

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

Metropolitan Alliance of Police, Chapter 297,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-16-079
)	
Chicago State University,)	
)	
Respondent)	

ORDER

On February 27, 2017, Administrative Law Judge Anna Hamburg-Gal, 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 June 13, 2017 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 16th day of June 2017.

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



Helen J. Kim
General Counsel

**STATE OF ILLINOIS
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Metropolitan Alliance of Police, Chapter 297,)	
)	
Charging Party)	
)	Case No. S-CA-16-079
and)	
)	
Chicago State University,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On February 1, 2016, Metropolitan Alliance of Police (MAP), Chapter 297 (Charging Party, MAP Chapter 297, 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 1300 (Rules). The charge alleged that the Chicago State University (Respondent) violated Sections 10(a)(4), (2) and (1) of the Act.

The charge was investigated in accordance with Section 11 of the Act and on January 9, 2017, 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 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 Anna Hamburg-Gal, at the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601, 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 Respondent should have filed an answer post-marked no later than January 27, 2017, 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 Thursday, January 12, 2017.¹ The Respondent should have filed an answer within fifteen days of January 12, 2017, in other words, no later than January 27, 2017.

As of February 6, 2017, the Respondent had filed no answer. Accordingly, on that date, 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 February 21, 2017.

On February 21, 2017, the Respondent filed a response to the Order and an answer.

I. Issues and Contentions

The issue is whether the Respondent should be allowed to file a late answer pursuant to Section 1220.40(b) of the Board’s rules.

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). However, the Respondent here admits that it received the Complaint on January 12, 2017.

The Respondent's attorney asserts that he should be permitted to file a late answer because he inadvertently entered the wrong filing date on his calendar. He further claims that the Charging Party is not prejudiced by the late response. Finally, he denies that the Respondent breached the applicable collective bargaining agreement.

II. Discussion and Analysis

A default judgment issues herein because the Respondent did not file a timely answer and failed to demonstrate the existence of extraordinary circumstances that would warrant granting approval for a late filing.²

As a preliminary matter, the Respondent does not dispute that it should have filed an answer post-marked no later than January 27, 2017, pursuant to the Board's rules, and that it failed to do so. 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 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).

Section 1220.40(b)(4) of the Rules provides that "[l]eave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include among other things: fraud, act or concealment of the opposing

² The Respondent has not expressly requested a variance from the regulatory filing deadline. However, the same rationale for denying the request for a late filing would similarly apply to denying any request for a variance here.

party, or other grounds traditionally relied upon for equitable relief from judgments.” 80 Ill. Admin. Code 1220.40(b)(4).

However, the failure of a party’s legal representative to meet a deadline due to inattention or negligence does not constitute an extraordinary circumstance under Section 1220.40(b)(4). First Transit/River Valley Metro, 26 PERI ¶ 38 (IL LRB-SP 2010), aff’d by unpub. order, 27 PERI ¶ 61 (3rd Dist. 2011); City of Markham, 27 PERI ¶ 7 (IL LRB-SP 2011). Except in narrowly defined circumstances, negligence by a party’s attorney does not shield it from the consequence of that negligence. Amalgamated Transit Union. Local 241, 29 PERI ¶ 78 (LRB-SP 2012) (citing Wood Dale, 25 PERI ¶ 1136 and Bd. of Educ. Thornton Twp. High Sch. Dist. No. 205 v. Ill. Educ. Labor Relations Bd., 235 Ill. App. 3d 724, 730-31 (4th Dist. 1992)).

Here, the Respondent’s attorney admits that he inadvertently notated the deadline for filing the answer on the wrong date on his calendar, and the Board has upheld default judgments under similar circumstances. See City of Chicago (Fire Department), 33 PERI ¶ 51 (IL LRB-LP 2016) (default judgment issued where attorney filed late answer because she inadvertently entered the wrong due date on her calendar); Vill. of Dolton, 17 PERI ¶ 2017 (IL LRB-SP 2001) (answer untimely due to docketing error arising from office personnel changes); City of Markham, 17 PERI ¶ 2036 (IL LRB-SP 2001) (attorney misread due date for answer and response to order to show cause); Ill. Secretary of State, 11 PERI ¶ 2027 (IL SLRB 1995) (failure to mail answer in a timely manner); Vill. of Maywood, 21 PERI ¶ 147 (IL LRB-SP ALJ 2005) (failure to file timely answer due to office turmoil).

Thus, Respondent is not granted leave to file a late answer and a default judgment issues herein.

III. Respondent’s Admissions

By failing to file an 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 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 Respondent's employees in the job title or classification of Police Sergeant as certified by the Board on April 15, 2004, in Case No. S-RC-03-015.
5. At all times material, Chief of Police, Patricia Walsh (Walsh) has been an agent of the Respondent, authorized to act on its behalf.
6. At all times material, Wilbert Norey (Norey), Veronica Harris (Harris), Calvin Robins (Robins), Wendell Mack (Mack), Pamelee Robinson (Robinson), and Marcella Sawyer (Sawyer) have been employed by the Respondent as Sergeants and are members of the unit.
7. The Collective Bargaining Agreement (CBA) between MAP Chapter 297 and the University expired July 31, 2015.
8. On or about September 29, 2015, the parties requested mediation, and therefore, interest arbitration proceedings were pending from this date forward.
9. At all times material, Norey served as Watch Commander for the first watch, Harris served as Watch Commander for the second watch, and Robins served as Watch Commander for the third watch.
10. On or about December 10, 2015, Norey, Harris, and Robins submitted a request for a desk audit because they believed they were performing the duties of a lieutenant when acting in the capacity of a Watch Commander.
11. On or about December 16, 2015, during a mediation session, the Union introduced a proposal to upgrade Watch Commander pay by 10% in correlation with the requested desk audit.
12. On or about January 12, 2016, Walsh announced that Norey, Harris, and Robins would be demoted to field sergeants, and Mack, Robinson, and Sawyer would take their places as Watch Commanders.
13. On or about January 14, 2016, Walsh distributed a memo transcribing her announcement referenced in paragraph 12 and cited the change as a training opportunity for the new Watch Commanders.

14. On or about January 16, 2016, the change in Watch Commanders became effective, and Norey, Harris and Robbins were demoted to field sergeant, which meant that they no longer served as Watch Commanders for their respective shifts.
15. The demotion to field sergeant and the removal of Watch Commander duties as referenced in paragraphs 12, 13, and 14 concerns wages, hours, and terms and conditions of employment and are a mandatory subject of bargaining.
16. By implementing the changes referenced in paragraphs 12, 13, 14, and 15, the Respondent failed to maintain the status quo regarding promotion and wages during the pendency of interest arbitration procedures, as required by 14(l) of the Act.
17. By its acts and conduct as described in paragraphs 12, 13, 14, 15, and 16, the Respondent has and failed to bargain in good faith with the Charging Party, in violation of Section 10(a)(4) and (1) of the Act.
18. By its acts and conduct as described in paragraphs 12, 13, and 14, Respondent retaliated against Norey, Harris, and Robins for their actions described in paragraphs 10 and 11, in violation of Section 10(a) (2) and (1) of the Act.

IV. Conclusions of Law

1. The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed to bargain in good faith with the Charging Party by unilaterally changing employees' terms and conditions of employment during the pendency of interest arbitration proceedings.
2. The Respondent violated Sections 10(a)(2) and (1) of the Act by retaliating against Wilbert Norey, Veronica Harris, and Calvin Robins for engaging in protected, concerted activity.

V. Recommended Order

IT IS HEREBY ORDERED that the Respondent, Chicago State University, its officers and agents shall:

- 1) Cease and desist from:

- a) Failing and refusing to bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter 297, as the exclusive representative of the bargaining unit composed of Respondent's employees in the job title or classification of Police Sergeant.
 - b) Making unilateral changes to employees' terms and conditions of employment during the pendency of interest arbitration proceedings.
 - c) Retaliating against Wilbert Norey, Veronica Harris, and Calvin Robins for engaging in protected, concerted activity.
- a) 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 the status quo by reinstating Wilbert Norey, Veronica Harris, and Calvin Robins as Watch Commanders of their respective shifts.
 - b) Make whole employees Wilbert Norey, Veronica Harris, and Calvin Robins for any losses incurred from the Respondent's demotion of them from Watch Commanders to field sergeant, plus seven percent interest per annum.
 - c) On request, bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter 297, as the exclusive representative of the bargaining unit composed of Respondent's employees in the job title or classification of Police Sergeant.
- a) 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.
 - b) 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 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 27th day of February, 2017

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-16-079

The Illinois Labor Relations Board, State Panel, has found that the Chicago State University 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 refusing to bargain collectively in good faith with the Metropolitan Alliance of Police, Chapter 297, as the exclusive representative of the bargaining unit composed of our employees in the job title or classification of Police Sergeant.

WE WILL cease and desist from making unilateral changes to employees' terms and conditions of employment during the pendency of interest arbitration proceedings.

WE WILL cease and desist from retaliating against Wilbert Norey, Veronica Harris, and Calvin Robins for engaging in protected, concerted activity.

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 the status quo by reinstating Wilbert Norey, Veronica Harris, and Calvin Robins as Watch Commanders of their respective shifts.

WE WILL make whole employees Wilbert Norey, Veronica Harris, and Calvin Robins for any losses incurred from our demotion of them from Watch Commanders to field sergeant, plus seven percent interest per annum.

DATE _____

Chicago State University
(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.**
