.

On August 10, and August 31, 2016, the Union representative Williams sent JTDC Labor Relations Analyst II Akins letters requesting to arbitrate specific grievances. Akins responded to each request by send the Union a copy of the waiver letter, which stated that the Chief Judge refused to arbitrate the grievances. All the grievances the Union requested to arbitrate concerned grievances filed prior to July 25, 2016, the date on which the parties executed their collective bargaining agreement.

The Respondent agreed to arbitrate one grievance, regarding employee Cheryl Ash, even though the Union filed it in March 2016, before the parties executed their agreement. JTDC General Counsel Zenaida Alonzo testified that Superintendent Dixon was willing to arbitrate any

decisions he made after May 15, 2015, when he took operational control. However, Sanchez testified that Labor Relations Analyst II Akins informed him that the Chief Judge would only arbitrate those grievances initiated after July 25, 2016, the date on which the parties executed their agreement.

IV. DISCUSSION AND ANALYSIS

1. Respondent's Alleged Refusal to Arbitrate Grievances during the TA's Tenure

The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it refused to arbitrate all but select grievances, in August or September of 2009. The Respondent also did not violate Sections 10(a)(4) and (1) Act when the TA refused to arbitrate all grievances on March 1, 2012.¹²

The Respondent did not have control over Union members' terms and conditions of employment at the time of the alleged misconduct and therefore cannot be held liable under the Act for a refusal to bargain in good faith. Judicial and labor board decisions demonstrate that an entity's exercise of control over employees' terms and conditions of employment is a threshold requirement to finding it liable for violations of the Act. Am. Fed'n of State, County & Mun. Employees, Council 31 v. State Labor Relations Bd. ("Wexford"), 216 Ill. 2d 569, 579 (2005)(DOC could not be held liable for retaliatory discharge where it exercised no control over its contractor's employees); County of Will v. Illinois State Labor Relations Bd., 220 Ill. App. 3d 62, 65 (3d Dist. 1991)(Will County Board's refusal to negotiate violated the Act where it exercised control over employees' wages by virtue of its exclusive control over County Executive's funding); Kane County v. Illinois State Labor Relations Bd., 165 Ill. App. 3d 614, 623 (2d Dist. 1988) (County's refusal to bargain violated the Act where it shared control with the Sheriff over Sheriff employees' wages, hours and working conditions); see also City of Cortland, 29 NYPER ¶ 3037 (NY PERB 1996) (employer had no duty to bargain over the creation or continuing maintenance of civil service lists or the scheduling of civil service examinations where those

¹² The Union also contends that the TA refused to arbitrate all but termination grievances in 2009, but the complaint contains no such allegation, and the Union did not move to amend the complaint to include it. Moreover, any attempt to amend the complaint to add this allegation would be properly denied because the evidence presented in this case indicates that the claim is untimely. An ALJ may not amend a complaint if the allegations are untimely and outside the six-month limitation period, even if the other requirements for amendment are met. Vill. of Glenwood, 32 PERI ¶ 159 (IL LRB-SP 2016); Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004). Here, the Union contends that the TA refused to arbitrate all but termination grievances beginning in 2009, but the Union filed its first charge over a year later, on February 26, 2010.

matters were within the jurisdiction of the appropriate civil service commission acting pursuant to requirements of the Civil Service Law); Lamont's Apparel, Inc., 268 NLRB 1332 (1984) (employers cannot be expected to bargain concerning third-party changes over which those employers have no control or influence).

Notably, under the unique facts of this case, it is more accurate to label the Respondent's control a prerequisite to imposing liability than a prerequisite to finding that the Respondent is an employer (or, alternatively, a joint employer with the TA). The Respondent has been listed on the Board's certification as an employer of union members at the JTDC since December 23, 2008, and no legal finding in this unfair labor practice case could change that designation.¹³ Yet, the federal court also appointed the TA, an agent of the court, to run operations and to bring the JTDC into compliance with the Jimmy Doe settlement agreement. See supra. Accordingly, the threshold question presented in this case is whether the Respondent exercised control over employees' terms and conditions of employment, that in other cases would be presumed by virtue of the Board's certification. As discussed below, it did not.

There is insufficient evidence that the Respondent exercised control over employees' terms and conditions of employment in August 2009, when the first alleged instance of misconduct occurred, or at any time thereafter until the TA's removal on May 20, 2015.¹⁴ First, the Office of the TA, and employees hired by the TA, performed the actual day-to-day supervision and direction of employees on the job.

In addition, the Respondent exercised no control over the recruitment or selection of bargaining unit employees. Instead, the TA engaged an outside consultant to make recommendations on hiring and made the final decision on all candidates recommended by the consultant. The Respondent's participation on interview panels for high-level JTDC employees does not demonstrate that the Respondent exercised control over of bargaining unit members' terms and conditions of employment where the Respondent exercised no control over the hiring of employees into bargaining unit positions.

¹³ Parties must use the Board's representation procedures to change Board certifications. 80 Ill. Adm. Code 1210.10 & 1210.180(a) (addressing means to amend a certification).

¹⁴ See Case No. S-CA-10-213 (alleging refusing to arbitrate beginning in late August, 2009).

Furthermore, the Respondent exercised no control over the JTDC's draft budget. Rather, the TA exercised exclusive control over creating a draft budget for the JTDC, and the Respondent did not participate in creating it or presenting it to the County Board Finance Committee.

Next, there is insufficient evidence that the Respondent exercised control over employees' hours or assignments. Rather, the TA assigned overtime and made decisions to make and modify shift assignments. In fact, the TA even changed the hours of the Union-represented Youth Development Specialist position from eight hours a day to eight and a half hours a day.

There is also insufficient evidence that the Respondent exercised control over the policies that governed the workplace. Instead, the TA made the final decision on JTDC employment/personnel policies, and he did not consult the Respondent or the Respondent's staffing in creating them.

There is likewise insufficient evidence that the Respondent exercised control over employees' wages. The County pays the JTDC employees' wages, and the TA made changes to the wages that position holders earned by reclassifying their positions. For example, the TA reclassified the Union-represented Juvenile Detention Counselor (JDC) position to the position of Youth Development Specialist (YDS), and thereby increased the position holders pay by \$3000.

Finally, there is insufficient evidence that the Respondent exercised control over employee discipline at any time relevant to the allegations in the complaints. The first alleged instance of misconduct occurred in late August 2009, but the TA had assumed final decision-making authority on disciplinary matters months earlier, in April 2009.

Contrary to the Union's claim, the Respondent's review of third step grievances in August 2009, and its decision to arbitrate some of them, does not demonstrate that the Respondent exercised control over employees' terms and conditions of employment. There is no indication that the Respondent had authority to reverse the TA's actions. The Union points to no case in which the Respondent countermanded the TA's employment decisions. There is also no indication that the Respondent had authority to implement any remedy ordered by an arbitrator, without the TA's consent. While some grievants regained their employment with the JTDC following the Respondent's arbitration of their grievances, the Union has not proven that it was the Respondent, rather than the TA, that reinstated them.

Moreover, the court orders and the TA's later directives to the Respondent-Chief Judge strongly indicate that the TA had final authority on employment-related matters, irrespective of

the Respondent's early involvement in the grievance/discipline process. The order that appointed the TA gave him "[a]ll powers relating to the operation of the JTDC" and further specified that the Chief Judge would take over operation control of the JTDC only when the TA deemed it appropriate. The court acknowledged that the legislature planned to transfer administrative authority over the JTDC from the County to the Chief Judge, but specified that such legislation would not remove the TA's authority over operations or automatically transfer it to the Chief Judge. Rather, it simply triggered the TA's duty to determine if any function of the JTDC could be transitioned to the Chief Judge and administered in accordance with the terms of the settlement agreement. Until the TA made such a determination to transfer control, he retained all those powers "which in usual circumstances, are exercised by the Superintendent of the JTDC," including the "the power to establish personnel policies; to create, abolish, or transfer positions; and to hire, terminate, promote, transfer, and evaluate management and staff of the JTDC."

The TA enforced his control over the workplace in communications with the Chief Judge. He informed the Chief Judge's Human Resources Department that its input with regard to labor and employment relations was neither required nor permitted by the orders in place in the federal litigation. In fact, by letter of July 20, 2009, the TA assumed the function of reviewing third step grievances as of September 1, 2009—previously performed by the Chief Judge—on the grounds that "the Office of the Chief Judge ha[d] not assumed operational control of the facility." Thus, although the Chief Judge may have initially operated under the assumption that he possessed some control over employees' terms and conditions of employment, and the TA corrected the Chief Judge's misapprehension.

Similarly, the Respondent did not exercise control over employees' terms and conditions of employment by bargaining with the Union during the TA's tenure because the Respondent never entered into an agreement that took effect during that time. The Illinois Supreme Court has made clear that an entity's theoretical control over employees' terms and conditions of employment is not relevant to the question of whether an entity is liable for an unfair labor practice—only the actual exercise of control matters. Wexford, 216 Ill. 2d at 578-580 (applying joint employer analysis).¹⁵ Here, the Respondent admittedly could have exercised such control, had it entered

¹⁵ The NLRB applies a different test than Illinois to assess liability based joint employer status, but it is in conflict with Illinois Supreme Court precedent, and Illinois law controls. Cf. Browning-Ferris Industries of California, Inc., 362 NLRB No. 186, 2 (2015) (possession of authority to control employees' terms and

into a binding agreement with the Union during the TA's tenure because the TA would have been obligated to follow that agreement unless it obtained relief from the Court.¹⁶ Yet, the Respondent did not enter into an agreement that would take effect during that time, and it even declined to appoint a superintendent until after the TA's removal. Indeed, it expressly refused to accept proposals, made by other unions, for collective bargaining agreements that would take effect while the TA exercised control.

Notably, this case is distinguishable from those in which the courts have imposed liability on an entity, where it was necessary for the creation of an effective bargaining relationship, but refused to bargain. In those cases, the entity exercised present control over employees' terms and conditions of employment, whereas the Respondent here disengaged from the employment relationship during the TA's tenure and exercised no such control. Cf. City of Rockford v. Illinois State Labor Relations Bd., 158 Ill. App. 3d 166, 173 (2d Dist. 1987) (City was liable for refusing to bargain in good faith with union representing library employees where City's "past and present role" in funding the library rendered City's presence in bargaining "necessary for creation of effective bargaining relationship").

The Respondent also did not exercise control over employees' terms and conditions of employment through the TA's actions because the TA was not an agent of the Respondent. "The primary consideration in determining whether an entity is acting as an agent is the nature and degree of control exercised over the work being performed." Dumas v. Lloyd, 6 Ill. App. 3d 1026, 1029 (1st Dist. 1972). Furthermore, "the relationship of principal and agent exists if the principal has the right or the duty to supervise and control, and also has the right to terminate the relationship at any time." Id. citing Hulke v. International Manufacturing, 14 Ill. App. 2d 5, 33 (2d Dist. 1957)." Here, TA was not an agent of the Respondent because (1) the Respondent could not unilaterally terminate its relationship with the TA, who was appointed by the federal court pursuant to a settlement agreement; (2) the Respondent had no right or duty to supervise or control the TA, as the court orders make clear; and (3) the court order that appointed the TA expressly stated that the

conditions of employment is sufficient for imposing liability on entity as a joint employer; exercise of that authority not required).

¹⁶ See Judge James F. Holderman's May 29, 2009 Order, ¶ 5. ("Nothing in this Order limits Local 714 or the Chief Judge of the Circuit Court of Cook County from making proposals for a labor agreement, or from entering into a labor agreement, which may conflict with or require adjustments in the above terms; nor does this Order restrict the TA from seeking relief from such labor agreement terms with this Court.")

TA was the District Court's agent, and necessarily therefore not the agent of the Respondent. See Countiss Perkins, 29 PERI ¶ 34 (Board affirmed ALJ's analysis finding the TA was not an agent of the Chief Judge, but remanded for hearing on other grounds). Notably, none of the Chief Judge's statements, made in press releases or letters to the Union, bear on this agency analysis because the Chief Judge's statements could not alter the court orders, which set forth the TA's authority and status as agent of the court.¹⁷

The Union observes that the National Labor Relations Board construes definitions of agency more liberally than the common law, but that broader construction does not apply here. Labor decisions in the federal sector impose a more liberal construction of agency law because the National Labor Relations Act mandates it, but there is no corresponding mandate in the Illinois Public Labor Relations Act. Compare 29 U.S.C. §§ 152 (13)¹⁸ and 5 ILCS 315; cf. N.L.R.B. v. Georgetown Dress Corp., 537 F.2d 1239, 1244 (4th Cir. 1976) (considering union's liability for misconduct of employee organizers, who received no compensation from the union).

Contrary to the Union's contention, the Respondent's right to object to the TA's decisions regarding the JTDC's administration does not create an agency relationship because the Respondent's right to object was not coupled with any right of control.¹⁹ Indeed, the Court was the sole arbiter of the TA's conduct, and any objection to the TA's conduct by the Respondent would have carried no weight absent a supporting decision by the Court.

In addition, there is no merit to the Union's claim that the TA was "cloaked with the Respondent's authority" by the legislature's amendment to the Shelter Care and Detention Act. The Shelter Care and Detention Act did not grant the Respondent control over the TA. It simply transferred administrative responsibility over the JTDC from the County to the Respondent. More importantly, the August 14, 2007, court order appointing the TA delayed transfer of control over the JTDC from the County to the Chief Judge, and it conferred upon the TA the authority to determine the means and methods of that transfer.

¹⁷ There is no question that the Union was fully aware of these orders.

¹⁸ "In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 29 U.S.C. §§ 152 (13).

¹⁹ The Union also contends that the Respondent had a right to intervene in the TA's actions, but it does not offer support for this claim.

Finally, the Union’s vicarious liability arguments are inapplicable in the absence of evidence that the Respondent exercised any control over the TA. For a charging party to hold a respondent vicariously liable under the doctrine of *respondeat superior*, the charging party must establish that the respondent’s relationship to the wrongdoer is one of principal to agent, master to servant, or employer to employee. Moy v. County of Cook, 159 Ill. 2d 519, 523 (1994). These terms are sometimes used interchangeably.²⁰ “Critical to the determination of a master-servant relationship is the existence of the right to control, which includes the power of discharge.” Moy, 159 Ill. 2d at 523. As discussed above, the Respondent had no such control over the TA, the decision-maker in 2012. The fact that the Respondent may have approved of the TA’s conduct or benefited from it is immaterial to the question of vicarious liability. Id. at 523.

In sum, the Respondent cannot be held liable for its August 2009 refusal to arbitrate certain grievances or the TA’s 2012 refusal to arbitrate all grievances. The Respondent did not exercise control over employees’ terms and conditions of employment during the time of the alleged misconduct and it cannot be held liable for the TA’s actions under principles of agency.

2. Motion to Amend the Complaint

The Union’s motion to amend the complaint is granted. Accordingly, the complaint now includes the allegation that the Respondent repudiated its collective bargaining obligation, in violation of Sections 10(a)(4) and (1) of the Act, by refusing to arbitrate grievances that arose after the TA’s removal but before the parties executed their agreement.²¹

The Act gives administrative law judges broad discretion to amend complaints. Section 11(a) provides, in relevant part: “Any such complaint may be amended by the member or hearing officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon.” The Board’s case law is more specific, allowing for the amendment of complaints in two distinct instances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely

²⁰ Moy, 159 Ill. 2d at 523 (“although words ‘agent’ and ‘servant’ are not wholly synonymous, there is no basic distinction between liability of principal for tort of agent and liability of master for tort of servant”).

²¹ This is my interpretation of the Union’s motion, which appears to focus on the grievances’ filing date.

related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. Chicago Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998); City of Chicago (Chicago Police Dep't), 12 PERI ¶ 3013 (IL LLRB 1996); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Cnty. of Cook, 5 PERI ¶ 3002 (IL LLRB 1988).

Here, the complaint is properly amended to add the allegation that the Respondent repudiated its collective bargaining obligation by refusing to arbitrate grievances that arose after the TA's removal but before the parties executed their agreement because this allegation is closely related to the charged allegations. To assess whether the new allegations are closely related to allegations contained in the original complaint, the Board looks to (1) whether the new allegations are of the same class as the violations alleged in the original complaint; and (2) whether the respondent would raise same or similar defenses to both allegations, and thus whether it would have preserved similar evidence and prepared a similar case in defending against the new allegations. Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019.

In this case, the uncharged allegations are of the same class as the violations alleged in the original complaint because all the allegations claim that the Respondent repudiated its collective bargaining obligation by refusing to arbitrate grievances. The amendment simply focuses on the Respondent's refusal to arbitrate grievances that arose after the Transitional Administrator's tenure, whereas the allegations in the complaints focus on the Respondent's refusal to arbitrate grievances that arose during the Transitional Administrator's tenure. The Respondent raises similar defense to both allegations: (i) the Respondent-Chief Judge was not a successor employer to the County, with which the Union had a binding collective bargaining agreement, and (ii) that the Respondent had no obligation to arbitrate where the Transitional Administrator previously exercised exclusive control over the workplace and changed employees' terms and conditions of employment from those set forth in the contract.

Notably, the Respondent is not unfairly prejudiced by consideration of this proposed amendment because the Respondent presented evidence in defense of it at hearing and thoroughly addressed the matter in its post-hearing brief. Chicago Park Dist., 15 PERI ¶ 3017 (considering proposed amendment on similar grounds).

Thus, the Complaints are amended to include the allegation that the Respondent violated Sections 10(a)(4) and (1) of the Act when it repudiated its collective bargaining obligation by

refusing to arbitrate grievances that arose after the TA's removal but before the parties executed their agreement.²²

3. Alleged Repudiation Based on Respondent's Refusal to Arbitrate Grievances After the Transitional Administrator's Removal

The Respondent repudiated its collective bargaining obligation by refusing to arbitrate grievances that arose after the Transitional Administrator's removal on May 20, 2015, and before the parties executed their collective bargaining agreement on July 25, 2016. The Respondent-Chief Judge had an obligation to arbitrate grievances filed by the Union after the TA's removal because the Respondent was a successor employer to Cook County and was bound by the agreement between the Teamsters and the County.

An employer and the exclusive representative of its public employees have the duty to bargain collectively regarding employees' wages, hours and other conditions of employment—the “mandatory” subjects of bargaining. City of Decatur v. Am. Fed. of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-62 (1988); Am. Fed. of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 264 (1st Dist. 1989); Ill. Dep't of Cent. Mgmt Serv., 17 PERI ¶ 2046 (IL LRB-SP 2001); Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). Accordingly, an employer violates Section 10(a)(4) of the Act when it “refuses 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). An employer's refusal to arbitrate all grievances represents a wholesale repudiation of its duty to bargain, provided that the employer in fact has a duty to arbitrate. Vill. of Lisle, 19 PERI ¶ 132 (IL LRB-SP 2003) (employer's claim, that it was bound by the arbitration provisions contained in expired contract following certification of a new representative, constituted repudiation).

The Illinois Supreme Court has recognized that public policy favors the arbitration process for resolving employment disputes between labor and management. City of Decatur, 122 Ill. 2d at 366; see also 5 ILCS 315/8 (requiring all contracts to include grievance arbitration provisions, unless the parties mutually agree otherwise). The United States Supreme Court has similarly recognized the importance of arbitration in private-sector labor relations. John Wiley & Sons, Inc.

²² The Union does not allege that the Respondent refused to arbitrate grievances that arose after the parties executed their contract on July 25, 2016.

v. Livingston, 376 U.S. 543, 549 (1964); United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

In furtherance of this policy, the United States Supreme Court has held that a successor employer will be required to arbitrate grievances under the agreement reached by its predecessor, where the business entity remains the same. John Wiley & Sons, Inc., 376 U.S. at 549-50. Notably, the Illinois Appellate Court relied on Wiley & Sons in support of a related finding, where one of the contracting parties changed. Thompson v. Policemen's Benevolent Labor Comm., 2012 IL App (3d) 110926 (employer was bound to arbitrate grievances arising from agreement it negotiated with a prior bargaining representative, even though unit members had subsequently selected a new representative).

Here, the Board's certification in Case No. L-AC-09-001 demonstrates that the Respondent was a successor employer to the County. The Board's Executive Director issued an Amendment to Certification on December 23, 2008 (Case No. L-AC-09-001) that identifies the Chief Judge as the successor Employer to the County of employees in the Teamsters-represented unit at the JTDC, at issue here.²³ Notably, the Executive Director issued this Amendment in response to the County's petition, filed September 8, 2008, which sought to "name as Employer the Chief Judge of the Circuit Court of Cook County, in place of the County of Cook." The petition indicated that the business enterprise remained the same in all but name because it noted that the legislature had simply transferred responsibility for the JTDC from the President of the Cook County board to the Chief Judge of the Circuit Court of Cook County, "making the Chief Judge the employer of the employees." Accordingly, there is no question that the Chief Judge was a successor employer to the County.

The TA's earlier exercise of control over JTDC employees' terms and conditions of employment, between August 14, 2007 and May 20, 2015, does not change the fact that the Respondent became a successor employer to the County on December 23, 2008, upon issuance of the Board's Amendment to Certification. The TA's exercise of control simply precludes a finding that the Respondent committed an unfair labor practice by refusing to arbitrate grievances while

²³ This amendment noted that the unit description was set forth in Case No. L-UC-09-002, which changed the composition of the bargaining unit to include only employees of the JTDC.

the TA exercised exclusive control over the workplace. It is unnecessary to address whether there was “substantial continuity of identity of the business enterprise,” to determine whether the Chief Judge was a successor to the County. Indeed, the Respondent has cited no case in which either the ILRB or the NLRB have considered the question of “substantial continuity” where there is a certification in place that lists the employer as a successor, as in this case.

Second, the Respondent was bound by the collective bargaining agreement between the County and the Union because that agreement remained in effect until the Union and the Respondent executed a new one. The terms of the contract set forth the manner in which the parties could terminate it, and neither party terminated the contract according to those contractual requirements. The contract provides that the agreement automatically renews from year to year unless “either party gives written notice to the other no less than ninety calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify or terminate [the] Agreement.” It further provides that once the parties give written notice of an intent to modify the agreement, the expired agreement remains in effect until a new agreement is reached or the other party gives five days written notice of its cancellation. Here, neither party to the contract gave such notice of intent to cancel the agreement in lieu of its continuation, prior to the execution of a new contract.²⁴ Accordingly, the 2004-2008 agreement between the County and the Union remained in effect until the successor employer, Respondent-Chief Judge, executed a new contract with the Union. Thompson v. Policemen's Benevolent Labor Comm., 2012 IL App (3d) 110926 (relying on language of contract to determine whether employer remained bound by it after employees selected a different union to represent them).

Contrary to the Respondent’s contention, the TA’s actions did not nullify that contract. Indeed, District court orders, issued after the stated expiration date of the contract (November 30, 2008) acknowledged that the contract remained in effect, even though some of the orders carved out exceptions to the application of certain terms. Judge Holderman’s March 12, 2009, order emphasized that his prior order did not “suspend...any laws or ordinances requiring compliance with provisions of the CBA involving employee discipline or discharge arising from alleged abuse,

²⁴ The record contains a February 4, 2008 letter from Chief Judge Evans to the Union, in which he expresses a desire to bargain a new contract and states that he will not adopt the County’s agreement for the remainder of its term. However, the Respondent does not argue on brief that this letter satisfies the requirements for termination/cancellation of the contract. Furthermore, Respondent witness Teresa Abreu testified that neither party to the contract gave notice of intent to terminate it.

neglect, or similar misconduct.” Moreover, when Judge Holderman approved a staffing plan that proposed to terminate unit members and require them to reapply under heightened selection criteria, the Seventh Circuit reversed his order as contrary to state labor laws and the “*existing collective bargaining agreement*.” *Doe*, 798 F.3d at 566, 567 (emphasis added). Had the TA’s changes voided or terminated the CBA, as the Respondent now contends, the Seventh Circuit would not have noted that the agreement was still in force.

Third, the Respondent repudiated its collective bargaining obligation by refusing to arbitrate grievances that arose after the TA’s removal but before the parties executed their agreement. The grievance numbers listed in the Union’s May 10, 2016 request (e.g., 16-JUV-01) show that at least some of them arose after the TA’s removal on May 20, 2015. Sanchez confirmed that the Union filed them before July 25, 2016, the agreement’s execution. Furthermore, the Respondent issued letters to all the Union’s requests, explaining that it would not proceed with any arbitrations on the grounds that the Chief Judge was a new employer, that there was yet no collective bargaining agreement between the Chief Judge and the Union.

There is no merit to the Respondent’s claim that it acted lawfully because it only refused to arbitrate those grievances that concerned decisions made by the Transitional Administrator. As a threshold matter, the Respondent’s refusal to arbitrate was not limited to decisions made by the TA, as it claims on brief. Rather, the Respondent broadly stated that it would not arbitrate any grievances: “Mr. Dixon/OCJ is a new employer and will not proceed with arbitration until a Collective Bargaining Agreement is signed between the Union and the OCJ.” Although General Counsel Zenaida Alonzo testified that Superintendent Dixon was willing to arbitrate decisions he made himself, Union Representative Sanchez credibly testified to the contrary. He stated that Labor Relations Analyst II Akins informed him that the Respondent would only arbitrate those grievances initiated after July 25, 2016, the date on which the parties executed their agreement.²⁵

²⁵ The Respondent argues that Akins’s statement is inadmissible hearsay, but the Respondent’s objection is untimely. “It is well settled that an objection to the admission of evidence, to be timely, must be made at the time the evidence is introduced.” *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 112 (1st Dist. 1990). Here, the Respondent did not object to the admission of the disputed statement at hearing, when Sanchez offered it.

Moreover, even if the Board were to consider the objection, it lacks merit because Akins’s statement is an admission by a party opponent, and not hearsay. A statement is not hearsay if “[t]he statement is offered against a party and is * * * a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship.” Ill. R. Evid. 801(d)(2)(D). Here, Akins is a member of management. She is a labor relations analyst who gave

There is no indication that Akins qualified this refusal to arbitrate with the assertion that the Chief Judge would agree to arbitrate those grievances that arose from the decisions made by the Chief Judge. Notably, Sanchez's testimony carries particular weight because it accords with the position taken by the Respondent in writing, and tendered to the Union repeatedly, each time the Union sought to arbitrate grievances after the Respondent assumed control over the JTDC.

Moreover, the Respondent's refusal to arbitrate grievances that arose after the TA's removal would be unlawful irrespective of whether the grievances arose from actions taken by the Respondent or by the TA. The Respondent indisputably exercised exclusive control over employees' terms and conditions of employment when the grievances arose, and the Respondent offers insufficient legal support for its claim that it could not review or remedy grievances arising from the TA's actions.

The Respondent suggests that its refusal to arbitrate does not violate the Act because the TA's permanent changes to employees' terms and conditions of employment render these grievances inarbitrable. However, this is an argument that raises questions of substantive arbitrability, unique to each grievance, which are more properly presented to the court upon review of the award. Elkouri & Elkouri, *How Arbitration Works*, 278-80 (6th ed. 2003).

The Respondent also notes that it did arbitrate one grievance filed after TA's removal, and before the parties executed their agreement, but one agreement to arbitrate does not nullify its unlawful refusal to arbitrate all the others on the stated rationale that it had no legal obligation to do so.

In sum, the Respondent violated Sections 10(a)(4) and (1) of the Act when it refused to arbitrate grievances that arose after the TA's removal but before the parties executed a collective bargaining agreement that replaced the Union's agreement with the County.

V. CONCLUSIONS OF LAW

1. The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it refused to arbitrate all but select grievances, while the TA controlled the JTDC.

the Union notice of the Respondent's refusals to arbitrate grievances, filed by the Union after the TA's removal. Furthermore, she made the identified statement within the scope of her employment, because she was the agent responsible for informing the Union of the Respondent's decisions concerning the arbitration of grievances.

2. The Respondent did not violate Sections 10(a)(4) and (1) of the Act when the TA refused to arbitrate all grievances in March 2012.
3. The Respondent repudiated its collective bargaining obligation, in violation of Sections 10(a)(4) and (1) of the Act, by refusing to arbitrate grievances that arose after the TA's removal and before the parties executed their collective bargaining agreement.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Chief Judge of the Circuit Court of Cook County its officers and agents shall:

1. Cease and desist from:
 - a. Refusing to arbitrate grievances filed by the Union between May 20, 2015 and July 25, 2016, that the Union requested to arbitrate.
 - 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. Arbitrate grievances filed by the Union between May 20, 2015 and July 25, 2016, that the Union requested to arbitrate.
 - b. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
 - c. Notify the Board in writing, within 20 days from the date of this Decision, of the 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 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 of 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 1st day of August, 2017

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**