

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

International Association of Fire Fighters,)	
Local 50,)	
)	
Charging Party,)	
)	Case No. S-CA-18-160
and)	
)	
City of Peoria,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 27, 2018, Charging Party, International Association of Fire Fighters, Local 50 (Charging Party or Union) filed an unfair labor practice charge against Respondent, City of Peoria (Respondent or City) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016) as amended (Act) and the Rules and Regulations of the Illinois Labor Relations Board (Board), 80 Ill. Admin. Code parts 1200 through 1300 (Rules).

The charge was investigated in accordance with Section 11 of the Act, and on January 9, 2019, the Board’s Executive Director issued a Complaint for Hearing, alleging that the Respondent violated Section 10(a)(1) and 10(a)(4) of the Act when it violated the terms of a memorandum of understanding between the parties and made a unilateral change to a mandatory subject of bargaining without first bargaining the subject with the Union to agreement or impasse. The Complaint contained the following (emphasis in original):

RESPONDENT IS HEREBY NOTIFIED that within 15 days after service of the complaint upon it, pursuant to Section 1220.40(b) of the Board’s Rules and Regulations, 80 Ill. Admin. Code §§1200-1300, it must file an answer to this complaint with Matthew Nagy, at the Illinois Labor Relations Board, 801 South 7th Street, Suite 1200A, Springfield, IL 62703, or electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board’s Rules and Regulations. Respondent must serve a copy of the answer upon Charging Party. Please note that the Board’s Rules and Regulations do not allow electronic service of the Answer upon Charging Party. Said answer shall include an express admission, denial, or

explanation of each and every allegation of this complaint. Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or conclusions alleged in the allegation. Failure to timely file an answer shall be deemed to be an admission of all material facts or legal conclusions alleged and a waiver of hearing. The filing of any motion or other pleading will not stay the time for filing an answer.

The ILRB's Affidavit of Service notes that the Complaint was sent to Respondent's legal counsel on January 9, 2019 via mail to the mailing address provided on counsel's Notice of Appearance. Section 1200.30(c) of the Rules provides that a document is presumed served on a party three days after it is mailed. 80 Ill. Adm. Code 1200.30(c). In computing any period of time prescribed by the Act or Part 1200 of the Rules, "the designated period of time begins to run the day after the act, event, or default and ends on the last day of the period so computed." 80 Ill. Adm. Code 1200.30. In addition, "when a time period prescribed under the Act or [Part 1200 of the Rules] is less than 7 days, intervening Saturdays, Sundays, or legal holidays shall not be included." Id. Finally, if the last day of a time period prescribed under the Act "falls on a Saturday, Sunday or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday." Id.

Applying these rules, service of the Complaint on the Respondent was presumed effective on January 14, 2019. Under Section 1220.40(b) of the Rules, a Respondent is required to submit its answer to a complaint within fifteen days of service thereof. 80 Ill. Adm. Code 1220.40(b). Accordingly, the Respondent should have filed its answer within fifteen days after January 14, 2019; in other words, by no later than January 29, 2019.

As of February 4, 2019, the Respondent had not filed an answer to the Complaint. Accordingly, on that date, I, the undersigned, issued an order directing the Respondent to show cause why a default judgment should not issue against it for failure to file a timely answer (Order to Show Cause). To date, Respondent has yet to file its answer.

I. Discussion and Analysis

A default judgment issues herein because the Respondent has failed to file an answer.

The consequences for failing to file an answer are laid out in no uncertain terms in the Rules, which provide that "parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint." 80 Ill. Adm. Code 1220.40(b). Further, "(t)he failure to answer any allegation shall be deemed an admission of that allegation." Id. This language was recited on the face of the Complaint, and the section in which it was

contained was set off by all-caps, bolded lettering. The Rules go on to make clear that “[f]ailure to file an answer *shall* be cause for the termination of the proceeding and the entry of an order of default.” Id. (emphasis added). These rules have been strictly construed by both the Board and courts, which have consistently held that a respondent’s failure to timely file an answer to a complaint results in an admission of all allegations in the complaint and an entry of default judgment against the respondent. Wood Dale Fire Prot. Dist. v. ILRB, 395 Ill. App. 3d 523 (2nd Dist. 2009), *aff’g* Wood Dale Fire Prot. Dist., 25 PERI ¶ 136 (IL LRB-SP 2008); Metz v. ISLRB, 231 Ill. App. 3d 1079 (5th Dist. 1992), *aff’g* Circuit Clerk of St. Clair Cnty., 6 PERI ¶ 2036 (IL SLRB 1990); Peoria Hous. Auth., 11 PERI ¶ 2033 (IL SLRB 1995); Chicago Hous. Auth., 10 PERI ¶ 3010 (IL LLRB 1994); Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI ¶ 2025 (IL SLRB 1993); City of Springfield, Office of Pub. Utils., 9 PERI ¶ 2024 (IL SLRB 1993).

II. Admitted Allegations

The Respondent, by failing to file an answer, has waived its right to a hearing and admitted the following material facts and legal allegations as stated in the Complaint:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, Charging Party has been the exclusive representative of a bargaining unit composed of all Respondent’s full-time, permanent employees in the job titles or classifications of Firefighter, Fire Engineer, Fire Captain, and Battalion Chief, as certified by the Board on June 23, 2004, in Case No. S-UC-02-010.
5. At Respondent’s November 14, 2017, City Council meeting, the City Council and Fire Chief Chuck Lauss (Lauss) discussed a “brownout policy” and the closure of a Truck Company to address Respondent’s budget deficit.

6. Soon after the City Council meeting referenced in paragraph 6, at a meeting with Charging Party's officials, Lauss verbally proposed to do the following to address Respondent's budget deficit: hire three firefighters in Suppression, eliminate the Battalion Chief of Training, transfer a Fire Inspection position to Suppression, transfer a Captain EMS/Quality Assurance Officer position back to Suppression, assign three Bouncing Firefighters to a machine in Suppression, reduce the number of required annual physicals, abstain from using time accrued from the prior year's Good Incentive Day, and accept straight time in lieu of the following year's Good Incentive Day in exchange for keeping all 17 machines in service.
7. On November 17, 2017, Respondent memorialized the proposal referenced to in paragraph 6 in an email that included Charging Party's representatives.
8. Sometime before November 21, 2017, Charging Party's membership voted on and approved the proposal referenced in paragraph 6.
9. On November 21, 2017, Respondent held a Special City Council meeting in which the City Manager presented the proposal referenced in paragraph 6 as part of Respondent's budget proposal.
10. At the meeting referenced in paragraph 9, the City Council approved Respondent's budget proposal.
11. In December of 2017, Charging Party presented Respondent with a memorandum of understanding (MOU) that outlined the terms of agreement detailed in paragraph 6.
12. By January 2018, Respondent made the personnel changes outlined in paragraph 6.
13. On February 14, 2018, the parties met to discuss the MOU, and Respondent suggested adjustments.

14. During the meeting referenced to in paragraph 13, Charging Party agreed with Respondent's adjustments to the MOU, made the suggested changes, and presented the amended MOU to Respondent, and the new Fire Chief, Edward Olehy (Olehy), signed the document; however, Respondent did not provide a signed version of the MOU to Charging Party.
15. On April 4, 2018, the parties met again to discuss the MOU, and Respondent indicated that it was not going to sign an agreement that prevented it from closing a machine.
16. During the meeting referenced in paragraph 15, Charging Party responded that it would not have made the concessions detailed in the MOU if Respondent had not agreed to keep all 17 machines operational.
17. On April 13, 2018, the parties met again, and Charging Party reiterated that it only agreed to the concessions in the MOU in exchange for keeping 17 machines operational.
18. At the meeting referenced to in paragraph 17, Respondent indicated that, if the budget did not allow for the staffing of 17 machines, it would only staff the number of machines funded; however, Respondent confirmed that, if it changed working conditions in this manner, it would bargain with Charging Party.
19. On May 21, 2018, Respondent notified Charging Party that it would be instituting a "brownout policy," effective May 29, 2018.
20. The "brownout policy" referenced in paragraph 19 stated that, if a machine required three overtime slots in order to staff it, it would be taken out of service, and, if four to five overtime slots were necessary to keep all machines in service, Respondent would utilize overtime to fill two slots to staff a machine, but, if six overtime slots were necessary to keep all machines in service, two machines would be taken out of service.

21. On May 29, 2018, Respondent “browned out” one machine.
22. On May 30, 2018, Respondent “browned out” two machines.
23. On June 15, 2018, Respondent informed Charging Party that Good Incentive Day would be “paid out” the following week, reflecting the concessions that were agreed to in the MOU about Good Incentive Day.
24. On June 15, 2018, Charging Party emailed Respondent requesting a copy of the signed MOU, and Respondent refused to furnish the document.
25. Soon after, Charging Party made a FOIA request for a signed copy of the MOU, and Respondent denied the request.
26. Charging Party appealed Respondent’s denial of the FOIA request for the Illinois Attorney General’s Office.
27. Respondent refused to reduce an agreement to writing and provide it to Charging Party, as described in paragraphs 14, 24, and 25.
28. Respondent violated the MOU and made a unilateral change without bargaining the subject to impasse or agreement when it implemented “brown outs” as described in paragraphs 19, 21, and 22.
29. By its acts and conduct as described in paragraphs 14, 19, 21, 22, 23, 24, 25, 27 and 28, Respondent has failed and refused to bargain in good faith with the Charging Party, in violation of Sections 10(a)(4) and (1) of the Act.

III. Conclusion of Law

The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act when it implemented its “brown out” policy without first bargaining such with the Union to either agreement or impasse.

IV. Recommended Order

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

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with the Charging Party with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Restore the *status quo ante* as it existed before May 21, 2018 with respect to the staffing of its machines.
 - b) Make whole any employees in the bargaining unit represented by Charging Party for all losses incurred as a result of the City's decision to unilaterally alter its policy with respect to the staffing of its machines, including back pay with interest as allowed by the Act, at seven percent *per annum*.
 - c) Upon request, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the Union's bargaining unit, including the staffing of machines.
 - d) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

V. Exceptions

Pursuant to Section 1200.135(b)(1)(B) 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 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with General Counsel Helen J. Kim of the Illinois Labor Relations Board, 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 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 Springfield, Illinois this 27th day of February, 2019

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

/s/ Matthew S. Nagy

**Matthew S. Nagy
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-18-160

International Association of Fire Fighters, Local 50/City of Peoria

IT IS HEREBY ORDERED that the City of Peoria, its officers and agents shall:

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with International Association of Fire Fighters, Local 50 with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Restore the *status quo ante* as it existed before May 21, 2018 with respect to the staffing of its machines.
 - b) Make whole any employees in the bargaining unit represented by International Association of Fire Fighters, Local 50 for all losses incurred as a result of the City's decision to unilaterally alter its policy with respect to the staffing of its machines, including back pay with interest as allowed by the Act, at seven percent *per annum*.
 - c) Upon request, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the International Association of Fire Fighters, Local 50's bargaining unit, including the staffing of machines.

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

Date: February 27, 2019

City of Peoria
(Employer)

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

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**

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

International Association of Fire Fighters,
Local 50,

Charging Party

and

City of Peoria,

Respondent

Case No. S-CA-18-160

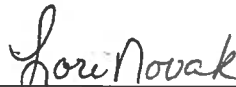
DATE OF
MAILING: **February 27, 2019**

AFFIDAVIT OF SERVICE

I, Lori Novak, on oath, state that I have served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 3:00 p.m., on the date listed above, copies thereof in the United States mail pickup at the Mail Room located at 801 South 7th Street, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

Jerry J. Marzullo
Puchalski Goodloe Marzullo, LLP
2100 Sanders Road, Suite 110
Northbrook, IL 60062

Chrissie L. Peterson
City of Peoria
419 Fulton Street, Room 200
Peoria, IL 61602



Lori Novak

SUBSCRIBED and **SWORN** to
before me, **February 27, 2019**


NOTARY PUBLIC



