STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Laborers' International Union of North America,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CA-18-007
	)	
Alexander County Housing Authority,	)	
	)	
Respondent,	)	
	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On May 16, 2017, Administrative Law Judge (ALJ) Matthew Nagy issued his Recommended Decision and Order (RDO) dismissing the Complaint for Hearing (Complaint) issued against Respondent Alexander County Housing Authority (ACHA) based on an unfair labor practice charge filed by Charging Party Laborers' International Union of North America, Local 773 (Union). The Complaint alleged Respondent violated Sections 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended, when it repudiated the parties' collective bargaining agreement. The Union filed timely exceptions and Respondent timely responded.

After reviewing the record, the RDO, the exceptions, responses thereto, and the parties' briefs in support, we find the Union's exceptions to be without merit and accept the ALJ's recommendation contained in his RDO for the reasons stated therein. Accordingly, we adopt the RDO as a decision of the Board.

I. DISCUSSION

In his RDO, ALJ Nagy provided thorough findings of fact based upon the stipulated record. We provide the following summary for discussion purposes.

The allegations in the Complaint involved circumstances surrounding the ACHA's implementation of a federal housing program. In February 2016, the United States Department of Housing and Urban Development (HUD) took possession of the ACHA pursuant to 42 U.S.C. § 1437d(j)(3)(A)(iv) as a result of the ACHA's implementation of HUD's Low Rent Housing Program.

After HUD took possession, the Union and the ACHA entered into negotiations for a successor to their collective bargaining agreement which expired on September 30, 2015. During negotiations for the successor agreement, the parties at the August 1, 2016 bargaining session agreed that a modified agreement should be drafted and presented. The ACHA presented a revised draft to the Union on December 22, 2016 and the Union countered on February 27, 2017. To assist in reaching an agreement, the parties scheduled a mediation session for June 26, 2017.

On June 27, 2017, the HUD's Secretary directed the immediate abrogation of the parties' collective bargaining agreement pursuant to 42 U.S.C. § 1437d(j)(3)(D)(i)(l). The next day, June 28, 2017, HUD-Appointed ACHA Executive Director/HUD Co-Administrator Towanda Macon sent a letter to unit members informing them that they would be discharged within 30 days; the collective bargaining agreement had been cancelled; and that as a result, unit members would not be entitled to the benefits and rights contained in the collective bargaining agreement, but they would be compensated in accordance with State law.

Determining the sole issue in the case to be whether the abrogation of the parties' collective bargaining agreement and issuance of Macon's June 28, 2017 letter constituted a repudiation of the parties' collective bargaining agreement, the ALJ concluded the evidence

failed to demonstrate that the ACHA's conduct violated Section 10(a)(4) and, derivatively, Section 10(a)(1) of the Act. In reaching this conclusion, the ALJ relied on the Board's decision in Chief Judge of the Circuit Court of Cook County, 34 PERI ¶ 136 (ILRB-SP 2918), in which the Board found the employer's control over the wages, hours, and other conditions of employment inherent in the duty to bargain in good faith. The ALJ then determined the Union, as the party bearing the burden of proof, failed to show the ACHA had the requisite control over the terms and conditions of employment once HUD took possession of the ACHA in February 2016.

After finding the ACHA lacked control over the terms and conditions of employment after HUD's intervening conduct, the ALJ, relying on International Union, United Auto, Aero & Agric. Implement Workers, Local 737 v. Auto Glass Employees Federal Credit Union, 72 F.3d 1243 (6th Cir. 1996) as persuasive authority, determined the record lacked evidence demonstrating the ACHA had any authority, control or influence over HUD's direction to immediately abrogate the contract.

Regarding the termination of employment of unit members, the ALJ found the record also lacked sufficient evidence of ACHA's control over the termination decision. Citing caselaw, he also found that even if the ACHA had control over the decision to terminate the employees, because HUD abrogated the contract, there were no contractual terms in existence. Moreover, the ALJ noted that for a repudiation to be unlawful, the employer's conduct must be without rational or reasonable justification such that the conduct demonstrates bad faith. He concluded ACHA's belief that the unit members became at-will employees after HUD directed the abrogation of the collective bargaining agreement was reasonable under the circumstances and thus did not constitute bad faith.

A. UNION'S EXCEPTIONS

The Union submitted five exceptions to the ALJ's findings and recommendations contending the ALJ: (1) failed to address the Union's objections to the inclusion of exhibits in the ACHA's post-hearing brief; (2) erred in finding the ACHA lacked control over the decision to abrogate the parties' collective bargaining agreement; (3) erred in interpreting the Housing and Urban Development Act as giving HUD the authority to abrogate collective bargaining agreements; (4) incorrectly recognized HUD's authority to terminate the collective bargaining agreement because such authority "runs afoul" of the Act; and (5) erred in finding the termination notices did not constitute a violation of the Act. The Union's exceptions, however, lack merit.

The Union's first exception is meritless for it is not only incorrect but also based on speculation that the ALJ considered two exhibits included with the Respondent's post-hearing brief. As the Respondent correctly observes, the ALJ expressly cited to the parties' joint stipulations and exhibits in making his findings, and notably, the Union fails to identify any specific finding, conclusion or observation that was based on anything other than the parties' stipulations or exhibits admitted into the record. The second, third, and fifth exceptions are also unavailing. The Union made similar arguments in its post-hearing briefs which were considered and rejected by the ALJ in reaching his RDO. These exceptions fail to identify any flaw in the ALJ's findings and analysis sufficient to undermine his recommendations that the evidence failed to demonstrate that the ACHA repudiated the collective bargaining agreement. Specifically, the Union fails to identify a compelling basis to find the ACHA had any ability to ignore or defy HUD's directives once HUD took possession of the ACHA in February 2016.

With its fourth exception, the Union contends for the first time, that the HUD statute conflicts with Section 15 of the Act. This exception is also unpersuasive. As the Respondent points out, Section 15 of the Act states in relevant part: "[i]n the case of any conflict between the provisions of this Act and any other law . . . *relating to wages, hours and conditions of employment or employment relations*." 5 ILCS 315/15(a) (emphasis added). The HUD statute does not conflict with the Act for it does not concern "wages, hours and conditions of employment or employment relations."

The ALJ appropriately focused on the Respondent's control over the decisions at issue under the rather unique circumstances in this case—HUD's take-over of ACHA's implementation of HUD's Low Income Housing Program—and correctly determined ACHA lacked control over those decisions. Nothing in the Union's exceptions points to any evidence in the stipulated record indicating that ACHA had any control, influence or authority over those decisions or that the ACHA had the ability to challenge HUD's decisions. Furthermore, the Union fails to identify any evidence indicating the ACHA affirmatively invited, suggested, or induced HUD into making those decisions for the purposes of avoiding its bargaining and contractual obligations. The crux of the Union's exceptions appears to be that HUD did not have the authority to abrogate the parties' collective bargaining agreement. But whether HUD had the authority or acted beyond its authority is not an issue we can resolve for it is ACHA's conduct that we must consider, not HUD's conduct. Federal constitutional issues aside, our jurisdiction does not extend to federal agencies as the Act's definition of "public employer" or "employer" does not include governmental entities outside the State of Illinois. See 5 ICLS 315/3(o).

We find the ALJ accurately stated the issues and his analysis was appropriate and correct in view of the unique circumstances presented, the record evidence, and relevant caselaw. None

of the arguments or citations to the stipulated record provided by the Union in its exceptions are sufficiently persuasive to reject the ALJ's recommendations.

For the reasons stated above, we accept the ALJ's recommendations and adopt the RDO as a decision of the Board.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on November 14, 2019, written decision approved at the State Panel's public meeting in Chicago, Illinois on December 10, 2019, and issued on December 11, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Laborers' International Union of North America, Local 773, Charging Party and Alexander County Housing Authority, Respondent	)	Case No. S-CA-18-007

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 12, 2017, Laborers' International Union of North America, Local 773, (Charging Party or Union) filed an unfair labor practice charge with the Illinois Labor Relations Board (Board) alleging that Alexander County Housing Authority (Respondent or ACHA) violated Sections 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended. The charge was investigated in accordance with Section 11 of the Act, and on September 13, 2017, the Board's Executive Director issued a Complaint for Hearing, alleging that the Respondent repudiated the collective bargaining agreement between it and the Charging Party in violation of Section 10(a)(4) and 10(a)(1) of the Act.

In lieu of a hearing, the parties submitted stipulations of fact on March 4, 2019. Along with the stipulations of fact, the parties submitted two joint exhibits: first, the parties' collective bargaining agreement (CBA); second, a group of letters sent on June 28, 2017 to various members of the Charging Party's bargaining unit.[1] In addition to the stipulated facts and exhibits, the parties filed supporting briefs on April 5, 2019, response briefs on April 19, 2019, and reply briefs on April 26, 2019. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case[2], I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find, that:

[1] The body of each of these letters are identical.
[2] In addition to the parties' submissions, I include the Board Exhibits in this case: the unfair labor practice charge, the Complaint for hearing, the Respondent's Answer, and the parties' waiver of hearing in lieu of a stipulated record.

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, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
3. 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.
4. The most recent Collective Bargaining Agreement (CBA) between Laborers Local 773 and Alexander County Housing Authority (ACHA) expired on September 30, 2015 (Joint Exhibit 1)**.**
5. The parties engaged in bargaining over a successor agreement to the CBA that expired on September 30, 2015.
6. During February 2016, the United States Department of Housing and Urban Development (HUD) took possession of the ACHA pursuant to 42 U.S.C. §1437d(j)(3)(A)(iv) after HUD determined that the ACHA was in substantial default of its Consolidated Annual Contributions Contract (ACC) with HUD and that the ACHA had violated provisions of the ACC, as well as federal statutes and regulations implementing HUD's Low Rent Housing Program.
7. The parties held a negotiations meeting on August 1, 2016, during which the parties agreed that a modified, more comprehensive agreement be drafted and presented.
8. A revised agreement was drafted and presented to the Union on December 22, 2016.
9. Laborers Local 773 submitted its counterproposal to the revised agreement on February 27, 2017.
10. The parties agreed to proceed to mediation to assist their efforts to bargain a successor CBA and scheduled a mediation session to begin on June 26, 2017.
11. On June 26, 2017, the parties met for mediation but did not reach an agreement on a successor CBA.
12. On June 27, 2017, the Secretary of HUD issued a determination directing the immediate abrogation of the CBA between ACHA and Laborers Local 773 pursuant to 42 U.S.C. §1437d(j)(3)(D)(i)(l), and the CBA was abrogated as of the issuing of that determination.
13. On June 28, 2017, HUD-Appointed ACHA Executive Director/HUD Co-Administrator, Towanda Macon sent a letter to Unit members, informing them that their employment would be terminated in 30 days, that the CBA had been cancelled, and that because of the CBA was cancelled, they were not entitled to termination benefits or rights of seniority as set forth in the CBA, but would receive all of the compensation to which they were entitled under state law (Joint Exhibit 2).

14. Prior to the termination of the CBA, the bargaining-unit represented by Laborers 773 consisted of the following individuals: David Bigham, Jeffrey Childs, Robert Fitzgerald, Rodney Houston, James Renfro, Rhiannon Shirley, and Elizabeth Thurston.

II. ISSUE AND CONTENTIONS

To clarify, the sole issue in this case is whether the abrogation of the parties' CBA and subsequent issuance of notice of termination letters to Charging Party's bargaining unit members amounts to a repudiation of the parties' collective bargaining agreement in violation of Section 10(a)(4) and, derivatively, 10(a)(1) of the Act. See Chicago Transit Authority, 15 PERI 3018 (explaining that a 10(a)(1) allegation is derivative of a 10(a)(4) allegation). The Union argues that the ACHA also independently violated Section 10(a)(1) of the Act by retaliating against its bargaining unit members for bargaining a successor contract, which is a form of protected activity under the Act. However, the Union did not allege an independent 10(a)(1) violation in its charge, nor does the Complaint allege such. Moreover, I find that the Union's alleged 10(a)(1) violation does not closely relate to the 10(a)(4) violation, a separate and distinct legal theory, which is pled in the Complaint. See County of Cook and Sheriff of Cook County, 6 PERI 3019 (ILLRB 1990) (reciting NLRB "closely related" test, which considers, among other things, whether the uncharged allegations involve the same legal theory and usually the same section of the law as the charged allegations). Accordingly, I will not consider the Union's independent 10(a)(1) allegation.

The Union argues that ACHA failed to comply with the requirements for terminating a contract set forth in Section 7 of the Act. Specifically, the Union argues that Section 7 requires notice of a proposed termination of a contract, not a notice that termination of contract has already occurred. It also asserts that Section 7 requires notice to be served on the Union, not on individual bargaining unit members. Third, it points out that the notice did not include an offer to meet and confer to negotiate a new contract, a requirement under under Section 7. Fourth, it notes that there is no evidence that the ACHA complied with the Section 7 requirement to give the Board notice within 30 days of a termination notice. Finally, it avers that the Act requires a contract to remain in full force for sixty days after notice is given or until its expiration, which did not occur here. Failing to comply with these various provisions of Section 7, the Union concludes, amounts to an unlawful repudiation of the CBA and the collective bargaining process, which violates the duty to bargain under Section 7 of the Act.

The Respondent argues that it was HUD, not the ACHA, that cancelled the contract, that HUD has the power to abrogate any contract including collective bargaining

agreements pursuant to federal law, and that contractual abrogation has been upheld as proper when undertaken by other entities operating pursuant to federal authority similar to the authority at issue in this case. Further, it argues that after HUD abrogated the CBA, the Charging Party's bargaining unit members became at-will employees, subject to termination at any time for any legal reason.

III. DISCUSSION AND ANALYSIS

The ACHA did not violate the act when the CBA was abrogated and the Union's bargaining unit members were terminated.

a. Application of Section 7 to the ACHA

The Complaint in this case alleges that the ACHA repudiated the parties' CBA when it abrogated the contract and notified the Union's members that their employment would be terminated. Repudiation of a collective bargaining agreement is an unfair labor practice under Section 10(a)(4) of the Act because such repudiation violates the Act's requirement that parties bargain in good faith. See, e.g., County of Cook and Sheriff of Cook County, 34 PERI 72 (ILRB-LP 2017). Therefore, I must start with an examination of the section of the Act which establishes the duty to bargain in good faith.

Section 7 of the Act creates the duty for a public employer and an exclusive representative to bargain collectively with respect to wages, hours, and other conditions of employment which affect employees represented by the exclusive representative. 5 ILCS 315/7. However, the Board has affirmed that inherent in this duty is a requirement that the public employer have sufficient control to affect those wages, hours, or conditions of employment. Chief Judge of the Circuit Court of Cook County, 34 PERI 136 (ILRB-SP 2018) (Chief Judge). In Chief Judge, a union filed an unfair labor practice charge against an employer alleging that it violated Section 10(a)(4) of the Act by refusing to arbitrate certain grievances. Id. The Board upheld the ALJ's determination that the employer did not violate the Act because it was subject to the control of a federally-appointed transitional administrator during the period in question and, consequently, it did not exercise control over its employees' terms and conditions of employment. Id. This is consistent with the Board's holdings in prior cases involving representation petitions. See Department of Central Management Services (DOC/Wexford), 18 PERI 2051 (ILRB-SP 2002), *aff'd* AFSCME v. ISLRB, 216 Ill. 2d. 569 (2005) (employer must "control sufficient matters relating to the employment relationship so as to engage in meaningful collective bargaining"); Departments of Central Management Services and Corrections (DCMS/DOC), 23 PERI 71 (ILRB-SP 2007) (upholding an ALJ's application of the Wexford standard and conclusion that employer's control over pay and benefits of subcontracted employees was sufficient to allow the employer to engage in meaningful bargaining).

Applying this principle to the instant case, the threshold question becomes whether the ACHA exercised control over the actions which form the basis of the alleged unfair labor practices; i.e., the cancellation of the CBA and the termination of the Union's members. There is no question that, up until February 2016, the ACHA exercised control over matters relating to the employment relationship between it and its employees and that it engaged in meaningful collective bargaining. Evidence of this is plain in the parties' most recent CBA, which included provisions relating to both economic and non-economic issues affecting employees, such as work week and overtime pay; holidays, vacation, personal days, and sick leave; wage rates; a grievance procedure; seniority; health insurance; employer pension contribution; and a stipend for work uniforms.

However, in February 2016, the control that the Respondent exercised over the employment relationship between it and the Union's members was altered when HUD took possession of the ACHA pursuant to 42 U.S.C. §1437d(j)(3)(A)(iv) (Section 1437d). When it takes possession of a housing authority pursuant to Section 1437d, HUD:

> (I) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the Secretary determines that reasonable efforts to renegotiate such contract have failed;
>
> (II) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 1437p of this title, including disposition by transfer of properties to resident-supported nonprofit entities;
>
> (III) may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;
>
> (IV) may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies;
>
> (V) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or

> administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default; and
>
> (VI) shall, without any action by a district court of the United States, have such additional authority as a district court of the United States would have the authority to confer upon a receiver to achieve the purposes of the receivership.

42 U.S.C.A. § 1437d(j)(3)(D)(i)(I-VI) (West 2019).

Given this context, I next apply the language of Section 7 to the allegations as pled in the Complaint. The Union, as the party bringing the charge, has the burden of proving the allegations set forth in the Complaint. 80 Ill. Admin. Code 1220.50.

b. Abrogation of the Parties' Collective Bargaining Agreement

The plain language of Section 1437d grants HUD the authority to abrogate any contract if HUD's Secretary determines certain conditions have been met. Nothing suggests that HUD needs to first secure the acquiescence of a housing authority before it does so. Moreover, there is no evidence in the record that the ACHA had any involvement in HUD's decision to abrogate the CBA in this case, nor that HUD was required to consult the ACHA before it did so. Stated differently, there is no evidence that the ACHA had any power, authority, influence, or control of any sort over HUD's decision to abrogate the CBA. What is more, decisions made by HUD under Paragraph 3 of Section 1437d—which include the decision to abrogate a contract—are not subject to judicial review in any federal or state court. See 42 U.S.C.A. § 1437d(j)(3)(E) (West 2019); City of East St. Louis v. United States Dep't of Housing and Urban Development, No. 3:13–982–DRH–PMF, 2015 WL 225433 (S.D. Ill. January 15, 2015) ("[p]aragraph (3)(E) of [Section 1437d] unequivocally bars judicial review of decisions made under paragraph (3)").

The Union argues that the determination issued by HUD on June 27, 2017 was not an immediate abrogation of the CBA, but rather a directive to the ACHA to abrogate the CBA, and that the CBA was not abrogated until June 28, 2017. However, this runs counter to the parties' own agreed-upon stipulation that on "June 27, 2017, the Secretary of HUD issued a determination directing the *immediate* abrogation of the CBA between ACHA and Laborers Local 773 pursuant to 42 U.S.C. §1437d(j)(3)(D)(i)(l), *and the CBA was abrogated as of the issuing of that determination*." (Stip. 12, emphasis added). To abrogate is to "annul, cancel, repeal, or destroy" (Black's Law Dictionary 8 (5th ed. 1979)). Further, the language of the termination letters sent to the Union's members on June 28, 2017 noted

that it was HUD which "determined that it was necessary to cancel the Collective Bargaining Agreement between your union . . . and ACHA." (Jt. Ex. 2). Therefore, by the parties' own stipulations and joint exhibits it is clear that the CBA was cancelled as of June 27, 2017, and the Union's contention otherwise is not supported by the facts in the record.

As the Respondent points out in its brief, the ability of an entity to repudiate a collective bargaining agreement pursuant to federal authority has been addressed by federal courts. See International Union, United Auto. Aero & Agric. Implement Workers, Local 737 v. Auto Glass Emples. Fed. Credit Union, 72 F.3d 1243 (6th Cir. 1996) (Auto Glass Employees). In Auto Glass Employees, the conservator of an employer repudiated a collective bargaining agreement between the employer and its employees, invoking its federal statutory authority to "repudiate contracts." Id. The union argued that the conservator's repudiation violated, among other things, Section 8 of the National Labor Relations Act (NLRA). Id. at 1247. The Sixth Circuit, in upholding the conservator's repudiation of the collective bargaining agreement, noted that the federal statute under which the conservator was acting "unequivocally grants authority to conservators to repudiate 'any contract'" adding that "'any contract' includes collective bargaining agreements." Id. at 1248.

Contrary to the Union's assertion, Auto Glass Employees is analogous to the instant case in two key respects. The first involves the similarity of the federal authority invoked. Like the conservator's federal statutory authority to "repudiate contracts" in Auto Glass Employees, HUD has similar authority under federal law to "abrogate any contract" when it takes possession of a housing authority, and there is nothing to suggest that it first needs to have the approval of that housing authority in order to do so. Second, the union in Auto Glass Employees argued that the conservator's repudiation of the collective bargaining agreement violated Section 8 of the NLRA. Repudiation of a collective bargaining agreement is an unfair labor practice under Section 8(a)(5) and 8(a)(1) of the NLRA. See e.g., In re Exxon Chemical, 340 NLRB No. 51 (2003). Section 8(a)(5) of the NLRA is analogous to Section 10(a)(4) of the Act. Village of Lisle, 23 PERI 39, at FN 3 (ILRB-SP 2007); County of Jackson, 9 PERI 2036, at FN 6 (ISLRB 1993). Both the Board and Illinois courts have noted that the rulings of the National Labor Relations Board and federal courts that construe the NLRA are persuasive authority for construing similar statutory provisions in the Act. Sheriff of Jackson County, 14 PERI 2009 (ISLRB 1998) (citing City of Burbank v. ISLRB, 128 Ill. 2d 335 (1989)); AFSCME v. SLRB, 190 Ill. App. 3d, 259 (1st Dist. 1989). Applying this principle, I find Auto Glass Employees to be persuasive authority to the extent that it rejected a similar claim of repudiation made under a provision of federal law analogous to the one pled in the Complaint in this case.

The Union argues that the abrogation of the CBA violates Section 7 of the Act, and cites Village of North Riverside v. ILRB, 2017 IL App (1st) 162251 (2018) (Village of North Riverside) in support of its argument. In Village of North Riverside, an employer notified the union that it was terminating the parties' collective bargaining agreement while the union was pursuing interest arbitration. Id. The Board held, and the appellate court affirmed, that such conduct violated of Section 10(a)(4) of the Act. Id. The Union argues that, unlike the employer in Village of North Riverside which at least attempted to adhere to the Section 7 requirements for terminating a collective bargaining agreement, the ACHA here did not even try to adhere to those requirements, and for that reason its unilateral cancellation of the contract must necessarily violate Section 7.

However, the contract termination provisions of Section 7 that the Union cites to apply only to parties to a contract. See 5 ILCS 315/7 ("no *party* to a collective bargaining contract shall terminate or modify such contract, unless the *party* desiring such termination or modification [lists requirements]."). In Village of North Riverside, the entity seeking to terminate the contract was in fact a party to that contract. Here, by contrast, the decision to cancel the CBA was not made by any party, but rather by HUD, a non-party. Moreover, the employer in Village of North Riverside plainly had control over the decision to seek the contract's termination, whereas here, there is no evidence to suggest that ACHA had any control whatsoever over the decision by HUD to abrogate the CBA. For these reasons, I find Village of North Riverside distinguishable and unpersuasive.

Based on the foregoing, I find that the ACHA did not violate the Act when HUD abrogated the parties' contract because there is no evidence that the ACHA had control over that decision.

c. Notice of Termination Letters

The issuance of notice of termination letters to the Union's bargaining unit members did not violate the Act.

As a starting point, I note that any argument that HUD is required to comply with the provisions of the Act, including the duty to bargain, is called into question by the language of Section 1437d, which provides that HUD "shall not be required to comply with *any State or local law* relating to . . . *employee rights* (except civil rights) . . . that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default[.]" 42 U.S.C.A. § 1437d(j)(3)(D)(i)(V) (West 2019) (emphasis added).[3] However, putting this consideration aside, there are several other problems with the Union's contention that the notice of termination letters violate the Act.

[3] Neither party argued what impact this provision ought to have on the instant case.

First, there is insufficient evidence for me to conclude that the ACHA had control over the decision to terminate the Union's members. The only pieces of evidence that exist on this issue are one stipulation and one joint exhibit. The parties stipulate that the notice of termination letters were sent by HUD-Appointed ACHA Executive Director/HUD Co-Administrator Towanda Macon (Macon), and the parties' second joint exhibit are the letters themselves. These pieces of evidence do not explain certain key details such as who Macon is employed by; on whose behalf, and under what authority, she was acting when issuing the letters; and the decision process that led to the letters, generally. In addition, there are two other individuals who signed the letters, and their employer, authority, and involvement in the decision is likewise unknown. As stated above, the Union bears the burden of demonstrating the necessary elements of its case, including that the ACHA had control over the decision to terminate its employees and send the notice of termination letters, and given the scant evidence before me, I cannot conclude it has done so here.

Second, even if the ACHA had control over the decision to issue the notice of termination letters, such does not constitute a repudiation under the Act. The parties' joint exhibits make clear that the Union's bargaining unit members were informed on June 28, 2017 that their employment would be terminated within thirty days. For the reasons explained, *supra*, the contract between the parties was cancelled one day prior, on June 27, 2017. Therefore, I cannot find that the notice of termination letters constituted a repudiation of the parties' contract because there was no contract in existence to repudiate on that date. I note that I am unable to uncover, nor has the Union provided, a case in which the Board has found a violation of the Act under a theory of repudiation when there were no contractual terms in effect at the moment the alleged repudiatory conduct took place.

Rather, the Board has held that an employer repudiates its collective bargaining obligation when it engages in conduct that "evidences an outright refusal to abide by a contractual term[.]" See City of Loves Park v. ILRB, 343 Ill. App. 3d 389, 395 (2d Dist. 2003), *citing* City of Collinsville, 16 PERI ¶ 1553 (IL SLRB 2000), *aff'd* City of Collinsville v. ISLRB, 329 Ill. App. 3d 409 (5th Dist. 2002). The ACHA cannot be said to have refused to abide by a contractual term when the notice of termination letters were issued because there were no contractual terms in existence at that moment in time. Moreover, in order to repudiate a collective bargaining agreement, an employer's conduct must be without a rational justification or reasonable interpretation such that the conduct demonstrates bad faith. See City of Chicago, 30 PERI 194 (ILRB-LP 2014); Byron Fire Protection District, 31 PERI 134 (ILRB-SP 2015). Here, the Respondent argues that it believed that the Union's members were at-will employees after HUD cancelled the contract, and therefore subject to termination at any time for any legal reason. Absent any

evidence to the contrary, I find that such a belief is both rational and fails to rise to the level of bad faith needed to warrant a finding of repudiation.

In sum, I find that the ACHA did not violate the Act by issuing notice of termination letters to the Union's members because there is insufficient evidence to suggest it had control over that decision. Alternatively, even if the ACHA had control over that decision, I find that it did not violate the Act in doing so as there was no contract for it to repudiate, and its decision was both rational and not done in bad faith.

IV. CONCLUSIONS OF LAW

1. The Respondent did not violate Section 10(a)(4) and 10(a)(1) of the Act when HUD abrogated the CBA between the Union and the Respondent.
2. The Respondent did not violate Section 10(a)(4) and 10(a)(1) of the Act when the Union's bargaining unit members were sent notice of termination letters.

V. RECOMMENDED ORDER

The complaint for hearing is dismissed.

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 in 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 this decision. Within seven 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, 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 in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. 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 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.

Dated: **May 16, 2019**
Issued: Springfield, Illinois

/s/ *Matthew S. Nagy*
Matthew S. Nagy
Administrative Law Judge

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