

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

Chicago Regional Council of Carpenters,	)	
Local 790,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-14-095
and	)	
	)	
Carroll County Circuit Clerk,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 4, 2013, the Chicago Regional Council of Carpenters, Local 790 (Charging Party) filed a charge in Case No. S-CA-14-095 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Carroll County Circuit Clerk (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(1) and (4) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Board’s Executive Director issued a Complaint for Hearing on January 29, 2014.

The case was heard on July 15, 2014 by the undersigned administrative law judge after the parties attempted to mediate the dispute with a Board mediator. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Later, written briefs were timely filed on behalf of both parties. 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

1. The parties stipulate and I find that, at all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate and I find that, at all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
3. The parties stipulate and I find that, at all times material, the Charging Party has represented a bargaining unit comprised of some of the Respondent's employees.
4. The parties stipulate and I find that, at all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement (CBA) setting forth the terms and conditions of employment for employees in the unit with a term of December 1, 2010 to November 30, 2013.
5. The parties stipulate and I find that, from December 3, 2013 to December 9, 2013, the employees represented by the Charging Party were on strike.

II. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Respondent failed to bargain in good faith with the Charging Party in violation of Sections 10(a)(1) and (4) of the Act when the Respondent did not respond to the Charging Party's demand to bargain until after the strike had occurred. The Respondent denies that allegation.¹

¹ In its post-hearing brief, the Respondent also contends that the Charging Party violated the parties' CBA and the Act when it induced its employees to strike. However, those particular contentions need not be addressed by the Board, as they are not encompassed by the Complaint for Hearing (which I decline to amend sua sponte) and the Board is generally not responsible for enforcing parties' contracts. Illinois Office of the Comptroller, 30 PERI ¶282 (IL LRB-SP 2014).

III. FINDINGS OF FACT

Sherri Miller has been the Carroll County Circuit Clerk since she was elected in 1996. The Charging Party represents a bargaining unit of the three Carroll County Circuit Clerk employees who report to Miller as well as a separate unit of Carroll County employees who are overseen by the Carroll County Board. Miller has negotiated several CBAs with the Charging Party since 2000, and during all of the parties' negotiations the Charging Party has been represented by Zachary Ross, the Charging Party's business representative since 1997.

On March 22, 2013, Carroll County State's Attorney Scott Brinkmeier, Miller's legal representative, sent Ross a letter. In the letter, Brinkmeier indicated that in light of a prior incident in Miller's office Miller would not be meeting with Ross without a prescheduled appointment. Brinkmeier's letter also stated that if Ross believed Miller was not complying with a specific provision of the CBA Ross should contact Brinkmeier directly.

On August 1, 2013, the Charging Party sent Miller a "shop agreement letter" by mail. In it, the Charging Party notified Miller of the Charging Party's "intent to modify and/or amend" the CBA and asked Miller to give Ross available dates to meet and negotiate. The letter also included a "notice to mediation agencies." In the past, Miller has always received a nearly identical shop agreement letter and notice when each CBA's term was ending.

Miller did not contact Ross to set up negotiations. Instead, Miller took the August 1, 2013 shop agreement letter to Brinkmeier, who told Miller that the letter indicated that the Charging Party was informing her that contract negotiations were approaching and that the Charging Party would be sending her a draft CBA. According to Miller, after receiving each of the prior shop agreement letters, she did not contact the Charging Party and instead simply waited for the Charging Party to present her with a proposal or a draft CBA.

In the middle of September of 2013, Brinkmeier spoke with Ross on the phone. According to Ross, Ross asked Brinkmeier to let Ross know if Brinkmeier heard anything from Miller regarding negotiations. Later, Ross allegedly spoke with Carroll County Administrator Michael Doty, who purportedly had not heard anything about the Carroll County Circuit Clerk's contract from Miller. At the time, Doty was negotiating separately with the Charging Party on behalf of Carroll County.

In an October 1, 2013 e-mail, Miller asked Doty for the total amount Carroll County's general fund would be granting her for raises. Doty responded later that day, indicating that Carroll County was in negotiations with the Charging Party at the time, would be presenting the Charging Party Carroll County's offer in mid-October, and would give Miller the figure after Carroll County and the Charging Party reached an agreement.

On October 16, 2013, Ross sent Miller a letter threatening to pursue a grievance and file an unfair labor practice charge because the Respondent had allegedly installed surveillance equipment on union members' computers. The letter also asserted that Miller had "a duty to bargain collectively over any matter with respect to wages, hours, and other conditions of employment not specifically provided for in any other law or not specifically in violations of the provisions of any law." It did not specifically mention contract negotiations or Ross' prior request.

On November 20, 2013, Ross sent Miller a five-day notice of intent to strike. Miller received the notice and notified Brinkmeier. On November 21 and 22, 2013, Brinkmeier telephoned Ross and left messages on Ross's answering machine asking Ross to call Brinkmeier "at the earliest convenience." On November 25, 2013, Brinkmeier also sent Ross an e-mail message asking Ross to call Brinkmeier and discuss the notice of intent to strike. Ross did not

respond to any of Brinkmeier's communications. Additionally, Ross did not provide the Respondent with a proposal or draft CBA after the Charging Party ratified its contract with Carroll County.

The parties' CBA "expired" on November 30, 2013.² On December 2, 2013, Miller's employees went on strike. The next day, Brinkmeier approached Ross in person and asked Ross what needed to be done to address the strike. Ross directed Brinkmeier to contact Owen Dratler, another attorney for the Respondent. As noted above, the Charging Party filed an unfair labor practice charge with the Board on December 4, 2013.

The strike ultimately ended when Brinkmeier informed Ross that he had contacted Dratler, who wanted to initiate negotiations with the Charging Party. The parties' representatives subsequently met to negotiate a successor CBA on December 10, 2013. According to Ross, the parties reached an impasse at that time. Miller's employees went back to work on December 11, 2013, after Ross was allegedly informed by Dratler that the unit could work under an extension of the CBA. On December 12, 2013, Dratler sent a letter to the Federal Mediation and Conciliation Services requesting a mediator's assistance. A successor CBA was later executed on February 19, 2014.

IV. DISCUSSION AND ANALYSIS

As noted, the Complaint for Hearing alleges that the Respondent violated Sections 10(a)(1) and (4) of the Act. Section 10(a)(1) provides in relevant part that an employer may not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in the Act or dominate or interfere with the formation, existence, or administration of a labor organization.

² Around this period, the parties were governed by a CBA that ran from December 1, 2010 through November 30, 2013. However, the language of the CBA indicated that the CBA could continue in effect after that date.

Pursuant to Section 10(a)(4), it is an unfair labor practice for an employer “to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit.” If the employer fails to bargain in that way, it violates not only its Section 10(a)(4) duty but, derivatively under Section 10(a)(1), those employees’ right to have a representative as the Act envisions. County of Lake, 28 PERI ¶67 (IL LRB-SP 2011); Aurora Sergeants Association and City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008); City of Chicago (Department of Police), 21 PERI ¶83 (IL LRB-LP 2005); County of Perry and Sheriff of Perry County, 19 PERI ¶124 (IL LRB-SP 2003).

Generally, parties are obligated to make expeditious and prompt arrangements, within reason, for meeting and conferring. WATE, Inc., 132 NLRB 1338, 1349 (1961); J. H. Rutter-Rex Manufacturing Company, Inc., 86 NLRB 470, 508 (1949). Further, the willful avoidance of meetings or delays in the scheduling of meetings can be evidence of a party’s lack of good faith. County of Cook and Sheriff of Cook County, 6 PERI ¶3012 (IL LLRB 1990).

In its post-hearing brief, the burdened Charging Party centrally contends that the Respondent violated Section 10(a)(4) of the Act when the Respondent failed to respond to the Charging Party’s request to bargain until the CBA expired and the union members had gone on strike. In support of that contention, the Charging Party exclusively cites City of Loves Park v. Illinois Labor Relations Board State Panel, 343 Ill. App. 3d 389, 395, 798 N.E. 2d 150, 155 (2nd Dist. 2003), which states in relevant part that an employer violates Section 10(a)(4) when the employer’s conduct demonstrates a disregard for the collective bargaining process. In my judgment, that kind of disregard has not been shown and the Charging Party’s case falls short.

As the Charging Party correctly notes, before there can be a wrongful refusal to bargain, there must be a request to bargain. Also, a request to bargain need not invoke any special

formula or form of words. It is sufficient that the request to bargain be made by clear implication. City of East St. Louis v. Illinois State Labor Relations Board, 213 Ill. App. 3d 1031, 1035, 573 N.E.2d 302, 305 (5th Dist. 1991).

Given that standard, the Charging Party's August 1, 2013 shop agreement letter can readily be characterized as such a request, as it expressly notifies the Respondent of the Charging Party's intent to modify and/or amend the CBA and asks the Respondent to meet with the union's negotiating committee. As indicated, the letter is also consistent with the parties' past practice. However, the same is true of Miller's delayed response, and in my view that fact weighs against finding bad faith in this instance. See Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013).

Certainly the Respondent could have been more forthcoming, but when determining whether there was bad faith the totality of the circumstances must be evaluated. Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044 (IL LLRB 1992); City of Springfield, 6 PERI ¶2051 (IL SLRB 1990); Chicago Transit Authority, 4 PERI ¶3013 (IL LLRB 1988); Captain's Table, 289 NLRB 22, 23 (1988); WATE, Inc., 132 NLRB at 1350. That logically includes the parties' past practices. See Illinois State Toll Highway Authority, 25 PERI ¶76 (IL LRB-SP 2009).

During the hearing, Miller consistently and credibly testified that for every contract negotiation after her first in 2000 the Respondent waited until Carroll County had completed its contract negotiations before the Respondent negotiated with the Charging Party. Miller did that in order to know what kind of raise she could give her own employees and essentially accepted whatever Carroll County had agreed to for its own CBAs. Because Ross always negotiated both

contracts he reasonably should have been aware of that trend and expected some delay. I also note that the August 1, 2013 shop agreement letter presented no opening offer or proposal.

Separately, while it is true that Miller did not personally contact Ross to schedule negotiation sessions, the Respondent did not altogether fail to respond to him. Brinkmeier (the Respondent's representative) casually spoke about the matter with Ross after receiving the shop agreement letter and, prior to the strike, made several other attempts to contact Ross. (As noted, Ross did not respond those later attempts.) Dratler (who represents the Respondent as well) also sought to initiate negotiations with the Charging Party via Brinkmeier and later did so. Those actions do not demonstrate bad faith. Moreover, the parties eventually agreed to a successor CBA. To that extent, it cannot be found that the Respondent simply "refused to bargain." See Chief Judge of the Circuit Court of Cook County, 8 PERI ¶2044; J. H. Rutter-Rex Manufacturing Company, Inc., 86 NLRB at 503.

V. CONCLUSION OF LAW

I find that the Charging Party has failed to demonstrate by a preponderance of the evidence that the Respondent violated Section 10(a)(1) or (4) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing be dismissed in its entirety.

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 10 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 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on October 27, 2014.

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A handwritten signature in cursive script, reading "Martin Kehoe", written in dark ink.

**Martin Kehoe
Administrative Law Judge**