STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party	)	
and	)	Case No. L-CA-12-044
County of Cook and Sheriff of Cook County,	)	
Respondent	)	

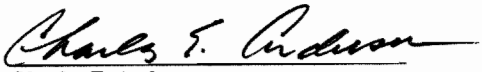
DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On January 24, 2013, Administrative Law Judge Anna Hamburg-Gal issued a Recommended Decision and Order in the above-captioned case, recommending that the Illinois Labor Relations Board, Local Panel, dismiss a complaint based on charges filed by Charging Party, International Brotherhood of Teamsters, Local 700. Charging Party alleged that Respondent, County of Cook and Cook County Sheriff, violated Sections 10(a)(1) and (4) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a)(1) & (4) (2010), by unilaterally changing bid criteria in such a manner as to present it with a fait accompli.

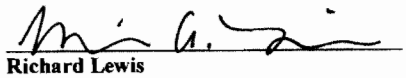
Charging Party timely filed exceptions to the Administrative Law Judge's Recommended Decision and Order pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. Respondent did not file a response. Upon review of the exceptions and the record, we dismiss the complaint for the reasons articulated by the Administrative Law Judge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

Robert M. Gierut
Chairman



Charles E. Anderson
Board Member



Richard Lewis
Board Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on May 7, 2013; written decision issued in Chicago, Illinois on May 30, 2013.

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County of Cook and Sheriff of Cook County,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On February 24, 2012, International Brotherhood of Teamsters, Local 700 (Union or Charging Party) filed a charge with the Illinois Labor Relations Board's Local Panel (Board), alleging that the County of Cook and Sheriff of Cook County (County or Respondents) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on June 4, 2012, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on November 7, 2012, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the Respondents have been public employers within the meaning of Section 3(o) of the Act.
2. At all times material, Respondents were subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.

3. At all times material, Respondent County was subject to the jurisdiction of the Act pursuant to Section 20(b) thereof.
4. At all times material, the Union was a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union or its predecessor has been the exclusive representative of a bargaining unit composed of the Respondents' employees in the title Deputy Sheriff.
6. At all times material, the Union or its predecessor has been a party to a collective bargaining agreement with the Respondents setting out the terms and conditions of employment for the Unit's employees.
7. Transfer bid criteria for Unit employees involve wages, hours or working conditions within the meaning of Section 7 of the Act and are therefore mandatory subjects of bargaining.

II. ISSUES AND CONTENTIONS

The issue is whether Respondents violated Sections 10(a)(4) and (1) of the Act when they allegedly modified their criteria for unit employees' transfer bid applications to unit positions within the Evictions and Civil Process Units of the Sheriff's Department without providing the Union notice or an opportunity to bargain.

The Union argues that the County violated the Act because it unilaterally modified employees' transfer bid criteria, a mandatory subject of bargaining, without granting the Union notice and an opportunity to bargain. As a preliminary matter, the Union notes that the parties stipulated that transfer bid criteria are a mandatory subject of bargaining and that the County admitted the same in its Answer.

Next the Union contends that the County's use of attendance and disciplinary criteria, drawn from the Sheriff's Employment Action Manual (SEAM), constitutes a change from its past practice. In support, the Union first notes that Deputy Wilcox testified that the County had never before used the disputed criteria in the bidding process. Second, the Union states that the Director of Labor Affairs David Devane admitted that the County modified existing criteria and repeatedly compared the "old process" to the "new process" in his Step Four grievance denial. Third, the Union notes that Chief Kevin Connelly testified that the bidding process is now "less

restrictive" and more "subjective" than it had been in the past.[1] Fourth, the Union contends that the criteria are new because the County drafted SEAM, the document from which the County drew its criteria, after the parties executed their agreement.

Further, the Union asserts that the Shakman Supplemental Relief Order (SRO) and the Sheriff's Employment Plan do not provide a defense to the alleged unfair labor practice at issue because there is no indication that the federal litigation mandated that the County institute new criteria. Moreover, the Union contends that even if the SRO did contain such a mandate, the County violated the Act because the collective bargaining agreement's (CBA or agreement) language controls when it conflicts with SEAM, as the Union asserts it does in this case.

In addition, the Union contends that the County failed to introduce evidence that the disputed criteria pertain to ability, one of the permissible criteria for judging applicants under the CBA.

Finally, the Union argues that the County failed to give the Union adequate notice of the alleged change and an opportunity to bargain over it. Moreover, the Union asserts that although it demanded to bargain over the bid criteria, the County never bargained.

The County denies that it changed the criteria it considers to evaluate bidders. In support, the County notes that it has always considered employees' attendance and discipline in the evaluation process to determine an employee's ability to perform the job. In the alternative, and despite the parties' stipulation and the County's admission otherwise, the County argues that bid criteria are not a mandatory subject of bargaining. Further, it asserts that bid criteria are a matter of inherent managerial authority and that "the burden on the County's authority would be significant if it could no longer consider the historically pertinent factors which it deemed necessary for the job."

Finally, the County argues that the Shakman SRO justified the imposition of the criteria set forth in the bid announcements because they were drawn from SEAM which the County implemented in response to the SRO. Further, although the County concedes that the language of a collective bargaining agreement governs if it conflicts with SEAM, the County asserts that SEAM does not conflict with the CBA in this case because the criteria set forth in SEAM address attendance and discipline, factors which the County had historically used to assess an

[1] In addition, the Union notes that the Board should find Connelly's testimony incredible, on the whole, because it contained contradictions and evasions.

employee's ability to do the job. In addition, the County asserts that SEAM and the bid announcements which mirror SEAM's language merely reduced to writing those historical criteria. Lastly, the County notes that the County, not the Union, historically determined whether an employee possessed the ability to perform the job.

III. FINDINGS OF FACT

1. Sequence of Events and Bid Criteria used in 2011 and 2012

The collective bargaining agreement between the County and the Union classifies seventeen units within the County's Court Services Civil Division as "biddable." These biddable units include the Evictions Unit and the Civil Process Unit. When a unit is biddable, bargaining unit members may laterally transfer into vacancies that open in those units by applying (i.e., bidding) for a vacancy after the Sheriff's Office has posted a notice announcing an opening. Article 15(3) of the parties' agreement provides that the County must post a notice of vacancies for a minimum of ten working days in all locations and in plain view; vacancies in units which are specific to a single facility must be posted in the facility for a maximum of ten working days and are only posted in other locations if a successful bidder is not found within the facility. The agreement further provides that "all vacancies will first be filled by the most senior employee who bids thereon, provided said employee has the ability to perform the job." Thus, the County chooses the most senior bidder who is able to perform the work.

Prior to 2011, the County required all bidders for vacancies in the Evictions Unit and Civil Process Unit to undergo an interview by a panel of three supervisory employees[2] and to submit a writing sample. The interviewers considered the applicants' attendance records and their internal affairs history to determine their ability to perform the job.[3] The County historically required that "applicants...possess a past history consistent with the Department's standards of professionalism and personal decorum. Such standards shall include, but are not limited to, attendance, tardiness, personal appearance, impeccable work history, etc."

Sometime in October 2011, the Chief Deputy Sheriff's Office released a "Seniority Plus Bid Transfer Posting Announcement," notifying employees of vacancies in the Evictions Unit. This was the first bid for a vacancy in the Evictions Unit since before 2007. The County gave

[2] The composition of the panel changed over time.
[3] The interviewers had access to the applicants' attendance records.

Deputy Sheriff Thomas Wilcox a copy of the bid announcement. Wilcox posted the announcement for the County at his facility. The County also posted the announcement at all its other facilities. At the same time, the Sheriff's Office informed the Union that it would dispense with the interview process for the bids at issue. The County opened bidding for the Evictions Unit on October 31, 2011, and closed bidding for the unit on November 9, 2011.[4]

The announcement stated that "the Court Services Department will be offering the opportunity" for employees to bid into Eviction Unit vacancies. Further, it set forth minimum qualifications for all applicants and incorporated the bid transfer procedures outlined in the Sheriff's Employment Action Manual (SEAM), which the County drafted and adopted in 2007 or 2008.[5] The memo stated that "candidates that fail to meet any one of the minimum qualifications will be deemed not qualified." The minimum qualifications included the following: The applicant (1) must be in full active duty status; (2) must not be de-deputized; (3) must not have received a department or Office of Professional Review (OPR) discipline resulting in a suspension of four or more days during the previous 18 months[6]; (4) must possess a valid driver's license; (5) must submit to a background check; (6) must be authorized by the Sheriff's office to carry a weapon and to possess a valid FOID and firearm meeting Sheriff's Office regulations; (7) must meet certain attendance requirements. Specifically, within the previous 12 months, the applicant must not have incurred any of the following: one or more unpaid "unauthorized activities," three or more instances of tardiness, or six or more instances of an attendance pattern not associated with any mitigating circumstances. The memo directed employees to refer to the definition of "unauthorized activity" in the glossary of SEAM.

SEAM describes 11 discrete types of "unauthorized activities." No sick time (NST/0) refers to a situation in which an employee is unable to perform his duties due to sickness, does not come into work, but has no accrued benefit or sick time. Absent late call (ALC/0) refers to a situation in which an employee calls in absent later than one hour before his shift begins.[7]

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[4] The County reviewed the applicants' attendance and disciplinary data accumulated between November 7, 2010 and November 5, 2011.

[5] The County prepared the Sheriff of Cook County Employment Plan and SEAM with the assistance of the Shakman Compliance Administrator, pursuant to the federal litigation, to comply with the Shakman Supplemental Relief Order (SRO).

[6] The memo further explained that "written reprimands for minor infractions such as tardiness may disqualify an applicant, but it is not automatic" and that "counseling will not disqualify an applicant."

[7] Employees are required to report their absences at least one hour prior to the time when their shift begins.

Absent No Call (ANC/0) refers to a situation in which an employee does not show up for work and fails to notify anyone in the chain of command. No Vacation Time (NVT/0), No Personal Time (NPT/0), No Compensatory Time (NCET/0) and No Holiday Time (H/0) refer to situations in which an employee calls in absent but does not have any vacation, personal, compensatory, or holiday time. Unauthorized FMLA (0/FMLA Unauthorized) refers to a situation in which an employee attempts to use FMLA time in a manner other than as described in the employee's FMLA document. Unauthorized IOD (IOD/Unauthorized) refers to a situation in which an employee takes off work for an injury received on duty, but when the Safety Division ultimately denies the leave. Proof status (0/Proof) refers to a situation in which an employee on proof status is absent and fails to provide the required proof of a medical reason for his absence.[8] Tardiness Docked Time (0) refers to an instance when an employee is more than 15 minutes late for his shift. "Attendance pattern" refers to any behavior which the personnel department determines constitutes a pattern of absenteeism.

Union steward investigator Deputy Wilcox became concerned when he reviewed the bid notice because he believed that it set forth new criteria for bid applicants which did not appear in the collective bargaining agreement. In particular, Wilcox objected to the attendance requirements and the requirement that addressed disciplinary history.[9] Immediately upon receiving the announcement, Wilcox raised his concerns about those criteria with the Union's Chief Steward for the Court Services Division, John Figueroa. Figueroa asked Wilcox to prepare a document listing the Union's objections to the criteria set forth in the bid announcement.

The Union filed a grievance over the Evictions Unit bid criteria on the same day the County posted the vacancy announcement. Neither the date of the posting nor the date on which the Union filed its grievance appears in the record. The grievance advanced to the third step. Figueroa, First Assistant Chief Deputy Kevin Connelly, and Union counsel Cass Casper attended the third step grievance meeting. The date of the third step grievance meeting does not appear in the record. During that meeting, the Union demanded to bargain the County's implementation of

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[8] Proof status is reserved for those employees who have abused their sick time and requires them to prove they have a medical reason for their absence.

[9] At hearing, Wilcox took issue with other aspects of the bid announcement. However, the Union objects only to the two aspects listed above. As such, this RDO addresses only those portions of the bid announcement.

the unauthorized and unpaid activities criteria adopted from SEAM. The County never engaged in bargaining on that issue.

In January 2012, the Sheriff posted a bid announcement for vacancies in the Civil Process Unit. The announcement contained the same criteria set forth in the Evictions Unit bid announcement. The County opened bidding for that unit on January 4, 2012, and closed bidding on January 13, 2012. This was the first bid for a vacancy in the Civil Process Unit since before 2007.

The grievance over the Evictions Unit bid criteria advanced to the fourth step. Figueroa, Director of Labor Affairs David Devane, and Casper attended the fourth step grievance meeting. On February 3, 2012, Devane wrote a letter denying the Union's fourth step grievance. In his letter, Devane stated that "the Sheriff's Office has modified existing criteria [and has] not instituted a new bidding process." Devane noted that the County had historically required "applicants [to] possess a past history consistent with the Department's standards of professionalism and personal decorum" and that such standards included "attendance, tardiness, personal appearance, impeccable work history, etc." He further compared the "old process" or the "previous process" to the "new process."

Wilcox drafted the document Figueroa requested which outlined the Union's objections to the bid criteria and submitted it to Figueroa sometime around February 9, 2012.[10] Wilcox addressed the document to Chief Connelly and asserted, on behalf of the Union, that "the use of any factor other than seniority and ability to perform the job in relation...to the bid procedure" violated Article XV Section 15.3 of the collective bargaining agreement. It also alleged that the County had violated SEAM by failing to give employees a notice of deficiency prior to their disqualification or a reason for their disqualification. Further it noted that SEAM provides that "with respect to Shakman non-exempt employees, if a CBA is in conflict with the language in the Employment Plan or SEAM, the language in the CBA governs provided it does not permit or involve the use of political reasons or factors." In addition, it requested "dialogue and resolution [of the bid criteria issue] at the earliest possible date." Finally, it asked the County to rescind the "previously effectuated" transfers "in favor of transfers [made] in compliance with the collective

[10] Wilcox testified that he gave the document to Figueroa prior to the date on which the County executed the bids, however, the document itself undermines this assertion because (1) it is dated February 9, 2012, after the County opened bidding for the Evictions Unit vacancies on October 31, 2011, and (2) it requests that the County rescind the transfers which suggests that the County had already effected them.

bargaining agreement." Figueroa then submitted the document to First Assistant Chief Deputy Sheriff Kevin Connelly. The date on which Figueroa submitted the document to Connelly does not appear in the record.

After the County completed the bidding process for both the Evictions and the Civil Process Units, Wilcox requested personnel records related to those bids to determine how many employees had been impacted by the allegedly "offensive" criteria set forth in the announcements. On February, 9, 2012, Wilcox received those records. Wilcox learned that the County used those criteria to disqualify 44 deputies out of 88 who had bid for the Evictions Unit vacancies and to similarly disqualify 11 deputies out of 16 who had bid for the Civil Process Unit vacancies.

2. Comparison of Bidding Processes and Criteria Pre- and Post-October 2011

Connelly testified that the County did not change how it evaluated the candidates and did not change the criteria for unit employees' transfer bid applications in October 2011. Rather, Connelly stated that the criteria set forth in the bid announcement were those criteria on which the County had evaluated candidates in the past. In particular, Connelly noted that the County historically evaluated candidates based on their attendance and that the County had used the specific attendance criteria now documented in SEAM, in "various combinations," to evaluate a candidate's attendance since 1997. However, he explained that the candidates themselves would not have been aware that the County considered such infractions because the interview panel did not tell the candidates how they evaluated the candidates' attendance. As such, Connelly stated that the 2011 and 2012 bid announcements merely clarified the criteria on which the County had always evaluated applicants' attendance history.

However, Connelly conceded that the bidding process used by the County starting in October 2011 was more objective than the process the County had used previously. In October 2011, the County replaced the interview and the writing sample with objective criteria to make the bidding process more consistent and to remove elements of subjectivity in evaluating employees' attendance history.[11] Connelly noted that employees could still try and challenge

[11] Connelly also testified that the process became less restrictive because it eliminated the interview and the writing sample.

any adverse documentation in their personnel files at any time.[12] However, unlike employees who participated in earlier bids, employees bidding for the 2011/2012 Evictions/Civil Process vacancies could not present mitigating circumstances pertaining to their attendance patterns or disciplinary issues during an interview. Thus, under the terms of the new bid announcements, and in contrast to the County's prior practice, the County automatically disqualified employees who had incurred a single instance of an unauthorized activity or an excess of the minimum threshold allowances for tardiness, discipline, or general "attendance patterns." Finally, Connelly confirmed, on cross-examination, that the County's 2011 Evictions bid criteria were new.

3. Relationship of October 2011 and 2012 Bid Criteria to Ability to Perform the Job

Deputies in the Evictions Unit execute Orders of Court in mortgage foreclosure and forcible detainer cases. Officers dispossess named party defendants on court orders from the residence listed on the order. They also perform a cursory search of the residence, apprehend wanted criminals, and perform other duties demanded of them or assigned to them by the assistant chief or the sheriff.

Deputies in the Civil Process unit serve all court process filed within Cook County on parties named in legal proceedings. They also serve Orders of Protection and execute warrants.

Connelly testified that attendance affects an applicant's ability to perform the job in the Evictions and the Civil Process units because those units are small and specialized, with a large daily workload, and the County must count on employees to come to work. Thus, when an applicant incurs attendance infractions outlined in SEAM, it demonstrates that the applicant will not be at work on a regular basis to perform the amount of work that is required. In addition, Connelly noted that an applicant's disciplinary history affects an applicant's ability to perform the job in the Evictions Unit because if a deputy sheriff in the Evictions Unit were suspended for four days in a given year, he would not be allowed in the unit "based on the new criteria."

However, the County does not automatically remove a deputy sheriff who successfully bids into one of the units at issue if he later commits one of the attendance-related infractions

[12] Historically, any challenges employees made to their attendance record was also made available to the interview panel.

enumerated in SEAM. Accordingly, the County tolerates employees within these units who commit one of the unauthorized activities.

IV. DISCUSSION AND ANALYSIS

The County did not violate the Act when it modified its transfer bid criteria by setting threshold requirements for applicants' attendance and disciplinary history, even though that action changed employees' terms and conditions of employment, because the Union failed to demonstrate that the County presented the Union with a fait accompli or, alternatively, that the Union made a timely demand to bargain the change.

1. Unilateral Change Analysis

Parties are required to bargain collectively regarding employees' wages, hours and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-2 (1988); Am. Fed. of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd. ("AFSCME v. ISLRB"), 190 Ill. App. 3d 259, 264 (1st Dist. 1989); Ill. Dep't of Cent. Mgmt Serv., 17 PERI ¶ 2046 (IL LRB-SP 2001); Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). It is well-established that a public employer violates its obligation to bargain in good faith, and therefore violates Section 10(a)(4) and (1) of the Act, when it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, its employees' exclusive bargaining representative. Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996).

A topic is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: (1) is either not a matter of inherent managerial authority; or (2) is a matter of inherent managerial authority, but the benefits of bargaining outweigh the burdens that bargaining imposes on the employer's authority. City of Chicago (Dep't of Police), 21 PERI ¶ 83 (IL LRB-LP 2005) (citing, Cent. City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 599 N.E.2d 892 (1992), and City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 692 N.E.2d 295, 14 PERI ¶ 4005 (1998)).

The parties stipulated, and the County admitted, that transfer bid criteria are a mandatory subject of bargaining.[13] Accordingly, the two remaining issues are (1) whether the County instituted a material change in its bidding criteria such that it altered the status quo and, if it did, (2) whether the County granted the Union notice and an opportunity to bargain that change.

2. Status Quo

The County altered its transfer bid criteria in October 2011 and changed the status quo when it set threshold requirements for applicants' attendance and disciplinary history because the County did not mechanically disqualify bidders based on such threshold criteria in the past.

First, both the County's admissions and witnesses' descriptions of the bidding process demonstrate that the County changed its bid criteria in October 2011. As a preliminary matter, Director of Labor Affairs David Devane's February 3, 2012, letter to the Union admits that "the Sheriff's Office...modified existing criteria" in the October Evictions Unit bid. See Lake Park Comm. High School Dist. 108, 7 PERI ¶ 1085 (IL ELRB ALJ 1991) (School Board's resolution which stated that it was "desirous of implementing such a change" confirmed that the District knew the School Board's resolutions were a material change in conditions of employment). Similarly, on cross-examination, Connelly confirmed that the County's October 2011 bid criteria were new.

In addition, witnesses' descriptions of the bidding process show that the County changed its bid criteria because they demonstrate that the County replaced its subjective standards with threshold requirements. The Illinois Labor Relations Board and the National Labor Relations Board have held that an employer changes the status quo when it affects employees' terms and conditions of employment by replacing its subjective evaluation of employees' conduct with threshold standards. In Village of Westchester, the Illinois Labor Relations Board held that the Respondent unilaterally changed employees' terms and conditions of employment by replacing its case-by-case, reasonable suspicion standard to evaluate employee abuse of sick time with a six-day threshold after which the employer automatically scrutinized employees' attendance patterns. Vill. of Westchester, 16 PERI ¶ 2034 (IL LRB-SP 2000). Likewise, in Murphy Diesel Company, the National Labor Relations Board held that the Respondent unilaterally changed

[13] Accordingly, this RDO does not undertake the Central City analysis, even though the County, contrary to its admission and stipulation, argues that transfer bid criteria are not a mandatory subject of bargaining.

employees' terms and conditions of employment by replacing its general rule against excessive absenteeism with a specific quota of allowable absences, when the employer had historically employed no quota system and instead imposed attendance-related discipline on a case-by-case basis. Murphy Diesel Comp., 184 NLRB 757, 762-64 (1970), enf'd., 454 F.2d 303 (7th Cir. 1971) (Employer's change from subjective evaluation of employee attendance to mechanical rule that imposed discipline after two instances of absenteeism or tardiness within a 3-month period, or more than six a year, represented a material change in employees' terms and conditions of employment).

Similarly, in this case, the County materially changed its bid criteria because it eliminated its subjective assessment of employees' attendance and disciplinary history, replaced it with objective threshold standards, and mechanically eliminated individuals from the bidding process without assessing each employee's record on a case-by-case basis. See Vill. of Westchester, 16 PERI ¶ 2034 (IL LRB-SP 2000); Murphy Diesel Comp., 184 NLRB at 762-64. Here, the County established threshold criteria when it disqualified bid applicants who incurred, in a given time period, any instance of unauthorized activities, more than two instances of tardiness, more than five instances of an attendance pattern not associated with mitigating circumstances, or an OPR discipline resulting in a suspension of four or more days. Murphy Diesel Comp., 184 NLRB 762-63 (Unilateral change found where employer historically exposed employees to potential discipline for "excessive" absences and then later established that seven absences constituted such excess which triggered review). Historically, by contrast, the County had considered even those applicants who had incurred the quantity and the types of infractions listed in SEAM,[14] granted those applicants the opportunity to explain their records, and determined their eligibility on a case-by-case basis. Vill. of Westchester, 16 PERI ¶ 2034 (IL LRB-SP 2000) (Change from case-by-case evaluation to threshold trigger constituted material change in employees' terms and conditions of employment); see also Murphy Diesel Comp., 184 NLRB at 762-63. Thus, the County changed its transfer bid criteria when it replaced its subjective standards with objective ones.

[14] While the County drafted SEAM after it executed its most recent Collective Bargaining Agreement with the Union, Connelly testified that the County had, since 1997, considered the sorts of attendance infractions listed in SEAM when evaluating employees' ability to do the job, albeit in a subjective manner and in "various combinations."

Contrary to the County's contention, it did not maintain the status quo, even though it continued to evaluate employees' ability by their attendance and disciplinary history, because the County changed past practice when it replaced its discretionary considerations with mandatory standards and disqualified formerly-considered employees based on those modified criteria. As such, the County did not merely reduce to writing those criteria it had historically used to judge applicants and instead changed them.

Further contrary to the County's contention, this change to employees' terms and conditions of employment is not mitigated by the fact that employees may challenge their attendance and disciplinary infractions prior to bidding because the County now automatically disqualifies employees who unsuccessfully challenge such infractions whereas the County formerly considered such applicants and permitted them to justify their infractions during the bidding process.

Thus, the County changed the status quo when it modified its transfer bid criteria in October 2011.

3. Notice and Opportunity to Bargain

The Union waived the right to bargain over the modified criteria because it did not demonstrate that the County presented the Union with a fait accompli or, alternatively, that it made a timely demand to bargain.

The duty to bargain arises upon request of the exclusive representative when the union receives timely notice that the employer intends to change a condition of employment. Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991) (citing, Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013, 1017-8 (1982) enf'd, 722 F.2d 1120 (3rd Cir. 1983); Cnty. of Cook (Cook Cnty. Forest Preserve Dist.), 4 PERI ¶ 3012 (IL LLRB 1988); Clarkwood Corp., 283 NLRB 1172 (1977)); Vermilion Cnty., 3 PERI ¶ 2004 (IL SLRB 1986). The union must make such a request in order to preserve its right to bargain on the subject.[15] Chicago Hous. Auth., 7 PERI ¶ 3036 (IL

[15] However, a request to bargain need not invoke "any special formula or form of words"; it is sufficient that the request to bargain be made by clear implication. City of Collinsville v. Ill. State Labor Rel. Bd., 329 Ill. App. 3d 409 (5th Dist. 2002); City of East St. Louis v. Ill. State Labor Rel. Bd., 213 Ill. App. 3d 1031 (5th Dist. 1991). The employees must at least signify to respondent their desire to negotiate. NLRB v. Columbian Enameling and Stamping Co. Inc., 306 U.S. 292 (1939). However, the union cannot be content with merely protesting the action or filing an unfair labor practice charge over the matter. Citizens Nat'l Bank of Willmar, 245 NLRB 389, 389-90 (1979).

LLRB 1991). If the union fails to exercise due diligence and demand bargaining in a timely manner after it receives such notice, the union may waive its right to bargain the issue. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992). A union's demand is timely if it is made prior to implementation. Vill. of Schaumburg (Police Dep't), 29 PERI ¶ 75 (IL LRB-SP 2012) (dismissing charge where union received notice of planned reorganization on September 15, 2011, where respondent commenced reorganization on September 27, 2011, and where Union demanded bargaining on January 16, 2012); Cnty. of St. Clair and Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011) aff'd by unpub. ord No. 5-11-0317 (Respondent can raise waiver argument only if it has given sufficient notice and opportunity to bargain and Union fails to demand bargaining prior to implementation); Cnty. of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996); See also State of California (Dep't of Corrections & Rehabilitation, Avenal State Prison), 36 PERC ¶ 30 (CA PERC 2011) (Where union learns of a change after implementation it cannot make a timely demand to bargain); City of West Palm Beach, 35 FPER ¶ 24 (FL PERC 2009) (union made a timely demand on January 31, 2008 when it received notice of new policy on December 6, 2007 because the demand occurred one day before implementation); City and Cnty. of San Francisco (Fine Arts Museums), 34 PERC ¶ 127 (CA PERB H.O. 2010)(if the Union has received notice and an opportunity to bargain, the Union must demand bargaining prior to implementation date).

The employer's notice to the union of its planned change (1) must be transmitted to an authorized agent; (2) must be substantively adequate; and (3) must allow a reasonable opportunity to bargain.

First, the employer must give actual notice of the intended change to a union official with authority to act. City of Berwyn, 8 PERI ¶ 2038 (IL SLRB 1992). No particular form of notice is required. Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991) (no formal notice required); see also, McGraw-Hill Broadcasting Co. Inc., KGTV, 355 NLRB No. 213 (2010), Forest Preserve Dist. of Cook Cnty., 4 PERI ¶ 3012 (IL LLRB 1988), Medicenter, Mid-South Hosp., 221 NLRB 670 (1975) and Hartmann Luggage Co., 173 NLRB 1254 (1968). Formal notice of an intended unilateral change is not essential where the union in fact knows of the plan and a formal announcement would be futile. Forest Preserve Dist. of Cook Cnty., 4 PERI ¶ 3012 (IL LLRB 1988) (Citing United States Lingerie Corp., 170 NLRB 750 (1968); Am. Bus Lines, Inc., 164 NLRB 1055 (1967)).

Second, the employer's notice to the union of its planned change must be substantively adequate. Thus, the union must possess sufficiently detailed notice of the contemplated change to give it the opportunity to make a meaningful response. Georgetown-Ridge Farm Comm. Unit School Dist. 4., 7 PERI ¶ 1045 (IL ELRB 1991) aff'd 239 Ill. App. 3d 428 (4th Dist. 1992) (notice insufficient where union was aware that the employer was contemplating taking action to reduce its budget but where union had no specific information available as to what form those reductions might take)(citing, Metromedia, Inc. v. NLRB, 586 F.2d 1182 (8th Cir. 1978); Electri-Flex Co. v. NLRB, 570 F.2d 1327 (7th Cir. 1978) cert. denied 439 U.S. 911 (1978)). In other words, notice must be sufficient to "initiat[e] the bargaining process" and it must be clear enough to advise the union of the scope and impact of the proposed change. Pinkston-Hollar Const. Serv. Inc., 312 NLRB 1004, 1005 (1993) (quoted text); Univ. of California, 7 PERC ¶ 14293 (CA PERB 1983) (information concerning scope and impact required).

Third, the employer's notice must allow the union a reasonable opportunity to bargain. This element is comprised of two necessary and related components: (i) timeliness and (ii) intent. If either element is missing, the employer is deemed to have presented the union with a fait accompli and the union, accordingly, has no obligation to demand bargaining. Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999)(employer's statement that it would implement the change with or without the agreement of the union demonstrated that the employer presented the union with a fait accompli, even though the employer gave notice of the change 10 days prior to implementation) Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). The burden is on the Union to prove that the employer presented it with a fait accompli. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011).

As a preliminary matter, the employer must give the union notice sufficiently in advance of its actual implementation of the change. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (citing Owens-Corning Fiberglass Corp., 282 NLRB 609, 609 fn. 1 (1987)). The National Labor Relations Board has held that an employer's notice, given even a relatively short period of time prior to the change, may constitute adequate advanced notice. Jim Walter Resources, 289 NLRB 1441, 1442 (1988) (ten days); Kentron of Hawaii, 214 NLRB No. 116 (1974) (three weeks); Cnty. of Bond and Sheriff of Bond Cnty., 10 PERI ¶ 2024 (IL SLRB ALJ 1994)(two days notice insufficient). However, the employer does not give adequate notice if it implements the change before announcing it to the union. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991).

Next, the employer must give notice to the union of its decision before it is final and thereby show it is receptive to bargaining. Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). The Board examines objective evidence, including the employer's statements and conduct, to determine whether the employer presented the union with its final decision, such that the employer had no intention of changing its mind. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). A union's subjective impressions of the employer's state of mind, taken alone, are insufficient to excuse the union from demanding to bargain. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991). Further, an employer is entitled to fully develop a proposal before presenting it to the union and may use positive language to describe it. Id.

Here, the County provided the Union with substantively adequate actual notice of its intent to change its bid criteria when it posted the Evictions bid announcement at all County facilities and delivered a copy of it to Union steward investigator Wilcox to post at his own facility. First, the Union received actual notice of the new bid criteria because Wilcox immediately informed the chief steward of the objectionable proposed changes when he received the announcement. See Clarkwood Corp., 233 NLRB 1172, 1172 (1977) (employer provided sufficient actual notice when it posted memo informing employees of the planned change and where employees then notified Union officials). Second, the County's notice to the Union was substantively adequate because the bid announcement alerted the Union of an impending change to employees' terms and conditions of employment by unambiguously listing the new transfer bid criteria and thereby permitting the Union to formulate a meaningful demand to bargain. Emhart Ind., 297 NLRB 215, 216 (1987), enf. denied on other grounds, 907 F.2d 372 (2nd Cir. 1990) (notice to union substantively sufficient where employer conveyed to union that it intended to affect employees' terms and conditions of employment when it told union agents it would begin reinstating employees post-strike starting on a definite date, although employer did not set forth the exact procedures for reinstatement); Clarkwood Corp., 233 NLRB at 1172 (posted memo constituted sufficient notice when it expressly stated nature of the change by informing employees that room with lockers and bathrooms would no longer be available for employee use as of a definite date).

However, the Union has not shown that the County presented it with a fait accompli because (i) the Union has introduced insufficient evidence as to the time span between its first

awareness of the change (here, actual notice) and the County's implementation of it and (ii) the Union neglected to otherwise demonstrate that the County had no intent to bargain over the bid criteria prior to the County's use of them.

First, the Union did not show how much time elapsed between the County's actual notice to the Union of its plan to use new bid criteria and the County's de facto use of those criteria to choose bid applicants. The time period between a Union's awareness of the change and the employer's implementation of it is key to determining whether the employer gave the union an opportunity to bargain or instead presented the union with a fait accompli. Vill. of Schaumburg (Police Dep't), 29 PERI ¶ 75 (IL LRB-SP 2012) (dismissing charge and noting that "it would be more than disingenuous" for the Union to characterize Respondent's conduct as a fait accompli where union had notice of Respondent's planned change 12 days prior to its implementation but when it waited four months to demand bargaining); Vill. of Western Springs, 27 PERI ¶ 4 (IL LRB-SP 2011) (comparing date of notice to date of implementation in determining whether Respondent presented the Union with a fait accompli; finding no fait accompli where Respondent's notice to Charging Party took place months before the planned implementation date). Accordingly, the Union must introduce evidence of both the date of the employer's implementation and the date of the Union's first awareness of the change.[16]

Here, the Union presented evidence of the implementation date, but not the date on which it became aware of the change. The Union introduced evidence of the date on which the County implemented its new bid criteria because the bid announcement notice provides that the County opened bidding for the Evictions Unit on October 31, 2011, and had the opportunity to apply its new bid criteria to applicants as of that date. Yet, the Union has not introduced evidence as to the specific date on which the County first informed the Union of its plan to change the bid criteria by posting the Evictions bid announcements or by giving Deputy Wilcox a copy of the same. Instead, the Union merely notes that the County posted the first bid announcement sometime in October. However, since the County implemented its decision on the very last day of October, it is equally likely under the evidence presented that the County posted the bid on October 1, and gave the Union sufficient time to demand bargaining, as it is that the County posted the bid on October 30, one day before implementation, and presented the Union with a

[16] The manner in which an employer must notify the union or make the union aware of the change is subject to a separate analysis, set forth above.

fait accompli. Notably, the contract does not help calculate the date of notice, even though it mandates that the County must post the notice for a minimum of 10 days, because it does not articulate a fixed period of time for which to post and likewise does not specify whether the County must maintain the posting during the bid window or whether the County may post earlier, leaving a gap between the last posting day and the first bidding day.[17] Thus, the Union failed to demonstrate by a preponderance of the evidence that it had insufficient time to demand bargaining.[18]

Second, the Union has not rendered the above-referenced time span less crucial to the analysis by showing that the County, through the actions of its agents, objectively demonstrated that it had no intent to bargain over the change. As noted above, an employer is permitted to present its plan in positive language and the Union's subjective impressions of the employer's state of mind, taken alone, are therefore insufficient to excuse the union from demanding to bargain. Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991). Here, neither the language of the posting nor the County's pre-implementation conduct demonstrates that the County had no intent to bargain over the new transfer bid criteria.

As a preliminary matter, the language of the posting fails to show that the County's decision was final and instead suggests that it was not. First, the County's assertion that, "candidates [who] fail to meet any one of the minimum qualifications *will* be deemed not qualified," merely demonstrates that the County permissibly couched its planned change in positive terms. See Id. (employer's notice informing union of its plan to change mileage reimbursement policy did not indicate that employer's decision was final, and instead represented a fully developed plan, even though Board of Commissioners had already approved the new policy, the notice stated that policy had gone into effect, and the notice included a new

[17] Here, the County must have posted the Evictions bid announcement for a minimum of ten days because (1) Wilcox testified that the County posted the announcements at ***all locations,*** (2) the contract provides that the County must post a bid announcement ***in all locations*** when the unit open for bidding is ***not specific to a single facility***, and (3) the contract further provides that announcements for bidding into a unit ***not specific to a single facility*** must remain posted for a ***minimum of 10 days***.

[18] While it is clear that the County posted the announcement for the Civil Process Unit bid sometime in January 2012, within four days of the date on which it opened bidding for that unit on January 4, 2012, there is no basis on which to find that the County used the same time frame to post the October 2011 Evictions Unit bid announcement.

form which employees could complete to comply with the plan).[19] Moreover, the fact that the County drafted the posting in the future tense and set forth specific dates on which it would implement the new criteria demonstrates that its decision was not final. But see Vill. of Oak Park, 9 PERI ¶ 2019 (IL SLRB 1993) (memo demonstrated a fait accompli where it did not state an effective date for the change any later than the date of the memo itself); Chicago Transit Auth., 21 PERI ¶ 95 (IL LRB-LP ALJ 2005) (letter to employees in which Respondent referenced implementation in the past tense and offered to bargain effects demonstrated that the Respondent presented the Union with a fait accompli).

Next, the Union has identified no conduct by the County which objectively demonstrates that it lacked the intent to bargain over the new transfer bid criteria before implementing them. Notably, the County's February 3, 2012, denial of the Union's fourth step grievance over the bid criteria and corresponding assertion that the County actions did not violate the contract does not shed light on the County's position concerning its duty to bargain or on its intentions prior to implementing the change. First, the letter does not expressly address the County's position on its duty to bargain or its obligations under the Act and instead addresses only its rights under the contract. Second, the letter does not address County agents' state of mind prior to implementation because the County issued the letter on February 3, 2012, three months after it began using the new criteria on October 31, 2011. But see Chicago Park Dist., 20 PERI ¶ 110 (IL LRB-SP 2003) (employer's outright statement, prior to implementation, refusing to bargain the proposed change obviated the need for the union to demand bargaining); Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999) (employer's statement that it would implement the change with or without the agreement of the union demonstrated that the employer presented the union with a fait accompli, even though the employer gave notice of the change 10 days prior to

[19] In Chicago Housing Authority, the Board additionally noted that the posting did not demonstrate the employer had made its final decision because the parties stipulated that the announced policy would not be effective for another four months. However, the Union's failure to demonstrate the precise time span between notice and implementation in this case should not be construed against the County here because the Union bears the burden of proving the factual allegations in an unfair labor practice complaint. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011)(Union must prove a fait accompli); Macon Cnty. Bd. and Macon Cnty. Highway Dept., 4 PERI ¶ 2018 (IL SLRB 1988) (The burden of proving that an unfair labor practice has occurred is on the charging party, who must establish by a preponderance of the evidence that the specific provision of Section 10 set forth in the Complaint has been violated).

implementation). Thus, the County did not present the Union with a fait accompli when it implemented new bid criteria on October 31, 2011.

Finally, the Union has not demonstrated that it made a timely demand to bargain because there is no evidence that the Union demanded to bargain prior to October 31, 2011, the date on which the County implemented its new criteria. First, although Union agents demanded to bargain at the third step grievance meeting which occurred sometime prior to February 3, 2012,[20] there is no evidence in the record as to when this meeting occurred. Second, assuming *arguendo* Deputy Wilcox's memo, drafted at Chief Steward Figueroa's direction, constituted a demand to bargain, there is no evidence as to when Figueroa gave that memo to Chief Connelly. Thus, the Union waived the right to bargain the County's change to transfer bid criteria because it has not shown it made a timely demand to bargain.

V. CONCLUSIONS OF LAW

Respondents did not violate Sections 10(a)(4) and (1) of the Act when they modified their criteria for unit employees' transfer bid applications to unit positions within the Evictions and Civil Process Units.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the instant complaint be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400,

[20] This is the date on which the County denied the Union's fourth step grievance.

Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 24th day of January, 2013

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge