

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

International Union of Operating Engineers,)	
Local 150,)	
)	
Charging Party)	
)	Case No. S-CA-13-197
and)	
)	
City of Park Ridge,)	
)	
Respondent)	

City of Park Ridge,)	
)	
Charging Party)	
)	Case No. S-CB-13-047
and)	
)	

International Union of Operating Engineers,)
Local 150,)
)
Respondent)

ORDER DENYING MOTION TO REVOKE SUBPOENA

On May 28, 2013, the International Union of Operating Engineers, Local 150 (Union) filed charges with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1300, alleging that the City of Park Ridge (City) violated Sections 10(a)(1), 10(a)(4), and 10(a)(7) of the Act. On June 7, 2013, the City filed charges with the Board's State Panel pursuant to Section 11 of the Act alleging instead that, by its conduct in the same course of bargaining, the Union had violated Sections 10(b)(4) and 10(b)(8) of the Act. Both charges were investigated in accordance with Section 11 of the Act and on September 20, 2013, the Board's Executive Director issued Complaints for Hearing in both matters. Both parties filed timely Answers and the charges were scheduled for a consolidated hearing.

On May 30, 2014, the Union requested a subpoena *duces tecum* for the following documents: (1) all communications (memoranda, emails, etc.) between Park Ridge elected officials and/or staff regarding the negotiations and subsequent unfair labor practice charges between the City and the Union; and (2) all minutes and recordings of closed session of Park Ridge council meetings for the past 24 months. The Union's request recited that this subpoena should be provided at the Board's "earliest convenience." By email of May 30, 2014, I informed the Union that its request would be processed on Monday, June 2, 2014, due to unavailability of the Board's administrative staff to do so on Friday, May 30, 2014. The Board issued the requested subpoena on June 2, 2014, and it was served on the City that afternoon. The subpoena ordered that the requested documents be produced to counsel for the Union on or before June 9, 2014. On June 9, 2014, the City filed a motion to revoke the subpoena. For the reasons that follow, the City's motion is denied.

I. INVESTIGATORY FACTS

The Union is the exclusive representative of a bargaining unit of city employees. Following the expiration of a collective bargaining agreement covering the bargaining unit, the parties began negotiations on a successor agreement in May 2012. The Union alleges that the parties reached a tentative agreement on a successor agreement, including health insurance premiums and caps and a choice of three options for a wage increase, on November 28, 2012; the City denies that any tentative agreement was reached on that date. Instead, the City alleges that the parties reached a tentative agreement on January 21, 2013. The parties both state that, following their January 21, 2013, meeting, they agreed the City would draft the parties' agreement. Both parties also agree that the Union contacted the City on February 20, 2013, and stated that the drafted agreement prepared by the City "looked good." The Union now states that it was mistaken in doing so. On April 1, 2013, the City voted to ratify an agreement covering the bargaining unit; the Union denies that this agreement reflected the agreement reached by the parties and ratified by the Union.¹ On April 5, 2013, the Union contacted the City and stated that the insurance caps in the drafted agreement were incorrect. Sometime after April 1, 2013, the City's Mayor vetoed the contract ratified by the Park Ridge City Council. In his veto message,

¹ The Union states that its membership chose one of the wage options agreed to on November 28, 2012, by vote of December 4, 2012. The City states that it does not have sufficient information to confirm whether the Unit members chose a wage option on that date, and further denies that the parties had even reached a tentative agreement that included three wage options at that point.

the Mayor explained that he was exercising his power to veto the contract because the wage increases contained therein were not offset by other cost savings; he specifically cited instructions given to the City's bargaining team during a closed City Council session regarding the need for an expense neutral contract.

On May 1, 2013, the Park Ridge City Council voted to override the mayoral veto. In its charge, the City alleges that the Union has subsequently failed to sign an agreement that reflects the terms of the parties' agreement. The Union denies that the contract ratified by the City Council reflects the parties' agreement and alleges instead, in its charge, that the City has failed to draft and sign an agreement that reflects the terms of the parties' agreement. The Union further alleges that the City unilaterally implemented changes to health insurance premiums and caps and has failed or refused to implement the parties' agreed-upon wage increase.

II. ISSUES AND CONTENTIONS

The City argues that the subpoena issued June 2, 2014, should be revoked because: (1) minutes and recordings of closed meetings of the Park Ridge City Council are exempt from disclosure under the Open Meetings Act, 5 ILCS 120; (2) the requested documents are exempt from disclosure pursuant to the common law collective bargaining privilege; (3) the subpoena is overbroad because it potentially requires the disclosure of attorney-client privileged communications; (4) the scope of the subpoena is overbroad because it potentially seeks documents relating the parties' collective bargaining relationship prior to the negotiations at issue in these matters and unduly burdensome because it does not provide the City sufficient time to locate responsive documents; and (5) the subpoena is invalid on its face because the Union failed to serve the subpoenas on the city at least five days before the date on which the documents must be produced, as required by Rule 1200.90(b)(3).

By email of June 10, 2014, following a conference call to discuss various issues raised by the Motion to Revoke, I informed the Union that I intended to issue an order revoking the subpoena as to the request for minutes and recordings of closed meetings of the City Council unless it filed a response to the City's motion by June 11, 2014. In response, the Union voluntarily withdrew the subpoena as to those documents. The Union also agreed to limit its request as to the remaining documents to those relating to the negotiations at issue in these matters. The Union argues that, thus limited, its request is not unduly burdensome. Finally, the Union attributes the alleged defect in the time between service of the subpoena and the deadline

to produce the requested documents to the Board's failure to provide the subpoena on May 30, 2014.

III. DISCUSSION AND ANALYSIS

The City's first argument, that the Open Meetings Act exempts the minutes and recordings of closed meetings from disclosure in response to an administrative subpoena, has been fully addressed by the Union's withdrawal of its request for those documents.

As to the City's argument that the scope of the subpoena is overbroad and burdensome, the Union's agreement to limit the scope to documents relating to the negotiations at issue in these matters addresses the contention that the scope is overbroad. Further, I find that the scope of the request, thus limited, is not unduly burdensome.

As to the allegation that the subpoena was not served at least five days before the deadline to produce the requested documents, in violation of Rule 1200.90(b)(3), any defect is easily remedied by amending the production date. Further, as I explained in a conference call between the parties, without finding that the City's interpretation of Rule 1200.90(b)(3) is accurate, I am inclined to grant a variance as to the application of this Rule. The provisions of 80 Ill. Admin. Code 1200 may be waived by the Board when it finds that: (1) the provision from which the variance is granted is not statutorily mandated; (2) no party will be injured by the granting of the variance; and (2) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. 80 Ill. Admin. Code 1200.160. In this case, the requirement under Rule 1200.90(b)(3) that a subpoena *duces tecum* be served at least five days before the deadline to produce the requested documents is not statutorily mandated. Further, as the City has not yet produced the requested documents in a shorter time frame, any injury to the City is avoided by amending the deadline to produce the documents. Finally, it would be unreasonable to apply Rule 1200.90(b)(3) in this case because the delay in service is attributable to the Board. The Board regularly processes requests for subpoenas the day they are received. The Union's faxed request was received on May 30, 2014, before noon. But for the unavailability of the Board's administrative staff to process the request, the subpoenas would have been available for service on May 30, 2014. As the delay in service is not attributable to the Union, application of Rule 1200.90(b)(3) would be unreasonable in this case.

The City's remaining arguments relate to its claims of privilege. The City alleges that the communications between its elected officials and/or staff relating to the most recent negotiations

between itself and the Union and the subsequent unfair labor practice charges are exempt from disclosure under both the common law collective bargaining privilege and, potentially, the privilege covering attorney-client communications. The Board's rules provide that a subpoena may be revoked on the grounds that it seeks privileged information. 80 Ill. Admin. Code 1200.90(c). However, precedent prohibits the Board and its agents from conducting a review of subpoenaed documents in order to evaluate a claim of privilege. See Illinois Labor Relations Board v. Chicago Transit Authority, 341 Ill. App. 3d 751 (1st Dist. 2003). In Chicago Transit Authority, the Administrative Law Judge (ALJ) assigned to hear the underlying charge ordered the Chicago Transit Authority (CTA) to produce subpoenaed documents to another ALJ to conduct an *in camera* review and determine whether the requested documents were privileged. Id. at 752. CTA refused to comply with the order and the Board filed a petition in circuit court seeking to enforce the subpoena. Id. The Illinois Appellate Court, 1st Dist., ultimately determined that the circuit court, rather than the Board or its agents, must conduct an *in camera* review of allegedly privileged documents. Id. at 756 (citing Illinois Educational Labor Relations Board v. Homer Community Consolidated School District No. 208, 132 Ill. 2d 29 (Ill. 1989)). Thus, I am not authorized to review the documents requested by the Union to evaluate the City's claims of privilege, and, absent such a review, I cannot determine that the City's Motion to Revoke should be granted. The Act provides that the Board may apply to a court of competent jurisdiction in the event a party willfully fails to produce documents in response to a subpoena. 5 ILCS 315/11(b) (2012). Thus, I find that the City's Motion to Revoke the subpoena on the grounds that the requested documents are privileged should be denied in order to give rise to an enforcement action, wherein the claims of privilege can be properly evaluated. This is consistent with the procedure I have relayed to the parties in conversations regarding the City's Motion to Revoke.

IV. CONCLUSIONS OF LAW

The Union's withdrawal of its request for the minutes and recordings of closed meetings of the City Council fully addresses the City's argument that these items are exempt from disclosure. The Union's agreement to limit its remaining request to communications between Park Ridge elected officials and/or staff related to the most recent negotiations and subsequent unfair labor practice charges addresses the City's allegation that the request is overbroad and, thus limited, I find that the request is not unduly burdensome. I also find that the Union is

entitled to a variance from the provisions of Rule 1200.90(b)(3) and the subpoena should not be revoked based on the City's allegation that was not issued and served in compliance with this provision. Finally, as to the City's remaining claim of privilege, I find that neither I nor the Board are authorized to evaluate this claim, and that the City's Motion to Revoke the subpoena on the grounds that it seeks privileged documents should be denied.

V. ORDER

IT IS HEREBY ORDERED that the portion of subpoena number 3219, issued June 2, 2014, seeking the production of minutes and recordings of closed meetings of the Park Ridge City Council is stricken in its entirety, by agreement of the Union.

IT IS FURTHER ORDERED that the scope of the subpoena as to communications between elected officials and/or staff regarding the negotiations and subsequent unfair labor practice charges between the City and Union is limited to communications related to the parties' negotiations for a successor agreement that commenced in May 2012 and the subsequent unfair labor practice charges. The City's Motion to Revoke as to these documents is DENIED.

IT IS FURTHER ORDERED that the Union is granted a variance from the application of Rule 1200.90(b)(3). On or before June 13, 2014, the City shall produce all communications (memoranda, emails, etc.) between Park Ridge elected officials and/or staff regarding the negotiations commencing May 2012 between the City and Union and the subsequent unfair labor practice charges.

VI. EXCEPTIONS

Pursuant to 80 Ill. Admin. Code §1200.45, this ruling is not appealable at this juncture.²

Issued at Chicago, Illinois, this 11th day of June, 2014

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

/s/ Heather R. Sidwell

**Heather R. Sidwell
Administrative Law Judge**

² Under 80 Ill. Admin. Code §1200.135 the parties will have an opportunity to file exceptions once a Recommended Decision and Order is issued in this case.