An Open Letter to the Residents of Algonquin Township

Over $2.5 million dollars in wasteful spending, all at the expense of Township taxpayers. That is what I discovered, from an exhaustive investigation of the financial records of the Algonquin Township Road District and Township 2017-2021.

The negative publicity prompted me to launch an investigation to find the facts behind the turmoil, and how to prevent this financial abuse from happening again. I requested the assistance of David Linder, the retired Police Chief of Crystal Lake with 20 plus years of investigative experience to conduct this inquiry. Interviews were conducted of those involved, and a thorough list of lawsuits and incurred expenses were examined.

In order for positive change to happen, identification of the facts and where the process broke down, needed to take place. In my opinion this could only be done by revisiting the past, in a professional manner, and try to glean as much information and collect as much documentation as possible to determine where we had been, and where we should go.

My search for answers began amid disturbing newspaper reports. This includes, but is not limited to:

- Suing the past Road Commissioner Robert Miller and his wife costing the Township in legal fees. The case was dismissed.

- Attempts to undo the Union (Local 150) and the employees' contract, including the firing of employees without merit. After losing the action in court, it was then appealed, doubling down on an already overburdened legal fund for the Township Road District and losing.

- Disappearing documents that led to multiple tax payer funded payouts because of FOIA requests.

The attached report shows that it is evident township laws need to be updated to provide controls over Road District spending. New legislation will help prevent mishandling of taxpayer money, and provide consequences and oversight should abuse occur.

The report surmises that over $2.5 million dollars in additional expenses and legal fees were lost under the previous administration. Townships exist to support residents at the local level. Constant legal pressure and financial strain undermine the township's ability to provide necessary services.

Please feel free to direct any questions you may have to Randy Funk, rfunk@algonquintownship.com or 847.639.2700 X7.

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ALGONQUIN TOWNSHIP ORGANIZATIONAL REVIEW

Investigation and Report by David Linder

APRIL 25, 2022

ALGONQUIN TOWNSHIP
3702 US Hwy 14, Crystal Lake, IL 60014

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Algonquin Township Organizational Review

Interviews authorized by Randy Funk, Algonquin Township Supervisor
Interviewer: David Linder
Date inquiry began: 08/09/2021
Terms of reference:

ECW – Edgar County Watchdogs
FOIA – Freedom of Information Act
ATRD – Algonquin Township Road District

Purpose and Background of Organizational Review

0n 07-26-2021, I met at the Algonquin Township with Randy Funk, Supervisor, Danijela Sandberg, Highway Commissioner and Michael Cortina, Algonquin Township Attorney.

The purpose of this meeting was to discuss the examination of certain past practices on the part of former Township officials and to ensure compliance with the Township's Mission. Additionally, several other issues concerning potential legal and or ethical non-adherence to District regulations that may or may not have taken place were asked to be reviewed.

Our discussion centered on Mr. Funk's concern regarding the most recent past administration and their propensity to have highly volatile and very public issues and disputes. He felt concern that this might lend itself to Township constituents being concerned for the professionalism of the district and how it is being operated.

As the newly elected Supervisor, Mr. Funk wanted any potential issues with the past business practices in the operation of the district, be explored, in order to provide the public with confidence in the legal and ethical operation of the Township. This was equally as important to Highway Commissioner Sandberg who echoed those concerns.

Although Mr. Funk was most recently elected and sworn in on May 17, 2021, Ms. Sandberg had been employed with the district since November 6, 2018, during the last administration. Ms. Sandberg was hired by Andrew Gasser, past Highway Commissioner, as an Administrative Assistant. She voiced numerous concerns with regard to Gasser as well as Gasser's Attorney, Robert Hanlon.

Both of these administrators felt confident that there were issues surrounding the activities of Gasser and Hanlon that, at a minimum, were of such a nature that a review of said practices was necessary to ensure that the district's mandates were being met. They were further concerned that activities on the part of any party that might involve the misappropriation and/or duplicitous spending of taxpayer funds should be a focus of any review.

It should be noted that all parties present at this meeting provided no appearance of prejudice and/or indication that they were privy of anything but a vast amount of disconcerting information. This information, gleaned by various sources including the media, court system and employees (past and present) information, not to exclude pending legal cases that were brought during the previous term. Concern was that past actions not be a negative legacy that would harm the reputation of the Algonquin Township and to diminish that potential consequence through transparency.

It was determined that I should review further any and all concerns relative to the function of the Algonquin Township offices. I was instructed to contact Supervisor Funk with any information I gleaned resulting from this inquiry.

Interview of Bonnie Kurowski
Owner, Illinois Reporter

On 07-27-21, I had a phone conversation with **Bonnie Kurowski**, owner and reporter of a newspaper, the *Illinois Reporter*. I spoke with Bonnie about the nature of my inquiry, further telling her that I had been informed that she may be aware of pertinent information about the Township. I asked if she would agree to be interviewed, to which she consented, and provided the following in summary.

The nature of her involvement with suspect political behavior began in 2020 when she was contacted, and it was suggested, that she cover a mayoral race in Bolingbrook, Illinois. It was during this coverage that she was told about the actions of the Bolingbrook Township Trustee, Alyssia Benford. Bonnie was informed that people were concerned with certain activities that were reported to her as unethical and possibly illegal including leaks of information, bullying, harassment, and insurgency.

It was about this time that Kurowski became aware of a group she identified as the Edgar County Watchdogs (ECW) who provide an address of ECWD, Box 124 Paris, IL, 61944, ECWD @ edgarcountywatchdogs.com, Email woofwoof.com. During the time she was involved (almost entirely negative according to Kurowski) with this group she had begun to investigate their actions that include those involving several Illinois Townships.

Her first encounter with the ECW was the result of a Freedom of Information Act (FOIA) she sent involving the activities of Benford. Kurowski sent a FOIA for an alleged leaked document. Kurowski reported that almost immediately after receipt of the FOIA by Benford, the ECW began “attacking her”. According to Kurowski, Benford leaked the FOIA to the ECW unredacted, which had Kurowski’s contact information on it. This included her phone number for questions and her email address.

Within one day, the ECW wrote an article about Kurowski, doxing her: (to publicly identify or publish private information about (someone) especially as a form of punishment or revenge (Merriam-Webster. (n.d.) Citation. In Merriam-Webster.com dictionary. Retrieved August 5th, 2021, from https://www.merriam-webster.com/dictionary/citation.

This doxing included providing personal information, her job, her home address, pertinent information about her 20 years of financial history to the community, phone number, email, divorces, etc. Kurowski felt this was solely in retaliation for the FOIA request.

The leak, according to Kurowski, proved to her that Benford in fact was leaking information to the ECW before it could be requested or approved by the FOIA officer. Kurowski noted that this was illegal with possible civil remedy if the information was illegally obtained and may fall under other Illinois State Statues.

Through further investigation on her part, she discovered that then Trustee Benford had attended a meeting in January of 2008 where ECW invited people identified as Jean Kelley, attorney Robert T. Hanlon, Cynthia Brzana, and Alyssia Benford, to speak with other residents. This meeting was titled, “How to be a Watchdog”. It was this meeting that Kurowski alleges started this formation of a group of individuals who would then work together in their path to impacting local governments. Since then, this group has been working together. According to Kurowski, these are all people associated with the ECW.

With regard to the events surrounding Algonquin Township, she told me that she heard from Algonquin that Benford was in their Township too, as a CPA. Kurowski contacted Mary Oliver, a Dupage Township Trustee who told Kurowski of wrongdoing on the part of board member Alyssia Benford who was on the Board of Trustees in Dupage Township. Kurowski indicated that Benford was in

Algonquin Township in response to a FOIA request on the part of the ECW group demanding a forensic audit report from Algonquin Township.

Mary Pat Oliver also confirmed that her peer, Alyssia Benford, was not a forensic accountant. Oliver also told her that Benford was not reliable as a Township CPA, since she has grossly misread the DuPage Township budget on multiple occasions and falsely accused one woman of a $70,000 theft that did not happen, and was resolved when it was determined to be a line item on the report in the wrong place.

Mary Oliver informed Bonnie that Benford should not be auditing another Township's information, as she could not even do her own. Mary Oliver indicated that she had confirmed that Alyssia was NOT a licensed forensic auditor.

Oliver then informed Kurowski that Oliver had filed a police report on Benford shortly after the January 2018 "How to be a Watchdog" meeting. This was because Alyssia Benford removed a computer from the Township offices and took the HR files. According to Oliver, it was months until they could get this returned. Oliver filed a police report because her bank information, social security card, and other information was a part of that purported breach.

Shortly thereafter, Supervisor Bill Mayer received a bill from Benford for "services" to add software to the computer and the bill was returned. The Board had never approved these actions or payments, and did not pay because according to Oliver, it was illegal in her position to do this and to get paid.

According to Kurowski, this was the first incident of many, where someone working for ECW took a computer or laptop. Bonnie would further find that the ECW was suing Joliet Township for hard drives of content. At the same time, former Supervisor of Pecatonica Township reported to Bonnie that they had raided his hard drives right after the April 6th, 2021, election and filed suit personally on him for a vote he took in 2009.

Bonnie has stated that both Gasser and Benford were extremely supported in their election in April 2021 by the ECW, with articles against their opponents and false light about the current administration. She decided to continue her research, despite the ECW threats.

Kurowski interviewed Derek Lee, an ATRD employee, leading to her discovery that Gasser and the ECW introduced Alyssia Benford (CPA and member of the ECW) to the board to be hired to conduct a "forensic" audit. While at their initial meeting, Benford was introduced to the members of the ECW and both parties acted as if they were meeting for the first time, suggesting to Kurowski that this was staged in order to allow an ECW member access to Algonquin Township files and auditing information.

Eventually Benford was hired to conduct the audit, but according to Kurowski she was hired with no board approval and without following the bid process. Kurowski does not know how Benford was actually hired since no FOIA can produce this, as it was outside the statutes and laws. Kurowski contends that Benford told the township that she was a certified forensic accountant, which Kurowski determined was not the case. Kurowski determined this by reviewing multiple bio's on Benford online and checking her business website for Benford and Associates, where nobody at her office was forensic certified. Kurowski submitted a FOIA request of all emails between Algonquin Township and Benford, where it in fact states in over a dozen areas that this was to be a "Forensic" audit.

The audit has yet to be received by the Algonquin Township, which according to Kurowski, they were invoiced for and Benford was paid. (Forensic audit is attached in Exhibit 1). This led to a suspicion on the part of Kurowski that Benford was merely using the audit to gain access to the Township's audit and provide the information for the ECW group to later use for lawsuits. This matter is currently being litigated.

She then asserted that Benford, in conjunction with the ECW, backed then candidate, Andrew Gasser, for election to the Algonquin Township Highway Commissioner's post. Kurowski told me that when the election was won, the newly elected official was caught "in the middle of the night" copying all of the Township hard drives, suggesting the information would be used to assist the ECW in the undermining of the Algonquin Township. This confirmed to her the suspicion that the ECW and its affiliates were on a "fishing expedition of information" and showed a pattern of behavior with hard drives, candidates, and lawsuits. All of this started with the candidate contacting the ECW for help, a seminar was offered in that area, candidates vetted, and then the scheme moved forward.

This was a pattern of behavior that Kurowski started looking for in other communities. She felt that there was enough evidence proving that the ECW made a "handshake agreement" with candidates whereby the ECW would help them get elected if they turned over documents. The ECW was using their website, which people in Illinois assumed was reliable news, to report negative articles on their opponents and current board members to support the new candidate. For example, there are 74 articles attacking Algonquin Township and praising Andrew Gasser. In exchange, the ECW received documents from the candidates. Not only did the ECW use their website, but they also helped spawn other news sites and used social media with negative information in the community.

A mass bombardment of social media was done largely by Cynthia Brzana on behalf of the ECW, with them joining in to confirm her allegations. Most of this was done on local Facebook sites. In DuPage Township, there are over 5,000 Facebook posts attacking opponents and journalists against Benford by Brzana (and her multiple fake profiles), and John Kraft and Kirk Allen from the ECW. Brzana is not even from DuPage Township, she is from Wesley, but travels with the ECW to their locations.

Kurowski in a report that she provided to me, wrote:

"Going back to Algonquin's case, Alyssia and Edgar County got the documents from the fake audit and the $30k, then hired attorney Denise Ambroziak to be the lawyer to sue the township on their scam for findings of wrongdoing. The lawyer Denise was "personal friends" to the Township attorney Robert Hanlon. They worked a deal to settle out of court.

After this happened, I became aware of the fact that Hanlon had been Alyssia's attorney and Edgar County attorney as well. This made it appear as though Hanlon, Ambroziak, Benford, and Edgar County Watchdogs Kirk Allen and John Kraft conspired the whole thing from the beginning.

I believe the intent all along was for this group of 5 (2 attorneys, Alyssia and 2 Edgar County) to manipulate, defraud and scam the taxpayers.

I believe they manipulated possible candidates into back-end agreements and in doing so, these candidates also harmed their communities.

I believe that all the candidates chosen were far right-wing extremist candidates, who were conspiracy driven individuals.

I believe this has happened in Townships in Wesley, Algonquin, DuPage, Joliet, Pecatonica, Collinsville and Avon. I have also found this happened with the City of Bloomington, IL and with the College of DuPage. There are possibly others. In all these cities and townships, lawsuits confirm the acquiring of documents and lawsuits filed.

I believe that an elected official cannot also be a watchdog over their own actions, thus putting the Townships at risk. At multiple occasions I witnessed Alyssia sit quiet during meetings and then afterwards report to ECW that a meeting was illegal for some reason."

She ended the document with:

"I am citing that it appeared Alyssia Benford misrepresented herself, sold a service she couldn't offer, knowingly stepped outside of laws, worked with an anti-government hate group (Edgar County Watchdogs), and was involved in a fraudulent scheme to defraud the government. In return ECW supported her run for a state seat in 2018 and the Supervisor of the Township election in 2021. Hanlon represented her legally in multiple cases against her Township including her being "censured" and for a meeting ECW and her zoom bombed and brought insurgency, then claimed they couldn't hear the meeting. It happened to be the meeting Benford was censured. "

Take aways: As a result of this interview certain questions remain unanswered. Those questions include, what are the specific qualifications of a Forensic Auditor, what is the fee structure for a Forensic Auditor, and board approval for audit expenditure was not found. Additionally, if in fact, it is found that a non-Forensic Auditor misrepresented their qualifications and bills as such, is this fraudulent behavior?

Noted: as of 2/3/22, Denise Ambroziak is the defense attorney representing attorney Robert T. Hanlon for defacing political signs in Crystal Lake, IL. https://www.shawlocal.com/northwest-herald/news/crime-and-courts/2022/02/03/colatorti-campaign-signs-vandalized-local-attorney-charged/

Interview of Colleen Schor
Tenure ATRD administrative assistant 5/30/17-7/8/19,
AT Assessor employee 7/9/19-2/29/20

On 08/03/21, I met with Colleen Schor at her home in Crystal Lake, IL. I informed Schor that I was interested in any and all information that she would provide me relative to her time working at Algonquin Township. Specifically, I told her that I was interested in any issues that she was aware of that seemed unusual to her or problematic during her tenure with the Township.

She agreed to speak with me and made the following statement in summary; Colleen indicated that she began her tenure with the Township in dissonance, applied and was chosen for a position as a part-time assistant to the administrative assistant.

Schor stated that she was acquainted with then Township Board Member Rachael Lawrence who, according to Schor, encouraged her to apply for the position. She identified Lawrence as having a similar philosophy as to what Gasser had run his campaign on at first, but that changed with time. When I inquired further, she reported that Gasser had run on a fiscally conservative platform, which Lawrence agreed with. As time went on Lawrence and Gasser became further alienated. Schor attributed their discord, to a "tremendous increase" in spending by Gasser (legal fees) and after an incident when Gasser obtained a contract for salt without obtaining a bid.

Her duties were under that of assistant to the Road Commissioner's administrative assistant who she identified as Dorothy Wilderboer. She reported that her duties included clerical functions. She did tell me that because of the actions of Gasser while in office, Wilderboer became more confrontational with Gasser when he instructed them to do things that Wilderboer thought were unethical or wrong. Gasser subsequently fired Wilderboer for "challenging him".

She explained that she is more non-confrontational and “just tried to do my job”. This was not a problem for her until Gasser began to “go rogue”. She qualified this by indicating that the nature of Gasser was “he did whatever he felt like”. Gasser was “very secretive, always planning and plotting revenge, especially against the prior administration”.

It had become knowledge that the Township Clerk, Karen Lukasik was concerned about missing Township files. It was about this time that files were missing for then Township Supervisor Chuck Lutzow’s office. Schor told me that Gasser, and his Assistant Ryan Provenzano had openly spoken about entering the Supervisor’s office and had said they entered it with “Chuck’s approval”. According to Schor “they were illegally filming”.

According to Schor, who identified Provenzano as Gasser and Lutzow’s assistant, Provenzano was eventually fired by Lutzow who banned him from the Township building. During Provenzano’s tenure though, Schor contends that there were many occasions when he (Provenzano) would be going to Gasser’s house to “tend to his chickens”. She contends that this was done on Township time whereby he was working privately for Gasser while being paid by the Township.

The absence of Gasser was commonplace according to Schor when he was away from the Township for extended periods of time. She told me, “When Andrew was gone, Ryan (Provenzano) was gone”.

When Gasser was going to hire an assistant, Schor was given the task of collecting resumes. After compiling a group of resumes for review, Gasser told her “Scratch them and hire Danijela Sandberg” who, according to Schor, was a friend of Gasser’s.

Schor described Sandberg as “very republican” and involved with the McHenry County republican party (for whom Sandberg is now Vice Chair.)

According to Schor, Sandberg began talking about her future "regime" as Highway Commissioner almost immediately after her hire.

Danijela was described by Schor as having "no experience" and at the time of hire by Gasser, was working as a "bagger at Jewel". With no experience, Schor described Sandberg's ability as "horrible; she couldn't do anything and was unable to do payroll". Schor was so concerned with Sandberg's obvious poor work product, that she went to Gasser and told him in confidence of her concerns regarding Sandberg's ability. Shor told me that Gasser immediately went to Sandberg and told her of Schor's statements resulting in Sandberg confronting her. Her overall appraisal of Sandberg was "she was complicit in everything that Gasser did".

Additionally, during her tenure, she noted that Karen Lukasik could not "keep up with Gasser" noting the tremendous amount of FOIA requests that were being made since his tenure began. As a result, Karen hired an assistant (Dina Frigo) who Schor indicated Sandberg began trying to get to "do things." This had more to do with her inability to follow chain of command and overstep her authority.

As her tenure continued, she was aware that Gasser was "in bed with them," explaining that he was constantly talking with the head of the ECW and Cal Skinner, a local blogger (who Schor indicated did Gasser's "dirty work"). Subsequently, after feeling that she could no longer work for Gasser, she resigned and began working for the Township Assessor's Office.

She did tell me that after her employment ended in the ATRD, she noticed suspicious activity surrounding her car. She said that on one occasion she came out of the building to find that her car tires had been flattened. According to the garage where she took her car, there was nothing wrong with the tires. There was also an occasion when her car wouldn't start, and she felt it was suspicious.

She told me that she would contact me with any further information and the interview was concluded.

Interview of Rachael Lawrence
AT Trustee 5/15/17-11/14/19

On 08/03/21, I had a phone conversation with Rachael Lawrence of Ooltewah, Tennessee, 37363. I spoke with her explaining my reason for this interview and she agreed to speak with me and made the following statement in summary.

Her dealings with the Algonquin Township began as her role of Township board member began. She became aware of Andrew Gasser because of both of their involvement in the McHenry County Republican Party. She told me that "Gasser's and my interests aligned" since Gasser was running for Township Highway Commissioner on a platform of fiscal conservatism.

After a time, and having watched Gasser's activities after being elected commissioner, she told me "He completely fooled me." That he started to "show that he was not the person he purported to be." After Gasser was in office for a time, she told me that he made her tenure "a difficult couple of years." According to her he tried to be perceived as an ally, but he was anything but. The description that Lawrence gave of Gasser included:

Backward dealings

Chameleon

A person who says what he thinks people want to hear

Pathological in his propensity to lie

The propensity to lie was obvious to Lawrence, and she pointed to a time that Gasser had been asked about his knowledge of a union contract resulting from a hearing regarding his firing of two employees without cause. According to Lawrence, he was adamant that he had no knowledge of the contract, yet she was aware of the fact that a copy of said contract was in fact in Gasser's possession. She told me that she was in the Township office when he (Gasser) picked up a copy.

She explained that copies of said contract were distributed to all the board members. After Gasser picked up his copy, according to Lawrence, Gasser apparently removed all the other copies prior to distribution.

At this point in the interview, Lawrence said that she needed time to collect her thoughts and asked me to allow her to compile further information about this inquiry. She assured me that she would contact me at a future date to complete this interview. I thanked her and ended the interview.

Included below are two documents - the Rachael Lawrence 11/14/18 allegations against Gasser, et al and the Independent LWM Research Inc, interview of Rachael Lawrence from 12/28/18.

November 14, 2018

I believe that Andrew Gasser and the Edgar County Watchdogs, specifically Kirk Allen worked together (and are still working together) for over one year now, to

a) Paint Andrew Gasser's political adversaries in a negative light (have Bob Miller indicted, mainly)
b) Release Algonquin Township and other documents for Kirk Alien to publicize on his blog
c) Possibly arrange a contrived FOIA lawsuit and a "settlement" payout of $40,000 to Kirk Allen.

I also know that while Andrew Gasser claimed not to have knowledge of a Collective Bargaining Agreement/CBA (between the Road District and local 150) upon taking office he did in fact have a copy of the CBA when he took office May 15^{1h} 2017, but he told me his strategy was to refute it and that he had no advance knowledge. I know this because he texted me on May 22nd 2017 that he had just read it for the first time, and he gave me a copy. He did not give any of the other trustees a copy. I only recently learned that he has claimed he had no advance knowledge of It in court documents.

Andrew has personally told me that he has PTSD, that he takes multiple medications including opioid medications, sedatives and Ambien, that he carries a loaded concealed firearm has said to me "l never leave home without it," and he has told me he carried it while we have done door to door canvassing as he patted his bulging right cargo leg pocket), but I have never actually seen a gun Itself or know whether he has brought it onto any government property.

Things I know come from my own involvement in Andrew Gasser's "inner circle, " personal conversations with him, Kirk Allen, and others, private e-mail, text, Facebook messenger messages, etc.

I participated in the searching for and sharing of information with Kirk Allen and The Algonquin
Township Road District in person, by telephone, personal e-mail, text, Facebook Messenger, and use of Kirk Allen's Dropbox links. I believed I was doing a morally right thing and that by sharing information and keeping it secret, I was "one of the good guys" and exposing what I believe to be corruption or illegal acts and holding government accountable. I never believed and still don't believe I broke any laws. I do believe, though, that over time, Andrew Gasser's objective changed at some point from merely exposing corruption, into exacting a personal vendetta against Bob Miller and anyone associated with him, including other elected officials.

Background:

I first met Andrew Gasser when I was appointed to serve as a Republican Precinct Committeeman in Spring of 2016 and he was the Chairman of the Algonquin Township Republicans. He also served on the McHenry County Board. He mentored me and encouraged me as a member of the committee. On Oct 31^{M}, 2016, I announced that I would run for Algonquin Township Trustee after talking with other friends and family. Within a few days, Andrew Gasser announced that he was running for Highway Commissioner. I did not know he was going to run when I decided to run (there was no coordination between us). The election turned very nasty very quickly, and around January 1^{5t} of 2017, I naturally aligned myself with Andrew because we were the only two Township candidates that were not running on what we called the "Bob Miller slate." We became friends, endorsing each other and walking precincts together.

After we were both elected, we both sought to uncover any evidence of what I believed to be corruption on the part of the previous administrations. I did this by asking the Supervisor's office staff to view previous months' bills to familiarize myself with what were normal vs abnormal expenditures. I would photograph or photocopy any bills which stuck out to me and share them with Andrew, his attorney, or Kirk Allen. At no time did I ever remove any township documents from the township.

Early in our term, (June 2017, I believe), I was in the township hall auditing the bills prior to a monthly board meeting when I came across a bill from "McHenryCom Company" that confused me. It showed a yearly fee and used the words "dial up" and on it was also an email address that ended with ...@mc.net. From previous knowledge, I had known that Bob Miller used an email address on that server, but I had always believed it to be a private (non-government) e-mail. I Immediately photocopied the bill and took the copy into Andrew Gasser's office to ask him if he knew what it was for. I asked him to call the number and ask them. I was there while he called the company and learned that it was payment for hosting Bob Miller's mc.net email address, among others. I turned it over to the Road District attorney, knowing that may contain information leading to the uncovering of missing documents and/or illegal activities. The attorney subpoenaed the company for Bob Millers e-mails, and I was given a copy on a flash drive. I do not/did not see anything wrong with this because these are all public documents, and I am an elected member of that public body. I personally researched the data and found many questionable e-mails that I turned over to the Road District through its attorney that were later used in legal proceedings and/or criminal complaints. I don't remember times or dates, but I recall sharing some of these e-mails with Kirk Allen as well as Andrew Gasser.

What I know:

1) Andrew Gasser began communicating with Kirk Allen in early November of 2017 or earlier. On November 13th, 2017, Andrew Gasser texted me a link which opened up to a Dropbox account which, when I clicked on it from my phone, took me to a Dropbox URL with a file folder icon named "Algonquin Township" and it said "Kirk Allen shared this with you. There was an option to "Get the App" "Or Continue to Website." Because I was in Springfield, IL for a conference, I did not immediately access the file or see all of its contents. I don't remember ever accessing that link again until recently, but I did later e-mail myself the link which is something I do when I switch from mobile device to desktop computer or vice versa. When I click on it now, it opens up to a very, very large assortment of files and documents on Algonquin Township, photos, legal documents, etc. It includes a file containing a settlement agreement to the recent lawsuit 18CH238, but the settlement document in the file is slightly different, and $10K less than the version of the settlement agreement that Andrew Gasser presented to the Algonquin Township Board on October 10th 2018 for payment. I do not have a flash drive big enough to download all of the data stored in this dropbox link.

On or about the evening of November 14, 2017, I was riding in Andrew Gasser's truck from a Township Officials of IL (TOI) conference in Springfield, back to the Cary area. At some point, Andrew received a phone call, placed it on his Bluetooth ear device, and I heard him get very overly excited at whatever he was being told. I later asked him who he was talking to and what the big deal was. He was giddy with laughter and excitement. He said that he wanted me to have "plausible deniability," but that "Good things are gonna start happening for us." He used the phrase "plausible deniability" a lot since then.

It was during the car ride on November 14th, 2017 that Andrew Gasser instructed to me to "flood her [Clerk Karen Lukasik] with FOIAs," and encouraged me to "have everyone you know send her FOIAs" with the strategy being to "give her so much work, she wouldn't be able to keep up." I remember telling other people (don't remember specific names) how to send FOIAs after that—to "help."

On November 16, 2017, Andrew sent me a text messages saying "Hell froze over," "Pigs are flying," and "Now we just need the long [needle emoji] and the 375mg of sodium p." He also said "Cultivating relationships with other papers n reporters" in response to a critical comment about the Northwest Herald.

-It was early November 2017 that the Edgar County Watchdogs began posting blog articles about Algonquin Township on www.illinoisleaks.com and sharing them on social media. Andrew, in turn, would share those articles on his own social media pages or via text or email. He would sometimes tell me "Big article coming tomorrow!" or "Just wait until tonight!" which showed me he sometimes had advance knowledge of many of the articles.

-Andrew and Kirk Allen both at various times encouraged me and made me feel like I was doing the right thing and that we were the good guys who would hold people accountable for their actions. I never felt like I was ever doing anything morally questionable or wrong.

-Since then, and during all of 2018, my friendship with Andrew Gasser became strained. He would say or do things that were not consistent with my perception of him being an honest man of integrity and good intent. When I held HIM accountable for something he would get mad or offended with me and not speak to me or do so coldly. He sometimes would do outlandish things like place a controversial message on a sign owned by Algonquin Township, and I took it down—twice. He would get angry with me for it.

-At some point in 2018, I began communicating with Kirk Allen directly. He would often email me, text me, or message me on Facebook regarding what he thought was illegal activity on the part of the Clerk or other trustees. Even after the McHenry County States Attorney released a memo detailing that Bob Miller would not be criminally charged, Kirk Allen still kept searching for and finding new things that he said would result in indictment. He posted many more blog articles about these things. We exchanged many, many emails, phone calls, texts, etc. He encouraged me to file an ARDC complaint against Township Attorney Jim Kelly, even articulating certain offenses that I should include in the complaint. He always made me feel like I was doing the right thing and part of a team of good guys.

-During the summer and fall of 2018, I began talking to some road district employees. They would indicate to me that Andrew Gasser was rarely at the office or at work and that he took frequent trips to Mississippi to be with his girlfriend. I was told that Ryan Provenzano had heard that they had spoken with me, and Ryan had used veiled threats against them for doing so, telling them "Just remember, you're all replaceable," and "If you don't like it, go see if Rachael Lawrence is hiring." I was even told that Ryan Provenzano had started a rumor that my longtime husband was seeing prostitutes. When I confronted Andrew about Ryan's behavior, he defended Ryan and said that my sources were lying. They had no reason to lie.

-On October 10, 2018, I was tipped off to a large six-figure purchase made by Andrew Gasser which is inconsistent with bidding laws. I e-mailed Andrew Gasser asking him to provide me with certain documents. He did not, and still to this day has not replied. I reported the information to the State's Attorney's office the following Monday. On October 16th, 2018, Andrew sent a press release to the Edgar County Watchdogs, Cal Skinner, and the Northwest Herald. Kirk Allen of the Edgar County Watchdogs published an article that same day, praising Andrew for admitting he screwed up. It was on this day that I no longer saw Kirk Allen and the Edgar County Watchdogs as unbiased corruption-fighters. I questioned Kirk, and he defended Andrew through e-mails to me. Since then, I haven't helped them in any way or even spoke to them other than to challenge them for their bias.

-On October 19th (?), the Algonquin Township Board held a special meeting. I had previously missed the regularly scheduled meeting. At this special meeting, a bill was presented to the board called "Settlement Agreement" between the Road District and Edgar County Watchdogs, signed by Andrew Gasser and Kirk Allen. The agreement would remove the Road District from the case (18CH238) in exchange for $40,000.00. It was audited and denied for payment due to lack of appropriated funds, I believe. Knowing that Denise Ambrosiak was Kirk Allen's attorney, and knowing that Denise Ambrosiak was a colleague of the Road District's attorney, knowing about all of the interaction between Kirk and Andrew, the entire situation rang alarm bells. In going through all of my emails, texts, and all other forms of communication, I cannot prove it with a smoking gun, but I believe that Andrew Gasser and Kirk Allen may have conspired to fabricate a situation in which the Edgar County Watchdogs would be essentially "paid off for their help in demonizing Andrew's political adversaries.

-During this period of realization (or at least suspicion), I called the Road District Attorney Robert Hanlon and told him flat out it looked fishy to me, and I asked him if he had referred Kirk Allen to Denise Ambrosiak. He told me "I gave 'em a list of attorneys, which is standard procedure in cases of conflict. "

-Although I can show a long-standing relationship between Andrew Gasser and Kirk Allen, I cannot prove anyone else was involved or part of any collusion or conspiracy.

-In clicking the link I emailed to myself that was texted to me by Andrew Gasser, I found another draft of the "Settlement Agreement" with several edits, namely the original monetary settlement was $30,000.00, a difference of $10K. There were also edits made which appear to have been for the benefit of Andrew Gasser making the Clerk look bad, and also emphasizing the liability of the Township as opposed to the Road District.

-In clicking the link that Andrew Gasser gave me, I also found documents indicating that the Edgar County Watchdogs seem to be preparing for still another lawsuit against the Algonquin Township board.

-The fact that the link containing these documents was given to me by Andrew Gasser suggests to me that he was or is colluding to create these lawsuits, or at the very least, is aware of them.

Also, many of the documents in the dropbox link could only have come from Andrew Gasser, (although I don't deny ever sending them some of the documents as well, although it was not nearly as many as are contained in that very large collection).

If there is anything specific that I can help with in any criminal investigation, I will do my best to cooperate fully with whatever is needed.

Signed,-

Rachael Lawrence

To: James Kelly

From: Larry Mason

LWM Research, Inc.

Date: 12-28-2018

Topic: Interview of Rachel Lawrence

On Friday, December 28, 2018, at approximately 10:15 am, LWM Research Inc., Investigator Larry Mason commenced this date's investigative activity. I proceeded to the Law Office of James Kelly located at 101 N. Virginian Street, Suite #150 in Crystal Lake, Illinois for the purpose of witnessing and assisting in an interview of Rachael Lawrence (female white, 35 years of age who resides at 6604 Hunters Path in Cary, IL 60013) a Trustee of the Algonquin Township in reference to possible alleged corruption and wrong doing by certain individuals.

Inv. Mason arrived at Kelly's law office at about 10:40 am and I met with him while waiting for Lawrence to arrive. I provided Kelly with some printed information I had found concerning the use of an off-site data storage facility in the "cloud" storage called Drop Box. Dropbox is a global collaboration platform where content is created, accessed, and shared. Dropbox was founded in June 2007 by Drew Houston and Arash Ferdowsi. It launched in September 2008 as a simple way for people to have their files wherever they are, and share them easily.

At approximately 11:40 am, Kelly and I met with Rachel in one of his conference rooms.

Rachel advised she had some concerns about certain parties in local government and associated with them in the Algonquin, IL area. When she got recently elected, she thought some of these people were legitimately concerned about transparency in government but has now started to think differently. Rachel brought up a name of an alleged watchdog group called the Edgar County Watchdogs (Note: Has some other associated groups) located out of Paris, Illinois in Edgar County, Illinois, which is located slightly west of Terra Haute, Indian and southeasterly from Champaign, IL.

Small-town watchdogs search for misconduct, misspending - Chicago ...
https://www.chicagotribune.com/.../ct-downstate-watchdogs-met-20150301-story.html ▾
Mar 2, 2015 - **Edgar County Watchdogs** are self-appointed watchdogs of municipal waste and corruption who tap into a frustration with government.

Rachael advised that it was about a year ago that she had her first contact with Edgar County Watchdogs (Note: Hereafter referred to as ECW).

Rachael said she first encountered them on Facebook back about April 2018. She had sent an email or post to them saying something to the effect that she though they were doing good job in what they did.

Rachael also mentioned a person named Kirk Allen, described as a _____. She said he sent her a text _____ and she originally thought he was on the level and concerned about uncovering possible corruption but now thinks differently of several of these people.

Rachael advised that she has had access to Drop Box files and folders involving the Algonquin Township. She advised that Andrew Gasser (a white male about 46 years of age, who resides at LKA: 112 Grove Avenue in Fox River Grove, IL 60021-1427), the Algonquin Highway Commissioner, who beat Robert Miller out in the last election had sent her the URL for these Drop Box files so she could have access to them, as part of her official duties. She claimed that Kirk Allan and ECW also gave her access to Drop Box files. Did Hanlon also????

Rachael Lawrence signed a notarized statement for Mr. Kelly stating that she was authorized to access these Drop Box files.

Rachael advised when she was given access to the Drop Box files they were so large and so voluminous and she was busy at the time so she just emailed the URL link to herself so she could review the material at a later time and at her leisure.

Rachael advised that she got a new cell phone at the end of November 2018 and when she transferred her data over not all of the data, for some reason, got transferred but, some she only got a partial transfer, but she still has access to her old phone and its files. Some of the partial files contained Gosser conversations and info with her.

Rachael advised that allegedly Gasser recently blocked a number of people from being able to call him.

Rachael advised that she had previously created a screen shot from her phone for a link to Gasser reference _____, on November 13, 2017 at 2:36 pm.

Some of the people Rachael claimed involved in some of these dealings that she had concerns about are Kirk Allen (kirk@illinoisleaks.com), Andrew Gasser, and Robert T. Hanlon. Robert Thomas Hanlon (A white male 52 years of age; resides at LKA: 3704 Beresford Drive in Woodstock, IL 60098-7165).

Rachael had also mentioned a Scot Talia (phonetic spelling only) who had been a maintenance man for the Algonquin _____. He was upset over the way he was either allegedly fired or forced out of his job by Ryan Provenzano (Ryan is a white male about 24years of age and resides at LKA: 2400 Evergreen Circle in McHenry, IL 60150). Ryan was the Chief Of Staff at Algonquin Township (2017-2018) and the Deputy Highway Commissioner at Algonquin Township Highway Department (since 2018) *(Note: Feb 18, 2018 newspaper article: ALGONQUIN TOWNSHIP – Ryan Provenzano, a political insider fired from his role as the Algonquin Township supervisor's chief of staff in January, still is employed as deputy highway commissioner in the Algonquin Township Road District. At the time of his firing, it was unclear if Ryan Provenzano, who at one time earned more than $32 an hour in both offices, would keep his job as deputy highway commissioner – but a recent Facebook post from Highway Commissioner Andrew Gasser and a phone call to Township Supervisor Charles Lutzow confirmed that. Lutzow also would not comment on why he fired Provenzano, whose roles in two offices raised questions among township officials and road district employees who contend that his hiring was the product of patronage and cronyism). Another NW Herald article dated Oct 12, 2018 stated: Ryan Provenzano, who was abruptly fired from an Algonquin Township job, resigned from the highway department effective Friday afternoon, according to reporting by the Northwest Herald. The decisions come after controversy over Provenzano's unusually high wages. The Herald reported Provenzano, a Republican Party insider, had been fired and banned from the Township and its office's premises by Township Supervisor Charles Lutzow. He had been earning $32 an hour and $63,000 a year. It was unclear exactly why Provenzano was fired or banned from the premises. However, he received a $7,245 severance package, the Herald reported. Provenzano's high pay raised eyebrows. In addition to the township chief of staff pay, the 24-year-old's income included $33 an hour working part time as the deputy highway commissioner. By comparison, the next-highest paid member of the agency was Randy Voss, who made $4 an hour less than Provenzano despite four-decades in the department.*

Rachael showed Mr. Kelly and myself Drop Box files she claimed she was given access to and she said she would make copies of to help in the investigation.

Rachael mentioned that Andrew Gasser on or about _____, had come into the office at _____ and was waving around a flash drive that she said believes contained a Screen shot video of Karen Lukasik allowing unauthorized people, access to government records. She said he mentioned he was going to deliver this stuff to their friends down south, on his way down to Mississippi. She believed this flash drive contained the screen shot video and was how ECW got some of their information

Rachael also stated they had found another flash drive in the inbox at _____ containing ???_____ and no one knows who dropped it off.

Rachael also mentioned about a work time card for Andrew R. Rosencrans (Rosecrans or Hellman) for the time period of 10/31/2016 to 11/06/2016, $438 and for 32 hours of work. (Note: Was it 2016 or 2017????, I had one as 2016 and one as 2017, This was when she observed possible govt employee doing political stuff on the job).

Rachael stated that a friend of hers (unidentified) sent a Freedom of Information request to _____, so she did not have to be associated with it, to see if Hellman took a day off or was doing political work on a work day, for the purpose of taking down Ronald Miller's campaign signs after the election. She had witnessed him taking these signs down in her neighborhood after the election She said the time card info obtained thru the FOIA shows he requested a vacation day on the same day she saw him taking down the signs and believes it was to cover his tracks when he got caught by her.

Inv. Mason asked why these people would be using the ECW to investigate or air alleged details of possible wrong-doing when they are not local and are a downstate, group (see below map) when they could use Cal Skinner's web page that does similar type stuff and it is local and well known. Rachael alleged that Andrew Glasser has full access to Skinner's blog web page, and has had for a long time. She in fact advised us that she had asked someone (_____?) why Skinner just copied and posted on his

web site what was posted on the ECW web site. She alleged that Glasser has access to all of this info.

Rachael had claimed that she had gone to the McHenry County State's Attorney's office with this information and she was advised that the State's Attorney's Office is not really an investigative unit. (Note: For 4 years I worked at the same place and was Chief of Investigations for the McHenry County States Attorney's Office and when I worked there we did investigations, including some that lead to successfully investigating millions of dollars of fraud, so do not know where they can claim that). She said she had talked to a friend of her named Jacobson, who works there as an Assistant States Attorney. He allegedly said _____.

Rachael also claimed she suspected some possible wrong-doings involving some 09-06-2018 Settlement Agreement. She said some of the wording had been allegedly changed, including a dramatic increase of legal fees charged by Robert Hanlon, from about$25,000 to about $40,000. She said what she saw and knew made it seem like a conspiracy to her working on this Settlement Agreement to benefit Denise M. Ambroziak (Denise is a white female about 53 years of age and who resides at 10509 Country Club Road in Woodstock, IL 60098-8066) who is the attorney for _____. She said this was before the lawsuit was filed and before it became a judgement. She also was concerned about the relationship of the one side conferring with the other side (Ambroziak and Hanlon conferring) and recommending _____. This involved Robert Hanlon (attorney for _____) and Denise Ambroziak, the attorney for _____. Rachael felt there was definitely something not right since she believed there was a very personal relationship between Hanlon and Ambroziak. It was on October 21 2018, that she said to _____ you don't go discussing settlements and referrals make referrals for the lawsuit to the other side. She said that Hanlon told her it was perfectly legal and is done by attorneys every day.

Rachael was asked if there was some kind of personal relationship between Hanlon and Ambroziak, in reference to the above interaction on the Agreement. She said they are

close friends but she can not say if there is more than a professional relationship, referring to a personal or romantic relationship. She said she can't prove it but she has her suspicions that there is more of a personal relationship. She claims she has gone to lunch with both of them before. She has also been in Hanlon's office with him and Denise would just walk right in and not going through the secretary to be announced, like she owned the place. Rachael said she did not know Denise at that time and he just said not to worry and identified Denise to her. Rachael also stated there was another time when she, Ryan Provenzano, Denise and Hanlon and others were all in a bar on the Woodstock Square and _____ got totally drunk, and this is why she also thought Denise and Hanlon were really close.

Rachael also advised that Hanlon had given her some related emails and they then appeared and were posted in the ECW webpage. They were about _____. Add in _____

Rachael was asked by Mr. Kelly if these people went to the ECW people with information. Rachael said she knows Gasser did but she is not sure about Hanlon, if he did, but she believes what Gasser gave to ECW came to Gasser from Hanlon.

Rachael was asked by Mr. Kelly if Hanlon ever went to any meetings with the ECW people? Rachael said yes, one on April 10, 2018 at the Crystal Lake Rib House in Crystal Lake, IL. The meeting was for the ____???Libertarian???_____group. She said she also attended.

Mr. Kelly asked her about another meeting attended by Hanlon with the ECW people. She said yes, on June 14, 2018. It was a meeting for the _____ at the Holiday Inn in Rolling Meadows-Schaumburg, IL. Note: My notes show this date and then show April 30, 2018???? believe this is the correct date. Rachael said they invited her to the dinner the night before and lunch that day (April 30, 2018). Rachael said the Committee took her out and it was a Committee for Prosperity or something similar???? Rachael said when she was around the ECW people that these people they would often

talk cryptically. Rachael said she told the ECW people that they should come to one of the Algonquin Township meetings. The ECW people declined her invitation around the time of the April 30, 2018 libertarian meeting and said they could not stop there but they were going to make a stop up north. She asked if they meant at Woodstock, IL and they said yes, and she believes this was referring to a meeting with Hanlon. Mr. Kelly asked why she thought they were meeting with Hanlon and she said because of her personal experience and knowledge of these people and the goings on and associations that she has. Rachael said she once asked Robert Hanlon how all of this looks with ECW and the referrals from them and she thought it did not look right.

Rachael said that Hanlon had told her that he had been asked to represent the Algonquin Township in the lawsuit and Mr. Kelly told her that would not happen.

Rachael said that she knows that Andrew Gasser uses phony email, facebook and Algonquin blog accounts so he can publicly and privately make comments and such, so no one knows who he is. She only knew for sure of two real accounts that Gasser uses and they are: Andrew@gasser5@gmail.com and Andrew@andrewgasser.com that he used to email to her and for the government related emails but she did not have any of his alleged made-up account addresses.

Rachael was asked if she had any email addresses for Robert Hanlon and she said the ones she knew were: rob@rhanlonlaw.com and it was later switched to Robert@roberthanlonlaw.com.

Rachael stated that Ryan Provozano and Andrew Gasser use to work together.

Rachael alleged that very early in 2017 that Ryan Provenzano took her into the back office of at _____ and he made a statement that they were going to really hurt Karen Lukasik, who is the _____. Rachael said that Karen use to be really difficult to work with. Rachael said that Andrew Gasser took her (Rachael) into his back office and showed her his cell phone on which there was a screen shot from a video clip of Karen's husband Ron Lukasik (NW Herald newspaper article says he had been the

Fox River Grove Police Department Chief of Police until April 2017). The screen shot allegedly shows Ron Lukasik leaning over a box of government records in the _____ office's records room copying or photographing some records, which she claimed was not legal, depending on the records copied as they are confidential. Rachael said the alleged reason was to try and protect or preserve copies of records to allegedly protect the former Algonquin Highway Commissioner Robert Miller, who Gasser beat in the most recent election. Rachael claimed that Karen should not have allowed or authorized her husband (Ron) to have access to those records. The office had cameras installed and how the records Gasser had a screen shot of were obtained, by unknown parties. Rachael did not know if Gasser had given a copy of this video to Hanlon or not. Rachael also alleged that Karen and her child were also in the video.

Rachael said that when she first heard about ECW investigating anything, she at first thought they were doing a good job of exposing possible corruption and helping to make things transparent. She contacted them and told them that. She said they got back in touch with her. She said she told them she would like to donate to them for their good work, but did not. But, then she thought she could not as it being a possible conflict of interest, and she wanted to be honest in all of her dealings. Rachael said that the ECW people told her it would not be a conflict because they do not have to report their donations.

When Rachael was asked by Mr. Kelly, she said that ECW had asked for copies of records. She said she would have to look it up but believe they wanted copies of documents such as meeting minutes, time cards, agendas, certain bills, and other stuff.

At about 2:15 pm, the meeting with Rachael ended. She was to get back to Mr. Kelly later.

Inv, Mason attempted to do research to find an address for Mr. Kelly to serve any subpoenas on but they do everything via emails, but I did find this one address.

Copyright Agent
Dropbox, Inc.
333 Brannan Street
San Francisco, CA 94107
copyright@dropbox.com

Interview of Keith Seda
President, The I.T. Connection, Inc.

On 08/ 04/ 21, I met at the Algonquin Township offices with Keith Seda, who is the IT professional for the Township. Mr. Seda works for the IT Connection Co., located in Crystal Lake, Illinois and the Township has been his client since 2005.

According to Mr. Seda, he was hired in 2005 by Robert Miller, Highway Commissioner and Diane Klemm, the Township Supervisor. His tenure at the district, according to Seda, was unproblematic until 2017 when elections resulted in the replacement of Robert Miller with Andrew Gasser as Highway Commissioner.

Mr. Seda told me "Things were weird from the beginning ". He said that Mr. Gasser, upon arrival, had Bob Miller's computers removed to be analyzed by another IT company and that he chose not to use Seda. He said that when Gasser first started, he had hired another IT professional that worked with him for about a week.

He recalls that Gasser purchased new computers upon his arrival. He reflected on the fact that he recalls several lawsuits coming about as a result of activities involving Mr. Gasser and others. He also indicated that during the years Andrew Gasser was Road Commissioner, things seemed unusually tense.

During the last election cycle, Andrew Gasser was replaced as Road Commissioner. On the weekend before Gasser's final day as Road Commissioner, the County Assessor Richard Alexander, had a painter in the Township offices doing work. On this Saturday, he was called by Alexander who told him that Andrew Gasser had gained access to the server room, a room for which he (Gasser) would not normally have had a key to. This access was only granted by the painter who, according to Seda, had no idea he wasn't allowed to do so.

According to Seda, Alexander was concerned what in fact Gasser was doing in the server room since he really had no business there. As a result, Seda monitored all of the servers and different division partitions within the Township building and only noted one system was entered into; the one designated for the highway department.

Further discussion led to Alexander confronting Gasser as to why he was in the server room. According to Alexander, Gasser acted “innocent” indicating that he (Gasser)was cloning files to protect himself. He did indicate that he was aware that the incoming Township Supervisor Randy Funk was notified about Gasser’s access. He was informed that Gasser had hired a separate computer firm who supplied a technician at Gasser’s request to clone the highway department files. Since he could provide no further information, I concluded the interview with Mr. Seda.

Interview of Dina Frigo
Administrative Assistant to AT Clerk, Karen Lukasik
Tenure: 4/2018-11/2019

On 08/06/21, I met with Dina Frigo, a past employee of the Algonquin Township. We met at the McDonald's restaurant located on Rt. 14 in Crystal Lake. I told her about the nature of my interview, and she agree to speak with me giving me the following statement in summary:

Frigo was hired by the Algonquin Township Clerk Karen Lukasik and worked in that capacity for less than one year between April 2018 until November 2019. According to Frigo, she had been hired to assist the Clerk with the maintenance and indexing of all Township records, which is the venue of the Township Clerk.

Primarily she told me that her duties were to update the Township record-keeping system for Lukasik who, as part of her duties, is the official keeper of the records. She was told at the time of her hiring that the Township was involved in on-going litigation regarding missing records. Her observations were that everyone seemed to be in litigation against each other, "there were claims and counterclaims and I was brought in to clean up the records."

She told me that most of the problems associated with the record-keeping system were attributed to years of mismanagement of Township files. She attributed that to the lack of an adequate and professional filing system. The system seemed antiquated. She denied that she knew of any missing files at the time of hire but did seem to think that Lukasik had mentioned "problems."

The only ones that had access to files at this time were the Township Supervisor, Lukasik and Frigo by means of a fob system. She did note that at one point Lukasik had the locks changed in the storage area, only to find that the

Supervisor told the Lock Smith to make him a key. Lukasik responded by changing the locks again.

As her tenure continued with the Township, she started to develop a system for managing files. She researched vast amounts of files and began the process of indexing all the records. Frigo explained there were three places that records were stored:

The Clerk's Office

Clerks' basement storage area

Building 6B storage area

She was unaware that files were also stored in the Highway Commissioner's and Supervisor's Office (as determined through interviews), usually containing the records of the present year. The Clerk's office contained contemporary file content while the basement storage normally held records that were being utilized more frequently. Building B stored older records that were stored for reference and overdue for destruction.

At the onset of her employment, she began a comprehensive indexing of all the files. As result of this indexing, she was able to make note that files were being removed. She said that one day an entire box of files was missing (box 11). She could not recall the genesis of those specific records, as to whether they were related to roads, or other Township business. She also began to notice things "out-of-place or rummaged through."

The indexing of all files was nearly complete to include documents in the locked basement storage area, indicating that she went through all the older records and was able to index them as well. It was about then that she noticed that when she was downstairs in storage area number two, that box 11 was missing (the whole box). She also noticed that the index sheet, which was normally always kept with

those records, had been removed and placed on a shelf. This unusual activity suggested to Frigo that someone had been going through those records and failed to return the index. She indicated to me that she would never have left an index page out of a box of records. To the best of her recollection, these records were concerning the ATRD files.

Concerning access to those records, Frigo told me that access was supposed to be limited to her (Frigo), Lukasik and the Supervisor's Office (Lutzow through Lukasik). When asked who had access to the office in the basement storage area, she replied that she did, Karen Lukasik and, she believed, the supervisor's office also had access to that area. She stated that they all had the same key fob to get in.

As a response to noticing these missing records, she reported her discovery to Karen Lukasik, and they then proceeded to meet with Township attorney Jim Kelly. They complied with Mr. Kelly's recommendation that they file a police report with the McHenry County Sheriff's Department. According to her, this occurred sometime around July 2019, and she was unaware if the McHenry County Sheriff's Department completed an investigation.

She told me that no one should have had access to those records without the express permission of Karen Lukasik who was the Township clerk and according to her there is statute concerning the storage of records. Illinois state law indicates that only the clerk should have unfettered access to said files.

Frigo, indicated that she was aware having been a Township clerk herself in another location that the handbook governing Township activities requires that the Clerk of the Township is the only one that may have or grant access to the Township records.

Accordingly, no one else should have entered the clerk's office nor those records areas since the only authorized individuals being the clerk or her designee. When asked if she was aware of anyone questioning employees regarding access to

those records, she stated that she was unaware. She told me "I didn't want to get too involved, there was so much litigation going on."

Frigo went on to state that she noticed irregularities in the main clerk's office (Lukasik's office) filing area where she had begun to index all of those files and get them in order. After their first revelation of finding a storage box missing and indications of records tampering, she became suspicious and investigated further.

Upon inspection, she noted that there were records out of place and misfiled, indicating to her that someone had been going through them. According to Frigo, she had gone to great lengths to ensure that the files were kept in order alphabetically and that she first noted that the files were placed back in their cabinet out of order or not alphabetical. All these additional suspicions on her part subsequently were forwarded to Karen Lukasik.

At about that time, the Township started receiving an inordinately large amount of FOIA requests from the ECW.

I asked if there was any chance that someone, maybe the FOIA officer, may have been in that area looking for files. She told me, that to the best of her recollection, the Township Assessor, Richard Alexander, was the FOIA Officer. Frigo indicated that the general rule was, if Alexander needed records for any requests, they would come to her and/or through Lukasik and Frigo would produce copies of those documents.

When asked how anyone had access to the Clerk's Office where these files were kept, she replied that normally only she and Karen Lukasik would have access through key fobs to be able to enter into (Lukasik's) office area.

After the aforementioned activities with regard to missing files, there had been a deadbolt locking system placed on Lukasik's office door. It was discovered soon after these more recent incidents that the locksmith whom Lukasik had hired to do the locks, had also given a key to then supervisor Charles Lutzow, at his

request. Frigo told me that because of the ongoing issues with people unlawfully accessing Township records, she became disillusioned and decided to discontinue employment with the Township.

Interview of Robert Miller
ATRD Highway Commissioner 1993-2017
Tenure: 1972-2017

On 08/04/21, at 2:30 pm, I met at the home of Robert Miller, of 415 E. Main St in Cary, Illinois. Also present was Miller's wife Anna. Both Millers were former employees of the Algonquin Township, with Robert being the former Road Commissioner from 1993-2017 and Anna being an Administrative Assistant.

Robert Miller lost his bid for re-election to the Highway Commissioner post, losing to Andrew Gasser, who then took over in May of 2017. He told me that Township Board member Rachael Lawrence had supported Gasser, but that after Gasser took office, she confided that she felt she had made a mistake.

The Millers related that Lawrence was very involved in the removing of documents from the Township offices and driving them and delivering them to the ECW. It was suggested throughout this series of interviews, that the reason for the ECW wanting the records for Algonquin Township was so they could sue the township for documents not produced when a FOIA request was submitted by the ECW. They would know this since allegedly they underhandedly received the records from Township employees deceptively (still unproven).

The Millers backed this up by telling me that they were aware that when this matter was being investigated by the McHenry County States Attorney's Office, Lawrence had asked for immunity to testify against Gasser for the removal of records. According to the Millers, when Lawrence was asked to give a statement of the activities she wanted to report, she refused citing a recent "bump on the head" that resulted in a loss of memory.

Throughout his tenure, the Millers were aware that Gasser became politically tied to Cal Skinner, (local Blogger) and an individual identified as Orville Brettman, described as a far-right wing proponent with a questionable background.

The information posted in Skinner's blog relating to the Algonquin Township, especially that which was negative, was suspected to be the actions of Gasser who reportedly was very close to Skinner (subjective and unproven.)

At some point during his tenure, Gasser hired a subject identified as Ryan Provenzano, a person the Northwest Herald identified as a "political insider" (H. Rick Bamman, Https://www.shawlocal.com/2020/11/18/algonquin-township-fires-ryan-provenzano-as-chief-of-staff). Provenzano was hired by Township Supervisor Charles Lutzow as his Chief of Staff and subsequently hired by Gasser, as Assistant Highway Commissioner. Provenzano was working for both departments at the same time during a short span of time during his employment.

They reported questionable behavior on the part of Gasser, in that during his tenure, a woman hired as a snow-plow driver got into a traffic accident. At the time it was noted that this employee was intoxicated, and Gasser gave her time to "dry out," then keep her job, rather than have her arrested and fired.

Additionally, they were aware of an employee who was driving with a BADE (alcohol monitoring device) and Gasser gave him a Township car to drive. If in fact this employee was issued a court ordered BADE, he would not be in compliance with said order. According to the Millers, the BADE employee is still working at the Township.

Another questionable occurrence was when Danijela Sandberg ordered "a million dollars' ($1,000,000) worth of trucks" for the township. Robert reported that the current fleet was only five years old and not ready for change. He told me that he was aware that the trucks were purchased at a company in Ingleside where the sales manager was a "personal friend" of Sandberg.

At some point early in his tenure with the Township, employees witnessed Provenzano as well as Charles Lutzow removing a large volume of records from the

Township building. He reported that employees witnessed them "fill a dumpster with township records," according to Miller.

There was concern on the part of the Millers regarding a lawsuit that was filed by Gasser against them both. According to them, the basis of this lawsuit was information gleaned by Gasser when he was sent "by an anonymous person," a box containing records from the Algonquin Township. According to Gasser, after examination of these files, he felt they showed a pattern of misuse of Township funds by Anna Miller. See Exhibit 2 - McHenry County State's Attorney Report dated 5/31/2018.

According to both Millers, this information was misinterpreted by Gasser and in the end was determined to be wholly within the confines of legal use of Township funds. It was their determination that these files, had been taken from the Township file storage area, probably by Gasser, who then utilized them in an attempt to bring discredit to Anna, and thus tarnishing the reputation of Robert Miller.

The Millers both expressed their concern with the amount of malevolence Gasser seemed to have with them both and questioned Gasser's personal stability. He seemed to them to be obsessed with going after them for frivolous and unsubstantiated allegations of alleged wrongdoing. Since they could provide no further information, I concluded the interview.

Interview of Pamela Gavers
Manager, Algonquin Township, Supervisors Department
Tenure: 5/2017-present

On 08/19/21, I met with Pamela Gavers at the Algonquin Township Supervisors office. Pam is the manager for the Algonquin Township Supervisor Department, and I spoke with her about this inquiry.

I had specific questions regarding past employee Ryan Provenzano. When she began her career with the Algonquin Township, she started working for Charles Lutzow, the then supervisor for the Township. She recalls that she began sometime after that of ex-coworker Ryan Provenzano. She did tell me that she had been a co-worker of Provenzano while working with him as a waitress at a local restaurant. She admitted that Provenzano was the one that initially told her about the job opening.

She explained that Provenzano had been Lutzow's campaign manager for his run for the supervisor's position. After Chuck won the election, he brought Provenzano in to be his administrative assistant/general assistant caseworker to replace a retiring employee identified as Judy Kreklow. At some point during his tenure, he (Provenzano) began working as assistant road commissioner for Andrew Gasser and was being paid by both entities.

She told me that Chuck Lutzow fired Provenzano on January 16, 2018, because Ryan Provenzano had possession of a flash drive of video of Karen Lukasik, her husband and son in the records storage. Apparently at some point, when questioned by Lutzow as to having custody of the videos, Provenzano had denied having it and subsequently was caught with the videos.

Eventually Lutzow banned Provenzano from the building and Gasser went on to hire him as a road worker for $20 an hour. This was much less than the salary he

was making from being assistant to both Algonquin Township supervisor and the Township Roadway Commissioner.

Since she could provide no further information relative to this case at this time, it was agreed that I would follow up and interview her about a variety of issues that may or may not have been potential problems during her tenure.

Interview of Karen Lukasik
Clerk & ATRD, Algonquin Township
Tenure Clerk 5/15/17-5/16/21 & ATRD 10/11/16-3/24/17

On 09/01/21 at noon, I met at the Village Squire Restaurant in Crystal Lake with Karen Lukasik who agreed to speak with me regarding her tenure as the Algonquin Township Clerk. She told me that she had been elected to the position of Clerk on May 15th, 2017. She told me that her primary duties included being the keeper of the Township records for all parts of the Township operation, inclusive of both the Township Supervisor and the Road Commissioner.

I was told that she was additionally responsible to attend all the bidding processes that occurred when departments were asking for capital purchases. She told me that she was responsible for all the Township records, and that she took this very seriously. If, in fact, records had disappeared during her tenure, she indicated that she would be held responsible.

When she began her job as clerk, she noted that there was no security involved with the storage of Township records. She further indicated that she had no idea when she first started what records were present, what records may have been removed, and where any and all of the records were kept. “I was informed that prior assistant clerk Judy Kreklow kept impeccable records”.

After starting in her position, Lukasik was denied access to the records by Ryan Provenzano, Andrew Gasser and Chuck Lutzow. According to them they had no master keys to provide to her, regardless of the fact that she was now clerk, and informed her they only had keys to her office area. The entire time that they denied Lukasik entry into the records area, according to her, they all had access.

A couple of days prior to taking office she proceeded to the Township building to examine her office area. While there, she noted in her filing cabinet records regarding bills or warrants for the Township to pay. She then took office

and proceeded to check her workspace to try to get organized for her new position. Upon examination of the same file cabinets, all the bills and files were missing. She proceeded to ask Lutzow and Provenzano the whereabouts of these bills, which included:

Road and Bridge fund

Equipment and Building

Town Fund

General Assistance

They told her (purportedly collectively, her description) "You're crazy, there were never any bills there," and that they had no idea where those bills were. She was told that they would keep those records in the office, so that the auditors would have easy access to them. They were generally the past years bills for auditing purposes.

After confronting both Lutzow and Provenzano regarding the missing records, Lukasik indicates that she was served with papers the next day, saying "I was being sued". This, according to Lukasik, was when she began to suspect that "something's going on here."

She told me that the basis of the suit alleged that she was "covering up Bob's (Robert Miller) malfeasance of stealing money by destroying Township records in order to preserve the integrity of Bob Miller. This suit, according to Lukasik, was brought by Andrew Gasser. This was served one day after she had access to her office stating, "I didn't even know what records were there."

After hiring Dave McArdle as her attorney (conflict of interest with Jim Kelly) for this suit, she added that Gasser's Attorney Robert Hanlon got involved because Gasser "is firing all these union guys." Of the records there, some were in Gasser's office and some were in Lutzow's office. Lukasik indicated that she was

denied access to these files and McArdle informed them that she had to have access to these records since she was the elected clerk the Township.

She continued to be denied access to those records until June 14th, when Judge Caldwell ordered the Township officials (Gasser and Lutzow) to give access to any and all records relating to the Township. She stated that judge Caldwell, in court, told the Township to give Lukasik access to the records immediately. Lukasik indicated that in response to the judge's order she returned from the court date to find that Gasser had taken all the file cabinets from his office and lined them in front of her office door.

She was forced to get the assistance of her husband, Ron Lukasik, and friends to come in and assist her in moving the vast number of records that Gasser had left in front of her door. It was during this time that she was apparently videotaped by a secret camera placed in the downstairs storage area for records. She would later determine that there had been cameras secreted in this area and others that use both video and audio recording devices that were recording as she was working in that room with her family and friends attempting to organize those records.

It was Chuck Lutzow, according to Lukasik, who basically told her that Ryan Provenzano had placed hidden cameras in the record storage area. She was also aware of a camera located in the front office area that had been hidden as well in the Supervisor's area. When I asked if Provenzano had any authority to be in the secured area of record storage to place a camera she replied, "absolutely not. I didn't even know he had a key to the storage area."

After the judge ordered that all records related to the Township were under the auspices of Lukasik and that she clearly had the authority to have access to all of these records and to maintain them the way that she felt necessary, she went in on the weekend to try to locate all the records so she could begin the process of

trying to inventory them. That, according to Lukasik, is when a video of her in the records area "cursing," stating "this is bull shit," because of the mess they had left her, was made public.

The bills that Lukasik originally complained about, the ones that Provenzano and Lutzow denied having knowledge of and about which they told her she was "crazy," were subsequently found in Provenzano's office. She then, after finding these records in Provenzano's drawer, contacted Jim Kelly, informing him that the misuse of these records was "against the law."

The Records Retention Act;

(50 ILCS 205/4) (from Ch. 116, par. 43.104)

Sec. 4. (a) Except as otherwise provided in subsection (b) of this Section, all public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law. Any person who knowingly, without lawful authority and with the intent to defraud any party, public officer, or entity, alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony.

At the same time Ryan Provenzano was doing some redecorating, which included the inside of his office area. At that time Lukasik, observed boxes of files in a common area, purportedly moved there from office areas, noted by the painters who were hired to paint the building. These boxes included council files that were in recycling bins. Because of her concern and the nature of these records which contained requests for assistance from citizens that included private and personal information, she proceeded to lock all these files in her office.

These files were referred to as the GA files, "General Assistance" files containing sensitive information about people requesting aid from the Township.

Lukasik indicates that it appears that Provenzano was throwing out these records. When I asked Lukasik if she was sure Provenzano was throwing these records out, she responded, "Yes, yes he was."

Lukasik told me that these files were the same files that had been requested through a FOIA by the ECW. She placed them in a box and put them in the downstairs storage area for safekeeping. Lukasik stated that the ECW had requested FOIA's on everything they had already had. The ECW already had these documents that were the same documents she found in Provenzano's files.

When I asked her, if in fact these were the files that they (ECW), already had, why had no one questioned why the ECW already had documents which they were complaining they did not receive as a part of a FOIA request. We then went into a more thorough breakdown of the timetable of events.

She told me that Dave McArdle started to "fight with them" about getting access to the records area. Shortly after she noted that records started going missing and because of her inquiries about missing records, Chuck Lutzow decided to put a security FOB system in place to lock the entire area. This distressed Lukasik, since she told Chuck that this would give unfettered access to anyone with a FOB to the records area that should remain secure.

When she complained Chuck responded that this FOB would be monitored by Pamela Gavers, with she and Lukasik having the only access through their fobs to that area. According to Lukasik, she demanded that all locks stay on the doors, that she was the keeper of the records and, as such, was the only one that had unrestricted access to the records area. She explained that they "got around" the fob and lock systems because Pam Gavers would let anyone in the records area that wanted access "That's when the records started going missing again".

At about this time she received a subpoena from the McHenry County State Attorney's office that she was to surrender all records regarding mostly the billing

during a specific period of Robert Miller's tenure to the Illinois State police. This subpoena, according to Lukasik, was the consequence of Andrew Gasser requesting an investigation into the activities of Robert Miller, suggesting that he (Miller), had been involved in illegal acts.

As a result, she proceeded to try to honor the subpoena by going to the records division and attempting to copy all the records required. She told me that fundamentally, this was going to be a rather large undertaking since Robert Miller had been at the district for several years and as such, she had her husband Ron Lukasik (Then a Chief of Police) and her son helping her to work with the records to copy them.

At this time is when Lukasik first noticed that while searching for this subpoena material, which was mostly bills that were being requested and, while going through these bills she noted that there were staple removers in the boxes and that there were staples missing from reports. They were additionally out of order, indicating someone had already gone through them. She told me that Judy Krekel "kept impeccable records" and that the condition of these files could only suggest that someone was searching and possibly copying these files.

It was Lukasik's opinion that this was all "part of a co-mingling of people; Gasser, et al" to undermine the Township process and destroy this government entity. She remembers that her husband Ron noted that the staple removers were located within the file boxes. He remarked that the files have had the staples removed and documents have been removed from these file boxes. "That's when I realized that someone had been going through the documents searching for records" for as for yet an unknown reason.

At the same time Chuck Lutzow told her that in fact, Andrew Gasser, Ryan Provenzano and Rachel Lawrence, had all been down in the records area making copies of documents. When Lukasik asked if he tried to stop them from making

copies, much less, being in a secure records area, his reply was "What was I supposed to do?" Lukasik reminded Chuck he was still the Supervisor at the time that they were going through these records and that he had a responsibility to ensure the security and confidentiality of them. She stated, "Chuck was in it from the onset."

I asked Lukasik at the time that these events were transpiring, had cameras already been placed at various spots in the building, to include the interior of the lower record storage area and she replied they had not. I was told that Robert Miller did have a surveillance system in the building and that she had tried to find the digital video recorder.

According to Lukasik, Gasser had tried to destroy this recorder, but her attorney Dave McArdle had a subpoena issued preserving said recorder. She went on to tell me that she had video footage of both Chuck Lutzow and Ryan Provenzano, the weekend prior to taking office, at the Township building, driving into the lower area of the storage buildings where records were kept. They were on a Kubota (transport vehicle,) loaded with file boxes heading towards the dumpsters.

When the Kubota came back from the area of the dumpsters it was empty. When I suggested that it had been said that Lutzow and Provenzano were throwing out old paperwork of Diane Klemm, including magazines and nonessential civilian documents, she told me that she was aware that there are employees that saw papers in the dumpster. She identified the witnesses as Tim (last name unknown) and Dylan Stern.

This brings it forward to when Lukasik is in office and attempting to sort the Township records. In August, she brought Keith Seda, the Township's IT vendor, down to the records area to look at a scanner system for entering records. She wanted his advice on how the system could efficiently be established. It was the Keith Seda who first spotted a hidden camera in the records room.

He described it as a Nest camera. He was asked if he installed the camera in the downstairs area, to which he replied, "I absolutely did not." She said that the camera had been hidden behind some flowers in the record storage area where people were not supposed to be.

This brings us to the point where she complained that she, her husband and her son were videotaped inside the storage area when they were trying to respond to the subpoena issued by the McHenry County State's Attorney for bills relating to Robert Miller. Lukasik lamented the fact that she felt that an area of the building which was supposedly secure to anyone but her or her designee, was used to film and overhear her conversation with family without their permission. She stated, "I had an absolute expectation of privacy." She subsequently had Keith Seda remove the camera and contacted her attorneys, Jim Kelly and David McArdle.

Her attorney went to the Township officials and wanted access to the video. Ryan Provenzano, who was the "office manager," indicated that he could not find the videos. He further refused to give them login information to the site where he was storing said records.

After getting access to the login, attorneys Jim Kelly and Dave McArdle were joined by Chuck Lutzow and Lukasik, who then viewed the videos. It was determined that the video was of Lukasik of when she and her family had been in the downstairs records area.

Lukasik noted that she became extremely upset with the fact that she had been filmed in a secure area, especially when it included her family, none of whom had given permission to be recorded either by video or audio recording equipment. At the meeting, Chuck Lutzow said he had nothing to do with the installation of these cameras.

Lukasik went on to state that Provenzano had indicated he had no other video. Lukasik said she started to look for the bills for nest cameras and found

billing for six security type cameras. Lukasik was adamant that there were most likely other videos of other events that occurred in the records area and that, along with other cameras around the building, she felt it was highly probable that these videos wound up in the hands of the ECW.

She recalls that on Labor Day, she was driving home from a hockey tournament that her son had attended, and she was called by Chuck Lutzow who informed her that he had to fire Provenzano. According to Lutzow, there was a video of Lukasik and a friend assisting Lukasik, in removing files from Lutzow's office to place in the record storage area.

This video had been released by the ECW, after Provenzano had indicated that no other videos existed. Her response to Lutzow was "I thought there were no other videos" and Chuck responded that he thought there were no others as well.

Lukasik went on to tell me that at the time that Chuck fired Provenzano, he provided $2,700 additional in his check as some sort of severance pay. According to Lukasik, there is no severance pay available or attached to Provenzano's job. She continued to tell me "He paid him off, it was hush money."

Although somewhat minor in nature, the fact that she was videoed moving records throughout the building with assistance from a friend (and well within her purview as clerk), she told me the video was released "just to cause her problems." She said Gasser had told Lawrence he was going to destroy me.

It was immediately after this incident that Provenzano was hired by Gasser to work in the road division. Provenzano told Lutzow, who then told Lukasik that he, (Provenzano) had given anything involving the videos to Gasser and Hanlon; that anything that had been retrieved had been taken by Provenzano was immediately given to Gasser and Hanlon, who then provided it to the ECW.

Lukasik told me of an incident where a woman was standing in line at a grocery store behind Gasser who was on his cell phone and loudly exclaimed into

the cell phone, “Oh yeah I'm going to Mississippi I can drop files off in Paris Illinois.” This witness provided this info to a Fox River Grove Councilperson Jennifer Curtis, who reported it to Lukasik. Paris, Illinois is where the ECW is located according to Lukasik.

Interview of Dylan Stern
Employee, ATRD
Tenure: June 2008 - March 2019

On 10/17/21, I met at the Algonquin Township offices with Dylan Stern, a former employee of the Algonquin Township. Dylan indicated that he had worked for the Township between June 2008 and March 2019. He stated that he originally was hired and worked for Robert Miller who was then supervisor of the Algonquin Township. When Stern spoke of his relationship with Robert Miller, he characterized Miller as "a genuinely good person."

According to Stern, his first contact with the Gasser administration was in 2017 when Gasser was elected to the position of Township Highway Commissioner. He told me that on Gasser's first day of work at the Township, he noted Andrew Gasser outside the building in a suit and tie, accompanied by a deputy sheriff for McHenry County. Also present was an attorney (unknown information) who was recording the activities.

The reason for the attorney being present, according to Stern, was due to a circulating rumor that Gasser was going to fire three of the employees that were currently employed and working for the Highway Department. The past Road Commissioner, Robert Miller, had hired these three employees.

Apparently, these employees had some relationship on a familial level with Miller. According to Stern, Gasser walked in at 6:30 in the morning to the break room and asked to see the three employees. He then took them into an office and told him that they were fired.

Dylan told me that his impression was that Gasser had a personal vendetta against Annamae and Robert Miller, and that is why he fired three employees, one of whom was Robert Miller's son-in-law. According to Stern, most of Gasser's animus seemed to be directed towards Annamae Miller, who Stern "had heard"

purportedly embarrassed Gasser in public at county board meetings when they were both board members.

Stern, who was the Union Steward for the Township employees, then approached Gasser in an attempt to speak with him about the firings. Stern indicated that Gasser basically "refused to talk to me." At that point, it became the impetus of Stern to train office personnel; namely newly hired Gasser assistant Dorothy Wildeboer.

On the occasions that the Millers were gone, Stern would take care of the office functions. He apparently knew how to run the office because he had been trained to take care of the day-to-day paperwork when needed.

After the office assistant was trained, Stern assisted her as necessary. Directly after she was hired, Gasser then brought in a subject that Stern identified as Scottie Pippen (sp), who was, he thought, from the Palatine area to help organize the Algonquin Township roads operation. Apparently, according to what Stern knew, Pippin had managed a public works at another location, for a period of time. Pippin had agreed to assist Gasser in the development of processes necessary to run a Highway Department.

When asked about the operation of the office initially, Stern told me that there was "no structure." He further lamented that there was no identification of a boss, in that Gasser basically just wrote things down on whiteboard for jobs to be done.

It was about this time that Gasser started filling staff positions, with Stern stating, he then began to hire "his own people" and when asked who they were, Stern related "there were so many, they came and went. He even fired his own people." There were many employees hired and fired by Gasser during his tenure, according to Stern.

It was during this period that Gasser brought in a subject identified as Ryan Provenzano. Stern told me "He was a big problem." Originally Provenzano was hired to be an assistant to the Township Supervisor Chuck Lutzow. Stern did tell me that he was aware that Provenzano was let go (fired) because of what he thought was a video release of Karen Lukasik to the ECW.

At some point during Provenzano's tenure, he was hired by Gasser as an Assistant Road Commissioner. As such, he was employed by both during the time and just prior to being fired by Chuck Lutzow. He told me that he was aware that Lutzow had banned Provenzano from Township property and that Gasser had threatened Lutzow with a lawsuit, with Lutzow relenting and allowing Provenzano back onto the property.

Stern told me that the guy (Gasser), was lawsuit crazy going after Bob Miller. At one point as Union Steward, Stern was present when there were union activities including picketing of the Township building. This picketing was in response to Gasser firing union-protected employees without cause. While at this event, he was approached by Provenzano, who told Stern that if he was in charge, he would've "fired us all."

I was told that Stern, along with employee Brian Dubeck met with Provenzano and Gasser regarding union employees' pay. Gasser told Provenzano that these employees were to be paid at the scale agreed to in their union contract. It should be noted that a contract had recently been reached between the union and the Township. This contract was settled during the last days of Robert Miller's term.

For some time after that, Stern noted that the hourly pay on the check showed the amount of gross pay coinciding with the union contract, but the actual take-home was the old and lesser amount. He said this went on for a bit before they finally rectified, but nothing was ever done to remedy the lost wages.

Between the time when they discovered they were not getting contract pay and when it actually showed up on their checks, Gasser told them that their contract was null and void, since it had been approved by Robert Miller prior to his leaving office. When discovered, Stern and eight employees confronted Gasser, who said he would talk to his attorney. He told me that the union attorneys were involved in that because of the firings of employees, as well as the benefits situation.

This was addressed by union attorneys, when they began to try to rectify the errors in dealing with union employees. Stern told me that Gasser and his attorney, Robert Hanlon, were extremely difficult to work with. He told me that the first firing involved employees by the name of Ryan Greene and Kevin Fitzgerald. This was basically an argument that went to the point of one of them pushing the chair at the other.

This happened in front of Gasser before working hours. Gasser told Ryan Greene that he wanted to talk to him in his office. Ryan Greene indicated that he did not want to, so Gasser sent him home and then subsequently fired him. Fitzgerald was also fired. He stated that the matter went to a hearing phase and at the hearing, the Judge agreed with Gasser and upheld the firing. Gasser began to fight the employees' unemployment pay and Stern told me that Gasser's attorney Robert Hanlon began to try to put words into their mouths and coerce them. Although the union attorney argued that it was an unfair firing, the arbitration Judge upheld the firing.

There were subsequent firings, one of which occurred directly after Stern left employment. He still showed up at the union hearing. Stern told me that an employee, Daniel Morrison, had been fired for smoking in a loader and that another employee, Andre Horhof, had taken a photo of him smoking and provided it to Gasser. As a result, Gasser brought charges against the employee and the matter went to hearing. During the course of the hearing, according to Stern, they

continued to lie openly; specifically, with regard to the progressive nature of discipline, specifically as written as part of the labor agreement.

The progression of discipline included a verbal warning, a written warning and then the possibility of termination. According to Gasser, he had followed the proper steps to firing. Stern, as Union Steward, had never been told of any of the initial, less substantial stages of the discipline process being afforded to Morrison, suspecting that due to the lack of his (Stern's) notification, the contract had not been honored.

Gasser said that he told all the employees that smoking was banned in all Township vehicles, something Stern said he was never told. He also told me of a handbook that Gasser indicated he had produced and distributed for employee signature. Morrison complained that the signatures in his copy of the handbook were not his, a complaint echoed by Stern. When I asked Stern if he specifically thought that someone was forging handbook signatures, he replied "Yes I do." No observation of discipline being meted out in a progressive fashion against Morrison. According to Stern, this basically resulted in management not complying with, nor accepting collaboration, within the confines of the union contract.

I inquired about any incident that he may have witnessed involving Chuck Lutzow and Ryan Provenzano using a loader to place items in a township dumpster. Stern said that he had, stating "I was there that day and I physically watched them throw files and files and files away."

I informed Stern that I had been told by other employees that the former Township supervisor identified as Diane Klemm had left a large amount of paperwork in her office. According to these employees, Chuck Lutzow and Ryan Provenzano were merely throwing that paperwork away. When asked if he actually saw that the paperwork was Township files, he responded that he could not.

Stern could only tell me that he observed them throw “files and files away.” He remembers that it was a Saturday, when Lutzow and Provenzano were removing these files and throwing them away. He told me that the files were in record boxes. He qualified this by stating that he has moved those record boxes containing Township files on many occasions.

He explained that on Saturdays, employees were allowed to use the facilities to wash their trucks after hours. He said there were a few employees present at the time, including Tim Sheppard and Andrew Rosencrantz.

He explained to me that Rosenkranz was one of the employees that was let go originally by Gasser because he is the son-in-law of Robert Miller. He went on to tell me that Rosenkranz was reinstated through the union when it was determined that he had not been properly released from employment. He did qualify that what was witnessed by three employees was not done because of a grudge but rather just observations that they made on that day.

Stern then told me that during the time that he and Stuart worked at the Township, there were over 50 grievances filed against Gasser and/or the Township. He told me that most of these were the result of monetary issues, pay issues and because some of the things done by Gasser were repetitive in nature and not necessary.

Stern told me that he saw Gasser do many strange things. When I asked him to explain further, he said there were three employees that observed Gasser hit himself. During a meeting with the two other employees, Gasser became frustrated and struck himself in the face two times with an open hand.

He also spoke of incidents involving Gasser and episodes of sexual harassment. These episodes were reported to the union, but it was decided not to continue the investigation because he stated it was “our word against his.” It was an incident between Daniel Morrison and Kevin Fitzgerald. Although not present

during this exchange, apparently Gasser had become aware that Morrison had his penis pierced. Gasser purportedly said to Morrison “Whip it out.” He apparently said this twice to Morrison during the conversation.

Stern reported an incident of a bridge failure at the Rodger and Dennis subdivision. Gasser reportedly had many members of his staff report to the scene of the incident and many of them didn’t want to get involved with trying to fix the bridge at that time. Stern said that he stayed there with Gasser and witnessed him get into a fight with the Fire Chief from Algonquin and Lake-in-the-Hills fire department. According to Stern, he was basically not listening to anybody and wanting to do things his own way.

Stern told me that Gasser was frequently away from the office, that he was away more than he was there, apparently spending considerable time in Mississippi. There were times when he had to call Gasser in the middle of the night because of emergencies and Gasser would be slurring his words and unable to converse with Stern. When I asked him why he felt this was happening he stated it was “probably the pills.”

Interview of Danijela Sandberg
Highway Commissioner, ATRD, 5/17/21-present
Tenure: 11/6/18 - present

On 10/27/21, I met with Danijela M. Sandberg the Highway Commissioner for the Algonquin Township Road District. I spoke with Ms. Sandberg in her office at the Township Offices where she provided the following statement, in summary:

That she started at the Algonquin Township on November 6, 2018, where she was initially hired as an assistant to Andrew Gasser. She told me that she worked there full-time and that she was working with another employee she identified as Colleen Schor.

When she first started, she presumed that her job was to assist Colleen in the daily operation of the road district. She recalls that she was given a schedule to work and that she worked it, while noticing that Andrew (Gasser) began to "take more time off." Frequently, during the time that she was around Gasser, she recalls that he had, on many occasions, asked her to take care of his chickens (at his home.) She stated that although she didn't like the idea of doing it, he reminded her on numerous occasions that she was an "at-will employee."

She additionally told me that Gasser would say the same thing to Colleen Schor suggesting the tenuous nature of their employment and that they would "walk around on pins and needles." She said that every time they came to work, they didn't know what they would "get from him." She additionally noted that Gasser would do a lot of "pitting between Colleen and me," something she described as "like a hostile work environment."

Gasser would constantly tell employees, including Sandberg, that the County was going to take over the Township and that they should prepare for that inevitability. At some point during their work relationship, Danijela noted that Colleen "fell out of favor with Gasser." She told me that she has always been

consistent in providing the best work product and would listen to her boss. “If your boss tells you what to do you do it the best of your abilities.”

After that, and possibly due to Schor’s strained relationship, Gasser made Danijela a manager, with Schor then reporting to Sandberg. Shortly after this change, Schor resigned. Although Schor provided a resignation letter, there was no warning, “she walked out the door leaving me high and dry and alone to provide services that had been the responsibility of two employees.”

Gasser was out of the office frequently and considering her relatively short tenure, Danijela told me that all the problems occurring within the road district would be “dumped on me.” According to Danijela, it was even more problematic since Gasser did not feel the need to return to the office.

She found herself in a position to do a “crash course on learning how to run a Township Road district.” She told me that Gasser refused to put the Township billing management software on their computer, preferring to do it by paper and report. Since Gasser was only in the office one to two days a month this made it difficult on her to prepare a report to the Township Board. According to Township rules, the only day that you must occupy the elected office is for the swearing-in ceremony and that he would merely come into sign the warrants for the bills and that was it.

She did tell me that Gasser was extremely concerned about being transparent especially when it came to bill paying and monetary issues. It was his requirement that all bills and anything to do with the budget be posted within 24 hours. She told me, “The two or three days a month that he was there it was complete chaos.” When asked if Danijela thought that during his tenure, Gasser was trying to undermine the Township as a system, she stated “hindsight being 2020, absolutely I do.”

When asked if she had any firsthand knowledge of records disappearing from the Township, she responded by saying that it was all hearsay. “I would hear things from Pam (Gavers), who would tell her that the Clerk (Lukasik), told her about missing records. She told me that she had no firsthand knowledge of records being destroyed or if so, how or why they were disappearing.

May 15, 2021, while Andrew Gasser was still Highway Commissioner, he called her during the morning hours asking her if she had Keith Seda’s phone number. Keith is the IT system operator utilized by the Township.

Directly after Gasser’s call, she was contacted by Seda who told her that her Township computers were down (not working). Danijela was told that Gasser was cloning the Township computers, “going from hard drive to hard drive ripping them out and copying them.”

As a result of this activity on the part of Gasser, Richard Alexander, the Township Assessor, proceeded to the Township offices. It was understood that Gasser gained access to the server room, a room not readily accessible by him, by means of painters that were present and working in the area on the weekend when employees would be off. According to what she was told, Alexander confronted Gasser who was in the server room with a subject who was employed by Wavetech in McHenry, IL, as they were hired by Gasser to clone all the hard drives

I questioned why Gasser would feel the need to hire a company to clone hard drives to which she responded she had no idea. She told me that she was concerned, since this information being taken by Gasser contained passport information, Social Security numbers and additional identifiers which would be problematic if in the wrong hands and highly sensitive in nature. When asked if it was legal for Gasser to copy these documents, she replied that “he tried to cover himself by signing a contract that Wavetech provided, entering into a contractual agreement with Wavetech.” The contract indicated that all these files that were

cloned would be kept in storage at Wavetech. She added she believes that Robert Hanlon also has access to these files.

Going back to the original phone call from Gasser, during ensuing conversation, Sandberg asked Gasser what he was doing, to which he replied, copying records. She told me that she continued to receive unsolicited phone texts and calls from Gasser that went unanswered since she was concerned over the fact that she was no longer an employee of the Township.

She was due to take office the next day as Algonquin Township Highway Commissioner, but during the interim, she would not be employed by the Township. After speaking to her husband and indicating her lack of comfort talking to Gasser about issues surrounding Township business, she decided to block his calls.

After taking office on May 17, 2021, Sandberg remained concerned with the fact that Gasser was possibly granting access to this information to attorney Robert Hanlon. "This is the attorney that wanted to undo the Township" and "what was he going to do with this information?" Immediately upon taking office and when approved, she hired an Attorney to send a "Stop and Desist order" (*A cease and desist letter is a document sent to an individual to stop allegedly illegal activity, HTTP://en.wikipedia.org Cease_ and_ Desist)* with regard to these records.

Sandberg told me that Wavetech has the files in their storage. She felt that relative to Wavetech not agreeing to return these documents or computer information to her after she was elected to office is further reason to suspect (not proven, merely supposition) that the information was "given to Hanlon and provided to the Edgar County Watchdog group."

Sandberg stipulated that it was her personal belief, sans evidence, to substantiate same. Danijela said that she cannot be sure that Hanlon is holding this information, since according to the contract, Wavetech is holding all of the cloned

computer files. She told me that two of the attorneys working for the Township, Michael Cortina and Carlos Arevalo, contacted Wavetech and she is not sure of the results of their inquiries.

Upon further discussion, Sandberg brought up an incident where she met a subject at a Township volunteer certification program identified as Alyssia Benford. That is, according to Sandberg, when Gasser met Benford, who worked for the Benford Brown and Associates, an apparent auditing firm.

According to Sandberg, when Gasser returned from this conference he was "hell-bent" on doing an audit of the district. Gasser identified certain information he wanted to glean from said audit and Sandberg said it was information Gasser requested that seemed to focus on, and was relative to, the past administration including Robert and Anna Mae Miller. He was particularly interested in any history of any credit card purchases made by anyone from that era.

She felt that he was using the audit for information on the Miller family because "he said (Gasser) that she was going to audit the records and the payroll, but it was specific, like Derrick Lee and Anna Mae and what was purchased on credit cards." Sandberg felt that this was the ultimate goal for Gasser.

When asked if Sandberg had any relationship with the ECW, she responded by telling me, "I have no first-hand knowledge, I can only go by hearsay, it's all, again, second-hand coming from the Supervisor's office."

Sandberg noted that completion of the audit was "arduous" because of the task of getting Benford all requested records, which Sandberg indicated were all on-line and available for anyone to see. She told me that "Carrie scanned all the bills and payroll that she could find and provided them." Accordingly, "Ms. Benford did her compiling, "I actually remember the day the report was sent, and I looked at it and said, Andrew, this isn't right," telling him "this is wrong and this is wrong, etc." In response and according to Sandberg, he (Gasser) "basically told her how to

edit the report." According to Sandberg, she believed that they paid approximately $32,000 for the audit.

Sandberg noted that "up to a year to nine months prior to taking office, I wasn't allowed to speak with the union and I wasn't allowed to speak with Hanlon", and that all information had to go through Gasser, "because he controlled everything" and that "he controlled the communication."

Gasser, according to Sandberg, was particularly concerned with making sure that Hanlon got paid quickly and stated "I don't know how many times I had to do budget appropriations to cover Hanlon's bill. Hanlon charged over $400 an hour for services, the average is $250 an hour for municipal attorneys." She referred to the amount of money spent on legal fees specifically with Hanlon as "sick."

She went on to tell me that "right in the middle of running for office, Hanlon sends a bill for $157,000." She said, "it wiped out the legal budget, I told Andrew we don't have the money and he said take it out of contingencies". She took the money out of contingency funds and the Township still owed $37,000.

Aside from those, I questioned Sandberg about the number of internal and/or external lawsuits filed by Gasser through Hanlon. She responded that he had sued Bob Miller, which he had recently dropped, he also sued the Township Clerk Karen Lukasik.

She went on to say that on his first day, Gasser fired three employees that were with the union, with no regard to the contract that they had in place. She told me that Judge Purcell presided over the case involving the fired workers and awarded the workers' lost pay and benefits with interest, and that total cost for that firing with attorney's fees cost Algonquin Township over $300,000. She reflected that regardless of what occurred, she still had to take over $165,000 from her first budget to make up the difference for all of the benefits that the employees had not received to comply with the judge's order.

There was a 17-count lawsuit brought against the Township by the ECW relative to the non-release of FOIA material that the current supervisor is still working on. At the time of this and almost immediately, the road district, through Gasser, paid $50,000 to have the road district removed from the suit. Sandberg confirmed that it seemed odd that the suit was paid "almost like a bill" and so quickly with no refuting it (had no independent information that anything was done unethically.)

She went on to tell me that "as far as Andrew's relationship with the ECW and John Kraft (she was unsure of the name), I don't know what that relationship was, I don't know if they were friends, I don't know." She was unaware of any relationship outside of employment with the ECW.

She qualified working with Gasser as "living in duress." She said that it was not uncommon for Gasser to go on tirades and "act weird." She reflected that as the mother of a special needs child, she knew when not to engage. Sandberg recalled that there were numerous times that Gasser threatened to fire her, indicating "just do it, you want your job right?" "He basically had me doing his job, at a fraction of what they were paying him."

Asked if she had any further information, she responded that yes, she found that there was never any e-mail between Gasser and Hanlon or anyone else. All communications were done by phone. "Calls to Hanlon, calls to the ECW or calls to "Miss Alyssia" (Alyssia Benford) were never done on a Township phone, they were always on his personal cell phone. She also told me that Gasser had several "clandestine meetings." For instance, when he had meetings with Hanlon regarding the local 150 case, "he'd be gone all day long" purportedly prepping. She told me that she has had no contact with Andrew Gasser since taking office, and the interview was concluded.

Interview of Carrie Price
ATRD, Office Manager 5/17/21
Tenure: 1/6/2020 - present

On January 6th, 2021, I met at the Algonquin Township offices with Carrie Price, who is the office manager for the Algonquin Township Road Department. She informed me that she began her tenure with the Algonquin Township on January 6, 2020. During her tenure she had very little, if any, contact with Andrew Gasser. She informed me that Gasser, during the time she was there, spent the bulk of his time in Mississippi and she would only see him 3 to 4 days out of the month when he would pay bills. Since she could provide no further information, I concluded the interview.

Interview of Timothy Sheppard
EE & Volunteer, ATRD, 5/17/21
Tenure: 1974-2002

On November 3, 2021, I had a phone conversation with an individual who identified himself as Timothy Sheppard. Mr. Shepherd told me that he had worked at the Algonquin Township Road Department as an employee and then became a volunteer for many years after his employment ended. He stated his tasks as a volunteer included assisting the ATRD.

I specifically asked him if he was aware of an incident where subjects identified as then Township Supervisor Lutzow and then Township employee Ryan Provenzano were at the Algonquin Township building loading up file boxes. I told him that I had been informed that both of these subjects had been observed loading what looked to be Township files into an end loader and placing them in the Algonquin Township dumpsters. He stated that he did recall, in fact, that there was a day when he observed this, but he could not specifically tell me that he had viewed individual Township records inside of the dumpster nor in the Kubota (loader.)

All Sheppard could tell me was that he saw that the boxes in question were record storage boxes. It should be noted that although suggested through the course of interviews as being indicative and suspicious in nature, there is no one that can explicitly state that they observed Township records being thrown away. Nor can it be determined if they were in fact disposing of old property belonging to the previous Supervisor, Dianne Klemm. Since Shepard could provide no further information, the interview was concluded.

Interview of Richard Alexander
Algonquin Township Assessor
Tenure: 1/2/18 - present

On November 11, 2021, I met with Richard Alexander, Algonquin Township Assessor, in his office to speak with him about this inquiry. I asked him for any information relative to the tenure of past administrations, and/or activities by same that he felt may be pertinent.

He related that he began his career as the Township Assessor on January 2, 2018, but he began his tenure with the Township under Bob Kunz, the previous Assessor in July of 2017. His primary function is to oversee the assessment of property taxes for residents within the Township.

He recalled that sometime in July, after the election, a meeting was held, attended by all the elected officials including him, Lukasik, Gasser, Lutzow and Provenzano. Early in this meeting, Karen Lukasik "got him (Provenzano) kicked out," stating "what is he doing here?" He then related that within minutes Gasser and Lukasik were "screaming at each other."

He qualified the obvious dislike between Gasser, Provenzano and Lukasik as "pure politics." He said that, in his opinion, the issue was that they did not come into office on the same ticket, which caused some level of friction.

He told me that additionally, when Lukasik first came in, she was looking for records and indicating that she was keeper of same, to which Gasser and Provenzano's response was to "dump the files in front of her office."

With regard to missing records, Alexander knew of issues surrounding that topic, but only anecdotally because of what he had heard. He told me that Karen had two different employees, the first a "young kid, I think his name was Jack," who were tasked with attempting to organize the records system.

He went on to explain that there is a system in the state where you can apply to destroy old records, (local records act, 50 ILCS 205) which had not been done by the Township in years. He said the "records were everywhere, pallets of records". Karen, According to Alexander, was trying to organize all of the Township records, including Gasser and the Supervisor's office. Alexander had done the same when he began his tenure as Assessor, assigning an employee to begin the process of proper destruction of old documents using the prescribed legal process.

Alexander went on to state that Dina Frigo came in after Jack and continued to try and organize records. He told me "That's the first time I ever heard anything, she came in and got everything in alphabetical order, it was on paper." Alexander then told me that Frigo told him that, "somebody was in there (records) and took something." Apparently Frigo went on to tell Alexander that "I went to look for a record, I knew it was there, and then it was just gone." He told me she wondered that it may have been Karen (Lukasik), but the first person she suspected was Andrew (Gasser.) Frigo resigned shortly thereafter because, according to Alexander's assessment, "she didn't want the drama."

He continued discussions by telling me that he was in another meeting with Andrew Gasser when Alexander told him "Hey, it's your department, run it any way you want to. I don't agree with it, I think all these lawsuits are a waste of taxpayers' dollars. You beat Bob Miller, that should be the end of it." Additionally, he told Gasser, "You are not gonna beat a union, so good luck with that." Alexander said that Gasser sued Lukasik for one thing and then Chuck (Lutzow) for some change in the banking that reflected a name change to an account and that Gasser sued him personally for it. He called it "stupid."

The last weekend that Gasser was still in office, Alexander indicated that he had painters doing work in the building. One of the painters contacted Alexander and told him, "Richard Gasser is in the server room." When asked what Gasser was

doing, the painter responded, “I don’t know, he needed me to get him in, I just happened to be painting that door and now Gasser is in there with some computer guy.”

Alexander proceeded to the Township building and finding the doors locked, “I knocked on the door and clearly, he (Gasser) was shaking, like he was afraid of what I was going to say. Clearly, he was not expecting me to be there.” Alexander asked him what he was doing, and Gasser responded, “I’m making copies of all the hard drives.” When asked for what, Gasser’s reply was “it’s just to cover my ass.” When assured that Gasser was not “messing around” with assessor’s files he relented, but told Gasser, “I don’t care unless you’re messing around with assessors’ files, but it’s a little annoying that I’m here on my son’s graduation because you didn’t tell anyone that you were going to be here, give a heads-up, it’s your last day.”

He went on to question why Keith (Seda, the Township IT manager) was not there, to which Gasser responded, “Keith’s not my IT guy,” to which Alexander retorted, “well, That’s news to me.” I asked if Gasser had keys to the server room, to which he responded, “the only reason he got in there, is because the painter guy had the door open, but then he left, the painter locked the door and he got back in, I thought Pam (Gavers) said he didn’t have access but obviously he did.”

He went on that Gasser was mostly cloning drives to the computers, which, “obviously he had keys there, but something was downstairs too, if it was our server.” He told me general speculation was that Gasser would make this “available to the watchdogs, ECW” so they could FOIA the information. Since he could provide no further information, the interview was concluded.

Interview of Richard Fahey, Local 150 Business Representative and Brian Diemer, Local 150 Attorney

On 12/8/2021, I proceeded to the Local 150 Union offices located on Rt. 120 in Lakemoor, IL. At 10:00 A.M. I spoke in the conference room with Richard Fahey, local 150 Business Representative and Brian Diemer, Local 150 Attorney. This meeting was the result of contact between Local 150 and the Algonquin Township Road Commissioner, Danijela Sandberg, during the normal course of labor relations. Sandberg informed them as to the nature of this inquiry and they indicated interest in speaking to me relative to certain practices they had become concerned about with Gasser and his Attorney, Robert Hanlon.

Attorney Diemer started by going through the history of the Local 150 discussions with then Township Commissioner, Andrew Gasser. Diemer stated that Gasser ran and was elected in 2017, running on a platform that included publicly stating that he was "going to get elected and fire everybody." He went on to tell me that the state of Illinois has a collective bargaining law and "being the rational actors that they were the employees at that point indicated that they had never needed a union before, but with this, with Gasser indicating he was going to fire everyone, they decided to start one." According to Diemer, the employees proceeded to legally elect to be members of the Local 150 Union and that everything was done in a very visible and proper manner. He said that Robert Miller, the former Road Commissioner, negotiated a contract and everything was "labor law 101, there is nothing to see here."

According to Diemer, Gasser was made aware of the activity as far as becoming unionized and sent a letter to the union telling them that in terms of the union contract nothing was to be done until he came into office. According to Diemer, on May 15, 2017, of that same year, when Gasser was to be sworn in, he

had requested the Clerk swear him in early so that he could go back to the Township building and "fire everyone." He then went on to state that Gasser proceeded to the Township building at which point he arrived before the employees, and as they arrived, he fired three of the employees and then proceeded to draft a letter and send it to the union repudiating the unions authority and validity of their contract. Mr. Fahey also told me that Gasser arrived at the Township offices at 5:30 A.M., accompanied by two McHenry County Sheriff's deputies so that he could be there prior to their working and fire them.

Attorney Diemer then told me that they proceeded to file an unfair labor practice against Gasser and the Township. The union went on to file their paperwork with the Algonquin Township Highway Department, which Diemer said was presented on their stationery and letterhead. Hanlon, according to Diemer, never responded to the complaint and the labor board threatened to drop the case.

Diemer then stated that Hanlon then, "resurrected the case by stating that his notification from the union of the unfair labor practice was sent to the Algonquin Township Highway Department Road District". According to Diemer, the Labor Relations Board reluctantly dropped their default ruling and reopened the case.

Local 150 continued by filing a new charge adding to the title Algonquin Township Highway Department, DBA Algonquin Road District. They proceeded with the case and according to Diemer, "they got smoked." He went on to tell me that the administrative judge sanctioned Hanlon and Gasser because their arguments were "frivolous". He told me that this ended up costing the Algonquin Township taxpayers $125,000. That does not count the addition of attorney Hanlon's fees.

Soon after Gasser came into office, Local 150 filed a FOIA request looking for documents from Gasser. According to Diemer, "they just blew it off". Local 150 proceeded to file a FOIA suit. The ATRD filed a counterclaim which in essence

according to Diemer, was an attempt to vacate the Collective Bargaining Agreement (CBA). He went on to tell me that the case wound up going through the courts initially starting in McHenry County circuit clerk court where it goes through a series of judges, who all decided to recuse themselves. The lawsuit was then sent to Lake County circuit court and initially assigned to a judge named Sam Betar, who recused himself, and it finally was seen by Judge Daniel Jasica who then took the matter through to judgement. Judge Jasica held Gasser in contempt and ruled in favor of the union. And also entered a fees award of $31,000.

At this time, according to Diemer, Hanlon takes the matter to appeal. He told me that “the filing of the appeal, it was a mess”. He explained that the documents basically tell the procedural story of how the case evolved up to that point. Diemer qualified Hanlon’s paperwork in brief as quote, “they were a mess”. He explained that the table of contents were “messed up”, they were poorly drafted and poorly edited and went on to state “this is what the taxpayers were paying for”. He went on to state, “and billing $400 per hour for this crap”. They appeared in court for the appellate procedure, and it was “the strangest appellate argument I’ve ever had in my life”

During the course of this hearing, Diemer described Hanlon’s attempt at defending his position as problematic in that he argued that they could not be held to a contract that was agreed to by a former administration. Ultimately, Local 150 won the appeal.

According to Diemer, “in the meantime the other piece of this is that he “billed the hell out of everybody” for the labor board case and the state board case. One of the issues noted was that three employees were initially fired, and then Dan Morrison and Brian Greene are additionally fired. “So, they had five discharged people that filed grievances to the local 150.” Additionally, they had some contract

violations that they also took to arbitration. He stated that at one point they had nine pending grievances.

Gasser refused to negotiate any issues since he believed that there was not a valid contract, which the court had decided that, in fact, there was a valid contract. Additionally, problematic was the fact that Gasser refused to engage in the labor union process and take matters properly to arbitration.

Diemer explained that traditionally there is a group of arbitration officials that are given to us on a list and it's up to each side of the negotiation to strike people they don't want to utilize for the arbitration process. According to Diemer, "they wouldn't do it, so that's why Gasser got put in contempt". The contempt was for failure to engage in arbitrator selection process.

He went on that after being threatened with potentially serving time in jail because of contempt, Gasser decided to actively participate in the grievance process and the arbitrators were picked. Local 150 prevailed on all of the outstanding grievances. He went on to say, "We get these employee's reinstated and they (Gasser), proceed to play around with their back pay calculations.

Diemer, ruminated about advice he received as a young Attorney about the importance of "not billing the client twice." He went on "there is no excuse and that was basically this case". His concern was that they fired the first three employees as noted above, which Diemer characterized as "political firings because they were related to the Miller's". He indicated, "they basically fired these three guys, wound up rehiring because they lost, and had to pay back pay and benefits plus Attorney fees, all at the publics expense anyway."

He went on to state that Ryan Greene was the next employee fired indicating that the tension in the shop was very high and almost untenable. He related that, with regard to Greene, there was an argument in the shop between Greene and

another employee. “It never went to blows” but Gasser fired him due to this conduct.

The last employee, Danny Morrison was fired for smoking a cigarette in one of the work vehicles. Apparently, their understanding was that Morrison had the door open to the vehicle at the time that he was observed smoking. They added that there were provisions in the contract calling for steps in a progressive discipline model in the contract, none of which were followed.

Diemer broke it down by looking at the entire process is three parts “you’ve got the Labor Board matter; you have the State Court litigation that goes up to the Appellate Court and then you have the arbitration stuff.” Diemer said that he had told Hanlon initially that “three guys get fired on the first day of work, first of all you’re a damn fool.” Arguing that there was absolutely no basis to fire them, “they never worked a minute under Gasser.”

He attempted to have the matter conjoined since the employees had been fired together for the same reason. That would bring the matter before one arbitration Judge rather than three. Hanlon refused. In the opinion of Fahey and Diemer, “this was about billing.” Diemer stated, “it was a lot of that stuff.”

The Chronology of Union contact, in a legal sense, according to Diemer, would reflect as follows; that the Labor Board and the State Court matters started in Lake County and proceeded to the Appellate Court 2Nd District. They were being reviewed “on parallel tracks at the same time.” Then once Gasser received the contempt order and acts, they were able to work on the grievances. He told me that they were arbitrating the grievances at about the time they are arguing in the Appellate Court.

I was provided with a copy of the billing schedule provided to the Algonquin Township Road District, submitted by Hanlon, relative to the cost of legal fees for

legal matters between the Township (Gasser) and Local 150. Initially according to Diemer "there is just massive billings for meetings."

He went on to tell me that when Local 150 files a brief (a written legal argument, usually in a format prescribed by the courts, submitted to lay out the argument for various petitions and motions before the court, https://dictionary.law.com/. He explained that normally, it is not fundamentally a time-consuming practice to read a court decision, Hanlon billed 1.5 hours for reading five pages of an Attorney General's decision which, according to Diemer, should have taken 15 minutes. (1.5 hours at $400 per hour is $600) Diemer apparently felt that this was excessive. Fahey inserted that "this is triple what it would cost our Attorneys."

Diemer went on to show me what he described as "the ease at which this guy will lie." When they were dealing with Gasser and Hanlon, and he was refusing to pick an arbitrator, that was causing tension with the judge (per Diemer.) "We were in the midst of this FMCS (Federal Mediation and Conciliation Service) problem," and Hanlon, according to Diemer, contended that they could not pick an arbitrator because FMCS was shut down by virtue of "the government shut down".

He went on to explain that FMCS, was primarily established to reduce the likelihood of strikes. Because of their unique status in preventing work strikes, they are never "shut down." According to Diemer, "they were not shut down, because I was dealing with them during the government shut down."

Upon learning that Hanlon filed a brief contending that FMCS was shut down and was one of many reasons they had not complied with the court, Diemer phoned Arthur Pearlstein, the head of FMCS, in Washington D.C. He explained to Mr. Pearlstein the nature of Hanlon's brief and Pearlstein said, according to Diemer, "no we weren't closed."

According to Diemer, Pearlstein was boarding a plane, but offered to send him an e-mail confirming that they had remained open. Mr. Pearlstein did send said e-mail denying that FMCS was shut down and carbon copied Hanlon. "After all of that," Diemer said he thought "there is no way Hanlon is going to stand in front of the Judge and say this, but sure as shit he did." Confronted with the e-mail, see email in Exhibit 3, "Hanlon "doubled down and said, no they were closed we tried." Diemer told me that he was astounded and wondered if he would have to subpoena Pearlstein from Washington to testify.

Diemer posited that at some point he felt, as a matter of Gasser's fiduciary responsibility, regardless of what he was being told by his Attorney, that he would have become reluctant to continue with his costly legal pursuits. To wit, a billing record, submitted by Hanlon, dated 12-31-18, reflecting [**PLANTIFF'S RESPONSE TO MILLER'S 2-619.1 MOTION TO DISMISS**] a bill for 35 hours for the day at a cost of $14,000.

He theorized about other items in Hanlon's billing that Diemer felt were questionable, and he provided me with the billing documents with notations that are attached to this report, see Exhibit 4.

He told me about "an Ed Komenda story" (former Northwest Herald reporter.) According to Diemer, it involved the "Lukasik lawsuit." He contends that "he, (Hanlon), took a bar journal article and cut and pasted it and used it in his brief." He referred to it as a journal article. According to Diemer, Komenda contacted the journal entry author and confirmed that it was a word for word replica of the author's article. He referred me to other sanctioning motions filed by other attorneys stating that they show a pattern of behavior.

James Kelly ESQ.
Former Algonquin Township Attorney

On January 26th, 2022, I met in the Office of James Kelly, Attorney at Law. I had previously met with Mr. Kelly in 2021, for the purpose of introduction and to be supplied with documentation relative to his work for the Algonquin Township. The records supplied have been made a part of this report by reference (copies attached.)

This meeting was for the purpose of obtaining a statement from Mr. Kelly about his contact with, and/or information about, people or situations associated with this inquiry. Kelly made the following statement in summary:

He told me that he was employed by the Algonquin Township as their Attorney since 2005. During his tenure in the role, he remembers no real unusual legal issues until 2017. He stated "there were no issues until Gasser (Andrew) got elected." He went on to tell me that Gasser was elected in May of 2017, and almost immediately "we were hit with a 'nonsensical lawsuit' against Bob Miller. Simultaneously, according to Kelly, Local Union150 filed a FOIA and accompanying FOIA lawsuit alleging that Gasser violated a union contract, due to Gasser's refusal to accept the Union contract.

According to Kelly, lawsuits were filed against the Miller's (Bob and Anna Mae), Karen Lukasik and the Algonquin Township. Karen Lukasik filed a counter claim. According to Kelly, they were eventually all "wrapped into one." The lawsuits, "were a bunch of meritless junk, that was never resolved," explaining "the road district (under Gasser) dragged its feet on nonsensical issues".

Karen Lukasik, indicating that township files had been removed illegally from the Township, made the counterclaim Kelly referred to. He, along with Attorney David McCardle, told Lukasik to file a police report when it was discovered that

files were missing. Kelly's contention of the frivolous nature of the suit against Lukasik was based on her campaign promise that she would purge old records. Gasser disagreed with the purging of the old files. Kelly indicated that Lukasik's intention was to clean up the records section, pursuant to the Illinois records retention act, in an entirely legal manner. He indicated that there were boxes of records dating back to the 1960's stacked on pallets in a garage "rotting away" that needed to be lawfully destroyed, which was Lukasik's goal. Kelly went on to speak more about the issues surrounding missing records that coincided with previous interviews (see Frigo and Lukasik interviews.)

Kelly detailed these lawsuits as to the number of untruths and frivolous accusations made by Gasser about the above litigants, which were determined to be erroneous and so overtly unworthy as to suggest they were potentially the product of contempt or injudicious and irresponsible actions (money spent by the Township as a result). Kelly went into great detail as to specific contents of the lawsuits that were, in his opinion, not merited (all of which can be viewed in the attached copies of said suits).

He went on to state, that ultimately, these lawsuits cost the Township "a ton of money on totally meritless lawsuits" most of which, were the result of legal fees attributed to Attorney's. See Exhibit 5 Lawsuits and investigations from 2017-2021.

Attorney Tom Gooch	Robert Miller's Attorney
Attorney Steven Brody	Anna Mae Miller's Attorney
Attorney David McCardle	Karen Lukasik lawsuit
Attorney Kelly's firm	Algonquin Township Attorney
Attorney Robert Hanlon	Andrew Gasser's Attorney

When asked, Kelly speculated that the reason for these lawsuits and associated costs seemed to be Gasser “going after Bob Miller” and that Gasser “wanted to destroy the Township.” He hypothesized that Gasser may have been “a shill” for State Rep. McSweeney, who was a proponent of Township devolvement, specifically with regard to McHenry County.

The entirety of the above noted lawsuits were the result of proceedings brought forth by Gasser, through his Attorney Robert Hanlon. Kelly said, “We had two big lawsuits. He referenced the Local 150 Union suits, which he told me resulted in “every single thing being dismissed”. Gasser was twice held in contempt, until the Judge told him he (Gasser) was going to jail.

We spoke about the information gleaned as a result of interviews conducted up to this point. When I interviewed Local Union 150 Attorney Diemer, he stated, “that’s the one (lawsuit with arbitration) that cost us a ($1,000,000) million dollars.” One, which Kelly described as “having zero merit.” Kelly stated, none of the allegations, “had any merit.” Gasser appealed through Hanlon (more Attorney’s fees) and lost. After “the complaint was amended several times,” Justice Burkett (Appellate Court Justice; District 2), was not “kind” in his comments related to the action, and that “one of the Justices essentially said that Hanlon had violated the rules of professional conduct”.

The appellate Court transcript in part reads:

On page 13, they quote plaintiffs' brief as saying it provides services "to its members at no cost." Whether intended or not, these are false statements, represented as direct quotations attributed to the opposing party. We admonish defendants' counsel to adhere to his ethical obligations of candor (Ill. R. Prof'l Conduct R. 3.3 (eff. Jan. 1, 2010)) and diligence (Ill. R. Prof'l Conduct R. 1.3 (eff.

Jan. 1, 2010)) before this court, and to adhere to this court's rules governing the briefs. *Sweeney v. Algonquin Twp. Rd. Dist.*, No. 2-19-0026, 23 (Ill. App. Ct. 2019)

Other online documents related to the above are cited below

Local 150 posted the following August 22, 2018

Local 150 picked up another win in the ongoing legal battle against Algonquin Township Highway Commissioner Andrew Gasser over his illegal firing of three employees on his first day in office.

After firing these employees, he repudiated Local 150's contract with the Department, claiming that the contract was invalid because it had been approved by his predecessor in office. A questionable claim, to be sure, which was defeated in court before being taken to appeal. The ruling yesterday affirmed that the contract is valid, regardless of whether the current occupant of the office signed it.

This battle has cost Township residents hundreds of thousands of dollars, and Local 150 has attempted to resolve the issue simply through the grievance procedure. The fact of the matter is that these employees should never have been fired, and we don't walk away from members who are wrongfully terminated.

There are several matters still being litigated in the case, and we will provide updates as they occur. Check out the article for more information, *https://local150.org/news/local-150-scores-a-win-in-ongoing-legal-battle-with-algonquin-township-road-district/*.

From the Northwest Herald

Algonquin Township Highway Commissioner Andrew Gasser on Tuesday lost his appeal in a legal fight with the labor union that represents his employees.

Illinois 2nd District Appellate Court judges issued a ruling Tuesday upholding a Lake County judge's decision to dismiss Gasser's attempts **at invalidating the union contract** with the International Union of Operating Engineers Local 150 signed by his predecessor.

In May 2017, Gasser made his first decision as highway commissioner and **fired the two sons-in-law of predecessor Robert Miller** – Derek Lee and Andrew Rosencrans – and former McHenry County Board member Nick Chirikos. The decision sparked a labor dispute between Gasser and Local 150 and prompted the union to report the firings to the labor board.

The labor board alleged in a civil lawsuit that the firings were unlawful and Gasser failed to bargain in good faith after he publicly abandoned the highway department's contract with the union.

Gasser in turn filed counterclaims alleging that the collective bargaining agreement was not enforceable and violated the township code. Gasser's attorney, Robert Hanlon, had argued that Miller, choosing to execute the contract allowed him to make decisions well beyond the term of office the people had elected him for.

Gasser also alleged that the agreement restricted his powers as the highway commissioner, including his ability to fire employees, and that the negotiation and approval of the agreement was a violation of the Open Meetings Act.

Lake County Judge Daniel Jasica dismissed Gasser's lawsuit in August 2018, despite Gasser's multiple attempts to refile his complaint with new arguments challenging the collective bargaining agreement.

The attorneys who represented the International Union of Operating Engineers Local 150 got the court to compel arbitration to address Gasser's termination of union employees and several grievances alleging contract violations.

Local 150's attorneys reached out to the highway department to begin that arbitration process, but received no response.

In March, Jasica found Gasser in indirect civil contempt for willfully failing to comply with the court order. But after Gasser took steps to select arbitrators in the ongoing labor dispute, **Jasica purged the contempt charge** in April, making Gasser avoid jail time.

Gasser argued on appeal that Jasica was wrong to dismiss the counterclaim and erred in finding Gasser in indirect civil contempt.

The appellate court found Gasser's allegations "undeveloped and unsupported," however, and affirmed the circuit judge's decision. The appellate judges also noted that Hanlon didn't provide the higher court with the records it would have needed to review in making a determination about Gasser's counterclaims. See Exhibit 6 Summary of ALJ's Recommended Decision and Order.

Local 150 attorney Bryan Diemer said after all of the time that went into the filing of counterclaims and the reviewing of information on appeal, the two-year ordeal has been a "colossal" waste of taxpayer resources.

"In our view, it's just a complete waste of time and money," Diemer said.

Hanlon could not be reached for comment.

https://local150.org/newsroom/appeals-court-sides-with-local-150-in-algonquin-township-battle/

State of Illinois' Illinois Relations Board (IRB)

On May 31, 2017, the International Union of Operating Engineers, Local 150 (Union or Charging Party), filed an unfair labor practice charge in case no. S-CA-17-137 alleging that the Algonquin Township Highway Department (Respondent or Highway Department) violated Section 10(a) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315/1 et seq. (2016), as amended. The charge identified Andrew Gasser, Highway Commissioner, as the employer's representative. An investigation was conducted in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Adm. Code §§ 1200-1300 ("Board's Rules"), and on August 21, 2017, the Board's Executive Director issued a Complaint for Hearing.

State of Illinois Relations Board State Panel Administrative Law Judge Sharon Purcell, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in part that reads:

For the above reasons, I find the Road District's defenses in this case were not made in good faith and did not represent a "debatable" position, and it made denials without reasonable cause and found to be untrue. Accordingly, pursuant to Section 11 of the Act and Section 1220.90 of the Rules and Regulations, I grant the Union's request to strike the denials made without reasonable cause and found to be untrue and also grant its request for costs and reasonable attorney's fees as a sanction. *https://www2.illinois.gov/ilrb/decisions/boarddecisions/Documents/S-CA-17-137_gco.pdf*

Kelly continued by stating that these were the "bigger cases," but then there were suits involving Edgar County cases (Edgar County Watchdogs). Attorney Denise Ambrosiak was also involved. She defended Provenzano (Ryan) and his

position, relative to secreted cameras being placed in the Township buildings (see Lukasik report). According to Kelly, it had been agreed that the cameras should be placed in the building for the security of the records, and that Karen, as well as her Attorney Dave McCardle, were aware of it. This is directly after Gasser tried to "break into the records room". Provenzano was ordered Gasser to install the cameras, but secreted them. He said that Karen Lukasik should have been made aware of their placement, but apparently had not been told that they were installed.

This led to the incidents aforementioned in this report about her being filmed while in the records room and became, in part, a basis for her countersuit. Ultimately, these are the videos that were forwarded to the Edgar County Watchdogs, but it was never determined by whom. Kelly apparently tried several times to interview Ryan Provenzano about the videos but he would always avoid the meeting, to the point that Kelly told Chuck Lutzow he "should fire him".

He spoke about Lukasik and her initial difficulties with regard to FOIA requests. Subsequently, it was determined through her, her Attorney Dave McCardle and Attorney Kelly, that Mr. Kelly would handle all FOIA requests going forward. After that, according to Kelly, things "calmed down", until records began to disappear. This was at or near the time that Lukasik reported finding some of the "missing" documents under Provenzano's desk. Provenzano was then banned from coming onto the Algonquin Township property. Right after banning Provenzano from the Township, "Gasser hired him".

Kelly remembered an incident where Provenzano was subpoenaed regarding a motion to show cause, filed by Attorney McCardle, regarding Provenzano's keeping of all of the videos where Lukasik was taped ostensively without her knowledge. Having been compelled to be there, Provenzano did not show up, but Ambroziak (Attorney for the Edgar County Watchdogs) did, indicating she was representing Provenzano. She contended that Provenzano should not be compelled

to appear. “Three times Judge Caldwell asked Ambrosiak if she was filing an appearance, which she said she would, but she never filed said appearance”. Kelly said “you have this kid who could have taken these videos, being defended by the Attorney for the Watchdogs, that’s a conflict”.

He then inquired about any contact I had with Rachael Lawrence. I informed him of my phone conversation with her. He told me that Lawrence had told him that she was present and heard a conversation with Gasser and the Watchdogs where the topic was that they were going to “bombard Lukasik with FOIA requests”. He said, “she admitted that to me and I think one other person”, (Larry Mason).

He went on to tell me that she was present in Hanlon’s office along with Hanlon, Gasser and Ambrosiak preparing documents (against the Township). He also remembered that Hanlon and Ambrosiak were representing their respective clients (Hanlon for Gasser and Ambrosiak for the ECW), with the ECW suing the township for FOIA violations. According to Kelly, Gasser immediately settles, what Kelly said, was an “unlawful agreement”, regarding the FOIA suit and pays $55,000 dollars using Road District’s funds. The Township did not settle at the time. It should be noted that a copy of a letter purportedly generated by Lawrence admitting culpability with Gasser et al. are attached in this report along with an interview conducted with Lawrence by Kelly and Private Investigator Larry Mason.

Mr. Kelly spoke of a case where a resident sued the Township through his Attorney (Ambrosiak) for not properly issuing a notice for a Township Board meeting where that years’ tax levy was approved. Accordingly, and after two years, the lawsuit was dropped because it “lacked any merit”. At the original meeting the week prior, the Board had opted not to accept the levy, according to Kelly, because they were angry with Gasser. Kelly told them they could not do that and held a meeting (that he indicates was legal and properly noticed) to approve said levy. He

later found out through deposition that the resident had been asked to bring the suit by Andrew Gasser (copy attached).

Since he could provide no further information, the interview was ended.

Summary

The nature of this inquiry was to present, as verbatim as possible, an objective review of information as provided by people who were in some way able to give pertinent information relative to the nature of this examination. It is the opinion of those interviewed, not this interviewer, nor those that requested this review, as to the nature of their individual opinions about the time period in question.

There were some individuals that provided information that could be considered of concern with regard to the manner in which some decisions and actions were made, some with questionable intent. For that reason, some of the principles were not questioned to allow for the Township to decide whether this matter should be investigated by other bodies for potential civil and or legal enforcement remedy.

It was not the intent of this action to replace legal intervention, but rather to produce a document that compiled most of the information in a manner that important decisions relative to the furtherance of any potential investigation could be made. It also serves as a possible template, enabling the elected officials and others involved with this kind of governmental operation, the potential to utilize the information to avoid future pitfalls and hopefully, assist in enhanced performance for the citizens who pay for and rely on Township assistance.

From the beginning, interviewees described the tenure of Andrew Gasser problematic, to say the least. From his first official act that included the firing of three employees without cause (as determined through the courts) to his final act of removing Township documents by copying Township computer drives containing the personal information of Township residents and employees. His methods were questionable and his intent therefore becomes less about potential professional naivety and more about actions that could suggest a more dubious resolve.

There were several people who indicate that Gasser seemed remarkably intent on finding some kind of actionable information that would result in criminal or civil litigation against the past Highway Commissioner Robert Miller and his wife Anna Mae Miller. Gasser, in fact, sued them, through his Attorney Robert Hanlon. Since the Millers had been employees of the Township at the time of the alleged infractions, the Township shouldered all legal defense fees for both Robert and Anna Mae Miller and prosecution fees prompted by Gasser, with the Millers both prevailing.

Additionally, Gasser, on his first day in Office, came to the Township building and proceeded to fire three employees that were covered by a collective bargaining agreement through Local Union 150. This matter was vigorously disputed by Gasser due to his belief that there was no validity to the workers' union contract, which led to a protracted legal battle that Gasser lost.

It must be noted that during the course of this legal battle between Gasser and Local 150, relative to the validity of the employee union contract, all personnel working for the Highway Department, received back pay for wages, benefits and interest accumulated. This was the result of Gasser failing to honor the Union agreement for all employees. In addition to all the legal fees that have been shown in previous exhibits, there was more than $433,000 dollars paid out to highway department employees for back wages, benefits and interest.

As noted in this report there were several more legal claims and counter claims involved with Gasser's judicial experiences during his tenure. All of these issues required a substantial amount of taxpayer money for Attorney's fees.

Equally as concerning, were the allegations by some of those interviewed about Gasser's suggestions that he did not agree with the Township type of government implying that he would act to abolish Algonquin Township. According to Danijela Sandberg "Gasser would constantly tell employees, including Sandberg, that the

County was going to take over the Township and that they should prepare for that inevitability", (referenced on page 62). Attorney Jim Kelly asserted he felt that Gasser was "going after Bob Miller" and that Gasser "wanted to destroy the Township" (referenced on page 83).

Karen Lukasik mentioned in her interview that it was her opinion that this was all "part of a co-mingling of people; Gasser, et al" to undermine the Township process and destroy this government entity (referenced on page 50).

Actions on the part of Andrew Gasser, especially with the involvement of the legal system, were either missteps, part of a systematic approach to bankrupt the Township, and/or the product of what many people interviewed felt was a misplaced need to destroy the former Township Administration, at any cost.

As noted in figures 2 and 3 below, the legal costs that were incurred during his tenure were decidedly more than that of any previous administrations - $161,000 vs $2,500,000. Much of this is associated with legal action that was brought by Gasser and /or used in the defense of same.

Additionally, there were several people interviewed that questioned Gasser's relationship with the ECW. Although motive can be abstract and unless otherwise substantiated, of no fundamental bearing on a report of this nature, the information, when looked at in the entirety, certainly suggests an ambiguous relationship between Gasser and the ECW, et al. (see figure 1).

Figure 1

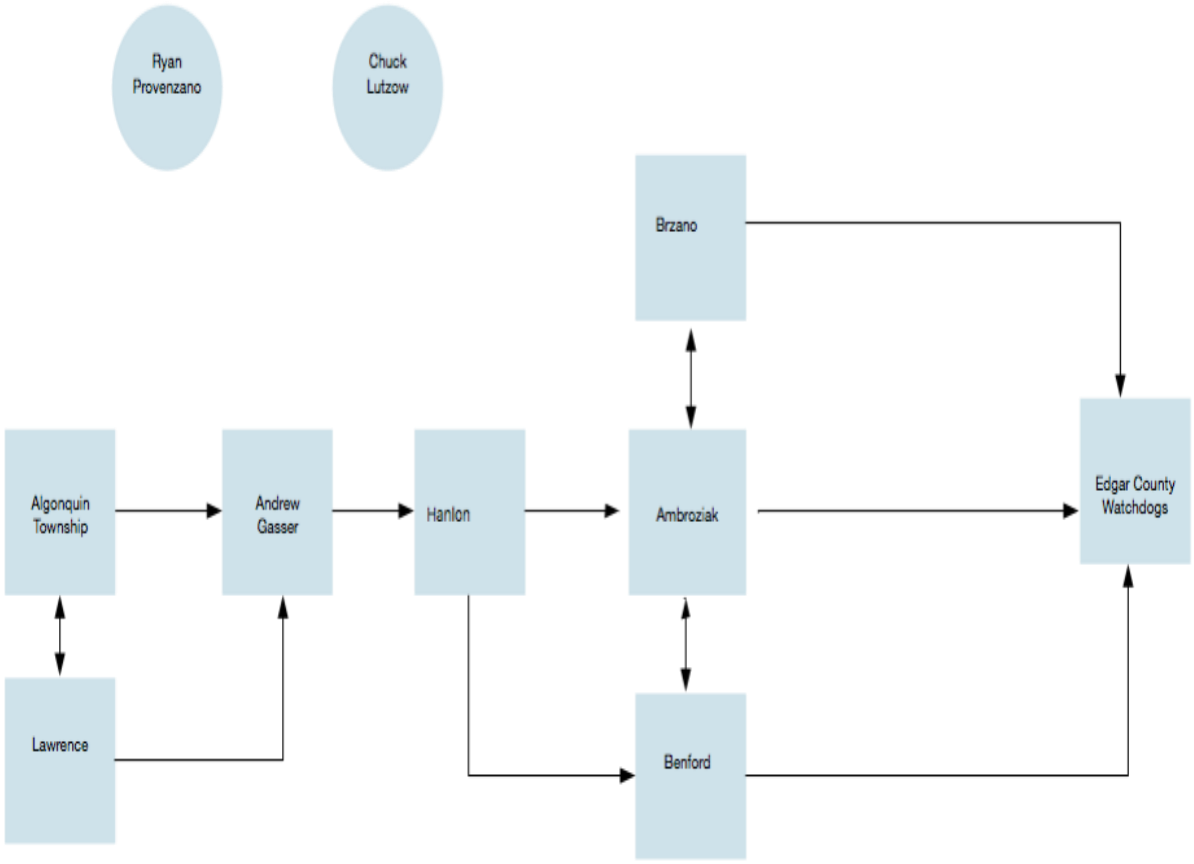
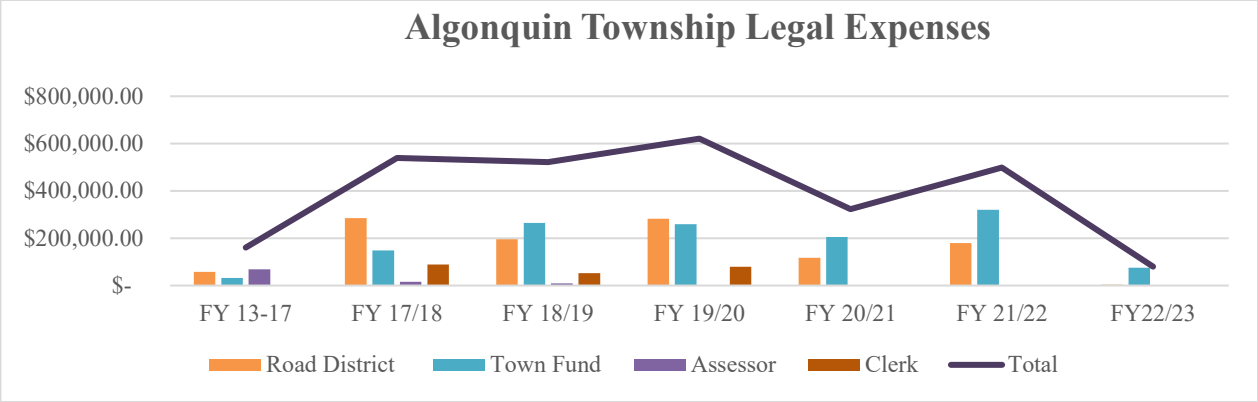

Ryan Provenzano
Chuck Lutzow
Brzano
Algonquin Township
Andrew Gasser
Hanlon
Ambroziak
Edgar County Watchdogs
Lawrence
Benford

Figure 2

Total Legal Fees for Algonquin Township FY13-17 $161,039 vs. FY17-21 $2,503,105



	FY 13-17	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23
Road District	$57,988.75	$284,770.18	$195,665.39	$282,711.13	$117,363.20	$179,045.55	$4,225.30
Town Fund	$32,086.90	$148,597.80	$264,536.55	$258,572.09	$204,937.55	$320,260.81	$75,640.00
Assessor	$68,211.61	$16,077.85	$8,694.10	$-	$267.50	$-	$-
Clerk	$2,752.50	$89,453.11	$52,671.25	$79,481.88	$-	$-	$-
Total	$161,039.76	$538,898.94	$521,567.29	$620,765.10	$322,568.25	$499,306.36	$79,865.30

Figure 3

Legal expense FY13-23 by Law Firm by Department over $20K*

Clerk								
Matuszewich & Kelly	$ 2,752.50	$ 5,973.75	$ -	$ -	$ -	$ -	$ -	$ 8,726.25
Zukowski, RF&M - Lukasik attorney	$ -	$ 38,796.00	$ 53,937.50	$ 82,105.00	$ -	$ -	$ -	$ 174,838.50
Road District								
Matuszewich & Kelly	$ 57,995.00	$ 7,026.00	$ 1,892.14	$ -	$ -	$ -	$ -	$ 66,913.14
Hanlon Law	$ -	$ 320,193.80	$ 104,709.00	$ 258,749.40	$ 87,976.00	$ 125,000.00	$ -	$ 896,628.20
TOIRMA	$ -	$ -	$ 10,000.00	$ -	$ 25,387.00	$ -	$ -	$ 35,387.00
Local 150	$ -	$ -	$ -	$ -	$ -	$ 129,212.88	$ -	$ 129,212.88
Klein	$ -	$ -	$ -	$ -	$ -	$ 16,756.45	$ 4,225.30	$ 20,981.75
Smith Amundsen	$ -	$ -	$ -	$ -	$ -	$ 13,920.00	$ -	$ 13,920.00
Town Fund								
Matuszewich & Kelly	$ 32,086.90	$ 71,856.00	$ 172,892.00	$ 107,149.00	$ 80,870.00	$ 23,862.50	$ -	$ 488,716.40
Gooch - Bob Miller attorney		$ 42,219.00	$ 106,675.33	$ 143,515.17	$ 105,267.35	$ 34,537.50	$ -	$ 432,214.35
Ambroziak (FOIA Settlement)						$ 81,250.00	$ 81,250.00	$ 162,500.00
Smith						$ 127,598.00	$ -	$ 127,598.00
Assessor								
West Pay	$ 46,268.92	$ 15,337.85	$ 8,289.10	$ -	$ -	$ -	$ -	$ 69,895.87
Matuszewich & Kelly	$ 20,274.46	$ 740.00	$ 405.00	$ 112.50	$ 67.50	$ -	$ -	$ 21,599.46
Total	$ 159,377.78	$ 502,142.40	$ 458,800.07	$ 591,631.07	$ 299,567.85	$ 552,137.33	$ 85,475.30	$ 2,649,131.80

This inquiry has been created at the request of the current management at the Township. The goal of this action was ultimately to collect information supplied by people who were directly and/or indirectly involved with, or had information about this tumultuous time in Township history. It stands as a testament to those currently holding township office, who, while concerned with the amount of unsubstantiated information relative to certain township actions and activities, were equally concerned that these matters should be reviewed so that this information can be used for bettering the township and, quelling doubts about the township operation.

Some of the outstanding issues still unanswered include:

- The location of the files cloned from the township computers by Gasser and any potential for the return of said township information some of which is reportedly personal taxpayer information.
- Were township records removed by personnel who, without authority, then provided said information to private entities.
- Any violations of the Illinois Record Act, (Il. 50 ILCS 205/4).
- If information in the form of documents and or files were removed, what were they utilized for?
- The Townships inundation of FOIA requests, at or about the time that reports were suspected of being removed.
- A full forensic audit is conducted to determine billing issues relative to the need for such an increase in financial demands on the district during this time.

- Investigate the allegations of Bonnie Kurowski relative to allegations of potentially questionable activities surrounding and including those affecting Algonquin Township and possibly other entities.

Note* The Edgar County Watch Dogs, Inc., Kirk Allen, John Kraft and Alyssia Benford have submitted a signed settlement indicating Kurowski's supposed deception with regard to any remarks made about or provided to this report via interview or any other means. (See Exhibit 7 and Exhibit 8).

Exhibit 1

Alyssia Benford Forensic Audit Document

BB&A
Benford Brown & Associates
CPA Firm
Bright People
Brilliant Ideas
Amazing Results

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Payroll and Credit Card Audit Report

To the Board of Directors of
Algonquin Township

We have completed a limited- scope audit of payroll records and credit card charges. During the audit, we identified opportunities for improvement and offered the corresponding recommendations in the audit report. The recommendations are intended to assist the township in strengthening controls and help ensure tax dollars are used in accordance with the law.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Benford Brown & Associates, LLC

Benford Brown & Associates, LLC
Bolingbrook, IL
February 6, 2021

Report Distribution:

Andrew Gasser, the Algonquin Township Highway Commissioner

Board of Trustee, Algonquin Township

External
Patrick D. Kenneally, McHenry County State's Attorney

Chicago Division, Federal Bureau of Investigations

Auditors Assigned to the Audit

Maya Booker (Lead Auditor)

Alyssia Benford (Partner)

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Background

Algonquin Township Road District services township roads and provides brush removal, senior transportation, and community recycling. The township currently provides services for sixtyseven miles of township roads. Services provided are authorized per the Illinois Highway Code 605 – Illinois Compiled Statute (ILCS). Algonquin township Road district provides the following services:

- Snowplow and apply ice control to township maintained roads
- Maintain, resurface, patch and repair township roads, shoulders and ditches
- Maintain township rights-of-ways
- Street sweep township roads
- Remove debris, trash and dead animals within township rights of way
- Install and maintain township culverts
- Maintain, repair and replacement of more than 800 warning, informational, and regulatory signs and posts
- Provide street lighting at major intersections
- Issue permits for driveway, culvert installations and right of way improvements, new utility installation, as well as
- Issue permits for overweight and/or oversized vehicles
- Trim and remove trees and branches that interfere with safe vehicle operation and/or visibility
- Remove fallen or damaged tree limb from roadways
- Provide brush pick up for seniors
- Provide brush drop off and free mulch
- Provide seniors and disabled residents transportation services
- Assist with Motor Fuel Tax distribution
- Assist law enforcement and first responders after accidents to return roadway to safe conditions
- Host monthly recycling events between April and October
- Active participation in non-dedicated road program
- Active participation in intergovernmental agreements

Algonquin Township is located in McHenry County, Illinois. The current township highway commissioner is Andrew Gasser. Andrew was elected in 2017. Prior to Andrew's election, Bob Miller was the Algonquin Township Highway Commissioner.

The Algonquin Road District Commissioner believes that funds budgeted for the Road District may have been misappropriated by former and current employees and has requested that the books and records of the Road District be reviewed and that supporting evidence be accumulated to support any misappropriations that may have occurred.

An investigation of official misconduct by the prior Algonquin Road District Commissioner was conducted by the McHenry County State Attorney's office. This investigation includes the review of approximately $260,000 in bonus payments to employees from May 2013 to May 2017 that are considered questionable in nature.

Audit Objectives and Scope

The objective of the audit was to evaluate payroll records and credit card charges for completeness, accuracy and determine if they are acceptable in mitigating fraud, waste and abuse.

Benford Brown and Associates professional services will be conducted in accordance with Statement on Standards for Consulting Services No. 1 (SSCS No. 1) issued by the American Institute of Certified Public Accountants (AICPA). Our forensic accounting services were initially engaged to cover all disbursements of the Road District for the period from January 1, 2010 to December 31, 2019. After discussions with the Algonquin Township Highway Commissioner and challenges with obtaining records requested in a timely manner, we limited our scope to include a review of credit card charges and payroll records for several employees. Our services will be focused on the following objectives:

- Determine whether or not disbursements of Road District funds were properly authorized by the governing body.

- Determine whether or not there may have been improper dealings, such as related-party transactions.

- Determine whether or not any disbursements from the various Road District accounts may have been improper, e.g., not for the benefit of and/or in the best interest of the Road District.

- Evaluate current internal controls and provide recommendations for improvement.

Audit Procedures

Forensic audits include a variety of detailed tests designed to detect fraud, waste or abuse by reviewing quantitative and qualitative information. For purposes of this audit, BB&A conducted the following procedures:

Risk Assessment: The activities of the road district were analyzed to understand the volume of transactions, dollars associated and current internal controls. We met with the current highway commissioner to understand and assess what controls, specifically anti-fraud controls are utilized and present to mitigate fraud risk. We also reviewed any polices and procedures provided as they pertain to the authorization request for disbursements.

Documentation Review: We reviewed timecards, payroll records, credit card statements, credit card receipts and board meeting minutes for required standard documentation to support the transactions. We reviewed the transactions for reasonableness of cost incurred. We reviewed the transactions to determine appropriateness, necessity and benefit to the Road District. We reviewed transactions to determine whether there were related-party transactions, or transactions that can be considered as self-dealing.

Audit Opinion

Results from our audit work for January 1, 2010 through March 31, 2017 confirmed that oversight processes related to credit card charges and payroll records were **Unsatisfactory**.

Results from our audit work for April 1, 2017 through December 31, 2019 confirmed that oversight processed related to credit card charges and payroll records were operating **Satisfactory.** Our opinion was changed to satisfactory because we were able to identify the implementation of improved internal controls. For example, a new timecard system has been implemented. Road District documents and bills are now scanned in as electronic documents and available online. Also, employees no longer calculate their own timecard hours. Lastly, an employee that was responsible for some of the errors on the timecard calculations was terminated in August 2018.

The Internal Revenue Services requires an entity to maintain adequate books and records as well as payroll records. Based on our review, the records maintained by the Algonquin Township Road District do not meet the minimum record keeping required by the Internal Revenue Service. For example, receipts for meals should contain a business purposes and list the attendees. The payroll records were missing and incomplete. The records as currently maintained are not sufficient should they be needed for future litigation an audit by the Internal Revenue Service. There do not appear to be payroll controls in place to prevent payroll abuse and fraud. We strongly recommend the Algonquin Township Road District adopt procedures to include a time clock and a detailed vacation and sick time policy. We also recommended the timecards are reviewed and compared to payroll records to ensure accuracy.

During our review of the credit card activity we noted purchases by a governmental agency for election and campaign matters. We noted the purchase of assets and equipment and were not able to verify that those items are in the custody of the Algonquin Township Road District. Lastly, we noted non-business related travel, for example, purchases of tickets to Disney world and multiple purchases of personal items including multiple purchases of electronics and clothing. Our firm will provide a copy to the McHenry County State's Attorney and the Chicago Division of the Federal Bureau of Investigation.

Report Findings

1. Missing or incomplete credit card statements

We requested all credit card statements for all credit cards used from January 1, 2010 to December 31, 2019. We noted credit card statements and receipts were not being properly maintained.

American Express

1. We received a partial American Express statement for the period ending on or around February 28, 2010.

2. We did not receive American Express Credit Card statements for periods listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.
    a. March 26, 2016 to December 27, 2016
    b. January 27, 2017 through December 27, 2017
    c. January 27, 2018 through December 27, 2018
    d. January 27, 2019 through December 27, 2019

Capital One

1. We did not receive Capital One Credit card statements for the periods listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance when possible.
    a. March 23, 2010
    b. September 26, 2010 through May 23, 2011
    c. July 23, 2011 through September 23, 2011
    d. November 23, 2011 through February 23, 2012
    e. July 23, 2012
    f. November 23, 2012 through December 23, 2012
    g. March 23, 2013
    h. September 23, 2014
    i. January 23, 2015 through March 23, 2015
    j. May 23, 2015 to June 23, 2015
    k. October 23, 2015 to December 23, 2015
    l. February 23, 2016 through December 23, 2019

Chase

1. We did not receive Chase Credit Card statements for the periods listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.
    a. January 1, 2010
    b. April 1, 2010
    c. January 1, 2012 through March 1, 2012
    d. April 1, 2014 through December 1, 2014
    e. July 1, 2015
    f. April 1, 2016 through December 1, 2019

Home Depot

1. We did not receive Home Depot Credit Card statements for the period end dates listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.
    a. March 28, 2010 through June 28, 2010
    b. August 28, 2010
    c. October 28, 2010 through September 28, 2011
    d. November 28, 2011 through February 28, 2014
    e. October 28, 2014
    f. May 28, 2015
    g. October 28, 2015
    h. March 28, 2016 through August 28, 2017
    i. December 28, 2017 through January 28, 2018
    j. April 28, 2018 through June 28, 2019
    k. August 28, 2019 through October 28, 2019
    l. December 28, 2019
    m. January 1, 2012 through March 31, 2017

Lowes

1. We did not receive Lowes Credit Card statements for the period end dates listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.

    a. January 17, 2010 through November 17, 2010

    b. February 17, 2011 through December 17, 2019

Sam's Club

1. We did not receive Sam's Club Credit Card statements for the period end dates listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.

    a. January 2, 2010 through May 2, 2010

    b. July 2, 2010 through October 2, 2010

    c. February 2, 2011 through March 2, 2014

    d. May 2, 2014

    e. July 2, 2014 through September 2, 2014

    f. November 2, 2014

    g. February 2, 2015

    h. April 2, 2015

    i. June 2, 2015

    j. August 2, 2015

    k. October 2, 2015 to December 2, 2015

    l. February 2, 2016

    m. April 2, 2016 through December 2, 2019

Visa

1. We did not receive Visa Credit Card statements for the period end dates listed below. Our actual period end date is an estimation based on credit card activity. We also reviewed the following month's statement for a previous month's balance to determine if a statement was issued when possible.

    a. January 25, 2010 through April 25, 2011

    b. July 25, 2011

    c. September 25, 2011 through December 31, 2019

2. Credit Card charges that appear to be improper or are missing supporting documentation

For the asset purchases, we are not able to identify if the items purchased were for township matters. Our testing would need to include a review of fixed assets for the period under review. We list the assets purchased via credit cards until we are able to identity the items were used for township matters. The majority of the receipts for meals did not contain detail of individuals present. There were multiple purchases of surveillance cameras. *American Express*

1. American Airlines - August 19, 2011 - $1,532.40 - Twelve plane tickets purchased, no receipt provided.
2. Amazon – There are several purchased via Amazon that appear to be abusive and/or documentation is missing.
    a. Ipod docking stations
    b. Ipad cases purchased a minimum of five times
    c. Ipad cover purchased in November 2012 and January 2013 for $100 to $180 each
    d. Cannon Camera Lens ($156)
    e. Automotive multimedia kit ($420)
    f. Nones Music player ($399)
    g. 2 Outdoor grills ($1,240)
    h. Framing Nailer ($407)
    i. Levi Jeans ($90)
    j. 10” digital frame ($260)
    k. 24 Inch LED Monitor ($180)
    l. Single purchase on July 31, 2013 ($3,366) - no receipt provided
    m. 46 Inch TV ($750)
3. American Diabetes Association – November 18, 2013 – ($670) – Highway Commissioners Association Christmas Gifts
4. American Diabetes Association – ($520) – No receipt provided
5. Augies front burner ($409) – no receipt provided
6. Brewburgers, Bucky Express, BW Plus, Comfort Inn, KBKS Invest, Llc, Loves Country, Molly-BS, Rocky Mountain Park, Silver Moon Inn, The Egg and Estes, The Grub Steak, Wagon Wheel, – ($1,540) – out of town meals, hotel, etc. did not find receipts for travel pertaining to township highway matters. Receipts are from locations in Nebraska, Colorado.
7. Brunch Café ($5,225) – Election Judge Meals

8. Clutchfield – No receipt – E&B written on statement – ($1,800). Kenwood navigation receiver and Cd receiver ($1,500)
9. Costco – charges on statement for $320, $660, $550, $495 and no receipts were provided
10. Countryside flowers - $115
11. Disneyland admission tickets ($182)
12. Dri Nuance – ($150) – Philips Digit Voice
13. Eaccess solution ($213)
14. Ebay – ($200) – 7" digital frame
15. Eddie Bauer – ($250)
16. Edible Arrangements ($200)
17. Ferguson Ent ($80) – No receipt
18. Filomena ($230)
19. Google Games ($50)
20. Google Earth Store ($600)
21. Hammacher Schlemmer ($800) – GPS tracking system, alarm clock weather monitor, tablet mount
22. Herrington Corp ($200) – 8GB picture keeper, quantity 2
23. HHGregg – ($2,800) – No receipt
24. Highland Park CVS - $106 – No receipt
25. Hilton Springfield ($215) – No receipt
26. Hobby Lobby – ($120) – Home Accents
27. Improvements – ($320) – Carport
28. Itunes ($150) – various purchases, no receipt
29. Jensen Equipment – ($350) – M18 Sawzall; ($525) no receipt.
30. Kojaks – ($5,000) – Election judges meal
31. Land's End – ($2,300) some receipts are missing
32. Levenger – ($1,200) – tote bag, rollerball pen, refill and monogram for Anna May Miller
33. LL Bean – ($600) – no receipts for purchases
34. Lowes – ($230) – White sink cabinet
35. Meals – ($8,300) in meals. The receipts did not contain who attended or the details of what – There are few that stood out Dunkin Donuts - $77, Hooters ($2,200) – three locations, Jewel's ($630)
36. Megagps.com – ($200)

37. NATAT – ($1,040) – Robert Miller, Joseph Powalowski and Jim Kelly were employees registered for the conference. Anna May Miller and Maura McKeever were guests that did not attend keynote events.
38. NATAT – ($950) – Receipts don't indicate who registered for conference
39. National Pen – ($1,059) – In June 2012, 250 pens were purchased for $281. In June 2013, 380 pens were purchased for $780. The priced more than doubled for an additional 130 pens.
40. Officemax – ($820) – Two identical color printers purchased within less than a month of each other
41. Onlineshoes.com – ($250)
42. OPC*McHenry – ($1,000) – No receipt
43. Orvis – ($1,025) – clothing purchases on 4 separate occasions. One purchase was a cashmere cardigan.
44. Osl Savesorb – ($3,355) – compressed bags
45. Paypal – ($350) – Debris Grabber
46. Renee's Flowers – ($325)
47. Sam's Club – ($745) – Several pop-up tents purchased
48. Seaport Boston – ($993) – Harbor view room for expo
49. Sears – ($2,900) – 2 socket sets, Levi jeans,
50. Shelpers ($550) – five separate purchases, three purchases did not contain receipts
51. Siriusxm radio ($6,000) – no receipts
52. Sports Authority – ($2,200) exercise equipment
53. Terry's Village – ($762) – Highway commission Christmas gifts
54. The Eastman Company ($620) – EW Rust Converter
55. The GPS Store – Isle Beach ($1,000) – Garmin
56. The Kodak Store – ($42)
57. Thewebsteraunt store – ($40) – Numbers for early voting
58. Think Geek – ($440) – No receipt, video cameras written on statement
59. Tigerdirect.com – ($800) – web cam, digital software and HP Probook
60. TSP*Travel – ($800) – No receipt
61. United Airlines – ($1,700) – Email shows only Bob Miller as registered for conference. Airline tickets purchased for Anne May Miller, James Patrick Kelly and Joseph Powalowski
62. USPS – ($4,200) – large amount of postage stamps purchased
63. Vanns.com – ($3,300) no receipt – E&B written on statement

64. Versa Tube Bldg – ($9,500)
65. Walmart – ($1,300) – multiple gazebo purchases, Christmas gifts
66. Wilson's Leather – ($400)
67. Woolrich – ($1,400) – Clothing, no receipts for some purchases
68. Yankee Candles – ($630) – Christmas gifts

3. Payroll records that appear to be improper or are missing supporting documentation

1. Employee #1 – Andrew Rosecrans

We requested timecards for this employee from 2010 through 2019. We received timecards for the week ending 10/13/2013 through May 2017.

a. Year 2013

   i. The majority of the timecards did not have an end time or had 8 hours written in on the timecards

   ii. We did not receive any paystubs therefore were unable to analysis the payroll this year.

b. Year 2014

   i. The majority of the timecards did not have an end time or had 8 hours written in on the timecards.

   ii. We received the paystub for only the last pay period of the year. For that per period, we noted the regular hours were under paid by $222 and the overtime hours were overpaid by $771.

   iii. We did not receive any paystubs for the other pay periods were unable to analysis the payroll those periods.

c. Year 2015

   i. Total regular hours were underpaid $361.

   ii. Total overtime hours were overpaid by $183.

   iii. There was a total of 8 vacation hours that were listed on the timecards that were not listed on the paystubs.

iv. Fifteen paystubs included a Misc. payment ranging from $100 to $1,700 for a total of $6,685.

2. Employee #2 – Anne Mae Miller

We requested timecards for this employee from 2010 through 2019. We received timecard for the week ending 10/6/2013 through May 2017 when this employee retired.

a. Year 2013

i. The timecards were received for the period ending 10/6/2013 through the end of 2013.

ii. Total regular time hours overpaid was $2,944.

iii. Total overtime hours overpaid was $494.

iv. Total vacation hours over paid was 4 hours.

v. Total sick hours underpaid by nine hours.

vi. Four paystubs included a Miscellaneous payment ranging from $200 to $1,800 for a total of $3,700.

vii. For each pay period, regular and/or overtime hours that were not accurate when recalculated.

b. Year 2014

i. We only received five paystubs for this year therefore we could not complete an analysis of each pay period.

c. Year 2015

i. Total regular hours overpaid was $3,002.

ii. Total overtime hours overpaid was $196.

iii. 159 vacation hours were listed on the timecards were not listed on the paystubs.

iv. Sick/PTO time was overpaid by 40 hours.

d. Year 2016

i. Total regular hours overpaid was $3,513.

ii. Total overtime hours underpaid was $189.

iii. 273 vacation hours listed on the timecard were not listed on the paystub.
iv. Sick/PTO time was overpaid by 17.5 hours.

v. Fifteen paystubs include a Misc. payment ranging from $200 to $1,750 for a total of $9,250.

e. Year 2017

i. The final pay period was May 17, 2017.

ii. Total regular hours overpaid was $1,620.
iii. Total overtime hour overpaid was $478.
iv. Total vacation hours overpaid was 30.

v. Total Sick/PTO hours overpaid was 20.

vi. Four paystubs include a Misc. payment ranging from $500 to $750 for a total of $2.250.

3. ***Employee #3 – Derek Lee***

We requested timecards for this employee from 2010 through 2019. Most of the employee's timecards are incomplete, meaning the employee punches in, but doesn't punch out for lunch or for the day. The employee's timecards do match the hours on their paystub.

a. We did not receive any timecards or paystubs for 2010 through 2012. Algonquin Township Clerk Karen Lukasik indicated she did not possess any timecards. She stated in an email that the McHenry State's Attorney has custody of the timecards.

b. Year 2013

i. The timecards we received started in October 2013.

ii. The majority of the timecards did not have an end time listed on them.

iii. The timecards have eight hours written in as the hours worked.

iv. There were no pay stubs received.

c. Year 2014

i. The only paystub received was for the last pay period of the year. For that pay period, the employee was paid $262 less than in regular pay than what

was on his timecard. The employee was over paid $1000 in overtime pay for this pay period.

ii. The majority of the timecards do not have an end time listed on them. The timecards have eight hours written in as the hour worked.

d. Year 2015

i. All timecards and paystubs were received.

ii. Regular pay was overpaid by $262 for the year.

iii. Overtime was underpaid by $49 for the year.

iv. Sick/PTO was paid out 18 hours less than what was reported on timecards. Some of the notes stated 2014 PTO used.

v. The majority of timecards did not have an end time listed on them.

vi. There were 11 checks with a Misc payment amount ranging from $200 to $1,500 for a total of $6,100.

vii. 16 paystubs reported regular and/or overtime hours that were not accurate when recalculated.

e. Year 2016

i. All timecards and paystub were received.
ii. Regular hours were underpaid by $131 for the year.

iii. Overtime was underpaid by $283 for the year.
iv. Vacation hours were overpaid by 4 hours.

v. The majority of timecards did not have an end time listed on them.
vi. Sick hours were overpaid by 8 hours.

vii. 18 payroll checks included in a Misc. payment amount ranging from $135 to $1,750 for a total of $11,385.

viii. 12 paystubs reported regular and/or overtime hours that were not accurate when recalculated.

f. Year 2017

i. The timecard and paystubs were received through May 31, 2017.

ii. Regular hours were overpaid by $279 for the year.

iii. Overtime hours were overpaid by $172 for the year.

iv. One timecard was missing. Algonquin Township Clerk Karen Lukasik indicated she did not possess any timecards. She stated in an email that the McHenry State's Attorney has custody of the timecards.

v. The majority of timecards did not have an end time listed on them.

vi. There are two checks with a Misc. payment. The total Misc. payments are $650.

vii. 8 paystubs reported regular and/or overtime hours that were not accurate when recalculated.

4. Employee #4 – Ryan Provenzano

We requested timecards for this employee from 2018 through 2019.

a. Ryan Provenzano worked for the township until February 2018. He was hired into the Road District in February 2018.

b. For 2018, we received payroll information for 21 pay periods.

c. Nine pay periods had missing timecards and four pay periods had missing paystubs. Algonquin Township Clerk Karen Lukasik indicated she did not possess any timecards. She stated in an email that the McHenry State's Attorney has custody of the timecards.

d. Any pay periods with missing timecards or pay stubs we were not able to analyze because we had incomplete information.

e. For the remaining periods for which we received timecards and paystubs we noted the following:

i. The employee was overpaid regular hours for seven pay periods for a total overpayment of $2,078.

ii. The overtime hours was overpaid or underpaid on the paystub for seven pay periods for a net total of $601.

iii. PTO/Sick time paid was 7.5 hours more than what was reported on the timecards in 2018.

iv. We received an explanation for regarding July 2018. There was a pay period in which the employee was underpaid. The underpayment was corrected on the next pay period.

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Notes:

Audit Ratings Satisfactory:

Critical internal control systems are functioning in an acceptable manner. There may be no or very few minor issues, but there number and severity relative to the size and scope of the operation, entity, or process audited indicate minimal concern. Corrective action to address the issues identified, although not serious, remains an area of focus

Needs Improvement:
Internal control systems are not functioning in an acceptable manner and the control environment will require some enhancement before it can be considered as fully effective. The number and severity of issues relative to the size and scope of the operation, entity or process being audited indicate some significant areas of weakness. Overall exposure (existing or potential) requires corrective action plan with priority.

Unsatisfactory:

One or more critical control deficiencies exist which would have a significant adverse effect on loss potential, customer satisfaction or management information. Or the number and severity of issues relative to the size and scope of operation, entity or process being audited indicate pervasive, systematic or individually serious weaknesses. As a result, the control environment is not considered to be appropriate, or the management of risks reviewed falls outside acceptable parameters, or both. Overall exposure (existing or potential) is unacceptable and requires immediate corrective action plan with highest priority.

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Exhibit 2

McHenry County State's Attorney Report

Memorandum

THE MCHENRY COUNTY STATE'S ATTORNEYS REPORT REGARDING ALLEGATIONS OF CRnaNAL CONDUCT ON THE PART OF ROBERT MILLER, FORMER HIGHWAY CONIßflSSIONER AT THE ALGONQUIN TOWNSHIP ROAD DISTRICT

May 31, 2018

Foreword:

This report is meant to inform the public of the basis upon which the McHenry County State's Attorney's Office declined to prosecute Robert Miller, former Highway Commissioner at the Algonquin Township Road District, after investigating various allegations of public corruption and misuse of public funds.

Generally speaking, a State's Attorney does not investigate criminal allegations. Rather, the primary function of the State's Attorney is "[t]o commence and prosecute all actions, suits, indictments, and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or County may be concerned." While a State's Attorney does have the authority to investigate criminal matters, this authority is limited in that the State's Attorney must ordinarily rely on police agencies to conduct criminal investigations. As stated by the Illinois Supreme Court:

> [A State's Attorney's] duty to investigate is not exclusive and necessarily involvce him with other investigative agencies. Justice is not served when the State's Attorney's duty to investigate collides with the duty of the police to investigate. The State's Attorney does not possess the technical facilities nor the manpower that the police have. Consequently, it is the recognized practice that the State's Attorney sensibly defers to the investigative duties of the police.

As such, the Illinois Supreme Court permits the State's Attorney to investigate criminal matters only "where other law enforcement agencies inadequately deal with such investigation or where a law enforcement agency asks the State's Attorney for assistance."

In this case, the two law enforcement agencies with jurisdiction to investigate Miller were the McHenry County Sheriffs Office and the Illinois State Police. Both declined to investigate and tendered the investigation to the State's Attorneys Offce. It is important to understand how taxing this investigation has been on the resources of our Offce as it is neither staffed nor resourced to conduct such an expansive investigation. We employ lawyers, not detectives. Our Office has only one full-time investigator who is a sworn peace offcer and has experience conducting criminal investigations.

The inyestigation required us to consider a convulsiou of indiscriminate allegations that, regrettably, first surfaced in the press. In order to thoroughly examine these allegations, we issued dozens of subpoenas, reviewed over 10,000 emails, analyzed thousands of pages of financial and Township documents, and conducted dozens of interviews. After devoting nearly seven months and hundreds of man-hours, we regard our investigation as complete and thorough.

It must be said that our investigation was undermined by the public nature of the allegations. An element of candor was lost when interviewing witnesses who had time to prepare their responses to anticipated questions, as opposed to answering extemporaneously. Moreover, a number of witnesses refused to speak with us as they did not want to involve themselves in the evolving spectacle.

It must be said further that this Office has faced pressure from members of opposing political factions to variously charge Miller or exonerate Miller, hasten the investigation or abandon the investigation, retain the investigation in house or refer the investigation to another entity. Particularly troubling were those voices that, not having access to all information and being politically opposed to Miller, stridently urged our Offce to put a man's liberty in jeopardy.

All of this betrays a fundamental misunderstanding of the State's Attorney's Office and its function. The United States Supreme Court has defined the role of the prosecutor as follows:

> The [government attorney] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

United State Supreme Court Justice Robert Jackson, pondering the question of what makes a good prosecutor, observed further:

> The qualities of a good prosecutor are as elusive and as impossible to define as those which make a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factionalpurposes and who approaches his task with humility. .

As recent history in this County has demonstrated, politically-saturated prosecutions of public offcials, represented publicly as airtight, can prove incredibly costly to the public and, after being subject to the intense scrutiny of an adequate criminal defense, disreputable upon being deemed unfounded.

It is essential that the duty to "seek justice" is first and rigorously applied at the time a State's Attorney is making a charging decision. This is especially true when considering criminal allegations against the infamous or unpopular.

Criminal prosecutions, which bring to bear the incredible power of the State directly down upon an individual, can have enormous financial, health, and social consequences for that individual. Accordingly, a State's Attorney must only seek a criminal prosecution if he has a moral certainty that the suspect committed the criminal offense, has a moral certainty that admissible evidence will be sufficient to prove the offense beyond a reasonable doubt, and believes the decision to charge is in the public interest.

When determining whether the prosecution is in the public interest, the American Bar Association has recommended that a State's Attorney consider, among other things:

1) the extent or absence of harm caused by the offense;
2) the impact of the prosecution or non-prosecution on the public welfare;
3) the criminal background and characteristics of the offender; and
4) whether the public's interest in the matter might be appropriately vindicated by available civil, regulatory, administrative, or other private remedies.

When making a charging decision, it is not enough to say that the prosecution itself, irrespective of outcome, is in the public interest in the sense that it "sends a message" to others who might consider similar conduct. It is not enough say that the prosecution will help resolve unsettled legal issues. It is not enough to say, "charge him and let the jury decide." An individual's liberty and freedom cannot be sacrificed for the good of the whole when a prosecutor has a reasonable doubt as to guilt.

A State's Attorney can neither be swayed by the logic that the sheer number allegations of wrongdoing against a suspect evidences criminal conduct. Perhaps not without significance, many witnesses we spoke with leveled a number of accusations of criminal conduct against the current Highway Commissioner, which have not been subject to the same media scrutiny. That notwithstanding, in criminal cases, with the exception of charges involving sexual abuse and domestic violence, a person's dishonorable character, prior criminal history, or prior "bad" conduct is not admissible evidence. Rather, the inquiry focuses solely on the sufficiency of evidence related to the specific criminal act charged. Each allegation, therefore, must be evaluated on its own merits and the combined persuasive force of a number of allegations, which individually do not arise to proof beyond a reasonable doubt or otherwise merit prosecution, is irrelevant.

Proof beyond a reasonable doubt is no small hurdle. Everyone charged with a crime is presumed to be innocent of the charges against him. This presumption

remains with him throughout every stage of the trial and during a jurys deliberations on the verdict and is not overcome unless the jury is convinced beyond a reasonable doubt from all the evidence that he is guilty. It is the State's burden of proving a defendant guilty beyond a reasonable doubt and the defendant is not required to prove his innocence nor offer any evidence in his defense.

Generally, a public offcial accused of improper spending is compelled to answer for and justifr the spending in the public arena. In a criminal court of law, he need not. Rather, it is the burden of the State to prove that a specific form of spending was improper and/or solely in furtherance of a private interest such that it could have no other reasonable explanation. Further complicating this task is the Fifth Amendment right against self-incrimination. This is especially true in cases where the one person responsible and presumably apprised of the thousands of expenses paid over the course of many years is under suspicion and asserts that right, as Miller did in this case.

We recognize the special danger and insidious naturo of crimes committed by public offcials. Not only does public corruption fundamentally threaten core principles of a democratic system, it diminishes the quality of government service, fosters a lack of respect for our shared institutions, limits private investment and economic growth, and wastes taxpayers' hard-earned money. Prosecuting cases of public corruption is one of our top priorities. However, the heightened public injury that results from public corruption does not allow a State's Attorney to dilute his standards when making charging decisions any more than he can moderate his approach when charging a murder as opposed to a petty theft.

The FBI also investigated the Algonquin Township Road District's credit card use and spending on the Amazon website. Upon presenting its findings to the United States Attorneys Offce, charges were declined. After conducting this investigation, we tendered the prosecution to the Illinois Attorney General's Office. We felt it was important that another agency review our investigation and determine independently whether it was appropriate to charge under State law and, if so, assume the prosecution. Important in the sense that members of our Office variously serving as prosecuting attorneys and appearing as witnesses may create the appearance of a conflict of interest. After its nearly three-month review, the Illinois Attorney General's Offce, acting as special prosecutor, declined charges.

Despite this and the diffcult position of serving as both investigator and prosecutor,

- we still arguably retain authority to prosecute should we choose.

We also decline to prosecute Miller at this time for the reasons discussed herein. New allegations, however, seem to be surfacing regularly. Our investigation into these new matters will continue. That said, we believe now, as we did when we voluntarily undertook this investigation that an explanation to the public is owed. The foregoing is an attempt to provide that explanation on our work to date. It is important to note

that our decision not to prosecute is not a declaration of Millefs innocence or any assessment of his aptitude as Highway Commissioner or virtue while serving in that role. Rather, we determined, mostly, that there is insuffcient evidence to establish beyond a reasonable doubt that Miller committed a criminal offense.

Should any member of the public wish to discuss this matter further, please contact me at (815) 334-4159.

Patrick Kenneally
McHenry County State's Attorney

I. Allegation: Miller improperly spent Road District money for private purposes.

A. Summary of the Facts

In the Fall of 2017 after various allegations surfaced that Miller misused the Road District's credit card and otherwise misspent Road District money, we contacted the FBI. The FBI agreed to review Road District spending between 2012 and 2017. In April of 2018, the FBI informed us that it had completed its analysis and did not believe that Miller's questionable spending constituted a criminal offense. Pursuant to a court order, the FBI shared its analysis with the Illinois Attorney General.

Thereafter, we similarly reviewed all Road District spending between 2012 and 2017. Our investigator itemized all questionable spending for those years in her reports. Some examples of significant or pronounced forme of quootionablo spending worthy of further discussion include:

1. Restaurants
   - $582.43 at Chris's Coach House (Cary), December 2012. The total bill was $1,749.29. It was divided three ways, with the Road District, Supervisds Offce, and Assessors Office each paying $582.43, respectively. The bill was submitted in January, but the timing of the charge would suggest that the costs were incurred as part of a holiday event.
   - $337.66 at Cheseapeake Seafood House (Springfield), November 9, 2015
   - $141.66 at Jameson's Charhouse (Crystal Lake), November 17, 2015

2. Recurring Annual Charges at the Brunch Cafe and Hooters
   - $176.38 at Brunch Cafe and $324.89 at Hooters in Wisconsin, February, 2012
   - $183.07 at Brunch Café and $272.27 at Hooters, January, 2014
   - $116.14 at Brunch Café and $202. 65 at Hooters, May, 2015
   - $188.14 at Brunch Café and $288.62 at Hooters, January, 2016

3. Recurring Charges for Women's Clothing
   - $164.64 at J. Jill Catalog, February, 2012
   - $110.77 at Lands End, February 2013
   - $249.62 at Lands End, May 2013
   - $348.23 at Land's End, October, 2014
   - $190.19 at Prana Living, November, 2016
4. Recurring Charges for Levenger Bags

- $111.57 at Levenger, "I-Pad Carry Case," January, 2013
- $211.44 at Levenger, "Brown Brief Bag," July, 2014
- $384.52 at Levenger, "grape/black" bag, November, 2014
- $263.55 at Levenger, bag, June, 2016

5. Restaurant Charges For Election Events
   - $550 at Kojak's Restaurant (Cary), May, 2012 (the total bill was $1, 100 and was divided between the Road District and Township)
   - $550 at Brunch Cafe, February, 2013 (the total bill was $1, 100 and was divided between the Road District and Township)
   - $550 at Brunch Cafe, December, 2014 (note with bill says for election judges) (the total bill was $1, 100, it was divided between the Road District and Township).
   - $500 at Domino's Pizza, March, 2014 (the total bill was $1,000 and was divided between the Road District and Township) • $500 at Brunch café, April, 2015 (the Local bill was $1,000 and was divided between the Road District and Township) • $550 at Bruch Café, March 18, 2016 (the total bill was $1, 100 and was divided between the Road District and Township)

6. Charges That Were Repaid
   - $625.43 at Rushing Waters Fishery, March, 2012 (this purchase was made on the Road District credit card and submitted with the request for payment was a check from the McHenry County Highway Commissioners for the full amount)
   - $628.60 to Yankee Candle Company, November, 2012 (along with this charge on the Road District credit card, there is a note indicating the purchase was for holiday gifts and a breakdown showing $572.62 to be paid by the McHenry County Highway Commissioners and $55.98 to Anna May Miller along with two checks for the same)
   - $94.47 credit card NAPA Auto Parts, January 2014 (submitted with personal check for the entire amount by Road District employee Kunz) • $625.43 at Linen Source, November, 2015 (this purchase was made on the Road District credit card and submitted with the request for payment was a check from the McHenry County Highway Commissioners for the full amount)
   - $682.43 at Rushing Waters Fishery, April; 2016 (this purchase was made on the Road District credit card and submitted with the request for payment was a check from the McHenry County Highway Commissioners for the full amount)
   - $870.00 at Orchard Meats Deli and Wine, July, 2016 for "Township Steak Fry' (this purchase was made on the Road District credit card

and submitted with the request for payment was a check from the McHenry County Highway Commissioners for the full amount)

7. Amazon Purchases From Amazon Bookstore
   - $1,299 to Amazon, August, 2014
   - $117 to Amazon, December, 2014, $256.49 on December 12, 2014
   - $167.24 to Amazon, December, 2016

8. Other
   - $182.00 to Disneyland, June, 2012
   - $256.90 for and $199.95 for a Kodak Digital Frame, January, 2013
   - $37.47 to Sam's Club, February, 2013 (for weatherproof cornhole bags) • $93.74 to Edible Arrangements, December, 2013 (this was a credit card purchase, get-well gift for Diane Klemm along with get-well card that was signed by the entire Township Board)
   - $9.88 and $7.97 at Menards, June, 2015 (this was for a BBQ Tool Set and long handled BBQ brush, respectively)
   - $299 to Blink for Home, January, 2016 (security system that allows remote monitoring from phone)
   - $210.90 in Gift Cards from Jewel, June, 2016
   - $498.98 to Galati's Hideaway (pizza retirement party), April, 2017
   - $206.25 to Dazell & Co. (retirement watch), April, 2017

B. Relevant Law

60 ILCS 1/80-10(a)

The township board shall meet at the township clerk's office for the purpose of examining and auditing the township and road district accounts before any bills.. .are paid.

60 ILCS 1/80-15

The township board shall, at the same time and place as stated in Section 80-10, examine the accounts of.. .the commissioner of highways of the township for all moneys received and distributed by them. The board shall also examine and audit (i) all charges and claims against their township and against their road district and (ii) the compensation of all township officers.

605 ILCS 5/6-201.6

[The Highway Commissioner shall] [d]irect the expenditures of all moneys collected in the district for road purposes, including those purposes allowed under Section

6201.21 of the this Code, and draw warrants on the district treasurer therefor, provided such warrants are countersigned by the district clerk.

605 5/6-201.15

The Township Road Commissioner shall annually make a report in writing, showing the following:

1) The amount of road money received by the district and a full and detailed statement as to how and where expended and the balance, if any, unexpended...

In counties under township organization, the reports in districts composed of a single township shall be made to the board of town trustees within 30 days before the annual town meeting. ..

605 ILCS 5/6-205

The [Township Supervisor] shall receive and have charge of all moneys raised in the district for the support and maintenance of roads therein. .. .He shall hold such moneys at all times subject to the order of the highway commissioner and shall pay them over upon the order of the commissioner.... In counties under township organization such moneys, other than Social Security taxes required by the Social Security Enabling Act, shall not be paid over until the board of trustees...has examined and audited the claims or charges for which such order is drawn.

Article inll. I(a) & (b) of the Illinois Constitution

Section (a) provides that "property or credit shall be used only for public purposes." Section (b) provides that [t]he State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance."

Unfortunately, there are only a few cases that are helpful in determining what types and categories of expenditures have a "public purpose." The most illuminating is People ex rel. McDavid v. Barrett, 370 Ill. 478 (1939), decided by the Illinois Supreme Court. Barrett involved the constitutionality of a statute that paid the widows of deceased judges in an amount equal to the judge's salary from the date of his death to the time of the qualification of his successor. The law was challenged on the grounds that the statute was an unconstitutional attempt to provide gratuities from public funds for the exclusive benefit of private persons.

The Illinois Supreme Court began its analysis by stating, whether government spending is for a public or private purpose is a question "not always easy of determination." It continued:

> In deciding whether such purpose is public or private, courts must be largely influenced by the course and usage of the government, the object for which the [spending] has been customarily and by long course of legislation levied and made, and what objects have been considered necessary to the support and of the proper use of the government. Whatever lawfully pertains to this purpose and is sanctioned by time and the acquiescence of the people may well be said to be a public purpose and proper for the maintenance of good government...Limitations resting on theory, only, or on the vague ground of doubt, but which the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives, are not within the control of the courts. The power of the State to expend public moneys for public purposes is not to be limited, alone, to the narrow lines of necessity, but the principles of wise statesmanship demand that those things which subserve the general well-being of society and the happiness and prosperity of the people shall meet the consideration of the legislative body of the State...lf it can be seen that the purpose sought to be obtained is a public one and contains the elements of public benefit, the question of how much benefit is thereby derived by the public is one for the legislature and not the courts.

There are two important insights that are to be drawn from this excerpt. First, the courts will give broad discretion to the legislature and the officials it tasks with expending public funds. Courts will not generally substitute its judgment on the question of whether the spending is for a "public purpose." This is especially true if that spending has been established over time as customary and one could reasonably view (i.e. "it could be seen") that the spending resulted is some, even slight public benefit. Second, it is not enough to maintain that the spending was not "necessary*' to accomplish the intended public purpose or even that it is doubtful that the spending was for a public purpose. Rather, public offcials authorized by the legislature to expend money appear to receive the benefit of the doubt.

The Illinois Supreme Court in Barrett also discussed awards or gratuities given to public employees. It stated:

> We held that representative government finds its greatest security in a strong spirit of patriotism and love of county; and that whatever tends to the greater patriotism and a greater interest in government makes for the welfare of the State. We pointed out that the erection of monuments and the awarding of swords and medals have always been recognized as means of rewarding meritorious service, and the legislature might use public funds for such purposes... [I]t holds that the power to give rewards after the event of conspicuous public service cannot be limited to military service; that if a man has deserved greatly of the commonwealth by civil services, the public advantage of recognizing his merit stands on grounds as strong as that for rewarding a General; that the possibilities of genius or distinguished worth cannot be foreseen so as to be settled for in advahce, and the public welfare, alone, is only legal justification for

> such payment; and that whether the public good will be served, must be left largely to the conscience of the legislature.

While public officials are afforded broad discretion, it is not limitless. In Village of Oak Law v. Faber, 378 Ill. App 3d 458 (1st Dist. 2007), the appellate court ruled that supplemental payments to a government employee untethered to an actual service contravened Article VIII, S 1. The court stated:

> [c]ompensation and benefits of public employees must comply with the constitutional requirement that public funds and property be used only for public purposes. Thus it has been held that payment or allowance in excess of that which was fixed by law or contract at the time when services were rendered, and when no further services are contemplated, is a gift for the private benefit of the individual, which serves no public purpose...

Moreover, there are also a number of cases that were decided prior to the ratification of the 1970 Constitution holding that supplemental pay in the form of an increased pension or supplemental payment to retired public servants was unconstitutional. Many of these cases were decided, however, on the basis of Art 4 S 19 of the 1870 Constitution, which prohibited the granting of any extra compensation to any public offcer, agent, servant, or contractor after service has boon rondorod or a contract made. This section, importantly, was repealed when the 1970 Constitution was ratified.

Official Misconduct. 720 ILCS 5/33-3

(a) A public offcer or employee or special government agent commits misconduct when, in his offcial capacity or capacity as a special government agent, he or she commits any of the following acts:

(1) Intentionally or recklessly fails to perform any mandatory duty as required by law; or

(2) Knowingly performs an act which he knows he is forbidden by law to perform; or

(3) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or

(4) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law. . .

(c) A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.

Theft 720 ILCS 5/16-1

(a) A person commits theft when he or she knowingly:

. (1) Obtains or exerts unauthorized control over property of the owner; or

(2) Obtains by deception control over property of the owner; or

(3) Obtains by threat control over property of the owner; or

(4) Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him or her to believe that the property was stolen; or

(5) Obtains or exerts control over property in the custody of any law enforcement agency which any law enforcement officer or any individual acting in behalf of a law enforcement agency explicitly represents to the person as being stolen or represents to the person such circumstances as would reasonably induce the person to believe that the property was stolen, and

(A) Intends to deprive the owner permanently of the use or benefit of the property; or

(B) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(C) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

In People v. Sturgeon, the defendant, a comptroller for a local water commission, was found guilty of theft after using the commission's debit card for personal spending. 2016 IL App (4th) 140736-U. The personal spending included hotel parking while on a personal vacation, trips to the grocery store and hardware store, and Dish network service at the defendant's personal address. As comptroller, the defendant was responsible for paying the bills. The commissioners only approved "large bills." The commissioners testified that while there were no formal spending policies, members were "aware" of general practices of spending only for business related purposes. Upon being confronted by the commissioners, the defendant offered to repay the money, claimed he was broke and needed extra money, and that he deserved "extra stuff' for his work.

In finding that the lack of explicit polices was an insufficient grounds upon which to reverse the defendant's conviction, the appellate court noted that there was a general understanding of authorized purchases and it would be unreasonable for the defendant to make the assumption that he could spend money on personal items or unilaterally reimburse himself. The court further rejected the defendant's arguments that some of the purchases, such as at the hardware store, were legitimate. In dismissing this contention, the court noted that no one at the commission had authorized the defendant to unilaterally make spending decisions. The court noted further that the defendant's response in offering to repay the money when confronted by commissioners evidences his own understanding of the improper nature of the charges.

Misapplication of funds. 720 ILCS 5/33E-16

(a) An offcer; director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district commits misapplication of

funds when he or she knowingly misapplies any of the moneys, funds, or credits of the unit of local government or school district.

(b) Sentence. Misapplication of funds is a Class 3 felony.

C. Discussion

The question of whether or not Miller should be charged with a criminal offense - "that he acted in excess of his lawful authority under the Illinois Constitution or Highway Code (official misconduct), "obtain[ed] or exert[ed] unauthorized control" over property (theft), or "misapplie[d] any public moneys" (misapplication of funds) - rests upon a narrower question: whether the spending can be deemed to be for a "public use." In the case of a Highway Commissioner, bestowed only with the authority to "direct the expenditures of all moneys collected in the district for road purposes," the question can be narrowed still further to whether spending was for "road purposes." As stated by the former and current Township Supervisors, both elected by Township residents, as long as Miller had money in his budget, generally the Road and Bridge Fund, he had expansive discretion on how that money should be spent. This discretion was circumscribed only by the power of the Township Board to examine and audit the Road District's spending before payment.

As stated by Trustees Sanchez and Emery, the Township Board had the opportunity to review all Township bills, credit card purchases, and other expenditures and had regular occasion to question Miller regarding said spending. Trustee Fischer, in particular, stated that the Trustees would review the spending "in detail." Township attorney Jim Kelly stated that all Road District bills and expenses were turned in the week before any Board meeting. He indicated further that all Road District bills and expenses were and currently are available at the Township for inspection by the public.

After review and on every occasion, the Trustees approved all of the abovecited questionable spending.

What constitutes a "road purpose" is not a simple question. Certainly there are the more literal among us who believe that a government workplace should be as spartan as possible and would say that a "road purpose" is spending that results in material or a service being directly applied to an actual road — e.g. salting, plowing, and filling pot holes. This, however, sets the core and not the parameters. Most should have no difficulty recognizing that there are types of spending not directly tied to a physical road nor expressly authorized by statute that are legitimate. In the case of the Road District, these would include attendance at trainings or trade expositions that allow employees to become better informed as to the nature of their work, internet access, phone service, certain types of work clothes and equipment, and office supplies. One instinctively recognizes that, while not directly related to a physical road, these are supporting expenses that are a necessary corollary to road care.

As the necessity or the relation of the expense becomes more remote from the physical care of roads, whether the spending is for a "road purpose" becomes more obscure. In the first two months after Miller's tenure, the current Highway Commissioner spent taxpayer money, with Board approval, on such things as cable

television, a bouncy house, a balloon sculptor, and baseball hats. Perhaps tellingly, no one is clamoring for the State's Attorney's Offce to investigate these forms of spending for purposes of establishing a criminal charge.

To be sure, however, one could legitimately question the degree to which any of these expenses furthers a public purpose. On the other hand, one could certainly make a case that they do. For example, the bouncy house at special events (like the cornhole bags and barbeque equipment) serves to attract young families to the Road District where, to further public relations and an understanding of Road District work, they are allowed to inspect the grounds and equipment and interact with employees.

One could similarly maintain that these forms of spending do not further a road purpose or are beyond the ken of the express powers assigned to the Highway Commissioner by statute. On the hand, the Highway Commissioner possesses not only those powers expressly granted, but also those powers "necessary or fairly implied in, or incident to, the powers expressly granted." For example, "incident to" a highway commissionefs express authority to oversee a public body and "employ labor" is his authority to purchase hats on behalf of those employees so they may be readily identified when in public, to foster a team spirit and cooperation among employees, etcetera.

The aforementioned expenditures during Miller's tenure, while perhaps controversial, are of a different nature than those that have been previously found to sustain criminal charges. In People v. Howard, 228 Ill. 2d 428 (2008), a mayor was convicted of offcial misconduct after obtaining cash advances to play video poker. In People v. Mehelic, a highway commissioner was found guilty of official misconduct and theft after ordering a township employee to work on his personal car during work hours. 152 Ill. App. 3d 843 (5th Dist 1987). Moreover, this case is readily distinguishable from Sturgeon. Unlike Sturgeon, Miller's purchases were all reviewed and approved by the Township Board. There is no evidence that Miller attempted to conceal or misrepresent any Road District expenditure. Moreover, unlike the purchases in Sturgeon, such as hotel parking while on a personal vacation and cable at the defendant's residence, all of the questionable purchases .bore at least some relation to Township activities.

When evaluating the aforementioned expenditures, it is also important to be considerate of the context in which they were made. As described by Charles Lutzow, current Township Supervisor and former Township Clerk, and over the last 20 years, no one at the Township had seen fit to formalize any system of internal controls for spending. Rather, he stated that "everyone just did [what] they thought was correct." Lutzow describes how years ago it was common practice for all Township employees to bring their wives on trips to out-of-state conferences at the expense of the Township. While operating in an institutional culture that is, at best, inattentive does not excuse individual acts of wrongdoing, long-standing practices

evidenced by bills that are subject to review at any time by the public and their representatives are not irrelevant to the question here. As stated by the Supreme Court, "in deciding whether such purpose is public or private, courts must be largely influenced by the course and usage of the government, the object for which the [spending] has been customarily and by long course of legislation levied and made, and what objects have been considered necessary to the support and of the proper use of the government."

The State's Attorney's Offce does not consider itself to be in a better position than the elected officials entrusted by the legislature and Algonquin Township constituents to oversee and safeguard spending at the Road District and ensure all spendmg IS for a "road purpose." As stated by the Supreme Court, "If It can be seen that the purpose sought to be contained is a public one and contains the elements of public benefit, the question of how much benefit that is thereby derived by the public is one for the legislature and not the courts." Barrett, 370 Ill. 478 at 483. As such, we will generally defer to Miller and the Trustees that reviewed and unanimously approved these expenditures unless there is no credible basis upon which to view the expenditure as being for a "road purpose" as opposed to private interests.

We believe that modest and infrequent expenditures for such things as holiday dinners, gift cards, breakfast or lunch for the staff before an annual trade show, holiday gifts, gatherings for staff, and "get well" bestowals have "elements of a public purpose." As stated by Lutzow, retention and satisfaction of experienced and competent employees are "very important matters that were directly related to road district operations and would be deemed a legitimate use of township funds." We are aware of an enormous body of learning and research indicating that employee recognition, often in the form of tokens of appreciation or meals, is vital to creating a functional work environment, increasing productivity, and building teamwork. We are aware further of a number of other local governmental organizations that also expend de minimis amounts in their budget in similar ways.

With respect to the breakfasts and lunches before and after trade shows, specifically, a number of employees indicated that these meals had elements of a business meeting in that they would discuss Road District business and the trade show. Moreover, we are aware of a number of governmental organizations that regularly reimburse employees for travel expenditures, especially meals.

Specifically with respect to the gift cards, Lutzow stated that these were provided to members of the public whose mail boxes were destroyed or damaged accidentally by Road District workers during the process of maintaining roads. We find these small gestures in an attempt to maintain community relations and provide some recompense to the members of the public who had to bear the inconvenience of damaged property sufficiently related to a public purpose.

We also find elements of a public purpose in expenditures for clothing and carry bags. As to the clothes, Anna May Miller was responsible for being present at the Township and addressing the needs and concerns of constituents. It is certainly important for those dealing with the public to present in an orderly and professional manner. We are aware of other government agencies that provide clothing allowances for office work attire to employees. As all of the attire purchased by the Road District would appear to be appropriate in an office setting (e.g. there were no biking spandex or bathing suits purchased), the mere expense of women's clothes is insufficient to establish criminality beyond a reasonable doubt. Moreover, Township Clerk Lukasik indicated that some of the clothes purchased by Anna May Miller were rugged in nature and worn during recycling and shredding events that involved "getting dirty." Though true that the clothing allowance policy does not cover women's clothing, there is no law stating that Miller is required to follow the administrative policies he sets or cannot, on occasion and in his best judgment, deviate from those policies.

As for the bags, we believe that Trustee Fischer provides an adequate explanation. According to Fischer, Miller was questioned on the bag purchases on at least one occasion and satisfactorily explained that the bags were for the purpose of transporting Township documents to and from business meetings. As verified, the grape/black Levenger bag purchased in 2016 is currently in the possession Lukasik.

With respect to the Disneyland tickets, this expenditure also bore elements of legitimacy. We learned that at the time the tickets were purchased, there was an American Public Works Association conference being held in Anaheim, California. We learned further that, as part of the conference, there was a training and networking event held at Disneyland that necessitated the purchase of the tickets at a reduced rate.

With-respect to the few personal charges for such things as a car battery and holiday gifts that were credited to the Township credit card and subsequently paid with personal funds, we see little here that warrants felony prosecution. While it is likely true that Miller had no statutory authority to charge these items, which were unrelated to a "road purpose", he did have the explicit approval of former Township Supervisor Diane Klemm and the evident approval of Trustees. Moreover, in order to constitute official misconduct, the act in "excess of lawful authority" must have resulted in a "personal advantage." In view of the facts that the Road District was repaid in full, any personal advantage that may have been derived is somewhere between slight and non-existent.

In Howard, there was evidence that the defendant paid back the cash advances he received for video poker. Under the offcial misconduct statute, the court ruled that the repayments did not immunize the defendant from "official misconduct" because he acted in excess of lawful authority and "personally benefitted" in that he obtained an "interest-free" loan. In so holding though, the

court made an interesting finding. Specifically, the court stated that it "was not unsympathetic" to the defendant's argument that the "offcial misconduct" statute as applied to situations like this where there was minimal actual harm could result in "overzealous prosecution of undeserving defendants."

The nature of the questionable spending here is distinct. Miller used his credit card to buy Christmas gifts for staff and Township employees, whereas the defendant in Howard used cash advances to play video poker after his personal funds were depleted. Moreover, unlike Howard, the Trustees approved this form of spending; Diane Klemm explicitly stated that Miller had authority to use the credit card in this manner. The harms suffered by the Township or taxpayers in unwittingly providing an "interest-free" loan to the Road District for a month or less amounts to, at most, a few cents. Even if this spending could be said to constitute official misconduct or misapplication of funds, we believe a felony charge here would be overwrought and constitute an overzealous prosecution beyond any public interest.

With respect to meals after special events like "Recycling Day" and "Touch a Truck" (noted in investigative reports), we likewise see elements of a public purpose. These meals were provided to employees working on weekends, served on the Township premises, and enabled overtime work.

With respect to the Blink Camera, both Lutzow and IT consultant, Keith Seda, verified that Miller had this camera in his Office and used it for security purposes.

With respect to the Kodak digital frame, we learned that these were used at trade shows and business expos to display pictures of Road District operations and -equipment.

With respect to the Amazon Bookstore purchases, we learned that these were for SD cards and electric cables, not books. These electric cables and SD cards were used in conjunction with advanced electronic equipment built into trucks.

With respect to the retirement party and gift in April of 2017, while seemingly excessive, this spending to recognize the perceived meritorious service of an employee has been seen by the supreme court as having a public purpose.

With respect to the credit card points, the FBI and the Illinois Attorney General's Offce, who received the FBI's Amazon and credit card subpoenas, investigated this matter. So as not to duplicate efforts, we did not conduct a parallel investigation. Both the FBI and Attorney General's Offce informed us that they were unable to develop evidence regarding any alleged misuse of credit card points suffcient to establish grounds for a criminal prosecution. That said, we are currently in the process of verifring these findings.

With respect to the Election Judges meals, we learned that the Algonquin Township served as a meeting place for all 68 of the precincts located in Algonquin. After the elections, the judges would drop off all of the election equipment at the Township and Township employees loaded the items onto a truck to transport it back to the County (financial records indicate that the Township was reimbursed for manpower hours by the County Clerk). According to Lutzow, the Township and Road District would split the cost of feeding the election judges, who had worked a 15-hour day, dropping off the equipment. According to Lutzow, feeding election judges was a longstanding practice.

We do have serious doubts that expenditures for election meals, especially during elections not involving townships, served any public or road purpose. Though perhaps a considerate gesture on behalf of election judges that may have an attenuated relationship to public relations, such spending is wholly inconsiderate of taxpayers. Townships must be mindful of the fact that they are not charitable organizations. However and again, we are reminded of the guidance provided by the Illinois Supreme Court that objections to spending based on "the vague ground of doubt" or on the grounds that it only provides a limited public benefit are not questions for the court.

We find no evidence that Miller was enriched by providing food to election judges or sought to further some personal interest in doing so. Moreover, even if we were to conclude that the spending had no credible public purpose, we face the thorny question of who to indict? Miller? The Trustees and Township Supervisor that sanctioned half of the spending from Township funds? We do not regard justice as being served by subjecting all of these people, who lack a sophisticated understanding of the vagaries of Article WI, section 1 of the Illinois Constitution or Dillon's Rule, to the risk of a felony conviction. Nor do we believe doing so would be in the public interest. We note too that the Township's or Road District's interest here can be readily vindicated in civil court by suing to recover any spending deemed inappropriate.

Despite our efforts and short of a search warrant for Miller's residence that no judge would authorize due to staleness, we were unable to physically account for a number of items purchased with Township funds, such as the Blink Camera, some clothing purchases, carry bags, and few other items. While some believe that the ostensibly questionable nature of these purchases and the fact that these items currently cannot be accounted for is suffcient evidence upon which to charge Miller; it is not. There are a number of other reasonable explanations beyond Miller having stolen these items that cannot be eliminated. These include the possibilities that some other Township employee took unauthorized control over the property or that the items were damaged or reached the end of their useful life and were discarded.

Upon review of the credit card statements and other expenditures, there are a number of charges that cannot plainly be settled as for a "road purpose" just by

considering the business credited. Our one investigator could spend a very long time subpoenaing every business that has accepted the Road District's credit card over the last several years for itemized receipts and any other documentation they may still retain and seek to identifr and interview employees involved with any of the transactions with the Road District on the off chance they have some lingering recollection of an unremarkable business transaction from years prior. We decline to expend our limited resources in this manner. At this juncture, we are satisfied by the facts that the Trustees contemporaneously reviewed and approved all Road District spending over the course of many years and specific allegations of improper spending are either unsupported or do not amount to proof beyond a reasonable doubt.

As such, we are not moved by the "what about this?" form of rebuttal to our conclusions here. Our job has been to investigate the specific allegations that have been brought to the State's Attorneys Offce, not investigate Miller "generally/' or audit and verify every transaction. As stated, our investigation may or may not end here. If anyone has any specific information or evidence that a specific Road District expenditure not discussed here solely furthered a private interest, please contact our Offce to schedule an interview.

It bears repeating that our analysis here is not an endorsement of the manner in which Road District resources were allocated. As taxpayers ourselves, we certainly consider many of the expenditures to be imprudent and the amount paid unworthy of the purported "public benefit." Miller is not solely to blame. We regard the Township's lack of a written, detailed, and binding spending policy and overall insouciance to the manner in which taxpayer money was consumed as a breach of its fiduciary duty to taxpayers.

However, Illinois law is grossly undeveloped and ambiguous with regard to the limits of public spending and we do not believe criminal court, which requires proof beyond a reasonable doubt and where one's liberty is in jeopardy, is the appropriate venue in which to seek clarification. As such, we defer to the Illinois Supreme Court's admonition that "limitations [on public spending] resting on theory, only, or on the vague ground of doubt, but which the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives, are not within the control of the courts." In Illinois, the legislature has seen fit to impart expansive authority upon highway commissioners to direct "the expenditure of all moneys" subject only to review by trustees and only after being elected to do so by constituents. As nearly all of the spending reviewed here can be deemed as having the elements of a public benefit, however nominally, whether said spending was patriotic, just, or show good judgment is a question best left to voters, not the courts. Indeed, voters appear to have already spoken on the issue.

Il. Allegation: Miller was illegally paying employees in the form of "Miscellaneous Pay."

A. Summary of the Facts

Between January of 2013 and May of 2017, the Road District paid employees in the form of "miscellaneous pay" in the following amounts:

- A.M. Miller, $29,290
- B. Doubek, $19,4500
- D. Helman, $26,212.50
- D. Lee, $30,335
- R. Voss, $22,800
- A. Rosecrans, $25,135
- D. Stern, $23,600
- D. Turskey (bus driver), $1,400
- D. Wacyk (bus driver), $1,400
- R. Greene, $18,050
- N. Chrikos (bus driver), $550
- A. Sylvester (bus driver), $550
- K. Fitzgerald, $7, 150
- D. Morrison, $6,353.13
- M. Barnas, $8,750
- C. Mohr, $1,200
- R. Mohr (bus driver), $1,050
- K. Lukasik (bus driver), $250

This miscellaneous pay was provided to employees as salary in addition to their regular hourly and overtime pay.

During interviews, Township employees justified "miscellaneous par in a number of ways. Many employees explained the approximately $200 payments allocated monthly between April and November as compensation for four hours of weekend work at Township recycling events. Employees also described receiving "miscellaneous par for working at other special Township events, such as "Touch a Truck," usually held during summer months. Pay varied depending on the number of hours worked and whether employees were involved in "set up" and "clean up." Road worker employees, who were responsible for maintaining the roads, also described receiving $100 weekly for being "on call." Each month, one or two employees were designated as being "on call" to address all off-hour emergencies other than snow removal. In addition, road workers, who were also responsible for operating or servicing the snowplows during winter months, indicated that they received "shift differential par as "miscellaneous pay." Shift differential pay is extra pay for having to be on-call if weather during the winter months required a "call out" for road work.

We learned during the course of our investigation that employees Lee and Barnas received "foreman's pay" once a year in the amount of approximately $1,700. This was to compensate them for their managerial and supervisory duties.

Sylvester, a bus driver, described the $550 he received in "miscellaneous pay" in December of 2015 and 2016 as a "holiday bonus." Sylvester identified "general knowledge around the road district" as his basis for believing the money he received

was a bonus. He indicated further that he never had a conversation with Miller about the extra money, as he did not want to ask questions. Helman and Tursky also described the pay received in November and December as a bonus.

Lukasik similarly indicated that the "miscellaneous pay' she received was "above and beyond" pay for exceptional work on behalf of the Road District.

Mohr indicated that "miscellaneous pay," especially around the holiday, was a creative way Miller allocated the budget to provide increased pay to employees without giving raises or cost of living increases. This was done, according to Mohr, in an effort to keep the tax levy flat.

Most of the employees interviewed, upon reviewing the few "miscellaneous pay' awards not associated with "winter shift differential" pay or a special event were often uncertain as to what work they had done to validate the payments. They attributed this to the fact that receiving "miscellaneous pay" was an unremarkable part of employment and their inability to recall the reasons for payments issued years prior.

Helman also indicated that A. Miller, a regular recipient of miscellaneous pay, worked "very long hours" and he knew she had "additional responsibilities" beyond a 40-hour work week.

Klemm stated that she was aware of the "shift differential pay." She stated that all the road workers and A. Miller were authorized to receive this pay. Specifically, A. Miller was entitled to receive "winter shift differential" pay because she would also have to be on-call to take care of internal matters during winter month "call outs." Klemm stated that A. Miller's "shift differential" pay was approved by the Township Board. Klemm stated further that she was aware that bus drivers received additional pay around the holidays. Klemm stated that Miller had the authority to spend the money in his budget as he saw fit.

Lutzow described "miscellaneous pay" as just how they coded "stipend" pay in the system. Lutzow stated further that he believed that Miller was allowed to spend the money in his budget as he saw fit, which included giving stipends to employees. Lutzow also stated that A. Miller worked very long hours, describing the Road District as her life. He stated further that if her husband was called out for weather during winter periods, A. Miller went too. Lutzow opined that stipend pay served the public purpose of adequately compensating and retaining productive employees. He felt "miscellaneous pay' was a legitimate use of Township funds.

Trustees Emery and Fischer, who both served from 2013 through 2017, stated that Miller had the authority to give bonuses or stipends instead of raises as long as he was working within his approved budget. Fischer stated that she believed it was

within Miller's authority to provide miscellaneous payments. All "miscellaneous pay" distributed by Miller between 2012 and 2017 was approved by the Township Board.

As of February of 2018, the current Highway Commissioner had continued the practice of providing "on call" pay and "shift differential par in the form of "miscellaneous pay." In particular, road workers received "miscellaneous pay' in the amount of $100 per week for being "on call" generally and $350 per month from November through March.

During the course of our investigation, we learned that all employees, including A. Miller, were hourly, non-exempt employees. All employees indicated that they did not have a written employment contract and that their "regular rate," i.e. hourly-rate for 40-hours, was set by oral agreement. The employees indicated further that they would receive an hourly rate of time-and-a-half for overtime work or a flat "miscellaneous pay" rate for certain types of overtime work at special events. Many indicated that they did not receive a raise or cost-of-living increase between 2012 and 2017. All "miscellaneous pay" was included for accounting purposes as "salary" and subject to taxation.

-Upon review of a spreadsheet of all miscellaneous pay disbursed between 2012 and 2017, certain patterns emerge. First, between the months of April and November, a number of employees received a one-time payment of around $200 on the same day; variously, some employees receiving more or less. We learned during the course of our investigation that the $200 per employee amount was meant to compensate all employees equally as they were doing the same amount and type of work. The $200 figure is an approximation of the overtime rate for the highest paid road worker for four hours of work. In addition, during the summer "miscellaneous payments" for a number of employees coincided with document shredding, Touch-aTruck, and other special events.

Upon further review, in the months of November and December, all road workers and A. Miller received between one and four payments amounting to approximately $3,000. This is consistent with "winter shift differential pay." Additionally, in December, the bus drivers received a one or two time payment in the amount of $500 or less.

Upon further review, there were monthly payments of $200 interspersed between one or two employees each month. This is consistent with the non-weather related "on call" pay.

Relevant provisions of the employee manual, effective 2012 and still effect as of April of 2018, are as follows:

INTRODUCTION

...The Handbook is presented to provide you with general guidance about the Road District's current rules and procedures as well as the benefits currently offered to eligible employees. This Handbook is not an exhaustive list of every workplace rule and policy, but rather a guide to employees on commonly raised questions. Other policies may exist that are not included in this Employee Handbook.

While the Road District believes wholeheartedly in plans, policies, and procedures described in this Handbook, they are not conditions of employment and are subject to unilateral change by the Road District, which may reinterpret, change, supplement, or rescind any part of this Handbook or any of its other policies from time to time as it deems appropriate, with or without notice.

It is important that you understand that you are employee "at will," which means that either you or the Road District may end your employment at any time, for any reason, with or without notice, and with or without cause. This Handbook is not to be construed as a contract for employment.

HOURS OF WORK

SCHEDULED WORK HOURS

The Highway Commissioner will set the work hours of each employee. The Highway Commissioner may stagger, rearrange, and adjust the hours of employment of his employees in such a manner as to enable him to provide all required services.

HOURS OF WORK COMPENSABLE AT STRAIGHT TIME

Road district employees will be compensated according to the salary schedule at the approved rate of pay for all work up to 40 hours in a work week.

HOURS OF WORK COMPENSABLE AT OVERTIME PREMIUM

Compensation of overtime hours worked will be made in accordance with the Fair Labor Standards Act. In the event employees are required to work hours in excess of 40 hours in a week, overtime will be paid under the following conditions:

A. Overtime pay will be provided to those employees designated to receive overtime at a rate of 1.5 times their regular hourly rate of pay...

WAITING TIME AS HOURS OF WORK

Certain Road District positions require waiting time before performance of work. In computing hours worked, waiting time is to be considered under the following conditions:

A. On DUTY: Waiting time under direction of an employee's supervisor during a scheduled work day shall be considered hours of work.
B. OFF DUTY: Waiting more than one-half (1/2) hour before or after a scheduled work day which the employee may use as his own time off is not to be counted as hours worked.

DRESS CODE

> ...The Road District reserves the right to establish a dress code for all employees that have direct contract with customers or suppliers of the Road District. All employees are expected to follow all prescribed safety codes, such as the wearing of safety shoes, safety goggles when appropriate, etc.

There is nothing in the policy related to "miscellaneous pay," reimbursement of expenses, holiday bonuses, or compensation for special events (e.g. recycling).

B. Relevant Law:

60 ILCS 1/80-10(a)
See section I.

60 ILCS 1/80-15(a)
See section I.

605 ILCS 5/6-201.6
See section I.

605 5/6-201.15
See section I.

605 ILCS 5/6-201.20 .
Every highway commissioner with 5 or more employees in a county under township organization shall set and adopt rules concerning all benefits available to employees of that offce. The rules shall include, without limitation, the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave.

605 ILCS 5/6-205 See section I.

Article VIII, S I(a) & (b) of the Illinois Constitution See section I.

Fair Labor Standards Act. 29 U.S.C 5207
(a)(l) Except as otherwise provided in this section, no employer shall employ any of his employees. ..for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed...

(e)(6) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of the employee, but shall not be deemed to include.. .extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;...

There is no direct prohibition on bonuses for public employees in Illinois. Moreover, no Illinois case has interpreted the Constitution or the law as imposing such a ban. Our review of a number of other states reveals that bonuses for public employees are generally condoned. As stated by the Supreme Court of California:

> With respect to a public employer's provision of benefits to its employees, including bonuses for work already performed, the cases have been fairly uniform in finding that such benefits serve public rather than private purposes. [Authorized bonuses] are 'necessary to ensure the continued recruitment and retention of qualified and competent state employees.'

Official Misconduct 720
ILCS 5/33-3 See section I.

In People v. Williams, the Illinois Supreme Court upheld the reversal of a conviction for offcial misconduct of a police dispatcher who informed the mother of her child and alleged drug dealer of police activity near his residence. 239 Ill. 2d 119 (2010). Her disclosure violated the police department's rules and regulations regarding confidential information. The dispatcher was charged with official misconduct under section 33-3(a). The dispatcher was convicted at trial and the appellate court reversed. The supreme court ruled that the police department's rules and regulations, though authorized to be established by ordinance of the village, are not "laws" for purposes of the official misconduct statute. Rather, a law cannot be construed as rules "promulgated solely by a person in

authority of a governmental department," but rather requires some type of "formal legislative process."

Theft. 720 ILCS 5/16-1
See section I.

Misapplication of funds, 720 ILCS 5/33E-16 See section I.

C. Discussion

From a legal standpoint, there is nothing criminal about providing "miscellaneous pay/' to public officers. Pursuant to 605 ILCS 5/6-201.15, the highway commissioner has broad authority to "direct the expenditures of all moneys collected in the district for road purposes," which would self-evidently include employee earnings. With few limitations, Miller was authorized to code and distribute employee compensation in whatever manner or form he chose, including "miscellaneous payments." There is no law that required Miller to enter into written contracts with his employees setting forth the specifics, manner, and schedule of their remuneration. There is no law that prohibited Miller from paying employees for the services they provide only at "regular" and "overtime rates." Rather, 29 U.S.C. 207(b)(e)(6) contemplates "premium" payments for work performed on off-days or weekends, so long as the amount is one and one-half times the rate established for "like work."

Even if Miller was required to pay employees one and one-half times the regular rate for special events like "Touch a Truck and "Recycling Days," it appears Miller complied with such a mandate in that he paid all employees the one and one-half times rate for the highest paid employee. Nothing prohibited Miller from paying employees more than time-and-a-half for overtime work. Our conclusions here were confirmed by the Illinois Department of Labor and labor attorney John Kelly.

We recognize that "miscellaneous pay" is not mentioned in or authorized by the

"Algonquin Township Road District Personnel Policies and Procedures Handbook." However, any breach of personnel policy is just that, a breach of the personnel policy and, as made clear by Williams, not Illinois law. Moreover, the personnel policy explicitly states that its contents are "not conditions of employment and are subject to unilateral change by the Road District, which may reinterpret, change, supplement, or rescind any part of this Handbook or any of its other policies from time to time as it deems appropriate, with or without notice." Section 605 ILCS 5/6-201.20 provides that a highway commissioner "shall set and adopt" personnel policies, not that he is required to follow them. This is, no doubt, a poorly written piece of legislation, but clear nonetheless.

Even if "winter-shift differential pay" or December payments to bus drivers could be deemed a bonus, this is not necessarily a violation of Article VIII, section 1 of the Illinois Constitution. We are aware that in 2016, Governor Rauner provided State employees with bonuses totaling over $3 million. Moreover, we find elements of a public purpose in providing discretionary bonuses as one could reasonably maintain that they are "necessary to ensure the continued recruitment and retention of qualified and competent...employees."

It is true that due to time and fallible memories, we have been unable to conclusively link a few of the hundreds of the "miscellaneous payments" made over the course of six years to a specific purpose or service provided the Road District. However, our investigation consistently revealed that by law and as applied, the disbursements in the form of "miscellaneous pay/' do not rise to the level of a criminal offense.

Here again, we recognize that our conclusion is unsatisfying, especially when considering that employees Anna May Miller and Derek Lee amassed the most in "miscellaneous pay' over the course of six years by a few thousand dollars. We are sympathetic to the viewpoint that an elected official's employment of his or her immediate family, especially in lucrative positions, is a serious breach of that official's civic obligations. That said, Illinois voters have seen fit to endure a Highway Code

that imposes few if any limits on the manner in which a highway commissioner compensates his employees. Algonquin voters saw fit to reelect Miller term after term despite the availability of public records documenting the questionable manner in which he exercised his spending authority. Short of criminal conduct, it is the voters that must defend the public's interest in good laws and conscientious representatives.

III. Allegation: Miller Unlawfully Sold and Purchased Street Sweepers in 2017.

A. Summary of the Facts

i. Purchase of New Sweeper

In 2012, the Road District purchased a new street sweeper for $246,000. According to Road District employees, the machine immediately began having mechanical problems. These problems were exacerbated by a vehicle crash the sweeper suffered shortly after it was purchased. In 2015 and not satisfied with the 2012 street sweeper, the Road District began the process of looking to purchase a new street sweeper; As part of this process, the Road District agreed with Elgin Manufacturing to beta-test an Elgin Crosswind street sweeper for a year. During the beta-testing process, Township employees indicated that they were very satisfied with the Elgin machine, favoring this model, and Elgin products for their superior performance, parts availability, ease of maintaining and making repairs, and familiarity with the operating system.

In early 2017, the Road District released and published a solicitation for bids for a new street sweeper. Based on the recommendations of employees, the Road District used the Elgin model's specifications delivered to it by Standard Equipment in the invitation for bids. It should noted that Standard Equipment is the only retailer in Midwest that sells Elgin Products. The Road District received three bids in response, one of which was from Standard Equipment for the Elgin Crosswind model. Standard Equipment was selected by the Road District despite the fact that its bid of $307,719 was approximately $40,000 higher than the next lowest bid.

Employees indicated that they believed that Standard Equipment was the lowest "responsible bidder" as the other bids did not conform to the specifications in

significant ways and the Road District operators felt the Elgin hybrid model best suited their purposes. The bids were not revised after the initial invitation, and all bidders received the same information. We were unable to develop any evidence of collusion between Standard Equipment and the Road District.

It should be noted that Standard Equipment gave campaign contributions to Robert Miller's campaign on nine occasions from 2008 to the present totaling $3,750. It appears that Standard Equipment donated 230 times to other campaigns over the same period.

ii. Sale of Old Sweeper

According to the Island Lake's Public Works director, Brian Bartnick, Island Lake became aware that the Road District was planning to purchase a new sweeper and contacted the Road District about the possibility of selling the 2012 sweeper. This was done approximately a year in advance of the actual sale. Miller permitted Island Lake to test the 2012 sweeper before the final purchase. In April of 2017, Island Lake purchased the 2012 sweeper from the Road District for $70,000. Elector approval was not sought nor was any public notification of the sale made.

At the time of the sale, the 2012 sweeper had main engine hours of 2,612, sweeper chassis miles of 15,015, and engine hours of 1,263. As mentioned, the sweeper was involved in a crash on August 9, 2012 in which it was damaged. The sweeper sustained $36,000 in repairable damage. The repairs appeared extensive and covered multiple body, frame, and mechanical damage areas.

B. Relevant Law:

605 ILCS 5/6-201.17

> The Road Commissioner shall] [h]ave authority to purchase or lease or to finance the purchase of highway construction and maintenance equipment under contracts providing for payment in installments over a period of time of not more than 10 years with interest on the unpaid balance owing not to exceed 9%. The purchases or contracts are subject to the bid provisions of Section 6-201.7 of this Code. In single township road districts, sale of road district property including, but not limited to, machinery and equipment shall be subject to elector approval as provided in Section 30-50 of the Township Code...

605 ILCS 5/6-201.7

...Except for professional services, when the cost of construction, materials, supplies, new machinery or equipment exceeds $20,000, the contract for such construction, materials, supplies, machinery or equipment shall be let to the lowest responsible bidder after advertising for bids at least once, and at least 10 days prior to the time set for the opening of such bids, in a newspaper published within the township or road

district, or, if no newspaper is published within the township or road district then in one published within the county, or, if no newspaper is published within the county then in a newspaper having general circulation within the township or road district...

60 ILCS 1/30-50

(a) The electors nay make all orders for the purchase, sale, conveyance, regulation, or use of the township's corporate property (including the direct sale or lease of single township road district property) that may be deemed conducive to the interests of its inhabitants, including the lease, for up to 10 years, or for up to 25 years if the lease is for a wireless telecommunications tower, at fair market value, of corporate property for which no use or need during the lease period is anticipated at the time of leasing.... (d) ...Anytime during the year, the township or township road district may lease or sell personal property by a vote of the township board or request of the township highway commissioner.

The clerk shall thereafter publish the resolution or personal property sale notice once in a newspaper published in the township or, if no newspaper is published in the township, in a newspaper generally circulated in the township. If no newspaper is generally circulated in the township, the clerk shall post the resolution or personal property sale notice in 5 of the most public places in the township. In addition to the foregoing publication requirements, the clerk shall post the resolution or personal property sale notice at the office of the township (if township property is involved) or at the offce of the road district (if road district property is involved). The following information shall be published or posted with the resolution or personal property sale notice: (i) the date by which all bids must be received by the township or road district, which shall not be less than 30 days after the date of publication or posting, and (ii) the place, time, and date at which bids shall be opened, which shall be at a regularmeeting of the township board.

...The notice and competitive bidding procedure shall not be followed when real or personal property is declared surplus by the township board or the highway commissioner and sold to another governmental body. ..

60 ILCS 1/85-30

Any purchase by a township for services, materials, equipment, or supplies in excess of $20,000 (other than professional services) shall be contracted for in one of the following ways:

(1) By a contract let to the lowest responsible bidder after advertising for bids at least once (i) in a newspaper published within the township, or (ii) if no newspaper is published within the township, then in one published within the county, or (iii) if no newspaper is published within the county, then in a newspaper having general circulation within the township.

(2) By a contract let without advertising for bids in the case of an emergency if authorized by the township board.

Interference With Contract Submission and Award By Public Offcial, 720 ILCS 5/33e6

(a) Any person who is an official of or employed by any unit of State or local government who knowingly conveys, either directly or indirectly, outside of the publicly available official invitation to bid, pre-bid conference, solicitation for contracts procedure or such procedure used in any sheltered market procurement adopted pursuant to law or ordinance by that unit of government, to any person any information concerning the specifications for such contract or the identity of any particular potential subcontractors, when inclusion of such information concerning the specifications or contractors in the bid or offer would influence the likelihood of acceptance of such bid or offer, commits a Class 4 felony. It shall not constitute a violation of this subsection to convey information intended to clarify plans or specifications regarding a public contract where such disclosure of information is also made generally available to the public.

(b) Any person who is an official of or employed by any unit of State or local government who, either directly or indirectly, knowingly informs a bidder or offeror that the bid or offer will be accepted or executed only if specified individuals are included as subcontractors commits a Class 3 felony.

(c) It shall not constitute a violation of subsection (a) of this Section where any person who is an official of or employed by any unit of State or local government follows procedures established (i) by federal, State or local minority or female owned business enterprise programs or (ii) pursuant to Section 45-57 of the Illinois Procurement Code. (d) Any bidder or offeror who is the recipient of communications from the unit of government which he reasonably believes to be proscribed by subsections (a) or (b), and fails to inform either the Attorney General or the State's Attorney for the county in which the unit of government is located, commits a Class A misdemeanor.

(e) Any public official who knowingly awards a contract based on criteria which were not publicly disseminated via the invitation to bid, when such invitation to bid is required by law or ordinance, the pre-bid conference, or any solicitation for contracts procedure or such procedure used in any sheltered market procurement procedure adopted pursuant to statute or ordinance, commits a Class 3 felony.

(D It shall not constitute a violation of subsection (a) for any person who is an offcial of or employed by any unit of State or local government to provide to any person a copy of the transcript or other summary of any pre-bid conference where such transcript or summary is also made generally available to the public.

C. Discussion

i. Purchase of New Sweeper

Miller did not evidently violate any of the bidding procedures. Rather, the solicitation for bids was appropriately published, the bids were appropriately received, and processed.

To be sure, creating bid specifications aimed at a result where only one brand or make of product meets all specifications would seem to violate the spirit of the competitive bidding process, this does not necessarily mean that such conduct arises to the level of a felony offense. Through our investigation, it was learned that it is neither illegal nor uncommon when purchasing specialized equipment for an entity or company seeking to purchase an item to begin their quest by obtaining sample sets of specifications for the items they may wish to purchase and using or amending those specifications for the invitation to bid. This is evidenced here by the fact that in addition to Standard Equipment, at least one other company, RNOW, also submitted a sample set of bid specifications. Moreover, we do not necessarily find it unreasonable that a Road District would seek to purchase a product it believes best suits its needs and that its employees are most comfortable using and maintaining.

We are not in a position to determine whether Standard Equipment was the lowest "responsible" bidder. The term "lowest responsible biddei' appears in multiple Illinois statutes governing purchasing by Illinois governmental bodies. In determining whether a bidder is "responsible," a government body should look to the ability of the bidder to meet the requirements of the contract, the qualities of the articles supplied, their conformity to the bid specifications, the suitability to the requirements of the body, the availability of support services, and the compatibility to existing equipment and delivery terms.

The requirement that a local government award a contract to the lowest responsible bidder does not require the governmental body to award the contract to the lowest bidder. The Illinois Supreme Court has opined,-"ln proper circumstances a contract may be awarded to one who is not the lowest bidder, where this is done in the public interest, in the exercise of discretionary power granted under the laws, without fraud, unfair dealing, or favoritism, and where there is a sound and reasonable basis for the award as made."

Upon review of Illinois case law, we were unable to find any cases that sanction or proscribe using the specifications of a particular product to design a bid. It is also important to note that the cases analyzing whether the award of a contract to a higher bidder was appropriate are not cases where some type of criminal contract interference is alleged, and are instead civil actions brought by losing bidders.

It appears that Algonquin Township had a longstanding relationship with Elgin products and was familiar with their parts and maintenance requirements. After testing the Elgin hybrid street sweeper, this was the product the Road District employees, not necessarily Miller, desired as the machine most conducive to operation and

maintenance. In compliance with the bidding procedures, the Road District publicly sought bids and publicly shared the bid specifications.

Though we did learn that Standard Equipment had donated to Miller's campaign committee for Road Commissioner, our investigation uncovered no evidence that Miller personally benefited, either through a bribe or other favor, from the purchase of the Elgin hybrid model, that he engaged in fraud or unfair dealing, or improperly conveyed privileged information. While we recognize that the campaign donations and the resulting business are unsavory, we do not believe that this in light of the fact that it was ultimately the Road District employees that lobbied for the Elgin hybrid model, provides suffcient evidence to charge criminally.

ii. Sale of 2012 Street Sweeper

The sale of the street sweeper appears lawful. Though 605 ILCS 5/6-201.17 states that in "single township road districts, sale of road district property.. .shall be subject to elector approval as provided by 605 ILCS 1/30-50," section 30-50 states that electors "may make all orders for the...sale...of the township's corporate property. Accordingly, electors are under no mandatory duty to "make orders" for the sale of Township property. The question arises, if they "may' sell township property, but neglect or opt not to do so, how can property in need of sale be sold? Section 30-50(d) provides that "at any time...the road district may lease or sell personal property by a vote of the township board or request of the township highway commissioner." When read together, sections 201.17 and 30-50 impart authority on both the township board, highway commissioner, and electors to sell property.

In this case, Miller "requested" that the property be sold. While there was no "sale notice" published in accordance with section 30-50(d), the Township was likely not required to make such a notification. Rather, as section 30-50(d) goes on to provide, "the notice and competitive bidding procedure shall not be followed when real or personal property is declared surplus by the...highway commissioner" and sold to "another government body." There

is no statutory procedure set forth for how "property" is declared "surplus" or that such a declaration has to be made formally or in writing. However, the evidence would support the fact that the 2012 sweeper was surplus. At the time it was sold, it was not being used by the Road District, which had already replaced it by purchasing the Elgin Hybrid model.

IV. Allegation: Miller was improperly paid unused sick time.

A. Summary of the Facts

On February 28, 2017, Miller lost his bid for reelection for Algonquin Township Highway Commissioner. It appears that in April 5, 2017, Miller filed the Highway Commissioner's Annual Report.

On April 12, 2017, Miller made a demand of $47,381.84 in the form of a bill at the Algonquin Township's Annual Meeting for payment of unused sick pay. The sick pay was purportedly earned between 1972 and 1993 while working as an employee of the Road District. The matter was heard during the portion of the meeting designated on the agenda as "Audit of Bills." The agenda did not specify or itemize the bills to be audited. Based on the April 12, 2017 minutes and after Miller presented the demand for sick pay, Trustees Emery and Cardelli moved to delay the matter for further inquiry. Thereafter, Miller explained to the Board how the sick time policy worked and represented that the issue was fully researched by Jim Kelly, Township attorney. Kelly, who was present for the meeting, concurred with Miller's explanation. A brief recess was taken to allow Miller to gather documentation in support the sick time payment.

Thereafter, Miller submitted to the Board a memorandum purportedly authored by Tom Schober, former Algonquin Township Supervisor. Below is the memorandum:

Algonquin Township

[illegible] Northwest Highway Crystal
Telephone (847) 659-2700
FAX (847) 659-4529 1..&, IL 6@14

[illegible] Supervisor
Robert J. Miller Highway Commissioner
Robert K. Kleas, Jr. Assessor
Mary J. Montemurro Town Clerk
Trustees
John M. Anderson
Patricia F. Hosier
David A. Kness
John W. Oyarzun

MEMORANDUM

DATE February 25, 1997

Bob Miller

FR(N• Tom Schober

Unused/Unpaid Sick Days:

SUBJECT:

Please be advised that an audit was taken of your past employment with the Algonquin Township Highway Department.

As an employee (not an elected official) from October 1, 1972 to April 5, 1993 you were entitled to 265 sick days. During that period of time you used 12 sick days. This leaves 253 unused/unpaid sick days. At the present time Illinois Municipal Retirement Fund allows a maximum credit of 240 unused/unpaid sick days which can be applied to your service credit upon retirement.

During the course of the investigation, we received a copy of the original February 25, 1997 Schober memorandum. The document is identical to the above except that the heading and title are properly aligned.

Miller also submitted a memorandum dated April 7, 2017. This memorandum does not identify an author and is as follows:

April 7,2017

1.1972E 1993

Days from October

You are entitled to be paid for the 253 accrued, unused and unpaid sick days upon your retirement.

This reimbursement is based on you hourly rate for 1993 which was $23.41/hr. Multiply that by an eight hour day and you receive $187.28 per day. Multiply that $187.28 times the 253 days and you will be paid a total of $47,381.84.

As has been suggested by the Township's auditor, Mr. Brown, you will be paid this amount in a lump sum and you will receive a 1099 at the end of the year

Upon presentation of these documents, the Board voted against removing Miller's sick pay claim from the monthly bills, thereby approving the lump sum payout.

No record of the purported liability of $47,381.84 due and owing to Miller is found in any prior annual report of Miller while serving as highway commissioner.

During the course of our investigation, a letter was obtained from Kelly to Miller dated March 22, 2017. Below is a copy of this letter:

MATUSZEWICH & KELLY, LLP
101 suite ISO
0014
(819 459-3120
(8B) 49-3B

UnhZ 2017

CO-VFD2-m,4L
ATTORNEY-CLm"TPRIVLEÆD

VIA E-MAIL & U. S. MA & u s. MAW
Mr. Robert J. Miller
Highway Commissioner Distict
Algonquin Township Road
3702 U.S. Highway 14
Crystal Lake, Illinois 6001 60014

RE: Paymat ofAccrued Lave

DearBob:

You had previously asked as to whether you or other employee of the Road District would be entitled to the payment of sick leave which had accrued prior to 1995, and in your case sick leave which had accrued prior to 1993. As you know, my opinion is that you are entitled to payment for your accrued sick leave.

You recently have inquired as to what fund should sick leave be paid from, and whether sick leave could be paid in a lump sum amount or as regular wages.

As Highway Commissioner, you are paid from the Town Fund. However, you were an employee of the Road District at the time your sick leave accrued and therefore your accrued sick leave is an obligation of the Road District. Payment of your accrued sick leave must be paid from the Road and Bridge Fund, salary line item. As you are no longer a Road District employee you can be paid in a lump sum amount and receive a 1099 for this payment. However, you will personally be responsible for self-employment taxes, as well as FICA and all other related income taxes, as these taxes will not be withdrawn from your lump sum payment. You can however be paid as a W-2 employee. It is much less expensive for the Township to pay you in a lump sum rather than as a W-2 employee.

Further, I have spoken with the Township's auditor, Mr. Brown and he has suggested that it is probably in the best interest of the Road District that your accrued sick leave be paid as a lump sum amount and that you receive a 1099 at the end of the year.

The Illinois Municipal Retirement Fund (IMRF) does not prohibit a government employer from paying out unused sick time. In lieu of a payout, however, an employee may request that IMRF provide a pension credit for unused sick time with 20 unused sick days being equal to one month of IMRF credit. During the course of our investigation, we learned that Miller had not sought to convert his prior sick time into IMRF credit.

B. Relevant Law

605 ILCS 5/6-201.15

Annually make a report in writing, showing the following:

(1) The amount of road money received by the district and a full and detailed statement as to how and where expended and the balance, if any, unexpended.
(2) The amount of liabilities incurred and not paid (any undetermined liabilities shall be estimated) and the determined or estimated amount owing to each creditor, who shall be named.
(3) An inventory of all tools having a present value in excess of $200, machinery and equipment owned by the district, and the state of repair of these tools, machinery, and equipment.
(4) Any additional matter concerning the roads of the district the highway commissioner thinks expedient and proper to report.

Forgery. 720 ILCS 5/17-3

(a) A person commits forgery when, with intent to defraud, he or she knowingly: (1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another; or
(2) issues or delivers such document knowing it to have been thus made or altered; or
(3) possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered; or
(4) unlawfully uses the digital signature, as defined in the Financial Institutions Electronic Documents and Digital Signature Act, of another; or
(5) unlawfully uses the signature device of another to create an electronic signature of that other person, as those terms are defined in the Electronic Commerce Security Act.
(b) (Blank).
(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. A document includes any record or electronic record as those terms are defined in the Electronic Commerce Security Act. For purposes of this Section, a document also includes a Universal Price Code Label or coin.
(c-5) For purposes of this Section, "false document" or "document that is false" includes, but is not limited to, a document whose contents are false in some material way, or that purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority.

C. Discussion

First, there is insuffcient evidence to charge Miller with forgery. As for the document Miller presented from Schober, the only person we were able to identifr capable of verifying or repudiating the authenticity of the letter, has since passed away. While we recognize that the copy appears to be somewhat positionally skewed, a likely explanation is some type of copying malfunction. Moreover and upon comparison with Schobefs signature elsewhere, it does not appear the signature on the document in question is an imitation.

As for the memorandum with no author, there is no evidence that the memorandum contains information known by Miller to be "false" or fraudulent. Moreover, Miller never asserted who the author of the memorandum was nor that it was written by a person with some type of special knowledge or authority over the Board.

Even if the untitled April 7, 2017 Memorandum presented by Miller to the Board were not genuine, there still remains the lingering question of whether Miller had an "intent to defraud" sufficient to establish forgery. To act "with intent to defraud means to act knowingly, and with the specific intent to deceive or cheat, for the purpose of causing financial loss to another or bringing some financial gain to oneself..." On March 22, 2017, Miller received a letter from Kelly indicating that Miller was legally entitled to the sick pay. At the Annual Meeting, Kelly confirmed that Miller was entitled to the sick time payout in the amount requested. As such, Miller had a good faith basis to believe he was owed a payout for unused sick time. Even if a document proves inauthentic or insufficient to establish Millefs claim to sick pay, he reasonably could argue that he had no intent to "deceive or cheat" the Board because he believed, based upon the advice of the Township's attorney, that he was entitled to the sick pay.

Second, we are unable to find any law or other authority conclusively prohibiting Miller from receiving sick pay. Even if Miller was not legally entitled to the sick time payout, we believe Kellfs letter forecloses felony prosecution. As alluded to, criminal charges require not just proof that an act violates the law, but proof of a mind-state. In other words, proof that the person acted "knowingly" or "intentionally." In this case, it cannot be said beyond a reasonable doubt that Miller "knowingly" misapplied funds (Misapplication of Funds), "knowingly" took unauthorized possession of the sick pay (Theft), or "knowingly" performed an act which he knew was forbidden by law (Offcial Misconduct). As discussed, Miller, after making a request, received a letter from the Township's attorney sufficient to establish Millefs belief that he was lawfully authorized to receive the payout from the Road District Fund in one lump sum.

Further, there is no evidence that Miller attempted to duplicate the benefit from his unused sick time by seeking pension credit with IMRF. That said, we understand that this issue is subject to an ongoing civil lawsuit. We believe that this is the appropriate forum to resolve this dispute as Kelly's letter forecloses criminal prosecution.

Third, it unclear whether 605 ILCS 5/6-201.15 required Miller to itemize unused sick time in the 2017 Annual Report. There is no definition of "liability" in the. Illinois Highway Code (including in Article 6, Administration of Township and District Roads) or case law clarifying what constitutes a liability for purposes of the annual report. Upon comparison to other annual reports submitted by other highway

commissioners, it does not appear as though it is a common practice to list unused sick pay as a liability.

As further guidance, we considered the Comprehensive Annual Financial Report for the State of Illinois, produced by the Illinois Comptroller's Office. In the report, the Comptroller gives an overview of the proper way to account for sick time and vacation liabilities. She notes that a liability for these amounts is reported only if the liability has matured, for example, as a result of an employee resignation or retirement. Assuming Miller's sick time had not matured in 1993 when he assumed the position of Highway Commissioner within the Road District, one could argue in good faith that neither had it matured by March 31, 2017, the end of the reporting period for the 2017 Annual Report. Rather, Miller had not yet retired, resigned, or been succeeded by his predecessor.

Even if one interprets Millefs sick time as a liability, there remains the open question of whether he has to report all outstanding liabilities in an annual report or only those liabilities incurred during the fiscal year to which the report pertains. While the plain language of the statute could be reasonably interpreted either way, we believe it is certainly reasonable to conclude that the annual report need only contain annually incurred liabilities. We find support for this position in the "General Administrative Duties of the Township Highway Commissioner." This publication is prepared and published by the Illinois Department of Transportation Bureau of Local Roads and Streets and appears to be distributed, revised, and prepared in conjunction with the Illinois Technology Transfer Center, the Illinois Association of County Engineers, and the Township Offcials of Illinois. With respect to the annual reports made by highway commissioners in accordance with Section 6-201.15 of the Illinois Highway Code, the manual strongly suggests that a highway commissioner in his annual report must only report those liabilities "incurred during the year and not paid to whom the debts are owed." One could reasonably maintain that Miller was not required to report the sick time payout in the 2017 annual report as this "liability' was incurred in 1993.

Generally speaking, a prosecutor has lost her case before it has even begun if there is a reasonable dispute as to whether the alleged act is even a crime, let alone whether the defendant performed the act.

Even if the law is interpreted as having required Miller to have reported the sick time as a liability in the 2017 Annual Report, a single accounting failure standing alone generally does not warrant felony prosecution. While Miller may have left his sick time claim off the Annual Report, there is no indication he did so for nefarious purposes or to conceal this liability. Rather, he publicly presented the claim to the Township Board at the Annual Meeting a little more than a week later. Though the Trustees entertained a motion to delay approving the sick time subject to further inquiry, they were ultimately satisfied after inspecting the disputed documentation and hearing from Miller and Kelly that the claim should be paid.

With respect to any Open Meetings Act violation, the State's Attorneys Offce takes no position as this is outside the scope of our investigation. If a violation occurred, any liability would be limited to those responsible for creating the agenda and running the meeting.

V. Allegation: Miller deleted public files from his Algonquin Township computer.

A. Summary of the Facts

On January 15, 2018, the McHenry County State's Attorneys Office was emailed a copy of a report authored by Garrett Discovery entitled, "Report for Algonquin Township Highway Department." The document is a summary of a forensic analysis of the Algonquin Township server. In the report, Garrett concludes that a user logged onto the server on April 2, 2017 and installed an anti-forensic software package designed to delete data, executed that program, and thereby permanently deleted a number of files. Additionally, a user took action to remove the user profile of "commissioner" and "manager" from the "profile redirection folders."

During the course of the investigation, we learned that Keith Seda was the IT professional accessing the server on April 2, 2017. During an interview, Seda stated that he worked for a company called IT Connection, Inc., which was an IT provider for small businesses who do not have their own IT department. Seda stated further that the Road District has been a long time client. Over the years, Seda and IT Solutions have assisted the Road District with new phones, new computers, and all other IT issues.

In response to the alleged "wiping" of documents from Road District computers, Seda stated that after Miller lost the primary election in March of 2017, Miller called Seda and requested that Seda assist the Road District in getting computers set up for the new highway commissioner. Seda stated further that Miller informed Seda that Miller had received information that the new highway commissioner would be conducting a forensic audit of the computers and Miller wanted to ensure all his personal documents and personal information were removed from the computers. Seda stated further that, thereafter, he responded to the Road District and assisted Robert and Anna May Miller in removing personal documents from Road District computers. Seda indicated that the Millers were aware of the need to retain documents related to Township business and wanted to ensure that any and all business documents were saved to the server. Seda commented that they took this to a "ridiculous" level, even saving a Word document from 1997 that read "back in 15 minutes" that was once hung on an office door. Once the saving of business documents was complete, Seda assisted

Robert and Anna May Miller in deleting their personal files through the use of an anti-forensic software package, CCleaner.

Seda also indicated that he deleted the user profiles for Robert and Anna May Miller and created new profiles for the new highway commissioner to use. Those new profiles were titled "Highway Commissionel*' and "Officer Manager." Seda stated that the backing up of business files and wiping of personal information was a "typical" process when someone gets a new computer or separates from employment. Seda stated that he did not find anything suspicious about his interactions with the Millers or his work on the Road District's behalf.

Seda stated further that he removed the hard drives from both computers and installed new ones. Seda stated further that he left the removed hard drives in the possession of Miller. Seda stated further that these hard drives were at the end of their useful life and should have been discarded.

During a second interview with Seda, he accessed the Township's shared server and showed us 4, 184 files present in the "Road Administration" folder. He indicated that this was the folder he used to store the files from Anna May and Robert Miller's computers. Seda stated further that the current Highway Commissioner and his assistant were trained by Seda on how to access the files. According to Seda, the current Highway Commissioner's assistant exclaimed "look, here are all the missing files" during the training.

B. Relevant Law

Local Records Act, 50 ILCS 205/4(a)

Except as otherwise provided in subsection (b) of this Section, all public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law. Any person who knowingly, without lawful authority and with the intent to defraud any party, public officer, or entity, alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony. ..

Local Records Act 50 ILCS 205/3

Except where the context indicates otherwise, the terms used in this Act are defined as follows: ... "Public record" means any book, pa-per, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produæd, executed or reæived by any agency or offærpursuant to law or in connection with the transaction ofpublic business and preserved or appropriate for preservation by such agency or officer, or any successor

thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein...

Local Records Act 50 ILCS 205/9
Nonrecord materials or materials not included within the definition of records as contained in this Act may be destroyed at any time by the agency in possession of such materials without the prior approval of the Commission. The Commission may formulate advisory procedures and interpretations to guide in the disposition of nonrecord materials.

C. Discussion

There is insufficient evidence to charge Miller for destroying records. It is not illegal under the above statutory authority to destroy personal documents unrelated to public business without prior approval. Rather, only those documents "made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business" must be retained. In view of the fact that the documents deleted are irretrievable, establishing that public documents were deleted would be impossible.

VI. Allegations:

1) During Miller's tenure as highway commissioner, he registered his personal vehicles on the Road District?s I-PASS account;
2) On May 25, 2017, one of Mille?s personal vehicles accessed the Road Districts I-PASS account; and
3) On October 29, 2017, Miller electronically registered personal vehicles on the Road District's I-PASS account.

A. Summary of the Facts

Based on the review of records returned by the Illinois Tollway regarding the IPASS usage for the corporate account

of Algonquin Township Road District in the name of Robert Miller, three personal vehicles belonging to the Miller family were registered to the Algonquin Township I-PASS account: license number BMG603, Acura registered to Anna May Miller; license number 7379126, Corvette registered- to Miller, and license number 823775S, a Ford F250 registered to Miller. This was in addition to 16 other vehicles all bearing municipal plates and belonging to the Road District. Based on interviews of Township staff, Miller regularly used the Ford F250 for work purposes.

During Miller's tenure, I-PASS had provided six transponders to the Road

District. Any of those transponders could have been on-boarded with any of the registered vehicles. If a vehicle passes through an I-PASS checkpoint with a transponder in vehicle, the I-PASS checkpoint disarms and no picture or other data identifying the vehicle is taken. The Illinois Tollway does not retain any information or data regarding vehicles passing through I-PASS checkpoints with a transponder in the car. If, conversely, a vehicle passes through the checkpoint and no transponder is detected, the system takes a picture of the license plate. If the license plate is a registered vehicle, the "virtual transponder system" activates, no ticket issues, and the account is charged as if a transponder was in the car. The Illinois Tollway "virtual transponder" system does retain records of the license plate and date and time that the vehicle passed through the checkpoint.

Between 2012 and 2016, the "virtual transponder" system detected one vehicle owned by the Miller family, license number MG603, passing through checkpoints on various dates. The total cost was $8.40. After Miller's term as highway commissioner expired, only one of the vehicles registered to the Miller family, license number 823775, was detected on the virtual transponder system. This occurred on May 25, 2017. The cost incurred was $0.45. Please note, this cost was incurred by Miller's vehicle after his term in offce had expired.

On July 12, 2017, Gasser contacted the Illinois Tollway, changed the billing information to a new credit card, and removed the vehicles belonging to Millefs family. That same day, someone, presumably Miller, accessed the automated system, restored Miller's contact information, requested a new transponder, and placed the account on auto-pay with a personal credit card.

On October 29, 2017, the Illinois Tollway automated system is accessed online, again presumably by Miller. He added a motorcycle, license number 2220766 and reactivated license number 739126. One hour later, Gasser contacted the Illinois Tollway and changed all vehicles registered to Miller expired and another municipal plate is registered to the account.

B. Discussion

Our investigation uncovered no evidence that the Acura with license plate MG603 was not being operated for Road District purposes when it passed through IPASS checkpoints and incurred $8.40 in charges over the course of four years.

As for the kerfuffle over the I-PASS accounts after May, we view this as more political horseplay than a crime. The I-PASS account was registered in Miller's name. After Miller left office, the I-PASS account was not immediately adjusted by any Road District offcial to remove Miller as the registered account holder, remove his personal vehicles, or change the passwords. Rather, it was not until July, 2017 that the appropriate changes were made. On July 12, 2017, when Miller, as the registered account holder, received notice that his vehicles had been removed on what he deemed his account, he sought to correct the situation by reactivating the account in his name and paying for the account with his own credit card.

On October 29, 2017, Miller, likely realizing that his personal vehicle with license number 7379126 was no longer active, sought to reactivate it and, again, used his own money to pay the I-PASS bill. Gasser, also on the account, received notice of the changes and, finally, took the appropriate steps to change the password and claim the account exclusively for the Road District.

VII. Allegation: Miller improperly supplied the Illinois Railway Museum (IRNO with Road District salt.

A. Summary of the Facts

Dave Diamond was the Riley Township Highway Commissioner between 2014 and 2017 and facilities director for the Illinois Railway Museum (IRM). Several years ago, the IRM began having a holiday event, the Happy Holiday Railway, where Santa would visit children on a train. Diamond stated that around December of 2015, the IRM decided to expand the event. As such, the IRM believed they were in need of road salt for the grounds where the event was to be held to ensure safety. Diamond stated further that he requested to purchase 5 yards of salt from Road District. Diamond stated further that Miller indicated that he would donate the salt. Diamond stated further that the estimated

cost of this salt was around $200. Diamond stated further that the first year IRM received the donation of salt, the weather was mild and much of the salt was left over. Diamond stated further that Miller informed Diamond to provide the salt to Coral Township.

In 2016, Diamond stated that he again requested that the Road District provide salt for the IRM holiday event and Miller agreed. Due to the inclement weather, Diamond stated further that he requested 6-7 yards of salt, the cost being $300-$500. Diamond stated further that Miller agreed and donated the salt to the IRM.

During the course of our investigation, we uncovered an email from Diamond to Miller, dated December 1, 2014. In the email, Diamond states, "[i]t's my annual request to see if you would be so kind once again to donate a load of salt for the IRM Christmas event." That same day, Miller responds by email, "[y]es, Dave we would like to make that donation again."

In 2014, 2015, and 2016, no resolution was passed declaring any of the Algonquin Township Road District's property surplus for purposes of donating it to the IRM.

B. Relevant Law

60 ILCS 1/30-53

The majority of electors present at an annual or special town meeting may declare property of the township to be surplus for purposes of donating the property to a historical society or other not-for-profit corporation as provided in Section 80-75.

60 ILCS 1/80-75

Any property declared to be surplus by the electors under Section 30-53 may by resolution of the town board of trustees be donated to a historical society or other notfor-profit corporation. The resolution shall set forth the historical society or other notfor-profit corporation's intended use of the property, and the board of trustees may require that the transfer be subject to a reversion of the property if the property is no longer used for its original intended use by the historical society or other non-for-profit organization. The resolution shall authorize the township supervisor to execute all documents necessary to complete the transfer of the property."

Official Misconduct 720 ILCS 5/33-3

See section I.

Theft, 720 ILCS 5/16-1
See section I.

C. Discussion

Prior to Miller donating Road District salt to the IRM, the electors had not declared it surplus. While the evidence here may be sufficient to charge Miller with Official Misconduct (performs an act in excess of his lawful authority) and theft (obtains unauthorized control over property), we do not believe such charges to be in the public interest. Drawing upon the aforementioned factors set forth by the American Bar Association, there is no indication that Miller's conduct resulted in anything beyond de minimis public harm. it is true that taxpayers in Algonquin Township may have been deprived of the benefit of a few of the thousands of yards of salt ordered each year, this did not risk or result in a shortage of salt or jeopardize road safety.

There is no evidence that Miller derived a personal benefit for the salt provision in the form of a kickback, campaign donation, or other favor. There is no evidence that Miller had any ulterior motive beyond his desire to modestly assist a non-profit organization in making a public event for children and families a success. Nor is there any indication that had Miller sought elector approval, it would have been denied. Moreover, we are not convinced that children and families enjoying a holiday event is the type "personal benefit" the legislature had in mind when it passed subsection (a)(3) of the Official Misconduct statute. While Miller's actions might be deemed "unlawful" upon a mechanical application of the law, we believe his actions here are more an oversight or indiscretion resulting from poor internal controls as opposed to selfserving public corruption wherein the People would have an interest in bearing the expense of a prolonged felony prosecution.

Further, the Township and/or Road District has an adequate civil remedy for any improper distribution of salt.

VIII. Allegation: Miller improperly purchased two plane tickets to New Orleans in 2008 for individuals not employed with the Road District.

A. Summary of the Facts

Township financial records reveal that in July of 2008, two plane tickets to New Orleans were purchased on the Road District credit card. The names on these tickets are Rebecca Lee and what is believed to be her child. It should be noted that Lee is the daughter of Miller and wife of Road District employee Derek Lee. These plane tickets were approved by the Trustees.

Lutzow indicated that in the past, the Township would pay for the plane tickets of family members to accompany employees during travel to work related conferences. Whether these plane tickets were so Rebecca Lee could accompany Derek Lee on a work-related trip is unknown.

B. Relevant Law

Misapplication of Funds. 720 ILCS 5/33E-16.
See section I.

Official Misconduct 720 ILCS 5/33-3 See section I.

Theft. 720 ILCS 5/16-1
See section I.

C. Discussion

We are hardpressed to recognize any public benefit derived from using taxpayer money to purchase plane tickets for family members of public employees. However, this matter was not pursued further as, even if the spending amounts to a criminal offense, it is beyond the statute of limitations.

The general limitation on felony prosecutions extends to 3 years past the date of the offense. While this matter would be generally barred, there is an exception for any offense based upon misconduct in office by a public officer or employee. Pursuant to 720 ILCS 5/3-6,

> A prosecution for any offense based upon misconduct in office by a public offcer or employee may be commenced within one year after discovery of the offense by a person having a legal duty to report such offense, or in the

> absence of such discovery, within one year after the proper prosecuting authority becomes aware of the offense. However, in no such case is the period of limitation so extended more than 3 years beyond the expiration of the period otherwise applicable.

This exception allows the State to commence such a prosecution within one year after discovery of the offense, however, in no case more. than 3 years beyond the expiration of the period otherwise applicable; the period otherwise applicable being 3 years. In other words, one year beyond the date of discovery of the offense, but in no case more than 6 years from the date of the offense.

We are aware that under 720 ILCS 5/3-7, the period that "the defendant is a public officer and the offense charged is theft of public funds while in public offce" is excluded from the limitations period. However, we do not believe that theft is the appropriate charge. In particular, we do not believe we can prove beyond a reasonable doubt Miller or anyone else that authorized the purchase of the plane tickets "knowingly?' "exerted unauthorized control" over public funds. Rather, the purchase was explicitly authorized and approved by the Township Board.

IX. Allegation: Miller purchased a Ford F250 with Township funds and without following the appropriate bidding procedures and, thereafter, retained the truck after leaving offce.

A. Summary of the Facts

The truck in question is a 2005 Ford .F250 Super Duty Black Extended Cab Pickup bearing Illinois registration 8237759B. Based on a review of the Secretary of State records pertaining to the truck, it was purchased from the Al Piemonte Ford dealership in Arlington Heights, Illinois on July 5, 2005 by a purchaser unrelated to Miller. Soon thereafter, the registration was changed from Illinois to Wisconsin. In

March of 2008, the truck was repossessed by Landmark Credit Union. Landmark Credit Union sold the truck to American Auto Sales Inc., located in Algonquin, Illinois on April 2, 2008. On November 26, 2008 the truck was sold to ANIM enterprises, Inc/Robert Miller and the vehicle has remained titled and licensed to Miller since.

There is no indication that at any time this vehicle was owned by Algonquin Township Road District or purchased with Road District or Township funds.

B. Discussion

The allegation is unfounded.

X. Allegation: Miller purchased Equipment in 2015 in violation of competitive bidding procedures.

A. Summary of the Facts

In 2015, the Road District purchased two John Deere 4066R compact Utility Tractors and two John Deere MX5 Lift Type Rotary Cutters (lawnmowers). The total purchase price for each tractor and each rotary cutter was $43,275 and $2,548, respectively. Collectively, the total price of the purchase was $91,360 less $18,000 due to the trade in of two 2005 utility tractors and two mowers.

Of note, on the purchase orders, there is a reference to the Illinois Association of County Board Members (IACBM), member classification 12-04-00777-A.

The IACB is a non-profit cooperative made up of hundreds of smaller units of government in Illinois. One of the programs run through the IACBM is the John Deere Discount Program. This Program provides a competitive bid process whereby one Illinois unit of government solicits bids on behalf of others for building and maintenance equipment using an authorized competitive bidding process.

B. Relevant Law

Illinois Government Joint Purchasing Act. 30 ILCS 525/1

..."Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code, officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute.

Illinois Government Joint Purchasing Act, 30 ILCS 525/2

(a) Any governmental unit, except a governmental unit subject to the jurisdiction of a chief procurement officer established in Section 10-20 of the Illinois Procurement Code, may purchase personal property, supplies and services jointly with one or more other governmental units. All such joint purchases shall be by competitive solicitation as provided in Section 4, except as otherwise provided in this Act. The provisions of any other acts under which a governmental unit operates which refer to purchases and procedures in connection therewith shall be superseded by the provisions of this Act when the governmental units are exercising the joint powers created by this Act.

Illinois Government Joint Purchasing Act. 30 ILCS 525/3

Under any agreement of governmental units that desire to make joint purchases pursuant to subsection (a) of Section 2, one of the governmental units shall conduct the competitive procurement process. Where the State of Illinois is a party to the joint purchase agreement, the appropriate chief procurement offcer shall conduct or authorize the competitive procurement process. Expenses of such competitive procurement process may be shared by the participating governmental units in proportion to the amount of personal property, supplies or services each unit purchases.

When the State of Illinois is a party to the joint purchase agreement pursuant to subsection (a) of Section 2, the acceptance of responses to the competitive procurement process shall be in accordance with the Illinois Procurement Code and rules promulgated under Ihal Code. When the State of Illinois is not a party to the joint purchase agreement, the acceptance of responses to the competitive procurement process shall be governed by the agreement.

The supplies or services involved shall be distributed or rendered directly to each governmental unit taking part in the purchase. The person selling the personal property, supplies or services may bill each governmental unit separately for its proportionate share of the cost of the personal property, supplies or services purchased.

The credit or liability of each governmental unit shall remain separate and distinct. Disputes between contractors and governmental units or qualified not-forprofit agencies shall be resolved between the immediate parties.

C. Discussion

With respect to the purchase of the John Deere tractors and mowers by the Road District, the matter was competitively bid out of Rock Island County, Illinois on March 14, 2014 in accordance with the Illinois Government Joint Purchasing Act. The allegation is unfounded.

XI. Conclusion and Recommendations

Though not appropriately redressed through criminal charges, this report has plainly set forth spending and decision-making that do more than merely create an appearance of incompetence, guile, and impropriety. We believe, however, that these failures go beyond any individual and point to a larger, systemic breakdown.

First, the statutory foundation upon which township government is built is deeply flawed. During the course of our investigation, we extensively reviewed the Township and Highway Codes and found them to be entirely unclear, selfcontradictory, and interminable. We are skeptical that anyone involved, whether a highway commissioner, trustees, or electors, can reasonably acquire a straightforward understanding of their duties and responsibilities under these disjointed and sprawling statutes.

We are specifically dismayed that the Highway Code bestows such unfettered discretion on the highway commissioner over road district operations and the acutely sensitive area of spending. As one employee commented during an interview, "the only difference between the highway commissioner and God is that the highway commissioner gets a truck."

Second, we have concluded that Algonquin Township and its elected offcials failed to impose and enforce the most basic of internal controls that could have prevented many of the excesses described herein. Lutzow's shocking description of the Township's spending policy, "everyone just did [what] they thought was correct" amply sums up its deficiencies.

Third, we believe trustees should have approached their responsibility as auditors more diligently. In township government, trustees are one of the few limits on road district spending. They have authority, should they choose to exercise it, "to examine and audit the township and road district accounts before any bills are paid... ", "examine

the accounts of the...commissioner of highways.. ..for all moneys received and distributed by them..." , and "examine and audit...all charges and claims against their road district...and. ..the compensation of all township officers." If trustees were not satisfied with the amount of access to or time afforded to review these bills and ensure the propriety of spending, they should have demanded the necessary process changes.

Lastly, we believe that the off-year Township elections that feature notoriously poor voter turnout do not adequately allow the disinfectant and quality assurance properties of the democratic process to operate.

If it has not already, we recommend that Algonquin Township:

1. Establish a detailed policy for payment or reimbursement of all expenses in keeping with the Internal Revenue Service's "Fringe Benefits Guide, Offce of Federal, State, and Local Governments." Have the Highway Commissioner adopt said policy and pass a resolution or ordinance prohibiting Trustees or any other Township official from approving expenses that are inconsistent with this policy.

2. Create a detailed policy for approving all other spending by setting forth all possible categories of spending deemed appropriate for "road purposes." Have the Highway Commissioner adopt said policy and pass a resolution or ordinance prohibiting Trustees or any other Township official from approving expenses that are inconsistent with this policy.

3. Prohibit Trustees or any Township official from approving any Road District employee compensation that is not specifically provided for in an employee's written and/or labor contract and in accord with the Road District's Personnel Policy.

4. Pass and adopt a purchasing ordinance setting forth the detailed procedures for competitive bidding and non-competitive procurements and entering into professional service contracts. A good example of such an ordinance is the McHenry County Purchasing Ordinance.

5. Pass an anti-nepotism resolution or ordinance that is adopted by the Highway Commissioner.

6. Establish a process to ensure that all Road District bills and expenses accrued but not yet paid along with a written explanation of the nature and purpose of the expense are accessible to Trustees at any time.

7. Carefully consider options to abolish the Road District and/or Township through consolidation.

Exhibit 3

Email Confirming Federal Mediation and Conciliation Service Never Shut Down

Bryan P. Diemer

From: Bryan P. Diemer
Sent: Thursday, February 28, 2019 10:09 AM
To: Rob Paszta
Subject: Fwd: FMCS status during "government shutdown"

Get Outlook for iOS

From: Pearlstein Arthur <apearlstein@fmcs.gov>
Sent: Thursday, February 28, 2019 10:04:02 AM
To: Bryan P. Diemer; robert@robhanlonlaw.com
Subject: FMCS status during "government shutdown"

To the parties,

At the request of Mr. Diemer, this is to confirm that the Federal Mediation and Conciliation Service was fully funded through the end of the 2019 fiscal year (ending on September 30, 2019) and was at no time subject to what has commonly been referred to as the "government shutdown." We have been continually open for business and have been processing arbitration requests without interruption throughout this period. The fact that we were open for business was prominently displayed on the home page of our website throughout the shutdown period.

Sincerely,

Arthur Pearlstein

Arthur Pearlstein
Director of Arbitration
Federal Mediation & Conciliation Service
One Independence Square
250 E Street, SW
Washington, DC 20427
202-606-8103
apearlstein@fmcs.gov
fmcs.gov/aboutus/agency-departments/arbitration-services-notice-processing

Exhibit 4

Attorney Diemer's Billing Notations of Attorney Hanlon's Billing Overages

Law Offices of

ROBERT T. HANLON & ASSOCIATES, P.c.

131 East Calhoun Street

Woodstock, IL 60098

Robert Thomas Hanlon

Phone: 815-206-2200

Fax: 815-206-6184

Invoice stbmiued to
Andrew Gasser
Highway Convniss•bner
Algonquin Tov,nship Highway Departnrnt
3702U'; 14
Crystal Lake, Illinois 60014

Matter Local I SO v Algonquin Towsnhip Road I)ist an-i
RTHCase Ni_mber 11-0026
MCH Case # 17-CH-482

Profėssnnal Senees Rendeted

5/15/201?		Meeting uith Andiew Chser re Local 1 50 pwported C BA	2.5	937.50
5/15/2017	RTIJ	C I withMEA re Featlerbeadiig Rjr Legal Reaseamh	0.2	75.00
5/152017	RTM	Research re Tenniutkjn and IL rulings re ILRB	2	750.00
5/15/2017	RTH	.RevQw pior leptdiition utter selt by AG bebre takhg office	1	375.00
Atty/Supp		Item Description		
RTH		Meeting with Andrew Gass		Amount
5/15/2017	RTH	Meeting w/A Gaser re repudiatin Eller and posiion		562.50
5/16/2016	RTH	Prepare suTvm1Y offäctual events for use with convlaint		875.50
5/17/2017	RTM	Prepa•e corespolkience - send e-nujto MEA re Repuliaåon ofL150 agrement	0.6	225.00
5/22/2017	RTH	Telcom vcit]l AGs MEA re cettification ard Illinois labor Act, analys8 ofllinois "ItmnshV Act, Illinoß I-RB- Certificatin issues. and discussicyn re Unit detennination	2	750.00
5/30/2017		'lucom vsith MEA & AG evideme and need Ibr addiiomE information	0.8	300
5/30/2017		Mee wih AG re Local 150	0.75	281.25
5/30/2017	RTH	Le galWüg - Prepemlion ofconviainL Dechrators alli iliunctive relief re mlawful comract	3	1 125.00
6/5/2017	RIH	Receive clairs of Incal ISO re IL-RB	0.75	28125
6/5/2017	RTH	Rexéw T0MFhip eases and mLhoriIy related to l@hway Commissioner Duties	3.25	1218.75

6/9/2017	RTH	Send c-maato MEA re Local 150 md AG	0.5	187.50
6/14/2017	RTH	Receive Dcnund for Arbitration	0.2	75.00
6/14/2015	RTH	Research on arbitration ofcontract chins in fight of no conå-aet chim	5.6	2100.00
6/17/2017		Continue Legal research into chins re arbirtraiion and no contract	6.83	1537.50
6/18/2017		Cominue Legal research into claims re arbirtration and no contract	6.33	1425.00
6/19/2017		Legal Research into public Offcial accountability and apearent authority •with govt	2.83	637.50
6,[8]20/20 \ 7		Continue LR into Ap auth w/o actual authority and accountability	1.5	337.00
5/15/2017	MEA	Research re Tennination and IL rulings re IllinoÉ LRB cases and confer RTE-I	1.25	643.75
5/17/2017	MEA	Review Illinois I-RB alleged certification oil.ocal 150 Re-Gew CBA	1 5	77? 50
5/22/2017	MEA	Telcozn with AG, MEA re certification and [limos labor Act, analysis of Illinois	2	1030.00
5/30/2017	MEA	Itlcom AG. MEA re and RTM oft)eOd1d101Y leleil*	0 75	386,25
5/31/2017	MEA	Telcom AG, MEA re missing documents and actions to take to obtian documents	0.25	128.75
65/2017	MFA	Revigw claillt•; by I ocul I so chary 10 11.1..n	0.25	19.8 / 5
6/6/7017	MLA	Legal research and analyze Illinois constitutional civil cases re property acq	0.75	386_25
69/2017	MEA	Rev±vv• Open Meetings Act	0.75	386.25
6/15/2017	N'IEA	Legal Research re setilg asside CBA	1.2	618.00
	MEA	ReviewLegal Analy" iör declaratory action against 1.150		515.00
6/15/2017	MEA	Corespond With and AG and Conf	0.55	283.25
6/15/2017	MEA	Reuew and edit Complaint	1.75	901 25
6/16/2017	MEA	Rev±w research re Hlinos caselaw on invalid contracts and public interest	1.5	772.50
		Total	Hours	Amount Due
Total Due			57.34	$21.008.75

Please remit the sumof $21

November l, 2017

Andrew Gasser
Algonquin Township Highway Commissioner Algonquin Township Road District c/o

Law Offices of
ROBERT T. HANLON & ASSOCIATES, P.c.
131 East Calhoun Street
Woodstock, IL 60098

Robert Thomas Hanlon

Phone: 815-206-2200
Fax: 815-206-6184

Algonquin Township Ilig,hway Depåltment
3702 U.s. Highway 14
Crystal Lake, Illinois 60014

DLC - 1 2017

Re: Mattel Local 150 v Algonquin Township Road Dist
McHenry County Case - Cll - 482 Illinois Lub01
Relations Board Matters
Local 150 Claims for other relief
Our File #17-0026

Professional Services Rendered:

Date	Atty!Para	Item	Hours		Amount
9/28/2017	MEA	Preperation of Stay Motion re Vacate matter (not contained jn prior billing)	1.67	S	860.05
10/5/2017	MEA	Review file status with RTH and Review Gasser affidavit and response	0.25		128.75
10/6/2017	MEA	Review Locai ISO motion asserting misnomer (naming the wrong party in the complaint) review arguments for Motion to vacate RDO, edit same. Research ELLRB Rules and decisions - send update to RTH	2	$	1,030.00
10/19/2017	MEA	Telcom with RTH re Local 150 response to Motion to vacate, prepare outline of issues	0.42		216.30
10/20/2017	MEA	Review draft reply memorandum to Union opposition to motion ot vacate RDO discuss with RTH	0.34	S	175.10
10/24/2017	MEA	Review proposed response to issues for reply to moti on to vacate related legal research and teleconf with A. Gasser	0.34		175.10
10/25/2017	MEA	Registration fee (IARDC) revise reply to motion to vacate, related legal research			379.16
10/25/2017	MEA	send to rth for finalization	5	$	2,575.00
10/26/2017	MEA	Review draft exceptions to RDO, corresponding issues, review documents in ILRB case for exceptions.	1		515.00
10/27/2017	MEA	Review exceptions to RDO, draft additional exceptions discuss with RTH and TC - guidence re exceptions	0.75	S	386.25
10/29/2017	MEA	Draft additional exceptions to RDO	0.75	$	386.25
10/30/2017	MEA	review and edit final draft of exceptions	5.5	$	2,832.50
10/20/2017	TC	Prepare reply memorandum re motion to vacate related legal research and correspond with MEA	6.17		1,542.50
		Continue to prepare reply memorandum re motion to			

10/24/2017	TC	vacate IRLB RDO related legal research	7.67	$	1,917.50
10/25/2017	TC	Review additional documents, continue to prepare reply memorandum re motion to vacate, related legal research, correspond and submit to MEA/RTH	6.05	$	1,512.50
10/26/2017	TC	Review draft exceptions to RDO Correspond with MEA regarding arguments in iLRB fro case exceptions	3.5		875.00
10/0/2017	T.	review exceptions and supporting brief, draft additional l;ÅcepLicjriå relatad research and rnrro€,ponde with MFA Continuo to prepare exceptions and supportlne brief, related legal research, analysis of case law and case file	6.5	$	1,625.00
10/29/2017	TC	roviow	6.83		1,70/.50
10/30/2017	TC	Continue to prepare exceptions and supporting bnef coordinate related research with MEA and RTH and provide documents to MEA for review	6		1,500.00
10/3/201/	RtH	prepare for courl proceedings	2		750 00
10/3/2017	RTH	Review lorai 1.50's authority and read respective cases	5.s	$	2,062.50
10/4/201/	RIH		0.25		93.75
10/5/2017	RTH	tel-conference with MEA re gasser affidavit and response			
10/5/2017	RTH	Meeting with A Gasser	1.75		656.25
10/6/2017	RTH	Review Local 150's authority and read respective cases for its purported motion on misnomer (screwed up complaint by naming Hwy Dept not certified employer)	4.5	$	1,687.50
10/9/2017	RTH	Conti nue reading authority on misnomer and arguments of Local 150	3	S	1,125.00
10/19/2017	RTH	Teicom with MEA re Local 150 response to motion to vacate.	0.42		157.50
10/19/2017	RTH	read and compare Local 150 authority for proposition offered	7.75	$	2,906.25
10/20/2017	RTH	Telecom with MEA re Local 150	0.33		123.75
10/20/2017	RTH	shepardize cases used in 150 document	4.25	$	1,593.75
10/24/2017	RTH	Review Drafts187.50	0.5	$	
10/25/2017	RTH	review draft send comments back to MEA93.75	0.25	$	
10/26/2017	RTH	teicom A. Gasser re findings on pleadings281.25	0.75	$	
10/27/2017	RTH	locate additional exceptions confer with MEA187.50	0.5	$	
10/29/2017	RTH	Review Exceptions to RDO for filing confer with MEA468.75	1.25	$	
			0.5	$	
			0.75	$	
			0.25	$	

Law Offices of

ROBERT T. HANLON & ASSOCIATES, P.c.

131 East Calhoun Street
Woodstock, IL 60098

$ 1,542.50

Robert Thomas Hanlon

Phone: 815-206-2200
Fax: 815-206-6184

10/30/2017	RTH	Telcom with MEA	187.50	
10/30/2017	RTH	Discussion with A. Gasser	281.25	
10/30/2017	RTH	confer with MEA re changes to Exceptions	93.75	
Total			95.24	$33,276.96

Please remit Payment in the amount of $33,276.96

December 4, 2017

Andrew Gasser
Algonquin Township Highway Commissioner Algonquin Township Road District

c/o
Algonquin Township Highway Department
3702 IJ.S. Highway 14
Crystal Lake, Illinois 60014

Re: Matter Local 150 v .Algonquin Township Road Dist
McHenry County case - CH - 482
Illinois Labor Relations Board Matters

Local 150 Claims for other rehcf
Our File #17-0026

11/14/2017	MEA	Review new union Charge with "-RB review with RTH Court action re Local 150 motion to	0.25	128.75
11/17/2017	MEA	dismiss review and draft reply, review rules for reply to	0.5	257.50

Professional Services Rendered:

Date	Attv/Para	Item	Hours	Amount
11/19/20017	MEA	exceptions -	1515.00	$
11/20/2017	MEA	Draft and edit reply brief to iLRB	3.51,802.50	$
11/21/2017	MEA	review expand and finalize reply brief and arguments	2.75	$ 1,416.25
11/22/2017	MEA	Edit final draft of reply legal research bargaining issues	0.75379.16	$
		Edit and Expand RTH Motion to file reply or strike local		
11/27/2017	MEA	150 response and confer with RTH	3.5	$ 1/802.50
		Review Local 150's response and opposition to exceptions to RDO prepare reply outline, related legal		

11/16/20017	TC	research - nothing in rues says reply prohibited continue to prepare reply to Local 150[1]s response, related legal research re dillions rule and correspond with	5,33	$		1,332.50
11/17/2017	TC	MEA/RTH	7.83			1,957.50
11/18/2017	TC	Continue to perpare reply continue to perpare reply to locat 150 response and	6.17	$		1,542.50
11/19/2017	TC	related legla research continue to prepare reply to Local ISO's response, related legal research re dillions rule and correspond with	6.67			1,667.50
11/20/2017	TC	MEA/RTH	6.83	S		1, 707.50
		Receive new Union Charge re alter ego concept of claimed to be filed in abundance of caution to allege a claim against both the Highway Department and the Road				
11/14/2017	RTH	District	0.25	93.75		
11/14/2017	RTH	forward new charge to MEA	0.25	93.75		
11/14/2017	RTH	contact MEA re latest Charge	0.2	75.00	11/14/2017	RTH
		discuss ILRB Rules re reply with MEA 0.5	187.50			
		prepare for court appearance and review of Dillion's rule for argument - review cases used /relied upon by Local				
11/15/2017	RTH		1	501,312.50		
11/15/2017	RTH	Meeting with A.G.		750.00		
11/16/2017	RTH	Court Appearance and Argument on Various motions		656.25		
		-contact MEA re court appearancQ and ruling on MTD, stdÄ				
11/16/2017	RTH	drafjng amended counter-claim				1,125.00
11/16/2017	RTH	Telcom with A. Gasser re ruling and next steps		375	00	
11/ 17/2017	RTM	Continue to work oti ernended counter-claim		2,437.50		
		read and compare Local 150 authority for proposition				
11/20/2017		RTH offered locate discrepencies	7.8	2,925.00		
		edit and expand teply associated legal research - re local 150 expansive response well beyond issuess in exceptions and no cross exceptions notify MEA of wplcal				
11/20/2017	RTH	findings with opposing counsel		1,968.75		
11/20/201/	RTH	she pardize cases used in 150 response		1,125.00		
11/22/2017	RTH	Edit and File Reply		468.75		
		Receive snarky e-mail correspondence from B. Diemer				

3.5	$
2	$
1.75	$
3	$
1	$
6.5	$
5.25	$
3	$
1.25	$
0.25	$
0.5	$
0.25	$
0.75	$

Law Offices of

ROBERT T. HANLON & ASSOCIATES, P.c.

131 East Calhoun Street

Woodstock, IL 60098

Robert Thomas Hanlon Phone: 815-206-2200

Fax: 815-206-6184

		Draft Motion to file reply nunc pro tunc or to strike Local			
11/22/2017	RTH	150 response legal research ELRB cases re response beyond scope of	4	$	1,500.00
11/25/2017	RTH	exceptions and changes to motion to file or strike	6		2,250.00
11/27/2017	RTH	Continue drafting of amende dCounte rclaim	6.25	$	2,343.75
11/27/2017	RTH	Review statutory language for amendment	3.25		1,218.75
11/27/2017	RTH	E-mail MEA draft of Motion to Strike and Telephone with MEA	0.5		187.50
11/27/2017	RTH	Discussion with A. Gasser re motion to strike	0.5		187.50
11/22/2017	RTH	with Local 150			93.75
11/22/2017	RTH	File corrected Reply correcting erroneous certificate of service	187.50		
11/22/2017	RTH	E-mail B. Diemer with local 150	93.75		
	RTH	telcom A. Gasser re findings on pleadings	281.25		
11/27/2017	RTH	E,mail B Diemerto inform him that i would be filing a document sho rtly	0.25	$	93.75
11/27/2017	RTH	Receive Mike's edits re motion	0.25	$	93.75
11/28/2017	RTH	File document with Il-RB - Motion to file orto strike	0.5	$	187.50
11/28/2017	RTE	make further changes to amended Counter-claim	3.5	$	1,312.50
				$	38,134.16

Total Due

Total Hours 108.08 Average Rate 352.8327

Please remit Payment in the amount of $38,134.16 for this invoice.

11/1/2017 Invoice outstanding balance $33,276.96

Total Now Due $71,411.12

Professional Services Rendered:

Date	Atty/Para	Item	Hours		Amount
12/23/2017	RTH	Winters v. Wangter, 386 IllApp,3d 788, 792 (4th -i Dist. 2008).	0.5		187.50
12/23/2017	RTH	605 ILCS 5/6-201.7.			93.75
12/23/2017	RTH	, review 605 LCS 5/6-101	0.25,	s	93.75
12/23/2017	RTH	•review v. Centreville Tp., 56 111.2d 151, 153-1541 (1973)	0.75		281.25
12/23/2017	RTH	review 60 ILCS 1/80-106), 60 ILCS 1/235-25.	0.25		93.75
12/2.3/2017	RTH	review 60 ILCS 1/73-5; 605 [LCS 5/6 In contexl of 1.150 Motion	0.5i		187.50
12/1.4/2.01 /	RIH	'review ll.(31.8//-(1). In context ot "O motion			94) S
12/2.3/2017	RTH	'Review 1997 Ill. Att'y Gen. Op. No. 97-007 cited by 150	(15		187.50
12/23/2017	RIH	.Review Amarantos, Hv,y Comm. of Northfield 'IV. v. 'l'he Board0fTrustees ofN0Ethfield Tp., No. 10 CH 38281, p. (Cook County (hr. Ct. July 27, 1)	0.75:		281.25
12/23/2017	RTH	review Dillinnq rule re I ocal I SO motion leview Pestickle Publle Police Foundation v. Vilkge or	0.75*		281.25
12/23/2017	RTH	Wauconda, 1 17 111.2d 9 107, 1 12 (1987).	0.75		281.25
12/23/201/	RI H	Review 5 ILCS 315/2; 5 ILCS 315/3(b).	0.25		93.15
12/24/2017	RTH	review Board ofEduc. ofArbor Park School Dist. No, 145 v. Baitweber, 96 1112d 520, 528 (1983). . State's	0.75		281.25
12/24/2017	RTH	:Attomey County, 21 PERI 176, m. 1 (ILRB 2005).	0.75		281,25
12/24/2017	RTH	;AFSCME Council 31, 10 PERI 3031 (ILLLRB 1994).i	0.75!		281.25
12/24/2017	RTH	Read 10(a)(4)ofthe IPLRA re 150 argument	0.251		93.75
12/24/2017	RTH	Tri-State Pro&ssional Firefighters Union, Local '3165, 32 PERI 153 (IL LRB-SP 2016).	0.5	s	187.50
12/24/2017	RTH	review Troopers Lodge #41, Fraternal Order ofPolice, 32 PERI 138 (ILRB GC 2016).	0.75		281.25
12/24/2017	RTH	ReviewBoard ofEducation ofCity ofChicago v. A, C and S, Inc., 131 1112d 428, 452 (1994).	0.51		187.50 |
12/24/2017	RTH	; review Gantz v. McHenry County Sheriffs ! Department Merit 296 Ill. App. 3d 335, 339—40 (Ill. App. 2d 1998) iReview Board ofEducation ofPeoria School District No.	0.75*		281.25
12/24/2017	RTH	• 150 v. Peoria Federation ofSupport Staff,Security/Policeman's Benevolent & Protective Association UnitNo. 114, 375 111 Dec. 744, 761(2013)	0.75!		281.25
12/24/2017	RTH	Confer MEA re cases cited by Local 150	0.75		281.25 |

12/23 - 12/24
12.25 hours
reviewing cases
cited in Local 150
brief.

12/23/17
hour

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan May 6, 1997 t (8 7. fro

5/9/18
1 hour to read
$400.00

FILE NO. 97-007

TOWNSHIPS: Residency Requirement for Employees

The Honorable Michael J. Madigan
Speaker
House of Representatives
State House, Room 300
Springfield, Illinois 62706

Dear Speaker Madigan:

I have your letter wherein you inquire whether a township may validly adopt and enforce a policy requiring that township employees reside within the township. For the reasons hereinafter stated, it is my opinion that a township board may require that employees subject to its control be residents

read

hereinaf of the township .

Your inquiry relates specifically to a township' s personnel policy which requires that any employee who is hired by the township after adoption of the policy must become a resident of the township within six rnonths after the date of appointment or employment. The failure of an employee to become or remain a resident of the township is cause for termination of employment .

500 South Second Street, Springfield, Illinois 62706 (217) 782-1090 • -cry: (217) 785-2771 • FAX: (217) 782-7046
100 West Randolph Chicago, Illinois 50601 (312) 814-3000 • (312) 814-3374 • FAX. (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 (618) 457-3505 • TTY': (618) 457-4421 • FAX: (618) 457-5509

J .

Extensions of time or waivers of the requirement may be granted upon specified conditions .

Section 100-5 of the Township Code (60 ILCS 1/100-5 (West 1994)) provides, in pertinent part :

> "Township attorney and other employees; compensation .
>
> (a) The township board may employ and fix the cornpensation of

> township employees that the board deems necesgary, excl uding the employees af the ot±xces supervisor of general assistance, township collector, and township assessor .
>
> (b) The board shall set and adopt rules concerning all benefits available to employees of the board if the board employs 5 or more employees . The rules shall include, without limitation, the following benefits to the extent they are appl icable : insurance coverage , compensation, overtime pay, compensatory time off, holidays, vacations , sick leave, and maternity leave. The rules shall be adopted and filed with the township clerk within 6 months after July 1, 1992. Amendments to the rules shall be filed with the township clerk on or before their effective

Nothing in section 100-5 expressly authorizes the township board to require that employees be residents of the township . Ordinarily, however, the authority to hire employees, fix compensation and adopt rules concerning benefits necessarily includes the authority to establish qualifications, terms and conditions of employment . Employment is a contractual relationship in which the employer has the choice, control and direction of the em-

ployee . (Hills v. Strong (1907) , 132 111. App. 649.) An employer has a right to employ labor on favorable terms, subj ect to valid statutes designed to prohibit substandard working condi tions . (Cater Construction Co. v. Nischwitz (1940) , 111 F.2d '971 f 976.) Furthertnoze, i L has been esLab1ished that a governmental agency can place reazonable conditione public employment . (Kelly v. Johnson (1976) , 425 U.S. 238, 245-47, 96 S. Ct. 1440, 1444-4G, 47 Ed. 2d 708; Washington v. r i vil Service Comm'n (1984) , 120 111. App. Yd 822, 829.) An employer may, therefore, adopt and enforce terms and conditions of employment which are not contrary to law .

Local governmental residency requirements for employment have repeatedly been upheld as constitutional . In McCarthy v. Philadelphia Civil Service Comm'n (1976 424 U.S. 645, 96 s. Ct. 1154, for example, the Supreme Court upheld the termination of the employment of a city fire department employee who moved his permanent residence from the city. The court concluded that such requirements are not irrational and do not violate the Due Process or Equal Protection Clause of the Fourteenth Amendment . Further, they do not infringe upon any constitutional right to travel. There is no constitutional

right to be employed by a city while living elsewhere. McCarthy v . Philadelohia Civil Service Comm'n (1976) , 424 U.S. 645, 646-47, 96 S. ct. 1154,

1155 .

J .

Even before the decision in McCarthy v. Philadelphia Civil Service Comm'n, the United States Court of Appeals in Ahern

v. Murphy (7th Cir. 1972) , 457 F.2d 363, had reached a similar conclusion with respect to a Chicago city ordinance requiring police uELicexs Lo Les ide wit-hill I-he ciLy, and Illinois courts have followed the same reasoning. (Faqiano v . poliq.'# Dud L a (1983) , 98 111. 2d 277; Budka v. Board of Public Safety Commissionorg (1 '87), 120) r ll . App. Od i14ß ,) Qt. her jurisdictions hav•e also followed this line of reasoning, with only rare exceptions . See, Brian H. Redmond, Annotation, Validity, Construction, and Effect of Municipal Residency Requirements for Teachers. Principals and other School Employees, 75 A. L. R. 4th 272 (1988) ; Joel

E. Smith, Annotation, Validity, Construction, and Application of Enactments Relating to Requirements of Residency Within or Near

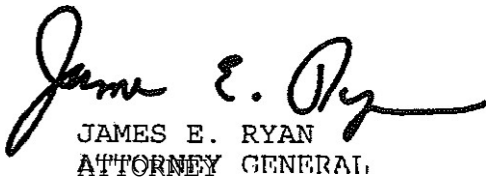
Specified Governmental Unit as Condition of Continued Employment for Policemen or Firemen, 4 A. L. R. 4th 380 (1978) .

Based upon the authorities cited, it is my opinion that a township board may validly require that township employees who are subject to its control establish residency within the township within a reasonable time as a condition of continued employment . In so concluding, I note, however, that the township board does not control the employees of the supervisor of general assistance , the township collector or the township assessor. (60 ILCS 1/100-5 (a) (West 1994) .) These employees have responsibilities under the Public Aid Code (305 ILCS 5/1-1 seq. (West

J.

1994)) and the Property Tax Code (35 ILCS 200/1-1 sea. (West 1994)) and are subj ect to the supervision and control of the officers who appoint them, rather than the township board .

Sincerely ,



JAMES E. RYAN
ATTORNEY GENERAL

Jump to Table of Contents

21 PERI 176, 21 Pub. Employee Rep. for Illinois 11 176, 2005 WL 6710523

Illinois Labor Board, State Panel

State's Attorney of Johnson County, Charging Party and International Brotherhood of Teamsters, Respondent
No. S-CB-05-020
Gallagher, Hade, Hernandez
October 14, 2005

Related Index Numbers
71.227 Investigation and Complaint, Complaint, Dismissal
77 51 Q 10 nutguill ill Good FuilhJ Continuous Duly 10 Ne.guliitle., Midleltll Neguliulious/llcupening

Judge / Administrative Officer
Gallaghcr, Hade, Ilcmandoz

Ruling

Despite ohnrging party's contcntion that the employer ßtate's attorney refused to bargnin the terms of n bargaining, agreement, the LRB, Statc Pancl upheld the Executtvc dismissal of unlåil practicc charge. It agreed with the Director's determination that no evidence indicated the employer restrained or coerced the previous state's attorney to negotiate an agreement. The Director properly found no merit in charging party[F]s assertion that the new state's attorney was rcquired to renegotiate the contract struck by her predecessor, the LRB concluded.

12/24/17

New state's attomey lacks duty to negotiate additional bargaining agreement

Meaning

The LRB specifically rejected charging party's contention that a "new" duty tcsworn into offce. The states attorney, not the individual offce holder, served the LRB reasoned.

75
$281.25
(Footnote 1)

Case Summary Despite charging party's contention that the employer-state' attorney refused the LRB, State Panel upheld the Executive Director's dismissal of the unfair charging party's contention that a "new" duty to bargain arose when a new st attorney, not the individual office holder, served as the employer of bargainil with the Director's determination that no evidence indicated the employer rest negotiate an agreement. The Director properly found no merit in charging pc -required to renegotiate the contract struck by her predecessor, the LRB concluded.

Fun Text

Decision and Order of the Illinois Labor Relations Board State Panel

On April 18, 2005, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by the State's Attorney of
Johnson County (Charging Party or Employer) in the above-captioned case, which alleged that the International Brotherhood of
Teamsters, Local 347 (Respondent or Union) violated Section 10(b)(2) and (4) ofthe Illinois Public Labor Relations Act, 5 ILCS 315 (2004), as amended (Act), when it and coerced the Charging Party in its choice of bargaining representatives and when it refused to bargain the terms of a collective bargaining agreement. Thereafter, in accordance with Section

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1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Sections 1200 through 1240 (Rules), the Charging Party filed a timely appeal of the Dismissal, to which the Respondent filed a timely response. After reviewing the record, appeal, and response, we hereby uphold the Dismissal for the reasons set forth by the Executive Director.

Dismissal

On December 17, 2004, the State's Attorney ofJohnson County (Charging Party or States Attomey) filed a charge in Case No.

S-CB-05-020 with the State Panel ofthe Illinois Labor Relations Board (Board), alleging that the International Brotherhood of

Teamsters, Local 347 (Respondent or Teamsters) had engaged in unfair labor practices within the meaning of Section 10 of the Illinois Public Labor Relations Act, 5 LCS 315 (2003), as amended (Act). After an investigation conducted in accordance with

Section 11 of the Act, the Executive Director has determined that the charge fails to raise an issue of law or fact suffcient to warrand llLd11ng and 11CICby Issues Llds Dlsmlssal Lhc rulluwlng Icasuns.

I. InvestigaLmy Facts

The Charging Party is a public employer within the meaning of Section 3(0) of the Act. The Respondent is a labor organization within the meaning of Section 3(i) of the Act. On November 24, 2004. the Respondent was certified as the exclusive representative of a urdt of the Charging Party[1].s employees pursuant to a Board conducted election held on November 9, 20()4. There is in existence a collective bargaining agreement (agreement) between the parties effective from November 22, 2004

through November 21, 2009. The agreement contains a grievance procedure culminating in binding arbitration.

On November 2, 2004, Tricia Shelton defeated incumbent Brian Trambley in the election for Johnson County State's Attorney. Shortly thereafter, as recited above, on November 9, 2004, the Charging Party's employees in the job titles of full and part-time secretaries, paralegal, victim witness coordinator, and investigators elected Teamsters Local 347 as their exclusive bargaining representative pursuant to the Board conducted consent election.

After the election, but before the unit was certified, the parties began negotiations for a collective bargaining agreement. The negotiated agreement was approved at a November 22, 2004 county board meeting. On November 22, 2004, the parties signed a side agreement providing for participation in the Midwestern Teamsters Health & Welfare Fund and the provision of health and welfare benefits for unit employees. On November 23, 2004, the then incumbent Trambley as well as the president of Local 347 signed the agreement. The agreement was effective November 22, 2004 through November 21, 2009.

On December 1 , 2004, Tricia Shelton took office as the State's Attorney ofJohnson County. On December 10, 2004, the Charging Party sent a demand to bargain to the Respondent asserting that "a duty to bargain in good faith has arisen between us." She asked the Respondent to send a comprehensive initial written proposal and a list of dates for the first bargaining session. In a letter dated December 15, 2004, the Respondent replied that an agreement was already in effect, thus refusing the demand to bargain. In that letter, the Respondent erroneously stated that the agreement had been executed on November 24, 2004.

Il. The Positions of the Parties

The Charging Party's Position

The Charging Party alleges that the parties to the agreement, that is, the Respondent and the previous State's Attomey, entered into a "collusive" relationship for the specific purpose of denying the newly elected State's Attomey the exercise of her right under the Act to reorganize her office pursuant to Section 4 of the Act. The Charging Party finds this evidence of intent in the following provisions ofthe agreement:

(1) The five year term of the agreement. The Charging Party characterizes it as "very unusual" and as preventing the newly elected State's Attorney from ever entering into collective bargaining negotiations with her employees during her term of office.

(2) The severance package of 12 months pay and other benefits. The Charging Party characterizes the severance package as "unique and egregious" in preventing the exercise of her inherent management rights.

(3) The funding of the position of victim witness advocate when the current grant funding expires.

(4) The granting, in a separate agreement, of health insurance benefits different from those offered other county employees.

(5) The granting of wages increases of five percent annually for six years, the final increase to take effect after the agreement expires.

The Charging Party further alleges that the agreement is not enforceable as to the new State's Attorney Shelton because the
Respondent had not been certified by the Labor Board when the agreement was executed. The Charging Party contends that the Respondent engaged in deception when it stated in its December 15, 2004 letter that the date of the agreement was November 24, 2004. Finally, the Charging Party apparently alleges that dues and fair share fees are being collected in violation of the Act because the agreement was executed prior to Board certification of the unit. The Charging Party demands an order to bargain und u decluruLion Lhul lhe ugre,e.me.nl is unenforceable

The Respondent's Position

The Respondent disputes the Charging Party's contentions. The Respondent denies that it sought to deny the newly elected State's Attorney her right to reorganize her office. Rather, it explains, it acted to protect its members because during her campaign for offce, Shelton had said that she would terminate employees ofthe State's Attorneys office.

Next, the Respondent explains that at the time of the bargaining unit election, it believed, based on statements made by Board agents, that it would be certified by two weeks after the election, i.e., November 23, 2004. The Respondent also explains that the agreement was dated November 21, 2004 in order that employees would be eligible for benefits under the Midwestem Teamsters Health & Welfare Fund by December 1, 2004. To be so eligible, the Employer was required to provide contributions for the week of November 21 through November 27}2004. This also explains the effective date of the agreement and the side agreement.

The Respondent notes that when the agreements were presented at the November 22, 2004 county board meeting, the board did not object. The agreements were executed and ratified prior to receipt of the Board's certification for purposes of health insurance coverage.

With respect to specific provisions of the agreement, the Respondent explains that the severance package was negotiated to address employee fears of terminations under the new State's Attomey. With respect to the duration of the agreement, the Respondent observes that it has negotiated five-year terns for befiveen 15 and 20 percent of its bargaining units.

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With respect to the wage increases, the Respondent notes that there is language in the executed agreement that differs from what was originally proposed. The Respondent asked for 5% plus a 2 1/2 percent cost of living. The Employer agreed to a five percent increase. The December I, 2009 increase in the agreement is an error. With respect to a provision concerning use of grant money to fund the victim witness advocate, the Respondent explained that the State is sometimes late remitting grant money, and that the County pays for the position and accepts the grant money as a refund.

Finally, the Respondent observes that in a letter dated March 8, 2005, it requested from Johnson County copies of all collective bargaining agreements to which Johnson County is currently a party. The County provided to the Respondent copies of the

202% No

agreement benveen the County and Teamsters Local No. 347 effective November 22, 2004 through November 2 1 , 2009. For all these reasons, the Respondent denies that it refused to bargain.

m. Discussion and Recommendation

The Charging Party alleges that the Respondent violated Section IO(b)(2) and (4) of the Act which provide as follows:

It shall be an unfair labor practice for a labor organization or its agents:

(2) to restrain or coerce a public employer in the selection of his representatives for the purposes of collective bargaining or the settlement of grievances; or ...

4) to refuse to bargain collectively in good faith with a public employor, if it has bccn designated in accordance with the provisions of this Act as the exclusive representative ofpublic, employees in an appropriate unit

This charge involves two contentions. The Charging Party claims that the Respondent violated Section I O(b)(2) of the Act by restraining or coercing the Charging Party's choice of representatives in bargaining However, there is simply no evidence that the Respondent restrained or coerced the previous Stale's Attorney to ncgotiutc an agrccment. Furthcr, thcrc is no evidcncc that tho prouous State's Attorney lacked authority to negotiate with the Respondent prior to the end of his tenue and the Clnuging Party does not so allege. I note that when the Respondent requested copies ofcollective bargaining agreements to which Johnson County was a pally, Ille CounLy provided Its agreenrelil wILh the RespondenL.

The Charging Party cites the fact that the negotiations concluded before the Board certified the Respondent as the exclusive bargaining representative, but cites no case authority for its position that the negotiations befiveen the previous State's Attomey and the Respondent constituted an unfair labor practice. Although the Act provides that no duty to bargain arises prior to Board certification of a bargaining unit representative, that does not mean that parties are forbidden to voluntarily begin negotiations after a Board-conducted election andprior to certification. Nor does it mean that parties engaging voluntarily in such negotiations commit an unfair labor practice. I note that neither party to those negotiations repudiated the agreement prior to the end of the previous State's Attorney's tenure.

Secondly, the Charging Party claims that the Respondent refused to bargain. Again, the Charging Party cites no authority for its position that the Respondent having negotiated a contract with the prior State's Attorney was required to re-bargain that contract when that State's Attorney's tenure ended notwithstanding the County's ratification of the contract. The essence of the Charging Party's argument is that it does not like the bargain that its predecessor struck with the Respondent. The Charging Party does not allege that the provisions of the agreement were illegal or fraudulent or agreed to because of deceit.

Further, even if, for the sake ofargument, I agreed that because the Board certification came after the execution ofthe agreement, the agreement was invalid, the status quo at the time the new State's Attomey took offce would include the provisions of the alleged unlawful agreement. Thus, the present State's Attorney would have to bargain to impasse before she could implement any unilateral changes. Illinois Departinent of Central Management Services, 17 PERI 2046 (IL SLRB 2001). I conclude that the Charging Party's arguments fail to raise any issue of law or fact for hearing.

IV. Order

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to Jacalyn J. Zimmerman, the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or

organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifring that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this Dismissal will be final.

Footnotes

1 On November 2, 2004, Tricia Shelton, the current State's Attomey of Johnson County, defeated the then-incumbent, Brian Trambley. On November 9, 2004, the Union prevailed in a Board-conducted election for a unit of the State's Attorney's employees. On November 23, 2004, Tramble.y and the Union's president signed a collective bargaining agreement for the unit. The Board issued its certification the next day. On December 1, 2004, Shelton took office.

The Charging Party contends that the agreement is invalid and that the Union has committed an unfair labor practice for refusing to negotiate the terms or a new agteartent. Ilowevet, as by the Fxecuiive nil ec101, there is contention that the previous State[F]s Attorney, while still in office, lacked the authority to negotiate and agree with the Union. The Charging Party asserts thal a "new" duty to bargain arose with the certification, but Trambley was still in office at that time and, by his continuing assent to the contract, ratified his previous agreement with the union.

The Charging Party cites no aulhority for its additional contention that anothcr "new duty to bargain" arose with the swearing in ofthc new State's Attorney, characterized by the Charging Party as "new sole cmployer". But the employer in thig cage is 1110 Stutc[l]g ALtomcy, nol the individual officc holder, and Chi.uging ly[i]g contention that all continuing contracts are invalidated by a change in officeholder is patently ridiculous, as it would throw government into chaos. We therefore agree with the Executive Director that the charge was properly dismissed.

1 Section 4 of the Act provides as follows:

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the firnctions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

Date	Atty/Para	Item	Hours	
1/3/2018	TC			1,667.50
1/3/2018	MEA	tReview Union motion to counterclaim, discuss objections with TC for response fitrther review of Union i Exhi13its	.33}	684.95
1/4/2018	RTH			
1/5/2018	MEA			
1/5/2018	RTH	· Conference & initial review and		s 1,000.00
1/6/2018	RTII			
1/6/2018	NfEA	;reserarch re motion to dismiss	1.75	s 656.25
				1,625.00
1/6/2018	TC	Meet with A gasser to discuss Local 150 motion to disnliss Continue opposition to Motion to dismiss (ver. I & 2) continue previous research and correspond with	1.6	937.50 458.75
1/7/2018	TC	MEA with MEA rc Motion to dismiss nnd infonnation gathered	0.51	S
1/8/2018	RH	{Confer with Agasscr ro hearing		
1/8/2018	RH	set of 1/8/2018 Review Draft response to Union Motion provide guidence i to TC re strategy		1,292.50 i 169,95 ,
1/8/2018,	MEA	' Continue opposition to motön to dismiss ver 3 related legal purchase ofservices and case hw re case-by,,: casc determination & wtth MEA		187.50 i
1/8/2018	TC	6.67 Continue opposition to Motion to dismiss 4-7) related •		
1/9/2018	MEA	Amount		875.00 750.00
1/9/2018	RTH			750.00
1/9/2018	TC			375.00
1/9/2018	RTH			468.75
1/12/2018	RTH			187.50 ;
1/12/2018	RTE	187.50		
1/12/2018	RTH	187.50		
1/12/2018	RTH	515.00		

s

legal research including purchase ofservices terms of , empb)ment in CBA Road district status Dilhns role and ; ConEr with MEA

1 6.5

s:tvieeting with A gasser and Local 150 claim via IDES and ! scheduled hearings {Telecom with MEA re Motion and conEr update as to iother potential issues to stratgeys {Telcom with RTH review Draft responses to Union Motion {to distrbs advise		1,25
. Continue to develop opposition to Motion to dismiss (vers 8-10) related legal research 91nctoding stripping of power, multi-year agreements, open meetings and direct dealing		
and confer with MEA	5.17	
review draft opposition to union motion to dismiss confer with MEA regarding oppostion nx)tion and liltssing	0.33	s
•nuance ofkw	0.5	
\ Continue to develop opposition to Motion to dismiss (vers. 11-13) related legal research Including stripping ofpower, i multi-year agreements, open meetings and direct dealing		
confrr with MEA		s
{Prepare for status hearing set for I- 12-18	2'	s
Continue to prepare for status hearing - re'iew orders, case file and outstanding items		s
Appear ffr status in MCHenry co - informed by court administration that forumn changed to Lake county, Contact judge's clerk to appear tekphonicalty Appeared tekphonicalb'		
Telephonic with Agasser	1.25}	
• Teleplznic with MEA	0.5}	{
		S

Date	Atty/Para	Item	Hours		Amount
1/12/2018	N'IEA	' analyze issues regarding Road District documetns assened : in Unon Motion	0.5,	s	257.50
1/12/2018	RTH	•Meeting with A Gasser			375.00
1/15/2018	RTH	research into motion to dismiss filed by Local 150			1,218.75
1/16/2018	RTH	: Contüwe legal research into motion to dismiss filed by ; Local 150 review case status with RTH	2.25,		843.75
1/18/2018	MEA	analysis of Esues for . pleadings	0.75}		386.25
1/18/2018	RTH	.:review case statis 9üh RTH analysis of issues for pleadings	0.75		281.25
	R'CH	Review nfll RB decision and Il .RB nntters	0.51		187.50
1/22/2018	MEA	Review offörensic repott obtained by Road District	0.17i	s	87.55
1/23/2018	MEA	Review ILRB decision	0.33;	s	169.95
1/26/2018	MEA	Review ILRB Investigation letter	0.33,		169.95
1/29/2018	MEA	•Review ILRB complaint, file review, consider responses to : ILRB Inform ILRB RI H E on tnal and unavailable to ,re.spoond until 2/2/18 and outline			,030.00
1/31/2018		Revew letter from campbell, prepare response rehted legal research	8		4,120.00
1/31/2018	RTH	'IEkpbonE call MFAS (late evening) re slraley on ILRB investigative memo while pending complaint.			375.00
1/31/2018	MEA	Telephonic call wth RTH re ALG Twp Matters		s	515.00 i
1/31/2018	TC	preperation ofdraft response research for position to be taken	8		2,000.00 i
		\ Total Professional Services Rendered			40,562.35

No past due amounts

Please remit $40,562.35

2/13/2018 RIY teEconfwith MEA 0.7 $ 262.50

Review arguments fir response to motion to dismisscounterclaims, discuss wåh MEA,TC, draii and edit RTH amended opposition resporse

RTH Legal analysÉ ofresponse to motion to dismiss, edit 0.25 $ 93.75

2/15/2018 RTH make revüns to response to motion to dismiss fotr doctments filed in Sweeney v Road District review 3 $ 1,125.00

2/16/2018 RTH and check pkadings för misuse ofauthority 4.5 $ 1,687.50

2/16/2016 RTH Fik Documents 8.25 $ 3,093.75

Receive E-mail from MEA re response to Local 150 1 $ 375.00

2/16!2018 RTH Motion to DGmiss, review attachment , make edits937.50 2.5 $

2/19/201* RTH I ,€yal Reseat(h re- authorny ofhighway commissioner 750.00 2 $

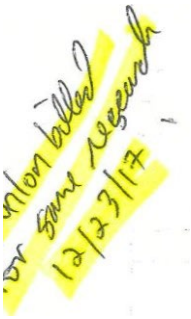
Research regarding delaüed allegations and case law In Union motion to dismiss/discuss with MEA finalize

2/19/2018 RTH Response fir Filing 3.25 $1,218.75

Recieve ALJ decüyn on the nu•rits that termination of

2/23/2018 RI H Discussion With A. Gusxel AI,,I decision 1.25 s 468.75

2/27/20 IS	RTH	Review grkvance and discuss wth RTH	0.25	$	93.7±1
2/27/2018	RTH	Review Local 150 Filings and afimative deftnses for new ILRB Compluint	1.2	$	450.00
2/23/2017	RTH	Ryan Green was valid.	0.25		93.75
2/23/2018	RTII	Travel to meet AG	0.75		28 .25



2/1/2018	MEA	Review draft answer, edit, prepare for service	$515.00		
2/2/2018	MEA	review 605 ILCS 5/6-101	1.75	$	901.25
		Review complaint and counterclaims, ILRB requests for infornution, researchissues for detailed analysis, discuss 2/5/2018 MEA with RH.			
	MEA	review 60 LCS 1/80-10(a), 60 ILCS 1/235-25. review 60 [LCS 1/73-5; 605 [LCS 5/6 In context of			
	MEA	L 150 Motion			
2/6/2018		MEA ~~Review rese~~arch and Draft outline to answer to ILRB complaint, review			
2/7/2018	MEA	issues with RH	0.5	S	257.50
		Legal research re & draft additional defenses, review motion for dismÉsaI & draftopposition, begin prepare			
2/8/2018	MEA	Opposition Ver. 14 & correspond w/MEA.	2.5	s	1,287.50
219/2018	MEA	Review and pending matters and filings with RH.	0.33	S	169.95
		Review arguments for response to motion tod ismis. scounterclaims, discuss withTC,RH, draf and edit amended.			
		annotations to ILRB case law; possbk	1.17	$	602.55
			0.25	$	128.75
			0.5	$	257.50
			0.25	$	128.75
2/12/2018	MEA	opposition response	0.75	$	386.25
2/130018	MEA	Legal analysis ofresponse to motion to dismiss,	5.67	$	2,920.05
edit		Draft and edit response in opposition to motion to dismiss;	6.75	$	3,476.25
2/15/2018	MEA	discuss with RH and TC			
2/16/2018	MEA	Research regarding detailed allegations and case hw in Union motion to dismiss/dÉcuss with RH finalize Response for Fifing	4.5	S	2,317.50
018	MEA	Revie. wgrievance and discuss with RH	0.25	S	128.75
2/27/2018	MEA	Review Local 150 Filings and affirmative l efenses for new Il-RB Complaint	1.2	$	618.00

Item		Date		Hotns	Amount

FOURTH AMENDED COMPLAINT FOR BREACH OF FIDUCL4RY DUTY, CONVERSION, CONSTRUCTIVE UD, AND AN ACCOUNTING	Road Dislrjc	6/15/2018	RTH	2.5
review MOTION TO DISMISS WITH PREJUDICE	R. Miller	6/15/2018	RTH	0.5
Court Appearance	Road Dist	6/15/2018	RT11	
Preparefor Court	Road Dist	6/21/2018	RUI	
Court Appearance	Road Dist	6/22/2018	RTH	1
review MOTION FOR EXTENSION OF TIME		7/9/2018	RTH	0.25
Preparefor Court	Road Disl	7/10/2018	RTH	
Court earance	Road Dist	7/11/2018	RTH	1
review BfOTION FOR EXTENSION OF TIME	R. Miller	7/24/2018	RTII	0.25
Pre are or Court Court A earance	Road Road Dkt	7/25/2018 7/26/2018	RTM RTH	
Review MOTION TO MODIFY COURT ORDER	Toy,nsh'	8/2/2018	RTH	0.25
Prepare andfile PLAINTIFF'S RESPONSE TO MOTION TO MODIFY COURT ORDER	Road	8/2/2018	RTH	3
Review DEFENDANT'S COMBINED MOTION TO DISMISS BROUGHT PURSUANT TO 735 ll.cs 5/2-619.1		8/80018	RTM	3.8
Review NOTICE OF A. MILLER'S INTENT WITH RESPECT TO FOURTH AMENDED COMPLAINT	A. Miller	8/10/2018	RTH	0.25
Review MOTION TO COMPEL COMPLIANCE WITH LOCAL RULE 3.08 AND FOR SANCTIONS	A. Miller	8/13/2018		
Court A earance	Road Dist	8/13/2018	RTH	
Prepare for Court	Road	8/14/2018	RTH	1
Prepare or Court	Road DSt	8/15/2018	RTH	1
Court A earance	Road Dist	8/16/2018	RTM	
Prepare andfile PLAINTIFF'S RESPONSE TO MLLER 'S 2619.1 MOTION TO DISMISS	Road District	9/28/2018		7.5
Pre are for Court	Road DGt	10/1/2018	R TH	
Court A earance	Road Dist	.10/2/2018		1
review DEFENDANT R, MILLER 'S MOTION TO STRIKE PLAINTIFF'S RESPONSE TO COMBINED MOTION TO ms,wss DUE TO INCLUSION OF SCANDALOUS AND IRRELEVANTMÅTERIAL	R. Miller	10/4/2018	RTIA	2.2
Pre arefor Court	Road DGt	10/4/2018	RTH	
Court A earance	Road Dist	10/5/2018	R TH	1
Pre arefor Court	Road Dist	10/160018	RTM	
Court A earance	Road Dist	10/16/2018	R Til	
Prepare andfile PLAINTIFF'S MOTION FOR CONTINUANCE AND RESETTING OF SCHEDULE	Road Distric	12/11/2018	RTH	

Preparefor Court	Road [ht	12/11/2018	RTH		s 400.00
Court Appearance 2-	Road DGt	12/12/2018	RTII		s 400.00
PLAINTIFFS' AMENDED RESPONSE TO MILLER 'S 619.1 MOTION TO Dlsnnss	Road	t 12/31/2018	RTH	35	s 14,000.00
MOTION FOR ADDITIONAL TIME TO REPLY AND TO RESET HEARING DA TE	R. Miller	1/16/2019	RTH	0.2	s 80,00
Prepare for Court	Road Dist	1/17/2019	RTH	1	s 400.00
Court Appearance	Road Dist	1/18/2019	RTH		s 400,00

Date	Atty/Para	Item	Hours		Amount
2/7/2019	RTH	Shepardize cases	1.2	$	480.00
2/7/2019	RTH	Prep for Court	1	$	400.00
2/8/2018	RTH	Confer with Agasser	1	$	400.00
2/8/2019	RTH	Travel to Waukegan	2	$	800.00
2/8/2019	RTH	Court Appearance	1	$	400.00
2/8/2019	RTH	Travel back to Woodstock	2	$	800.00
2/11/2019	RTH	Preperation of Motion to Stay	4	$	1,600.00
2/12/2019	RTH	File Motion	0.25	$	100.00
2/13/2019	RTH	meeting with A Gasser	4.5	$	1,800.00
2/14/2019	RTH	Continue Appellate Brief	3.4	$	1,360.00
2/15/2019	RTH	Continue Appellate Brief	2.5	$	1,000.00
2/18/2019	RTH	Continue Appellate Brief	2.25	$	900.00
2/21/2019	RTH	Receive and review e-mail re Service on Gasser	0.2	$	80.00
2/21/2019	RTH	Respond to E-mail of R. paszta	0.5	$	200.00
2/21/2019	RTH	2nd E-mail to R. Paszta	0.1	$	40.00
2/27/2019	RTH	Prep for hearing with AG	3.5	$	1,400.00
2/28/2019	RTH	Prep for hearing with AG	2.25	$	900.00
Total February Services				$	18,000.00

4 hours travel to/from Woodstock - Waukegan

Total Due this Invoice for February 2019 services rendered. $18,000.00

All invoices to the Road District are subject to accrual of interest for non-payment after 30 days.

Please remit Payment in the amount of $18,000.00 for this invoice on or before March 10, 2019.

of
ASSOCIATES, P.C.
n Street
60098

Phone: 815-206-2200
Fax: 815-206-6184

April 1, 2019

Andrew Gasser
Algonquin Township Highway Commissioner
Algonquin Township Road District
c/o
Algonquin Township Highway Department
3702 U.S. Highway 14
Crystal Lake, Illinois 60014

Re: Local 150 v Algonquin Township Road Dist
17-CH-482
Our File #17-0026

4.5 hours travel to/fro Woodstock - Waukegan

Professional Services Rendered March 2019:

Date	Atty/Para	Item	Hours		Amount
3/1/2019	RTH	Meet with A. Gasser	2.2	$	880.00
3/1/2019	RTH	Travel to Waukegan	2.25	$	900.00
3/1/2019	RTH	Court Appearance	1	$	400.00
3/1/2019	RTH	Travel to Woodstock	2.25	$	900.00
3/2/2019	RTH	~~Arb~~ Selection research	~~4.5~~	$	1,800.00
3/4/2019	RTH	E-mail With BD - Local 150 selection of FMCS Panels	0.25	$	100.00
3/4/2019	RTH	Appellate brief/review of cases and authority	3.5	$	1,400.00
3/5/2019	RTH	Appellate brief/review of cases and authority	5.5	$	2,200.00
3/6/2019	RTH	Appellate brief/review of cases and authority	6	$	2,400.00
3/6/2019	RTH	Prepare Motion to file an amended Notice of Appeal	2.75	$	1,100.00
3/6/2019	RTH	prepare Notice fo Motion	0.5	$	200.00
3/7/2019	RTH	Prepare separate motion in Ap Ct	5.5	$	2,200.00
3/7/2019	RTH	Discussion with AG	1.25	$	500.00
3/8/2019	RTH	Legal Reasearch re Local 150 Attorney fees	2.25	$	900.00

Law
ROBERT T. HANLO
131 East
Woodst

Robert Thomas Hanlon

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Date	Atty/Para	Item	Hours		Amount
3/11/2019	RTH	Authority in AP Ct for change in law	3.5	$	1,400.00
3/12/2019	RTH	research and cite to Vill. of Bensenville v. City of Chicago, 389 Ill. App. 3d 446, 447, 906 N.E.2d 556,	1	$	400.00
3/12/2019	RTH	Arbrator researh into F Donal O'brian	1	$	400.00
3/12/2019	RTH	Arbrator researh into F Brian Reynolds	0.8	$	320.00
3/12/2019	RTH	Arbrator researh into James Brenwald	1.2	$	480.00
3/12/2019	RTH	Arbrator researh into Andree mcKissick	1.25	$	500.00
3/12/2019	RTH	Arbrator researh into Thomas Sonneborn	1.2	$	480.00
3/12/2019	RTH	Arbrator researh into Elizabeth Kenney	1.3	$	520.00
3/12/2019	RTH	Arbrator researh into Rocco Scanza	0.8	$	320.00
3/13/2019	RTH	Arbrator researh into Daniel Zeiser	0.5	$	200.00
3/13/2019	RTH	Arbrator researh into Richard Vankalker	1.2	$	480.00
3/13/2019	RTH	Arbrator researh into Asam Stone	0.7	$	280.00
3/12/2019	RTH	Arbrator researh into M E Shea	1.2	$	480.00
3/13/2019	RTH	Additional Arbitrator research	6.25	$	2,500.00
3/13/2019	RTH	Research and cite to Board of Trustees of Community College District No. 502 v. Department of Professional Regulation, 363 Ill. App. 3d 190, 196, 842 N.E.2d 1255	1.25	$	500.00
3/15/2019	RTH	Receive order in AP Court - re separate case number	2.25	$	900.00
3/15/2019	RTH	pull order of AP court dated 1-15 acknowledging reciept of Docketing Statement	0.2	$	80.00
3/15/2019	RTH	research and cite to 735 ILCS 5/1-106	0.2	$	80.00
3/15/2019	RTH	research and cite to 735 ILCS 5/2-603(c).	0.2	$	80.00
3/15/2019	RTH	research and cite to Zeitz v. Glenview, 592 N.E.2d 384.	1.2	$	480.00
3/15/2019	RTH	read and cite Cain v. Amer. Bank, 325 N.E.2d 799	0.5	$	200.00
3/15/2019	RTH	read and cite Stinson v. Physicians , 646 N.E.2d 930, 932 (Ill.App. 1995);	0.75	$	300.00
3/15/2019	RTH	Read and cite to Fiala v. Bickford, 43 N.E.3d 1234	0.75	$	300.00
3/15/2019	RTH	find read and cite to J.I. Case v. NLRB, 321 U.S. 332, 335 (1944)	2.1	$	840.00
3/16/2019	RTH	read and cite to Heileman v. E.W: Scripps, 661 F.2d 1115	2.5	$	1,000.00
3/16/2019	RTH	find read and cite to In re Continental Airlines, 257 B.R. 658	1.5	$	600.00
3/17/2019	RTH	Unavailable - Health Reasons	0	$	-
3/17/2019	RTH	Review grassini case for AB	1.25	$	500.00
3/17/2019	RTH	Read and cite to NLRB v. General Steel, 933 F.2d 568, 571-72 (7th Cir. 1991)	2	$	800.00
3/17/2019	RTH	Find read and cite to Bausch & Lomb Optical Co., 108 N.L.R.B. 1555	2	$	480.00
3/17/2019	RTH	Shepardize cases	2	$	800.00
3/17/2019	RTH	Find read and cite to Bausch & Lomb Optical Co., 108 N.L.R.B. 1555, 1559 (1954)	0.75	$	300.00
3/17/2019	RTH	Find read and cite to Amal. Trans. v. ILRB,87 N.E.3d 315, 322 (Ill.App. 2017)	1.2	$	480.00
3/19/2019	RTH	Arbirtrator Strilke and e-mail to L150	0.55	$	220.00
3/19/2019	RTH	Meeting with A Gasser	3.8	$	1,520.00

4.25 travel to/from Woodstock/Wauke

arb. research

same entry

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La[...]ices of
ROBERT T. HANL[...] & ASSOCIATES, P.C.
131 Eas[...]oun Street
Wood[...], IL 60098

Robert Thomas Hanlon

Phone: 815-206-2200
Fax: 815-206-6184

May 1, 2019

Andrew Gasser
Algonquin Township Highway Commissioner
Algonquin Township Road District
c/o
Algonquin Township Highway Department
3702 U.S. Highway 14
Crystal Lake, Illinois 60014

Re: Local 150 v Algonquin Township Road Dist
17-CH-482
Our File #17-0026

Professional Services Rendered April 2019:

Date	Atty/Para	Item	Hours		Amount
4/1/2019	RTH	Case Managememt	1.25	$	50C.00
4/1/2019	RTH	Converse with Legal Research TC	0.5	$	20C.00
4/2/2019	RTH	Prepare motion with Appellate Court	2	$	80C.00
4/4/2019	RTH	visit Courthosue to ascertain delivery of CLR	0.75	$	30C.00
4/5/2019	RTH	Prepare Appellate court response to Local 150 Motion to Reconsider	2.2	$	88C.00
4/6/2019	RTH	finalize response and e-mail to 150	1.8	$	72C.00
4/8/2019	RTH	Prepare for court/Local 150 Gasser	2	$	80C.00
4/9/2019	RTH	prep of Documents for court	2.5	$	1,00C.00
4/9/2019	RTH	send e-mail to L150	0.1	$	4C.00
4/9/2019	RTH	meet with A Gasser re court Hearing	1.7	$	68C.00
4/9/2019	RTH	Travel to Waukegan	2	$	80C.00
4/9/2019	RTH	Court	1.25	$	50C.00
4/9/2019	RTH	Travel back to Woodstock	2.25	$	90C.00
4/10/2019	RTH	work on appellate breif	3.8	$	1,52C.00
4/11/2019	RTH	E-mail to Dennis McGilligan	0.25	$	10C.00
4/11/2019	RTH	E-mail to 150	0.25	$	10C.00
4/11/2019	RTH	work on appellate breif	4.5	$	1,80C.00
4/12/2019	RTH	e-mail to Joanne Lain, Asst to Jeanne Wood (5:20AM)	0.1	$	4C.00
4/12/2019	RTH	Unavailable - Mayo Clinic - no contact	0	$	-
4/15/2019	RTH	Finalized Response ot Local 150 Motion to Reconsider	4.5	$	1,80C.00
4/17/2019	RTH	Finalize Appellate Brief and File	12.5	$	5,00C.00

4.25 hours in travel Woodstock t. Waukegan

Offices of
N & ASSOCIATES, P.C.
alhoun Street
:k, IL 60098
Phone: 815-206-2200
Fax: 815-206-6184

July 1, 2019

Andrew Gasser
Algonquin Township Highway Commissioner
Algonquin Township Road District
c/o
Algonquin Township Highway Department
3702 U.S. Highway 14
Crystal Lake, Illinois 60014

10.75 hours
2 trips to Chic

Re: Local 150 v Algonquin Township Road Dist
17-CH-482
Our File #17-0026

Professional Services Rendered June 2019:

Date	Atty/Para	Item	Hours	Amount
6/1/2019	RTH	Work on Appellate Reply Brief	1.5	$ 600.00
6/2/2019	RTH	Work on Appellate Reply Brief	2.5	$ 1,000.00
6/3/2019	RTH	Work on Appellate Reply Brief	2.5	$ 1,000.00
6/4/2019	RTH	Mayo Clinic	0	$ -
6/5/2019	RTH	Work on Appellate Reply Brief	3.5	$ 1,400.00
6/5/2019	RTH	Discussion with A. Gasser	0.5	$ 200.00
6/6/2019	RTH	Discussion with A. Gasser	3.5	$ 1,400.00
6/7/2019	RTH	Telephonoic A Gasser	0.5	$ 200.00
6/7/2019	RTH	Travel to Waukegan	2	$ 800.00
6/7/2019	RTH	Court appearance	1	$ 400.00
6/7/2019	RTH	Travel back to Woodstock	2.25	$ 900.00
6/7/2019	RTH	Work on Appellate Reply Brief	4.5	$ 1,800.00

ROBERT T. HA
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Robert Thomas Hanlon

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e	Atty/Para	Item	Hours	Amount
2019	RTH	Work on Appellate Reply Brief	5.7	$ 2,280.00
2019	RTH	Work on Appellate Reply Brief	6.2	$ 2,480.00
2019	RTH	Discussion with A Gasser	0.75	$ 300.00
2019	RTH	Work on Appellate Reply Brief	2.9	$ 1,160.00
2019	RTH	Work on Appellate Reply Brief	3.5	$ 1,400.00
2019	RTH	Work on Appellate Reply Brief	8.8	$ 3,520.00
2019	RTH	File Reply Brief	0.5	$ 200.00
2019	RTH	Prepare for Hearing with Local 150	3.5	$ 1,400.00
2019	RTH	Review ILRB file for hearing with Local 150	3.5	$ 1,400.00
2019	RTH	RTH Unavailable	0	$ -
2019	RTH	Prepare for Hearing with Local 150	3.5	$ 1,400.00
0189	RTH	Conference with MEA re Hearing with Local 150 ILRB	1.5	$ 600.00
0019	RTH	Travel to Chicago	2.5	$ 1,000.00
0019	RTH	Hearing at ILRB	9	$ 3,600.00
0019	RTH	Travel back from Chicago	3	$ 1,200.00
2019	RTH	Travel to Chicago	2.75	$ 1,100.00
2019	RTH	Hearing at ILRB	0.5	$ 200.00
2019	RTH	Travel to Woodstock	2.5	$ 1,000.00
2019	RTH	Send material to Local 150	0.5	$ 200.00
ne Services				$ 34,140.00

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Total Due this Invoice for June 2019 services rendered. $34,1

All invoices to the Road District are subject to accrual of interest for non-payment.

Please remit Payment in the amount of $34,140.00 for this invoice on or before June 10 2019.

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Law Offices of

ROBERT T. HANLON & ASSOCIATES, P.C.

131 East Calhoun Street

Woodstock, IL 60098

Robert nomas Hanlon

Phone: 815-206-2200

Fax: 815-206-6184

July l, 2019

Andrew Gasser
Algonquin Township Highway Commissioner
Algonquin Township Road District c/o
Algonquin Township Highway Department
3702 U.S. Highway 14

Crystal Lake, Illinois 60014

Re: Local 150 v Algonquin Township Road Dist.
17-CH-482 ILRB, Arbitration Matters
(not including Illinois Employment Security claims) Our File#17-002

Statement on Local 150 Matters

Dear Andrew:

As you know last year: the Algonquin Township Board elected to manipulate your budget as it relates to legal services. This in tum created a situation ofnon-payment. It is clear that the Township Board may not fully appreciate what is involved with the representation of the Road District. As it relates to Local 150 there have been 13 separate matters which are consolidated herein for billing purposes. In Grafton Township there was a single case that exceeded $500,000. Here, we have substantially more litigation. However, a substantial number of cases I believe will come to an end shortly.

As you know we prevailed on each of the cases at the Illinois Department of Employment Security involving claims from discharged employees who were represented by Local 150. One employee even quit and claimed that he was entitled to economic benefits from the Road District, a grievance which continues to this day.

Because of the numerous late payments, and open hostility towards me for doing the job I was hired to do, I have invoked that portion of our agreement that calls for interest on late payments reflected in the rider to our engagement letter. The interest charges are shown on this statement,

Jubi	StatenEnt December 2018 Invoice Arrount $ 8,280.00 Interest (mpaid Bill 7 months @9%) s 434.70		
	January 2019 Invoice Amount		s 26, 180.00
	Interest (tnpaid Bill 6 months @9%)		
	Febnaary 2019 Invoice Anuunt $ 17,220.00 Interest (unpaid Bill 5 months @9%) S 645.75		
	March 2019 Invoice Amotffit		s 18,000.00
	Intcrcst (unpaid Dill 4 months @9%)	s	540,00
	April 2019 Invoice Armunt	s	43,220.00
	Interest (unpaid Bill 3 months @9%)	s	972.45
	May 2019 Invoice Arnotmt	s	19,580.00
	Interest @paid invoice 2 months@9%)	s	293.70
	June 2019 Invoice arrmtlt	s	34,140.00
'I'otal Duc fbr Matter		$	170,684.70

Not included on this statement are the charges for Illinois Department of Employment Security hearings for Ryan Green, and Daniel Morrison matters and work on Algonquin Township Road District

v Charles Lutzow and A. Gaser & ATRD v Karen Lukasik, Robert Miller and Anna May Miller as well as A. Gasser v Charles Lutzow et al.

Law Offices of Robert T. Hanlon & Assoc., P.C.

131 East Calhoun Street
Woodstock, Il 60098
815-206-2200
robert@robhanlonlaw.com

Bill To: Algonquin Township Road District
Address: 3702 US. Hwy 14
Crystal Lake, IL 60014
Phone: 847-639-2700
Fax:
Hourly Rate: $400/hr
Invoice #:
Invoice Date:

Inveiea For: Legal serviees for paried (3/27/20)

Date	Description	Qty	Unit Price		Price
	NTH case # 17-0024 al) MéH17 CH 000435				
6/4/2020	Receivéd motions from Gooch & Brody. Commenced preparing	i.oo	-400.00		400.00
6/8/2020	Court appearance	1.00	400.00		• 400.00
6/8/2020	Drafting response	0.75	400.00		300.00
6/8/2020	Reviewed pleadings by Mr. Gooch	1.00	400.00		400.00
7/1/4020	Mtg w Andrew Gasser	1.50	-400.00		600.00
7/9/2020	Drafting response	3.00	400.00		1,200.00
7/13/20io	prep-for court	1.00	400.00		400.00
7/13/2020	Court appearance	1.00	400.00		400.00
7/13/2020	Post court conference w Andrew -	oso	$ 400ö.oo		200.00
7/14/2020	Prepared motion to strike R.M. counter-claim	2.00	400.00		800.00
7/14/2020	Prepared motion for sanctions against R.M. and Gooch	-zoo	400.00		800.00
7/15/2020	Piepared motion for sanctions	2.50	400.06		1,000.00
7/15/2020	Eichanged tvjo emails w Gooch	O.SO	$ 400.00		200.00
7/15/2020	Drafting response to 219E motion	2.00	400.00		800.00
7/15/2020	File review for courtqh 7/16/20.	d.50	$ 400.00		$ 200.00
7/16/2020	Court appea ce (?)	1.00	$ 400.00		400.00

			400.00		

Law Offices of Robert T. Hanlon & Assoc., P.C.

131 East Calhoun Street
Woodstock, Il 60098
815-206-2200
robert@robhanlonlaw.com

Bill To: Algonquin Township Road District
Phone: 847-639-2700
Invoice #

Address: 3702 US. Hwy 14
crystal Lake, IL 60014
Fax:
Hourly Rate: $400/hr
Invoice Date:

Invoice For. Legal services for period 3/16/20

Date	Description	Qty	Unit Price		Price
	McH County No. 17CH000482 Sweeney & Local 150 v Gasser RTH 17-0026				
3/17/2020	T/C w/ Andrew Gasser re Local 150 matter	1.00	$ 400.00		$ 400.00
3/23/2020	T/C w/ Andrew Gasser re Local 150 & Nick Churickus grievance arbitration matters (20 minutes)	0.50	$ 400.00		$ 200.00
3/26/2020**	Legal research concerning Local 150 arbitration	3.00	$ 400.00		$ 1,200.00
3/27/2020	Legal research concerning Local 150 arbitration	3.00	$ 400.00		$ 1,200.00
4/1/2020	Received 2 letters from Local 150	0.50	$ 400.00		$ 200.00
5/5/2020 **	Mtg *T/C w Andrew Gasser	1.00	$ 400.00		$ 400.00
6/18/2020	Court Appearance	1.00	$ 400.00		$ 400.00
6/18/2020	Email exchange w Local 150	0.25	$ 400.00		$ 100.00
7/1/2020	Mtg w Andrew Gasser	1.50	$ 400.00		$ 600.00
7/9/2020	Drafting response	3.00	$ 400.00		$ 1,200.00
7/15/2020	Court Appearance	1.00	$ 400.00		$ 400.00
7/15/2020	Drafted response	2.00	$ 400.00		$ 800.00
7/16/2020	Drafting response	5.00	$ 400.00		$ 2,000.00
7/17/2020	Drafting response	5.00	$ 400.00		$ 2,000.00
			$ 400.00		$ -
			$ 400.00		$ -
			$ 400.00		$ -

Law Offices of Robert T. Hanlon & Assoc., P.C

Bill To: Algonquin Township Road District Phone: 847-639-2700 Invoice #: ALRD20-1Chirikos

Address: 3702 US. Hwy 14 Fax: Invoice Date: 4/1/20 crystal Lake, IL 60014 Hourly Rate: $400/hr

For: Legal services for period 1/10/20 Invoice

3/26/20

Date	Description	Unit Price			Price
1/10/2020	Received email from Andrew Gasser re Federal Mediation & Conciliation Services (FMCS) obtaining a new panel for Chirikos a it tion	0.25	400.00		wo,oo
1/14/2020	Investigation of arbitrators	6.20	400.00		
1/17/2020	Researched arbitrators and employers struck Jeanne Von Huf	1.2	400.00		480 00
1/17/2020	Email to 8.Diemer striking von Huf	0.25	400.00		
1/1712020	Received email from Brian Diemer striking Joseph Cassidy	0.25	400.00		100.00
1/23/2020	Research into Martin Malin	2.20	400.00		
1/23/2020	Confer with A. Gasser	0.50	400.00		200.00
1/23/2020	Submit email to B. Diemerstriking Martin Malin	0.25	400.00		
1/24/2020	Received email from B. Diemer	0.25	400.00		100.00
1/24/2020	Reviewed remaining arbitrators Stanley Michelstetter, Doyle O'Connor, & Anne L. Draznin	4.80	400.00		
1/31/2020	Dispatched email to B. Diemer Striking Anna Draznin	o.	400.00		100.00
2/3/2020	Received from B. Diemer an email re striking of Stanley Michelstetter, confirming Doyle O'Connor as arbitrator on panel	0.25	400.00		
2/5/2020	Received email from A. Gasser which originated with D. O'Connor. Reviewed email.	0.25	400.00		100.00
2/5/2020	T/C w/ Andrew Gasser	oso	400.00		
2/5/2020	Received email from B. Dtemer	0.25	400.00		100.00
2/7/2020	T/C w/ A. Gasser	0.80	400.00		
2/11/2020	Dispatched an email to B. Diemer	0.25	400.00		100.00

4/13/2018	MEA	Review Draft Counter-claim and Case law discuss ith RH	1	$ 515.00
4/20/2018	RTH	Discussion on local strategy after MEA Withdraws	1	$ 375.00
4/25/2018	RTH	Assessment of whether or not Expert testimony would be necessary as it relates to amended complaint and issues in Circuit Corut and conflicting positions of Local 150 in different forumns	3.5	$ 1,312.50
4/28/2018	RTH	Receive commun from MEA re pending matters and conference call (Saturday)	2.25	$ 843.75
4/30/2018	RTH	Receive from MEA Motion to Withdraw	0.25	$ 93.75
4/30/2018	RTH	Send E-mail to Diemer/Pierson re Mike's Withdraw	0.25	$ 93.75
Total Due for April 2018 for professional Services Rendered				$ 8,371.25

7.5 hours to discuss Avakian's withdrawl. No parallel billing from Avakian

Please remit Payment in the amount of $8,371.25 for this invoice.

Total Now Due for April Work $8,371.25

February Billing Past Due $43,926.80

March Billing Past Due $15,977.70

Std Rate for RTH $400.00 reduced in this billing cycle as a courtesy to A. Gasser to $375.00.
Std Rate for MEA= $515

Law Offices of
ROBERT T. HANLON & ASSOCIATES, P.C.
131 East Calhoun Street
Woodstock, IL 60098

Robert Thomas Hanlon
Phone: 815-206-2200

Jump to Table of Contents

May 4, 2018

Andrew Gasser
Algonquin Township Highway Commissioner
Algonquin Township Road District
Algonquin
3702 U.S. Highway 14
Crvstal Lake, Illinois 60014

Re: Matter Local 150 v Algonquin Township Road Dist
McHenry County Case - CH - 482
Illinois Labor Relations Board Matters
Local 150 Claims for other
relief Our File #17-0026 Professional
Services Rendered:

Date	Atty/Para	Item	Hours		amount
4/3/2018	RIM	Research ülto caselaw for amended complaint on additional count	2.5	$	937.50
4/4/2018	RTH	Draft amended complaint have CJ send to MEA	3.5	$	1,312.50
4/4/2018	RTH	Receive comespondence revkw and discuss with MEA in light ofno grievance havilg been filed on employee part	1	$	375.00
4/4/2018	RTM	ILRB documetns to be amended for final and filing	4.5	$	1.687.50
4/4/2018	RIM	file docutnetns with Il-RB	0.5	$	187.50
4/12/2018	RTH	deliver 10 MEA dralt amended Complaint receive information thatMEA must withdraw from case because ofrecent presidential appointment and	1.2	$	450.00
4/13/2018	RTH	subsecquent appointment ofMEA to USDOL Cornmunicate with TC re employment directly with RTH	0.5	$	187.50

c/o

Township Highway Depanment

111 Ill.2d 318

Supreme Court of Illinois.

Robert B. BARTLEY, Appellee,

UNIVERSITY ASPHALT COMPANY,

NC., et al. (International Brotherhood of Teamsters, Local No. 26, Appellant).

No. 61475.

Feb. 21, 1986.

Synopsis
Discharged employee brought action against his employer for retaliatory discharge and against his union for civil conspiracy arising out ofhis cooperation in FBI investigation 1egarding allegations ofbribey between employer and union. The Circuit Court, Champaign County, Creed D. Tucker, J., entered surnmury judgment in favor of defendants, bul the Appellate court, 129 111.App.3d 231, 84 111.Dec. 539, 472 N.E.2d 499, reversed. On appeal, the Supreme Court, Thomas J. Moran, J., held that discharged employee's cause of action against union for civil conspiracy, based upon alleged conspiracy with employer to inadequately represent employee on his claim ofretaliatory discharge, was preempted by federal labor law.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (4)

[1] Labor and Employment Duty to Act Impartially and Without Discrimination; Fair Representation

Union has statutory duty to represent fairly all employees in bargaining unit in negotiating and administering collective bargaining agreement; duty of fair representation imposes on union obligation to serve interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

USE-W

3 Cases that cite this headnote

[2] Judgment Operation and effect

Determination by federal court, in remanding removed case back to state court, that it lacked subject matter jurisdiction over former employee's action against employer and union did not preclude claim by union that employee's state action against union for civil conspiracy was preempted by federal labor law, where federal court's determination that it lacked subject matter jurisdiction was prompted by statement of former employee "that the sole cause of action is based on the * * * Tort of retaliatory discharge."

16 Cases that cito this headnotc

[31 Courts Assumption and exercise af conflicting jurisdiction in general

Federal preemption, when raised by defendant as defense to state-law claim, will not confer subj ect matter jurisdiction on federal court.

2 Cases that cite this headnote

[41 Conspiracy Relation between state and federal law; preemption

States Particular cases, preemption or supersession

Discharged employee's cause of action against union for civil conspiracy with employer in failing to adequately represent employee on his claim of retaliatory discharge was preempted by federal labor law. Labor Management Relations

Act, 1947, 301, 29 U.S.C.A. S 185.

15 Cases that cite Chis headnote

Attorneys and Law Firms

**1367 ***503 *320 Cavanagh, Hosteny & OHara, Springfield, for appellant.

4892928,

John H. Otto, Zimmerly, Gadau, Selin & Otto, Champaign, for appellee.

Opinion

***504THOMAS J. MORAN, Justice.

Plaintiff, Robert B. Bartley, brought this action in the circuit court of Champaign County alleging that he was discharged from his job because he cooperated with a Federal Bureau of Investigation (FBI) probe ofhis employer, University Asphalt Company. Inc. (University). and his union, the International Brotherhood of Teamsters, Local No. 26 (defendant). He charged University with the tort of retaliatory discharge and defendant with a civil conspiracy in ftrtherance of the retaliatory discharge. The circuit court entered summary judgment in favor ofUniversity and defendant. The appellate court, with one justice dissenting, reversed the judgments of the circuit court and remanded the cause for further proceedings. (P 129 111.App.3d 231, 84 111.Dec. 539, 472 NE.2d 499.) Thereafter, only defendant petitioned this court for leave to appeal (94 111.2d R. 315), which we granted.

The central issue in this case is whether plaintiffs cause of action against defendant for civil conspiracy is preempted by Federal labor law. Defendant argues that plaintiffs State tort claim for civil conspiracy is preempted by Federal labor law, and that, as a result, it must be dismissed. In addition, defendant contends that the circuit court was correct in entering summary judgment in its favor because plaintiffs allegations do not support a finding of retaliatory discharge or civil conspiracy.

*321 The plaintiff, who had been employed by University as a ü•uck driver since 1969, was discharged from his job on October 15, 1981. The reason given by his employer for the discharge was that plaintiff had refused to haul a load of asphalt as directed by his foreman on October 13, 1981. Plaintiff contended, however, that the reason given by University for his discharge was a pretext and that in fact he was discharged for participating in a 1979 FBI probe of University and defendant.

After receiving his discharge notice, plaintiff filed a grievance against University through defendant, the recognized bargaining representative of certain employees, including plaintiff, at University's Urbana, Illinois, plant. The collective-bargaining agreement then in force between defendant and University stated that no employee covered by

the agreement was to be discharged except for "justifiable cause," and it further provided for a multistep grievance procedure to resolve employee grievances, including binding arbitration in some instances. Pursuant to the grievance procedure provided for in the collective-bargaining agreement, Mike Carr, defendant's business representative, met with Gary Saathoff, University's general superintendent, on October 19, 1981, to discuss plaintiffs grievance. The meeting failed to resolve the dispute, and plaintiffs grievance was referred to the Joint Committee. The committee, which was comprised of an equal number of union and employer rcprcsc.ntativc.s. was c.stablishc.d by the. collective-bargaining agreement to hear employee grievances. On November 4, 1981, the committee denied the plaintiffs grievance.

Subsequently, on December 30, 1982, plaintiff filed suit against defendant and University in the United States Disfrict Court for the Central District of Illinois pursuant to section 301 ofthe Labor Management Relations Act of 1947 (INIRA) (29 U.S.C. sec. 185(a) (1982)). Section 301 vests Federal drsLnel courls With Junsd1eUon *322 cvel suils alleging a breach of contact between an employer and union. The complaint alleged that University had discharged plaintiff in retaliation for his participation in the FBI investigation of defendant and University, and, as

such, plaintiff had not been discharged for "justifiable cause" as required by the collective-bargaining agreement.

The allegations against defendant were based on the theory that it violated Federal labor law by not fairly representing plaintiff in contesting his discharge. The complaint alleged that defendant was hostile toward plaintiff for his participation in the FBI investigation, and that, as a result, it breached its statutory duty of fair representation in that it "conspired with Defendant **1369 ***505 Company [University] to permit Plaintiffs discharge to stand." It further alleged that defendant "failed to use its best efforts to obtain and present witnesses and documentary evidence at the hearing" before the Joint Committee; failed to "present and argue Plaintiffs case * * * to the arbitrator"; and "failed to produce evidence within its possession and control that would have supported Plaintiffs position."

According to the parties, defendant and University moved to dismiss the Federal suit on the ground that it was barred by the applicable statute of limitations. Thereafter, plaintiffs counsel, apparently agreeing that the suit was barred by the statute of limitations, moved to dismiss the suit and the plaintiffs motion was granted.

in violation of Federal labor law; that it "conspired" with University "to permit Plaintiffs discharge to stand" and that it was "hostile to Plaintiffbecause ofhis previous assistance to the FBI." The complaint further alleges that defendant "breached its duty to represent Plaintiffs interest at an arbitration proceeding" by failing "to use its best efforts to obtain and present witnesses and documentary evidence * * * favorable to Plaintiffs position"; by failing to "present and argue Plaintiffs case * * * to the arbitrators"; and by failing "to produce evidence within its possession and control that would have supported Plaintiffs position."

Count Il of the complaint alleges that defendant and University "wrongfully agreed and conspired together to allow the * * * retaliatory discharge * * to remain unchallenged by Defendant Union at the arbitration hearing of November 4, 1981, even though it was unjust and a clear violation of the collective bargaining agreement." Plaintiff states in an affidavit filed in response to defendant's motion for summary judgment that he relied on Mike Carr, defendant's business manager, to "properly frame *324 the issues" before the Joint Committee. He states that prior to the November 4, 1981, hearing of the Joint Committee, Carr advised plaintiff to "leave the talking to him (Carr)." Plaintiff also states that he did not give the committee his

On April 11, 1983, plaintiff filed the present action. The complaint alleges in relevant part that University discharged plaintiff in retaliation for his involvement in the FBI investigation; that the discharge violated the "justifiable cause" provision of the collective-bargaining agreement; and that the discharge contravened "a clearly mandated public policy which favor [sic] Plaintiffs *323 conduct in cooperation with a law enforcement agency." In an affidavit, plaintiff disputes the reason given by University for his discharge. As related, University maintains that plaintiff was discharged because he reftased to haul a load of asphalt as directed by his foreman. Plaintiffs affidavit states that on the day in question he had already worked eight hours; that he received a message that his wife needed to go to the hospital; and that no loads of asphalt were available for him to haul despite his foreman's instructions to the contrary.

The allegations agamsL delélldalll are subslanlially similar Lo the allegations contained in the 1982 Federal lawsuit. Count I ofplaintiffs complaint in relevant part alleges that defendant "breached its statutory duty offair representation"

version of the events leading to his discharge on the advice of Carr.

On April 27, 1983, both defendant and University removed the present suit to the United States Dist-ict Court for the Central District of Illinois on the ground that plaintiffs State tort action was preempted by Federal law. The Federal district court, after conducting a hearing on plaintiffs motion to remand, concluded that it lacked subject-matter jurisdiction, and it remanded the cause to the circuit court of Champaign County. Subsequently the circuit court entered summary judgrnent in favor of both University and defendant.

[Il Under Federal labor law, unions have a statutory duty to represent fairly all employees in the bargaining unit, in negotiating and administering the collective bargaining agreement. (Vaca v, Sipes (1967), 386 U.S. 171, 87 S.Ct. 903. 17 L.Ed.2d 842; v.

Moore(1964), 375 U.S. 335, 84 S.Ct. 363, L.Ed.2d 370; 6 Kheel, Labor Law sec. 28, at 42 (Supp. 1984 & 1985).) The duty of füir repregentation, which arises from a union's Gtatus as the exclusive bargaining representative, imposes on the union the "obligation to serve the intercsls of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Vaca v. Sipes (1967), 386 U.s. 171, 177, 87 S.Ct. 903, 910, 17 LEd.2d 842, 850.

Issues concerning a union's duty of fair representation frequently arise in the context of suits brought pursuant to section 301 of the LMRA (29 U.S.C sec. 185(a) (1982)), which provides that suits for violation of contacts between an employer and union may be brought *325 in any Federal district court having jurisdiction ofthe parties without regard to the amount in controversy or the citizenship of the parties. Discharged employees, in bringing section 301 suits, often join both employer and union, alleging a violation of the collective-bargaining agreement by the employer, and a breach of the duty of fair representation by the union.

See, e.g., Vaca v. Sipes (1967), 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842; Harper v. San Diego Transit corp. (9th Cir. 1985), 764 F.2d 663; Ramsey v. Signal Delivery Sen'ice, Inc. (5th Cir.19SO), 631 F.2d 1210; Fristoe v, Reynolds Metals co. (9th Cir. 1980), 615 F.2d 1209.

The record shows that plaintiff originally filed suit against defendant and University in Federal district court pursuant to section 301. Plaintiffs Federal complaint in essence alleged that University violated the "justifiable cause" provision

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of the collective-bargaining agreement and that defendant breached its duty of fair representation in handling plaintiffs grievance. Defendant contends that plaintiffs present suit alleges essentially the same cause of action as was alleged in the earlier Federal suit. As such, it argues that plaintiffs cause of action for civil conspiracy is preempted by Federal labor law. Plaintiff maintains, however, that the preernption issue was decided adversely to defendant by the Federal court. Additionally, plaintiff contends that the present suit for retaliatory discharge and civil conspiracy alleges a "distinctly different cause of action" from the section 301 suit and, consequently, is not preempted by Federal law.

[21 Before considering plaintiffs complaint in light of Federal preemption principles, we address his argument that the preemption issue was decided adversely to defendant by the Federal district court. The Federal court record, which has been made a patt of the record here, states that the case was remanded back to the circuit *326 court because the Federal court concluded that the "action could not have been brought into * * * [Federal court] originally." The determination that the Federal court lacked subject-matter jurisdiction was prompted by a statement by plaintiff 'that the sole cause of action is based on the * * * Tort of retaliatory discharge." The gist of plaintiffs argument is that the determination by the Federal court that it lacked subject-matter jurisdiction forecloses any claim by defendant that the present suit is preempted by Federal labor law. We disagree.

[3] Defendant and University sought to remove the present case to Federal court pursuant to • - 28 U.S.C, section 1441(b) (1982), the removal provision goveming cases which "arise under" the laws of the United States when a Federal question appears on the face of a plaintiffs wellpleaded complaint. It is well established that a defense predicated upon Federal law is not enough by itself to confer jurisdiction on a court, even though the defense is certain to arise. ($ Pan American Petroleum Corp. v. Superior Court (1961), 366 U.S. 656, 662, Sect. 130.3, 1307, 6 L.Ed.2d 584, 589; *Madsen* v. Prudential Federal Savings & Loan Association (10th Cir.1980), 635 F.2d 797.) Thus, Federal preemption, when raised by a defendant as a defense to a State-law claim, will not confer subjectmatter jurisdiction on a Federal court. " Illinois v. KerrMcGee Chemical corp. (7th Cir.1982), 677 F.2d 571, 577-78; V M Madsen v. Prudential Federal Savings & Loan Association (10th Cir.1980), 635 F.2d 797, 801.) Although some Federal courts have recharacterized State tort suits involving employment disputes as section 301 actions and thereby allowed defendants to remove the suits to Federal court, courts have not uniformly done so. (Compare Fristoe v. Reynolds Metals Co. (9th Cir, 1980), 615 F.2d 1209 (removal was allowed after a State wrongful-discharge suit was *327 recast as a section 301 suit), with Schaffer v. General Motors (E.D.Mich.1984), 586 F.Supp. 870 (removal was not allowed because the labor preemption issue was raised solely as a defense).) Therefore, we believe that the record supports the conclusion that the Federal district court never reached the preemption Issue raised by defendant.

The preemption doctrine has its basis in the supremacy clause ofthe Federal Constitution (I i.S. Const., aft. VI, cl. 2). IJnder the doctrine, Federal law is deemed in some instances to override or preempt State laws on the same subject. (See generally Rice E Santa Fe Elevator Coyp. (1 947), 331 U.S. 218, 229-31, 67 S.Ct. 1151-53: 91 L.Ed. 1447, 1459.) In dcciding preemption issucs, including thosc which arisc in the labor relations area, the Supreme Court has emphasized that "the question whether a certain state action is preempted by Federal law is one of congressional intent." AllisChalmers corp. v. Lueck (1985), 471 U.S., 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206, m 3; see also Malone v. White Motor corp. (1978), 435 U.s. 497, 504, 98 S.Ct. 85, 1189, 55 LEd.2d 443.

In W Vaca v. Sipes (1967), 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842, the Supreme Court addressed Federal preemption in the context ofa suit brought by a union member against his union. The plaintiff in Vaca filed suit against the union in a State court in Missouri alleging that he had been discharged by his employer in violation of the collectivebargaining agreement. Although making no reference to Federal law, the complaint further alleged that the union had "arbitrarily, capriciously and without just or

Asphalt Co., ... Dec. 503, 121 (BNA) 2928, 54 USLW 2495..

reasonable reason or cause" declined to proceed with plaintiffs grievance to arbifration. 386 U.S. 171, 173, 87 S.Ct. 903, 908, 17 L.Ed.2d 842, 848.) The court, in passing upon the plaintiffs complaint, stated that "[i]t is obvious that [the] complaint alleged *328 a breach by the Union of a duty grounded in federal statutes, and that federal law therefore govems his cause of action." (V 386 U.s. 171, 177, 87 s,ct. 90.3, 910, 17 L.Ed.2d 842, 850.) The coun determined that both State and Federal courts have jurisdiction over fair-representation

cases, but held that "federal law governs" such cases.V 386 U.S. 171, 174, 87 S.Ct. 903, 908, 17 L.Ed.2d 842. See generally 6 Kheel, Labor Law sec. 28, at 42 (Supp. 1984 & 1985).

Following Vaca, many lower Federal courts determined that State tort or contract actions arguably alleging violations of the collective-bargaining agreement or the union's duty of fair representation were preempted by Federal labor law. see, e.g., Oglesby v. RCA cop. (7th Cir.1985), 752 F.2d 272 (a State tort action for retaliatory discharge was precmptcd by section 301 of the LMRA); Olgutn v. Inspiration Consolidated Copper Co. (9th Cir. 1984), 740 F.2d 1468 (a State action alleging a wrongful discharge, wrongful discharge in violation of public policy, and intentional infliction of emotional distress was preempted by Fedcral law); Ramsey v. Signal Delivery' Service, Inc. (5th Cir.1980), 631 F.2d 1210 (a State tort action against a union for emotional distress was preempted by Federal labor law); Fristoe v. Reynolds Metals Co. (9th Cir.1980), 615 F.2d 1209 (State common law actions against an employer and a union were preempted by Federal labor law). Contra,

Garibaldi v. Lucky Food Stores, Inc. (9th Cir. 1984), 726 F.2d 1367 (a State wrongful-discharge action was not preempted).

Moreover, in the recent case of Allis-Chalmers Corp. v. Lueck (1985), 471 U.S.. 105 S.Ct, 1904. 1916, 85 L.Ed.2d 206, 221, the Supreme Court concluded that Federal labor-contact law preempts State tort actions which are "substantially dependent upon analysis of the terms of an **1372 ***508 agreement made bebveen the *329 parties in a labor contact." The plaintiff in Lueck suffered a nonoccupational injury and thereafter received disability benefits under a disability plan included in the collective-bargaining agreement in force between his employer and union. The benefits, however, were periodically discontinued. Under the collective-bargaining agreement, disputes concerning disability payments were resolved by resort to a three-step grievance procedure. Instead of filing a grievance with his union, however, the plaintiffbrought a tort action in a State court in Wisconsin against his employer and ifs insurer, alleging bad faith in the handling of the disability claim. The State trial court granted summary judgment in favor of the defendants, holding that plaintiff had stated a claim under section 301 ofthe LMRA (29 U.S.C. sec. 185(a) (1982)) and that the complaint should be dismissed for failure to follow grievance procedures. Alternatively, the court held that if the claim was deemed to arise under State law, it was preempted. The Wisconsin Supreme Court reversed, holding that the State tort claim was distinguishable from a bad-faith breach-of-contract claim.

The Supreme Court in Lueck reversed, holding that the State tort claim was preempted by section 301 of the I*'IRA. The court observed that because of the congressional policy favoring a uniform body of Federal labor-contract law, it ha[illlapt•eted section of the I,MRA as requiring tho application of Federal substantive law to suits alleging violations of collective-bargaining agreements. As such, any K'slate rule Lhal purports 10 define the Inealling 01 scope of a term in a [labor] contract suit * * * is pre-empted by federal labor law." C Allis-Chalmers Corp. v. Lueck (1985), 471 U.S.——, ——,105 s.ct. 1904, 1911, L.Ed.2d 206, 215.) The court concluded that the same policy required application ofthe preemption doctrine to many State tort claims:

*330 "If the policies that animate section 301 are to be given their proper range, however, the pre-emptive effect of section 301 must extend beyond suits alleging contract violations. These policies require that 'the relationships created by [a collective-bargaining] agreement' be defined by application of 'an evolving federal common law grounded in national labor policy. * * * The interests in interpretive uniforrnity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation. Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over

substance and allow parties to evade the requirements of section 301 by re-labeling their contract claims as claims for tortious breach of contract." C 471 .U.S. 202, 105 S.Ct. 1904. 1911, 85 'L.Ed.2d 206, 215.)

The court concluded that when a State tort claim is "substantially dependent upon analysis of the terms of [a collective-bargaining] agreement" the claim must either be treated as a section 301 claim or dismissed as preempted by

17. As a result of the foregoing facts, Plaintiff was not protected by the collective bargaining agreement and lacked any recourse against * * * [University) under that agreement, even though * * * [University's] action in discharging Plaintiffwas unjust and a clear violation ofthe collective bargaining agreement." (Emphasis added.)

Count Il of plaintiffs complaint, which also contains allegations of civil conspiracy, alleges in relevant part:

Federal labor law. ([w] 471 U.s. 202, , 105 S.Ct. 1904, 1916, 85 L.Ed.2d 206, 221.

Our review of the above authorities convinces us that plaintiffs suit, as if pertains to defendant, must either be treated as an action arising under Federal labor law, or be dismissed as preempted. Although styled as a State tort suit for retaliatory discharge and civil conspiracy, it is clear that plaintiffs complaint alleges a violation of a collectivebargaining agreement and a breach of defendant's duty of fair representation. Count I of plaintiffs complaint, which contams some allegations relating to the civil conspiracy claim, alleges in relevant part:

*331 "13. Defendant Local Union conspired with * * * [University] to permit **1373 ***509 Plaintiffs discharge to stand although there was nojustifiable cause therefore.

16. Defendant Union breached its duty to represent Plaintiffs interest at the arbitration proceeding in the following manner:

A. Defendant Union failed to use its best efforts to obtain and present witnesses and documentary evidence at the hearing favorable to Plaintiffs position, and to present and argue Plaintiffs case otherwise to the arbi&ators;

B. Defendant Union deliberately failed to produce evidence within its possession and confrol that would have supported Plaintiffs position;

C. Defendant Union informed the Plaintiffthat no further steps could be taken to contest the discharge.

"19. That the Defendants wrongfully agreed and conspired together to allow * * * [University's) retaliatory discharge ofPlaintiff to remain unchallenged by Defendant Union at the arbitation hearing ofNovember 4, 1981, even though it

was unlawful, unjust and a clear violation ofthe collective bargaining agreement.

20. As a result, Defendant Union not only breached its duty offair representation to the Plaintif it also conspired to do so with the Defendant Company [University]." (Emphasis added)

Thus, the complaint essentially alleges that plaintiff was discharged in violation of the "justifiable cause" provision ofthe the collective-bargaining agreement and that defendant breached its statutory duty of fair representation. *332 As such, plaintiff has alleged a violation of "a duty grounded in federal statutes, and that Federal law therefore govems his

cause of action " *Vaca v.* Sipes (1967), 386 U.S. 171 87 S.Ct. 903, 910, 17 L.Ed.2d 842, 850.

Plaintiff concedes that the present cause of action against defendant could be consfrued as one arising under Federal labor-contract law. Indeed, plaintiff originally brought suit against defendant in Federal court under secfion 301 of the LMRA. He argues, however, that the action for civil conspiracy is sufficiently independent from the Federal claim so as to avoid preemption. We disagree. An evaluation of plaintiffs cause of action for civil conspiracy reveals that it is "substantially dependent upon analysis of the terms of [the collective-bargaining] agreement." (Allis-Chalmers Corp. v. Luck (1985), 471 U.S. ——, ——, 105 S.Ct. 1904, 1916, 85 L.Ed.2d 206, 221.) In order to

Aspha\t Co., iii.2d 318 (1986)
.Dec. 503, 121 (BNA) 2928, 54 USLW 2495..

support his conspiracy theory, plaintiff has alleged that a collective-bargaining agreement was in force between defendant and University; that University violated the terms of the agreement; that defendant conspired with University to violate the terms of the agreement; and that defendant breached its statutory duty of fair representation by not representing plaintiff adequately during the g-ievance proceedings established by the collective-bargaining agreement. Thus, plaintiffs State tort claim for civil conspiracy is "inexfricably intertwined with consideration of the terms of the labor contract." Allis-Chalmers Corp. v. Lueck (1985), 471 U.S.105 S.Ct. 1904, 1912, 85 L.Ed.2d 206, 216.) To hold that plaintiffs cause of action only sounds in tort, and is wholly independent of the Federal labor-contract claim, would "elevate form over substance and allow parties to evade the requirements" of Federal labor law. 471 U.s. 202, 105 S.Ct. 1904, 1911, L.Ed.2d 206, 215.

*333 See Maynard v. Revere Copper Produc!s, Inc. (6th

L.RR.M.
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Cir. 1985), 773 F.2d 733 (action alleging violation of the Michigan handicap discrimination **1374 ***510 statute was preempted by a section 301 fair-representation claim);

Harper v. San Diego Transit COQ. (9th Cir. 1985), 764 F.2d 663 (a State common law action alleging that a union "breached duty of fair representation" was preempted by

Federal law); Vantine v. Elkhart Brass Manufacturing Co. (7th Cir. 1985), 762 F.2d 511 (a State tort action for retaliatory discharge was preempted by section 301 of the LMRA);

Lingle v. Norge Division of Magic Chef, Inc. (SD.III. Oct. 9, 1985), 120 L.R.R.M. (BNA) 2859, 618 F.supp.

1448; Green v. Hughes Aircraft Co. (S.D.Cal.1985), 119 LR.R.M. 3610, 630 FSupp. 423 (a defamation action against an employer was preempted by section 301 of the Lb/fR.A).

Cf Pe:erson v. Air Line Pilots Association, Internafional (4th Chr.1983), '159 F.2d 1161 (an employee's State CIVII conspiracy action against the union was preempted by the Federal fair-representation claim under the Railway Labor Act).

[41 We hold, therefore, that plaintiffs cause of action against defendant for civil conspiracy is preempted by Federal laborcontract law. Accordingly, the judgment of the appellate court, as it pertains to this defendant, is reversed. The cause is remanded to the circuit court of Champaign County for further proceedings consistent with this opinion.

Reversed and remanded.

MILLER, J., took no part in the consideration or decision of this case.

All Citations

111 [11,'2d 318, 489 N.E.2d 1367, 95 111.Dec. 50.3, 121 L.R.R.M. (BNA) 2928, 54 USLW 2495, 103 Lab.Cas. P 55,545, 106 Lub.Cus. P 35,697

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June 8, 2018

Andrew Gasser
Algonquin Tmwnship Highway Commissioner
Algonquin I ownship Road L)lstnct c/o
Algonquin Township Highway Department
3702 US. Highway 14
Crystal Lake, Illinois 60014

Re: Matter Local 150 v Algonquin Township Road Dist
McHenry County Case - CH - 482
Illinois Labor Relations Board Matters
Local 150 Claims tor other relief
Our File #17-0026

		Meeting with A Gasser re case status and transition issues		
5/5/2018	RTH	with departur ofMEA.		800.00
5/8/2018	RTH	Prepare and file Motion to Withdraw on behalfofNIEA		400.00
5/8/2018	RTH	Receive and review 154 pg motion to dismiss Sweeney v AT'RD	5.5	2,200.00
		Verify LI 50 application ofstatutory citations in Code under 2-615/2-619/2-619.1/ 735 ILCS 5/2-		

Professional Services Rendered:

Date	Atty/Para	Item	Hours		amount
5/9/2018	RTH	619(a)(1),(2),(5),(9)s	40.00	0.1	
		Veri$' L150 application ofSection 85-30 ofthe Toyvnship		0.2	
5/9/2018	RTH	Code			s 80.00
		Veri$' L] 50 application of60 ILCS 1/80- I O(a), 60 ILCS			
5/90018	RTH	1/235-25.		0.2	80.00
		of 1997 Ill. Att'y Gen. Op. No.			

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5/9/2018	REITH	97-007	1	S	400.00
5/9/2018	RTA	Verify Ll 50 applEation of Amarantos, lfiy Comm. of Northfield Tp. v. Board ofTtustees ofNorthfieid Tp., No, 10 CH 38281	I	S	400.00
		Verify Ll 50 application n of 1997 Ill. Att'y Gen. Op. No			
s 5/9/2018	RTH	Veri& Ll 50 application ofDillon's Rule	2	$	800.00
5/9/2018	RTH	Verity 1-150 application ofPesticide Public Police Foundation v. Village of Wauconda, 117 111.2d 107, 112 (1987)	0.6	$	240.00
5/9/2018	RTH	Veri$' LI 50 application ofIndeck N. Am. Power Fund, L.P. v. Norweb PLC, 316 111. App. 3d 416, 432 (1st Dist. 2000)	0.75	$	300.00
5/9/2018	RTH	Veri$' L150 application ofAdcock v. Brakegate, Ltd., 164 Ill. 2d 54 (1994).	0.4	$	160.00
5/9/2018	RTH	Verifr L 150 application ofBuckner v. Atl. Plant Maint., Inc., 182 Ill. 2d 12, 23 (1998).	0.3	120.00 s	
5/9/2018	RTH	Verify L150 application ofFritz v. Johnston, 209 Ill. 2d 302, 317 (2004).	0.2		80.00
5/9/2018	RTH	Verify L150 application of Fiala v. Bickford Sr. Living Group, LLC, 2015 IL App (2d) 150067, ¶ 62, 43 N.E.3d 1234, 1250 (2nd Dist. 2015)	0.4	$	160.00
5/9/2018	RTH	Verify L150 application of Tri-State Professional Firefighters Union, Local 3165, 32 PERI ¶ 153 (IL LRB-SP 2016);	0.7	s	280.00
5/9/2018	RTH	Verify L150 application of Troopers Lodge #41, Fraternal Order of Police, 32 PERI ¶ 138 (ILRB GC 2016).	0.7	s	280.00
5/9/2018	RTM	Verify L150 application of IBEW, Local 134 (Allen), 13 PERI ¶ 3008 (IL LLRB 1997); Chicago Transit Authority, 13 PERI 3007 (IL LLRB 1997); SEW, Local 73, 19 PERI¶ 62 (IL ELRB Exec. Dir. 2003).	2.2	$	880.00
5/10/2018	RTH	VerifrL150 application ofIBEW, Local 134 (Allen), 13 PERI 3008 (IL LLRB 1997)	0.4	$	160.00
5/10/2018	RTH	339-40 (Ill. App. 2d 1998); see also Board ofEducation ofPeoria School istrictNo. 150 v. Peoria Federation of Support Staff, Security?oficeman's Benevolent & Protective Association Unit No. 114, 375 111. Dec. 744, 761 (2013)	2.5	$	14000.00
		Verity L150 -application ofBartley v. University Asphalt co., I 1 111.2d 318. 332 (1986) (internal citations omitted); see also Gendronv. Chicago & North Western			

Billed .75 to read same case on 12/24/17

5/9 - 5/10

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verifying application of cases cited in 150's

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5/10/2018	RTH	Transpottation co.. 139 111.2d 422, 444-45 (1990)		2.5	$	I,OOO.OO
		Verify L150 application of Chicago Transit Authority, 13 PERI 3007 (IL LLRB 1997); SEIU, Local 73, 19 PERI				
/10/2018	RIM	'162 (IL ELRB Exec. Dir. 2003).		0.5	S	200.00
		Verify L150 application ofAIwood Vacuum Mach. Co. v, Continental Casualty Co.. 107				
5/10/2018	RTM	Ill.App.2d 248, 266 (1969).	0.4	s	160.00	verify L150 application of60 Il-c-s
		1/80- 10(a), 60 ILCS				
5/10/2018	RTH	1/235-25 (briefpg 12)		0.2	s	80.00
		Verifr LI 50 application ofGantzv. McHenry County Sheriffs Department Merit Comm'n, 296 [Il. App. 3d 335,				

13 PERI 113007, 13 Pub. Employee Rep. for Illinois Il 3007, 1997 WL 34820307

Illinois Local Labor Relations Board

ROBERT ALLEN, CHARGING PARTY, AND CHICAGO TRANSIT AUTHORITY, RESPONDENT
No. L-CA-97-036
March 17, 1997

Related Index Numbers
72.311 Discrimination Related to Union Membership or Concerted Activity, Criteria for Determining Violation, Anti-Union Animus
72.334 Discrimination Related 10 Union Membership or Concerlcd Activity, Forms of Discrimination, Discharge
72.3592 Discrimination Related to Union Membership or Concerted Activity, Defenses Against Charge of Discrimination, Efficiency of Operation, Drug or Alcohol Abuse

Case Summary Assuming that letter written by city electrician to union representative, in w} discharge, qualified as grievance, c.ily did nol cornmil unfair practice by failit showed that discharge was intended as retaliation for electrician's union ac animus. Absent evidence of such animus, hearing was not warranted on issue in discharging electrician for his failure to comply with drug treatment progr

5/4/18
2.2 hours
$880

Full Text

Decision and Order of the Illinois Local Lat

On February 14, 1997, the Executive Director of the Illinois Local Labor Rp , 1 0 practice charge filed by Robert Allen (Charging Party) in the above capti(Authority, (Respondent) violated Sections 10(a)(1) and (7) of the Illinois P amended, (Act), when it discharged him and failed to process a grievance

8 L150's
brief

Section 1220.40(a) of the Rules and Regulations of the Illinois Labor Relations Boards, 80 Ill. Admin. Code Sections 1200 through 1230, the Charging Party filed a timely appeal of the Executive Director's Dismissal. A response to that appeal was timely filed by the Respondent. After reviewing the record, the appeal and the response, we hereby sustain the Executive Director's Dismissal as there is no issue of law or fact sufficient to warrant a hearing concerning the alleged violations of

Sections 10(a)(1) and (7) ofthe Act.1

Dismissal

On December 6, 1996, Robert Allen (Charging Party) filed a charge with the Illinois Local Labor Relations Board (Board) in Case No. L-CA-97-036 alleging that the Chicago Transit Authority, (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a) ofthe Illinois Public Labor Relations Act, 5 ILCS 3 15 (1992) (Act) by failing to process his grievance according to the collective bargaining agreement between it and Charging Party's exclusive bargaining representative, International Brotherhood of Electrical Workers, Local 134 (Union). After an investigation conducted pursuant to Section 11 of the Act, the Executive Director has determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issues this Dismissal for the following reasons. 1

I. Investigatory Facts

Respondent is a public employer within the meaning of Section 3(0) ofthe Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act and worked as an electrician for the Respondent. The Union is a labor organization within the meaning of Section 3(i) of the Act and the exclusive bargaining representative of a group of electricians working for the Employer including Charging Party (Unit). A collective bargaining agreement governs the relationship between the Respondent and Union for the unit which includes a grievance procedure that culminates in final and binding arbitration (Agreement).

The grievance procedure has four steps. There is a five-day time limit between each of the first three steps and a ten-day time limit to initiate the fourth step. Step 1 is a verbal discussion between the aggrieved employee and/or his Union steward and the employee's foreman. If the matter is not resolved at Step 1 the grievance can be advanced to Step 2. Step 2 requires the employee or Union steward to file with the appropriate Department Manager a written grievance on a grievance form supplied by the Union and signed by a Union steward. The Department Manager will respond in writing and return the grievance form to the Union steward involved. Step 3 requires the Union to present the grievance to the Gencral Manager, Industrial Relations, who will conduct a meetmg WIth the Unron. Step 4 is final and binding arbitration.

Charging Party began working for the Employer in July, 1995. On or about April 12, 1996, Charging Party voluntarily entered thc Employcc Assistance Program (EAP) because of drug, emotional, and family problems. Prior to that time, Charging Party had missed numerous days ofwork and had been late for work on numerous other occasions. On May 3, 1996, the Employer's doctor determined Charging Party to be "fit for duty." On May 6, 1996, Charging Party reported to work but Mr. Gamer, one of Charging Party's supervisors, relieved him of duty pending a meeting on May 9, 1996. Gamer also advised Charging Party of the EAP. On May 6, 1996, Mr. Kurtovich, another supervisor, called Charging Party at home and told him to see Dr. Realiza about his hospitalization. Charging Party saw Dr. Realiza on May 7, 1996, and Dr. Realiza determined him "not fit for duty" and told him to submit to a drug test and to see an EAP counselor. The meeting scheduled for May 9: 1996, was canceled.

On June 7, 1996, Ms. Petersen, EAP counselor, met with Charging Party and Union steward Mike Fedanzo. All three signed an EAP participant agreement form, which required Charging Party to submit to two drug tests per week and states that a positive result may result in discharge. Charging Party submitted to the drug tests as required. On or about June 26, 1996, Petersen told Charging Party that he tested positive for drugs on June 19 and 21 , 1996. Charging Party explained that the results were positive because ofprescribed medication he was taking because ofan injury. On July 1, 1996, Petersen advised Charging Party that the Employer was removing him from EAP and not to submit to any more drug tests.

On or about July 24, 1996, Robert Gierut, the Employer's General Manager-Human Resource Program Compliance, met with Fedanzo and Charging Party. Gierut explained that Charging Party had an attendance problem in addition to his drug problem. On July 30, 1996, Gierut met with Peter Cerf, chiefsteward for the Union, and Charging Party. Immediately before that meeting, Cerf met with Charging Party and they discussed his situation. Then all three met and discussed Charging Party's situation.

Then Gierut and Cerf met alone. After those two met, Cerf talked to Charging Party about resigning. Cerf explained that if Charging Party resigned his record would not indicate that he was discharged for failing to complete EAP. Charging Party told Cerfhe could not resign.

On August 14, 1996, Dennis Milicevic, the Employer's General Manager-Bus Heavy Maintenance, conducted a discharge meeting. Cerf accompanied Charging Party at the meeting. At this meeting Charging Party gave a two-page letter to Milicevic. The letter explained Charging Party's side ofthe situation. Milicevic read the letter and then handed a "Notice of Discharge" to Charging Party dated August 14, 1996. The notice provided that the Employer was discharging Charging Party because of the following: failure to abide by rules; conduct unbecoming an employee and excessive absenteeism; changing his work schedule without authorization; failing to use his best judgnent when a situation arises that is not covered

by the rules; and failing to complete EAP. All three signed the 'Notice ofDischarge." Charging Party was one of more than 50 employees whom Respondent discharged for falling to complete an EAP and/or for some other drug related situation in 1996.

Il. Position of the Parties

A. Charging Party

Charging Party alleges that Respondent has failed to follow the grievance procedure contained in the Agreement. Charging Party contends that the Respondent and the Union conspired against him. He alleged that they are "in bed together" and they always cut deals with each other. Charging Party contends that Respondent and the Union frequently cut deals with each other over these types ofmatters. Charging Party contends that several managers wanted him discharged and were racially motivated and that the Union failed to object in order to obtain favor or to repay a favor. Charging Party contends that the fact that Gierut and Cerf are brothers-in-law establishes the conspiracy.

Charging Party contends that he told Milicevic LhaL the leLler he submiLled al Lhe August 14, 1996, tneeling was a grievance. Charging Party argues that Respondent knew th1S but never responded to It as It IS required to do pursuant to the Agreement. Charging Party finally, argues that the entire. situation and all of Respondent's and the I Tnion's arguments are a smoke screen so that they can justify his discharge.

Charging Party argues that the primary reason for his discharge was his failure to complete EAP, which he contends was impossible because his EAP counsclor was on vacation and Rcspondcnt failcd to advisc him of his treatmcnt program. He argues that all the other reasons for his discharge are invalid because those were the reasons he joined the EAP and to use them as the reason for his discharge would be akin to double jeopardy. He also contends that because he voluntarily admitted himself to the EAP the Respondent must follow the EAP rules and regulations and cannot discharge him while he remains in the EAP. Charging Party argues that Respondent knew all this but discharged him in any event knowing that the Union would not advance his grievance.

B. Respondent

Respondent argues it has not violated the Act. Respondent admits that Charging Party gave one ofits agents a two-page statement explaining his position, but it contends that the statement was not a grievance and that neither the Charging Party nor the Union ever filed a grievance as provided in the Agreement. Additionally, Respondent contends that Charging Party has failed to allege that it has interfered with his rights as provided for by the Act or that it has retaliated against him for invoking his rights under the Act.

Ill. Discussion and Analysis

Charging Party alleges that Respondent violated the Act by not following the grievance procedure contained in the Agreement and by conspiring with the Union to discharge him. Section 10(a)(1) ofthe Act makes it an unfair labor practice for an employer or its agents "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in [the) Act. " Section 6(a) of the Act provides in part that public employees shall have the right "to engage in . . . concerted activities . . . for the purpose of . . . mutual aid or protection. . . . ' Section IO(a)(2) of the Act makes it an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization." To establish a violation of the Act, the charging party must establish aprimafacie showing that: (1) the employee was engaged in union activity; (2) employer knew ofthe employees conduct; and (3) union animus was a substantial or motivating factor in the employer's decision to take the adverse action. City ofBurbank v Illinois State Labor Relations Board, 128 111.2d 335, 538 N.E.2d

1146, 5 PERI 4013 (1989). The charging party can establish the unlawful motive by direct or circumstantial evidence, including the ti_ming of the employer's action in relation to the protected activity, expressed hostility toward unionization, disparate treatment between union employees and other ernployees and shifting or inconsistent reasons for the adverse employment action. Burbank, 5 PERI atXII-61. If the

Charging Party establishes aprimafacie case, then the Respondent has the burden of producing evidence to show that it would have taken the same action for legitimate reasons even in the absence ofthe union activity. Burbank, 5 PERI at XII-61.

Charging Party alleges that Respondent violated the Act by failing to abide by the grievance procedure contained in the Agreement and by conspiring with the Union to discharge him. First, Charging Party has not filed a grievance on a grievance form as required by the Agreement and therefore Respondent could not have violated the Agreement. Consequently, any unfair labor practice charge alleging that a violation of the Agreement constitutes an unfair labor practice must fail.

Assuming that the letter Charging Party gave to Milicevic at the August 14, 1996, meeting constitutes a grievance, Respondent's failure to respond to it, in this case, does not constitute an unfair labor practice. Charging Party did not allege, nor did he provide evidence supporting a proposition, that his discharge or Respondent's failure to respond to his alleged grievance was in retaliation for filing a grievanc• or pursuing his griovanc,e, hoc,auso hß engaged in soma other protected concerted activity, or was otherwise prompted by anti-union animus. A violation of a collective balgaining ageelnenl does nol aulunatically ccnslilute an unfair labor practice. The mere assertion that the Respondent violated the Agreement without evidence of retaliation or other anti-union animus does not raise an issue of law or fact which necessitates a hearing. It must be noted that it is the Charging Party's and Union's, not the Respondent's, responsibility to advance grievances, even if and especially if the Respondent chooses to deny it by ignoring it. If the Charging Party and Union fail to advance the grievance to the next step then there is nothing 10 which Respondent call tespoud.

Charging Party also contends that according to the rules and regulations of EAP Respondent cannot discharge him while he is participating in the program even if he tests positive for drugs. This argument runs contrary to the participant agreement Charging Party signed which states that a positive test result may result in discharge. Notwithstanding the participant agreement, Charging Party has failed to provide evidence that Respondent allegedly failed to follow its own BAP rules and regulations in order to retaliate against him or because of some other improper motive. As discussed above concerning Respondent's alleged failure to follow the grievance procedure, the mere fact that Respondent discharged Charging Party together with the allegation that Respondent failed to follow its own rules and regulations is not in and of itself evidence sufficient to warrant a hearing. There is no evidence of anti-union animus, in motive, retaliation, or disparate treatment.

Charging Party's allegation that Respondent and the Union conspired against him is unsupported. The only piece of evidence of this conspiracy is the familial relationship of one of the Union stewards and one of Respondent's agents, however, the familial relationship standing alone is not evidence of a conspiracy or intentional misconduct. Charging Party presented no evidence establishing that such a situation is irregular. Additionally, there is no evidence that it is highly unusual for Respondent to meet with the Charging Party's union steward in private when attempting to settle grievances regardless of the familial relationship. Charging Party has provided no evidence that any part of the procedure was irregular or that Respondent's decision was based on something other than its beliefthat Charging Party tested positive for drugs after being admitted into the EAP, and signing the participant agreement. There is no evidence that Respondent treated him differently than it has treated other similarly situated employees, retaliated against him, or otherwise acted with an improper motive.

Finally, Charging Party believes that the discharge may be racially motivated. Section IO(a) of the Act protects against discrimination resulting from a public employee's engagement in protected concerted activity or union activity, it does not protect against discrimination based on an employee's race, sex, national origin, age, religion, etc. City of Chicago, (Departnent of Police), 7 PERI 3035 (IL LLRB 1991); Illinois Department of Central Management Services and Corrections, 8 PEPd ¶2047 (IL SLRB 1992).

There being no evidence of retaliation, disparate treatment, anti-union animus or a causal con_nection linking Charging Party's discharge to Respondent's alleged failure to follow the Agreement and its failure to respond to Charging Party's alleged grievance there is no issue of law or fact sufficient to warrant a hearing on this matter.

IV. Order

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. Such appeal must be in uriting, contain the case caption and number, and must be addressed to Jacalyn J. Zimmerman, the Board's General Counsel, at 160 North LaSalle Steet, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reasons in support thereof, and must be served upon all other parties involved in the case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties involved in the case and veriÜing that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, the Dismissal will be final.

Footnotes

1 Though the Executive Director failed to address the alleged violation of Section of the Act, we find no reason to issue a complaint on that allegation. Section IO(a)(7) prohibits a public employer from refusing to enter into or sign a written oollcctivc bargaining agrcemcnt. The facts allcgcd by thc Charging Party siruply (10 li0L supporl a violation of this particular section ofthe Act as there is no evidence indicating that the Respondent was refusing to sign or enter into a collective bargaining agreement.E

1 On the same day, the Executive Director dismissed the charge the Charging Party filed against his union in Robert Allen and Intemational Brotherhood ofElecfrical Workers, Local 134, Case No. L-CB-97-037. In that charge Charging Party alleged that his Union failed to advance his grievance through the grievance procedure and failed to properly represent him during the grievance process.E

13 PERI 3008, 13 Pub. Employee Rep. for Illinois 3008, 1997 WL 34820308

Illinois Local Labor Relations Board

ROBERT ALLEN, CHARGNG PARTY, AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 134, RESPONDENT

No. L-CB-97-037

March 1% 1997

Related Index Numbers

23.21 Grievance Processing, Informing Employee of Decision Not to Process

23.23 Guevance Processmg, RelUsal to Process Grievance

73.113 Interference With or Restraint of Employees' Rights, Types of Interference or Restraint, Breach of Duty of Fair Representation

Case Summary

Where union decided not to pursue grievance on behalfof discharged city electrician based on his failure to file grievance on grievance form, union did not violate its duty offair representation toward electrician without evidence that electrician

proccsscd other grievances that were not on proper rorrns. Further, no evidence chowed that improper motivc was behind union's :eIUsal to pursue grievance. Last, while union had failed, through miscommunication, to inform elecfrician that it would not pursue grievance, union's mere negligence was insufficient to establish statutory violation on union's part.

Full Text

Decision and Order of the Illinois Local Labor Relations Board

On February 14, 1997, the Executive Director of the Illinois Local Labor Relations Board (Board) dismissed the unfair labor practice charge filed by Robert Allen (Charging Party) in the above captioned case which alleged that the International Brotherhood ofElectrical Workers, Local 134, (Respondent) violated Sections (4) and (8) of the Illinois Public Labor Relations Act, 5 ILCS 315 (1994), as amended, (Act), when it failed to represent him in meef_ngs that led to his discharge and in grieving his discharge. Thereafter, in accordance with Section 1220.40(a) of the Rules and Regulations of the Illinois Labor Relations Boards, 80 Ill. Admin. Code Sections 1200 through 1230, the Charging Party filed a timely appeal of the Executive Director's Dismissal. No response to that appeal was filed by the Respondent. After reviewing the record and the appeal we hereby sustain the Executive Director's Dismissal as there is no issue of law or fact sufficient to warrant a hearing concerning the alleged violations of Sections 10(b)(1), (4) and (8) of the Act. 1

Dismissal

On December 6, 1996, Robert Allen (Charging Party) filed a charge with the Illinois Local Labor Relations Board (Board) in Case No. L-CB-97-037 alleging that the Intemational Brotherhood of Electrical Workers, Local 134, (Respondent or Union) engaged in unfair labor practices within the meaning of Section IO(b) ofthe Illinois Public Labor Relations Act, 5 ILCS 3 15 (1992) (Act) by failing to properly represent him. After an investigation conducted pursuant to Section 11 of the Act, the Executive Director has determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issues this Dismissal for the following reasons.

I. Investigatory Facts

Respondent is a labor organization within the meaning of Section 3(i) of the Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act and worked as an electrician for the Chicago Transit Authority (Employer). Respondent is the exclusive bargaining representative of a group of elect-icians working for the Employer including Charging Party (Unit). A collective bargaining agreement govems the relationship between the Respondent and Employer for the unit which includes a grievance procedure that culminates in final and binding arbifration (Agreement).

The grievance procedure has four steps. There is a five-day time limit between each of the first three steps and a ten-day time limit to initiate the fourth step. Step 1 is a verbal discussion between the aggrieved employee and/or his Union steward and the employee's foreman. If the matter is not resolved at Step 1 the grievance can be advanced to Step 2. Step 2 requires the employee or Union steward to file with the appropriate Department Manager a written grievance on a grievance form supplied by the Union and signed by a Union steward. The Department Manager will respond in writing and retum the grievance fonn to the Union steward involved. Step 3 requires the Union to present the grievance to the Geneal Manager. Industrial Relations, who will conduct a meeting with thc Union. Step 4 is final and binding arbitration.

Charging Party began working fol the Employer in July, 1995. 011 01 abouL April 12, 1996, Charging Party voluntarily entered the Employee Assistance Program (EAP) because ofdrug, emotional, and family problems. Prior to that time, Charging Party had missed numerous days of work and had been late for work on numerous other occasions. On May 3, 1996, the Employer's doctor determined Charging Party to be "fit for duty." On May 6, 1996, Charging Party reported to work but Mr. Garner, one. of Charging Party's supervisors, relieved him of duty pending a meeting on May 9, 1996. Garner also advised Charging Party of the EAP. On May 6, 1996, Mr. Kurtovich, another supervisor, called Charging Party at home and told him to see Dr. Realiza about his hospitalization. Charging Pally saw DI. Reulizu on Muy 7, 1996, and Dr. Rcaliza determined him "not fit for duly" and told him to submit to a drug test and to see an EAP counselor. The meeting scheduled for May 9, 1996: was canceled.

On June 7, 1996, Ms. Petersen, EAP counselor, met with Charging Party and Union steward Mike Fedanzo. All three signed an EAP participant agreement form, which required Charging Party to submit to two drug tests per week and states that a positive result may result in discharge. Charging Party submitted to the drug tests as required. On or about June 26, 1996, Petersen told Charging Party that he tested positive for drugs on June 19 and 21, 1996. Charging Party explained that the results were positive because ofprescribed medication he was taking because of an injury. On July 1 , 1996, Petersen advised Charging Party that the Employer was removing him from EAP and not to submit to any more drug tests.

On or about July 24, 1996, Robert Gierut, the Employer's General Manager---Human Resource Program Compliance, met with Fedanzo and Charging Party. Gierut explained that Charging Party had an attendance problem in addition to his drug problem. On July 30, 1996, Gierut met with Peter Cerf, chief steward for Respondent and Charging Party. Immediately before that meeting, Cerfmet with Charging Party and they discussed his situation. Then all three met and discussed Charging Party's situation. Then Gierut and Cerfmet alone. After those two met, Cerftalked to Charging Party about resigning. Cerf explained that if Charging Party resigned his record would not indicate that he was discharged for failing to complete EAP. Charging Party told Cerfhe could not resign.

On August 14, 1996, Dennis Milicevic, the Employer's General Manager---Bus Heavy Maintenance, conducted a discharge meeting. Cerf accompanied Charging Party at the meeting. At this meeting Charging Party gave a two-page letter to Milicevic. The letter explained Charging Party's side of the situation. Milicevic read the letter and then handed a 'Notice of Discharge" to Charging Party dated August 14, 1996. The notice provided that the Employer was discharging Charging Party because of the following: failure to abide by rules; conduct unbecoming an employee and excessive absenteeism;

changing his work schedule without authorization; failing to use his best judgment when a situation arises that is not covered by the rules; and failing to complete EAP. All three signed the "Notice of Discharge."

11. Position of the Parties

A. Charging Party

Charging Party alleges that Respondent has failed to properly represent him and has conspired with the Employer to have him discharged. He alleges that the Respondent and the Employer are "in bed together" and they frequently cut deals with each other over these types of matters. He contends that several managers wanted him discharged and that Respondent agreed with the Employer to discharge him rather than fight for his rights. Charging Party believes that his discharge may have been racially motivated. In support ofhis allegations, Charging Party points to the fact that Cerf and Gierut are brothers-in-law and that at first Cerfexplaincd that he would be able to work things out and he would not be discharged but after the private meeting between Cerf and Gierut on July 30, 1996, Cerf completely changed his mind and attempted to persuade Charging Party to resign. Charging Party contends that Ceffs attitude changed after the private meeting between Cerf and Gierut, and after Charging Party explained that he would not resign in that Cerfbecame agitated and raised his voice and told Charging Party that he should not think hc going to bc able to sue the Employel and win lots or money.

Charging Party also contends that he told C.erf at the meeting on August 14, 1996, that he could not resign, that the Icttcr he gave to Milicevic at that meeting was a grievance, and that Respondent should follow the grievance procedure as required by the Agreement. Charging Party contends that the Agreement contains mandatory language at Steps 2 and 3 of the grievance procedure such as the Union or steward "shall" file a grievance or present it to management and that Respondent has no discretion not to advancc a grievance to Steps 2 and 3. Charging Party argucs that by not pursuing his grievance beyond Step I the Union has violated the Agreement thereby comrnitting an unfair labor practice. Charging Party also argues that the Employer and Respondent knew the letter was his grievance but that the Respondent intentionally failed to follow up on the grievance so that the Employer could deem it untimely. Charging Party contends this occurred because of the familial relationship between Cerf and Gierut and is evidence of the conspiracy against him and intentional misconduct.

Charging Party also contends that intentional misconduct is demonsfrated by the Respondent's failure to respond to his telephone calls and letters requesting that it pursue his grievance. Charging Party contends that Respondent never told him that it was not going to pursue his grievance. After the August 14, 1996, Charging Party called Fedanzo and asked him to file a grievance. Charging Party alleges that Fedanzo told him thathe already filed a grievance and that Charging Party has to get his own attomey to sue the Employer. Charging Party then asked Fedanzo to send a copy of the grievance to him, but Fedanzo never sent a copy of the grievance to him because, Charging Party alleges, he never filed one. Charging Party contends this was done to delay Charging Party from pursuing his rights and to allow the Employer to claim that the grievance is untimely. Charging Party also contends that Cerfrefused to respond to his telephone calls and his letter dated August 16, 1996.

Charging Party finally, argues that the entire situation and all ofRespondent's and the Employer's arguments are a smoke screen so that they canjusti$l his discharge. Charging Party argues that the primary reason for his discharge was his failure to complete EAP, which he contends was impossible because his EAP counselor was on vacation and the Employer failed to advise him of his treatnent program. He argues that all the other reasons for his discharge are invalid because those were

the reasons he joined EAP and to use them as the reason for his discharge would be double jeopardy. Charging Party argues that Respondent Imew all this but failed to do anything about it or to pursue his grievance as required by the Agreement because Respondent wanted him discharged.

B. Respondent

Respondent argues it has not violated the Act. It contends that it adequately represented Charging Party and did all that it could for Charging Party considering the reasons for the discharge. It also contends that Cerf merely suggested that Charging Party resign rather than be discharged so that he could more easily find subsequent employment. Respondent also explained that suggesting resignation in lieu of discharge is somewhat typical depending on the circumstances and is not evidence of intentional misconduct.

Respondent also contends that Charging Party did not file a grievance. Respondent aclmowledges that Charging Party gave a letter to Milicevic at the August 14, 1996, hearing, but believed it to be a response to the discharge and not a grievance because it was not on a grievance form. Respondent also contends that Fedanzo never told Charging Party that he already filed a grievance, but does admit that he told Charging Party that he would have to hire his own attorney to sue the Employer because there was nothing more the Respondent could do for Charging Party. Respondent also contends that Cerfnever received Charging Party's letter dated August 16, 1996. Respondent contends that it treated Charging Party no differently than it has freated other individuals who the Employer discharged for similar infractions. Finally, Respondent stated that if Charging Party' files a grievance on the proper form it will pursue the grievance and argue that it is timely.

Ill. Discussion and Analysis

Chargmg Paz ty mainlams Ihat Respondent breached its duty of' fhir representation by not representmg Charging Party and nol pursuing a grievance on his behalf thereby violating Sectioh 10(b)(l) of the Act. Charging Party cites the conspiracy between Respondent and the Employer, Respondent's failure to file a grievance ag requircd by Step 2 ofthc Agrccmcnt and Respondelll's railtne to lespolld 10 his lellers and return his telephone calls as evidence of intentional misconduct.

Section IO(b)(1) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents:

To restrain or coercepublic employees in the exercise ofthe rights guaranteed in this Act provided . . . (ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

In FOP, Illinois Labor Council (Denore et al.), 8 PERI 2033 (IL ISLR.B 1992), and SEW, Local 25 (Breland), 7 PERI ¶ 3041 (IL LLRB 1991), the State and Local Boards cited with approval the interpretation of the intentional misconduct standard utilized by the United States Court of Appeals for the Seventh Circuit in Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981). Under Hoffman and other similar cases, the Seventh Circuit has established a two-part analysis for a breach of the intentional misconduct standard. First, a charging party must establish that the union's conduct is intentional, invidious and specifically directed at the employee(s). Also, a charging party must show that the union's intentional action occurred because of and in retaliation for some past activity engaged in by the charging party or because ofthe charging party's status. A charging party must allege this bad faith motive with a showing of fraud, deceitful actions, or dishonest conduct by the labor organization to have a viable claim under Section 10(b)(1) ofthe Act. Further, the Board has held that

a union violates its duty of fair representation if it acts or refrains from acting because of an employee's union activities, or any inelevant reason such as the race, sex, or national origin of the employee, or personal animosity toward the employee. Amalgamated Transit Union (Weatherspoon), 10 PERI 3012 (L LLRB 1994), affinned 10 4009 (1994). Also in Grafv. Elgin Joliet and Eastem Railway, 697 F.2d 771 , 112 LRRM 2462 (7th Cir. 1983), the Seventh Circuit held that:

The union has a duty to represent every worker in the bargaining unit fairly but it breaches that duty only if it deliberately and unjustifiably refused to represent the worker. Negligence, even gross negligence is not enough; and, obviously, intentional misconduct may not be inferred from negligence, whether simple or gross.

See also Thomas v. United Parcel Service, 890 F.2d 909 (7th Cir. 1989); Olsen v. United Parcel Senice, 892 F.2d 1290 (7th Cir. 1990).

Respondent's decision not to pursue a grievance on behalf ofCharging Party appears to be based on the fact that Charging Party failed to file his grievance on a gievance form. Absent a properly submitted grievance, there is nothing upon which Respondent can act. Although this may appear to be form over substance, Charging Party has produced no evidence wherein Respondent processed other grievances that were not on proper forms. Additionally, as discussed below, Charging Party has produced no evidence establishing an improper motive or why Respondent did this. Absent such evidence the charge fails.

Assuming that Charging Party advised various Union stewards that the letter he gave to Milicevic at the August 14, 1996, meeting was his grievance, that Cerfreceived his August 16, 1996, letter, that Respondent failed to respond to various telephone calls, and that Respondent failed to directly tell Charging Party that it would not pursue his grievance the charge still fails. Although no one may have told him 'the Union will not pursue your grievance" Charging Party admits that Cerf talked to him about resigning shortly before the Employer discharged him and Fedanzo told him to hire his own attomey. These comments indicate that the Union was not going to pursue his grievance. Respondent's failure to directly tell Charging Party that it would not pursue a grievance on his behalf or tell him that his situation was dire may have resulted from a miscommunication and may constitute negligence, however, negligence is insufficient to establish a violation of the Act. See AFSCME Local I I I I (Mu.rphy), 9 PERI 3025 (IL LLRB 1993). Additionally, Charging Party failed to allege any reason for Respondent's actions.

Respondent appears to have believed, based on objective evidence, i.e. positive drug tests, that it could not prevail if it pursued Charging Party's situation. 10 Sc.cliotl 6(d) oflhc Act Respondenl has (he light to lcft'din fi processing unmeritorious grievances. See LIUNA Local 2 (Mazzie), 10 PERI 3004 (ILLLkB 1993); A•ru, Local 241 (Conley & Walton), 8 PERI ¶3021 (ILLLRB 1992). Charging Party has provided no evidence that Respondent's failure to pursue a grievance on his behalfwas motivated by bad faith or an otherwise improper motive. Charging Party has provided no evidence establishmg why Respondent took the actions it did, rather he simply repeated that Respondent did not want to follow the grievance procedure and conspired with the Employer against him. Charging Party contends that intentional misconduct and a conspiracy are established by the fact that he was discharged and Respondent did not pursue his grievance. However, Respondent's failure, standing alone, is not evidence ofintentional misconduct or a conspiracy. This type or situation is precisely what Section 6(d) of the Act is designed to cover. Otherwise a union would be required to pursue every grievance regardless of the merits to at least the arbifration step.

Charging Party's assertion that the Agreement requires Respondent to pursue his grievance to Steps 2 and 3 is incorrect. Although the Agreement contains mandatory language, Charging Party's asserfion is illogical. It must be noted that the grievant has no right under the Agreement to pursue Step 4 on his own. That is exclusively Respondent's right. The language in the Agreement cannot be consfrued as requiring the Respondent to expend valuable resources once it decides that a grievance is unmeritorious only to later decide not to proceed to Step 4 arbitration. If the Respondent decides that it cannot win the grievance and that it has done all that it can, Section 6(d) of the Act gives it the right to refrain from pursuing it, regardless of the fact that it is not yet at the arbitration step. Additionally, Charging Party has provided no evidence that the Respondent has treated him differently than other Unit members. There is no evidence that Respondent always pursues every grievance through Step 3 regardless of its merits. Charging Party has presented no evidence that Respondent was motivated by hostility toward him or otherwise has acted in bad faith.

Charging Party also takes issue with the fact that Cerfand Gierut are related, however, the familial relationship standing alone is not evidence ofa conspiracy or intentional misconduct. Charging Party presented no evidence establishing that such a situation is irregular. Additionally, there is no evidence that it is highly unusual for Respondent to meet with the Employer's agent in private when attempting to settle grievances regardless of the familial relationship. Even though Respondent may have attempted to persuade Charging Party to resign immediately after a meeting at which Charging Party was excluded, that in and of itself is not suffcient to raise an issue of fact suffcient to necessitate a hearing. Charging Party has provided no evidence that any part of the procedure was irregular or that Respondent's decision was based on something other than its belief that it could not prevail. There is no evidence that Respondent treated him differently than it has treated other similarly situated bargaining unit members. Therefore, absent evidence ofthis nature, Respondent's decision not to pursue a grievance on Charging Partys behalf is not evidence of intentional misconduct.

There being no evidence that Respondent targeted Charging Party or applied its decision making process in a discriminatory, hostile, or disparate fashion, or acted with an improper motive or in bad faith, there is no issue of fact or law sufficient to warrant a hearing.

IV. Order

IBEW LOCAL 134 (ALLEN), 13 PERI ¶ 3008 (1997)

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to Jacalyn J. Zimmerman, the Boards General Counsel, at 160 North LaSalle Steet, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reasons in support thereof, and must be served upon all other parties involved in the case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties involved in the case and verifring that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, the Dismissal will be final.

Footnotes

1 Though the. F.xec.utive Director failed to address the. alle.ge.d violation of Sections and (8) ofthe Act) we find no reason to issue a complaint on those allegations. Section 10(b)(4) of the Act prohibits a public employer from refusing to negotiate in good faith with a labor organization which is the exclusive bargaining representative of its employees. Section prohibits a public employer from refusing to enter into or sign a written collective bargaining agreement with that exclusive bargaining representative. The facts alleged by the Charging Party simply do not support a violation of these particular sections of the Act as there is no evidence indicating that the Respondent was refusing to bargain with any exclusive bargaining representative of its employees or to sign or enter into a written collective bargaining agreement.E

1 On the same day, the Executive Director dismissed the charge the Charging Party filed against his Employer, Chicago Transit Authority in Robert Allen and Chicago Transit Authority, Case No. L-CA-97-036. In that charge Charging Party alleged that his Employer violated the Act by failing to respond to his grievance as required by the grievance procedure contained in the collective bargaining agreement executed by the Employer and Respondent.

2 The Employer responded to Charging Party's charge against it, in Robert Allen and Chicago Transit Authority, Case No. L-CA-97-036, arguing that Charging Party failed to file a grievance.

3 Section 6(d) of the Act reads, in pertinent part, as follows: . .. Nothing herein shall be constued to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.E

ElisApp,3d

KeyCite Yellow Flag - Negative Treatment
Distinguished by Gyant v. Dimas, Ill.App. I Dist., February 22, 2019

296 Ill.App.3d 335

union, and therefore deputies' claim was under jurisdiction of Illinois State Labor Relations Board (ISLRB) rather than circuit court. S.H.A.

5 31S/6(d), 10(b)(1).

p. 13 of 150

Appellate Court of Illinois,
Second District.

Dean GANTZ et al., Plaintiffs—Appellants,

The McHENRY COUNTY SHERIFF'S

DEPARTMENT MERIT COMMISSION

et al., Defendants—Appellees.

No. 2—97—0454.

May 8, 1998.

Synopsis

Nonmerited deputies working at county jail brought action agamst sheriffs department ment commission, county and sheriff, claiming that they were entitled to same compensation under collective bargaining agreement as merited deputies who worked at the jail. The Circuit Court, McHenry County, Terence J. Brady, J., granted defendants' motion to dismiss. Deputies appealed. The Appellate Court, Rathje, J., held that: (1) deputies' allegations essentially alleged breach of duty of fair representation claim which was under jurisdiction of Illinois State Labor Relations Board (ISLRB); (2) deputies' claim involved dispute arising from collective bargaining agreement which was under jurisdiction of ISLRB; and (3) collective bargaining agreement barred deputies' action.

Appeal dismissed.

Procedural Posture(s): On Appeal; Motion to Dismiss; Motion to Dismiss for Lack of Subject Matter Jurisdiction.

West Headnotes (4)

[Il Labor and Employment Fair Representation

Allegations of nonmerited deputies working at county jail that they were entitled to same compensation under collective bargaining agreement as merited deputies performing same work at the jail essentially

2 Cases that cite this headnote

[2] Labor and Employment Collective Bargaining in General

Claim of nonmerited deputies working at county jail that they were entitled to same compensation under collective bargaining agreement as merited deputies performing same work at the jail involved dispute arising from collective bargaining agreement, and therefore Illinois State Labor Relations Board (ISLRB), rather than circuit court, had jurisdiction over the matter. S.H.A. 5 ILCS 315/56), 156, b).

2 Cases Chat cite this headnotc

131 Labor and Employment Persons Concluded

Collective bargaining agreement providing that arbitrator's decision was binding on parties barred nonmerited deputies working at county jail, after arbitrator denied their grievance alleging that they were entitled to same compensation as merited deputies, from maintaining lawsuit raising the same complaint.

1 Cases that cite this headnote

[41 Appeal and Error Jurisdiction of Lower Coult

Anneal and Error Want Of Jurisdiction

5/40 (18

2.5 hours to read

OVO

0 2021 No to

alleged a breach of duty of fair representation
claim against

Attorneys and Law Firms

**800 *335 Magee, Negele & Associates, James T. Magee, Round Lake, for Dean Gantz.

William I. Caldwell Jr., Caldwell, Bemer & Caldwell, Woodstock, for Sheriffs Dept. Merit Com'n, McHenry Co.

Gary W, Pack, McHenry County State's Atty., Woodstock, James T. Harrison, Harrison Law Offices, P.C., Woodstock, for County of McHenry.

*336 Bruce C. Beal, Ciaudon, Lloyd, Barnhart & Beal, Ltd., Canton, for George H. Hendle, Sheriff and William Mullen, Sheriff.

Opinion

Justice RATHJE delivered the opinion of the court:

Plaintiffs, Dean Gantz et al., filed a three-count complaint seeking dec.latatory judgment, illjllttclive telief) and datnage.s The crux of the complaint was that plaintiffs, nonmerited deputies working at the McHenry County jail, were entitled to the same compensation under a 1990—to—1993 collective bargaining agreement (CBA) as the merited deputies who worked at the coun%rjail. Defendants McHenry County Sheriffs Department Merit Commission (Merit Commission), McHenry County (County), and William Mullen, the sheriff of McHenry County (sheriff), filed a motion to dismiss the complaint. After **1019 ***801 a hearing, the frial court found that plaintiffs' complaint was barred on three grounds: (1) the running of the statute of liliitations under the Local Governmental and Govemmental Employees Tort Immunity Act (745 ILCS 10/8—101 (West 1994)); (2) the lack of subject matter jurisdiction, i.e., preemption of collective bargaining issues under the Illinois

Public Labor Relations Act (the Act) (f. 5 LCS 315/1 etseq. (West 1994)); and (3) resjudicata, where a prior arbitration decision based upon the same facts and parties had already disposed of the issues raised in plaintiffs' complaint.

The record reveals the following facts. Plaintiffs were 55 correctional offcers assigned to work at the McHenry County jail. All plaintiffs were hired after an ordinance was adopted by the County on February 16, 1988. The ordinance removed all correctional offcers from the jurisdiction of the Merit Commission. The last of the plaintiffs hired took his position over a year before the filing of the subject complaint on June 5, 1996. None ofthe plaintiffs was hired or certified through the Merit Commission. Plaintiffs' principal duties were to operate and maintain the County jail.

Approximately six merited deputy sheriffs were assigned to the County jail and performed the same duties as the nonmerited deputies. However, these merited deputy sheriffs were hired before 1988 and were certified by the Merit Con-mission. Together, the nonmerited and merited deputies working at the County jail constituted a bargaining unit, which was designated the "Corrections Officer Bargaining Uni?' (the Unit).

The Illinois Fraternal Ordcr of Police Labor Council, on behalf of and with Lodge No. 119 (the Union), was the exclusive representative for all bargaining units in the sheriffs department. Since 1987, the Union, the County, and the sheriff had worked out CBAs covering, inter alia, the employees within the Unit. In the 1990-t0-1993 *337 CBA, which is the focus of this appeal, the Union, thc County, and the sheriff expressly bargained for a dual rate of pay for work pcrfOrmed ut Lhc County Jull by the rncrlled and nonmerlted deputies. Despite the fact that merited and nonmerited deputies performed the same duties, the merited deputies received a higher rate of pay than the nonmerited deputies. Under the CBA covering 1993 to 1996, the rate of pay for these two classifications of employees within the Unit was made equal, and plaintiffs make no claim for additional pay under the latter CBA.

The Union filed a grievance on November 4, 1993, just as the 1990—to—1993 contract was expiring and when negotiations for the 1993—to—1996 agreement were commencing. This grievance was brought pursuant to the terrns and conditions ofthe 1990—to—1993 CBA. The grievance alleged that, under said CBA, the nonmerited deputies should have been deemed merited deputies, i.e., they should have received the same compensation as the merited deputies working at the County jail. On January 11 and 12, 1996, the arbitrator held a hearing on the grievance. On July 31, 1996, the arbitrator issued a decision which denied the grievance. The arbitator found, inter alia, that the Union and the grievants had no basis to complain about the dual pay scale within the Unit because the latter were paid according to the wage scale that was bargained for

under the subject CBA. Subsequently, plaintiffs brought the subject cause of action against defendants in the frial court.

We first address plaintiffs' argument that the frial court erred in granting the motion to dismiss on the basis that it lacked

subject matter jurisdiction. This general issue can be broken down into three subissues, namely, (1) whether the plaintiffs' allegations, in effect, amount to a charge ofbreach ofthe duty of fair representation against the Union and, thus, plaintiffs' complaint comes within the Illinois State Labor Relations Board's (ISLRBs) jurisdiction; (2) whether the ISLRB has exclusive jurisdiction over the collective bargaming issues raised by plaintiffs; and (3) whether the grievance portion of the subject CBA permits plaintiffs to pursue a cause of action in the courts.

Intere;tingly, plaintiff briefs never diractly address the issue of subject matter jurisdiction. However, dcföndants' brieß, particularly [hose or the sheriff and Ihe County, argue extensively that the issue of unequal wages between the merited and nonmerited deputies within the Unit was a matterunderthejurisdiction ofthe ISLRB. **1080 ***802 Specifically, defendants assert that plaintiffs have been paid under the terms of the 199040—1993 CBA, which were negotiated by the Union, the sheriff, and the County in full accordance with thc Act. *338 Thcy contend that plaintiffs' complaint seeks to achieve through litigation in the courts what plaintiffs could not gain through negotiations by their exclusive bargaining representative, the Union. Defendants maintain that plaintiffs' argument is with the Union, which, according to defendants, essentially breached its duty of fair representation by negotiating a CBA that permitted a two-tier wage scale for merited and nonmerited deputies. Defendants argue that the proper forum for plaintiffs' concems is the ISLRB.

Ill We now address the first subissue, i.e., whether plaintiffs had essentially alleged a breach of the duty of fair representation against the Union, a claim that was under the ISLRB's jurisdiction. In the instant appeal, there is no dispute that plaintiffs were members of a bargaining unit that was represented by the Union. There is no dispute that the Union, the sheriff, and the County fashioned CBAs for all the units of the sheriffs department for the years 1990 to 1993 and that plaintiffs' unit ratified the CBA, which provided, inter alia, for plaintiffs' wages and working conditions. As noted above, the crux ofplaintiffs' cause of action is that they were improperly relegated to a wage scale inferior to that ofmerited deputies working in the jail. In this context, we find that such an assertion is tantamount to alleging a breach of the duty of fair representation against the Union in fashioning the subject CBA.

In Aåninistrative Office of the Illinois Courts v State & Municipal Teamsters, Chauffeurs & Helpers Union, Local 726, 167 111.2d 180, 212 627, 657 N.E.2d 972 (1995), the supreme court stated:

> "The Act prohibits employers and labor organizations and their agents from engaging in unfair labor practices, and the Act contains procedures for resolving claims of that nature. [Citation.] Under those provisions, an employer may not, for example, refuse to bargain in good faith with the exclusive representative of an employee group 01 violHtc 01 der concerning a representation election [Citation.] Nor may an employer interfere Wilh rights granted to employees by the Act or discrirninate against an employee for engaging in prolecled activity. [Citation.] The Act prohibits corresponding forms of misconduct by labor organizations and their members. [Citation.] Unfair labor practice charges are to befiled with the appropriate labor board, which may investigate the charge, hear evidence, and grant relief Review of a labor board's disposition of an unfair labor practice charge lies directly 10 Lhe appellate court. [Citation.] The boards may also institute proceedings in circuit court to enforce their dispositional orders." (Emphasis added.)

Moreover, "the Act imposes upon exclusive representatives the duty of fair representation[,] and * * * an exclusive bargaining representative *339 commits an

unfair labor practice pursuant to section ofthe Act when it fails to fairly represent the interest of all members of a bargaining unit as required by section 6(d) of the Act." Foley v. American Federation of State, County, & Municipal Employees, 199 111.App.3d 6, 8-9, 144 Ill-Dec. 903, 556 N.E.2d (1990).

Further, section 6(d) of the Act provides in pertinent part:

> "Labor organizations recognized by a public employer as the exclusive representative or so designated in accordance with the provisions of this Act are responsible for representing the interests of all public employees in the unit." (Emphasis added.) 5 LCS 315/6(d) (West 1994).

Admittedly, the Act is relatively silent on what constitutes a breach of the duty of fair representation by an exclusive representative. However, we infer from its language that the Union's bargaining of a CBA under which nonmerited deputies earned less than merited deputies even though they did the exact sarne work is an example of an alleged breach

of the duty of fair representation, which should be addressed to the ISLRB, not the circuit court.

In Foley, the appellate court described some compelling reasons why such actions should go the ISLRB rather than to circuit courts.

> **1081 ***803 "Inconsistent judgments and forum shopping will be inevitable ifwe pronounce a rule whereby breach of the duty of fair representation claims can be maintained in the circuit courts, as well as before the Board Furthermore, our already overburdened court system would face increased amounts of unnecessary litigation."i - Foley. 199 111.App.3dat 11, 144 Ill.nec. 903, 556 N.E.2d 581.

[21 In the next subissue, defendants argue that the Act gives the ISLRB exclusivejurisdiction over the matters related to collective bargaining. The defendants cite the Act, which provides in pcrtinent part:

> "(a) There is created the Illinois State Labor Relations Board * * * which shall havejunsdiction over collective bargaining matters between employee organizations * * * and units of local government * * * ." (Emphasis added.)
>
> 5 ILCS 315/56) (West 1994).

The Act further provides:

> "(a) In case of any conflict between the provisions of this Act and any other law, executive order or administative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and con&ol. * * *
>
> (b) Except as provided in subsection (a) above, any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary *340 statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents." 5 LCS 315/150, (b) (West 1994).

It is clear from this statutory language that, in disputes arising from CBAs, the ISLRB has jurisdiction over the subject claims. In the instant appeal, plaintiffs' failure to submit initially their claims concerning the 1990—to—1993 CBA to the ISLRB further served to divest the circuit court of subject matter jurisdiction over plaintiffs' cause of action.

[31 Regarding the final subissue, defendants point to the following language found in the CBA. (Here we must note that the 1990—to—1993 CBA is not part of the appellate record. However, the 1993—to—1996 CBA is in the record, and apparently it contains the same language as the relevant portions of the prior CBA. The parties do not argue that the subject language of the 199340—1996 CBA is materially different from that of the 1990—to—1993 CBA.)

> "The decision and awa.ld of the arbitrator shall bc made within (45) days following the [arbitation] hearing and shall be final and binding on the Employer, the Lodge/Council and the Employee or Employees involved." (Emphasis added.)

This language from the subject CBA leaves no doubt that all the parties contracted away their right to take their claims further than arbitration. The CBA clearly states that the arbitrator's decision is final and binding on the parties. Plaintiffs are of a bargaining unit that agreed to be bound by the arbitrator's decision. This attempt to an end around" on the finality of the arbitator's decision directly contradicts the CBA.

[41 We conclude that, in regard to each ofthe three subissues, defendants prevail in their contention that the trial court was without subject matter jurisdiction over the instant cause of action. As the frial court lacked jurisdiction to hear the case, this court does not have jurisdiction to review its decision and must dismiss the appeal. Greer v. Illinois Liquor Control Comm'n, 185 111.App.3d 219, 221, 133 Il].Dec. 379, 541 N.E.2d 216 (1989).

Appeal dismissed.

GEIGER, P.J., and BOMNAN, J., concur.

All Citations

296 111.App.3d 335, 694 N.E,2d 1078, 230 Ill.Dec. 800

Eki.App.3d

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v. • . ,

KeyCite Yellow Flag - Negative Treatment
Distinguished by Piccioli v. Board of Trustees of Teachers' Retirement System, Ill., April 4, 2019

2013 IL 114853

Supreme Court of Illinois.

The BOARD OF EDUCATION OF PEORIA SCHOOL DISTRICT NO. 150, Appellee,

PEORIA FEDERATION 01 SUPPORT SI'AFF, SECURITY/POLICEMANS BENEVOLENT AND PROTECTIVE ASSOCIATION UNIT No. 114 (The Illinois Educational Labor Relations Board et al., Appellants).

No. 114853.

Oct. 18, 2013.

Synopsis

Background: School disfrict brought action against Illinois Educational Labor Relations Board and Illinois Labor Relations Board, seeking declaratory judgment that statutory amendment that operated to remove jurisdiction over labor disputes between district and its security offcers[l] labor union from Illinois Educational Labor Relations Board (IELRB) and to confer suchjurisdiction on the Illinois Labor Relations Board URB) was unconstitutional special legislation. The Circuit Court, Sangamon County, John Schmidt, J., granted labor boards' motion to dismiss, and dist-ict appealed. The

Appellate court, 2012 IL App (4th) 110875, 362 111.Dec. 221, 972 N.E.2d 1254, Cook, L, reversed and remanded. The Supreme Court allowed appeal.

Holdings: The Supreme Court, Karmeier, J., held that:

[1] district had the right, without exhausting administrative remedies, to bring declaratory judgment action challenging the statutory amendment in question as special legislation; and

[2] amendment was unconstitutional special legislation because it applied only to a school district that had peace offcers employed in its own police departnent in existence on effective date of amendment.

Appellate court judgment affrrned, as modified.

Kilbride, C.J., specially concurred, with opinion.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (l I)

[1] Stututes I awx of Special, I or Private Nature

There are two requisite elements to a successful special legislation challenge: (1) the statutory classification at issue discriminates in favor of a select group, and (2) the classification is arbitrary. S,H.A. Const. Art. 4, 1.3.

2 Cases that cite this headnote

[21 Statutes Laws of Special, Local, or Private Nature

Where no fundamental right or suspect class is affected by the statute in question, the deferential rational basis test applies to a challenge to the statute under the special legislation clause of state constitution. S.H.A. Const. Art. 4, 13.

3 Cases that cite this headnote

[31 Declaratory Judgment Statutory remedy

Labor and Employment Constitutional and Statutory Provisions

Labor and Employment Powers and Functions of Boards

School disfrict had the right, without exhausting administrative remedies, to bring declaratory judgment action asserting that amendment to Illinois Labor Relations Act (ILRA) that purported to remove jurisdiction of Illinois Educational Labor Relations Board (IELRB) over labor disputes between dist-ict

and labor union representing dist-ict's security offcers and to confer such jurisdiction on Illinois Labor Relations Board (ILRB) was unconstitutional special legislation on basis it applied only to a school district that had peace officers employed in its own police departments in existence on effective date of amendment; neither agency had authority to declare amendment unconstitutional.

S.H.A. const. Art. 4, S 13; S.H.A. 5 ILCS

31 5/1 seq., 315/3(n, o); 115 LCS 5/1 et seq.

I Cases that cite this headnote

[4] Administrafive Law and Procedure Constitutional questions or issues

Administrative Law and Procedure Power and authority of agency in general

Administrativc agencies have no authority to declare statutes unconstitutional 01 even to question their validity.

2 Cases that cite this headnote

[51 Appeal and Error Statutory or legislative law

Where a statute is challenged as special legislation, appellate court reviews, de novo, a trial court's determination of constitutionality.
S.H.A. Const. Art. 4, 13.

[6] Appeal and Error De novo review

Appellate court applies a de novo standard of review to a trial court's ruling on a motion to dismiss.

[71 Statutes Applicability of General Law as

Affecting Validity of Speciål Law

Under constitutional prohibition against passage of a special law when a general law can be made applicable, a law that the legislature considers appropriately applied to a generic class presently existing, with attributes that are in no sense unique or unlikely of repetition in the future, cannot rationally, and hence constitutionally, be limited of application by a date restriction that closes the class as of the statute's effective date.
S.H.A. Const. 4, 13.

2 Cases that cite this headnote

18] Statutes Laws of Special, Local, or Private Nature

Special legislation clause of state constitution does not bar the legislature from enacting a law specifically addressing the conditions of an entity that is uniquely situated. S.E.A. Const. Art. 4, 13.

I Cases cilc Lis hcadnole

[9] Statutes Giving effect lc statute or language; construction as written

If statutory language is clear and unambiguous, it must be applied as written, without resort to fürther aids of statutory construction.

[101 Labor and Employment Validity Statutes Labor, employment, and public offcials

Amendment to Illinois Labor Relations Act (ILRA) that operated to remove jurisdiction of Illinois Educational Labor Relations Board (IELRB) over labor disputes between particular school district and its security officers' labor union, and to confer such jurisdiction on Illinois Labor Relations Board (ILRB), was unconstitutional special legislation because it applied only to a school district that directly employed peace officers on effective date of amendment; there was no rational justification for not extending advantages of amendment, which substituted interest arbitation in place of peace officers' right to strike, to disfricts that might directly employ peace offcers in the future. S.H.A. Const. Art. 4, 13; S.H.A. 5 LCS 315/36, 0).

1 Cases that cite this headnote

[11] Declaratory Judgment Determination and disposition of cause

Supreme Court would enter declaratory judgment for school district after concluding

that law that removed labor disputes between district and its security offcers[1] labor union from jurisdiction of the Illinois Educational Labor Relations Board and conferred jurisdiction over such disputes on Illinois Labor Relations Board was unconstitutional as special legislation on basis it applied only to a school district that had peace officers employed in its own police depart-nents in existence on the effective date of the amendment; remand to Hial court, which had dismissed action, was not warranted because pmlies had blough(evc1Y itpp1iciLbIc iuguunclll and consideration to bear on appeal. S,H.A.

Const. Art. 4, 13; S.H.A. [LCS 315/30, 0); Sup.Ct.Rules, Rule 366(a)(5).

2 Cases that cite this headnote

Attorneys and Law Firms

*38 Lisa Madigan, Attorney General, Springfield (Michael A. Scodro, Solicitor General, Sharon A. Purcell, Assistant Attomey General, Chicago, of counsel), Shane M. Voyles, Springfield, for appellants.

Stanley B. Eisenhammer, Elizabeth L. Jensen, Christopher M. Hoffnann, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, Arlington Heights, for appellee.

OPINION

Justice KARMEIER delivered thejudgment ofthe court, with opinion.

**746 I The issues presented in this appeal are: (1) whether plaintiff school district had the right to bring a declaratory judgment action in the circuit court challenging the jurisdiction of the Illinois Labor Relations Board over a dispute involving the **747 *39 district and its security officers; and (2) whether Public Act 96—1257 is special legislation violative of article IV, section 13, of the Illinois Constitution of 1970 (111. Const. 19702 art. IV, 13). The appellate court answered the first question in the affirmative

(2012 IL App (4th) 110875, 38, 362 111.Dec. 2215 972 N.E.2d 1254) and suggested an affrmative answer to the second question (2012 IL App (4th) 110875, ¶¶ 28–29, 362 111.Dec. 221, 972 N.E.2d 1254), reversing the circuit court's of plaintiffs action and remanding " for further proceedings consistent with this opinion." 2012 IL App (4th) 110875, 41, 362 Ill.Dec. 221, 972 N.E.2d 1254. We affirm the judgment of the appellate court, rendering, however, an unequivocally affirmative answer with respect to the second question.

2 SPECIAL LEGISLATION CLAUSE OF THE 1970 ILLINOIS CONSTITUTION

¶3 "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, 13.

4 BACKGROUND

¶5 The following facts are taken, for the most part, from the uncontested averments ofplaintiffs complaint and the motion to dismiss subsequently filed by the defendants.

¶6 On March 15, 2011, plaintiff, the Board of Education of Peoria School District No. 150 (the District), filed a complaint in the circuit court of Sangamon County naming as defendants the Peoria Federation of Support Staff, Security/Policeman[1]s Benevolent and Protective Association Unit No. 114 (the Union), the Illinois Educational Labor Relations Board (the IELRB), and the Illinois Labor Relations Board (the ILRB). In count I of the complaint, the District sought a declaration that Public Act 96—1257 constituted special legislation violative of the Illinois Constitution, and injunctive relief appurtenant to such a finding. In count Il, the District sought a declaration that the Illinois Educational Labor Relations Act (IELRA) }tcs sn et seq. (West 2010)), rather than the Illinois Public Labor Relations Act (IPLRA) (i' 5 ILCS 315/1 et seq. (West

2010)), governed labor disputes between the District and its security officers.

¶ 7 According to the complaint, the District employed 26 full-tirne and part-time employees who worked as "security agents and guards." At the time this litigation commenced, the Union represented those employees. The Union had first been certified by the IELRB to represent the Distict's "full and part time security guards and truant officers" in November of 1989. In October of 1996, the IELRB again certified the Union as the sole and exclusive bargaining representative for "all full and part-time guards, agents, security and police employees" employed by the District. Collective-bargaining agreements negotiated between October 1996 and August 2008 were all pursuant to IELRB certification and under the provisions ofthe IELRA. The last ofthese agreements expired on June 30, 2010. Public Act 96—1257 became effective on July 23, 2010. It amended the IPLRA, purporting to remove "peace offcers" employed by "a school district" in "its own police department in existence on the effective date of this amendatory Act" from the purview of the IELRA, und Lhc ovasight IELRB, and Lo lcdefinc us "public employees," subject to the IPLRA and the jurisdiction of the ILRB. Correlatively, Public Act 96—1257 redefined "public employer" so as to remove "a school **748 *40 district" that employed "peace officers" in " its own police department in existence on the effective date of this amendatory Act" from lhe scope of Ihe IELRA and place il under the provisions ofthe1PLRA.

¶8 On or about December 8, 2010, the District and the Union began negotiations on a new collective-bargaining agreement. During the course of contract negotiations between the District and the Union, a dispute arose over the time of day when negotiations would occur. Although it was the position of the Union that the IELRA no longer governed the Union's relationship with the District, in a letter dated December 28, 2010, the Union stated it was "prepared to file a charge, duplicate if necessary[,) with the IELRB and the ILRB." On March 3, 2011, the Union filed a representation petition with the ILRB seeking certification of the Union as the exclusive representative for the same bargaining unit that had been previously certified by the IELRB. That action prompted the filing of the District's complaint for declaratory judgment 12 days thereafter.

¶ 9 In paragraphs 25 and 26 of the complaint, the District presented the parties' conflicting interests as follows:

"25. Under the IPLRA, if the parties reach an impasse during their negotiations, the employer does not have a right to impose the terms and conditions that it presented during negotiations, the matter goes directly to interest arbitration.

26. Under the IELRA, however, if the parties reach an impasse during their negotiations and the educational employer has exercised good faith during bargaining, then the educational employer has a right to impose the terrns and conditions that were presented during negotiations and employees have the right to strike."

The complaint alleged that the District "has an interest in having the IELRA rather than the IPLRA apply to * * * negotiations," and the Union a converse interest. When counsel for the District was subsequently asked, at oral argument before this court, to clariör what select group was favored by the amendment over others similarly situated, counsel's answers shifted and were initially ambiguous. Later, however, counsel was asked: "Does the Union benefit by being subject to the Il RB instead ofthe IF.I,R B?" Counsel for the District responded that smaller groups—like the security personnel employed by the District—are favored by interest arbitration because their smaller numbers afford them less leverage than larger groups in a strike.

¶ 10 Citing attached transcripts of legislative history, the complaint avers that lcgislators Imcw, when thcy passed thc amendment, that it would only apply to the District. The complaint nulhe.l stales ill palagraphs 34 {luough 36.

"34. Since the amendment only applies to a school district which employs peace offcers in its own police departnent in existence on the effective date of the amendment, the amendment by its own terms will never apply to any other school district which may, after the effective date of the amendment, decide to employ peace officers in its own police depart-nent.

35. This classification is arbitrary and beats similarly situated individuals and districts differently without an adequate justification or connection to the purpose of the statute.

36. This classification is not rationally related to a legitimate state interest."

In light of the foregoing, the Disfrict concluded count I of the complaint with the assertion that "Public Act 96—1257

is special ** 749 *41 legislation prohibited by Section 13 of Article 4 of the Illinois Constitution."

¶ Il In count Il, the District contended, alternatively, that its circumstances did not bring it within the purview of the statutory amendment, arguing that the District "neither maintains nor is authorized to establish and maintain a Police Departnent," "has not certified or appointed its security employees as truant offcers," and "does not employee [sic]peace offcers as defined by the IPLRA."

vs

¶ 12 On April 22, 2011, the Union filed a section 2—615 (735 ILCS 5/2-615 (West 2010)) "Motion to Strike/Amend Pleadings," complaining that the District had "intentionally misnamed" the Union "to claim those officers are not really police or peace officers," even though documents indicate they: (1) are supervised by a "Chief of Police," (2) are assigned "to the Campus police department," (3) are "required to appear in court, on School related cases" as police "officers," (4) wear uniforms and patches identifring them as "campus POLICE," (5) wear badges describing each officeras "OFFICER Dist-ict 150 POLICE," (6) are issued a "Peonia Public Schools Campus Police Opelålions Manual" informing them that those who complete course work at the Police Training Institute "possess filll police authority for the school district and by state law arc invested with filkl police powers," (7) may "[d]isplay and carry loaded weapons while on the premises of Peoria Public School District 150," and (8) "[e]ffect arrests and document those arrests with police reports submittcd to thc Peoria County State's Attorney for criminal prosecution."

¶ 13 On April 29, 2011, a motion to dismiss was filed by the IELRB and the ILRB. In that motion, the Boards argued that: (I) the challenged statutory provision does not classifr school disfficts with their own police departments differently from school districts which do not have their own police departments; rather, it classifies all peace offlcers employed by educational institutions as public employees and is, therefore, not special legislation; (2) even if the statute applies to school districts which employ peace offcers in their own police departments on the effective date of the amendment, applying it to plaintiff does not constitute improper special legislation; and (3) contrary to what the complaint alleges, this group of employees is not excluded from the jurisdiction of either the ILRB or the IELRB.

¶ 14 In a supporting memorandum, the Boards first took issue with the District's suggestion that the challenged statutory provision classified school disfricts with their own police departments differently from districts which did not maintain their own departments. The Boards opined that the provision merely classified all peace offcers employed by educational institutions as public employees; therefore, the Boards suggested that the amendment was not unconstitutional as special legislation. Quoting this court's opinion in ? Illinois Polygraph Society v. Pellicano, 83 111.2d 130, 137-38, 46 111.Dec. 574, 414 N.E.2d 458 (1980), the Boards stated that special legislation must "arbitrarily, and without a sound, reasonable basis, discriminate[ ] in favor ofa select group." (Emphasis in original.) The Boards argued that the group at issue here is not employees of educational institutions; it is peace offcers employed by public educational institutions. The Boards contended: "Plaintiff has not alleged a group of similarly situated persons who are teated differently." The Boards concluded that the amendment actually "fixed" an irrational scheme of classification by '%ringing members of a similarly situated group—peace officers employed by public educational institutions *42 —together within the province of one statute, the Illinois Public Labor Relations Act."

¶ IS The Boards submitted, even ifthe relevant group consists of"school districts which employ peace offcers in their own police departments on the efitctlve date of the amendment," applying it to plaintiff does not constitute improper special legislation. Citing the appellate court's decision in Crusius v. Illinois Gaming Board, 348 Ill.App.3d 44, 58, 283 Ill.Dec. 366, 807 N.E.2d 1207 (2004), thc Boards stated that "classes of one are permissible if there is a rational justification for Lhe limiled application, and the narrow classification is reasonably related to the justification." On this point, the Boards concluded:

> "Here, the governmental interest in putting all peace officers employed by school districts—whether in their own police department or not—under the umbrella of one labor board makes this classification constitutional. Speculating whether

> some school district in the future may create a police force and claim its police departinent employees do not fall under the definition of public employee is not a reason for declaring the legislation unconstitutional now."

¶ 16 In a supplemental memorandum, filed May 9, 2011, the Boards challenged the circuit court's jurisdiction over the controversy. The Boards argued that the IPLRA and the IELRA "give exclusive jurisdiction over deciding what group of employees belongs to what type of bargaining unit to the Labor Boards" and, under both acts, those decisions are "reviewable directly by the Appellate Court." The supplemental memorandum was not responsive to a

situation—such as this—where the question is which Board has jurisdiction of the matter.

¶ 17 On July 20, 2011, the District filed a response to the Boards' motion to dismiss. The District averred, inter alia, that the "effect (and purpose) of the Amendment is to deny the affected employees the right to strike and, instead, to grant them the power to invoke interest arbitration to settle labor disputes with their employing school district."

¶ 18 The District argued that the amendment created an arbi11Rty splil ill IllC B'%Ltds' jutisdic.liou ovel pencc officers employed by educational employers, opining that the LRB "will now have jurisdiction over peace offlcers employed by a school distict's own police departments as well as peace officers ernployed by a state university" (see, for the latter assertion, 5 ILCS 315/3(n), (o) (West 2012)), while the IELRB "retains jurisdiction over peace officels employed by a school disfrict which does not have a police department and peace offcers employed by any other educational employer." In response to the Boards' assertions that the amendment merely brought "all peace officers employed by public educational institutions" under the jurisdiction of the same Board (the ILRB) and that there are no similarly situated groups who remain covered by the IELRA, the Dish-ict cited, as controverting examples, peace officers employed by the following educational employers:

(1) charter schools;

(2) contract schools or turnaround schools;

(3) community colleges;

(4) combination of public schools, including joint agreements of any type formed by two or more school districts;

(5) a subcontractor of institutional services of a school district; and

(6) any state agency whose major function is providing educational services.

In that regard, the District referenced subsections (a) and (b) of section 2 of the *43 IELRA (115 ILCS 5/2(a), 0)) (West 2012)). In its brief before this court, the District emphasizes that community colleges, in particular, are statutorily authorized to employ peace officers (see 110 Il-CS 805/3—42.1 (West 2012)); yet, the District claims, they "continue to fall under the IELRA."

¶ 19 The District contended there is "no rational reason why all other employees in a school district do not have the right to go to interest arbitration while school district peace offcers have the right," opining that it "cannot be based on public safety concerns." The District noted:

> "All school districts except for one operate wlthout ther own police officers. In the evenl of a strike, city and county offices would still provide police protection, as they do now. Nor could the reason be that a peace officer strike would shut down a school district. Other employee sfrikes prevent school districts from operating."

The District concluded its constitutional argument reiterating its position that there is no justification for the disparate treatment effected by the amendment insofar as "the interests ofthe peace offcers existing in the Peoria School District are identical to peace offcers that could be or are employed by other school disfricts or educational employers in the state in relation to the purpose of the statute."

¶ 20 With respect to the jurisdictional issue, the District argued that "Illinois courts have jurisdiction when presented with a challenge to the jurisdiction of an administrative agency," citing People ex rel. Thompson v. Property Tax Appeal Board, 22 111.App.3d 316, 321, 317 N,E.2d 121 (1974), as such a challenge "presents a matter of law determinable by the courts and not a matter of fact determinable by the administrative body," citing Office of the Lake County State's Attorney u Illinois Human Rights Comm'n, 200 Ill.App.3d 351 , 156, 146 ill.Dec. 705. 558 N.E.2d 668 (1990). The District argued that it was "imperative" that the circuit court "decide the issue of

jurisdiction because there is a risk of conflicting administative decisions." The District also noted that an appeal from an ILRB decision must be to the Third District of the Appellate Court, while an IELRB decision must be appealed to the Fourth or First Districts.

Ill.Dec.

Il 21 On September 7, 2011, the circuit court issued orders denying the Union's motion and granting the Boards' motion as to both count I and count Il of the complaint. With respect to the former, the court found that "peace officers are public employees under the IPLR Act, and that the amendment "is not unconstitutional as special legislation." The court dismissed count Il, finding it "clear that the IELRB and ILRB have jurisdiction over collective bargaining unit determinations."

¶ 22 As noted, the appellate court reversed and remanded,

In a unammous dccmon. 2012 IL App (4th) 110875, 362 Ill.Dec. 221, 972 N.E.2d 1254. At the outset, the court acknowledged the legislature's determination (hal "where the right of employees to stnke IS prohlblted by law, It IS necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes."

2012 IL App (4th) 110875, 16, 362 111.Dec. 221, 972 N.E.2d 1254 (quoting 5 LCS 315/2 (West 2010)). The appellate court recognized that "altemate" procedure—interest arbitration—to be " 'qualitatively similar to the right to strike.' " 2012 IL App (4th) 110875, 16, 362 111.Dec.
22], 972 N.E.2d 1254 (quotingState of Illinois Deparfrnent QfCentral Management Services v. State ofIllinois Labor Relations Board, State Panel, 373 Ill.App.3d
242, 255, 311 Ill.Dec. 600, 869 N.E.2d 274 (2007) (hereafter CMS)).

[1) [2] 23 Addressing count I ofthe District's complaint, and quoting from this court's decision in *Crusius v.* Illinois Gaming Board, 216 111.2d 315, 325, 297 Ill-Dec. 308, 837 N.E.2d 88 (2005), the appellate court reiterated the standards of review this court found applicable to a special legislation challenge. 2012 IL App (4th) 110875, 18, 362 111Dec. 221, 972 N.E.2d 1254. The court noted that the special legislation clause prohibits the legislature from " 'conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated.' " 2012 IL App (4th) 110875, 18, 362 111.Dec, 221, 972 N.E.2d 1254

(quoting? Crusius, 216 111.2d at 325, 297 fli.Dec. 308, 837 N.E.2d 88). There are two requisite elements to a successful special legislation challenge: (I) " 'the statutory classification at issue discriminates in favor of a select group,' " and (2)

" 'the classification is arbitrary.' " 2012 IL App (4th) 110875, 18, 362 111.Dec. 221, 972 N.E.2d 1254 (quoting C,usius, 216 lil.2d 325, 297 111.Dec. 308, 837 N,E.2d 88). Where, as here, no fundamental right or suspect class is affected by the statute in question, " 'the deferential rational basis test' " applies. 2012 IL App (4th) 110875, 18,
362 111.Dec. 221, 972 N.E.2d 1254 (quoting ; Cjusius, 216 111.2d at 325, 297 111.Dec. 308, 837 N.E.2d 88). Applying those standards, the appellate court determined that plaintiffs complaint "makes out a claim that Public Act No. 96—1257 is special legislation." 2m2 IL App (4th) 10875, 20, 362 111.Dec. 221, 972 N.E.2d 1254.

¶24 Assuming the amendment applied to the parties, the court dcLcH11iucd "the lelevanL distinctions are (1) bctwcen pcaec officers employed by plaintiff, the only distict currently employing police officers directly, and any peace officers who may be employed directly by other school districts in the future; and (2) bctwccn plamllfl and any school dtslncl that,

in the future, may employ peace officers directly." 2012 IL App (4th) 110875, 20, 362 ill.Dec. 221 972 N.E'.2d 1254.

¶25 Construing the pleadings in the light rnost favorable to the District—the party against which dismissal was sought and obtained—the appellate court gave "plaintiff the benefit of the doubt" when plaintiff asserted that Public Act 96— 1257, "if it applies to these parties, favors Unit No. 114 and disfavors plaintiff by substituting interest arbitration for the

employees' right to strike." 2012 IL App (4th) 1 10875, ¶ 23, 362 111.Dec. 221, 972 N.E.2d 1254. The rejected the labor boards' "implication" that the court had, in - CMS, evaluated the desirability ofinterest arbitration versus striking from either the employees' or the employer's perspective, let alone concluded that "the alternative proceedings were a wash for all parties." 2012 IL App (4th) 110875, 24, 362 111.Dec. 221, 972 N.E,2d 1254, The observed that the labor boards had "cited no cases stating

or holding the right to strike benefits an employee as much as the right to engage in interest arbitation, which is the crux of the labor boards' position." 2012 IL App (4th) 110875, 24, 362 Ill.Dec. 221, 972 N.E.2d 1254.

¶ 26 Having found a statutory classification that arguably discriminated in favor of a select group, the appellate court next held that classification was arbitrary insofar as the statute only applied to peace offcers employed by a school disfrict in its own police department in existence on the effective date of the amendment. 2012 IL App (4th) 110875, ¶26, 362 ill.Dec. 221, 972 NE.2d 1254. In that regard, the court rejected the Union's contention that the language ofthe amendment supported a prospective application, concluding instead **753 *45 that the class ofofficers affected by the amendment closed on July 23, 2010, the public act's effective date, and offcers directly employed by school disticts in the future would remain under the purview of the IELRA.

2012 IL App (4th) 110875, 27, 362 111.Dec. 221, 972 N.E.2d 1254. From that finding, the court continued:

> "If the legitimate interest justifring the classification in the amendment is to ensure that police offcers, no matter who cmploys arc not allowed to strike, then the distinction between police employees of school disfricts urently etnploying police officers and those of school disfricts that may employ police in the filture is irrational. No legitimate state interest identified hy the parties and none we can conceive of—accounts for the closing of the affected class by rcfcrencc. to Lhc slålule's effecLivc dulc."
>
> 2012 IL App (4th) 110875, 27, 362 111.Dec. 221, 972 N.E.2d 1254.

The appellate court found that the District's "right not to be disadvantaged by special legislation is at issue now in ongoing bargaining and labor disputes." The court indicated it would "not waitto see whether another school district actually establishes its own police force in the future," finding that "plaintiffs constitutional challenge does not depend on this contingency." (31 - Emphasis in original.) 2012 IL App (4th) 110875, 29, 362 111.Dec. 221, 972 N.E.2d 1254.

¶27 Although the appellate court's analysis bespeaks its belief that Public Act 96—1257 is special legislation, violative ofthe Illinois Constitution (2012 IL App (4th) 110875, 28-29, 362 111.Dec. 221, 972 N.E.2d 1254 (finding the legislature's "classification" and "distinctions" "arbitrary")), the court did not actually declare it to be such. Instead, the appellate court simply found the allegations of count I "suffcient to withstand the labor boards! motion to dismiss." 2012 IL App (4th) 110875, q 39, 362 111.Dec. 221, 972 N.E.2d 1254.

IL

¶ 28 With respect to the jurisdictional issue—whether a declaratory judgment action was properly brought in the circuit court under these circumstances challenging the jurisdiction of the LRB—the appellate court relied principally upon this court's opinion in County ofKane v. Carlson, 116 111.2d 186, 199, 107 ill,Dec. 569, 507 N.E.2d 482 (1987) ("The rule [of exhaustion of remedies] does not apply when a party challenges the constitutionality of a statute on its face [citations) or contests the authority or jurisdiction of the adminisfrative agency [citations] * * *."),

and an appellate court decision in • Office of the Lake County State's A ttorney Illinois Human Rights Comm '72, 200 Ill.App.3d 151, 146 Ill.Dec, 705, 558 N.E.2d 668 (1 990), in holding that the action was properly brought in the circuit court.

¶29 In County QfKane, [he chief judge of a judicial ci.rcuil challenged the Illinois Labor Relations Board's jurisdiction over charges of LLnfRir labor practices filed against hitll by a union of probation officers. The chief judge argued, inter alia, that he was not a public employer and, thus, "not within the scope of the LPubhc Labor Relations] Act." County of Kune, 116 111.2d 201, 107 111.Dec. 569, 507 N.E.2d 482. Because he challenged the labor board's jurisdiction, and because "the questions presented Iwere] cnll.rcly legal and [did] not require fact finding by the administative agency or an application of its particular expertise," this court held thejudge was not required to exhaust administrative remedies before seeking declaratory and injunctive relief in the circuit court. County cfKane, 116 111.2d at 199-200. 107 111.Dec. 569, 507 N.E.2d 482.

¶30 In Lake County, i_n a complaint before the circuit court seeking declaratory **754 *46 and injunctive relief, a State's Attorney challenged the jurisdiction of the

Department of Human Rights over an assistant State's Attorney's charge before that agency of race- and sex-based discrimination. The State's Attomey alleged, inter alia, that the assistant State's Attorney was not an "employee" and the State's Attorney was not an "employer" or a "person" as used in

the Illinois Human Rights Act Ill.Rev.Stat.1987, ch. 68,

¶ 2-101(A), (B), Lake County, 200 111.App.3d at 153-54, 146 111.Dec. 705, 558 N.E.2d 668. The circuit court dismissed for lack of jurisdiction because the State's Attomey failed to exhaust administative remedies. The appellate court, however, found the circuit court had jurisdiction over the States Attorney's complaint because it attacked the adminisfrative jurisdiction of the Departrnent of Human Rights and was therefore exempt from exhaustion requirements. • Lake County, 200 Ill.App.3d at 156—57, 146 111.Dec. 705, 558 N.E.2d 668. As in County of Kane, the appellate court found the State's Attorney's jurisdictional

challenge raised "entirely legal" questions, and the court ultimately held: "The State's Attorney need not first subject himself to an exercise ofjurisdiction of the [Human Rights] Commission, which is not authorized by law[,] simply to obtain a decision from which he could" pursue adminis&ative reliefand, ultimately, appeal. • Lake County, 200 Ill.App.3d at 157, 146 111.Dec. 705, 558 N.E.2d 668.

¶31 The appellate court in this case found the reasoning of County ofKane and Lake County controlling. It distinguished its decision in Nestle USA, Inc. v, Dunlap, 365 Ill.App.3d 727, 735. -304 Ill.ncc. N.E..?d 28? (2006), a c,asc. in which the court held the plaintiff was required to exhaust adnumsfraüve remedies.

¶ 32 The court noted, in Nestle the plaintiff sought a declaratory judgmcnt that the Illinois Workers' Compensation Commission had exceeded its statutory powers when an arbitrator working on the agency's behalf reinstated a claim beyond, the plamtlff argucd, the tm-IC allotlcd for doing so. The appellate court found the plaintiff was improperly attempting to "skip review [by the administrative agency] and seek judicial review by alleging that the arbitrator's decision was not authorized by statute." Nestle, 365 Ill.App.3d at 734-35, 304 111.Dec. 32, 852 N.E.2d 282. The Nestle court noted that circuit courts "would be forced [in such circumstances] to first determine if arbitrators' decisions were wrong in order to determine if they had jurisdiction."

Nestle, 365 m.App.3d at 735, 304 Ill.Dec. 32, 852 N.E.2d 282.

¶ 33 This appellate panel noted that the "merits," as that term was used in Nestle—"among other things whether the petitioned unit is 'appropriate' and whether the petitioners complied with mandated voting procedures"—were not the subject of the District's circuit court complaint in this case.

2012 IL App (4th) 110875, 38, 362 111.Dec. 221, 972 N.E.2d 1254. The court found the questions that were posed in the complaint for declaratory judgment—"whether the unit's members are public employees and their employer a public employer'—"are jurisdictional prerequisites apart from the merits of the case" and those questions are "appropriately addressed by a trial court prior to a plaintiffs submission to an administrative agency's unauthorized exercise of its ¶ 34 In light of its findings on the constitutional and jurisdictional issues before it, the court reversed the judgment of the circuit court and remanded for "further proceedings consistent with this opinion." **755 *47 2012 IL App (4th) 110875, 41, 362 Ill.Dec. 221, 972 N.E.2d 1254. Given the parameters and content of the appellate court's analysis, it does not appear there would be much for the circuit court to do upon remand.

35ANALYSIS

36 Jurisdiction

[3} 37 With regard to the jurisdictional issue presented herein, the parties cite no case with comparable facts, i.e., a constitutional challenge to a statute that would potentially divest one labor board (the LELRB) of jurisdiction, with specified dispute resolution procedures, and conftr it upon another (the LRB), with different procedures. Disposition of the constitutional issue dictates which of the two boards has jurisdiction of this matter. That decision is properly one for the courts, and, in the first instance, the circuit court.

[41 38 As this court recently confirmed in Goodman v. ward, 241 111,2d 398, 350 300, 948 N.E.2d 580 (2011), administrative agencies have no authority to declare statutes unconstitutional or even to question their validity. The appellate court's reliance upon County ofKane was well placed. In that case, this court held that a party need not exhaust administrative remedies when that party challenges the constitutionality of a statute on its face or contests the authority or jurisdiction of the administrative agency. Count)' of Kane, 116 111.2d at 199, 107 Ill.Dec. 569, 507 N,E.2d 482. This court found it significant that "the questions presented are entirely legal and do not require fact finding by the administrative agency or an application of its particular expertise." County of Kane, 116 111.2d at 199, 107 111.Dec. 569, 507 N.E.2d 482.

¶39 The constitutional issue here is compounded, beyond that presented in County of Kane, insofar as the question is not simply if an agency has jurisdiction, but rather which of two agencies has jurisdiction. That question is one for the courts.

998 N.E.2d 36, 375 Ill.Dec. 744, 299 Ed. Law Rep.
jurisdiction." 2012 ILApp(4th) 110875, Il 38, 362 Ill.Dec. 221.
972 N.E.2d 1254.

¶ 40 Constitutionality

[5] [6] 41 Where a statute is challenged as special legislation, we review, de novo, a circuit court's determination of constitutionality. Crusius v. Illinois Gaming Board, 216 111.2d 315, 324, 297 Ill.Dec, 308, 837 N.E.2d 88 (2005). we apply the same standard in review of a circuit court's ruling on a motion to dismiss. Ben u Hutsell, 2011 IL 110724, 9, 353 111.Dec. 288, 955 N.E.2d 1099.

Il 42 We begin with a principal point of argument raised by the District in the circuit court, and the basis for thc appellate court's suggestion that Public Act 96—1257 is special legislation violative of article IV, section •13, of the Illinois Constitution, i.e., the. "troubling distinction" in "(l) the statute's treatment of officers currently employed by school districts and those who may bc employcd by other school districts in the future and (2) its corresponding treatrnent of the school districts employing such officers." 2012 App (4th) 110875, 27, 362 111.Dec. 221, 972 N.E.2d 1254. The appellate court found: "[T]he distinction between police employees of school districts currently employing police officers and those of school districts that may employ police in the future is irrational. No legitimate state interest identified by the parties—and none we can conceive of—accounts for the closing of the affected class by reference to the statute's effective date." 2012 IL App (4th) 110875, 27, 362 Ill.Dec. 221 , 972 N.E.2d 1254. The appellate court concluded: "Plaintiffs right not to be disadvantaged by special legislation is at issue now in ongoing bargaining and labor disputes. We will not wait to see whether another school district **756 *48 actually establishes its own police force in the future; plaintiffs constitutional challenge does not depend on this contingency." C • Emphasis in original,) 2012 IL App (4th) 110875, 29, 362 111.Dcc. 221, 972 N.E.2d 1254.

¶43 The appellate court's analysis, which accounts for those who might occupy a similar position in the future, is not foreign to our special legislationjurisprudence. In fact, in that regard it is consistent with opinions rendered by this court under the Illinois Constitution of 1870 (Ill. Const. 1870, art. IV, 22)—Potwin v. Johnson, 108 ill. 70 (1883); Pettibone v. West Chicago Park Commissioners, 215 Ill. 304, 74 N.E. 387 (1905); Dawson Soap Co. P. City ofChicago, 234 Ill. 314, 84 N.E. 920 (1908); Mathews v. City ofChicago, 342 111. 120, 174 N.E. 35 (1930)—and at least two cases decided after the Wright v. Central l.)u *Page Hospital ßss fn, 63 111,2d 31 3, 347 N.E.2d 736 (1976).

¶ 44 In Potwin, which was later quoted approvingly in Dawson Soap Co. v. City of Chicago, 234 Ill. 314, 317, 84 N.E. 920 (1908), this court employed the following rationale in finding an act affecting cities and villages acceptably genelal.

> "[T]he act in relation to cities and villages is a general law, and not local or special, although there may be municipal corporations to which it is not applicable, namely, municipal corporations in existence under special charters at the time of the adoption of the constitution, which have not since sought to have their charters changed or amended. It is general and of uniform application to all cities, towns and villages thereafter beconzing incorporated, or thereafter having their charters changed or amended, to the extent of such change or amendment, and thus fully conforms to the definition of a general law." (Emphases added.) Potwin, 108 Ill. at 80—81.

In other words, a "general law" is one that applies to all who are similarly situated at the time of passage or in the ftture.

45 In Pettibone, this court concluded that the use of the phrases "which is now included within the limits of any city" and "shall now exist" in the act under scrutiny supported a finding that the act was special legislation:

> "The use ofthe word, 'now,' in section I ofthe act excludes the idea that the act was intended to apply to the future, or to any town, which in the future might have effective date of our current constitution—V People ex rel. East Side Levee & Sanitary District v, Madison County Levee & Sanita,,, District, 54 111.2d 442, 298 N.E.2d 177 (1973);

its limits coextensive with the limits ofthe park district. The provisions of the act are limited to the present, and to a town now complying with the description indicated. Therefore, the decisions referring to such towns, as might in the future come within the designation specified in the act, can have no application to the act now under consideration. For the reasons thus stated, we are of the opinion that the act * * * is unconstitutional as being a local or special law, and as being in conflict vhth section 22 of article 4 [of the Illinois Constitution of 1870]." Pettibone, 215 Ill. at 74 N.E. 387.

¶46 A quarter of a century after this court issued its decision in Pettibone, this court appears to have remained steadfast in analyzing special legislation challenges by reference to not only classes presently existing, but also those that might be similarly situated in thefuture. In Mathews v. City ofChicago,
342 111. 120, 128 29, 174 N.E. 35 (1930), this court stated: "We have repeatedly held that a law may be general and yet operative in a single place where the condition necessary to its operation exists. [Citations.] Whether the condition **757 *49 exists in one place or many, if the classification is reasonable and just it does not violate the Constitution and it applies to all places now within its terms and to all that may hereafter come within its terms." (Emphasis added.)

¶ 47 Statements this court made shortly after the advent of our current constitution of 1970 acknowledge that the new constitution effected no change in this court's special legislation jurisprudence, other than the framers' expressed intention that courts not defer to legislative determinations as to whether a general law can be made applicable.

¶48 In Bridgewater v. Hoe, 51 111.2d 103, 109, 281 N.E.2d 317 (1972), this court determined that "[s]ound rules of consffuction require that in those instances in which this court, prior to the adoption of the constitution of 1970, has defined a term found therein, that it be given the same definition, unless it is clearly apparent that some other meaning was intended." This court noted, pursuant to its precedent, "Laws are general and uniform when alike in their operation upon all persons in like situation." (Internal quotation marks omitted.) Bridgewate'; 51 111.2d at 109, 281 N.E.2d 317. The term "special" refers to "laws which impose a particular burden or confer a special right, privilege or immunity upon a portion of the people of the State." (Internal quotation marks omitted.) Bridgewater, 51 111.2d at 109-10, 281 N.E.2d 317. Quoting from Latham v. Board ofEducation of the City of Chicago, 31 111.2d 178, 183, 201 N.E.2d 111 (1964), the Bridgewater court acknowledged that the constitutional prohibition against special legislation " 'does not mean that every law shall affect alike every place and every person in the State but it does mean that it shall operate alike in all places and on all persons in the same condition.' " Bridgewater, 51 111.2d at 109, 281
N.E.2d 317.

¶ 49 The court emphasized that the principal change effected by the new constitution was that it specifically rejected the rule, enunciated in a line of decisions, that whether a general law can be made applicable is for the legislature to determine, the framers specifically providing that question henceforth "shall be a matter for judicial determination." (Emphasis added.) (Internal quotation marks omitted.) Bridgewater, 51 111.2d at 110, 281 N.E.2d 317. The BHdgewater court acknowledged that law is general not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included." (Emphasis added.) Bridgewaier, 51 111.2d at I 1l, 281 N.E.2d 317.

¶ 50 One year after Bridgewater; this court rendered its opinion in People ex rel. Easl Side Levee & Sanitary I)istrict v. Mudison County Levee & Saiütan; District, 34 111.2d 442, 298 N.E.2d 177 (1973). In East Side Levee, this court cited, inter alia, its earlier decision in Bridgewater for the propositions that '"the criteria developed under the earlier constitution for determining whether a law is local or special are still valid"; however, given the changes in the 1970 Constitution, "the deitrence pleviously accorded the legislative judgment whether a general law could be made applicable has been largely eliminated." [7] East Side Levee, 54 111.2d at 447, 298 N.E.2'd 177.

51 At issue in East Side Levee was an enactment which purported to divide, into two separate districts, any sanitary district "which lies in 2 counties and which has an equalized assessed valuation for tax purposes of S 00,000,000 or more, upon the effective date of this amendatory Act of 1972," to provide for "more effective administration and fiscal control."

See East Side Levee, 54 111.2d at 447, 298 N.E.2d 177. The original sanital} district **758 *SO challenged the constitutionality of the enactment in the circuit court of St. Clair County. The "not yet organized" sanitary district, and two frustees ofthe original district, sought an injunction in the circuit court of Madison County to restrain the depositories of the original district, the county collector, and the fr•ustees ofthe "St. Clair Levee and Sanitary District" from disbursing any funds pending resolution of the legal questions stemrni_ng from the questioned legislation. • East Side Levee, 54 111.2d at445, 298 N.E.2d 177.

¶ 52 Applying the applicable criteria developed under the earlier constitution, and citing Pettibone, this court found the enactment violated the constitution's prohibition against special legislation, noting:

> "The briefs cite no reasons, and none are apparent to us, for restricting the advantages of 'more effective administrative and fiscal control' to those two-county districts which on

December 22, 1972 (the effective date of the Act), had an equalized assessed valuation of $100,000,000, and not extending the same advantages to those disfricts reaching that valuation at a subsequent time." " East Side Levee, 54 111.2d at 447, 298 N.E.2d 177.

This court concluded: "It is our opinion that a general law could have been made applicable, and that Public Act 77—2819 therefore violates the constitution's prohibition against special legislation." East Side Levee, 541112d at 447, 298 N.F..2d 177.

¶ 53 East Side Levee was cited approvingly, and dispositivoly, in Wright. At issue in Wright was the constitutionality of section 401a of the Illinois Insurance Code 111.Rev.Stat197S, ch. 73, 1013a), which was added by section 3 of Public Act 79—960. That new section provided:

> 'No insurance company licensed or authorized to write insurance covering medical, hospital or other healing art malpractice shall refuse to renew any existing policy providing such coverage at the rates existing on June 10, 1975, unless such company shall have provided suffcient evidence to justiÜ such increase to the Director of Insurance, provided that the Director shall not approve such increase until after public hearings have been held and the increase justified from data from the books and records of such company."

See Wifght, 63 111.2d 330, 347 N.E.2d 736. Plaintiffs argued, inter alia, that the enactment constituted special legislation in violation ofsection 13 ofarticle IV ofthe Illinois Constitution. This court noted: "By its terms section 401a regulates medical malpractice insurance rates on policies that were in existence on June 10, 1975, and not those written after that date." Wright, 63 111.2d at 330, 347 N.E.2d 736. Citing East Side Levee, the coun found that a general law could have been made applicable and held the statute's temporal dichotomy "violative of section 13 of article IV of the Constitution of 1970." Wright, 63 111.2d 331, 347 N.E.2d 736.

[71 54 The cases cited—Pofivin. Pettibone, Dawson Soap Co., Mathews, East Side Levee, and Wright—collectively stand for the principle that a law the legislature considers appropriately applied to a generic class presently existing, with attributes that are in no sense unique or unlikely of repetition in the future, cannot rationally, and hence constitutionally, be limited of application by a date restiction [hal Glows Iha clHss as or [he slH11Lle^{T}s Q[Teclivg date Pnrring some viable rationale for doing so, it would, for example, violate the proscription of the constitution for the legislature to apply a law to a person or entity in existence on the effective date of enactment, but make it inapplicable to a person or entity who assumed those atfributes or **759 *51 characteristics the day after the statute's effective date.

[81 1155 That said, as we have noted, article IV, section 13, of our constitution "only prohibiLs passage 01 a special or local law when 'a general law is or can be made applicable.' "

Elenaenlary School District 159 v. Schille.j; 221 111.2d 130, 154, 302 111.Dec. 557, 849 N.E.2d 349 (2006) (quoting in part Ill. Const. 1970, art. IV, 13). Nothing in the constitution bars the legislature from enacting a law specifically addressing the conditions of an entity that is uniquely situated. Schiller; 221 111.2d at 154, 302 111.Dec. 557, 849 N.E.2d 349.

¶ 56 It is that principle that underpins our decisions in Schiller, Big Sky Excavating, Inc. v. Illinois Bell Telephone co., 217 111.2d 221, 298 739, 840 N.E.2d 1174 (2005), Crusius v. Illinois Gaming Board, 216 111.2d 315, 297 111.Dec. 308, 837 N.E.2d (2005), and County of Bureau v. Thompson, 139 111.2d 323, 151 111.Dec. 508, 564 N.E.2d 1170 (1990), notwithstanding instances of broader language included in the analyses. See Schille; 221 1]l.2d at 1.35-37, 302 Ill.Dec. 557, 849 N.E.2d 349 (legislation was tailored to address a specific annexation issue involving a particular piece of property and a limited

geographical area); Big Sky, 217 111.2d at 227-29, 298 111.Dec. 739, 840 N.E.2d 1174 (legislation in effect abated a complex Commerce Commission case against Illinois Bell, rendered all its business services "competitive" within the meaning of the Universal Telephone Service Protection Law without further review, compelled Bell to make $90 million in refunds to the customers who would have been affected by the abated Commission proceedings, and obligated the company to make separate deposits of $15 million into two different funds); Crusius, 216 111.2d 319-20, 297 Ill-Dec. 308, 837 N.E.2d 88 (while Emerald Casino's administrative appeal was pending before the Illinois Gaming Board, legislation was enacted allowing "[a] licensee that was not conducting riverboat gambling on January 1, 1998" (Emerald) to apply for a license renewal and approval ofrelocation, and directing the Board to "grant the application and approval upon receipt by the licensee of approval from the new municipality or county * * * in which the licensee wishes to relocate");

County *of Bureau,* 139 li!.2d at 328-29, 151 111.Dec. 508, 564 N F, 2.d 1170 (legislation directed the governmental units otherwise responsible for maintaining highway and bridge infrastructure within their territories to maintain infrastructure associated with the Illinois and Mississippi Canal, whic.h the state acquired from the fOdcral government).

¶ 57 With respect to the case now before us, County of Bureau, Crusius, Big SO, and Schiller are distinguishable on their facts insofar as the legislature, in each case, was addressing a problem unique to a particular geographical area and/or one involving peculiar, multifaceted economic considerations. In such circumstances, a general law could not have been applied, as no other person or entity did, or could, occupy the precise position of the party or class affected. In this case, however, a general law clearly could have been enacted that would have affected what is, and henceforth would be, a generic class of individuals.

[91 Il 58 We reject, in passing, the contention that this language applies, prospectively, to school districts that may, in the future, employ peace officers in their own police deparfrnents. Similar language in the acts at issue in Pettibone, East Side Levee, and Wright was interpreted by this court as restrictive, closing the affected class as of the effective date of the statute. See Pettibone, 215 Ill. at 336—37, 74 NE. 387;*52 EastSideLevee, 54111.2dat447, 298 N.E.2d 177; h4•ight, 63 Jil.2d at 330, 347 N.E.2d 736. We interpret it similarly here. If statutory language is clear and unambiguous, it mustbe applied as written, without resort to further aids of statutory construction. " Gaffney v. Board of Trustees ef the Orland Fire Protection District, 2012 IL 110012, 56, 360 111.Dec. 549, 969 N.E.2d 359.

¶ 59 We, like the appellate court, find no basis for restricting the reach of the amendment herein to "peace offcers employed by a school district in its own police department in existence on the effective date of [the] amendatory

Act." (Emphasis added.) • 5 ILCS 315/3(n) (West 2010). In the policy statement of the IPLRA, the legislature itself set forth the rationale for according "[e)ssential services employees" the remedy of arbitration as a means to settle labor disputes: "To prevent labor strife and to protect the public health and safety * * * " 5 ILCS 315/2 (West 2010). The legislature obviously deems peace officers employed by a school district, in its own police department, to be "so essential that the interruption or termination of [their] function will constitute a clear and present danger to the health and safety of the persons in the affected community."

See 5 ILCS 315/3(e) (West 2010) (defining "1eJssential services employees"). Having made that determination, it is Irrational, and Inconsistent With the reasoning of this couns decision in East Side Levee, not to extend the benefits and protection of interest arbitration to citizens of those school districts that may hereafter employ peace officers in their own police departments. As in East Side Levee, there is no reason "for restricting the advantages" of the legislation to a district with characteristics currently qualifying and "not extending the same advantages to those districts" qualifying

"at a subsequent time." See East Side Levee, 54 111.2d at 447, 298 N.E.2d 177.

[10] [Ill Il 60 For the foregoing reasons, we find that a general law could have been made applicable in this case, that there is no rational justification for the amendment's lirnited application via effective—date restriction. Thus, we hold that Public Act 96—1257 violates article IV, section 13, of the Illinois Constitution. Unlike the appellate court, we do not feel constrained, by the procedural posture of this case, from concluding this litigation with our judgment. The appellate court provided the rationale for holding Public Act 96—1257 violative of the constitution's special legislation

clause, but felt compelled to remand "for further proceedings" consistent with its opinion. 2012 IL App (4th) 310875, ¶41, 362 m.Dec. 221, 972 N.E.2d 1254. We do not know what such proceedings would entail, as the parties appear to have brought every applicable argument and consideration to bear in this appeal. Therefore, we enter declaratory judgment for the District on the question of the statute's constitutionality.

See 111. S.Ct. R. (eff. Feb. l, 1994) (this coult may "enter any judgment and make any order that ought to have been given or made, and * * * grant any relief * * * that the case may require"). Thus, we reverse the judgment of the circuit court outight, with no remand, and affirm the judgment of the appellate court} as modified.

¶61 Circuit court judgment reversed.

¶62 Appellate court judgment affirmed, as modified.

***53** Justices FREEMAN, THOMAS, GARMAN, BURKE, and THEIS concurred in the judgment and opinion. Chief

Justice KILBRTI)E specially concurred, with opinion.

* *761 63 Chief Justice KILBRIDE, specially concurring.

¶ 64 Although I agree with the majority's resolution of the constitutional issue, I wHte separately to emphasize [hat the cucuit court's initial consideration of that issue in the underlying declaratory judgment action was proper only under the circumstances here. Indeed, recognizing the unique nature of this case, the majority correctly notes that no other Illinois decision analyzes the primary legal issue—a constitutional challenge to a statute that would potentially divest the Illinois Educational Labor Relations Board (IELRB) ofjurisdiction and confer it upon the Illinois Labor Relations Board (ILRB). Supra Il 37. In other words, our holding is applicable only to the facts and issue presented in this appeal.

¶ 65 This distinction is important because the IELRB and ILRB are governed by comprehensive statutory schemes that extensively address public sector collective-bargaining matters, respectively the Illinois Educational Labor Relations Act C 115 ILCS 5/1 et seq. (West 2010)) and the Illinois

Public Labor Relations Act (l 5 ILCS 315/1 et seq. (West 2010)). As this court has long recognized, when "the legislature enacts a comprehensive statutory scheme, creating rights and duties which have no counterpart in common law or equity, the legislature may define the 'justiciable matter' in such a way as to preclude or limit the jurisdiction of the circuit courts." Board of Education of Warren Township High School District 121 v. Warren Township High School Federation of Teachers, Local 504, 128 111.2d 155, 165, 131 Ill.Dec. 149, 538 N.E.2d 524 (1989). Accordingly, this court has consistently held that the IELRB and ILRB have exclusive jurisdiction to hear disputes that fall within their respective statutory schemes. - Board of Education of Community

School District No. l, Coles County v. Compton, 123 111.2d

216, 221-22, 122 Ill.Dec. 9, 526 N.E.2d 149 (1988)'" City ofFreeport v. Illinois Stare Labor Relations Board, 135 Ill.2d

499, 505, 14.3 111.Dec. 220, 554 N.E.2d 155 (1990); Warren Township fligh School District 121, 128 111.2d at 166, 1.31 Ill.Dec. 149, 538 N.E.2d 524, Our well-founded holding on that issue is not disturbed by this decision.

¶ 66 Moreover, in relevant part, the respective statutory schemes governing the ILRB and IELRB provide that final decisions from those boards are reviewable by direct appeal to the appellate court. S Ill.'S 31 5/9(i), Il(e) (West 2010); 115 ILCS 5/16 (West 2010). Accordingly, we have discouraged litigants involved in school-related labor disputes from attempting to circumvent the authority of the review board by filing actions i_n the circuit court because "[t]o allow the parties in school labor disputes to freely seek circuit court intervention would disrupt the statutory scheme." Warren Township High School District 121, 128 111.2d at 165-66, 131 111.Dec. 149, 538 N.E.2d 524. Nothing in this decision should be construed as deviating from this admonishment, or othenvise altering the typical process required under the applicable statutory provisions to resolve labor disputes before the IELRB or ILRB.

¶67 For these additional reasons, I respectfully concur in the majority's judgment.

All Citations

2013 IL 114853, 998 N.E.2d 36, 375 Ill.Dec. 744, 299 Ed. Law Rep. 167

Footnotes

1 The ILRB's website suggests that it may interpret this language more broadly (see http://www.state.il.us/ilrb/subsections/frequent/index. asp), but such an interpretation is contrary to our precedent.

36. 375 744, 299 Ed. Law Ill.Dec. Rep. 167

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32 PERI 138, 32 Pub. Employee Rep. for Illinois 138, 2016 WL 929304

Illinois Labor Relations Board General Counsel

Troopers Lodge #41, Fraternal Order ofPolice, Labor Organization and Illinois State Police, Employer
No. S-DR-16-003
NELSON
February 18, 2016

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42.11 Mandatory Subjects, Case Law
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Judge / Administrative Officer
NELSON

Ruling

The I-RB[I] s General Counsel considered the state employer' s unilateral petition seeking a declaratory ruling. Upon granting a vanance from LRB rules governing declaratory petitions, the General Counsel decided that the employer' s ment incentive program proposal constituted a mandatory subject of bargaining because it related to wages. The General Counsel concluded that the employer' s seniority positions proposal also constituted a mandatory subject of bargaining.

Merit incentive, seniority proposals constitute mandatory bargaining topics

Meaning

The General Counsel cited LRB case law for the proposition that merit pay Increases, such as those at issue here, are a mandatory subject of bargaining.

Case Summary

The state employer filed a unilateral petition seeking a declaratory ruling. It sought a determination regarding whether its proposals concerning seniority positions and a merit incentive program were permissive or mandatory subjects of bargaining within the meaning ofPLRA provisions. The union objected to the petition, arguing that it was untimely. The LRB' s General Counsel determined that the en-xployer' s petition for declaratory ruling was untimely under st-ict application of the LRB' s rules. However, the General Counsel granted a variance from the regulatory time limit, where the regulatory deadline for filing a unilateral petition for declaratory ruling was not statutorily mandated and where neither the union nor the employer would be injured by the grant of a variance. The General Counsel decided that the employer' s merit incentive program proposal constituted a mandatory subject ofbargaining because it related to wages, because it did not seek the union' s waiver of statutory rights, and because it did not qualifr as a prohibited subject ofbargaining. The General Counsel concluded that the employer' s seniority positions proposal constituted a mandatory subject of bargaining, where the proposal limited circumstances under which the employer would use seniority as the sole criterion in making position assignments.

On December 31, 2015, the Illinois State Police (Employer) filed a unilateral Petition for Declaratory Ruling pursuant to Section 1200.143 ofthe Rules and Regulations ofthe Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1300. The Employer requests a determination as to whether its proposals concerning Seniority Positions and a Merit Incentive Program are permissive or mandatory subjects ofbargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 3 1 5 (2014). Troopers Lodge #41, Fraternal Order of Police (Union) objects to the Employer' s petition on the grounds that it is untimely filed. Both parties filed briefs addressing procedural and substantive issues.

I. Background

The Employer and the Union are parties to a collective bargaining agreement that expired on June 30, 2015. On or about May 11, 2015, the parties commenced negotiations for a successor contract. On August 20, 2015, the Union filed a demand for Compulsory Intcrest Arbitration. The parties selected Dan Nielsen as their neutal intcrcst arbitrator. The parties agreed to submit 'heir final offers to the inleresL arbitrator two days prior Lo Lhe first day of hearing. They likewise agreed to present their objcctions to any proposals on thc first day ofhearing.

On December 2.3, 2015, the arbitrator held the first day of hearing in the parties' interest arbitration. On that date, the Union objected to the Employer' s Seniority Positions proposal and its Merit Incentive Program proposal on the grounds that they addressed permissive subjects of bargaining.

On December 30, 2015, the Employer submitted its revised final offer to the interest arbitrator and the, IJnion via email. The. revised final offer corrected typographical errors in its Seniority Positions proposal and modified paragraph four of its proposal on the Merit Incentive Program proposal to address the Union' s objections. The Employer also asked the Union to inform the Employer as to whether it would maintain its objection to the Employer' s proposals. In addition, it asked the Union to notify it by December 31, 2015 as to whether it would join in the Employer' s petition for declaratory ruling.

The Union responded by email that it would not join in the Employer' s petition. The Employer replied by email to express its outrage at the timing ofthe Union[t] s objection to the Employee s Merit Incentive Program proposal and the Union' s concomitant refusal to join in the Employer' s petition. The Employer claimed that the Union had not previously objected to the Employer' s Merit Inventive Program proposal. The Employer also noted that the parties had openly discussed the potential of using the Board' s procedures to resolve disputes, but that the Union never stated it would withhold its agreement to file a joint petition for declaratory ruling.

On December 31, 2015, the arbitrator replied by email in relevant part, as follows: " I agreed completely that the [Union' s) objection to going to the ILRB is inconsistent with the schedule we discussed, and with the options we discussed."

The parties did not exchange their final health insurance proposals until two weeks after the commencement of the interest arbitration hearing.

Il. Relevant Statutory and Constitutional Provisions

The duty to bargain is defined in Section 7 of the Act which provides in relevant part:

A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.

For the purpose of this Act, " to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative ofthe public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and

the execution of a witten contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The duty " to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty " to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

5 ILC'S 315/7 (2014).

The Illinois Pension Code I'10Vides 11K: following iti tele.vant part:

(a) For periods of service on and after January 1 , 1978, all remuneration for personal senrices performed defined as " wages" under the Social Security Enabling Act, including that part of such remuneration which is in excess of any maximum limitation provided in such Act, and including any benefits received by an employee under a sick pay plan in effect before January I , 1981, but excluding lump sum salary payments:

(1) fbr vacation,

(2) for accumulated unused sick leave,

(3) upon discharge or dismissal,

(4) for approved holidays.

(d) For periods of service after September 30, 1985, compensation also includes any remuneration for personal sen[r]ices not included as " wages" under the Social Security Enabling Act, which is deducted for purposes of participation in a program established pursuant to Section 125 of the Internal Revenue Code or its successor laws,

40 LCS 5/14-103.10 (2014).

The Social Security Enabling Act provides the following in relevant part:

Wages. " Wages" means remuneration for employment, including the cash value of remuneration paid in any medium other than cash, but not including that part of such remuneration which would not constitute " wages" within the meaning of the Social Security Act for wages paid prior to January 1, 1987, or the Federal Insurance Confributions Act for wages paid after
December 31, 1986

40 LCS 5/21-102.17 (2014).

The State of Illinois Constitution provides the following in relevant part:

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contactual relationship, the benefits of which shall not be diminished or impaired.

111. Const. 1970, art. Xlll, S.

Ill. The Employer' s Proposals

Article 28

Seniority Positions

1. Position Subject to Seniority Bid

Should vacancies occur in any of the positions listed in Paragraph A ofthis Section, the most senior eligible Trooper / Special Agent (where applicable) (based on continuous service in the Department) within the distict, bureau, or unit in which the position arises who bids for the position in accordance with the procedures established herein, shall be selected for the position provided the senior Troopers / Special Agents (where applicable) qualifications for the position are substantially equivalent to
or greater than those of other officers seeking the position. In determining qualifications, the Department shall not be arbitrary or capricious but shall consider training, education, experience, skills, ability and performance.

\Vhcrc thc gcographic arca ofrcsponsibility ofthc positions is largcr than a singlc district, burcau, or unit thcn seniority hercundcr shall be determined within the larger area.

When the Department determines that ajob vacancy exists in a position listed in Paragraph A of this Section, the vacancy shall be posted for bid on the appropriate bulletin board(s) of the district, zone, bureau, or unit for a period of at least fourteen (14) calendar days prior to the filling ofthe position and distributed to the Troopers / Special Agents (where applicable) ofthe disfrict, bureau, or unit by mail or other appropriate means. The Department shall determine, in its discretion, whether a job vacancy exists; provided, however, that a vacancy shall be posted within thirty (30) days after the Departnent makes this determination. Except for the positions of Riverboat Unit/Gaming Officer and Riverboat Unit/Garning Sergeant which shall be bid statewide, all such vacancies shall be posted in the district where the vacancy occurs. Once the posting period has ended, no other bids shall be accepted and no appointment shall be made to any person except the successful bidder. Where vacancies for seniority positions posted in a district are not filled, the vacancy shall be posted in the zone and available to investigative personnel who reside within the geographic boundaries of that district, prior to being posted statewide. If the bidding process does not fill the vacancy, then the Department may fill the position by other means. The vacancy posting shall contain the position title, work location, a summary of duties and responsibilities ofthe position. Non-probationary employees within the above units may bid during the fourteen (14) day posting period on a form supplied by the Department. If the bidding process does not result in interested applicants, then the Department may fill the position by other means.

Where skills and ability are relatively equal and there exists an underutilization of a minority class in a given geographical region and/or category, the Department may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.

The Department retains the right, at any time during the procedure, to deterrnine that a vacancy shall not be filled.

6. Merit Incentive Program

The parties agree to develop and implement a merit incentive program which will begin in the Fiscal Year starting July 1 , 2016, to reward and incentivize high-performing employees, or group' s/unit' s performance. As a part of such efforts, the Departnent ma y shall create an annual bonus fund for payout to those individuals deemed high performers or for a group' s/unit[f] s level of performance for the specific group/unit. Payment from this bonus ftnd will be based on the satisfaction of performance standards to be developed by the Department in consultation with the Union. Such merit

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compensation either for a group/unit or an individual shall be considered a one-time bonus and will be offered only as a non-pensionable incentive, and that any employee who accepts merit pay compensation does so voluntarily and with the knowledge and on the express condition that the merit pay compensation will not be included in any pension calculations.

Additionally, as a part ofoverall efforts to improve efficiency ofstate operations and align the incentives ofthe Department with its employees, the Department shall develop gain sharing programs. Under such programs, employees or agencies that achieve savings for the State will share in such savings. Savings shall be calculated based on achieved savings for the State and shall not include savings from other ftnds, such as Federal funds, if the State is forbidden from disbursing such monies as rewards. Such compensation either for a group or an individual shall be considered a one-time bonus and will be offered only as a nonpensionable incentive, any employee who accepts gain-sharing compensation does so voluntarily and with the knowledge and on the express condition that the merit pay or gain-sharing compensation will not be included in any pension calculations.

In each subsequent contract year i_n which a merit incentive program is created, no less than twenty-five percent (25%) of the employees subject to this Agreement will receive some form of merit compensation under such programs. Funding for these performance bonuses is subject to annual approval as a part of the State' s overall budget, and limited to two (2) percent of the budgeted base payroll costs for bargaining unit employees.

The Department, in consultation with the Union, will develop specific policies for both of these programs. Furthæ; once *developed,*~~and will give~~ the Union will be given an opportunity to review and comment on such policies prior to their implementation. The Department' s intent is to develop policies that will reward employees or group of employees based on specific achievements and to provent payouts that are influenced by favoritism, politics, or other purely subjective criteria. Compliance witli 111c policies for both of these ptoyams shall be subject Lo Lhe grievance and arbitration procedure. Whenever the Department pays an employee or group of employees as part of the merit incentive program or gain-sharing initiatives, the payments shall be funded by the DeparlmenL' s operating funds. The DeparLrnenl shall forward all requests for puytnenl LU the Compfroller, and payments shall be issued as required by the obligations of this Agreement.

IV. Issues

At issue is (1) whether the Employer' s petition is timely filed and (2) whether the Employer' s proposals on Seniority Positions and the Merit Incentive Program are permissive or mandatory subjects of bargaining.

As a threshold matter, the Union argues that the Employer' s petition is untimely filed under the Board' s Rules because the Employer filed it unilaterally, after the first day ofthe parties' interest arbitration hearing. The Union further asserts that I should not grant a variance from the Board' s Rule to allow a late filing because doing so would increase the Union' s litigation costs, delay resolution ofthe issues, and foreclose the arbitration panel from considering the mechanics of implementing the Employer' s proposals. Finally, the Union argues that the Employer has no viable excuse for its late filing. It notes that the parties agreed to submit their objections on the first day ofhearing and denies that it " created" the timeliness issue by reneging on an agreement to join in the Employer' s petition for a declaratory ruling on disputed issues.

The Employer counters that its petition is timely filed under the circumstances. It claims that the interest arbitration hearing has not yet commenced with respect to the two proposals at issue because the parties have yet to present testimony on the subjects they address. In the altemative, the Employer asserts that if its petition is deemed untimely filed, I should grant a variance from the Board' s filing rule. The Employer argues that application of the regulatory deadline in this case would be unduly burdensome where the Union acted in bad faith by waiting until the first day of interest arbitration to object to the Employer' s proposals and then reneging on its agreement to join in a petition for declaratory ruling on disputed matters.

On the merits, the Employer argues that its seniority positions proposal addresses a mandatory subject of bargaining because it affects employees' seniority rights and constitutes a departure from established operating practices. The Employer next argues that its Merit Incentive Program proposal is a mandatory subject of bargaining because it concerns wages. It denies that its proposal requires the Union to waive its statutory right to midterm bargaining by reserving to the Employer broad and unfettered discretion. In addition, the Employer explains that the limited discretion reserved to the Employer under the proposal is consistent with its management rights.

The Union argues that the Employer' s Seniority Positions proposal is a prohibited subject of bargaining because it contains an affirmative action plan that does not satisfy the standards set forth by the United States Supreme Court. Next, the Union argues that the Employer' s Merit Incentive Program proposal is likewise a prohibited subject of bargaining, or altematively a permissive subject ofbargaining, because it allows the Employer to engage in direct dealing, conflicts with the Illinois Pension Code, and requires the Union to waive its members' individual statutory and constitutional rights.

V. Discussion and Analysis

1. Timeliness

•rhe Employee s petition declälalory luling is untuncly undcr SLIicl applicaliüll of Ihc Doald[1] s xulcs, bul I find il uppiopxlalc to grant a variance from the regulatory time limit given the facts of this case.

Section 1200.143(b) ofthe Board' s Rules set forth theprocedures for filing petitions for declaratory ruling that address protective service employee bargaining units, at issue here. It states that a party to an interest arbitration covering such protective service units may file a unilateral request for a declaratory ruling provided that it has " requested the other party to join it in filing a dcclaratory ruling ɔetition[,]...thc other party has refused the requost[, and] the petition is filed no later than the firgt day of tho interest arbitration hearing." 80 Ill. Admin. Codo 1200.1 '13(b).

Here, the Employer' s petition is untimely under the Board' s rule because the Employer filed it on December 3 1 , 2015, after the arbitrator held the first day of hearing in the parties' interest arbifration on December 23, 2015. The Employer claims that the interest arbitration had not commenced when it filed its request for declaratory ruling because the interest arbitrator had not yet taken testimony on the proposals at issue; however, plain language of the rule creates a bright-line test that gauges timeliness based on the start of hearing process rather than on the evidence that the parties have infroduced.

Nevertheless, a variance from the Board' s rules is warranted here because adhering to the rule in this case would defeat the purpose ofthe declaratory ruling process. Under the Board' s Rules, the Board—and by implication, the General Counsel— may grant a variance from any of its provisions if (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 (3) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. 80 Ill. Admin. Code 1200.160.

Here, the regulatory deadline for filing a unilateral petition for declaratory ruling is not statutorily mandated.

Next, neither the Union nor the Employer is injured by the grant of a variance. The Union claims that it must bear the burden of increased legal expenses in responding to the Employer's substantive arguments. Yet, such a burden does not weigh in favor of denying the variance because it is not unique to the Union or this case and is instead the natural, expected consequence of granting any variance from a regulatory filing deadline. The Union further asserts that a declaratory rule would foreclose the arbitrator from considering the mechanics ofimplementing the Employer's proposals, but such an argument is disingenuous where it is the Union that seeks to remove the proposals from the arbitrator' s consideration by declaring them permissive. If the Union wishes the arbitrator to consider the mechanics ofimplementing the Employer' s proposals, it can simply withdraw its objections to their consideration. The Union next claims that the declaratory ruling process would delay the interest arbitration, but the declaratory ruling process is in fact an expedited mechanism compared to the available alternatives. If the Union persisted in its claim that the arbitrator could not consider the Employer' s proposals, the Employer could file an unfair labor practice charge alleging that the Union violated the Act by refusing to bargain over a mandatory subject. 80 Ill, Admin. Code 1230.90(k)[2] ; Pill. of Bensenville, 14 PERI (L SLRB 1998) ("raising objections to submission of mandatory subjects ofbargaining to interest arbitration is confrary to the statutory duty to bargain in good faith and constitutes an unfair labor practice under the Act"). The Board' s resolution of that charge would

delay issuance of an award on the disputed issues far longer than a declaratory ruling would. Finally, the Union has not identified any injury to the Employer in granting this variance and I see none.

Lastly, strict application ofthe deadline would be unreasonable and unnecessarily burdensome where the arbitrator noted that the Union's refusal tojoin in the Employer's petition was inconsistent with the parties' agreed-upon schedule and the Union' s earlier representations. Here, the parties agreed to submit their final offers to the arbitrator No days prior to hearing and agreed to raise any objections to those final offers on the first hearing date. They also had discussions on and off the record concerning the manner in which they would resolve disputes over the permissive or mandatory nature of their respective offers. The arbitrator' s comment on the parties' process and conduct is reliable in its neutrality and I rely on his statement as probative of the Union' s conduct and the Employer! s reliance on it. The arbitrator noted in an email that the Union' s refusal to join in the Employer' s petition was inconsistent with the agreed-upon arbifration schedule and the options discussed by the parties to resolve disputed issues. The Union correctly observes that parties should be aware of the Boards rules and that the Employer should have anticipated that the Union might use the parties' expedited schedule to argue that the Employer' s unilateral petition was timeburred. However, Ihc urbilrulor' s comment strongly suggests [hul the Employer did consider such InallCIS and uddtcsscd LhC1n In discussion. Accordingly, I defer to the arbitrator' s assessment of these particular matters of fact and equity in determining that application of the deadline would be unreasonable and unnecessarily burdensome in this case.

Thus, the Employer' s request for a variance from the filing deadline is granted and I therefore resolve the substantive matters raised by the parties below.

2. The Employer' s Proposals

a. Merit Incentive Program

The Employer' s Merit Incentive Program proposal is a mandatory subject of bargaining because it relates to wages and does not seek the Union' s waiver of its statutory rights or the statutory rights of its members. Nor is the proposal a prohibited subject of bargaining.

As a general matter, wages are a mandatory subject ofbargaining. 5 ILCS 315/7; City of Decatur v. Am. Fed n of State, Cnt y . and Mun. Empl, Local 268, 122 Ill. 2d 353 (1988); Am. Fed ' n ofState, Cnty. and Mum. Empl. v . Ill. State Labor Rel. Bd., 190 111. App. 3d 259 (1st Dist. 1989); 111. Dep 't ofMi1ita,yAffairs, 16 PERI 2014 (IL SLRB 2000); City ofMattoon, 13 PER-I ¶2016 (L SLRB 1997); City ofPeoria, 3 PERI 2025 (IL SLR-B 1987). More specifically, merit pay increases, such as those at issue here, are a mandatory subject of bargaining. City ofPeoria, 3 PERI Il 2025 (IL SLRB 1987).

Furthermore, the Employer's proposal does not seek the Union's waiver of its right to represent employees with respect to terms and conditions of employment because it does not permit the Employer to engage in direct dealing. A proposal that seeks the waiver of a statutory right is a permissive subject ofbargaining. Vill. ofMidlothian, 29 PERI TN 25 (IL LRB-SP 2013); Vill. of Wheeling, 17 PERI 112018 (IL LRB SP 2001); cnty, ofC00k (Cook cnty. Hosp.), 15 PERI #009 (IL LLRB 1999); Bd. of Trustees ofthe Univ. oflll., 8 PERI ¶1014 (IL ELRB 1991), affd 244 111. App. 3d 945, 612 N.E.2d 1365 (1993); Bd. ofRegents ofthe Regency Universities System (Northern 111. Univ.), 7 PER-I q 113 (IL ELRB 1991). A union has the statutory right to represent employees with respect to their terms and conditions of employment where the Board has certified the union as their exclusive representative, as it has in this case. 5 ILCS 315/6(c). An employer may deal directly 'With its employees over any lawful matter ifit first obtains the consent oftheir union; however, a proposal that seeks a union's consent to allow the employer to engage in direct dealing is a permissive subject ofbargaining. See Jl. Case Co. v. NLRB. 321 U.S. 332, 338 (1944); Toledo Typographical Union No. 63 v. NLRB, 907 F.2d 1220 (D.C. Cir. 1990).

Here, the Employer' s proposal does not limit the Union' s right to represent its members or otherwise permit the Employer to engage in direct dealing. The Union correctly observes that the Employer' s Merit Incentive Program proposal allows the Employer to offer employees a benefit and, in turn, gives the employee an opportunity to accept it. However, there is no room for negotiation between the individual and the Employer because the conditions of acceptance are set by the Employer and would

be memorialized in the collective bargaining agreement, should the arbitrator award the Employer' s proposal. In this respect, the Employer' s proposal is more akin to a management rights clause, which reserves to Employer specified rights and authority to set certain terms and conditions of employment. In this case, the authority reserved to the employer is the authority to award merit pay only to those individuals who exempt that pay from their pension calculation. Cf Toledo Typographical Union No. 63 v. NLRB, 907 F.2d 1220, 1224 (finding proposal permissive where it authorized employer to negotiate with employees over the terms and conditions oftheir retirement, and deprived the union ofright to represent employees in buyout negotiations); but see N.L.R.B. v. Tomco Communications, Inc., 567 F.2d 871, 878 (9th Cir. 1978)(" An employer may insist on a management rights clause to invasse without violating the Act").

Next, the Employer' s proposal does not seek the Union' s waiver ofits right to mid-term bargaining over changes to employee compensation because theproposal does not give the Employer unlimited discretion to make such mid-term changes. A proposal that reserves to the Employer broad and unfettered discretion to make midterm changes to a mandatory subject of bargaining may he deemed a permissive subject ofbargaining because it seeks the Union' s waiver of its right to midterm bargaining over that subject. City ofWheaton, 31 PERI 166 (IL LRB-SP care proposal deemed permissive); Cnty. ofPeon a, 3 1 PER] 166 (IL LRB-SP G.C. City ofDanviUe, 26 PERI 32 (IL LRB-SP G.C.2010)(s

Here, the proposal places two significant limits on the Employer's discretion. First, il bars the Employer from eliminaling the benefit or limiting its application to very few employees because it provides that 'ho less than twenty-five percent (25%) of [unit membe.l$] will receive sumc fum of melil compensalion. (emphusis added). Second, the effectively lilili(s Ille ileiia that the Employer may use in deciding who will receive the merit increase and how much of an increase they will receive by includingastatementofmtentwhoseinterpretatroms subject the grievance procedure. Specifically, the proposal provides that the Department intends to "develop policies that will reward employees...based on specific achievements and to prevent payouts that are influenced by favoritism, politics, or otherpurely subjective criteria." Although the Union[t] s participation in formulating those policies is limited to " consultation," " review," and " comment," the Union may file a grievance ifthe Employer' s policies do not conform to the Employer[t] s contractually-specified intent. Moreover, the Employer' s own interpretation of its proposal supports a finding that the proposal limits the Employer' s discretion because the Employer concedes " the Union would have the right to challenge the [policy s] standards pursuant to the grievance arbifration procedure.„

Thus, the Employer' s Merit Incentive Program proposal is a mandatory subject of bargaining.

b. Seniority Positions

The Employer' s Seniority Positions proposal is a mandatory subject ofbargaining.

Seniority rights are matters that relate to wages, hours and other terrns and conditions of employment. City ofPeoria, 1 1 PERI ¶2007 (IL SLRB 1994); Martin-Marietta Corp., 159 NLRB No. 59, 906 (1966). The Employer' s proposal in this case addresses seniority rights because it limits the circumstances under which the Employer will use seniority as the sole criterion in making position assignments. Specifically, it allows the Employer to bypass the most senior candidate where the less senior employees' skills are equal, where there exists an underutilization ofa minority class, and where selection of the less senior candidate would reduce the underutilization.

The Union's attack on the constitutionality ofthe Employer's proposal does not warrant a finding that the Employer' s proposal addresses a pennissive subject ofbargaining. Here, the Union claims that the Employer' s proposal contains a vague and overly broad affirmative action program, and it cites to a case from the private sector that suggests the plan would not withstand judicial

10

review. Asapreliminarymatter, administrative agencies—andby extension, their agents—lack the authority to dispositively decide constitutional issues. Crowley v. Bd. of Educ . of City of Chicago, 2014 IL App (l st) 130727, #5; Singh v. Reno, 1 82 F.3d 504, 510 (7th Cir. 1999). Furthermore, it is not my role in a Declaratory Ruling to determine, on a subject by subject basis, whether an employer's proposal represents a narrower scope ofrights than that conferred by statute or the constitution. Tri-State

Fire Protection District, 31 PERI 75 (IL LRB-SP GC 2014)(referring such comparison to the interest arbitrator); Pill ofElk Grove Vill., 21 PERI 1114 (IL LRB-SP GC 2005)(appIying same rationale). Finally, in this case, the Union has not argued, as it did with respect to the Employer's Merit Incentive Program proposal, that the express language of the proposal conflicted with any specific statutory or constitutional provision nor has it otherwise presented a waiver argument.

Thus, the Employer' s Seniority Positions proposal addresses a mandatory subject of bargaining.

Footnotes

1 This declaratory ruling initially issued February 18, 2016, contained a typographical error on page eleven, in former footnotc 4. The words following (emphasis added) werc inadveLtentIy included and have been omitted.

2 Section 1230.90(k) of the Board's Rules provides the following: "Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the part-res are required to bargam, the arbitration panel' s award shall not consider that Issue. However, except as provided in subsections (1) and (m) ofthis Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to bc a subject over which the parties are required to bargain." 80 Ill. Admin. Codc 1230.90(k).

3 The Board must investigate all charges. 80 Ill. Admin. Code 1220.40. Ifthe Executive Director finds issues of fact or law for hearing, she assigns the matter to an Administrative Law Judge, who holds a hearing and issues a written decision. 80 ill. Admin. Code 1220.50. The parties may then avail themselves of the appeals process before the Board and then, in turn, before the Court. 80 Ill. Admin. Code 1200.135(b).

4 In light of the arbitrator's comment, it is unnecessary to resolve whether the Union ever expressly agreed to join in a petition for Declaratory Ruling.

5 I acknowledge that pursuant to the Rules, "[d]eclaratory rulings shall not be issues conceming factual issues that are in dispute." 80 Ill. Admin. Code. 1200.143(b)(2). However, the limited factual findings set forth above are consistent with this rule because they are limited to issues oftimeliness and do not impact the subject of the petition itself. Id. (General Counsel may refer factual issues to the interest arbitrator where they will " facilitate a determination of the issues that are the subject ofthe petition. (emphasis added).

6 The Union frames its argument differently, asserting that the proposal addresses a prohibited subject of bargaining because it allows the Employer to violate the Act by engaging in direct dealing. As discussed below, direct dealing only violates the Act if Employer does not seek the Union's consent to it. I therefore interpret the Union's argument as an assertion that the Employer' s proposal is a permissive subject ofbargaining because it seeks the Union' s waiver of its right to represent its members,

7 Section 6(c) of the Act provides the following in relevant part: "A labor organization designated by the Board as the representative of the majority of public employees in an appropriate unit in accordance with the procedures herein or recognized by a public ernployer as the representative of the majority of public employees in an appropriate unit is the exclusive representative for the employees of such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours and other conditions ofemployment not excluded by Section 4 of this Act." 5 ILCS 3 1576(c).

8 There is no indication that the Employer has sought to exclude disputes over the interpretation of this clause from the grievance arbitration process.

9 The Employer asserts that the Union's authority to grieve the Employer's standards is " expressly" stated in the proposal. I therefore infer that the language referenced by the Employer is the following: " compliance with the policies for both ofthese programs shall be subjectto the grievance and arbitration procedure." This language is

open to the interpretation that Union can merely challenge the Employer' s application of the policies, as opposed to their content. However, the Employer has offered a different interpretation, discussed above, and I rely on it in rendering this Declaratory Ruling.

10 Notably, the case cited by the Union is of questionable value to the parties'public sector bargaining dispute at issue here because it addressed the "narrow statutory issue of whether Title Vll forbids private employers and unions from voluntarily agreeing upon bona fide affirmative action plans...." United Steelworkers American v, Weber, 442 U.S. 1 93, 208-209 (1979)(emphasis added).

End of Document

19 PERI 62, 19 Pub. Employee Rep. for Illinois Il 62, 2003 VNTL 26067398

Illinois ELRB Executive Director

Local 73, SEIU, Respondent, and Bernice London, Charging Party.

No. 2003-CB-0003-C

BLACKWELL, EXECUTIVE DIRECTOR

April 11, 2003

Related Index Numbers
15.171 Educational Employees, Service and Maintenance, Custodians
23.24 Gnevance Processing, kefUsal to Brtng Grievance to Arbitration
73.113 Interference With or Restraint of Employees' Rights, 'IYpes of Interference or Restraint, Breach of Duty of Fair Representation

Judge / Administrative Officer
BLACKWELL, EXECUTIVE DIRECTOR

Ruling

The IELRB's Executive Director dismissed a part-time school custodian's claim that her union breached its duty of fair rcprcscntation toward her. The union did not engage in intentional misconduct by relying on its experience in processing factually similar arbitration cases and determining that the custodian's claim lacked merit, the Executive Director determined.

Refusal to arbitrate grievance did not support DFR claim

Meaning

Under Section of the IELRA, a union does not violate its duty of fair representation unless it engages in intentional misconduct. Such misconduct consists of actions conducted in a deliberate and severely hostile manner or fraud or deceitful action or conduct.

Case Summary

The IELRB's Executive Director dismissed a part-time school custodian's claim that her union breached its duty of fair representation toward her. The custodian contended that the union failed to arbitrate her grievance concerning the school district's failure to hire her for a full-time position. The Executive Director explained, under Section 14(b)(1) of the IELRA, a union does not violate its duty of fair representation unless it engages in intentional misconduct. Such misconduct consists of actions conducted in a deliberate and severely hostile manner or fraud or deceitful action or conduct, the Executive Director further explained. Here, the union relied on its experience in processing factually similar arbitation cases in determining that the custodian's claim lacked merit, the Executive Director determined. The Director ruled that the union's failure to take the custodian's grievance before an arbitrator did not establish intentional misconduct rising to the level of a breach of its duty of fair representation.

Full Text

Executive Director's Recommended Decision and Order

I. The Unfair Labor Practice Charge

On July 17, 2002, Bernice London ("London") filed an unfair labor practice charge the Illinois Educational Labor Relations Board ("Board" or "IELRB") against Service Employees International Union, Local 73 ('Union"), alleging that the Union breached its duty of fair representation in violation of Section 14(b)(1) of the Illinois Educational Labor Relations Act, 11 5[LCS 5/1 et. seq. ("Act"of1ELRA").

11. Facts

A. Jurisdictional Facts

London is an educational employee within the meaning of Section 2(b) of the Act. The Union is an employee organization within the meaning of Section 2(c) of the Act and an exclusive representative within the meaning of Section 2(d) of the Act. Bellwood School District 88 (^{C} District") is an educational employer within the meaning of Section 2(a) of the Act.

B. Facts Concerning the Unfair Labor Practice Charge

London is employed as apart-time custodian at Grant Elementary School ("Grant"). She began working at Grant as a librarian's assistant in 1993. In August of 2000, London became a part-time custodian. London says that the District told her that parttime custodians would he promoted to full-time on a seniority basis as positions bcc,nmc. available, According to I,ondon, when her turn for promotion came, the District passed her over in favor of Union Vice President Nick Belsanli^{l} s C'Belsanti") daughter, Jennifer Theis ("Theis"). Theis did nol work ror the District prior 10 becoming a full-lime custodian. London believes that Belsanti conspired with the District to have his daughter hired as a full-tirne custodian. The Union denies the conspiracy. The Union insists that Belsanti has no role in the decision-making process relating to the hiring of the District's employees because the Collective Bargaining Agreement ("Agreement") gives the Dist-ict the sole authority to determine whether two job applicants are equally qualified.

John Woodhouse ('Woodhouse"), London's union steward, filed a grievance on London's behalf regarding the District^{t} s failure to promote her. Woodhouse represented London at the grievance meeting. The District denied the grievance request to move London to full-time custodian. When London asked that her grievance be heard by the Board of Education, the District told her that she needed to obtain the Superintendent^{t}s approval. The Superintendent denied London's request for a meeting with the Board of Education. Woodhouse told her that there was nothing that he could do. Several custodians approached Union Representative Catherine Schutzius ("Schutzius") on London's behalfregarding London's problems with the District. London says that because Schutzius works with Belsanti, she would do nothing to assist her.

London reports that Woodhouse attempted to move her case before an arbitrator but was unable to do so because Schutzius never returned his calls. The Union insists that its decision not to arbitrate London's claim was based on its experience that arbitration is rarely successful when an Agreement, such as the one between the Union and the Disfrict, gives the employer the authority to determine whether two applicants are equally qualified.

m. Positions of the Parties

London argues that the Union breached its duty offair representation in violation of Section 14(b)(l) of the Act when Belsanti conspired with the District to have his daughterhired as full-time custodian and when it failed to take her grievance to arbitration.

The Union completely denies any conspiracy against London or any involvement in the Disfrict's decision to hire Theis. The Union claims that its decision not to arbitrate London's case was based on its experience with factually similar cases where the Union had been unsuccessful. Finally, the Union contends that London^{t}s charges are false, unsubstantiated and fail to meet the standard for a breach of its duty of fair representation in violation of the Act.

IV. Discussion

The evidence does not establish an unrebutted prima facie case that the Union violated Section 14(b)(I)of the Act.

A. Standard for Complaint

The IELRB established the standard for issuance of an unfair labor practice complaint in Lake Zurich School Dist-ict No. 95, 1 PER-1 1031, Case No. 84-CA-0003 (IELRB Opinion and order, November 30, 1984). The IELRB has to "decide whether its investigation of the charge establishes a prima facie issue of law or fact sufficient to warrant a hearing of the charge." Id. In order for a complaint to be issued, "the investigation must disclose adequate credible statements, facts, or documents which, if substantiated and not rebutted in a hearing could constitute sufficient evidence to support a finding of a violation of the Act." Id.

In Brown County Community Unit School District No. 1, 2 PERI 1096, Case No. 85-CA-0057-S (IELRB Opinion and Order, July 31, 1986), the Board held that the standard for complaint set forth in Lake Zurich:

[Rlequires the Executive Director to make an assessment of all of the evidence presented during an investigation by both the charging party and the respondent 10 determine whether the charging party has presented "adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing, [c]ould constitute suffcient evidence to support a finding of a violation of the Act." Lake Zurich, supra. As a threshold matter, the charging party must present facts that establish a prima facio violation; but tho inquiry doog not end thoro. Tho roopondent'o evidence must also be considered. If a respondent presents objective evidence during an investigation which shows that the charging party's material "facts" are erroneous, and the charging party cannot or does not rebut respondent's evidence, then no complaint should be issued, since what is left of charging party's case does not state a prima facie case.

This does not mean ... that the Executive Director may make credibility resolutions in the sense of crediting one witness's version of an event over another's ... Where the parties present conflicting statements that go beyond mere opinion on a material issue of fact, then an "issue of facЄ' is created which can only be resolved through a hearing. In Lake Zurich, we used the words "credible statements" to mean that a charging party's "facts" will not be accepted wholesale if the respondent presents objective evidence that those "facts" are vaong.

B. Duty of Fair Representation

Section 14(b)(1) of the Act prohibits employee organizations, their agents or representatives, and educational employees from

Restraining or coercing employees in the exercise of the rights guaranteed under this Act, provided that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

It is well established that this Section enconlpasses a duty of fair representation. NEA, IEA, Rock Island Education Ass'n (Adams), 10 PERI 1045, Case No. 93-CB-0025-C (IELRB Opinion and order, February 28, 1994); Township High School District 214, 3 PERI 1121, Case Nos. 87-CA-0003-C, 87-CB-0002-C (IELRB Opinion and order, November I o, 1987).

However, Section 14(b)(1) provides that an employee organization does not violate its duty of fair representation unless it engages in intentional misconduct. Intentional misconduct consists of actions that are conducted in a deliberate and severely hostile manner, or fraud, deceitful action or conduct. Norman Jones v. IELRB, 272 Ill. App. 3d 612, 209 ill. Dec. 1 19, 650 N.E.2d 1092 (1st Dist. 1995); University ofllllinois at Urbana (Rochkes), 17 PER-1 1054, case Nos. 2000-CB-0006-S, 2001CA-0007-S (IELRB Opinion and Order, June 19, 2001). Thus, intentional misconduct is more than mere

negligence or the exercise of poor judgment. Chicago Teachers Union (Oden), 10 PERI 1135, Case No. 94-CB-0015-C (IELRB Opinion and Order, November 18, 1994); NEA, IEA, North Riverside Education Ass'n (Callahan), 10 PERI 1062, Case No. 94-CB-0005-C (IELRB Opinion and order, March 1994); Rock Island (Adams), 10 PERI 1045.

A union is not required to process every grievance, AFSNfE Local 3506 (Pierce), 16 PERI 101 C, Case Nos.99-CB-0002-C, 99CB-0003-C (IELRB Opinion and Order, December 3, 1999) or take every grievance to arbitration. Rochkes, 17 PERI 1054. A union is required to conduct a good faith investigation to determine the merits of a claim. Id. A union may take into account the following factors when determining the merits of a claim: perceived merit of the complaint, likelihood that the union will prevail, the cost of pursuing the grievance, or the possible benefit to membership. Jones, 272 Ill. App. 3d 622-23, 650 N.E.2d 1099. In this case, the Union determined that London's claim did not have merit based on its knowledge and experience in factually similar arbitration cases in which the union had not been successful. Accordingly, the Union's failure to take London's grievance before an arbitrator does not establish intentional misconduct amounting to a breach of its duty of fair representation.

London also alleges that the Union breached its duty of fair representation when it conspired with the District to hire Theis as a ftll-time custodian. As discussed above, the charging party bears the initial burden of presenting sufficient facts to establish a prima facie violation of the Act. Brown County, 2 PERI 1096. The only evidence that London presents in support of her allegation is the fact that Theis is Belsanti's daughter. Familial relationship standing alone is not evidence of a conspiracy or intentional misconduct. IBEW, Local 134 (Allcn), 13 PERI 3008, L-CB-97-037 (March 17, 1997). is more, pursuant to the Agreement, the Union had no role in the District's decision to hire Theis rather than London.

Since the evidence fails to establish an unrebutted prima facie case that the Union violated Section 14(b)(l) ofthe Act, I dismiss the instant unfail labor practice charge in its entirety.

V. Recommended Decision and Order

For the reasons discussed above, the instant unfair labor practice charge is dismissed in its entirety.

VI. Right to File Exceptions

Pursuant to the Board's Rules and Regulations at 80 Ill. Adm. Code 1120.30(c), the parties may file exceptions to this Recommended Decision and Order and briefs in support ofthose exceptions no later than fourteen (14) days after receipt of this Decision and Order. See IELRB Rules and Regulations, Sections 1100.20(d) and 1 1 20.30(c) concerning service of exceptions. If no exceptions are filed within the fourteen (14) day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

End of Document

KeyCite Yellow Flag - Negative Treatment

Superseded by Statute as Stated in Sekendur v. McCandliss, N.D.III., September 23, 2013

139 111.2d 422

Supreme Court of Illinois.

T.J. GENDRON, Indiv. and on Behalf of All Others Similarly Situated, et al., Appellants,

C111CAGO AND NORTH WESTERN Ploccdlucs in Railway Låb01 ACI rol lcsolulion 'IRANSPOÆUAI'ION COMPANY et al., Appellees. of minor disputes are mandatory; employee may not opt against those procedures in favor of stateNo. 69582. law actions for what amount to grievances under Act. Railway amended 45 U

Labor Act, 3, subds. I, I(q), 2, as Nov. 30, 1000. U.S.C.A. 153, subds. 1, I(q), 2.

Synopsis

Railroad employees and railw, creditiployment officers brought of railroad line as County, Richard L. Curry preempted by federal law. Appe 301, *putes and concerted activities 721, affirmed. Petition for Court, Ryan, J., heldexecutive conv conspiracy and fraudulent with collective

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p. 14 of L150 brief

even though

West Headnotes (9)

UI Labor and Employment Major and minor and employee benefits; inquiry into impact of disputes in general sale on rights of employees would require close scrutiny of collective bargaining agreement; and Act relate to formation or modification of ICC had authorized the sale. Railway Labor Act, collective bargaining agreement; they seek to 1-208, as amended, 45 U.S.C.A. 151-188; create contractual rights. Railway Labor Act, 49 US.C.A. 10101-11917; S.H.A. ch. 59, ¶1-208, as amended, 45 U.S.C.A. 151-188. 101 et seq.

2 Cases that cite this headnote

"Minor disputes" for purposes of Railway Labor Act involve interpretation or application of existing collective bargaining agreement; they seek to enforce existing rights. Railway Labor Act, 1—208, as amended, 45 U.S.C.A.§§ 151-188.

2 Cases that cite this headnote

[31 Labor and Employment MAior and minor disputes in general

Railway Låb01 ACI rol lcsolulion of minor disputes are mandatory; employee may not opt against those procedures in favor of stateNo. 69582. law actions for what amount to grievances under Act. Railway amended 45 U

U.S.C.A. 153, subds. 1, I(q), 2.

action as Wages and fraudulent con Cook pp}oyment Pensions and court, 190 111.App.3d

leave{1•Iroad employees and railway Supreme offlcers as creditors conspiracy and fraudulent Railway Labor Act and Interstat€ Jf rail line were inextricably bargaining Affrmed.

onstituted "minor dispute," and d by Railway Labor Act and erce Act (ICC),

ICC did not mandate sale; employees and officers sought wages, vacation pay, personal and sick leave, pension contributions, and severance

4 Cases that cite this headnote

[21 Labor and Employment Major and minor Labor and Employment Can-iers; disputes in general Railway Labor Act

"[.2d

States Labor and Employment

Railway Labor Act preempts cases involving interpretation and application of agreements covering rates of pay, rules, or working conditions. Railway Labor Act, 2(5), as amended, 45 U.S.C.A S 151a(5).

[6] Fraudulent Conveyances Elements of Fraud as to Creditors

In order to establish that conveyance is fraudulent ill law, linee elements Illust be present: there must be transfer made for no or inadequate consideration; there must be existing or contcmplatcd indebtedness against transferor; and it must appear that did not retain sufficient property to pay indebtedness. S.H.A. ch. 59, 101 etseq. 44 Cases that cite this headnote

[7] Commerce Combinations and consolidations of carriers; agreements Interstate Commerce Commission (ICC) was empowered to examine aspects ofsale ofrailroad line, including any possible adverse impact on vendor's employees. 49 U.S.C.A. 10501(d), 10901.

[81 Commerce Decisions Reviewable Failure of Interstate Commerce Commission (ICC) to disapprove sale of railroad line or impose on it conditions for protection ofvendor's employees did not give courts authority to step into picture and fashion remedy for protection of vendor's employees and railway unions' chief executive officers alleging status as creditors. S.H.A. ch. 59, 101 et seq.; 49 US.C.A. §§10101-11917.

Commerce Decisions Reviewable State courts lacked authority to enjoin or otherwise attempt to undo sale of railway line authorized by Interstate Commerce Commission (ICC). 49 U.S.C.A. 10101-11917.

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Attorneys and Law Firms

1208422 Timothy D. Kelly and Lee F. Arnold, of Kelly & Berens, Minneapolis, Minn., and Steven A. Weiss and Arthur J. Howe, of Schopf & Weiss, Chicago, for appellants.

*423 Harold C. Hirshman, Jeffrey L. Dorman, William M. Walsh and I[l].dward T Perelmutar, of Sonnansc,hain, Nalh &. Rosenlhal, and P. Daley, Siu,dll F. and Myles L. Tobin, Chicago, for appellee Chicago & North Western Transp. Co.

Susan Getzendanner, of Skadden, Arps, Slate, Meagher & Flom» Chicago. for appellee, Fox River Valley Railroad Corp.

Opinion

Justice RYAN delivered the opinion of the court:

Plaintiffs, the Railway Labor Executives' Association (RLEA) and certain employees of defendant, Chicago & North Western Transportation Company (C & NW), sued in the circuit court of Cook County seeking to enjoin an allegedly fraudulent conveyance of a portion of the rail line of C & NW to defendant Fox River Valley Railroad Corporation (FRVR) and for damages allegedly occasioned by that conveyance. The circuit court dismissed plaintiffs' complaint on the ground that plaintiffs' State-law claims are preempted by the Federal Railway Labor Act (45 U.S.C. §§ 151 through 188 (1982)) (RLA) and the Interstate Commerce Act (49 U.S.C. 10101 through 11917 (1982)) (CA). The appellate court affirmed, with one justice dissenting. (190 Ill.App.3d 301, 137 Ill.Dec. 776, 546

N.E.2d 721 we granted plaintiffs' petition for leave to appeal (107 111.2d R. 315), and now affirm the decision of the appellate court.

PlaintiffT.J. Gendron is an employee of C & NW. He alleges that he is also a creditor of C & NW. Plaintiff RLEA is a voluntary, unincorporated association of the chief executive offcers of the standard national and intemational railway unions in the United States. RLEA also alleges that it is a creditor of C & NW.

Defendant C & NW is the nation's ninth largest rail system. Defendant FRVR was incorporated under the laws of Wisconsin in September 1987. In late 1987, C & *424 NW and FRVR began negotiating the sale of 208 miles of Wisconsin rail line and incidental trackage rights from C & NW to FRVR. This rail line is Imown as the Duck Creek South Line.

The line sale was consummated in 1988, and took the form of a "leveraged buy out"; FRVR borrowed fimds to purchase C & NW assets and will use the purchased assets as collateral to secure the borrowed funds. C & NW is to receive $61.1 million from the sale and will continue to operate as a Class I railroad.

On December 23, 1987, C & NW and FRVR (the railroads) filed with the Interstate Commerce Commission (ICC) a notice of exemption from regulation, seeking approval of the sale and requesting clarification of the ICCs jurisdiction over labor issues arising from line sale transactions. Under the procedures established in Ex parte No. 392 (1985), 11.C.C.2d 810, lccs authorization or sale became effective on December 30, 1987. (The Staggers Rail Act of 1980 (49 U.s.c. 105056) (1982)) authorized tho ICC to exempt from regulation a broad range of rail-related actionsdeemed to be of limited scope (49 U.S.C.. § 10505(a) (1982)).) Pursuant to this authority, in Ex parte No, 392 (1985), **1209 ***547 1 1.C.C.2d810,affdsubnom. Illinois Commerce Comm fn v. Interstate Commerce Comm'n (D.C.Cir.1987), 817 F.2d 145, the ICC established a policy whereby a short rail line sale to a noncarrier, like FRVR, would be approved automatically seven days after the filing with the ICC ofan application for exemption from regulation. As part of the policy established in Ex parte No. 392, the ICC announced that it would not, as a matter of course, impose "labor protective conditions" on such short-line sales. Such conditions, including pay and benefit protection for employees, were formerly imposed by the ICC as part of its approval of rail line sales. Following the ICCs authorization of a sale, a labor *425 union may seek labor protection, or otherwise challenge the sale, by filing a petition to revoke the exemption pursuant to 49 U.S.C section IOSOS(d). (Ex parte No. 392, 11.C.C.2d at 815. See also Chicago & North Western fransportation Co. v. iliA2d

Ry. Labor Executives' Association (7th Cir.1988), 855 F.2d 1277, 1279.) On January 29, 1988, the ICC responded to the railroads[l] request for clarification, expressing its view that it continued to have jurisdiction over rail line sales to the extent necessary to allow the parties to a sale to consummate a transaction previously authorized by the ICC. On February 19, 1988, the petitioned the ICC for revocation of the exemption from regulation. The ICC subsequently denied the RLEA[T]s petition.

Plaintiffs initiated the present class action on January 22, 1988, by filing a three-count complaint in the circuit court of Cook County. The complaint alleges that the sale of the Duck Creek South Line constitutes a fraudulent conveyance under Illinois law (Ill.Rev.Stat.1987, ch. 59, par. 4), and is the product of a civil conspiracy between the railroads to deprive plaintiffs of their rights and benefits as creditors of C & NW. In their complaint plaintiffs seek to enjoin the sale or to create a lien on the Duck Creek South Line, other injunctive relief and damages allegedly occasioned by the sale.

Plaintiffs allege in their complaint that C & NW's purpose in selling the Duck Creek South Line is to avoid the cost burden of ownership, including continuing to pay plaintiffs' wages and benefits. Plaintiffs claim that the sale is a highly leveraged buyout and that C & NW will use the proceeds of the sale to pay favored creditors or to pay dividends or other bcncfiLs 10 C & NW's shatcholdcts lalhC1 than satisfying plaintiffs' claims. Plaintiffs further allege that FRVR will be loft dangorou81y undercapitalizcd, with tho bulk of its nsscts

pledged as security for the benefit of creditors other than plaintiffs.

*426 On February 1, 1988, the railroads filed a petition for removal to Federal court pursuant to 28 U.S.C. sections 1441 and 1446, and the case was accordingly removed. Plaintiffs filed in the Federal district court a motion to remand, and the railroads filed a joint motion to dismiss plaintiffs' complaint on the ground that plaintiffs' causes of action are preempted by the RLA and the ICA. The Federal court remanded the case to State court, holding that neither the RLA nor the ICA are "complete preemption" statutes; a preemption defense under these statutes is insufficient to confer removal jurisdiction on Federal courts. (See Caterpillar Inc. v. Williams (1987), 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 3 8 (discussing the "complete preemption" doctrine).) Having determined that it lacked jurisdiction over this case, the Federal court accordingly declined to pass on the question whether plaintiffs' particular claims are preempted by the RLA and/or the ICA.

Upon remand to the circuit court of Cook County, the railroads again filed a motion to dismiss the complaint. The circuit court granted the motion, ruling that plaintiffs' causes of action are preempted by the RLA and the ICA. Following affirmance by the appellate court (1 90 Ill.App.3d 301, 137 Ill.Dec. 776, 546 N.E.2d 721), plaintiffs appealed to this court. We need only decide whether plaintiffs' causes

of action under the Illinois Fraudulent Conveyance Act (Ill.Rev.Stat. 1987, ch. 59, par. 4), since repealed and replaced by the Uniform Fraudulent Transfer Act (Ill.Rev.Stat. 1989, ch. 59, pars. 101 through 112), and for civil conspiracy are preempted by Federal law. We hold that they are, and, as noted above, we accordingly affrm the dismissal ofplaintiffs' complaint.

**1210 ***548 The parties' contentions before this court may be briefly outlined as follows. Plaintiffs assert that the appellate court erred in finding that the plaintiffs' fraudulent conveyance action is a "minor dispute" within the *427 meaning or Lhe RLA and, therefore. subject 10 the exclusive jurisdiction of the National Railway Adjustnent Board (NRAB). The railroads respond that plaintiffs' claims in fact constitute a "minor dispute" within the RLA, and are thus preempted by that statute. Plaintiffs further argue that their claims are not preempted by the ICA because the relief plamtlffs seek would not conflict With any order of the ICC. The railroads counter by noting that the ICC expressly approvcd this linc salc. Thc railroads contcnd that thc granting of plaintiffs' requested relief would impermissibly interfere with the ICCs approval and would constitute an undue interference with the ICCs exclusive jurisdiction over these types of railroad line sales. We consider first the arguments concerning the RLA.

Congress enacted the Railway Labor Act to promote stability in labor-management relations in the railroad industy. (Union Pacific R.R. co. v. Sheehan (1978), 439 U.S. 89, 94, 99 S.Ct. 399, 402, 58 LEd.2d 354, 359.) The "general purposes" section of the RLA, in part, states that "[t]he purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates ofpay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out ofgrievances or out ofthe interpretation or application of agreements covering rates of pay, rules, or working conditions." (45 Ü.S.C. 151a (1982).) We note parenthetically that the RLA also covers the airline industry. see 45 U.S.C. 181 etseq. (1982).

[1] [2] Labor disputes subject to the dispute-resolution processes of the RLA are characterized as either "major disputes" or "minor disputes." The terms "major" and "minor" do not appear in the RLA but are terms articulated by the Supreme Court to differentiate the two *428 types of disputes govemed by the RLA. These two types of disputes have different avenues of resolution under the RLA. Major disputes relate to the "formation or modification" of a collective-bargaining agreement; they seek to create contractual rights. Minor disputes, on the other hand, involve the interpretation or application of an existing collectivebargaining agreement; minor disputes seek to enforce existing rights. Consolidated Rail Corp. v. Ry. Labor Executives' Associanon (1989), 491 U.S. 299, - 109 S.Ct. 2477,
2479-81, 105 L.Ed.2d 250, 260-62; Elgin, Joliet & Eastern Ry. co. v. Burley 0945), 325 U.s. 723, 65 s.ct. 1282, 1289-90, 89 L.Ed. 1886, 1894.

The category of minor disputes. into which [he railroads assert plaintiffs' present claims fall, is based on section 2 Sixth and section 3 First (i) of the RLA. (45 U.S.C, 152 Sixth, 153 First (i) (1982); see Consolidated Rail Corp., 491 U.S. at 109 S.Ct. at 2480, L.Ed.2d at 261 These sections set forth conference and arbitration procedures for disputes ansmg 01 glowing "out 01 grievances ar out the interpretation or application of agreements conceming rates ofpay, rules, or working conditions." Thc Suprcmc Court has recognized that the category of "minor disputes":

> "contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e.g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future." Elgin, Joliet & EastemRy. *429 Co. v. Burley (1945), 325 U.S. 71 i, 723, 65 S.G. 1282, 1290, 89 L.Ed. 1886, 1894.

See also ** 1211 ** *549 Consolidated Rail Corp. v, Ry. Labor Executives' Association (1989), 491 U.S. ——, 299, 109 Sect. 2477, 2480-..81, 105 L.Ed.2d 250, 261-..62.

[31 Under the minor-dispute mechanism of the RLA, the parties themselves are to resolve the dispute in the first instance. If the parties are unsuccessful, then the dispute is subject to compulsory and binding arbitration before the National Railroad Adjustment Board (45 U.S.C. S 153 First

(1982)), or before an adjustment board established by the employer and the unions representing the employees. (45

U.s.c. 153 Second (1982).) In either case the RLA vests in the adjustment board exclusive jurisdiction over minor disputes, subject to very limitedjudicial review in the Federal courts. (45 U.S.C. 153 First (q) (1982); Consolidated Rail Corp. v. Ry. Labor Execufives' Association (1989), 491 U.S. 299, , 109 S.Ct. 2477, 248C-81, 105 L.Ed.2d 250, 262; Union Pacific R.R. co. v. Sheehan (1978), 439 U.s. , 93, 99 S.Ct. 399. 402; 58 LEd.2d 354, 358.) The procedures set forth in the RLA for resolution of minor disputes are mandatory; an employee may not opt against these procedures in favor of State-law actions for what amount to "grievances" under the RLA. (Andews v. Louisville & Nashville R.R. Co. (1972), 406 U.S. 320, 92 S.Ct. 1562, 32 L.Ed.2d 95.) The Supreme Court has observed that in enacting this legislation "Congress considered it essential to keep these so-called 'minor' disputes within [he Adjustment Board and out of the courts." Union Pacific R..R. Co. v. Sheehan (1978), 439 U.S. 89, 94, 99 s.ct. 399, 402, 58 L.Ed.2d 354, 359.

The ruilrouds contend thal plaintiffs' claims here consLiLuLe a minor dispute under the RLA and are thus subject to the exclusive jurisdiction of the NRAB. We note at the outset, as the cases reveal, that the RLA casts a *430 wide net into the arena of disputes arising between employees and their railroad employers. The Supreme Court has indeed indicated that the minor-dispute mechanism of the RLA sweeps within its govemance even disputes which are not based on any specific provision of a collective-bargaining agreement. (See Elgin, Joliet & Eastern Ry. Co. v. Burley (1945), 325 US. 711, 723, 65 sect 1282, 1290, 89 L.Ed. 1886, 1894 (minor disputes as contemplated in the RLA include "omitted" cases, which are cases "founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective bargaining agreemenf'); Consolidated Rail Corp., 491 U.S. 299, 109 S.Ct. 2477, 105 L.Ed.2d 250 (Ifarailroad asserts a contractual right to take an action contested by its employees or their unions, then the resulting controversy is a minor dispute if the railroad's action is "arguably justified" by the terms of the parties' collective-bargaining agreement. The controversy is a major dispute if the railroad's claims to a contractual right are frivolous or obviously insubstantial). See also Leu v. Nojfolk & Western Ry. co. (7th Cir.1987), 820 F.2d 825 (former railroad employees[F] State-law fraud and conversion claims against railroad based on railroad's alleged failure to pay medical expenses preempted by RLA even if railroads alleged liability arose from "course and practice" of railroad rather than from specific provision of collective-bargaining agreement because question of railroad's obligation to pay expenses would require examination ofrailroad[t]s "course and practice" in light of collective-bargaining agreement); Ry. Labor Executives Association v: Atchison, Topeka & Santa Fe Ry. co. (9th Cir.1970), 430 F.2d 994, 996 ("If the claim is founded upon some incident of the employment relationship, or an asserted one, the [Adjustment] Board may determine the meaning and effect of the provisions of the collective agreement with reference either *431 to an included orto an omitted case"); Arbogastv. CSXCorp. (N.D.W.Va. 1987), 655 F.Supp. 371, 372-73, afd (4th Cir. 1987), 831 F.2d 290 (RLA preempted action by former railroad employees alleging right to liquidated damages based on failure to pay wages eamed prior to separation—"lf a claim is founded on some incident of the employment relationship, it is immaterial, for purposes of coverage by the RLA, whether the claim is expressly covered by the collective-bargaining agreement, or is independent of that agreement").) It would appear, however, that not every dispute arising in the course of employment between an employer covered by the RLA and its organized envloyces is **1212 ***550 preempted by the RLA. See, e.g., Colorado Anti—Discrimination Comm'n v. Confinentul Airlines, Inc. (1963), 372 u.s. 714, 724, 83 S.Ct. 1022, 1027, 10 L,Ed.2d 84, 91 (Neither RIA nor other Federal labor statutes preempted State-law claim for racial discrimination in hiring. Congress, in enacting the RLA, did not intend to bar States from protecting employees against racial discrimination); Air Line Pilots Association v. UAL coy-p. (7th Cir.1989), 874 F.2d 439 (RLA did not preempt State law regulating anti-takeover measures in context of dispute between airline pilots and airline over anti-takeover provisions in airline[l]s collective-bargaining agreement with machinists' union).

The courts have articulated various standards for evaluating whether a claim couched in terms of a State-law cause of action is in fact a dispute subject to the exclusive jurisdiction ofthe NRAB. For example, in Stephens v. Norfolk & Western Ry. Co. (6th Cir. 1986), 792 F.2d 576, the court stated:

> "Employees' attempts to evade NRAB exclusive jurisdiction over minor disputes by recharacterizing their claims into state causes of action are scrutinized by the following test: If the 'action is based on a mat•ix of facts which are inexticably intertwined with the grievance

> machinery *432 of the collective bargaining agreement and of the R.L.A.,' exclusive jurisdiction of the NRAB preempts the action." (792 F,2d at 580, quoting Magnuson v. Burlington Northern, Inc. (9th Cir, 1978), 576 F.2d 367, 1369.)

Similarly, inLeu v. Norfolk & Western Ry. Co. (7th Cir. 1987), 820 F.2d 825, the court observed that the "key inquiry" in such cases is " 'whether evaluation of the [State-law] claim is inexfricably intertwined with consideration of the terms of the labor contact. If the state * * * law purports to define the meaning of the contact relationship, that law is pre-empted. ' ,' 820 F.2d at 830, quoting Allis-Chalmers Corp. v. Lueck 0985), 471 U.S. 202, 213, 105 S.Ct. 1904, 1912, 85 L.Ed.2d 206, 216-17.

In Andrews v. Louisville & Nashville RR. Co. (1972): 406 U.S. 320, 92 S,Ct. i S62, 32 L.Ed.2d 95, the Supreme Court held that a railroad employee, who, after recovering from injuries sustained in an accident, was allegedly not permitted by his employer to return to work, could nol maintain a State-law "wrongful discharge" claim against his employer. The Court initially held that the RLA's procedures for the resolution of minor disputes are not optional, but arc mandatory. (Andrews, 406 U.S. at 322-23, 92 S.Ct. at 1564, 32 L.Ed.2d at 98-99.) The Court went on to find the RLA preemptive of the employee's claim because the existence of the employee's asserted right not to be discharged under the circumstances depended upon an interpretation of the collective-bargaining agreement between the employer and the employee's union. Andrews, 406 U.S. at 324, 92 S.Ct. at 1565, 32 L.Ed.2d at 99.

In Koehler v. Illinois Central Gulf R.R Co. (1985), 109 111,2d 473, 94 111.Dec. 543, 488 N.E.2d 542, a railroad employee filed suit against his employer alleging "retaliatory discharge." This court held the employee[E]s claim preempted by the RLA. Citing *433 Andrews v. Louisville & Nashville R.R. co. (1972), 406 U.s. 320, 92 S.Ct. 1562, 32 L.Ed.2d 95, we rejected the employee's contention that because he had styled his claim as a cause of action in tort, rather than contract, the claim was not preempted by the RLA. We noted that the RLA's administrative remedy for such disputes " 'stems not from any contractual undertaking between the parties but from the Act itself.' " (Koehler, 109 111.2d at 478, 94 111.Dec. 543, 488 N.E.2d 542, quoting Andrews, 406 U.S. at 323, 92 S.Ct. at 1565, 32 L.Ed.2d at 99.) This court observed that "[t]he RLA is an elaborate and extensive administative scheme." (109 111.2d at 479, 94 Ill.Dec. 543, 488 N.E.2d 542.) We concluded that "[a] thorough reading of the RLA makes clear Congress' intent that employmentbased disputes between parties covered by the RLA are to be resolved exclusively pursuant to the Act. * * * State courts have nojurisdiction to hear and resolve such disputes." Koehler, 109 111.2d at 480, 94 111.Dec. 543, 488 N.E.2d 542.

See also Jackson v. Consolidated Rail Corp. (7th Cir.} 983), 717 F.2d 1045 (RLA preempted railroad employees' claim that he was discharged in retaliation for ** 1213 ** *551 filing a Federal Employers Liability Act complaint); Grafv. Elgin, Joliet & Eastern Ry. co, (7th Cir.1986), 790 F.2d 1341 (same).

Plaintiffs, relying principally on the Supreme Court's recent decision in Lingle v. Norge Division of Magic Chef Inc. (1988), 486 U.S. 399, 108 sect. 1877, L.Ed.2d 410, contend that the resolution of their claims does not require an interpretation or application of a collective-bargaining agreement and that their claims thus do not fill within the exclusive jurisdiction of the NRAB. The Supreme Court, in Lingle, held that section 301 of thc Labor Management Relations Act (29 U.s.c 185 (1982)) did not preempt an employee's State-law retaliatory discharge claim against her employer. The Court declared that "an application of' State law is preempted by section 301 of the Labor Management Relations Act of 1947 only if such application rcquircs thc intcrprctation *434 of a collcctivc-bargaining agreement." (Lingle, 486 US. 399, 413, 108 s.ct. 1877, 1885, 100 L.Ed.2d 410, 423 .) The Court reasoned that the elements of the State-law retaliatory discharge claim involved "purely factual questions pertain[ing] to the conduct of the employee and the conduct and motivation of the employer. Neither of the elements requires a court to interpret any term of a collective-bargaining agreement." 486 U.S. at 407, 108 S.Ct. at 1882, 100 L.Ed.2d at 419.

Section 301 (a) of the LMRA provides, in part:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter * * * may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Emphasis added.) (29 U,S.C. 185(a) (1982).)

The I-N'fRA says nothing about actions which require the interpretation of the collective-bargaining agreement being preempted by the LMRA. That was read into the I-NfRA through construction of the italicized language above. The

Supreme Court has recognized that section 301(a) is more than jurisdictional—that section "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." (Textile Workers Union of America v. Lincoln Mills (1957), 353 U.S. 448, 451, 77 S.Ct.
912, 915, 1 L.Ed.2d 972, 977.) Thus, questions an

interpretation of a collective-bargaining agreement are to be answered by reference to Federal law. This rule is a necessary incident to the need for uniformity in the interpretation of collective-bargaining agreements. (*435 Local 174 Teamsters, Chauffeurs, Warehousemen & Helpers ofAmerica v. Lucas Flour co. (1962), 369 U.S. 95, lw04, 82 S.Ct. 571, 577, 7 L.Ed.2d 593, 599.) The corollary rule, however, as announced in Lingle, is that those claims which do not require an interpretation of a collective-bargaining agreement are not preempted by section 301 (a).

Indeed, one year after our decision in Koehler, this court held that an employee's rctaliatory discharge claim against his employer was not preempted by section 301(a) of the LNfR.A. (Gonzalez v. Presbess Engineering Corp. (1 986), I i5 111.2d 1, 104 Ill..Dec. •LAI, SOS N.E.'2d 308.) '[he court reasoned that an action in tort for retaliatory discharge is separate and independent from any action based upon a labor contract (115 111.2d at 10), and would not require interpretation of any collective-bargaining agreement. (See also Ryherd v. General Cable co. (1988), 124 111.2d 418, 125 111.Dec. 273, 530 N.E.2d 431.) This court's reasoning in Gonzalez was thus consistent with the standard later annunciated by the United States Supreme Court in Lingle. This court distinguished Koehler by noting simply that "Koehler involved the preemptive effect ofthe Railway Labor Act (45 U.S.C. 151 through 164 (1982)) and is therefore clearly inapposite." Gonzalez, 115 111.2d at Il, 104 Ill.Dec. 751, 503 N.E.2d 308.

[41 In light of the Supreme Court's decision in Lingle, plaintiffs urge us to reconsider our decision in Koehler, and to hold that the minor-dispute mechanism ofthe RLA preempts only those State-law claims which amount to disputes over the interpretation **1214 ***552 or application of a collective-bargaining agreement. We are aware of some authority supporting plaintiffs' position. (See, e.g., Lancaster v. Norfolk & Ry. co. (7th Cir.1985), 773 F.2d 807, 814), and we would note that various tests utilized by the courts to evaluate whether the RLA preempts a State-law claim are actually quite similar to the standard announced in Lingle. (See, e.g., Stephens v. Norfolk & Western Ry. Co. (6th Cir-1986), 792 Fid 576, 580; *436 Leu v. Norfolk & Western Ry. co. (7th Cir.1987), 820 F.2d 825, 830.) The railroads, on the other hand, pointing to the extensive and compulsory administrative nature of the RIA, and to the policy of keeping minor disputes within the exclusive jurisdiction of the NRAB, argue that the preemptive force of the RLA is broader than that of the LMRA. There is ample authority for that position as well. We note that in a recent decision of the United States Court of Appeals for the Ninth Circuit, the court expressly recognized that the preemptive scope of the RLA is broader than that of LMRA section 301(a). (Grote u frans World Airlines, Inc. (9th Cir. 1990), 905 F.2d 1307, 1309—10.) We: however, need not pass on the question whether the preemptive force of the RIA is greater than that of LMRA. We continue to recognize, as we did in Koehler, that the RLA and the LMRA embody different schemes for dispute resolution—very different in many respects—and the policies underlying these statutes are not the same. We find it unnecessary, however, to decide in this casc as the plamtlffs have requested, whether or not the holding of the Supreme Coun in Lingle requires that Koehler be overruled. Even under the preemption test annunciated In Lingle, which plamtiffs assert IS the correct test, plaintiffs' claims here are preempted by the RLA. These claims are inextricably intertv,'ined with the parties' collective-bargaining agreements.

151 We pointed out above that section 301 (a) of the LMRA, which we quoted, does not specifically state that in cases involving the interpretation of a collective-bargaining agreement Federal law governs. That construction was placed on the Ltv1RA by the Supreme Court. However, the RLA specifically states that one of the general purposes of the RLA is "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working *437 conditions." (Emphasis added.) (45 U.S.C. 1 51 a(5) (i 982).) Therefore, under the RLA, both cases involving the interpretation and the application of such agreements are preempted by the Act. The resolution of the claims ofthe plaintiffs in our case will necessarily involve the interpretation or application of the agreements between the parties.

The Illinois Fraudulent Conveyance Act (Ill.Rev.Stat.1987, ch. 59, par. 4) provides:

"Every gift, grant, conveyance, assignment or transfer of, or charge upon any estate, real or personal, or right or thing in action, or any rent or profit thereof, made with the intent to disturb, delay, hinder or defraud creditors or other persons, and every bond or other evidence of debt given,

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suit commenced, or judgment entered, with like intent, shall be void as against such creditors, purchasers and other persons."

We note again that this section has since been repealed and replaced with the Uniform Fraudulent Transfer Act (Ill.Rev.Stat.1989, ch. 59, par. 101 et seq.), effective January 1, 1990.

[6] Illinois recognizes two categories of fraudulent conveyances: those which are fraudulent in fact and those which are fraudulent in law. (Anderson v. Ferris (1984), 128 111.App.3d 149, 152-53, 83 111.Dec. 392, 470 N.E.2d 518; First Security Bank v. Bawoll (1983), 120 lil.App.3d 787, 791, 76 Ill-Dec. 54, 458 N,E.2d 193.) In fraud-in-fact cases a specific intent to "disturb, delay, hinder or defraud" must be proved. (Anderson v. Ferris (1984), 128 Ill.App.3d 149, 152, 83 111.Dec. 392, 470 N.E,2d 518; First security Bank Y. Bawoll (198.3), 120 111.App.3d 787, 791, 76 Ill-Dec. $4, 458 N.E.2d 193; Wilkey v. Wax (1967), 82 111.App.2d 67,
70, 225 N.E.2d 813. See also Third National Bank v. Norris (1928), 331 111. 230, 234, 162 NE 829 ("There must be evidence to show a fraudulent intent before a conveyance made upon **1215 ***553 a valuable consideration may be held fraudulenf').) In fraud-in-law cases, on the other hand, a conveyance may be presumed fraudulent based on certain *438 circumstances surrounding the conveyance (Anderson v. Ferris (1984), 128 111.App.3d 149, 153, 83 111.Dec. 392, 470 N.E.2d 518), and intent is immaterial (Birney v. Solomon (1932), 348 111. 410, 415, 181 N.E. 318). In order to establish that a conveyance is fraudulent in law, three elements must be present: (1) there must be a transfer made for no or inadequate consideration; (2) there must be existing or contemplated indebtedness against the transferor; and (3) it must appear that the tansferor did not retain sufficient property to pay his indebtedness. Mills u Susanka (1946), 394 Ill. 439, 448, 68 N.E.2d 904; Anderson v. Fen-is (1984), 128 111.App.3d
149. 153, 83 111.Dec. 392, 470 N.E.2d 518. See also Second National Bank v. Jones (1941), 309 Tll.App. 358, 365—66, 33 N.E.2d 732.

Plaintiffs make allegations in their complaint pertinent to both categories of fraudulent conveyances. Plaintiffs allege that they are creditors of C & NW because they have claims against C & NW for wages, vacation pay, personal or sick leave, pension contributions, and severance and employee benefits. The complaint makes no mention of a collectivebargaining agreement. Such artful drafting of the complaint, however, will not save plaintiffs' claims from preemption if they are in actuality a "minor dispute" under the RLA. Plaintiffs point out that the term "creditor" is construed liberally in this State for purposes of our creditor's rights law. (Citing Bongardv. Block (1876), 81 111. 186, 187; Menconi v. Davison (1967), 80 111.App.2d 225 N.E.2d 139.) But however liberally that term is construed, the relief plaintiffs seek in this action cannot be based on bald, unsupported allegations of creditor status. The circuit court in this case aptly observed that "[c)reditors' rights cannot be protected without close scrutiny of the derivation of those rights." PlaintifIS[1] creditor status in this case must be based on some confractual relationship with C & NW; some "agreement [ ] concerning rates of pay, rules or working conditions." (45 U.S.C. S 153 First (i) (1982).) Plaintiffs *439 do not dispute that the employment benefits they seek to protect in this case are a subject of their collective-bargaining agreement with C & NW.

Plaintiffs, howcvcr, draw our attention to footnote 12 in Lingle, in which the Supreme Court stated:

"A collective-bargaining agreement may, of course, contain information such as rate ofpay and other economic benefits that might be helpful in determining the damages to which a worker prevailing in a State-law suit is entitled. [Citation.] Although federal law would govern the interpretation of the agreement to determine the proper damages, the underlying State-law claim, not otherwise preempted, would stand." (I-ingle v. Noyge

Division Qf Magic Chef Inc. (1988), 486 U.S. 399, 12, 108 S.Ct. 1877, 1885 n. 12, L.Ed.2d 423 N. 12.)

Plaintiffs assert that resolution of their fraudulent conveyance and civil conspiracy actions will require reference to the collective-bargaining agreement only with respect to the damages to which plaintiffs are entitled. We disagree. The Illinois Fraudulent Conveyance Act is not the source of the substantive rights plaintiffs here seek to protect. Plaintiffs are instead relying on the Fraudulent Conveyance Act as a means of protecting substantive rights arising pursuant to their collective-bargaining agreements with C & NW. Indeed, plaintiffs' standing to bring these actions is grounded upon their creditor status, which flows from the collective-bargaining agreements. The remedies sought by plaintiffs in this action will necessarily require inquiry into the validity and extent of the substantive rights plaintiffs seek to protect, and a definition of those rights. This will require examination, interpretation and application of plaintiffs' collective-bargaining agreements. Such is certainly not the sort of tangential reference to a collective-bargaining agreement referred to by the Supreme Court in Lingle.

*440 lnDef03du SooLineR.R. co. (8th Cir.1989), 867 F.2d 1080, a case virtually identical to the present case in relevant respects, railroad employees allegedly adversely **1216 ***554 affected by the sale of a portion of a railroad brought an action against their railroad employer claiming common law creditors' rights violations and violation of the Minnesota Uniform Fraudulent Transfer Act (Minn.Stat.Ann. §§513.41 through 513.51 (West 1990)). The Deford court held that the RLA preempted the employees' particular State-law claims because the resolution of those claims would requirc interpretation of the employees' collectivebargaining agreement with the railroad. The court reasoned that the "plaintiffs' allegations regarding ' creditors' rights' and 'creditor obligations' are based entirely upon supposed rights to unspecified and unquantified 'wages, benefits and labor protection' pursuant to the labor agreements." (Deford, 867 F.2d at 1086.) The court concluded that the plaintiffs there were "essentially claiming that if the sale of rail lines from Soo Line to Wisconsin Central is not, in effect, unwound, the &ansaction will result in a breach of Soo Line's obligations under the existing collective-bargaining agreements. Thus, by asserting State-law claims, [the plaintiffs seek] enforcement of the terms of the collective-bargaining agreements. The fraudulent conveyance act serves only as an enforcement mechanism. We believe [the plaintiffs are] only trying to invoke a State-law remedy in place of the mandatory and exclusive remedies of the Railway Labor Act * * * " (867 F.2d at 1088.) The court thus held the State-law claims preempted by the RLA. With respect to RLA preemption of plaintiffs' State-law claims in the present case, we agree with the reasoning of the court in Deford.

Plaintiffs' complaint alleges that C & NW undertook the Duck Creek South Line sale with the intent to disturb, hinder, delay or defraud plaintiffs, that C & NW *441 deliberately kept plaintiffs uninformed about the impact the sale would have on plaintiffs as creditors of C & NW, that the conveyance is for less than fair consideration, and that FRVR will be left deeply in debt as a result of the transaction. Plaintiffs assert that C & NW's conveyance of "previously unencumbered assets" and the railroads' failure to keep plaintiffs inforrned about the consequences of the sale are "badges of fraud" from which a fraudulent intent can be inferred. Inquiry into the motives of C & NW with regard to this line sale will require careful consideration of the employment relationship between C & NW and plaintiffs-employees, a relationship which is the subject of a collective-bargaining agreement. Any inquiry into the allegedly adverse impact this sale will have on plaintiffs[t] rights will require close scrutiny of the various terms of the collective-bargaining agreement, for it is within the agreement that the allegedly threatened rights exist. The allegations that the sale is for less than fair consideration and that C & NW will use the proceeds of the sale to pay debts other than plaintiffs' debts are pertinent to the "fraud-in-law" category of fraudulent conveyances, and will require the court to determine whether C & NW will be left with suffcient assets to pay its debts. This will require the court to determine the extent and validity of the debts—here including the obligations owing plaintiffs pursuant to the partics' collective-bargaining agreement. We fail to see how a court could fäshion a remedy for the protection of creditors' rights without consideration of the rights themselves. In the present case, such consideration will require reference to the tenns of a collective-bargaining agrccmcnt. In sum, wc conclude that the continuation of this suit will require much more than mere tangential reference to a collective bargaining agreement.

*442 Plaintiffs draw our attention to International Association ofMachinisfs & Aerospace Workers, LAM Local 437 v. United States Can co. (1989), 150 Wis.2d 479,

441 N.W.2d 710, in which the supreme court of Wisconsin held that section 301 (a) of the Ltv1RA did not preempt a State-law fraudulent conveyance action brought by labor unions against two corporations to challenge a leveraged buyout. The court, in United Slates Can, reasoned that reference to a collectivebargaining agreement was required only to establish the unions' standing as creditors, and that such reference was merely 'tangential. " (United States can: 1.50 Wis.2d at496-99, 441 N.W.2d 7-19.) The dissenting justices in United States Can pointed out that the collectivebargaining agreement was the very source of the debts the unions sought to secure and that resolution of the unions[t] claims would "undoubtedly force the court to construe the meaning and import of the numerous provisions of the collective-bargaining agreement in light ofthe provisions and definitions of [State fraudulent conveyance law)." (Emphasis in original.) (150 Wis.2d at 509, 441 N.W.2d at 723 (Ceci, J., dissenting).) We note that the Wisconsin case involved the LMRA while our case involves the RLA.

Also, in International Association €Machinists & erospace Workers v. Allegis Corp. (1989), 144 Misc.2d 983. 545 N.Y.S.2d 638, a New York court held that the RLA did

not preempt a fraudulent conveyance action brought by unions representing airline employees against the employer airline and its parent company. The court stated simply that resolution of the fraudulent conveyance claims would not require interpretation of any terms of a collective-bargaining agreement. (144 Misc.2d at 987, 545 NY.S.2d at 642.) In Allegis *443 Corp., the courtrelied on Ry. Labor ExecuLives Association v. Pittsbwgh & Lake Erie RR Co. (3d Cir. 1988), 858 F.2d 936. That case, however, involved the complete preemption doctrine as it relates to jurisdiction ofthe Federal court and not claim preemption under the RLA. We, however, do not find Allegis Corp. or the majority opinion in United States Can persuauvc, and wc decline to follow them.

We further note that the present case is not the RLEA's only attempt to halt the Duck Creek South Line sale. Twice, the RLEA has sought in Federal court an injunction against the sale and to force the railroads to bargain with the RLEA over labor protective conditions on thc sale. In each case, thc Federal disfrict court refilsed to enjoin the sale. The Federal di8frict court in each case characterized the dispute over the sale of the Duck Creek South Line without labor protective conditions as a "minor dispute" under the RLA, subject to the exclusivejurisdiction ofthe NRAB. Our holding is consistent with these prior holdings ofthe Federal court, which involved these same transactions. The Federal court granted C & NWs requests for a preliminary, and later a permanent, injunction against a strike over the sale. In each case the United States Court of Appeals for the Seventh Circuit affrmed these rulings. Chicago & North Western Transportation Co. v. Ry. Labor Executives' Association (7th Cir.] 99()), 908 F.2d 144; Chicago & North Western Transportation Co. v. Ry.
Labor Executives 'Associations (7th Cir. 1988), 855 F.2d 1277 (both recognizing that the sale without negotiation over labor protective conditions was arguably justified by the parties' collective-bargaining agreements).

If C & NW does actually squander away the proceeds of the Duck Creek South Line sale and does not pay plaintiffs the wages and other benefits due them under the terms of a collective-bargaining agreement, then C & NW will have breached the agreement. In that case, plaintiffs' sole avenue of relief would lie with the NRAB *444 and plaintiffs apparently do not dispute this point. Plaintiffs in this case are seeking protection of rights resulting from the collective-bargaining process. The policy underlying the minor-dispute procedures of the RLA is to prevent interruptions ofcommerce, by strikes or lengthy court battles, in the railroad industry by keeping minor disputes within the jurisdiction of the adjustment board "and out of the courts." We believe that continuation of plaintiffs' present suit in State court would seriously interfere with that policy. This case is merely an attempt to evade the mandatory procedures of the RLA.

Plaintiffs here could well have bargained with C & NW over the consequences of a short line sale undertaken pursuant to Ex parte No. 392. They could have sought protection of their interests in that manner. Plaintiffs, however, insist that they are challenging only the "form" of this sale, Obviously, however, ifplaintiffs can assert no prejudice to their interests as a result of the sale, then they ccMainly ale in no position Lo undo the transaction by attacking its "form."

**1218 ** *556 We similarly find that plaintiffs civil conspiracy claim is preempted by Federal law. In Bartley P. University Asphalt co. (1986), 111.2d 31 8, 95 ill,Dec. 503, 489 N.E.2d 1367, this court held that section 301(a) of the I-,rvfRA preempted an employee's claim that his union engaged in a civil conspiracy in furthcrancc of an alleged retaliatory discharge by his employer. In support of h1S civil conspiracy claim, the employee, in that case, had alleged that the union conspired with the employer to breach the terms of the collective-bargaining agreement in force befiveen the union and the plaintiffs employer, and further alleged that the union breached a statutory duty of fair representation of the plaintiff during the grievance proceedings established by the collective-bargaining agreement. This court held that the civil conspiracy claim was thus " 'inexticably intertwined with consideration of the terms of the labor *445 contract' " (Bartley, 111 111.2d at 332, 95 Ill.Dec. 503, 489 N.E.2d 1367, quoting Allis—Chabners Corp. v. Lueck (1985), 471 U.S. 202, 213: 105 S.Ct. 1904, 1912, 85 L.Ed.2d 206, 216), and was preempted by the LNfRA.

Similarly, in the present case, plaintiffs allege that the railroads engaged in a civil conspiracy to deprive plaintiffs of their rights as creditors. As discussed above, these rights are the subject ofplaintiffs' collective-bargaining agreements. Resolution of the civil conspiracy claim will thus require consideration ofthe terms of these agreements. As in Bartley, we must conclude that the civil conspiracy claim is preempted by Federal law. We conclude, therefore, that plaintiffs' claims in this case constitute a "minor dispute" within the meaning of the

RLA, which must be resolved pursuant to the provisions of that act.

We further agree with the appellate court that the Interstate Commerce Act (49 U.S.C. SSS 10101 through 11917 (1982)) preempts plaintiffs' claims here. Before a railroad may acquire or abandon a railroad line, the rail carriers involved must first obtain approval of the sale by the ICC. (49 U.S.C.§§ 10901 , 10903 (1982).) Pursuant to the streamlinedprocedures set out n *Ex parte* No. 392 (1985), 1 1.C.C.2d 810, the ICC authorized the sale ofthe Duck Creek South Line in this case, and later denied the RLEA's petition to revoke the exemption from regulation on this sale. For the following reasons, we conclude that the courts of this State are without authority to interfere with the sale by granting plaintiffs the relief they seek in Ibis case.

The ICCs jurisdiction to approve or to condition approval of rail line tansactions like the one challenged here is exclusive andplenary. (490.S.C. 10501(d), 10901 0982); Pittsburgh & Lake Erie R.R. Co. v. Ry. Labor Executives' Assuciutiun (1989), 491 U.S. 490, , 109 s.ct. 2584, 2596, 105 L.Ed.2d 415,434; Chicago *446 &North Western Transporfazion Co. v. Kalo Brick & Tile Co. (1981), 450 U.S. 311, 101 S.Ct. 1124, 67 L.Ed.2d 258; v. soo Line R.R. co. (8th Cir.1989), 867 F.2d 1080, 1088-89.) In Kalo Brick, the plaintiff, a shipper, sought damages under Iowa law from the defendant railroad. The plaintiff alleged that it had suffered injury from loss of rail service as a result of the defendant's abandonment of a portion of the defendant's rail line. The ICC had previously authorized the abandonment. The Supreme Court held that the plaintiffs claims were preempted by the Interstate Commerce Act.

The Court initially observed that while Federal preemption of State law is generally disfavored, 'Ca court must find local law preempted by Federal regulation when the 'challenged State statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' ".(Kala Brick, 450 U.S. at317, 101 S.Ct. at 1130, 67 L.Ed.2d at 265 (quoting Perez v. Campbell (1971), 402 U.S. 637, 649.91 S.Ct. 1704, 1711, 29 L.Ed.2d 233, 242, and Hines v. Davidowiz 0941), 312 U.s. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed 581, 587).) The Court went on to observe that "[t]he Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes" (Kalo Brick, 450 US. at 318, S.Ct. at 1130, 67 L.Ed.2d at 265), and that the ICCs authority over rail line abandonments is exclusive **1219 ***557 and plenary (Kalo Brick, 450 U.S. at 320, 101 S.Ct. at 67 L.Ed2d at 267). The Court added that "[t]he breadth of the [ICC's) statutory discretion suggests a congressional intent to limit judicial interference with the agency's work." Kalo Brick, 450 U.S. at 32}. 101 Sect. at 1132, 67 L.Ed.2d at 268.

In reversing the decision ofthe Iowa Court of Appeals, which held that the plaintiffs claims were not preempted by the ICA, the Supreme Court stated that *447 "[t)he decision below amounts to a holding that a State can impose sanctions upon a regulated carrier for doing that which only the [ICC), acting pursuant to the will of Congress, has the power to declare unlawful or unreasonable. * * * It is diffcult to escape the conclusion that the instant litigation represents little more than an attempt by a disappointed shipper to gain from the Iowa cowls the relief il was denied by [ICC)." (Kalo Brtck, 450 U.S. at 324, 101 S,Ct. at 1 1.3.3-.34, 67 L.Ed.2d at 269.) The Court also noted that in its decision approving the abandonment the ICC had expressly addressed the basic issues the plaintiff sought to litigate in its State-law claims. (Kalo Brick, 450 U.s. at 326-27, S.Ct. at 11.34-35, 67 L.Ed.2d al 270-71.) The coult held that "the Interstate Commerce Act precludes a shipper from pressing a statecourt action for damages against a regulated carrier when the [ICC], in approving the carrier's application for abandonment, reaches the merits of the matters the shipper seeks to raise in state court." Kalo Brick. 450 U.S. at 331--32, 101 S.Ct. at 1137, 67 L.Ed.2d at 274.

In Hayfield Northern R.R. Co. v. Chicago & Nonh Western Transportation Co. (1984), 467 U.S. 622, 104 S.Ct. 2610, 81 LEd.2d 527, the Supreme Court held that the Interstate Commerce Act did not preempt a condemnation proceeding pursuant to a State eminent domain statute against rail property abandoned pursuant to the provisions of the ICA. The Court reiterated that Federal preemption of State law is disfavored, and noted the "Congress has not 'unmistakably ordained' that the States may not exercise their traditional power of eminent domain over railroad property that has been abandoned." (Emphasis in original.) (Hayfield, 467 U.S. at 632, 104 S.Ct, at 2616-17, 81 LEd.2d at 536.) The Court then observed that the relevant provisions of the ICA "relate to requirements that must be met before the *448 [ICC] will authorize an abandonment. Therefore, unless the [ICC] attaches postabandonment conditions to a certificate of abandonment, the [ICC's] authorization of an

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abandonment brings its regulatory mission to an end." (Emphasis in original.) (Hayfield, 467 U.S. 633, 104 s.ct. at 2617, 81 L.Ed.2d at 537.) The ICC, in Hayfield had granted the railroad a certificate of abandonment; the ICC's jurisdiction over the matter was thus terminated at that point. The Court further held that State condemnation proceedings do not interfere with the purpose of the ICC "insofar as such proceedingsfollow abandonment." Hayfield, 467 U.S. at 635, 104 S.Ct. at 2618, 81 L.Ed.2d at 538.

In Kalo Brick, therefore, where the plaintiff was essentially challenging what the ICC had expressly authorized the railroad to do—abandon the rail line—the claim was preempted by the ICA. In Hayfield, however, there was no preemption where the ICC had authorized an abandonment and the plaintiffsought to condemn railroad assets over which the ICC retained no regulatory power. The present case is much more like Kalo Brick than Hayfield in relevant respects. I•le.rc, plaintiffs are. essentially attempting to regulttte, through S late law, the same aspects of the same transaction over which the ICC has jurisdiction. See Defordv. Soo Line R.R. Co. (8th Cir.1989), 867 F.2d 1080, 1089.

In the present case we, like the Supreme Court in Kalo Brick, must conclude that granting plaintiffs the legal and equitable relief they seek would impermissibly interfere with thc ICCs broad authority over rail line tansactions such as the one challenged in this action. It is tme that Kalo Brick addressed rail abandonment under then section 1(18) of the [CA, recodified at 49 U.S.C. section 10903. But clearly, the ICC has broad authority, much like that in the case of abandonment, to regulate acquisitions **1220 ***558 under 49 ü.S.C. section 10901 *449 where the ICC deems it necessary to do so in order to carry out the transportation policy of 49 U.S.C. section 1010t(a). The fact that the ICC ordinarily exempts from regulation short line sales, like the one before us, is the result of a considered policy evidenced in 49 U.S.C. section 10505 and expressed in Ex parte No. 392 (198.5), I I.C.C.2d 810, that regulation of such sales is generally neither necessary nor desirable. Plaintiffs attempt to distinguish Kalo Brick by pointing out that the ICC in the present case did not reach the merits of the claims plaintiffs now press in State court. Plaintiffs point out that nothing in the ICA even authorizes the ICC to consider whether a proposed sale would constitute a fraudulent conveyance under State law.

In Deford v. soo Line R.R. co. (8th Cit.1989), 867 F.2d 1080, the court addressed a similar claim that the ICA preempts a State-law fraudulent conveyance action brought by railroad employees against their railroad employer. The court discussed the powers ofthe ICC in approving line sales:

> "In determining whether to approve a transaction, the ICC is directed to consider both the financial aspects of the sale of rail lines to the non-carrier and the impact of the sale upon all employees involved. See 49 US.C. § 10901(a), (e). Furthermore, the ICC has discretion to condition its approval of a section 10901 transaction on the imposition of labor protective agreements containing a 'fair and equitable arrangement for the protection of the interests of railroad employees adversely affected by the fransaction.' (49 U.S.C. 10901 (D€ford, 867 F.2d at 1089.)

The Deford court concluded that "the ICA demonstates Congress' intent to delegate to the ICC the exclusive responsibility to evaluate ail aspects, including financial viability, or rail line transfers." (Dgford, 867 F.2d at 1091.) *450 The court thus found that the plaintiffs' State-law claims, in that case, were preempted by the ICA.

[7] [8] We think it clear that the ICC was empowered to examine the various aspects of this line sale, including any possible adverse impact of the sale on C & NW employees. The ICC could have disapproved the sale or imposed upon it conditions for the protection of the very rights plaintiffs seek protectin he present action. (49 U.S.C. 10901 (1982).) That the ICC did not do so to the satisfaction ofplaintiffs does not give the comts of this State any authority to step into the picture and fashion a remedy for the protection of plaintiffs' alleged interests here. Plaintiffs again argue that they are not challenging the sale as such, but only the "form" of the sale. This is an interesting academic argument but it cannot distract us from the simple fact that, in essence, plaintiffs are urging the courts of this State to impose conditions on this sale where the ICC has declined to do so. This we cannot do. As the Supreme Court in Kalo Brick observed, "compliance with the intent of Congress cannot be avoided by mere artful pleading." (Kalo Brick, 450 U.S. at 324, 101 S.Ct. at 1134, 67 L.Ed.2d at 269.) A thorough reading of the ICA[s provisions pertinent to rail line acquisitions reveals that Congress intended to vest in the ICC, and not in State courts, the authority to examine the various aspects of such rail line transactions and to authorize and regulate those tansactions. SeeDefordv. soo

Line RR co. (8th Cir.1989), 867 F.2d 1080, 1091. See also Kalo 450 U.S. 311, 101 S.Ct. 1124, 67 L.Ed.2d 258.

Plaintiffs insist that the Federal dish-ict court's decision in Terry v. Atlas Van Lines, Inc. (N.DIII.1986), 679 F.Supp. 1467, compels the conclusion that the ICA does not preempt plaintiffs' present claims. We disagree. Terry involved a dispute arising out of a nationwide moving company's termination of its agency relationship *451 with a local Illinois moving and storage company. The local carrier

alleged that the national carrier's termination of the agency relationship violated the Illinois Franchise Disclosure Act (111.Rev.Stat.1985, ch. 121 h, par. 701 et seq.) (FDA), which provided, in part, that termination of a franchise prior to its expiration must be founded on good cause. The national carrier pointed out that the ICC had approved the acquisition **1221 ***559 of a majority of its stock by another corporation, and argued that the IFDA claim was thus preempted by section 11341 ofthe ICA. That section provides in part:

> "A carrier, corporation, or person participating in an approved or exomptod trnnsnotion is exempt from tho antifrust laws and from all other law, including State and municipal law, as necessary to let Ihal person carry out the &ansaction, hold, maintain, and opcraLe properly, and exercise conLroI or franchises acquired through the transaction." (49 U.S.C, 11341(a) (1982).)

The disfrict court hcld that the IFDA claim was not prccmptcd because the exemption contained in section 11341 applied only as necessary to allow the franchises' operation. The exemption was unnecessary in Terry because the parties' agency agreement was construed as being terminable for cause during its term. Thus, the IFDA claim did not conflict with the provisions of the ICA. Terjy, 679 F.Supp. at 1473.

In the present case, on the other hand, the operation of the Fraudulent Conveyance Act does conflict with the ICC authority over these short line sales. We hasten to emphasize that we do not hold, and the railroads do not suggest, that the ICA completely govems all aspects of railroad operations, or that itpreempts all State law on the subject. But with respect to the ICCs authority to approve line acquisitions, we conclude that State law must give way.

*452 The procedures outlined in 49 U.S.C. section 10505 evidence, and the ICC, n *Ex parte* No. 392 (1985), 11.C.C.2d 810, expressly recognized, a policy favoring the sale and continuance of the operation of rail lines, as opposed to their abandonment. The ICC has accordingly established a streamlined procedure whereby it will, as a matter of course, exempt line sales of limited scope from regulation. The ICC can still impose on a sale conditions protective of employees who may be adversely affected thereby. Here, the ICC declined to do so. We believe that to superimpose the added sfrictures of our State fraudulent conveyance law on rail line sales undertaken pursuant to Ex parte No. 392 would unduly interfere with the ICCs authority over rail lines sales. As the court, in Deford, observed, "it would be contrary to both the letter and the spirit of Kalo Brick to allow [the plaintiffs] to avoid the ICCs approval of the transaction pursuant to Ex Parte No, 392 by pleading a state law claim." Deford, 867 F.2d at 1089.

Moreover, we agree with the railroads and the appellate court that there is yet another reason why Illinois courts cannot grant plaintiffs the injunctive relief they seek in this action. Pursuant to 28 U.S.C. section 2342:

> "The court of appeals * * * has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to detorrning tho validity of* * *
>
> * *
>
> (5) all rules, regulations, or final orders of the Interstate
> Commerce Commission* * *."

In the presenL case, {he ICC authorized the sale of the Duck Creek South Line pursuant to Ex parte No. 392. The ICC denied the RLLA's petition to revoke the exemption from regulation of the sale, and denied RLEA's request for a cease and desist order halting the sale. We do not believe that we can enjoin a sale which the ICC has authorized.

[9] *453 In v. soo Line R.R. co. (8th Cir.1989), 867 Fld 1080, 1090, the court held that the plaintiffs' Statelaw fraudulent conveyance action was nothing more than an impermissible collateral attack on the ICC's approval of a rail transaction pursuant to Ex parte No. 392. Similarly, in Ry. Labor Executives' Association v. Staten Island R.R. Corp. (2d Cir. 1986), 792 F.2d 7, the ICC approved a rail line sale, and the RLEA sought to enjoin the sale on the ground that the sale ofthe line, without negotiated labor protective conditions and without adherence to the RLEAs notices seeking to amend collective-bargaining agreements, violated the RLA. The court of appeals affirmed the district court's dismissal of the RLEA's complaint. The court reasoned that the district court was without authority to grant RLEA the injunctive relief it sought because to do so **1222 ***560 would

necessarily modify or rescind the ICCs order concerning the sale. The court concluded that 28 U.S.C. section 2342 precluded the distict court from granting such relief. (Staten Island, 792 F.2d at 11—12.) In part, for the same reason, the United States distict court refused to enjoin the same line sale with which we are here concemed. In his oral ruling denying RLEA's request for an injunction against the Duck Creek South Line sale, the trial judge stated:

> "I cannot, I do not believe, enjoin the sale because I do not believe that a dist-ict court has the power to do so when the sale has been approved by the Interstate Commerce Commission. Title 28 USCS 2343 [sic] provides that 'the court of appeals has exclu[sive) jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validly of' ICC orders. Chicago & North Western fransportation Co. v. Ry. Labor Executives' Association, Dk. No. 88 C 0444, Trans. of op. (N.D.III., March 16, 1988) affd on other grounds 855 F.2d 1277."

*454 We similarly conclude that the courts of this State are without authority 10 enjoin, or Lo oLherwIsc ullcrnpl Lo "undo," the sale of the I)uck Creek South Line sale because the ICC has authorized the sale.

Plaintiffs posit, however, that granting them the relief they seek here would not interfere with any ICC order because the ICC did not mandate that the sale be consummated itmcrely authorized the sale. Plaintiffs argue that they are merely suggesting (hat [he sale must take a form which does nol run afoul of Illinois fraudulent conveyance law. This argument was foreclosed by Venner u Michigan Centrai R.R. Co. (1926), 271 U.S. 127, 46 s.ct. 444: 70 L.Ed. 868. In Venner; the ICC approved an agreement between three railroads to acquire locomotives and pay for them by issuing certificates. Plaintiff, a minority stockholder of one of the railroads involved in the agreement, sued in State court seeking to enjoin the issuance of the certificates on the ground that the issuance would violate State law. The case was remanded to Federal district court, and the Federal court then dismissed the plaintiffs complaint on the ground that it essentially sought to annul or set aside an ICC order. The Supreme Court affirmed, agreeing that the suit was "essentially one to annul or set aside the order of the [ICC]. the amended bill does not expressly pray that the order be annulled or set aside, it does assail the validity of the order and pray that the defendant company be enjoined from doing what the order specifically authorizes, which is equivalent to asking that the order be adjudged invalid and set aside." (Vennæ; 27] U.S. at 130, 46 S.Ct. at 445, 70 LEd. at 869. see also Defordu soo Line R.R. co. (811] Cil.1989), 967 1080* 1090-91 The languag quoted similarly characterizes plaintiffs' efforts in the present case.

*455 In sum, we conclude that plaintiffs' State-law claims in this case are preempted by Federal law. We fmd that the cotuls Uf Iliis Stale zue without juisdiclion to resolve those claims, and we, accordingly, affirm the dismissal of plaintiffs' complaint.

Affirmed.

All Citations

139 111.2d 422, 564 N.E.2d 1207, 151 111.Dec. 545, 136 L.R.R.M. (BNA) 2413, 117 Lab.Cas. P 10,449

End of Document

Exhibit 5

Brief Outline of Lawsuits and Investigations from 2017-2021

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Lawsuits and investigations from 2017-2021

State's Attorney report, May 31, 2018 – Investigation by McHenry County States Attorney about allegations of criminal conduct on the part of Robert Miller, Former Highway Commissioner at the ATRD. No charges filed.

Andrew L Gasser v. Karen Lukasik (Clerk), Anna May Miller and Robert Miller – 4/25/18, **Case 17 CH 000435** Filed 6/1/17 Closed 6/9/21

McHenry County State's Attorney v Lukasik, Karen – Case 17MR000524 Filed 7/12/17 Closed 7/31/18. On June 14, 2018 Judge Caldwell ordered Township officials (Gasser and Lutzow) to give Lukasik immediate access to all Township records.

Local 150 vs ATRD dba… - Case 17MR00524 escalated to Appellate court, Case S-CA-17-137. Filed 5/31/17 Closed 7/1/20. Violations of IL Public Labor Relations Act, Sanctions ag. ATRD Gasser & Attorney Hanlon for credibility. Summary of ALJ Sharon Purcell ruling attached. Pages 39-41 of ruling specifically discusses reasons for sanctions.

Local 150 vs ATRD – FOIA requests ignored

ATRD vs Int'l Union of Operating Engineers Local 150 – **Case 20MR000171** – filed 2/3/20 closed 9/10/20

Allen, Kirk, Et Al vs Algonquin Township
Case 19CH000437 Filed 7/26/19 Closed 11/16/20 - $50K paid by ATRD to settle
Case 19CH000484 Filed 8/14/19 Closed 2/28/22 - $164K paid by Algonquin Township to settle
Case 19CH000459 Filed 8/1/19 Closed 2/28/22 - $164K paid by Algonquin Township to settle
Case 19CH000460 Filed 8/1/19 Closed 2/28/22 - $164K paid by Algonquin Township to settle
Case 19CH000461 Filed 8/1/19 Closed 2/28/22 - $164K paid by Algonquin Township to settle
Case 19CH000274 Filed 5/3/19 Closed 2/28/22 - $164K paid by Algonquin Township to settle
Case 18CH000238 Filed 4/2/18 Closed 3/1/22 - $164K paid by Algonquin Township to settle

ATRD vs Lutzow, Charles A Jr – **Case 19LA000006** Filed 1/10/19 Closed 10/7/19

Smith, Michael vs Lutzow, Charles, Et Al – **Case 18CH000824** Filed 12/21/18 Closed 2/11/20

ATRD and Andrew Gasser v. Charles Lutzow and AT Trustees – **Case 18 CH 000411** Filed 6/14/18 Closed 6/21/19. On 2/13/19 – Judge Meyer ordered Township to pay salt bill. ATRD had placed an order for road salt without competitive bid procedures in December 2018 and Township board refused to pay for salt.

Sweeney, James M, Et Al vs ATRD – **Case 17CH000482** Filed 6/23/17 Closed 10/23/18 moved to Appellate Court – 2nd district
Sweeney v. ATRD – 2nd district appellate court, citation 2019 IL App (2d) 19-0026-U, No. 2-19-0026 Filing Date 9/10/19 Decision Type Rule 23, Status NRel. Affirmed judgment of McHenry County circuit court. Granted in part plaintiffs' motion for sanctions by striking pages 2,3, and 10-13 of the reply brief. Affirmed. Admonished Hanlon in Paragraph 91.

Appellate court – Labor Board and State Court matters started in Lake County and proceeded to Appellate Court 2nd District – parallel tracks at same time. At one point there were 9 pending grievances against the ATRD by the Local 150 Union.

Footnote: Gasser hired Hanlon on 5/15/17 on retainer – same day he was sworn into office. Gasser fired 3 ATRD ee's on day one of office at 6:30 am with sheriff and attorney present.

Exhibit 6

Summary of ALJ's Recommended Decision and Order

Summary of ALJ's Recommended Decision and Order

Holdings

- The ALJ found that the Algonquin Township Road District violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act when it repudiated the collective bargaining agreement entered into between the Road District and Local 150. As a remedy, the ALJ ordered the Road District to make whole all employees covered by the terms' of the parties' collective bargaining agreement for losses incurred as a result of the violation, including lost wages and benefits, with interest computed at the Act's statutory rate of 7%.

- The ALJ also sanctioned the Road District because its defenses "were not made in good faith and did not represent a 'debatable' position, and it made its denials without reasonable cause and found to be untrue." The ALJ ordered the Road District to reimburse the Union for its costs and reasonable attorneys' fees in pursuing this matter.

Notable findings in the decision

- "Only the Union filed a prehearing memorandum. Respondent did not comply with [the ALJ's] order to file a joint prehearing memorandum and did not file anything in response." (Page 5).
- "Contrary to Hanlon's representation that he did not represent the Highway Department at the hearing, Gasser testified that he believed Hanlon was representing the Highway Department at the hearing." (Page 5-6).
- "I find that Hanlon misrepresented his actions before the Board when he stated that as far as he knew the Highway Department did not file an appearance." *** "Hanlon knew, or certainly should have known, that he appeared on behalf of the Highway Department." (Page 6).
- "The Union filed a timely post-hearing brief. Respondent did not." (Page 7).
- "On September 3, 2019, the Union filed a motion for sanctions against Respondent. Respondent did not file a response to this motion." (Page 7).
- "[O]n September 11, 2019, the Union filed a motion to supplement the record with new authority asking the ALJ to take administrative notice" of the appellate court's decision. Respondent did not file a response to this motion. (Page 8).
- "The Road District's arguments that the Board lacks jurisdiction over this unfair labor practice charge must be rejected as lacking merit entirely." (Page 17). The ALJ characterized both the Road District's position and testimony from Gasser as "incoherent." (Page 17 and 20).
- "[E]ach of the Road District's odd claims regarding the status of the Highway Commissioner as Township official but not 'part of the Road District' obviously is incorrect and, at the least, inconsistent with the law." (Page 20).
- "Moreover, Gasser's actions demonstrate that he knows that the Highway Department simply is the designation that the Road District presents to the public and under which it operates." (Page 24).

- "At the hearing, Gasser confusedly testified that he only repudiated the CBA to which the Highway Department was a party and then testified that he repudiated the CBA between the Union and the Road District. At the hearing, he tried to explain his failure to keep the story straight by stating, 'I think that's where it was all conglomerated together.' But there was no such conglomeration. There were never two CBAs. There is one CBA: that between the Union and the Road District, which also identifies itself as the Highway Department." (Page 25).
- "The CBA governing the terms and conditions of the Road District employees is valid and it was valid at the time that Gasser provided the Union with his notice that he was repudiating it." (Page 29).
- "There is no question that Gasser, in his capacity as Highway Commissioner of the Road District, repudiated the CBA." (Page 30). "At hearing, Gasser testified that he did not repudiate an agreement with the Road District but that he repudiated the Union agreement with the Highway Department. On the heels of that statement, he pivoted to testifying that he repudiated the CBA with the Road District, explaining that it was 'all conglomerated.'"*** "[T]here is no Township Highway Department of which Gasser is the sole employee and there is only one CBA, there was no conglomeration as asserted by Gasser. (Page 30).
- "The Highway Commissioner's conduct repudiating a valid CBA between the Road District and the Union, and the Road District's efforts to invalidate the CBA, evidenced total disregard for the collective bargaining process, an outrights refusal to abide by the contract, and prevented the grievance process from working." (Page 31).
- Robert Hanlon made false representations at the hearing. (Page 34). The Road District failed to respond to a Board-issued subpoena. At the hearing, "Hanlon inaccurately stated what Gasser would testify to regarding his production of documents to Local 150's agent. Also "[a]t the hearing, "Hanlon stated, 'if Mr. Gasser is called as a witness, he will testify that he tendered those documents to the business agent of Local 150.' But Gasser did not so testify. In its post-hearing brief, the Road District attributes this statement to human error." The ALJ also found the Road District defended against the Union's argument for sanctions "by misquoting and mischaracterizing the hearing transcript." (Page 40).
- "[T]he Respondent made false denials without reasonable cause." *** "Indeed, it can safely be said that the Road District made no effort to truthfully answer the allegations [in the Complaint], even where they involve easily ascertainable fact." (Page 37). "Respondent's denials to the complaint lacked reasonable cause." (Page 38).
- Gasser either falsely testified in his affidavit or at the hearing about the records sought by the subpoena. (Page 39).
- "The submission of these statements in the Road District's brief conduct (*sic*) only further underlines the lack of credibility if Gasser and of Hanlon throughout these proceedings, not in any way aiding the Road District's case, and warrants sanction."
- "The Act and the Board's Rules provide for sanctions on the parties only and does not give it authority to sanction a party's counsel or representative personally. Therefore, I find that this conduct warrants sanctions against the Road District, on whose behalf these representations were made." (Page 41).

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Exhibit 7

The Bonnie Kurowski Apology Letter

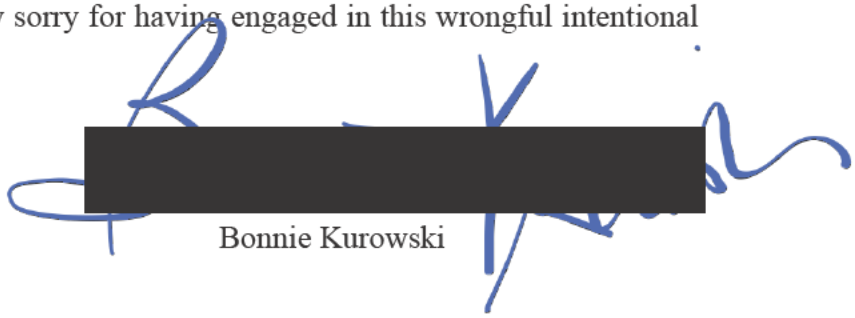
APOLOGY LETTER

I, Bonnie Kurowski, the undersigned, express my sincerest apology to Kirk Allen, John Kraft, Alyssia Benford and Edgar County Watchdogs, Inc. (Collectively "Plaintiffs"). I apologize for the numerous false statements I made about each of them. I acknowledge that the false statements I made about Plaintiffs rise to the level of constitutional malice and were intended to harm their reputations. I am woefully sorry for any injury to their reputations that I may have caused.

I made a number of specific false statements about one or more of the Plaintiffs for which I apologize here. I apologize for stating that any of them were guilty of any crime as I have no knowledge that any of the Plaintiffs was convicted of any felony, misdemeanor, or crime involving dishonesty. Nor do I have any knowledge that any of them have been or are subject to any investigation by any governmental authority. I have no knowledge of any fact that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any criminal act involving Racketeering and stalking. I knew at the time that I alleged Plaintiffs were engaged in racketeering and stalking that none of the Plaintiffs were engaged in any criminal conduct. I further apologize to each of the Plaintiffs for suggesting that Kirk Allen John Kraft, Alyssia Benford, Denise Ambroziak or Robert Hanlon engaged in acts of adultery. I have no knowledge that Kirk Allen, John Kraft, Alyssia Benford, Denise Ambroziak or Robert Hanlon engaged in any act that would constitute adultery. I further apologize for stating Alyssia Benford charged Algonquin Township Road District for audits not completed. I knew at the time that I alleged Alyssia Benford had charged Algonquin Township Road District for an audit not performed that it was not true. I apologize for stating that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. were engaged in acts of domestic terrorism or acts of stochastic terrorism. I have no knowledge of any fact that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any act of domestic terrorism or stochastic terrorism. I apologize for asking the Southern Poverty Law Center to list Plaintiffs as a hate group or participants in a hate group. I have no knowledge that any of the Plaintiffs engaged in any act that would constitute acting as a hate group nor any knowledge any of them participated in a hate group. I apologize for reposting an image of a noose and a picture of a confederate flag which a third party published in regard to Alyssia Benford. I apologize to Alyssia Benford for falsely stating that Alyssia Benford improperly disclosed records of DuPage Township. I apologize for having stated that any of the Plaintiffs made false statements about me. I have no knowledge that any of the plaintiffs published any false statement about me and to the extent that I expressed to any other person that any article published by any of them was false that was itself a false statement. I apologize for claiming that Kirk Allen or John Kraft, were involved in the DC siege (or insurgency) of January 6, 2021 at the United States Capitol building. I further acknowledge that I have no knowledge that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any act related to what has become to be known as the January 6th Insurgency at the United States Capitol building. I have no knowledge or information that any persons other than Kirk Allen and John Kraft are responsible for publishing the Edgar County Watchdog Inc.'s publication "Illinois Leaks" or that any other person authors the reports which appear in that publication. I apologize for alleging Plaintiffs Allen, Kraft and Benford entered the Calumet City offices unlawfully and destroyed documents. I apologize for falsely claiming Alyssia Benford participated in a robbery at the Calumet City Hall. I apologize for falsely claiming Alyssia Benford engaged in severe bullying of Calumet City employees. At the time I made the statements concerning Calumet City, I knew that

the statements I made were not true. I apologize for making false statements referring to Alyssia Benford as a highly paid call girl. I apologize for contacting, emailing and texting false information to Alyssia Benford's clients in an effort to damage her business relationships.

I am sorry for the malicious manner in which I published false statements concerning Kirk Allen, John Kraft, Alyssia Benford and Edgar County Watchdogs, Inc. I was wrong to intentionally malign their reputations and I am woefully sorry for having engaged in this wrongful intentional conduct.



Bonnie Kurowski

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Exhibit 8

The Bonnie Kurowski Settlement with ECW, Kraft, Allen & Benford

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into on this ___ day of February 2023 (the "Effective Date"), by and among Plaintiffs, Edgar County Watchdogs, Inc. ("ECW"), Kirk Allen ("Allen"), John Kraft ("Kraft"), and Alyssia Benford ("Benford); (collectively ECW, Allen, Kraft and Benford are referenced collectively as "Plaintiffs"), and Defendant, Bonnie Kurowski ("KUROWSKI"). (Plaintiffs and the KUROWSKI are sometimes collectively referred to herein as the "Parties").

RECITALS

WHEREAS:

A. On June 2, 2021 the Plaintiffs filed a complaint against Bonnie Kurowski in the United States District Court for the Middle District of Florida, Ocala Division in the action titled *ECW, et al vs. Bonnie Kurowski*, et al, Case No. 5:21-cv-00302-PGB-PRL (the "Litigation") and the complaint was amended thereafter. The claims in the operative complaint in the litigation contains various counts including Counts I & II by Kraft, Counts III and IV by Allen, Counts V & VI by Benford, and Counts VII and VIII by ECW. Each count is against KUROWSKI, with each respective Plaintiff having counts sounding in libel and defamation by implication. These foregoing claims or causes of action are referred to as the "Covered Claims" which are fully and finally resolved and released by the Plaintiffs by and under the terms of this Agreement.

B. On May 16, 2022 KUROWSKI filed an Answer (Docket #52) to the Third Amended Complaint (Docket #49). In the answer filed with the court by Kurowski, she asserted affirmative defenses of Truth, No Defamatory Statements, Qualified Privilege, Reporter's Privilege, No Malice, No Reckless Conduct, and Fair Comment. Plaintiffs dispute the legal sufficiency of those defenses and the parties agree Plaintiffs would prevail at trial over these defenses.

C. The respective parties endeavored to settle and compromise this dispute and this Agreement is the product of those settlement discussions related to the tortious conduct of KUROWSKI. All parties are represented by counsel in the negotiation and creation of this Agreement and both counsel have contributed to the drafting of this Agreement. Plaintiffs, ECW, Allen, Benford, and Kraft are represented by Attorney Robert T. Hanlon of Woodstock, Illinois and Defendant KUROWSKI is represented by Gary Edinger, of Gainesville Florida.

D. KUROWSKI acknowledges that if the above-captioned case were to go to trial, Plaintiffs could and would prove the allegations of the Complaint and that the obligations arising under this Agreement are a direct result of KUROWSKI's intentional tortious conduct against the Plaintiffs and each of them. KUROWSKI has further agreed that she understands that, should she breach the provisions of this Agreement with respect to future publications, the liquidated damage clause herein is specifically designed to compensate Plaintiffs for KUROWSKI's intentional willful torts against them. KUROWSKI understands and agrees that the liquidated damage clause of this Agreement, and any other provision providing for a monetary recovery against KUROWSKI, is exempt from discharge pursuant to Section 523 of the United States Bankruptcy

Initials ___ (BK)

Code and that the amount in the liquidated damage provision is not punitive and designed to reflect the Plaintiffs' actual losses should there be a breach of this Agreement by KUROWSKI.

G. Plaintiffs and KUROWSKI desire to affect a full and final settlement and compromise of all claims, defenses and issues raised or which could have been raised in the Litigation, including any Covered Claims .The Plaintiffs and Defendants wish to enter into this Agreement simply to avoid the further delay, inconvenience, and expense of ongoing protracted efforts in the Litigation.

H. KUROWSKI has purchased internet domains with the following names: "edgarcountywatchdog.com" "bolingbrookreporter" "fightforIL.com" "macombreporter.com", "illinoisreporter.org" "willcountyreporter.com" "lakecountyreporter.com" "McHenryreporter.com", "kanecountyreporter,org." "winnebagoreporter.com" "mcdonoughreporter.com" (collectively KUROWSKI's Web Pages). KUROWSKI also created Facebook pages or groups entitled "Macomb Reporter" " "Illinois Reporter" "Will County Reporter" "Cook County Reporter" "Cook County Reporter, IL" "Fight for Illinois" "Illinois Reporter" "Florida Reporter" "McHenry County Reporter" "Kane County Reporter" and "Winnebago County Reporter", (Collectively "Kurowski's Reporter Facebook Pages") .

I. KUROWSKI admits and acknowledges that none of the Plaintiffs has ever been the target of any racketeering investigation by any law enforcement agency of any town, city, state or any agency of the United States government. KUROWSKI further admits and acknowledges that none of the Plaintiffs in the Litigation has ever been convicted of a crime characterized as either a felony or a crime involving dishonesty. KUROWSKI further admits and acknowledges that she had no basis whatsoever to state that any of the Plaintiffs, or attorneys Robert T. Hanlon or Denise Ambroziak, were engaged in adultery, that her statements along these lines were false and knowingly made to harm Plaintiffs and each of their reputations as well as Plaintiffs relationships with Attorney Hanlon and Attorney Ambroziak. KUROWSKI admits that none of the Plaintiffs have engaged in any act to stalk her or otherwise place her under surveillance of any kind. KUROWSKI further admits and acknowledges that Allen and Kraft were not ever part of the "Proud Boys" and had no participation whatsoever in the January 6, 2021 incident at the United States Capitol building, also known as the "January 6 insurgency", "DC Siege" or "January 6 insurrection". KUROWSKI admits that each of her statements alleging that any of the Plaintiffs were part of a terrorist organization were untrue and that none of the Plaintiffs have ever been involved in any act of terrorism of any kind.

J. KUROWSKI made numerous false statements concerning Kirk Allen, Alyssia Benford and John Kraft related to Calumet City including but not limited to the forceful entering of government offices and the unlawful removal of documents.

NOW THEREFORE, in consideration of and in reliance on the mutual promises contained herein and of the further consideration set forth below, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

[redacted]K)

Terms and Conditions

1. Incorporation of Recitals. The Parties agree that the recitals set forth hereinabove are true and accurate and that they constitute material terms of this Agreement and are incorporated into this Agreement.

2. Apology. Contemporaneous with the execution of this Agreement, KUROWSKI shall tender a written apology to the Plaintiffs in the form attached as Exhibit "A" to this Agreement. The apology shall be e-mailed to Plaintiff's counsel [Robert@robhanlonlaw.com] and an original "ink-signed" apology shall be sent by U.S. mail to Plaintiff's counsel [131 East Calhoun, Woodstock, Illinois 60098].

Plaintiffs shall be entitled to publish, release, post and disseminate the apology and this Agreement through any means or medium of their choosing, and to any person.

3. Agreement to Assign Web Pages and Facebook Pages. As material consideration of this Agreement, KUROWSKI shall within ten (10) days take all steps to assign and transfer all right title and interest in KUROWSKI's Web Pages and Kurowski's Reporter Facebook Pages to Plaintiffs, including the access codes, passwords in connection with these sites and pages to ECW, Allen, Benford, and Kraft as directed by any of the Plaintiffs. The conveyance will include the domain name and access to the websites, but shall not include the content of the websites created prior to the Effective Date which shall remain the property of KUROWSKI. KUROWSKI shall have the right to scrub the websites of any content belonging to her, but shall not be obligated to do so, except with respect to any content naming or concerning the Plaintiffs, which information shall be permanently deleted from KUROWSKI's Web Pages and Kurowski's Reporter Facebook Pages. Any content remaining on KUROWSKI's Web Pages and Kurowski's Reporter Facebook Pages at the time they are conveyed to the Plaintiffs shall be the property of the Plaintiffs.

To facilitate this process, ECW will have its information technology consultant available to assist in the transfer of the various web pages. KUROWSKI further agrees that she will cooperate with Brandon Bernicky, President of Nextsulting LLC, to transfer KUROWSKI's Web Pages and Kurowski's Reporter Facebook Pages to Plaintiffs. Mr. Bernicky may be contacted by e-mail at bbernicky@nextsulting.com.

4. Removal of Content from GoFund Me. KUROWSKI also owns and maintains a GoFundMe page located at https://www.gofundme.com/f/Fight-for-Illinois-Democracy referencing Plaintiffs. KUROWSKI shall be entitled to retain ownership and control of said GoFundMe page and shall not be required to convey ownership of that page to the Plaintiffs. However, KUROWSKI shall delete, redact and scrub any reference to the Plaintiffs from the GoFundMe page and shall not thereafter publish anything about Plaintiffs, or any of them, on that site or any other site.

5. Removal of Content from Bolingbrook Reporter Facebook Page. KUROWSKI also owns and maintains a private Facebook group designated as the "Bolingbrook Reporter". KUROWSKI shall be entitled to retain ownership and control of said Bolingbrook Reporter group page and shall not be required to convey ownership of that page to the Plaintiffs. However, KUROWSKI shall delete, redact and scrub any reference to the Plaintiffs from the Bolingbrook Reporter group page and shall not thereafter publish anything about Plaintiffs, or any of them, on

Initials [redacted]

that site or any other site. Furthermore, KUROWSKI shall not convert the private Facebook group into a public page on Facebook.

6. KUROWSKI Facebook Pages. KUROWSKI owns a number of personal Facebook pages under her own name or under one or more aliases. KUROWSKI shall be entitled to retain ownership and control of her personal Facebook Pages and shall not be required to convey ownership or control of those pages to the Plaintiffs. However, KUROWSKI shall delete, redact and scrub any reference to the Plaintiffs from her personal Facebook pages and shall not thereafter publish anything about Plaintiffs, or any of them, on that site.

7. KUROWSKI's other Retractions. Within seven (7) days of the date of execution of this Agreement, KUROWSKI shall take action to cause the removal of those posts and responsive comments made on third party websites concerning ECW, Kraft, Allen or Benford (the "Third Party Content") specifically identified in Exhibit "B" attached hereto and incorporated herein.

For purposes of this Agreement, the term "take action to cause the removal of" means the following:

A. With respect to any webpages, services or ISPs owned or controlled by KUROWSKI, KUROWSKI shall be required to personally delete the specifically identified Third Party Content from those source(s).

B. With respect to any posts made by KUROWSKI over which she retains editorial control (meaning that she can directly alter or remove the content), KUROWSKI shall be required to personally delete the specifically identified Third Party Content from the source(s).

C. With respect to any posts made on a webpage, service or ISP over which KUROWSKI exercises no control and no ability to modify or edit content, KUROWSKI shall contact the host of that webpage, service or ISP through a reasonable means of communication (e-mail and/or U.S. mail) and shall request that they remove the specifically identifies Third Party Content.

D. If requested by one or more of the Plaintiffs, KUROWSKI shall join in any request that the Plaintiffs, or any of them, may direct to a webpage, service or ISP hosting the Third Party Content in an effort to have the content removed.

8. Agreement not to Make Statements Concerning any of the Plaintiffs.

As a material term of this Agreement, KUROWSKI agrees that she will not publish any statement concerning the Plaintiffs or any commentary concerning this Agreement after the Effective Date. KUROWSKI further agrees that she will not circumvent the terms of this Agreement by using agents or third parties to make any statements prohibited by this Agreement. In furtherance of this paragraph, KUROWSKI agrees that she will not create any new web pages or create any electronic medium or communication where the content concerns any of the Plaintiffs. This covenant shall survive the dismissal of the above-captioned litigation.

Initials [redacted]

9. Liquidated Damages for Non-performance. In paragraph 8 of this Agreement, KUROWSKI has entered into a covenant not to post any content concerning the Plaintiffs after the Effective Date. KUROWSKI agrees that, in the event of a breach of the covenant set forth in paragraph 8 of this Agreement by KUROWSKI, the specific money damages would be impossible to determine or would otherwise be difficult to ascertain, Accordingly, KUROWSKI agrees to pay as liquidated damages, to each Plaintiff affected by the breach, the sum of $50,000.00 per occurrence. In addition to the liquidated damages provided for under this Agreement, any Plaintiff affected by KUROWSKI's breach shall be entitled to collect his, her or its reasonable attorney fees and expenses incurred in litigating such a claim. This liquidated damage clause is specifically designed to compensate Plaintiffs for KUROWSKI's intentional willful torts against Plaintiffs as well as facilitating the objective of this Agreement. This liquidated damage clause of this Agreement is exempt from discharge pursuant to Section 523 of the United States Bankruptcy Code for the reasons set forth herein. Likewise, KUROWSKI agrees irrevocably to any petition of Allen, Benford, Kraft or ECW for relief from any automatic stay from any subsequent bankruptcy filing for the purpose of enforcing this liquidated damage provision. KUROWSKI agrees that the liquidated damages provision of this Agreement is directly causally related to her intentional, willful conduct that has caused Plaintiffs an actual injury. Statements Concerning Resolution of Litigation.

Notwithstanding anything to the contrary, KUROWSKI shall be entitled to inform third parties that this litigation was "resolved by agreement" or words to that effect. In making this disclosure, KUROWSKI may reference the Plaintiffs by name and such reference shall not be considered a breach of this Agreement nor shall Plaintiffs be entitled to damages (including liquidated damages) as a consequence of such disclosure.

10. Attorney's Fees and Costs. Each party shall bear their own attorney's fees and costs in the above-captioned litigation. The Plaintiffs expressly acknowledge that all potential attorney fees, costs, sanction claims and expenses that may otherwise have been claimed or pursued for any federal or state statutes, under Fed. Rule Civ. P. 54(d) or otherwise, in pursuit of the Litigation, are waived, discharged, and fully released pursuant to the releases provided for in this Agreement. Likewise, KUROWSKI expressly acknowledges that all potential attorney fees, costs, sanction claims and expenses that may otherwise have been claimed or pursued for any federal or state statutes, under Fed. Rule Civ. P. 54(d) or otherwise, in defense of the Litigation, are waived, discharged, and fully released pursuant to the releases provided for in this Agreement. KUROWSKI shall join in a motion to be filed with the United States District Court for the Middle District of Florida to vacate the order of January 11, 2023 (Docket #68) and to submit the attached order vacating the order of January 11, 2023.

11. Mutual General Releases. In consideration of the foregoing, each of the Plaintiffs, for itself and themselves and on behalf of their respective assigns, attorneys, insurers, employees, shareholders, members, officers, agents, heirs, beneficiaries and legal representatives, do hereby release and discharge KUROWSKI, and her heirs and beneficiaries from any and all known and unknown claims, causes of action, alleged damages, losses, liens, liabilities, attorneys' fees, expenses and costs, from the beginning of time through the Effective Date of this Agreement, including but not limited to all damage claims as detailed in their written discovery responses, and all matters related to the Covered Claims, including any claims which could have been raised in

the above-styled action, on either a compulsory or permissive basis. Such releases shall be effective upon the receipt of KUROWSKI's performance required in this Agreement.

Attorneys Denise Ambroziak and Robert T. Hanlon in consideration of the apology attached hereto as Exhibit A, for themselves and on behalf of their respective assigns, attorneys, insurers, employees, shareholders, members, officers, agents, heirs, beneficiaries and legal representatives, do hereby release and discharge KUROWSKI, and her heirs and beneficiaries from any and all known and unknown claims, causes of action, alleged damages, losses, liens, liabilities, attorneys' fees, expenses and costs, from the beginning of time through the Effective Date of this Agreement, including but not limited to any damages or liability associated with the matters which are the subject of the Apology attached as Exhibit "A" to this Agreement. Execution of this Agreement by Attorneys Ambroziak and Hanlon are a condition precedent to KUROWSKI's obligation to perform under this Agreement and for her covenant and release.

In consideration of the foregoing recitals and other recitals, KUROWSKI for herself and on behalf of her respective assigns, attorneys, insurers, employees, agents, heirs, beneficiaries and legal representatives, does hereby release and discharge each of the Plaintiffs and each of their heirs and beneficiaries, from any and all known and unknown claims, causes of action, alleged damages, losses, liens, liabilities, attorneys' fees, expenses and costs, from the beginning of time through the Effective Date of this Agreement, including but not limited to any counterclaims or set-offs which could have asserted herein on either a compulsory or permissive basis.

12. No Other Relief. Plaintiffs shall recover no monetary damages under this Agreement other than the liquidated damages which may be awarded in the event of a future breach by KUROWSKI. Other than the specific rights and remedies provided by this Settlement Agreement, neither party shall be entitled to any relief from the above-captioned litigation. There are no third party beneficiaries to this Agreement.

13. Dismissal with prejudice. Within five (5) business days after the last to occur of these performance items:

(a) Tender of the apology required under paragraph 2;

(b) Assignment of the KUROWSKI's Web Pages and Kurowski's Reporter Facebook Pages required under paragraph 3;

(c) Removal of the content from https://www.gofundme.com/f/Fight-for-Illinois-Democracy required under paragraph 4;

(d) Removal of the content from KUROWSKI's personal Facebook pages and the Bolingbrook Reporter group page required under paragraphs 5 and 6; and

(e) Removal of specifically identified content from third party webpages as required under paragraph 6 and Exhibit B

Parties' counsel shall execute and submit the attached Stipulation for Dismissal, dismissing the claims of the Third Amended Complaint, with prejudice, pursuant to this Agreement and Federal

Initial [redacted]

Rule of Civil Procedure 41(a)(1)(A). The parties anticipate that the Court will then enter a dismissal order on that Stipulation, substantially in the form attached hereto. To the extent that the Court objects to the entry of any order called for in this Agreement, the respective parties' counsel shall work together to resolve such differences with the Court in order to secure the dismissal with prejudice of Plaintiffs' claims.

14. Force Majeure; Acts of God. In the event that any Party shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lockouts, weather conditions, breakdowns, accidents, casualties, acts of God, labor troubles, delays in performance by contractors, inability to procure materials, inability by the exercise of reasonable diligence to obtain supplies, parts, employees or necessary services, failure of power, governmental laws, orders or regulations, actions of governmental authorities, riots, insurrection, war or other causes beyond the reasonable control of such party or for any cause not due to any act or neglect of the Party or its servants, agents, employees, licensees, or any person claiming by, through or under such Party ("Force Majeure"), then such Party shall not be liable or responsible for any such delays, and the doing and performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

15. Entire Agreement. This Agreement is the entire agreement between the Parties, and this Agreement supersedes and replaces all prior written, oral, and other agreements between the Parties, with respect to the subject matter set forth herein. There are no oral statements, representations, warranties, undertakings, or collateral agreements between the Parties modifying or affecting the terms of this Agreement. This Agreement may only be modified or amended in writing executed by the Parties.

16. Counterparts; Signatures. This Agreement may be executed in counterparts, each of which when so executed shall be, and be deemed to be, an original instrument and such counterparts together shall constitute the same instrument. Signatures of the Parties' may be transmitted via facsimile or photostatic means, or in .pdf format, and any such signature shall be deemed to be an original signature for enforcement and all other purposes.

17. Draftsmanship. In the event of any ambiguity in or dispute regarding the interpretation of this Agreement and the terms set forth herein, this Agreement shall not be construed against any Party, all of whom shall be deemed to have drafted this Agreement.

18. Governing Law. The Parties agree that this Agreement shall be governed and construed by the laws of the State of Florida, and that jurisdiction and venue for any dispute arising between and among the settling parties under this Agreement is the United States District Court for the Middle District of Florida, Ocala Division.

SIGNATURES on Following Page:

Initials [redacted]

Agreed to and executed by:

Edgar County Watchdogs, Inc.

_____
By: its Authorized Representative Date: February , 2023

_____
Kirk Allen, Plaintiff Date: February , 2023

_____
Alyssia Benford, Plaintiff Date: February , 2023

_____
John Kraft, Plaintiff Date: February , 2023

_____
Robert T. Hanlon, Attorney Date: February , 2023

_____
Denise Ambroziak, Attorney Date: February ,2023

[redacted]
Bonnie Kurowski, Defendant Date: February , 2023

Initials_____. (BK)

Agreed to and executed by:

Edgar County Watchdogs, Inc.

[redacted] John Kraft

By: its Authorized Representative Date: February 10, 2023

[redacted]

Kirk Allen, Plaintiff Date: February , 2023

Alyssia Benford, Plaintiff Date: February , 2023

[redacted] John Kraft

John Kraft, Plaintiff Date: February 10 2023

Date: February , 2023

Robert T. Hanlon, Attorney

Date: February ,2023

Denise Ambroziak, Attorney

[redacted]

Bonnie Kurowski, Defendant Date: February , 2023

Initials_____. (BK)

Agreed to and executed by:

Edgar County Watchdogs, Inc.

_____ Date: February , 2023
By: its Authorized Representative

_____ Date: February , 2023
Kirk Allen, Plaintiff

[redacted] Date: February , 2023
Alyssia Benford, Plaintiff

_____ Date: February , 2023
John Kraft, Plaintiff

_____ Date: February , 2023
Robert T. Hanlon, Attorney

_____ Date: February ,2023
Denise Ambroziak, Attorney

[redacted] Date: February , 2023
Bonnie Kurowski, Defendant

Initials_____. (BK)

Agreed to and executed by:

Edgar County Watchdogs, Inc.

[redacted] John Kraft

By: its Authorized Representative Date: February 10 2023

[redacted]

Kirk Allen, Plaintiff Date: February , 2023

Alyssia Benford, Plaintiff Date: February , 2023

[redacted] John Kraft

John Kraft, Plaintiff Date: February 10 2023

[redacted]

Robert T. Haplon, Attorney Date: February , 2023

[redacted]

Denise Ambroziak, Attorney Date: February ,2023

[redacted]

Bonnie Kurowski, Defendant Date: February , 2023

Initials_____. (BK)

EXHIBIT A
APOLOGY LETTER

I, Bonnie Kurowski, the undersigned, express my sincerest apology to Kirk Allen, John Kraft, Alyssia Benford and Edgar County Watchdogs, Inc. (Collectively "Plaintiffs"). I apologize for the numerous false statements I made about each of them. I acknowledge that the false statements I made about Plaintiffs rise to the level of constitutional malice and were intended to harm their reputations. I am woefully sorry for any injury to their reputations that I may have caused.

I made a number of specific false statements about one or more of the Plaintiffs for which I apologize here. I apologize for stating that any of them were guilty of any crime as I have no knowledge that any of the Plaintiffs was convicted of any felony, misdemeanor, or crime involving dishonesty. Nor do I have any knowledge that any of them have been or are subject to any investigation by any governmental authority. I have no knowledge of any fact that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any criminal act involving Racketeering and stalking. I knew at the time that I alleged Plaintiffs were engaged in racketeering and stalking that none of the Plaintiffs were engaged in any criminal conduct. I further apologize to each of the Plaintiffs for suggesting that Kirk Allen John Kraft, Alyssia Benford, Denise Ambroziak or Robert Hanlon engaged in acts of adultery. I have no knowledge that Kirk Allen, John Kraft, Alyssia Benford, Denise Ambroziak or Robert Hanlon engaged in any act that would constitute adultery. I further apologize for stating Alyssia Benford charged Algonquin Township Road District for audits not completed. I knew at the time that I alleged Alyssia Benford had charged Algonquin Township Road District for an audit not performed that it was not true. I apologize for stating that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. were engaged in acts of domestic terrorism or acts of stochastic terrorism. I have no knowledge of any fact that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any act of domestic terrorism or stochastic terrorism. I apologize for asking the Southern Poverty Law Center to list Plaintiffs as a hate group or participants in a hate group. I have no knowledge that any of the Plaintiffs engaged in any act that would constitute acting as a hate group nor any knowledge any of them participated in a hate group. I apologize for reposting an image of a noose and a picture of a confederate flag which a third party published in regard to Alyssia Benford. I apologize to Alyssia Benford for falsely stating that Alyssia Benford improperly disclosed records of DuPage Township. I apologize for having stated that any of the Plaintiffs made false statements about me. I have no knowledge that any of the plaintiffs published any false statement about me and to the extent that I expressed to any other person that any article published by any of them was false that was itself a false statement. I apologize for claiming that Kirk Allen or John Kraft, were involved in the DC siege (or insurgency) of January 6, 2021 at the United States Capitol building. I further acknowledge that I have no knowledge that Kirk Allen, John Kraft, Alyssia Benford or Edgar County Watchdogs, Inc. engaged in any act related to what has become to be known as the January 6th Insurgency at the United States Capitol building. I have no knowledge or information that any persons other than Kirk Allen and John Kraft are responsible for publishing the Edgar County Watchdog Inc.'s publication "Illinois Leaks" or that any other person authors the reports which appear in that publication. I apologize for alleging Plaintiffs Allen, Kraft and Benford entered the Calumet City offices unlawfully and destroyed documents. I apologize for falsely claiming Alyssia Benford participated in a robbery at the Calumet City Hall. I apologize for falsely claiming Alyssia Benford engaged in severe bullying of

Initials_____. (BK)

Calumet City employees. At the time I made the statements concerning Calumet City, I knew that the statements I made were not true. I apologize for making false statements referring to Alyssia Benford as a highly paid call girl. I apologize for contacting, emailing and texting false information to Alyssia Benford's clients in an effort to damage her business relationships.

I am sorry for the malicious manner in which I published false statements concerning Kirk Allen, John Kraft, Alyssia Benford and Edgar County Watchdogs, Inc. I was wrong to intentionally malign their reputations and I am woefully sorry for having engaged in this wrongful intentional conduct.

_____

Bonnie Kurowski

Initials_____. (BK)

EXHIBIT B (List of Third Party Web sites)

PRLOG.ORG

Facebook page Guardians of Wesley Township

Fight Against Extremism

Initials_____. (BK)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

EDGAR COUNTY WATCHDOGS, INC.,
KIRK ALEN, JOHN KRAFT, and
ALYSSIA BENFORD,

CASE NO.: 5:21-cv-302-JSM-PRL

Plaintiffs,

v.

BONNIE KUROWSKI,

Defendant.
_____/

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs, EDGAR COUNTY WATCHDOGS, INC., KIRK ALEN, JOHN KRAFT, and ALYSSIA BENFORD, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, hereby file this Stipulation of Dismissal with Prejudice. The Parties have resolved the dispute between them.

Dated: February __, 2023.

Law Offices of Robert T. Hanlon & Associates, P.C.

__/s/_____
ROBERT T. HANLON, Esquire
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200
robert@robhanlonlaw.com
Attorney for Plaintiffs

Initials_____. (BK)

Joinder and Consent by Defendant's Counsel:

Dated: February __, 2023.

BENJAMIN, AARONSON, EDINGER & PATANZO, P.A.

/s/
GARY S. EDINGER, Esquire
Florida Bar No.: 0606812
305 N.E. 1st Street
Gainesville, Florida 32601
(352) 338-4440/ 337-0696 (Fax)
GSEdinger12@gmail.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February __, 2023, a copy of the foregoing was served electronically, through the Clerk of the Court by using the CM/ECF system, to the party on the service list below.

/s/
ROBERT T. HANLON, Esquire

SERVICE LIST

BENJAMIN, AARONSON, EDINGER
& PATANZO, P.A.
Gary S. Edinger, Esquire
305 N.E. 1st Street
Gainesville, Florida 32601
GSEdinger12@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

EDGAR COUNTY WATCHDOGS, INC.,
KIRK ALEN, JOHN KRAFT, and
ALYSSIA BENFORD,

CASE NO.: 5:21-cv-302-JSM-PRL

Plaintiffs,

v.

BONNIE KUROWSKI,

Defendant.
_____/

STIPULATION TO VACATE SANCTION ORDER

COME NOW the Plaintiffs, EDGAR COUNTY WATCHDOGS, INC., KIRK ALEN, JOHN KRAFT, and ALYSSIA BENFORD, and the Defendant, BONNIE KUROWSKI, by and through their undersigned attorneys, and jointly move this Court to vacate the sanction Order entered on January 11, 2023 (Doc. 68), and say:

1. In January 11, 2023, this Court entered an Order (Doc. 68) awarding Defendant attorney's fees associated with a discovery dispute.

2. The parties have entered into a settlement agreement which provides that each party is to bear their own attorney's fees and costs in this action and specifically disclaims the payment of any attorney's fees to Plaintiff associated with the January 11, 2023 Order.

Initials_____. (BK)

Wherefore, in furtherance of that settlement agreement, the parties move this Court to vacate the Order January 11, 2023 Order (Doc. 68) so that Plaintiffs are not liable to pay any attorney's fees or costs to the Defendant.

DATED: February ___, 2023.

BENJAMIN, AARONSON, EDINGER & PATANZO, P.A.

/s/
GARY S. EDINGER, Esquire
Florida Bar No.: 0606812
305 N.E. 1st Street
Gainesville, Florida 32601
(352) 338-4440/ 337-0696 (Fax)
GSEdinger12@gmail.com
Attorney for Defendant

Law Offices of Robert T. Hanlon & Associates, P.C.

/s/
ROBERT T. HANLON, Esquire
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200
robert@robhanlonlaw.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February __, 2023, a copy of the foregoing was served electronically, through the Clerk of the Court by using the CM/ECF system, to the party on the service list below.

/s/
ROBERT T. HANLON, Esquire

SERVICE LIST

BENJAMIN, AARONSON, EDINGER
& PATANZO, P.A.
Gary S. Edinger, Esquire
305 N.E. 1st Street
Gainesville, Florida 32601
GSEdinger12@gmail.com

Initials_____. (BK)