STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Local 200, Chicago Joint Board, RWDSU	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-16-003
	)	
County of Cook (Health and Hospital System)	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On September 6, 2016, Administrative Law Judge Anna Hamburg-Gal (ALJ) issued a Recommended Decision and Order (RDO) finding that the County of Cook (Health and Hospital System) (County or Respondent) untimely answered the Complaint for Hearing (Complaint) in this case and recommended the entry of a default judgment finding that the County committed unfair labor practices in violation of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act). The County and Local 200, Chicago Joint Board, RWDSU, (Union or Charging Party) both filed timely exceptions and responses.

After reviewing the RDO, exceptions, responses, and the record, we reject the ALJ's findings and conclusions contained in her RDO and instead find as follows:

On July 27, 2016, the Executive Director issued a Complaint in this matter. According to Sections 1200.30(c) and 1220.40(b) of the Board's Rules and Regulations, 80 Ill. Adm. Code §§ 1200-1300, the Complaint was presumed to be served on the Respondent on August 1, 2016, making the Respondent's answer due on August 16, 2016, fifteen days from the August 1 presumed service date. The Respondent filed its answer on August 17, 2016.

Because the answer was filed on August 17, 2016, one day after the presumed date of service, the ALJ issued an Order to Show Cause on August 9, 2016, for the Respondent to show cause as to why a default judgment should not issue for its untimely answer. Respondent did not respond to the Order to Show Cause. Based on these service and computation of time rules and the Respondent's failure to respond to the Order to Show Cause, the ALJ found the Respondent's answer untimely, deemed the factual and legal allegations as stated in the Complaint admitted, and as such, recommended that a default judgement issue.

The Respondent excepted to the ALJ's recommendations claiming the answer was in fact timely filed. The Respondent claimed it actually received the Complaint on August 2, 2016, making the answer due on August 17, 2017, the date the County filed its answer. In support, the Respondent submitted affidavits from Edward Brooks, Administrative Supervisor of Supply/Mailroom, and Assistant State's Attorneys Patricia Fallon and Colleen Cavanaugh, all attesting to the actual receipt of the Complaint on August 2, 2016.

Assistant State's Attorney Colleen Cavanaugh's affidavit also attested to the fact that she was made aware of the emailed August 9, 2016, Order to Show to Cause for the first time when she read the RDO. She further attested that upon learning of the Order to Show Cause, she immediately contacted the IT department in inquire about the email and discovered that the emails from the ALJ were being placed in her SPAM folder without her knowledge. The Respondent also provided an affidavit from Angelo Velissaris, a technician in the MIS Department of the Cook County State's Attorney's Office, attesting to a technical glitch in the County's email system that had mistakenly placed ALJ Hamburg-Gal's email address in on the "Blocked Senders" list without Cavanaugh's knowledge.

In response to the Respondent's exceptions, the Union contends that the Respondent has not sufficiently rebutted the presumption and urges the Board to disregard the affidavits, noting that a copy of the Complaint with a date stamp receipt stamp was conspicuously missing from the Respondent's submissions and that the affidavit of Edward Brooks only spoke in general terms. The Union also filed exceptions to the RDO, taking issue with the ALJ's remedies for the unfair labor practice. The Union requests that the Board order the Respondent to reinstate its prior offer of an eighty-five cent per hour shift differential for work performed on weekends. The Respondent responded that it has a meritorious defense to the charge and thus, no default judgment should issue.

The Respondent's exceptions regarding the timely filing of its answer have merit, and we find that the Respondent has provided sufficient evidence to rebut the presumption contained in Section 1200.30(b) of the Board's rules. The affidavits from Brooks, Fallon, and Cavanaugh, show that the Respondent received the Complaint on August 2, 2016, rebutting the presumption that the Complaint was served on August 1, 2016. We also find that the affidavits from Cavanaugh and Velissaris credibly provide a reasonable explanation as to why no response was given to the August 9, 2016, Order to Show Cause. We see no reason, even in light of the Union's response, to disregard any of the affidavits submitted by the Respondents in support of its exceptions. Thus, we find that the Respondent's answer filed on August 17, 2016, was indeed timely.

Because we find the Respondent's answer to be timely filed, we need not address the Respondent's alternative argument seeking a variance from the Board's Rules and Regulations. Similarly, we find it unnecessary to address the Union's exceptions seeking an additional remedy.

For these reasons, we reject the ALJ's RDO and remand this case to the ALJ for hearing on the Complaint and/or other further proceedings as deemed appropriate.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

Decision made at the Local Panel's public meeting held in Chicago, Illinois, on May 16, 2016; written decision approved at Local Panel's public meeting held in Chicago, Illinois, on June 8, 2016 and issued on this date.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Local 200, Chicago Joint Board, RWDSU,	)	
Charging Party	)	
	)	Case No. L-CA-16-003
and	)	
County of Cook (Health & Hospital System),	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 24, 2016, Local 200, Chicago Joint Board, RWDSU, (Charging Party or Union) filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board 80 Ill. Admin. Code, parts 1200 through 1240 (Rules). The charges were investigated in accordance with Section 11 of the Act and on July 27, 2016, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing. The Complaint contained the following statement:

> **RESPONDENT IS HEREBY NOTIFIED** that 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 Anna Hamburg-Gal, 160 N. LaSalle St., Ste. S-400, Chicago, IL 60601, and serve a copy thereof upon Charging Party within 15 days after service of the complaint upon it. 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 Respondent should have filed an Answer post-marked no later than August 16, 2016, pursuant to Sections 1220.40(b) and 1200.30 of the Board's Rules. Under Section 1220.40(b) of the Rules, the Respondent was required to submit an answer to the complaint within 15 days of service. 80 Ill. Admin. Code 1220.40(b). 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. Admin 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. Admin. Code 1200.30(a). 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." 80 Ill. Admin. Code § 1200.30. Finally, the rule states that "if the last day 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 on Respondent was presumed effective on August 1, 2016.[1] The Respondent should have filed an answer within fifteen days of August 1, 2016, in other words, no later than August 16, 2016.

The Respondent's Answer was untimely filed on August 17, 2016. Accordingly, on August 19, 2016, I issued an Order to Show Cause (Order) to the Respondent via email as to why a default judgment should not issue for the Respondent's failure to file a timely answer. The Respondent's response to the Order was due by close of business on August 26, 2016. As of August 30, 2016, the Respondent had filed no response to the Order.

I. Issues and Contentions

The issue is whether a default judgment should issue in this case.

II. Discussion and Analysis

A default judgment issues herein because the Respondent did not file a timely answer, did not seek leave to file a late answer, did not seek a variance from the Board's rules, and did not respond to the Order to Show Cause issued on August 19, 2016.

The Respondent does not dispute that it should have filed an answer post-marked no later than August 16, 2016, pursuant to the Board's rules, and that it filed its answer a day late. The Board's rules 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. Admin Code 1220.40(b). The cited rule further provides the following: "The failure to answer any allegation

[1] Under City of St. Charles, the addressee may rebut the presumption of service with sufficient evidence that actual delivery occurred at a later date. City of St. Charles v. Ill. Labor Rel. Bd., 395 Ill. App. 3d 507 (2nd Dist. 2009).

shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default. Filing of a motion will not stay the time for filing an answer." Id. This rule has been strictly construed by the Board and courts, which have consistently held that a respondent's failure to timely file an answer to a complaint results in admissions of all allegations in the complaint and an entry of default judgment. Wood Dale Fire Prot. Dist. v. Ill-Labor Relations Bd., 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale Fire Prot. Dist., 25 PERI ¶ 136 (IL LRB-SP 2008); Metz v. Ill. State Labor Relations Bd., 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).

In addition, there is no basis on which to vary from the Board's filing rules. The Respondent never requested leave to file a late answer and it did not seek a variance rom the Board's regulatory filing deadline. Indeed, the Respondent did not even file a response to the Order to Show Cause issued on August 19, 2016.

Thus, the Respondent's answer is untimely and a default judgment issues.

III. Respondent's Admissions

By failing to file a timely answer, the Respondent has 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 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, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) of Respondent's employees.

4. At all times material, Respondent and Charging Party have been parties to a collective bargaining agreement for the Unit, which contains a grievance procedure culminating in final and binding arbitration.
5. In or about May of 2015, Respondent, without prior notice to the Union, began scheduling Unit employees to work weekends.
6. Unit employees referenced in paragraph 5 historically worked on a Monday through Friday, 8AM to 4PM work schedule.
7. Employee work schedules and compensation to be paid for hours worked concern wages, hours, and terms and conditions of employment and are mandatory subjects of bargaining.
8. In or about June of 2015, Charging Party requested Respondent bargain the change to Unit employees' work schedules referenced in paragraph 5.
9. On or about July 10, 2015, Respondent met with Charging Party to bargain the effects of the scheduling change referenced in paragraph 5.
10. During the meeting referenced in paragraph 9, Respondent provided Charging Party a Memorandum of Agreement that outlined a bidding procedure for Unit employees to bid for weekend work, but left the amount to be paid for a Saturday hourly premium blank.
11. During the meeting referenced in paragraphs 9 and 10, Respondent orally proposed Unit employees be paid an additional $.85 per hour shift differential for work performed on the weekend, to which the Union made a counteroffer of $1.00 an hour.
12. At the meeting referenced in paragraphs 9, 10 and 11, the Respondent rejected the Union's counteroffer and the Union agreed to take the Respondent's original offer of $.85 an hour to its membership.
13. On or about July 15. 2015, Respondent withdrew its offer of $.85 an hour and made no other changes to the Memorandum of Agreement, insisting that the Memorandum of Agreement was its last offer.
14. In the conduct described in paragraph 5, the Respondent made a unilateral change to a mandatory subject of bargaining without providing the Union notice and an opportunity to bargain.
15. Since on or about May of 2015, the Respondent has refused to bargain the decision to change Unit employees' work schedules.

16. In the conduct described in paragraph 13, the Respondent engaged in regressive bargaining and presented the Union with a *fait accompli* during effects bargaining.
17. By its acts and conduct as described in paragraphs 5, 13, 14, 15 and 16, Respondent has failed and refused to bargain in good faith with the Charging Party, in violation of Section 10(a)(4) and (1) of the Act.

IV. Conclusions of Law

1. The Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally scheduling unit employees to work weekends and refusing to bargain over its decision to schedule unit employees to work weekends.
2. The Respondent violated Sections 10(a)(4) and (1) of the Act by engaging in regressive bargaining and presenting the Union with a *fait accompli* during effects bargaining.

V. Recommended Order

IT IS HEREBY ORDERED that the Respondent, County of Cook (Health & Hospital System), its officers and agents shall:

1) Cease and desist from:
   a) Unilaterally scheduling unit employees to work weekends without first granting the Union prior notice and an opportunity to bargain;
   b) Refusing to bargain over its decision to schedule unit employees to work weekends;
   c) Presenting the Union with a *fait accompli* during effects bargaining;
   a) Engaging in regressive bargaining;
   b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
   a) Restore employees' work schedules to the way they existed before the unilateral change;
   b) Upon request by the Union, bargain over changes to employees' work schedules;
   c) 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 notices are not altered, defaced or covered by any other material.

d) Notify the Board in writing, within 20 days of the date of this decision of the steps Respondent has taken to comply herewith.

VI. 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 the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to 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 6th day of September, 2016

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Anna Hamburg-Gal

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-16-003

The Illinois Labor Relations Board, Local Panel, has found that the County of Cook (Health & Hospital System) has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from unilaterally scheduling unit employees to work weekends without first granting the Union prior notice and an opportunity to bargain.

WE WILL cease and desist from refusing to bargain over our decision to schedule unit employees to work weekends.

WE WILL cease and desist from presenting the Union with a *fait accompli* during effects bargaining.

WE WILL cease and desist from engaging in regressive bargaining.

WE WILL cease and desist from in any like or related manner interfering with, restraining or coercing our employees in the exercise of the rights guaranteed them in the Act.

WE WILL restore employees' work schedules to the way they existed before the unilateral change.

WE WILL upon request by the Union, bargain over changes to employees' work schedules.

DATE _____

_____
County of Cook (Health & Hospital System)
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(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.