STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Local 200, Chicago Joint Board, RWDSU,	)	
	)	
Charging Party,	)	
	)	Case No. L-CA-15-054
and	)	
	)	
County of Cook (Health and Hospital System),	)	
	)	
Respondent.	)	

ORDER

On June 3, 2016, Administrative Law Judge Deena Sanceda, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its September 7, 2016 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 7th day of September, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/Kathryn Zeledon Nelson
Kathryn Zeledon Nelson
General Counsel

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	)	
Respondent	)	

CORRECTED ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 24, 2015, Charging Party, Local 200, Chicago Joint Board, RWDSU ("Union"), filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board ("Board"), in the above-captioned case, alleging that Respondent, County of Cook (Health and Hospital System) ("CCHHS"), violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315 (2014), as amended, when it refused to bargain over the Recruitment and Selection Analyst ("RSA") position's wages and terms and conditions of employment. The charges were investigated in accordance with Section 11 of the Act, and on November 24, 2015, the Board's Executive Director issued a Complaint for Hearing ("Complaint"). For the reasons identified below, I recommend the following:

I. BACKGROUND

On December 9, 2015, Respondent filed an Answer, in which it admits ten of the twelve allegations articulated in the Complaint, denies one allegation, and in response to another allegation it provides that it "lacks sufficient information at this time to answer. Investigation is ongoing." On March 23, 2016, I ordered Respondent to provide a definitive answer to the

outstanding allegation. On April 12, 2016, Respondent filed an Amended Answer in which it admits the outstanding allegation. Through its answers, Respondent admits all the factual allegations contained in the Complaint, but denies that its conduct violated the Act, and further contends that the matter is moot because sometime after it filed its Answer in December 2015, it has agreed to bargain over the RSA position. Since there is no dispute over the facts alleged in the Complaint, I ordered the parties to brief the legal issues.

II. PRELIMINARY FINDINGS

Pursuant to Paragraphs 1 through 11 of the Complaint, the parties stipulate, and I find that:

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 a unit of local government under the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.
3. At all times material the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act, and has been the exclusive representative of a bargaining unit ("Unit") consisting of certain positions within the Respondent's Health and Hospital System.
4. The Respondent and Charging Party are parties to a collective bargaining agreement for the Unit, with a stated expiration date of November 30, 2012.
5. At all times material, the Respondent and Charging Party have been in negotiations for a successor collective bargaining agreement for the Unit.
6. On April 2, 2014, the Charging Party filed a majority interest petition with the Board in Case Number L-RC-14-009, seeking to include in the Unit the position of RSA at Stroger Hospital.

7. The Respondent filed objections to the petition referenced in paragraph 6, and a hearing regarding those objections was held before the Board's Administrative Law Judge on July 18, 2014.

8. On or about November 7, 2014, the Board's Administrative Law Judge issued a Recommended Decision and Order ("RDO") that the position of the RSA be included in the Unit, and the Board accepted the RDO in February of 2015.

9. On February 24, 2015, the Board issued a certification including the RSA position in the Unit.

10. On or about March 30, 2015 and April 30, 2015, at scheduled negotiation sessions, the Charging Party requested that Respondent bargain the wages, terms and conditions of employment of the RSA position.

11. On or about March 30, 2015 and April 30, 2015, Respondent refused to bargain the wages, terms and conditions of employment of the RSA position, asserting that Respondent had filed an appeal of the Board's certification of the RSA position with the Illinois Appellate Court.

III. ISSUES AND CONTENTIONS

The issue presented in this case is whether Respondent violated Sections 10(a)(4) and (1) of the Act when it refused to bargain over the RSA position's terms and conditions of employment.

The Charging Party contends that on or around March 30, 2015 and April 30, 2015, as the Board certified exclusive representative, it requested that Respondent bargain over the RSA position's wages, hours and other terms and conditions of employment, but Respondent refused, and this refusal to bargain constitutes Sections 10(a)(4) and (1) violations of the Act. Charging Party further contends that Respondent's duty to bargain exists even though the Respondent has

appealed the Board's certification to the Appellate Court because that obligation to bargain began upon the Board's certification of the RSA positions into the Charging Party's bargaining unit. Charging Party also argues that any willingness to bargain Respondent has expressed after the issuance of the Complaint does not moot the Complaint, because its actions are capable of repetition and because the Board has the remedial authority to treat the recognition year as beginning on the date that Respondent begins to bargain in good faith.

Respondent admits that it refused to bargain over the RSA position, but contends that this matter should be dismissed because its actions do not constitute a failure and refusal to bargain in good faith, and because the allegations in the Complaint are moot because it is no longer refusing to bargain.

IV. DISCUSSION AND ANALYSIS

CCHHS violated Sections 10(a)(4) and (1) when it refused to bargain over the RSA position's wages and terms and conditions of employment. CCHHS's appeal of the Board's certification of the RSAs does not alleviate its duty bargain during the pendency of the appeal. CCHHS's subsequent willingness to bargain does not render this matter moot.

A. Respondent's refusal to bargain violates the Act

Section 7 of the Act provides that a "public employer and the certified exclusive bargaining representative have the authority and the duty to bargain collectively[.]" 5 ILCS 315/7. Section 7 further provides that "'to bargain collectively' means the performance of the mutual obligation of the public employer [...] and the representative of the public employees to meet at reasonable times, [...] and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act[.]" Id. Wages, hours, and other conditions of employment are "mandatory" subjects of bargaining. Forest Pres. Dist. of Cook Cnty. v. Ill.

Labor Rel. Bd., 369 Ill. App. 3d 733, 754 (1st Dist. 2006); Vill. of Westchester, 16 PERI ¶2034 (IL SLRB 2000). Section 10(a)(4) of the Act provides, in relevant part, that it is an unfair labor practice for a public employer or its agent "to refuse 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). Section 10(a)(1) provides, in relevant part, that it is an unfair labor practice for a public employer or its agents "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization[.]" 5 ILCS 315/10(a)(1).

An employer's duty to bargain arises when an exclusive representative presents a request to the employer which clearly indicates a desire to negotiate and bargain on behalf of the unit employees. Cnty. of Kane, 3 PERI ¶2040 (IL SLRB 1987); Cnty. of Vermilion, 3 PERI ¶2004 (IL SLRB 1986); Yolo Transport, Inc., 286 NLRB No. 103 (1987). When the public employer refuses to bargain collectively in good faith with the exclusive representative of a unit of employees, then its refusal constitutes an unfair labor practice in violation of Section 10(a)(4) of the Act. Cnty. of Vermilion, 3 PERI ¶2004. When an employer has a duty to bargain a mandatory subject and refuses to negotiate, it commits a *per se* unfair labor practice. Serv. Employees Int'l Local Union No. 316 v. State Educ. Labor Rel. Bd., 153 Ill. App. 3d 744, 755 (4th Dist. 1987); Cnty. of Vermilion, 3 PERI ¶2004.

The stipulated facts demonstrate that the CCHHS has *per se* failed to comply with its duty to bargain under Section 7 of the Act. The Board certified the Union as the exclusive representative of the RSAs on February 24, 2015. On two different occasions, the Union requested CCHHS bargain the RSA position's wages, and terms and conditions of employment. On both occasions, CCHHS refused to bargain. Thus, CCHHS's refusal to bargain after valid

requests by the Board certified exclusive representative is a violation of Section 10(a)(4) of the Act. Quadcom Pub. Safety Comm. Syst., 13 PERI ¶2046 (IL SLRB 1997); Cnty. of Menard, 4 PERI ¶2033 (IL SLRB 1988); Cnty. of Kane, 3 PERI ¶2040; Cnty. of Vermilion, 3 PERI ¶2004.

Refusing to bargain with employees' chosen representatives also interferes with employees' rights guaranteed by the Act. City of Decatur, 2 PERI ¶2008 (Ill. SLRB. 1986). Accordingly, CCHHS also derivatively violated Section 10(a)(1) of the Act. City of Chicago, 31 PERI ¶129 (IL LRB-LP 2015); State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Pub. Aid), 10 PERI ¶2006 (IL SLRB 1993).

B. Respondent's appeal of the underlying certification is not a viable defense

CCHHS's appeal of the Board's certification does not relieve or otherwise stay its duty to bargain in good faith. In its defense, CCHHS claims that its conduct does not constitute an unfair labor practice when it refused to bargain while it in good faith pursued judicial review of the Board's certification of the RSA position into the existing bargaining unit, and requests that the Board dismiss the Complaint. The employer's good or bad faith or the reasons for its failure to bargain collectively are not relevant in the determination of a *per se* violation. Cnty. of Vermilion, 3 PERI ¶2004. Thus, whether the CCHHS had a good faith reason to refuse to bargain does not obviate it from liability where it committed a *per se* violation.

Furthermore, the Board has held that the neither the Act, the Rules nor Board precedent support the proposition that an employer is entitled to maintain its refusal to bargain pending the outcome of its appeal of the Board's certification. Quadcom Pub. Safety Comm. Syst., 13 PERI ¶2046. This conclusion is consistent with the NLRB's opinion on this issue, that if "an employer refuses to bargain on the ground the election which preceded the certification was invalid, it does so at its own risk." Wilkinson Mfg. Co., 187 NLRB 791, 795 (1971) quoting N.L.R.B. v. Laney

& Duke Storage Warehouse Co., 369 F. 2d 859, 869 (5th Cir. 1966). Accordingly, Respondent's defense that it refused to bargain while it was challenging the Board's certification is legally insufficient to avoid finding that its conduct violated the Act.

C. Complaint for Hearing is not moot

CCHHS's subsequent conduct does not moot the Complaint because the stipulated facts fall under an exception to the mootness doctrine, and a remedy is available to the Charging Party.

1. Exception to the mootness doctrine

CCHHS's illegal conduct falls within an exception to the mootness doctrine. The Board has held that a respondent's subsequent compliance with its duty to bargain in good faith does not render moot a complaint alleging that respondent violated its duty to bargain in good faith at an earlier point in time. City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011). Illinois law provides that a case is moot when it "presents or involves no actual controversy, interests or rights of the parties, or where the issues have ceased to exist." First Nat'l Bank of Waukegan v. Kusper, 98 Ill. 2d 226, 233 (1983). Exceptions to the mootness principle include matters that are capable of repetition yet evade review, and matters of great public interest. People v. Bailey, 116 Ill. App. 3d 259, 261 (1st Dist. 1983); Vill. of Palatine v. LaSalle Nat'l Bank, 112 Ill. App. 3d 885, 891 (1st Dist. 1983).

CCHHS's refusal to bargain over a newly certified position is capable of repetition yet evades review. A controversy that is capable of repetition, yet evades review falls within exception to the mootness doctrine if there is a reasonable expectation that same complaining party would be subjected to same action again, and the action challenged is too short in duration to be fully litigated prior to its cessation. People v. Bailey, 116 Ill. App. 3d at 261-262;

Edwardsville Sch. Serv. Pers. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 235 Ill. App. 3d 954, 959 (4th Dist. 1992).

Here, the Union may reasonably expect CCHHS to refuse to bargain in the future because the Union may seek to add other positions to the existing bargaining unit, or even seek to represent an entirely new bargaining unit of CCHHS employees. CCHHS's illegal conduct was too short to be fully litigated because it ceased refusing to bargain prior to the matter to proceed to hearing. CCHHS ceased refusing to bargain sometime between December 9, 2015, when it filed its Answer, and April 12, 2016, when it filed its Amended Answer.[1] Since CCHHS did not fully respond to the Complaint until April 2016, and at that time, it was no longer refusing to bargain, the conduct that I have found to be illegal ceased before the matter could be fully litigated.

2. Remedy available to Charging Party only through a Board Order

The Complaint is also not moot because, as an appropriate remedy to CCHHS's illegal conduct, the Board can extend the certification year to begin on the date that the CCHHS begins bargaining in good faith. Under the certification bar rule, "the Board will dismiss a representation or decertification petition filed within 12 months following the date of Board certification of an exclusive representative for all or some of the employees in the bargaining unit, as a result of certification following a representation petition or voluntary recognition petition." 80 Ill. Admin. Code 1210.35(b). The certification bar's purpose is to provide a bargaining representative and employer sufficient time to negotiate a first labor contact by guaranteeing "that the incumbent labor organization will enjoy the full period of the bar, by precluding the early filing of a petition, which might in turn induce the employer to abandon or

[1] CCHHS contends that the parties have been bargaining over the RSA positions for several months. The Union contends that while the CCHHS no longer refuses to bargain, the parties have not in fact been able to schedule bargaining dates. Thus, when or if CCHHS has in fact begun bargaining in good faith is

protract pending negotiations." Cook Cnty. and Cook Cnty. Cir. Ct., 1 PERI ¶3008 (IL LLRB 1985). In cases where a public employer has refused to bargain in violation of the Act during the one year post-certification period, as part of its remedial order, the Board has extended the certification year for the period of time the public employer has refused to bargain. Cnty. of Cook. (Dep't of Cent. Serv.), 15 PERI ¶3008 (IL LLRB 1999); Quadcom Pub. Safety Comm. Syst., 13 PERI ¶2046; Cnty. of Vermillion, 3 PERI ¶2004. Since I have found that CCHHS illegally refused to bargain, I recommend to extend the certification period so that it begins on the date CCHHS commences bargaining in good faith with the Union as the RSA position's certified bargaining representative.

V. CONCLUSIONS OF LAW

The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed and refused to bargain in good faith with the Charging Party over the Recruitment and Selection Analyst position's wages and terms and conditions of employment.

VI. RECOMMENDED ORDER

It is hereby ordered that the Respondent, County of Cook (Health and Hospital Systems), its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with Local 200, Chicago Joint Board, RWDSU over the Recruitment and Selection Analyst position's wages, terms and conditions of employment;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

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unclear, but because this defense is legally insufficient to dismiss the charges in the Complaint, I make no factual finding regarding whether CCHHS has begun to bargain in good faith.

1. bargain collectively in good faith with the Local 200, Chicago Joint Board, RWDSU over the wages, terms and conditions of employment of the RSA position;

2. Treat the initial year of certification as beginning on the date Respondent begins bargaining in good faith with the Charging Party;[2]

3. 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 by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced or covered by any other material;

4. Notify the Board in writing, within 20 days from the date of this decision, of the steps the 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 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 Kathryn Nelson, General Counsel 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 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 3rd day of June, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Deena Sanceda
Administrative Law Judge

[2] The date CCHHS has or will commence bargaining in good faith is a question for the Board's compliance procedures.