

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

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| Laborers, Local 1084, |) | |
| |) | |
| Charging Party |) | |
| |) | |
| and |) | Case No. S-CA-19-109 |
| |) | |
| City of Nokomis, |) | |
| |) | |
| Respondent |) | |

ORDER

On December 17, 2019, Administrative Law Judge Matthew S. Nagy, 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 18, 2020 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 18th day of June 2020.

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

/s/ Helen J. Kim
Helen J. Kim
General Counsel

**STATE OF ILLINOIS
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| |) | |
| City of Nokomis, |) | |
| |) | |
| Respondent. |) | |

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On May 2, 2019, Charging Party, Laborers, Local 1084 (Charging Party or Union) filed an unfair labor practice charge against Respondent, City of Nokomis (Respondent or City) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016) as amended (Act) and the Rules and Regulations of the Illinois Labor Relations Board (Board), 80 Ill. Admin. Code parts 1200 through 1300 (Rules).

The charge was investigated in accordance with Section 11 of the Act, and on August 14, 2019, the Board’s Executive Director issued a Complaint for Hearing, alleging that the Respondent violated Section 10(a)(4) and 10(a)(1) of the Act when it laid off certain of Charging Party’s bargaining unit members without first giving the Charging party notice or an opportunity to bargain the issue to agreement or impasse. The Complaint contained the following (emphasis in original):

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

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

The ILRB's Affidavit of Service notes that the Complaint was sent to the City's legal counsel on August 14 via mail to the mailing address provided on counsel's Notice of Appearance. Section 1200.30(c) of the Rules provides that a document is presumed served on a party three days after it is mailed. 80 Ill. 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. In addition, "when a time period prescribed under the Act or [Part 1200 of the Rules] is less than 7 days, intervening Saturdays, Sundays, or legal holidays shall not be included." Id. Finally, if the last day of a time period prescribed under the Act "falls on a Saturday, Sunday or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday." Id. Applying these rules, service of the Complaint on the City was presumed effective on August 19.

Under Section 1220.40(b) of the Rules, a respondent is required to submit its answer to a complaint within fifteen days of service thereof. 80 Ill. Adm. Code 1220.40(b). Accordingly, the City was required to file its answer within fifteen days after August 19; in other words, by no later than September 3. As of October 1, the City had not filed an answer to the Complaint. Accordingly, on that date, I, the undersigned, issued an Order to Show Cause to the City by both e-mail and U.S. Mail, at the e-mail and mailing address provided on the notice of appearance of the City's legal counsel, directing the City to show cause why a default judgment should not issue against it for failure to file a timely answer. The Order to Show Cause provided a deadline of October 15 for the City to respond.

On October 15, I was contacted by counsel for the City who noted that the parties were discussing settlement of the instant charge as well as another charge contemporaneously. After confirming this with counsel for the Union, I re-set the deadline for the Respondent to respond to the Order to Show Cause to November 15 in order facilitate settlement discussions between the parties. The City did not submit a response to the Order to Show Cause by the new deadline of November 15.

On November 18, I emailed the parties to inquire as to the status of settlement. The parties indicated they were still discussing settlement, and I re-set the deadline for the City to respond to the Order to Show Cause to December 10. In that correspondence, I noted it would be the final continuance that I would grant. To date, the City has not filed a response to either the Order to Show Cause nor an answer to the Complaint.

I. Discussion and Analysis

A default judgment issues herein because the Respondent has failed to both file an answer and respond to the Order to Show Cause.

The consequences for failing to file an answer are laid out in no uncertain terms in the Board's Rules, which provide that "parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint." 80 Ill. Admin. Code 1220.40(b). Further, "(t)he failure to answer any allegation shall be deemed an admission of that allegation." Id. This language was recited on the face of the Complaint, and the section in which it was contained was set off by all-caps, bolded lettering. The Rules go on to make clear that "[f]ailure to file an answer *shall* be cause for the termination of the proceeding and the entry of an order of default." Id. (emphasis added). These rules have been strictly construed by both the Board and courts, which have consistently held that a respondent's failure to timely file an answer to a complaint results in an admission of all allegations in the complaint and an entry of default judgment against the respondent. City of Chicago (Fire Department), 33 PERI 51 (ILRB-LP 2016); Wood Dale Fire Prot. Dist. v. ILRB, 395 Ill. App. 3d 523 (2nd Dist. 2009), *aff'g* Wood Dale Fire Prot. Dist., 25 PERI 136 (IL LRB-SP 2008); Metz v. ISLRB, 231 Ill. App. 3d 1079 (5th Dist. 1992), *aff'g* Circuit Clerk of St. Clair Cnty., 6 PERI 2036 (IL SLRB 1990); Peoria Hous. Auth., 11 PERI 2033 (IL SLRB 1995); Chicago Hous. Auth., 10 PERI 3010 (IL LLRB 1994); Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI 2025 (IL SLRB 1993).

Here, the City was obligated to file a timely answer even though the parties were engaged in settlement discussions. The Board's Rules provide in no uncertain terms that "[f]iling of a motion will not stay the time for filing an answer." 80 Ill. Admin. Code 1220.40(b)(3). This language was included on the face of the Complaint and imparted upon the City the importance of filing a timely answer even if it suspected the charge would be settled. Moreover, even after failing to file a timely answer, the City was given almost two full months' worth of extensions from the

original deadline to file a response to the Order to Show Cause in order to facilitate settlement discussions with the Union. The last of those extensions unequivocally noted it would be the final one. Despite this, the City never submitted a response to the Order to Show Cause or requested an extension of time to file one, nor has it filed its answer in this case. Accordingly, I find that default judgement must be entered against the City.

II. Admitted Allegations

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

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, Charging Party has been the exclusive representative of a bargaining unit (Unit) composed of Respondent's employees in the job titles or classifications of Street Superintendent, Water Superintendent, Wastewater Superintendent, Water and Wastewater Department Laborer, and Street Department Laborer as certified by the Board on February 15, 2017, in Case No. S-RC-17-037.
5. On April 23, 2019, Respondent notified Charging Party that it had entered into an agreement with Woodard & Curran for the company to take over the operation and maintenance of the Water and Wastewater Departments, and, as such, Craig Taylor, Brian Hayes, and Austin Bowers would be laid off effective May 1, 2019; however, Respondent mentioned that Woodard & Curran would be interviewing these three employees in hopes to staff the positions within their company.

6. On April 30, 2019, Charging Party sent a letter to Respondent demanding to bargain over the layoffs and requesting that layoffs be postponed.
7. On May 1, 2019, Respondent laid off the above-mentioned employees.
8. Layoffs relate to wages, hours, and conditions of employment and are thereby a mandatory subject of bargaining within the meaning of Section 7 of the Act.
9. Respondent took the action referenced in paragraph 7 without affording Charging Party prior notice and an opportunity to bargain the decision and its effects.
10. By its acts and conduct as described in paragraphs 5, 7, and 9, Respondent has failed and refused to bargain in good faith with the Charging Party, in violation of Sections 10(a)(4) and (1) of the Act.

III. Conclusion of Law

The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act when it laid off certain members of Charging Party's bargaining unit without first bargaining the decision and its effects with the Charging Party.

IV. Recommended Order

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

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with the Charging Party with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:

- a) Restore the *status quo ante* as it existed before May 1, 2019 with respect to the staffing of its Water and Wastewater Departments.
- b) Make whole any employees in the bargaining unit represented by Charging Party for all losses incurred as a result of the City's unilateral implementation of layoffs, including back pay with interest as allowed by the Act, at seven percent *per annum*.
- c) Upon request, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the Union's bargaining unit.
- d) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

V. Exceptions

Pursuant to Section 1200.135(b)(1)(B) of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with General Counsel Helen J. Kim of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois this 17th day of December, 2019

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

/s/ Matthew S. Nagy

**Matthew S. Nagy
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-19-109 (Laborers, Local 1084/City of Nokomis)

The Respondent, City of Nokomis (City), violated Section 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act) when it laid off members of the bargaining unit of Charging Party, Laborers, Local 1084 (Laborers), without first providing Laborers notice and an opportunity to bargain the change and its effects.

The City, and its officers and agents, shall:

- 1) Cease and desist from:
 - a) Failing to bargain collectively and in good faith with the Charging Party with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.
 - b) In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a) Restore the *status quo ante* as it existed before May 1, 2019 with respect to the staffing of its Water and Wastewater Departments.
 - b) Make whole any employees in the bargaining unit represented by Charging Party for all losses incurred as a result of the City's unilateral implementation of layoffs, including back pay with interest as allowed by the Act, at seven percent *per annum*.
 - c) Upon request by the Charging Party, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the Union's bargaining unit.
 - d) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.
 - e) Notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.

Date: _____

City of Nokomis

(Employer)

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

ILLINOIS LABOR RELATIONS BOARD

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

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

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