



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

August 16, 2010

Mr. John Brosnan
Executive Director
Illinois Labor Relations Board
160 N. LaSalle St., Suite S-400
Chicago, Illinois 60601-3103

RE: FOIA Pre-Authorization Request - 2010 PAC 7901

Dear Mr. Brosnan:

We have reviewed the Illinois Labor Relations Board's pre-authorization request and accompanying documents. [REDACTED] submitted a Freedom of Information Act ("FOIA") request to the Labor Board on June 2, 2010. Specifically, Mr. [REDACTED] has requested copies of the following (pertaining to Labor Board case S-CA-10-204, AFSCME v. Champaign County Nursing Home):

- (1) Any and all records related to this case provided to the Board by the charging party;
- (2) Any and all other records relevant to this case that were not provided by Champaign County, its agents or employees;
- (3) Any and all records concerning or related to the decision to issue a complaint in this case, bearing in mind that the decision to issue the complaint was a final decision;
- (4) Any and all records relating to any information in the possession of the Labor Board, its employees or agents regarding the conclusion that this case involves one or more dispositive issues of law or fact;
- (5) Any and all records indicating the basis/bases for the conclusion(s) that this case involved one or more dispositive issues of law or fact;
- (6) Any and all records showing any evidence of anti-union animus or a causal connection between the union activity of Ellerbe and the employment action taken by the employer;
- (7) Any and all records identifying or specifying that/those dispositive issue(s) of law or fact.

The Labor Board asserted that the requested information is exempt from disclosure under Section 7(1)(f) of FOIA. 5 ILCS 140/7(1)(f). On June 17, 2010, we determined that further inquiry was warranted. We directed the Labor Board to provide us with a copy of the requested

information. Based upon our review of the documents, the Labor Board's application to withhold the requested information pursuant to Section 7(1)(f) is **denied**.

Section 7(1)(f) of FOIA exempts from inspection and copying "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portions of a record shall not be exempt when the records is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f).

None of the documents requested by Mr. [REDACTED] fall within the purview of Section 7(1)(f) because none of the documents are preliminary in nature. All of the documents are in final form.

The Labor Board contends that because the documents are placed in an investigative file for purposes of determining whether an unfair labor practice has occurred, the documents are preliminary in nature. The fact that the Labor Board uses these documents to determine whether an unfair labor practice has occurred, however, does not transform the documents into "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated." Accordingly, Section 7(1)(f) does not apply.

The Labor Board also has asserted that the requested information is exempt from disclosure under Sections 7(1)(a) and 7(1)(d)(iv) of FOIA. 5 ILCS 140/7(1)(a), 7(1)(d)(iv). Pre-approval by the Public Access Counselor is not required to assert that information is exempt under any provisions of FOIA other than Sections 7(1)(c) and 7(1)(f). Accordingly, this Office takes no position on the applicability of any other exemptions to the production of the requested information.

Thank you in advance for your cooperation in this matter. If you have any questions or concerns, please feel free to contact me at (312) 814-5044. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:

[REDACTED]
Assistant Attorney General

cc: