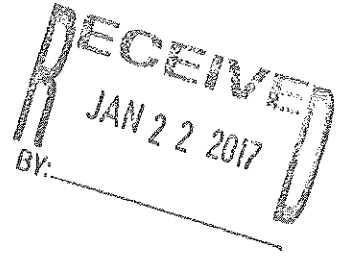


STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



International Union of Operating Engineers,)	
Local 150,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-17-137
)	
Algonquin Township Highway Department,)	
)	
Respondent.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On September 28, 2017, Administrative Law Judge (ALJ) Deena Sanceda issued a Recommended Decision and Order (RDO) finding the Algonquin Township Highway Department (Highway Department or Respondent) committed an unfair labor practice in violation of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (2016), as amended (Act). The Highway Department filed timely exceptions and a brief in support. The International Union of Operating Engineers, Local 150 (Local 150 or Charging Party) filed a timely response along with a brief in opposition to the Highway Department’s exceptions.

Local 150 filed an unfair labor practice charge on May 31, 2017 (Charge) listing the Highway Department as the employer and Andrew Gasser as the employer representative. In the Charge, Local 150 alleges that on May 15, 2017, Andrew Gasser, who is the Highway Commissioner, repudiated the “parties’ collective bargaining agreement” and memorialized the repudiation by letter dated May 23, 2017. That letter is attached to the Charge as “Exhibit A.” The Charge seeks a make whole remedy and an order directing the Highway Department to abide by the terms of the collective bargaining agreement.

The Charge was sent to Andrew Gasser, Highway Commissioner, Algonquin Township Highway Department, at the address listed on the Charge, 3702 US Highway 14, Crystal Lake, IL, 60014, and was investigated by a Board agent who sent a letter to Gasser seeking a response to questions pertaining to the investigation of the Charge. In response to the Board Agent's letter, attorney Robert Hanlon submitted responses to the Board Agent's inquiries along with his appearance. A Complaint for Hearing (Complaint) was issued and sent to Local 150 and to Robert Hanlon.

Following the Highway Department's failure to file an answer to the Complaint (Complaint), Local 150 filed a Motion for Default Judgment with ALJ Sanceda. Noting that the Board and courts have consistently applied Section 1220.40(b) to hold that a failure to answer a complaint for hearing results in the admission of all allegations in the complaint, ALJ Sanceda granted Local 150's motion and deemed the factual and legal allegations as stated in the Complaint admitted, providing the basis for finding the Highway Department violated the Act.

Post RDO Motions and Responses

After the RDO was issued, Local 150 and the Highway Department filed the following motions and responses:

October 6, 2017—Local 150's Motion to Amend the RDO to Identify Respondent More Accurately (Motion to Amend).

October 6, 2017—Highway Department's Motion to Vacate All Technical Defaults and for Other Relief on the Basis of Lack of Service (Motion to Vacate) along with a Supplemental Appearance.

October 16, 2017—Local 150's Response in Opposition to Motion to Vacate (Response to Motion to Vacate).

October 26, 2017—Highway Department's Reply Memorandum in Support of Motion to Vacate.

October 30, 2017—Highway Department's Response to Motion of Local 150 to Amend RDO to Identify Respondent More Accurately (Response to Motion to Amend).

All the motions and responses listed above were filed electronically and aim to alter the RDO in some manner.

Although the Board's rules do not provide for such motions, but instead require the filing of exceptions and/or cross-exceptions as the vehicle for challenging an ALJ's recommended decision and order, see 80 Ill. Adm. Code §1200.135(b), we construe the Motion to Vacate and Reply Memorandum in Support of Motion to Vacate as supplements to the Highway Department's exceptions and likewise construe the Response to Motion to Vacate as a supplement to Local 150's response to the exceptions. The Highway Department did in fact file exceptions which cite to and mirror the arguments made in its Motion to Vacate. The same holds true for Local 150's Response to Motion to Vacate. Local 150, however, did not file exceptions or cross-exceptions and, thus, we strike Local 150's Motion to Amend and the corresponding response.

Highway Department's Reply Brief and Motion to Strike

On November 22, 2017, the Highway Department filed a Reply in Support of Exceptions and then later filed a copy correcting clerical errors. On November 28, 2017, the Highway Department filed a Motion for Leave to File a Reply Brief in Support of Exceptions or to Strike Portions of Local 150's Response. The Highway Department desires to file a reply because it claims that Local 150's response to its exceptions raises new issues and arguments and thus, is not limited to responding to the exceptions. In the alternative, the Highway Department moves to strike specified portions of Local 150's response. Local 150 filed a response to the Highway Department's motion on December 5, 2017.

The Highway Department's motion for leave to file a reply is denied because it does not comport with the Board's Rules. Section 1200.135 of the Board's Rules set forth the procedures for appealing an ALJ's decision to the Board and provides for the filing of exceptions and corresponding responses along with cross-exceptions and cross-responses in such an appeal. 80

Ill. Admin. Code §1200.135. That section, however, does not provide an opportunity for a party to reply to another party's response or cross-response.

Likewise, the Highway Department's motion to strike portions of Local 150's response is denied. Local 150 did not file any exceptions or cross-exceptions to the RDO and its filing is limited to responding to the Highway Department's numerous exceptions.

Substance of Highway Department's Exceptions

The Highway Department's 75 exceptions focus on one general theme: the Board should reject the ALJ's recommendation for default judgment because the Highway Department was not served with the Complaint. This argument is based on the Highway Department's contention that it is not the same entity as the Algonquin Township Road District (Road District), which it contends is the proper party to these proceedings and the collective bargaining agreement at issue (CBA). The Highway Department points to the Board's Certification in Case No. S-RC- 17-051 (Certification) to support its assertions.

The Highway Department also argues that although Robert Hanlon filed an appearance on behalf of the Road District, it was only for the purpose of responding to the Board agent's inquiries and not for the purpose of accepting service of the Complaint. The Highway Department cites to the affidavit of Andrew Gasser that was included in its Motion to Vacate (Gasser Affidavit) for support.

The Highway Department's exceptions are not persuasive on the issue of whether the Road District is a separate entity from the Highway Department. Although the Certification lists the employer as "Algonquin Township Road District," the Charge and the references used to support the exceptions suggest that the Highway Department and the Road District are the same entity. According to the exceptions and the Charge, Andrew Gasser is the duly elected Highway Commissioner for Algonquin Township. His predecessor was Robert Miller. The Certification

was sent to Robert Miller at 3702 US Highway 14, Crystal Lake, IL, the same address as the Highway Department. Moreover, the Charge attaches as “Exhibit A,” a letter written by Gasser that Local 150 alleges memorializes an oral repudiation of the CBA. That letter states, among other things, “on behalf of the Algonquin Highway Department, I repudiate any agreement executed by Robert Miller”, bears a logo that uses the words “Algonquin Township Highway Department”, and is signed by Andrew Gasser as the “Highway Commissioner, Algonquin Township Highway Department.”

Notably, the Gasser Affidavit cited by the Highway Department in its exceptions fails to compel reversal of the ALJ’s recommendations. In that affidavit, Gasser states that he is “the duly elected Highway Commissioner” who “authorized Robert T. Hanlon to appear on behalf of the Algonquin Township Road District for the purposes of responding to inquiries to the [Board’s] investigation.” The fact that Gasser, the duly elected Highway Commissioner for the Township, has the authority to retain legal counsel to represent the Road District, together with his representations that he was acting “on behalf of the Algonquin Township Highway Department” in the alleged repudiation letter is at odds with the Highway Department’s assertions that it is a separate and distinct entity.

Although the exceptions are not particularly persuasive on the issue of whether the Highway Department and the Road District are separate and distinct entities, they, along with the Certification, cast just enough doubt as to the identity of the proper respondent in this case. As such, we find that the Highway Department, the current named respondent, was not properly served with the Complaint. Because application of Section 1220.40(b)(3) assumes proper service of the Complaint, that Section’s provisions cannot trigger the admission of the allegations in the Complaint, thereby vitiating the recommendation for default judgment.

Furthermore, after the Highway Department filed its exceptions, on November 13, 2017, Local 150 filed an unfair labor practice charge, Case No. S-CA-18-067, which is identical to the one it filed in May except that it lists the employer as the “Algonquin Township Road District, a/k/a Algonquin Township Highway Department.” The charge again lists “Andrew Gasser, Highway Commissioner” as the employer representative.

Rejecting the recommendation for default judgment would not only afford a hearing on the proper respondent for this case, especially in light of the description of the employer as the “Algonquin Township Road District” in the Board’s certification of the bargaining unit, but would also efficiently address the charge filed in Case No. S-CA-18-067. Accordingly, we reject the ALJ’s recommendations and remand the matter for further proceedings.

For the above reasons, **we reject the ALJ’s findings and conclusions contained in her RDO, and remand for further proceedings.**

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Kathryn Zeledon Nelson
Kathryn Zeledon Nelson, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

Decision made at the State Panel’s public meeting in Chicago, Illinois on December 12, 2017, written decision approved at the State Panel’s public meeting in Chicago and Springfield, Illinois (via video conference) on January 9, 2018, and issued on January 17, 2018.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Union of Operating Engineers,
Local 150,

Charging Party

and

Algonquin Township Highway Department,

Respondent

Case No. S-CA-17-137

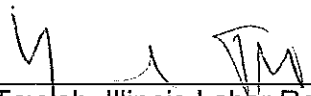
DATE OF
MAILING: January 17, 2018

AFFIDAVIT OF SERVICE OF BOARD DECISION

I, Yumnah Tayyab, on oath state that I have this 17th day of January 2018, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Robert Hanlon
Robert T. Hanlon & Associates
131 E. Calhoun St.
Woodstock IL 60098

Bryan P. Diemer
IUOE Local 150
6200 Joliet Road
Countryside, IL 60525-3992

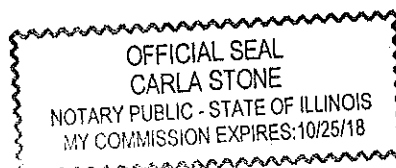


Yumnah Tayyab, Illinois Labor Relations Board

SUBSCRIBED and SWORN to
before me on August 9, 2017.



NOTARY PUBLIC



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160 North LaSalle Street, Suite S-400
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