

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Service Employees International Union, Local 73,)	
)	
Charging Party,)	
)	
and)	Case No. 2005-CA-0006-C
)	
University of Illinois at Chicago,)	
)	
Respondent,)	
)	
and)	
)	
Illinois Department of Central Management Services,)	
)	
Respondent)	
_____)	
Service Employees International Union, Local 73,)	
)	
Charging Party,)	
)	
and)	Case No. 2005-CA-0001-S
)	
University of Illinois at Urbana-Champaign,)	
)	
Respondent,)	
)	
and)	
)	
Illinois Department of Central Management Services,)	
)	
Respondent)	
_____)	

OPINION AND ORDER

On July 15, 2004, the Service Employees International Union, Local 73 (SEIU or Union), filed an unfair labor charge in Case No. 2005-CA-0006-C against the University of Illinois at Chicago (UIC or University) and the Illinois Department of Central Management Services (CMS) as joint employers. That same day, the Union filed an unfair labor practice charge in Case No. 2005-CA-0001-S against the University of Illinois at Urbana-Champaign (U of I or University) and CMS as joint employers. Both of the charges allege that the Universities and CMS, as joint employers, violated Section 14(a)(5) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et. seq. (2002) (Act or IELRA) when they failed and refused to bargain in good faith with SEIU over health insurance and employee contributions to the health insurance plan.

After investigation, the IELRB's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charges as they relate to CMS for the reason that CMS is not a joint employer with the Universities. The Executive Director issued a Complaint and Notice of Hearing with regard to the charges as they relate to the Universities. The Union filed timely exceptions to the Executive Director's Recommended Decision and Order dismissing the charges as they relate to CMS. For the reasons discussed below, we affirm the Executive Director's Recommended Decision and Order dismissing the charges in both cases as they relate to CMS.

I.

According to the Union, it learned by way of the press that the State of Illinois, through CMS, was contemplating major changes in health benefits. In response, the Union sent a letter on June 17, 2004, to the Universities and CMS demanding to bargain over the issue of health insurance and employee contributions. The Union claims that the Universities and CMS have continued to refuse to bargain over health insurance and employee contributions.

II.

The test to determine the existence of joint employer status is "whether two or more employers exert significant control over the same employees – where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." Orenic v. ISLRB, 127 Ill. 2d 453, 537 N.E.2d 784 (1989). Relevant factors in determining joint employer status are "the putative joint employer's role in hiring and firing; promotions and demotions; setting wages, work hours, and other terms and conditions of employment; discipline and the actual day-to-day supervision and direction of employees on the job." Id. The Orenic test was adopted to apply to cases arising under the IELRA in AFSCME v. IELRB, 197 Ill. App. 3d 521, 554 N.E.2d 476 (4th Dist. 1990). The key consideration in determining employer status is the extent to which an entity is necessary to create an effective bargaining relationship. Village of Winfield v. Illinois State Labor Relations Board, 176 Ill. 2d 54, 678 N.E.2d 1041 (1997). The issue of whether CMS and UIC have joint employer status is not an issue of first impression to the Executive Director. In University of Illinois (Chicago) and Illinois Department of Central Management Services, 9 PERI 1032, Case No. 92-CA-0078-C (Executive Director's Recommended Decision and Order, December 15, 1992), the Executive Director applied the Orenic test and concluded that CMS and UIC were not joint employers.

According to the University's Policy and Rules, the group insurance plan benefits, costs, and eligibility requirements for employees of the Universities are established by the State of Illinois in accordance with the State Employees Group Insurance Act, 5 ILCS 375/1 et. seq. (2004) (Insurance Act). The University's Policy and Rules further state that group insurance benefits and employee costs are established by CMS. The purpose of the Insurance Act is to "provide a program of group life insurance, a program of health benefits and other employee benefits for" eligible employees. 5 ILCS 375/2. The Insurance Act states that CMS "shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members." 5 ILCS 375/5. Under the Insurance Act, health benefits are designed by CMS to "include reasonable controls, which may include deductible and co-insurance provisions..." 5 ILCS 375/6(a). However, the Insurance Act allows the University to set the amount of premiums paid and the amount of member contributions paid. 5 ILCS 375/10(a). "[I]f any benefit is offered by the Department of Central Management Services to employees who are not members of a recognized bargaining unit, then that benefit shall also be offered to all bargaining unit members *through their certified exclusive representative.*" 5 ILCS 375/7.1. [emphasis added]

CMS does not play a role in any of the factors determining joint employer status listed in Orenic. CMS does not hire or fire; promote or demote; set wages, work hours or other terms and conditions of employment; discipline; resolve grievances; establish work sites or work rules; or conduct day to day supervision and direction of employees. Thus, CMS and the Universities do not have joint employer status. For that reason, we affirm the Executive Director's Recommended Decision and Order dismissing the portion of the charges as they relate to CMS.

III.

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order dismissing the charges as they relate to CMS is affirmed in its entirety.

IV. Right to Appeal

This is a final order of the IELRB. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to 115 ILCS 5/16(a), 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: September 13, 2005

Issued: September 27, 2005

Chicago, Illinois

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

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

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

/s/ Jimmie Robinson
Jimmie Robinson, Member

Illinois Educational Labor Relations Board

160 North LaSalle Street, Suite N-400

Chicago, Illinois 60601-3103

Telephone: (312) 793-3170

Member Ettinger, dissenting

I do not agree with my colleagues' determination that the Universities and CMS are not joint employers. CMS and the University are joint employers because CMS plays a role in one of the Orenic factors and because its presence at the bargaining table is essential for meaningful bargaining. Therefore, I respectfully dissent.

The record in this matter indicates that CMS plays a role in the relevant Orenic factors because it sets terms and conditions of employment: health insurance benefits. Board of Education of Sesser-Valier Community Unit School District No. 196, 250 Ill. App. 3d 878, 620 N.E.2d 418 (4th Dist. 1993); Vienna School District No. 55 v. IELRB, 162 Ill. App. 3d 503, 515 N.E.2d 476 (4th Dist. 1987). By its role in establishing insurance benefits and employee costs for University employees, CMS meets the test for joint employer status because it controls a matter governing essential terms and conditions of employment. Orenic.

The Insurance Act obligates CMS to bargain with the Union. Section 7.1 of the Insurance Act's requirement that that CMS must offer benefits to union members through their union creates a bargaining relationship between CMS and the Union because it requires CMS to deal with the Union regarding a mandatory subject of bargaining. Health insurance benefits are a mandatory subject of bargaining. Vienna, 162 Ill. App. 3d 503, 515 N.E.2d 476. A party is regarded as an employer if the party's presence at the bargaining table is necessary to establish an effective bargaining relationship. Administrative Office of Illinois Courts v. State and Municipal Teamsters Local 726, 167 Ill.2d 180, 186, 657 N.E.2d 972, 978 (1995). According to the Insurance Act, CMS must offer benefits to union members through their union, not through the University. Thus, without CMS at the bargaining table, such benefits cannot be offered.

The Union asserts that CMS negotiates the provision of health benefits with other unions, namely AFSCME. Neither CMS nor the Universities dispute the Union's claim. The obligation imposed upon CMS by the Insurance Act to offer benefits to union members through their union, coupled with the assertion that CMS bargains with AFSCME over such benefits demonstrates that CMS and the Universities are joint employers for the purposes of health benefits and employee contributions.

For the reasons discussed above, CMS and the Universities are joint employers and CMS should be included as a respondent in the Complaint and Notice of Hearing. Therefore, I respectfully dissent.

/s/ Ronald Ettinger
Ronald Ettinger, Member