**STATE OF ILLINOIS**
**EDUCATIONAL LABOR RELATIONS BOARD**

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| In the Matter of: | ) | |
| | ) | |
| Quincy Education Association, Local No. 809, IFT/AFT, AFL-CIO, | ) | |
| | ) | |
| Complainant, | ) | |
| | ) | |
| and | ) | Case No. 2001-CA-0035-S |
| | ) | |
| Quincy School District No. 172, | ) | |
| | ) | |
| Respondent. | ) | |

**OPINION AND ORDER**

On May 13, 2004, an Administrative Law Judge issued a Recommended Decision and Order in this case. The Administrative Law Judge determined that, by failing to file a timely Answer to the Complaint, Quincy School District No. 172 ("District") had admitted that it had violated Section 14(a)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act").[1]

The District filed timely exceptions to the Administrative Law Judge's Recommended Decision and Order, together with a supporting brief.[2] The Complainant, Quincy Education Association, Local No. 809, IFT/AFT, AFL-CIO ("Union"), filed a response to the exceptions. In addition, the District filed a reply to the Union's response.3

We affirm the Administrative Law Judge's Recommended Decision and Order.

**I.**

This case involves the Union's allegation that the District improperly refused to arbitrate a grievance. On August 8, 2001, the Executive Director issued a Complaint and Notice of Hearing. The District filed its Answer to the Complaint one day late, together with a Motion for Leave to File Answer One Day Out of Time. On January 14,

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[1] Section 14(a)(1) of the Act prohibits educational employers and their agents or representatives from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act."

[2] The District has requested oral argument. We deny the District's request. The Illinois Educational Labor Relations Board's Rule concerning oral argument, 80 Ill. Adm. Code 1120.50(c), states: "Oral argument shall be allowed only at the discretion of the Board. The Board shall direct oral argument when it determines that oral argument will assist determination of the issues." We determine that oral argument would not sufficiently assist us in determining the issues in this case.

[3] We do not consider the District's reply to the Union's response. The Illinois Educational Labor Relations Board's Rules do not provide for a reply to a response to exceptions, and it is not the Illinois Educational Labor Relations Board's practice to allow parties to file briefs in addition to those for which the Rules provide. *Niles Township High School District 219*, 21 PERI 104, Case No. 2005-CA-0002-C (IELRB, June 16, 2005) (appeal pending); *East Maine School District 63*, 13 PERI 1041, Case No. 94-CA-0024-C (ILERB, February 27, 1997).

2002, the Administrative Law Judge then assigned to the case denied the District's Motion. According to the affidavit of David W. Gearhart, submitted by the District, the Union responded in the negative when asked by that Administrative Law Judge, during a January 15, 2002 conference call, whether the parties would want to raise any other motions if the District's Motion were denied.

On January 9, 2003, the Illinois Educational Labor Relations Board ("IELRB") issued an Opinion and Order. The IELRB determined that the District did not have good cause for its failure to file a timely Answer. The IELRB also determined that the Union's argument, in a response to a motion by the District to reconsider the January 14, 2002 Order, that the District should not be granted leave to file a late Answer was the equivalent of a motion that the allegations of the Complaint be deemed admitted. The IELRB concluded that, by failing to file a timely Answer, the District had admitted all allegations in the Complaint.

On March 2, 2004, the Appellate Court affirmed in part and reversed in part the IELRB's Opinion and Order. The Appellate Court upheld the IELRB's determination that the District did not have good cause for failing to file a timely Answer, but determined that the IELRB's interpretation that there was the equivalent of a motion that the allegations of the Complaint be deemed admitted was "clearly erroneous, arbitrary, and unreasonable." The court stated, "[s]ince no party filed a motion to have the complaint's allegations deemed admitted, we remand the cause for a hearing on the merits." The court also stated:

> For the reasons stated, we affirm the IELRB's denial of the School District's motion for leave to file a late answer, reverse the IELRB's decision to deem the complaint's allegations admitted, vacate the portion of the IELRB's order based on the admission of the allegations, and remand the cause for further proceedings consistent with this order.

In addition, the court stated:

> It is the decision of this court that the order on appeal from the Illinois Educational Labor Relations Board be AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, and the cause be REMANDED to the Board for further proceedings as more fully set forth in the order of this court, a copy of which is attached hereto.

On April 20, 2004, the IELRB decided to issue an Order setting the case for hearing on June 1, 2004. The Order issued on April 26, 2004. On April 21, 2004, the Union filed a motion to deem the allegations of the Complaint as admitted. On April 29, 2004, the Administrative Law Judge assigned to the case issued an Order to Show Cause as to why the Union's motion should not be granted. On May 3, 2004, the District filed a response to the motion, which was accepted as the District's response to the Order to Show Cause. No proceedings on the merits were conducted.

**II.**

The Administrative Law Judge determined that the Union's April 21, 2004 motion compelled a conclusion that the allegations of the Complaint were deemed to be admitted. Therefore, she concluded that the District violated Section 14(a)(1) of the Act.

**III.**

The District argues that the IELRB should not adopt the Administrative Law Judge's Recommended Decision and Order. The District contends that the IELRB is bound by the Appellate Court's direction to hold a hearing on the merits and has no discretion not to hold such a hearing. The District also contends that, because of the Union's delay and the fact that the Union indicated that it would not file any motion, the Union has waived, or is estopped from receiving, the relief requested in its motion to have the allegations of the Complaint deemed as admitted. In addition, the District argues that it would be prejudiced by being forced to arbitrate the grievance.

The Union argues that the Administrative Law Judge was not in error in accepting its motion. The Union contends that, while the issue of the arbitrability of the grievance was raised in the District's Answer, the allegations in the Answer cannot be considered. The Union also contends that the Administrative Law Judge correctly concluded that the grievance was arbitrable.

**IV.**

The issue before us is whether the Administrative Law Judge correctly declined to conduct a hearing on the merits and determined that, by failing to file a timely Answer to the Complaint, the District had admitted that it had violated Section 14(a)(1) of the Act. We conclude that the Administrative Law Judge's decision was correct.

At the time relevant to this case,[4] Section 1120.30(d) of the IELRB's Rules, 80 Ill. Adm. Code Section 1120.30(d), provided, in pertinent part:

> Whenever an unfair labor practice complaint is issued, the respondent must file an answer within 15 days after service of the complaint.
>
> …
>
> 3) On motion of a party, failure to file a timely answer shall be deemed an admission of all allegations in the complaint….
>
> 4) When a party has failed to file a timely answer, leave to file a late answer may be granted by the Hearing Officer for good cause shown. If good cause is shown, the answer shall be deemed timely. Good cause will include: a written statement by the party of: ultimate facts showing a meritorious defense to the complaint; and either a reasonable excuse explaining the party's failure to file a

[4] On May 28, 2004, Section 1120.30(d) of the IELRB's Rules was amended. However, the amended version of Section 1120.30(d) was not in effect when the District filed its Answer. Accordingly, we apply the former version of Section 1120.30(d).

> timely answer, or that the party was prevented from filing a timely answer by: fraud, act or concealment of the opposing party; accident; excusable mistake; or lack of notice, lack of jurisdiction or other grounds traditionally relied upon for equitable relief from judgments.

Under this Rule, the District should be deemed to have admitted the allegations of the Complaint. The District failed to file a timely Answer, and the Union has filed a motion to deem the allegations of the Complaint as admitted. The Appellate Court upheld the IELRB's previous conclusion that the District did not have good cause for failing to file a timely Answer.

The District argues that the IELRB is bound by the specific direction in the Appellate Court's Order to hold a hearing on the merits. The District cites *County of Menard v. ISLRB*, 202 Ill.App.3d 878, 560 N.E.2d 1236, 1238 (4th Dist. 1990), *Stuart v. Continental Ill. Nat'l Bank and Trust Co. of Chicago*, 75 Ill.2d 22, 387 N.E.2d. 312 (1979), *cert. denied*, 444 U.S. 844 (1979), and *Berry v. Lewis*, 27 Ill.2d 61, 187 N.E.2d 688 (1963).

However, these cases do not address what happens when the circumstances on which the reviewing court's directions are based have changed in the interim between the reviewing court's decision and the administrative agency's or trial court's decision on remand. Here, the Appellate Court's Order stated that a hearing on the merits was to be conducted "[s]ince no party filed a motion to have the complaint's allegations admitted." Thus, the direction to have a hearing on the merits was conditioned on the fact that no such motion had been filed. Such a motion has now been filed. Therefore, a ruling that there should be no hearing on the merits because the Union has filed a motion to have the allegations of the Complaint be deemed admitted does not conflict with the Appellate Court's ruling. Rather, a ruling that there should be no hearing on the merits is consistent with the law as announced by the Appellate Court and conforms to the IELRB's Rules, which the Appellate Court directed the IELRB to follow.[5]

The District also argues that the Union has waived or is estopped from having the allegations in the Complaint be deemed admitted, because the Union delayed in filing its motion seeking that the allegations be deemed admitted and stated during the January 15, 2002 conference call that it had no other motions to raise. However, the Union filed its motion to deem the allegations in the Complaint as admitted with reasonable promptness after the Appellate Court's decision issued and before the Union received the IELRB's Order scheduling a hearing. Previous decisions of this agency stated that the Union had already filed the equivalent of a motion to

[5] Analogously, under the doctrine of the "law of the case," a decision is not binding where the facts have changed. *See Stickler v. American Augers, Inc.*, 325 Ill.App.3d 506, 757 N.E.2d 573 (1st Dist. 2001); *Faculty Ass'n of District 205 v. IELRB*, 175 Ill.App.3d 880, 530 N.E.2d 548 (4th Dist. 1988).

deem the allegations in the Complaint as admitted. Therefore, the Union's delay did not waive having the allegations in the Complaint be deemed admitted, and does not lead to a finding of estoppel.

The fact that the Union stated during the January 15, 2002 conference call that it had no other motions to raise also does not lead to a finding of estoppel or waiver. In order for equitable estoppel to apply, there must be a misrepresentation or concealment of material facts, and the party against whom estoppel is claimed must have known at the time the representations were made that the representations were untrue. *Vaughn v. Speaker*, 126 Ill.2d 150, 533 N.E.2d 885 (1988), *cert. denied*, 492 U.S. 907 (1989). These conditions do not apply here. Waiver "will not be inferred in the absence of a clear, unequivocal, and decisive act," *In re Marriage of Popovich*, 149 Ill.App.3d 643, 647, 500 N.E.2d 1109, 1112 (4th Dist. 1986). Gearhart's affidavit does not establish that the Union clearly, unequivocally, and decisively waived its right to file a motion for all time.

Finally, the District argues that it would be prejudiced by being required to arbitrate the grievance. However, the District might suffer no harm at all, because the arbitrator might rule in the District's favor. *See Camping Construction Co. v. District Council of Iron Workers*, 915 F.2d 1333 (9th Cir. 1990), *cert. denied*, 500 U.S. 905, 500 U.S. 953 (1991). As the court further noted in *Camping Construction*, 915 F.2d at 1348, "[n]or can we say that the minor expense and inconvenience to the objecting party, including being the object of an outstanding award, outweighs the other party's interests…." As the IELRB noted in its previous opinion in this case, arbitration is a favored method of resolving disputes. *Board of Trustees v. Cook County College Teachers Union*, 102 Ill.App.3d 681, 430 N.E.2d 249 (1st Dist. 1981); *see also* Section 10(c) of the Act, 115 ILCS 5/10(c) (requiring collective bargaining agreements to provide for grievance arbitration)." Moreover, assuming that the District would be prejudiced by being required to arbitrate the grievance, such prejudice would be due to the District's own action in failing to file a timely Answer to the Complaint.

The District has admitted the allegations of the Complaint by failing to file a timely Answer. Not conducting a hearing on the merits is consistent with the Appellate Court's Order. Accordingly, the District has violated Section 14(a)(1) of the Act by refusing to arbitrate the grievance.

**V.**

The District has violated Section 14(a)(1) of the Act. The Administrative Law Judge's Recommended Decision and Order is affirmed. Accordingly, **IT IS HEREBY ORDERED** that Quincy School District No. 172:

(1) Cease and desist from:

(a) Refusing to submit employee grievances to binding arbitration.

(b) Interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act.

(2) Take the following affirmative action to effectuate the policies of the Act:

(a) Immediately submit the Tierney grievance to binding arbitration.

(b) Post in District buildings on bulletin boards or other places reserved for notices to employees in the applicable bargaining unit copies of an appropriate Notice to Employees. Copies of this Notice, a sample of which is attached, shall be provided by the Executive Director. This Notice shall be signed by the District's authorized representative, posted immediately, and maintained for sixty (60) calendar days during which the majority of employees in the applicable bargaining unit are working. The District shall take reasonable steps to ensure that said Notices are not altered, defaced, or covered by any other materials.

(c) Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Opinion and Order of the steps taken to comply with it.

## VI. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: November 8, 2005
Issued: November 14, 2005
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

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Telephone: (312) 793-3170

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Quincy School District No. 172
Case No. 2001-CA-0035-S

Pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board and in order to effectuate the policies of the Illinois Educational Labor Relations Act ("Act"), we hereby notify our employees that:

This Notice is posted pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board issued after an administrative proceeding. The Illinois Educational Labor Relations Board found that we have violated the Act and ordered us to inform our employees of their rights.

Among other things, the Act makes it lawful for educational employees to organize, form, join or assist employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

We assure our employees that:

**WE WILL NOT** interfere with, restrain or coerce employees in the exercise of rights guaranteed under the Act.

**WE WILL** submit the Tierney grievance to binding arbitration.

QUINCY SCHOOL DISTRICT NO. 172

By:_____Dated:_____
(Representative) (Title)

***NOTICES TO BE POSTED MUST BE OBTAINED FROM THE EXECUTIVE DIRECTOR OF THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD***

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**Members Lamont and Prueter, dissenting**

Here, the Appellate Court specifically stated that "we remand the cause for a hearing on the merits." When a reviewing court remands a case with specific directions, "nothing can be done except carry out those directions," *Jones v. Board of Fire and Police Commissioners*, 127 Ill.App.3d 793, 805, 469 N.E.2d 393, 402 (2nd Dist. 1984); *see Foster v. Civil Service Commission*, 255 Ill.App.3d 30, 627 N.E.2d 285 (1st Dist. 1993). The specific directions "must be followed exactly," *County of Menard v. ISLRB*, 202 Ill.App.3d 878, 883, 560 N.E.2d 1236, 1238 (4th Dist. 1990). The language in these cases is clear and unqualified; there is no exception for cases where the inferior tribunal believes that circumstances have changed. The Appellate Court's direction to the Illinois Educational Labor Relations Board ("Board") to conduct "a hearing on the merits" was clear and specific. Thus, the Board must comply with that direction exactly and can take no other action.

Well over three years have passed in litigation over whether the Respondent has admitted the allegations of the complaint, and still no hearing has been conducted. Our colleagues' decision invites further litigation over this issue and resulting delay. The dispute over this issue should be brought to a close, and a hearing on the merits should be conducted, as the Appellate Court directed.

For the above reasons, we respectfully dissent.

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member