

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Charging Party)	
)	
and)	Case Nos. S-CA-08-039
)	S-CA-08-045
City of Rock Island,)	S-CA-08-069
)	S-CA-08-245
Respondent)	

ORDER

On April 30, 2014, Administrative Law Judge Michelle N. Owen, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its July 8, 2014 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 8th day of July 2014.

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Jerald S. Post
General Counsel

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)		S-CA-08-245
City of Rock Island,)		
)		
Respondent)		

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On August 28, and September 10 and 27, 2007, American Federation of State, County and Municipal Employees, Council 31 (Charging Party or AFSCME), filed unfair labor practice charges in Case Nos. S-CA-08-039, S-CA-08-045, and S-CA-08-069, respectively, with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Rock Island (Respondent or City) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Relations Act, 5 ILCS 315 (2012), as amended (Act). The charges were investigated in accordance with Section 11 of the Act, and on February 22, 2008, the Board’s Executive Director issued a Complaint for Hearing and Order Consolidating Cases. On March 28, 2008, Charging Party filed a fourth charge with the Board against Respondent, in Case No. S-CA-08-245. On August 27, 2008, the Executive Director issued a Complaint for Hearing in Case No. S-CA-08-245. On September 12, 2008, Administrative Law Judge John Clifford consolidated Case No. S-CA-08-245 for hearing with the three previous charges.¹ A

¹ A hearing was held before ALJ Clifford and written briefs were submitted. On September 15, 2011, ALJ Clifford informed the parties that he would be retiring from the Board and thus unable to render a decision before his retirement date. For this reason, ALJ Clifford asked the parties whether they would consent to having a newly-assigned ALJ determine the case on the record rather than have a new hearing.

hearing was held on February 15, 2012, in Springfield, Illinois by the undersigned.² Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by both parties. 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 stipulated to the following:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been a unit of local government subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a) of the Act.
3. At all times material, Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

The City did not consent to submit the case based on the record. Thus, the case was set for re-hearing by the undersigned.

² On November 1, 2011, prior to the hearing, the Respondent moved to defer the all four charges to arbitration. On November 7, 2011, Charging Party responded to the motion, and also moved to amend the complaints in Case Nos. S-CA-08-039, 045, and 069 to include the following language:

1. Add a new Paragraph 17 to state: In or about fall of 2007, Respondent communicated to bargaining unit employees that probationary employees would lose their jobs if they went out on strike.
2. Renumber existing Paragraph 17 to Paragraph 18.
3. Renumber existing Paragraph 18 to Paragraph 19 and amend it to state: By its acts and conduct as described in paragraphs 16 and 17, Respondent has interfered with, restrained, or coerced public employees in the exercise of their rights guaranteed in the Act, in violation of Section 10(a)(1) of the Act.

Charging Party also moved to amend the complaint in Case No. S-CA-08-245 to include the following language: "Amend Paragraph 8 to state: On or about January 14, 2008, Respondent unilaterally instituted a policy which banned the wearing of AFSCME buttons on employee clothing while at work." On November 8, 2011, I denied the Respondent's motion for deferral, and granted the Charging Party's motions to amend the complaints.

5. At all times material, the Charging Party has been the exclusive representative of a historical bargaining unit composed of the Respondent's full-time Public Works employees.

II. ISSUES AND CONTENTIONS

There are four issues in this case. First, Charging Party argues that Respondent unilaterally changed the terms and conditions of employment with regard to employee work clothing in violation of Sections 10(a)(4) and (1) of the Act, when it required an employee to remove a hat displaying a supplier's logo. Charging Party contends that this was a unilateral change made during the course of ongoing negotiations and prior to the parties' reaching agreement on a uniform policy. Respondent contends that this allegation is untimely and without merit because the Respondent adopted policies in 2005 which prohibited employees from wearing hats with logos or writing.

Second, Charging Party argues that Respondent interfered with, restrained, and/or coerced employees in the exercise of their rights under the Act in violation of Section 10(a)(1), and unilaterally changed the terms and conditions of employment with regard to employee work clothing, in violation of Sections 10(a)(4) and (1), when Respondent instituted a policy which banned the wearing of union buttons by employees during work hours. Respondent contends that it acted lawfully because the parties' collective bargaining agreement clearly and unambiguously states, "[w]ith the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer's logo." Thus, Respondent contends that Charging Party waived the right to bargain over this matter due to the language in the parties' collective bargaining agreement.

Third, Charging Party asserts that Respondent unilaterally changed the terms and conditions of employment with regard to the yard waste incentive program in violation of

Sections 10(a)(4) and (1), when it increased the number of stops required to receive the incentive. Respondent contends that it did not unilaterally implement changes to the program because the rate of work required to receive the incentive remained the same.

Lastly, Charging Party asserts that Respondent interfered with, restrained, and/or coerced employees in the exercise of their rights under the Act in violation of Section 10(a)(1), when it threatened probationary employees with termination if they participated in an anticipated work stoppage or strike, and when Respondent informed other employees of this threat. Respondent contends that Charging Party has failed to show that any threats were made.

III. FACTS

A. Background

AFSCME is the exclusive representative of a historical bargaining unit composed of approximately 75 full-time maintenance and craft employees in the City's Public Works Department (Unit). Unit members work in several divisions including Fleet Services, Electrical Maintenance, Municipal Services, and Utilities. The Utilities Division includes water and wastewater treatment, wastewater collection and maintenance, and levy maintenance.

AFSCME and the City were parties to a collective bargaining agreement governing the unit, with a term from March 29, 2004, to March 25, 2007. On or about March 25, 2007, the parties began negotiations for a successor agreement. Dino Leone, AFSCME's staff representative, was AFSCME's chief spokesperson during the negotiations. At least four Unit members were on the negotiating team including local AFSCME president from 2005-08 Nick Hartman and former local AFSCME president from the mid-nineties through 2004 Bruce Rannow. AFSCME and the City engaged in interest based bargaining until May 2007, when they transitioned to traditional bargaining. Bargaining continued until early 2008. On or about

January 17, 2008, the parties executed a successor agreement with a term from March 26, 2007 to March 21, 2010.

B. Employee Work Clothing

The parties' 2004-07 collective bargaining agreement contained the following language regarding uniforms:

UNIFORMS. Expenses incurred for the rental of uniforms represented by Local #988 shall be paid by the City of Rock Island as directed by the City Council. Three pairs of coveralls shall be made available for employees to wear at the employee's option. The employee may also elect to wear coveralls instead of shirt and pants on a one-for-one basis. Employees have the option of wearing the City provided uniforms or personal clothing. Employees who elect to wear the City uniform shall inform their department head no later than the beginning of each fiscal year (April 1). Employees who elect to wear personal clothing shall be responsible for expenses incurred for the care and maintenance of such clothing. As a general rule, employees electing to wear City uniforms shall be required to wear the uniform during work hours.

During negotiations for the parties' 2007-10 agreement, the City raised the issue of uniforms and employee work clothing, explaining that it was interested in a professional and uniform appearance and easy identification of City employees. During negotiations, Leone asked the City if they had any policy or procedures on hats, uniforms, or t-shirts, and the City stated that there was no policy outside of the 2004-07 collective bargaining agreement that dealt with uniforms.

On September 20, 2007, the City presented a package proposal which included the following language:

Shirts – Employees may wear uniform shirts provided by the City, personal clothing or AFSCME shirts approved by the Public Works Director while on duty. Personal shirts may not display anything other than a small manufacturer's logo. Other Visible Clothing – With the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer's logo.

The parties agreed to the September 20, 2007 language and included it in the agreement, which was then ratified in January 2008.

The parties' 2007-10 collective bargaining agreement also contained the following zipper clause in Article 24.000:

ENTIRE AGREEMENT This Agreement constitutes the complete and entire agreement between the parties, and concludes bargaining between the parties for its term. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and AFSCME Local #988, for the duration of this Agreement each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to, or covered in this Agreement, even though such subjects or matters may not have been with the knowledge or contemplation of the parties at the time they negotiated or signed this Agreement.

1. Hat Case

Donald Leatherman has been an electrician for the City for 34 years, and is a member of the Unit. Leatherman primarily works in the field, visiting various Public Works Department Buildings, City buildings, and City streets. On April 2, 2007, at the Fleet Services Building, Fleet Services Supervisor Bill Woeckener observed Leatherman wearing a hat that displayed the logo of a local electrical supplier. Supervisor Woeckener informed Leatherman that wearing the hat was a violation of City policy which prohibited personal logos. Supervisor Woeckener ordered Leatherman to remove the hat. Leatherman complied with the order, but filed a grievance a few days later. AFSCME filed this unfair labor practice charge in Case No. S-CA-08-039 on August 28, 2007.

Prior to the April 2, 2007, incident, during his 34 years working for the City, Leatherman had never been told to remove a hat with a logo or other insignia. Leatherman had worn a hat

every day to work since he began working for the City, including hats with the names of manufacturing companies on them. He wore these hats at various Public Works buildings while interacting with various supervisors and managers. Leatherman also regularly saw other City employees wearing hats and t-shirts displaying the names of construction companies, manufacturing companies, and sports teams. Prior to the April 2, 2007 incident, Leatherman had never received, nor was aware of any other policy or guidelines regarding uniforms, work clothing, dress code, or t-shirt and hat guidelines other than the language in the parties' 2004-07 collective bargaining agreement.

a. Unit Members

Rannow, a refuse collector and Unit member with the City for 22 years, noted that prior to the parties' 2007-10 collective bargaining agreement, employees were allowed to wear personal clothing of their choice or uniforms provided by the City. Rannow stated that Unit employees wore all types of shirts including AFSCME t-shirts and sports team t-shirts. Further, he noted that as long as hats were in good condition, people wore hats with the names and logos of construction companies, contractors, hunting companies, sports teams, and vendors. Prior to April 2, 2007, Rannow had not seen, received, nor was he aware of an employee uniform or work clothing policy, including t-shirt or hat guidelines.

Prior to April 2, 2007, Paul Stanforth, a maintenance worker and Unit member in the Municipal Services Division since 1980, saw unit members wearing hats on a daily basis including hats with AFSCME, school, and sports logos.

During his tenure as local president, Hartman had monthly meetings with Public Works Director Robert Hawes, and during these meetings Hawes never mentioned uniform, t-shirt, or hat policy and guidelines. Hawes never stated to Hartman that Unit employees were not

permitted to wear t-shirts, hats, or jackets with logos or other insignia. Other than the April 2, 2007, incident, Hartman, during his time as president and chief steward, was not aware of any Unit members being sent to pre-disciplinary meetings for wearing t-shirts or hats with logos or other insignia. Hartman testified that prior to the parties' 2007-10 collective bargaining agreement, there was no policy concerning what types of hats employees could wear and employees could "pretty much could wear any hat that you wanted." Prior to the parties' 2007-10 agreement, he observed many Unit employees, on more than one occasion and at many work locations wearing AFSCME, City of Rock Island, sports team, and supplier hats. Hartman testified that during negotiations for the parties' 2007-10 collective bargaining agreement, one of the options discussed between the parties was to keep the current contract language, but add that personal clothing must have no visible logos or names. Hartman testified that the City never stated during negotiations that this was the current policy. Hartman testified that another option that was discussed was to keep the current contract language, but limit visible clothing to union logos. Again, Hartman testified that the City never stated that this was the current policy.

b. Supervisors/Managers

At a weekly meeting in 2005, Public Works Director Hawes met with all of the managers in the Public Works Department including Supervisor Woeckener, Tim Ridder, Dale Howard, and Dave Suman, and instructed them to put together policies for their divisions which would limit employees to wearing the uniforms provided by the City. Hawes had received complaints from citizens about the appearance of City employees. Hawes was concerned due to the high level of contact between employees and the public, and wanted to avoid the appearance of the City endorsing certain vendors or contractors. After the meeting directing managers to put together policies, if Hawes saw employees in violation of the policy, he would report it to the

employees' supervisor, and ask the supervisor to "take care of it." Hawes noted that, violations were "always taken care of."

Hawes testified that at negotiations for the parties' 2007-10 collective bargaining agreement, Leone did not ask him whether the City had a policy with regard to "clothing and what employees could wear on clothing in the workplace."

Suman, the water treatment supervisor, drafted a memo after the 2005 meeting with Hawes and posted it at the water plant on August 10, 2005. The memo stated:

As a reminder to everybody, the new Public Works dress code applies equally to all Department employees and everyone is required to follow them when on duty. The official position regarding the uniforms is this: Employees should (must) either wear: (1) The uniforms provided for them or, (2) AFSCME tee-shirts or, (3) Any polo shirt, dress shirt, or t-shirt is acceptable to wear, but it must not have graphics, logos, or wording on it. Sleeveless t-shirts are acceptable, but they may not be made sleeveless by ripping the sleeves off of a regular tee shirt. (4) If an employee wears a hat it must be a Public Works issued hat. (5) Shorts are acceptable as long as they are hemmed and decent looking (no cut-offs). Shorts are available through the uniform service. Safety rules do not allow shorts for some activities. (6) If employees are working in traffic areas, an ANSI III shirt or vest also must be worn. (7) All AFSCME A employees must wear steel toed shoes.

After posting the memo, Suman observed employees who were not in compliance. When this occurred, he would remind the employee of the policy and direct them to comply with it. Suman testified that if the employee did not comply with his direction, he would report it to his immediate supervisor Howard.

Following the 2005 meeting, Howard, utilities superintendent for the Public Works Department, also posted a memo that contained the same language as Suman's memo.

Supervisor Woeckener also drafted and posted a memo after the 2005 meeting. The memo stated that company names on employee clothing were prohibited, clothing had to be non-descriptive except for a manufacturer's logo, t-shirts had to be plain white, and hats either had to

be non-descriptive, City, or AFSCME hats. Supervisor Woeckener testified that after the policy was implemented, he saw employees who were not in compliance and asked those employees to remove the non-compliant clothing.

Ridder, former assistant to the Public Works Director, also drafted and posted a memo for the Municipal Services Division. The memo dated June 23, 2005, prohibited employees from wearing hats or t-shirts with writing or logos on them, with the exception of AFSCME hats or t-shirts.

On or about June 23, 2005, Fred Bain, Street Maintenance Supervisor and former Maintenance Crew Leader, attended a meeting in which Ridder presented Bain and other crew leaders with a uniform policy that Ridder had drafted.

Melody Miller, assistant to the Public Works Director and Marina Manager from 1999-2008, recalled seeing a maintenance worker, Tim Gano, wearing a hat with words written on it. Believing that this was a violation of City policy, she told Gano to put on a different hat or take the hat off. Miller stated that Gano chose to put painter's tape over the writing on the hat. Miller also recalled seeing another employee, Rod Versluys, wearing a hat with the name of a construction company on it. Miller instructed him to take off the hat or wear a different one. Versluys took off the hat.

Hawes, Suman, Howard, Supervisor Woeckener, and Miller testified that after the meeting in 2005, they never saw nor could remember seeing Leatherman wearing a hat in violation of the policy.

2. Button Case

On January 14, 2008, Unit member Tim Anderson, a maintenance worker, was ordered by his supervisor, Howard, to remove the buttons on his hat because they "made a political

statement.” The buttons bore the messages “contract now” and “I support my bargaining team.” Anderson had been wearing the buttons on his hat for about a year. Howard told Anderson that wearing the buttons was a violation of the collective bargaining agreement and he needed to take them off. Anderson refused to remove the buttons.

On January 22, 2008, Supervisor Woeckener saw Anderson wearing a soiled hat with the same union buttons and told him to remove the soiled hat, replace it, and leave the buttons off the hat. Supervisor Woeckener stated that it was a violation of policy and the collective bargaining agreement. Anderson did not remove the hat and buttons. Anderson testified that he did not realize Supervisor Woeckener was talking to him directly, but thought he was speaking to all the employees in general. Anderson then received a disciplinary letter.

On January 28, 2008, the City conducted a pre-disciplinary hearing with Anderson which resulted in a written warning. A grievance was then filed. The City responded to the grievance on February 7, 2008, and stated that Anderson was disciplined for wearing buttons on visible clothing, wearing a soiled hat, and failing to comply with the directions of his supervisors. The response stated in relevant part:

The subject grievance alleges that employees must be allowed to wear union buttons on their clothing because this practice was allowed in the past and, therefore, the Written Warning you received should be rescinded. The issue of uniforms was discussed at great length during the recent negotiations on the labor agreement and contract language was modified substantially. The new language found in Section 18.000 (page 30) is crystal clear. ***“Other visible clothing – With the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer’s logo.”*** It is not acceptable to wear buttons on visible clothing. It does not matter whether the buttons promote a union, a political party, a sports team or anything else.

The grievance was processed through the third step. At a meeting over the grievance, the City Manager and Hawes were present for the City. Anderson, Hartman, and Leone were present for AFSCME. At the meeting, Leone stated that the City had never mentioned during

negotiations that union buttons were not allowed. The City Manager acknowledged that buttons and pins were not discussed during negotiations, but nonetheless decided the issue was covered under Section 18.000 of the parties' 2007-10 collective bargaining agreement, which states in relevant part, "Other Visible Clothing – With the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer's logo." In the step three response, the City Manager stated:

Though the specific matter of buttons apparently was not discussed during negotiations, Section 18 includes language that says that visible clothing may not display anything other than a small manufacturer's logo except for approved AFSCME apparel. I conclude that this section does cover buttons, embroidered logos or other items that might be displayed on clothing. Further I conclude that the management of the Public Works Department has the authority under this section to deny the display of buttons in employee clothing while they are on the job.

AFSCME then filed this unfair labor practice charge in Case No. S-CA-08-245 on March 28, 2008, over the incident.

Hartman testified that for as long as he has worked at the City, he has observed Unit members wearing AFSCME buttons and pins on hats and t-shirts. Hartman reports that at negotiations for the 2007-10 collective bargaining agreement, the parties did not discuss whether employees could wear union buttons and pins. Hartman testified that prior to the parties' 2007-10 collective bargaining agreement, Unit members wore AFSCME buttons, contract buttons, steward pins, and United Way pins on shirts, jackets, and hats while at various work locations. Since the effective date of the parties' 2007-10 agreement, Hartman has seen Unit members wearing United Way buttons and stickers, "I gave blood" stickers, and "I voted" stickers.

Rannow testified that Unit members wore buttons and pins during the negotiation process for the parties' 2007-10 agreement including steward pins, AFSCME buttons, "contract now" buttons, and "I support my bargaining team" buttons.

Leon testified that Unit members wore union buttons at the bargaining table for the 2007-10 collective bargaining agreement. Leone testified that during contract negotiations, the issue of AFSCME buttons was not raised or discussed, and AFSCME never agreed to limit Unit members' right to wear union buttons.

B. Yard Waste Incentive

For approximately the past 20 years, the City has maintained an incentive program for refuse collectors. The refuse incentive program allows a refuse collector to leave for the day and still receive pay for a full day's work regardless of the number of hours worked once the collector has completed an assigned route with a specific number of stops. Prior to the parties' 2007-10 collective bargaining agreement, there was no written policy or agreement covering the refuse incentive program, and the parties' 2004-07 collective bargaining agreement was silent on the topic.

The City raised the issue of the refuse waste incentive program during negotiations for the parties' 2007-10 agreement. The City's stated interests were the wear and tear on garbage trucks, safety, and concern that the incentive program was too generous. Initially, the City wanted the yard waste program excluded from the incentive program, but the parties eventually agreed that it would apply to the yard waste program once the route reached 225 stops. A tentative agreement on the issue was reached on May 14, 2007, but did not go into effect until both parties ratified the contract in January 2008.

The parties' 2007-10 collective bargaining agreement contains the following language on the refuse incentive, in relevant part:

Refuse Collectors or other employees assigned to automated or manual refuse collection are eligible for refuse incentive. Refuse collectors or other employees assigned to Yardwaste Collection (when there is less than 225 stops on a day

route), Special Pickup, Roll-off Truck, or other refuse duties are not eligible for refuse incentive.

The employees working either automated or manual refuse collection while on refuse incentive will be paid as if they worked their entire scheduled shift.

a) Automated refuse incentive allows an employee to leave work up to 1-1/2 hours before the end of their scheduled shift after all of their refuse incentive work has been completed.

b) Manual refuse incentive allows an employee to leave work after all of their work has been completed.

Prior to September 24, 2006, yard waste collectors worked five eight-hour shifts per week. On September 24, 2006, the City changed the schedule to four ten-hour shifts per week. When the shift was eight hours, employees were required to complete 180 stops per shift to receive the incentive. The change to four ten-hour shifts per week occurred during the growing season, and therefore the City did not immediately change the total number of stops required. The City decided that because there were only a few months left in the growing season, it would wait to change the number of stops until the next season. At the beginning of the 2007 growing season, around April 2007, the incentive was changed to 225 stops per shift. Prior to the change from eight to ten hour shifts, the number of stops required for employees to leave early was 180, or 22.5 stops per hour. When the shifts changed from eight to ten hours, the number of stops for the incentive was 225, or 22.5 stops per hour.

In 2007, at a department-wide meeting, Unit employees in the refuse department selected new routes based on seniority because of the change from eight to ten-hour shifts. Unit member Stephen Hinrichs attended the meeting and selected a yard waste assignment. At the meeting, he was told that "everything was going to remain the same, that nothing was going to change on the route." Before Hinrichs chose his route, he asked Assistant Public Works Director Ridder if the incentive program would remain the same. Ridder answered yes. About a week before the yard

waste collection began in April 2007, Ridder informed Hinrichs that the incentive was going from 180 stops to 225 stops. Hinrichs testified that Ridder said “this is what your people, your bargaining unit agreed upon, and so this is what we’re going to do.” About three weeks later, Crew Leader Mike Zeigler told Hinrichs that as far as Zeigler knew, the change to 225 stops had not yet taken place. Zeigler then told Hinrichs to take the incentive and go home even though Hinrichs had not completed 225 stops. Ridder later informed Hinrichs that the incentive was in fact 225 stops. Initially, AFSCME filed a grievance because of the change. However, the grievance was not advanced.

C. Threat Case

Tim Woeckener and Brad Runkle were hired in the summer of 2007 and served a probationary period during the first six months of their employment. During the fall of 2007, Woeckener and Runkle worked in water distribution and were supervised by Water Distribution Supervisor Jerry Martin. During that time, Martin had a conversation with Woeckener and Runkle regarding a potential work stoppage or strike. Martin testified that he “told them [Woeckener and Runkle] that probationary employees were not allowed. I didn’t think they were allowed to strike” or “I believe I told them that I wasn’t sure that probationary employees could go on strike.” Martin testified that he did not tell Woeckener and Runkle that they would be fired, and also never told seasonal employees that they would be fired.

Woeckener testified that he was never told by Martin that he would be fired for going out on strike. He reports that he did not feel threatened by Martin’s statements. Woeckener testified that Martin did initiate the conversation and informed him and Runkle that Martin did not know whether probationary employees were allowed to go on strike.

Runkle testified that Martin “quickly informed us that if AFSCME was to go on strike that we wouldn’t be able to because we would lose our positions if we would go on strike as probationary employees.” Runkle testified that he believed that if he went on strike, he would no longer have a job.

During a shift break a few days later, Woeckener and Runkle informed fellow Unit members Paul Stanforth, Norman Slaight, and Mike Brown of the conversation they had with Martin. Stanforth testified that Runkle and Woeckener told him that “if we went on strike they could be fired is all that I can -- they could be fired if they did not come to work.” Stanforth testified that at no time did Woeckener say “no” that is not what was said during the conversation with Martin. Slaight testified that “they [Woeckener and Runkle] told me that Jerry Martin had stopped them and told them that if they went out on – if the union was to go out on strike and they walked out with us that they could be fired.” Slaight testified that at no time did Unit member Woeckener say “no, that’s not what I said, or that’s not what Jerry said.”

About a month later, Runkle and Woeckener had a conversation with Rick Hitchcock, the chief steward at the time. Hitchcock told Runkle and Woeckener that he had been informed of Martin’s conversation with them. He asked Runkle and Woeckener what Martin had said to them. Hitchcock testified that “[t]hey both talked and basically told me the same thing, that if they were to go on strike, if we went on strike that they didn’t think they could go because they’d be fired...because of a conversation Jerry had with them previously.” Hitchcock testified that at no time did Woeckener indicate that this was not what had been said by Martin. Hitchcock then asked Runkle and Woeckener whether they would like to “press the issue.” Runkle and Woeckener replied no. Hitchcock also asked Runkle and Woeckener if they would be willing to sign an affidavit stating what was said between them and Martin. Hitchcock testified that Runkle

was not “too ambitious” to do so. He testified that Woeckener “was a little more – he was more willing at the time.” Hitchcock never followed up with Woeckener and Runkle regarding the affidavit.

Stanforth also testified that during the fall of 2007, Supervisor Woeckener told Stanforth that “if probationary or seasonal employees do not come to work if you guys go on strike they will be fired; if you guys go on strike, do you realize you won’t have health insurance; and you do not have enough support in the union to go on strike.” Slaight was also present for the statement. Slaight testified that Supervisor Woeckener was talking about the new employees that were on probation and Supervisor Woeckener stated “I believe the seasonals that were working, if they walked out with us during the strike that they would – they would all be fired.” Supervisor Woeckener denies that the conversation occurred and testified that he did not have any conversations with Stanforth and Slaight regarding probationary or seasonal employees and their right to strike.

IV. DISCUSSION AND ANALYSIS

A. Sections 10(a)(4) and (1) violations

1. Hat Case

The City violated Sections 10(a)(4) and (1) of the Act by unilaterally implementing an employee work clothing policy, when it required Leatherman to remove a hat displaying a supplier’s logo.

Under Section 10(a)(4) of the Act, it is an unfair labor practice for an employer “to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit.” Refusing to bargain with employees’ chosen representatives, a Section 10(a)(4) violation, interferes with employees’ rights guaranteed

by the Act. Cnty. of Vermilion, 3 PERI ¶ 2004 (IL SLRB), citing City of Decatur, 2 PERI ¶ 2008 (IL SLRB 1986). Thus, a respondent also violates Section 10(a)(1) of the Act when they refuse to bargain. Cnty. of Vermillion, 3 PERI ¶ 2004.

An employer violates its duty to bargain in good faith when it unilaterally changes the status quo involving a mandatory subject of bargaining without affording the exclusive representative adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter if negotiations have occurred, or bargaining to impasse regarding the change. Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2007); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1998); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); Cnty. of Cook (Dep ' t of Cent. Servs.), 15 PERI ¶ 3008 (IL LLRB 1999); Peoria Firefighters Assoc., Local 544, 3 PERI ¶ 2025 (IL SLRB 1987). In order to make a prima facie case under Section 10(a)(4), the charging party must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007. The subject of dress codes, uniforms, clothing allowances, and employee appearance are mandatory subjects of bargaining. Medco Health Solutions of Las Vegas, 2011 WL 3151774 (NLRB 2011), enfd. in relevant part, Medco Health Solutions of Las Vegas v. NLRB, 701 F.3d 710 (D.C. Circuit 2012); Yellow Enter. Sys., 342 NLRB 804, 827 (2004), citing Transp. Enter., 240 NLRB 551, 560 (1979), enfd. in relevant part, 630 F.2d 421 (7th Cir. 1980); Public Serv. Co. of New Mexico, 337 NLRB 193 (2001); Equitable Gas Co., 303 NLRB 925 (1991), modified on other grounds, 966 F.2d 861 (4th Cir. 1992).

In order to constitute the status quo, a term or condition of employment must be an established practice. Vill. of Lisle, 23 PERI ¶ 39, citing NLRB v. Katz, 369 U.S. 736 (1962); Cnty. of Woodford, 14 PERI ¶ 2015. The test for determining whether a practice is an

established practice is objective. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012), citing Vienna Sch. Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503, 515 (4th Dist. 1987); Vill. of Lisle, 23 PERI 39. The status quo must take into account the regular and consistent past patterns or changes in the conditions of employment. City of Lake Forest, 29 PERI ¶ 52, citing City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

Here, the City unilaterally changed the status quo when it instituted a policy prohibiting hats with logos because there is ample evidence that the City had historically allowed employees to wear hats with logos without discipline. The City instituted the policy on April 2, 2007 while the parties were negotiating a policy concerning employee work clothing and uniforms, and prior to the parties' reaching agreement on a uniform policy on September 20, 2007.

The City however contends that AFSCME has not proven a unilateral change because the City had adopted policies in 2005 which restricted hats to City-issued hats, AFSCME hats, or plain hats with no writing or logos. The City argues that the unfair labor practice charge is therefore also untimely because Section 11(a) of the Act requires that an unfair labor practice charge be filed within six months of the date of the alleged violation.

A party waives its right to bargain over a mandatory subject of bargaining either by agreeing to contract language waiving that right, by failing to protest the unilateral action, or by failing to request bargaining. Cnty. of Cook (Cermak Health Servs.), 10 PERI ¶ 3009 (IL LLRB 1994), citing Justesen's Food Stores, Inc., 160 NLRB 687 (1966), Ador Corp., 150 NLRB 1658 (1965), Montgomery Ward & Co., 1137 NLRB 218 (1962). To assert a defense of waiver by inaction, the employer must show that the union had clear notice of the employer's intent to institute the change, sufficiently in advance of the actual implementation, so as to allow a reasonable opportunity to bargain about the change. Cermak Health Servs., 10 PERI ¶ 3009,

citing Cnty. of Cook, Forest Pres. Dist. of Cook Cnty., 4 PERI ¶ 3012 (IL LLRB 1988), NLRB v. Crystal Springs Shirt Corp., 637 F.2d 399 (5th Cir. 1981). If a union receives notice of the change contemporaneously with the change itself, there can be no waiver by inaction. Cermak Health Servs., 10 PERI ¶ 3009, citing Am. Dist. Co., 264 NLRB 1413 (1982), enforced, 715 F.2d 446 (9th Cir. 1983), cert. denied, 466 U.S. 958 (1984).

Here, the parties' 2004-07 collective bargaining agreement was silent on the subject of what can be displayed on hats and employee work clothing, and thus waiver by contract is absolutely precluded. Chi. Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997), citing Metro. Edison Co. v. NLRB, 460 U.S. 693, 708 (1983).

Waiver by inaction is also precluded. The employee work clothing policy at issue was allegedly implemented sometime in 2005, but AFSCME did not discover the policy until April 2, 2007, when Leatherman was told to remove his hat and AFSCME filed a grievance. Leatherman noted that he had worn the hat on and off for nearly 20 years without being told prior to April 2, 2007, that it was a violation of a policy. In addition, Leatherman credibly testified that he had worn other hats with logos on them since he began working for the City 34 years ago. Further, he testified that he wore these hats at various Public Works buildings while interacting with various supervisors and managers. Moreover, Leatherman never received notice of any policy or guidelines regarding work clothing. Bargaining unit members Rannow, Stanforth, and Hartman also credibly testified that they saw employees wearing hats with various logos at various work locations. However, supervisors Suman, Supervisor Woeckener, and Miller also credibly testified that if they saw employees in violation of the alleged policy, they would direct the employees to comply with the policy. Thus, the alleged policy was not enforced uniformly, but sporadically at best, and therefore cannot be said to constitute an existing policy or practice.

Thus, the City failed to prove that prior to its implementation on April 2, 2007, AFSCME had clear notice of the policy to prohibit work clothing displaying logos.

Moreover, in the collective bargaining context, it is well-settled that notice to an individual employee does not constitute adequate notice to his or her exclusive representative. Chi. Transit Auth., 14 PERI ¶ 3002, citing S. Cal. Edison Co., 284 NLRB 1205 (1987). Thus, although the supervisors may have posted notices in 2005 and made subsequent statements to employees to remove offending clothing, these actions are not sufficient to show that AFSCME had notice of the work clothing policy.

Waiver by failing to request bargaining is also precluded because AFSCME was presented with a fait accompli. The Board will find a fait accompli when the employer has informed the union that bargaining would be futile or has implemented the changes before announcing them to the union. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011), citing Chi. Hous. Auth., 7 PERI ¶ 3036 (IL LRB 1991). Here, the City presented AFSCME with a fait accompli when it directed Leatherman to remove his hat. The City implemented its work clothing policy prohibiting the wearing of hats with logos before announcing the change to AFSCME.

The City's argument regarding timeliness is without merit. In cases alleging an unlawful unilateral change, the six months statute of limitations begins to run when the charging party became aware, or should have become aware, of the change in policy. Vill. of River Forest, 22 PERI ¶ 55 (IL LRB-SP 2006); Chi. Transit Auth., 19 PERI ¶ 12 (IL LRB-LP 2003). Generally, the courts have held that this is the date upon which the change was unambiguously announced, rather than the date the change was implemented, since the unfair labor practice is the unilateral change in policy and not its application to particular individuals. Vill. of River Forest, 22 PERI

¶ 55, citing Wapella Educ. Ass'n. IEA-NEA v. Ill. Educ. Labor Relations Bd., 177 Ill. App. 3d 153 (4th Dist. 1988); Water Pipe Extension, Bureau of Eng'g v. City of Chi., 206 Ill. App. 3d 63 (1st Dist. 1990). In this case, the change was unambiguously announced when Leatherman was directed to remove his hat because it was a violation of policy. This occurred on April 2, 2007, and the unfair labor practice charge was filed on August 28, 2007. Thus, I find that the unfair labor practice charge was timely filed.

In sum, the City violated Sections 10(a)(4) and (1), when it unilaterally instituted a policy prohibiting the wearing of hats with logos.

2. Button Case

The City violated Sections 10(a)(4) and (1) when it instituted a policy which banned the wearing of union buttons by employees.

As noted above, an employer violates its duty to bargain when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding the change. City of Lake Forest, 29 PERI ¶ 52, citing Vill. of Lisle, 23 PERI 39; Cnty. of Woodford, 14 PERI ¶ 2015; City of Peoria, 11 PERI ¶ 2007; Cnty. of Jackson, 9 PERI ¶ 2040; Cnty. of Cook (Dep't of Cent. Servs.), 15 PERI ¶ 3008. The charging party must initially show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007. As noted above, the subjects of dress codes, uniforms, clothing allowances, and employee appearance are mandatory subjects of bargaining. Medco Health Solutions, 2011 WL 3151774; Yellow Enter. Sys., 342 NLRB at 827, citing Transp. Enter., 240 NLRB at 560; Equitable Gas Co., 303 NLRB 925; Public Serv. Co., 337 NLRB 193.

The City argues that Anderson was appropriately disciplined for a violation of Article 18 of the parties' 2007-10 collective bargaining agreement which states that "[w]ith the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer's logo." The City urges that this language clearly and unambiguously states that visible work clothing may not display anything other than a small manufacturer's logo. The City asserts that because buttons are worn on clothing and are visible, the contract language undoubtedly pertains to wording that appears on a button as well as wording that comprises the surface of the clothing itself. The City asserts that Article 18 specifically addresses the issue of union buttons, and AFSCME waived the right to bargain over the matter due to the parties' zipper clause in Article 24 of the parties' 2007-10 collective bargaining agreement.

ASFCME asserts that the City never raised the issue of wearing union buttons during negotiations for the parties' 2007-10 collective bargaining agreement. AFSCME notes that in fact the City Manager, in his response to the grievance filed over the written warning issued to Anderson, acknowledged that the specific matter of union buttons was not discussed during negotiations.

The City correctly notes that a generally worded-zipper clause paired with other specific language in a collective bargaining agreement may indicate a waiver over a particular issue. City of Chi. (Dep't of Police), 21 PERI ¶ 83 (IL LRB-LP 2005). However, contract language does not serve as a waiver of a party's collective bargaining rights unless the waiver is "clear and unequivocal." Am. Fed'n of State, Cnty. & Mun. Emps. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989), citing Rockwell Int'l Corp., 260 NLRB 1346 (1982). Further, evidence that a party intended to waive a statutory right must be clear and unmistakable. Am. Fed'n of State, Cnty. & Mun. Emps., 190 Ill. App. 3d at 269 (1st Dist. 1989), citing Vill. of Oak

Park v. Ill. State Labor Relations Bd., 168 Ill. App. 3d 7, 20-21 (1st Dist. 1988). The right to wear union insignia at work is protected by the Act. Ill. Dep't of Cent. Mgmt. Servs. (Corrections), 25 PERI ¶ 12 (IL LRB-SP 2009).

Here, the waiver of the right to wear union buttons must be clear, unequivocal, and unmistakable. The language in the parties' 2007-10 collective bargaining agreement does not clearly, unequivocally, or unmistakably prohibit the wearing of union buttons. Article 18 states that "[w]ith the exception of approved AFSCME apparel, visible clothing may not display anything other than a small manufacturer's logo." This language does not specifically address union buttons or other union insignia. In addition, the City failed to provide evidence that the issue of union buttons or other union insignia was discussed during negotiations for the 2007-10 collective bargaining agreement. Rather, AFSCME presented evidence that the issue in fact was not discussed. Further, as AFSCME noted, the City in its response to the step three grievance stated that the "specific matter of buttons apparently was not discussed during negotiations." Thus, AFSCME did not waive the right to bargain over the subject of wearing union buttons or other union insignia.

The City violated its duty to bargain when it unilaterally changed the status quo of allowing employees to wear union buttons. As noted above, in order to constitute the status quo, a term or condition of employment must be an established practice. Vill. of Lisle, 23 PERI ¶ 39, citing NLRB v. Katz, 369 U.S. 736; Cnty. of Woodford, 14 PERI ¶ 2015. Here, it was an established practice to allow employees to wear union buttons. The evidence showed that for many years employees had been allowed to wear union buttons and other insignia. The first time that the City enforced its policy banning union buttons was on January 14, 2008, when Anderson

was ordered to remove his hat. Thus, the City changed the status quo when it instituted a policy prohibiting union buttons.

In addition, AFSCME did not waive the right to bargain over the wearing of union buttons because the prohibition on union buttons was presented to it as a fait accompli. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013); Cermak Health Servs., 10 PERI ¶ 3009. As stated above, the Board will find a union was presented with a fait accompli when the employer has implemented the changes before announcing them to the union. Cnty. of Lake, 28 PERI ¶ 67, citing Chi. Hous. Auth., 7 PERI ¶ 3036. Here, the City implemented the changes before announcing them to AFSCME when it ordered Anderson to remove his hat. Thus, AFSCME was presented with a fait accompli. In sum, the City violated Sections 10(a)(4) and (1) when it unilaterally instituted a policy prohibiting the wearing of union buttons.

3. Yard Waste Incentive Case

The City did not violate Sections 10(a)(4) and (1) when it increased the number of stops required to receive the yard waste incentive.

As noted above, an employer violates its duty to bargain when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding that change. City of Lake Forest, 29 PERI ¶ 52, citing Vill. of Lisle, 23 PERI 39; Cnty. of Woodford, 14 PERI ¶ 2015; City of Peoria, 11 PERI ¶ 2007; Cnty. of Jackson, 9 PERI ¶ 2040; Cnty. of Cook (Dep't of Cent. Mgmt. Servs.), 15 PERI ¶ 3008. Again, in order to make a prima facie case, the charging party must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007.

Notably, the City does not dispute the following: the incentive program is a mandatory subject of bargaining, the past practice of the parties was to require 180 stops to receive the incentive, the number of stops required to receive the incentive changed from 180 to 225, and the change was made without notification to or discussions with ASFCME. The City only argues that the change from 180 to 225 stops was not a substantive change and therefore no violation occurred. I agree.

To find that the City's unilateral change from 180 to 225 stops is a violation of Sections 10(a)(4) and (1) of the Act the change must be material, substantial, and significant. Vill. of Westchester, 16 PERI ¶ 2034 (IL SLRB 2000), citing City of Peoria, 11 PERI ¶ 2007; City of Quincy, 6 PERI ¶ 2003 (IL SLRB 1989); Alamo Cement Co., 277 NLRB 1031 (1985); Peerless Food Prod., 236 NLRB 161 (1978). The City correctly notes that there was no material, substantial, or significant change in the terms and conditions of employment because the rate of work required to receive the incentive remained the same. The City properly notes that both before and after the change from 180 to 225 stops, in order to receive the incentive, an employee had to make 22.5 stops per hour. Thus, the total number of stops required per week also remained the same both before and after the change: 900 stops. In addition, if the City had not changed the incentive to 225 stops per shift, the employees would be receiving an unfair benefit because employees would be only required to make 720 stops per week, instead of 900.³ Thus, the City did not violate Sections 10(a)(4) and (1) of the Act when it changed the number of stops required to receive the yard waste incentive.

³ AFSCME does not assert that the change in hourly schedules from five eight-hour shifts to four ten-hour shifts was a unilateral change in violation of Sections 10(a)(4) and (1). Presumably, this is because the management rights clauses in both the parties' 2004-07 and 2007-10 collective bargaining agreements state that the City has the right to determine the number of shifts per work week.

B. Section 10(a)(1) violations

1. Button Case

The City violated Section 10(a)(1) when it instituted a policy which banned the wearing of union buttons by employees.

A respondent violates section 10(a)(1) of the Act when it engages in conduct which reasonably tends to interfere with, restrain, or coerce employees in the exercise of rights protected by the Act. City of Lake Forest, 29 PERI ¶ 52; City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); Ill., Dep't. of Cent. Mgmt. Servs. (Dept. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chi., 3 PERI ¶ 3011 (IL LLRB 1987). A violation of Section 10(a)(1) does not depend on the employer's motive. City of Mattoon, 11 PERI ¶ 2016; Conservation, 2 PERI ¶ 2032. Instead, the test is whether the employer's conduct, viewed objectively from the standpoint of a reasonable employee, had a tendency to interfere with, restrain or coerce the employee in the exercise of a right guaranteed by the Act. Clerk of the Circuit Court, 7 PERI ¶ 2019; Conservation, 2 PERI ¶ 2032.

With respect to an employee's right to wear union insignia at work, the Board has held that employees have the right to wear union-related pins and insignia in the workplace, but the right must be balanced against the employer's right to manage its operations in an orderly fashion. City of Lake Forest, 29 PERI ¶ 52, citing Corrections, 25 PERI ¶ 12. An employer's rule "which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety." City of Lake Forest, 29 PERI ¶ 52, citing Corrections, 25 PERI ¶ 12. Special circumstances exist when "where an employer enforces a policy that its employees may only wear authorized

uniforms in a consistent and nondiscriminatory fashion and where those employees have contact with the public.” City of Lake Forest, 29 PERI ¶ 52, citing Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984).

To the extent that the City is claiming that special circumstances allowed it to prohibit employees from wearing union buttons due to the employees contact with the public, the City has the burden of providing substantial evidence establishing such special circumstances. Corrections, 25 PERI ¶ 12. Here, the City has failed to submit evidence establishing that any special circumstances exist. However, even if the City had shown special circumstances permitting the prohibition on buttons, the rule is nonetheless unlawful, because the City has applied the rule in a discriminatory manner, prohibiting employees from wearing union buttons while permitting employees to wear United Way buttons and stickers, “I voted” stickers, and “I gave blood” stickers. Thus, the City’s disparate application of its policy would impress, upon a reasonable employee, that Anderson was told to remove his hat because it had union buttons on it. See City of Lake Forest, 29 PERI ¶ 52. Thus, the City violated section 10(a)(1) by instituting a policy prohibiting employees from wearing union buttons.

2. Threat Case

The City violated Section 10(a)(1) when it threatened probationary employees with termination if they participated in an anticipated work stoppage or strike, and informed other employees of this threat.

The City argues that AFSCME has failed to prove there was a threat made against probationary employees. The City urges that Martin and Woeckener recalled Martin stating that he was not certain whether or not probationary employees were allowed to strike. Further, the City asserts that Martin never told probationary employees that they would be fired if they went

on strike. The City notes that Woeckener emphasized that he did not feel threatened by Martin's comments. Further, the City asserts that of the three individuals present for Martin's statements, two of them contend that no threat was made. In addition, the City urges that if Martin did question probationary employees' ability to strike, it would not be objectively reasonable to interpret his comments as a threat because he was merely expressing his own uncertainty. The City does not make any arguments regarding Supervisor Woeckener's conversation with Stanforth and Slaight.

The right to participate in a work stoppage or strike is guaranteed by Section 17 of the Act, which states in relevant part:

Nothing in this Act shall make it unlawful or make it an unfair labor practice for public employees, other than security employees, as defined in Section 3(p), Peace Officers, Fire Fighters, and paramedics employed by fire departments and fire protection districts, to strike except as otherwise provided in this Act.

As noted, an employer violates Section 10(a)(1) of the Act if it engages in conduct that reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Vill. of Calumet Park, 23 PERI ¶ 108 (IL LRB-SP 2007), citing Cnty. of Woodford, 14 PERI ¶ 2017; Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993); Clerk of Circuit Court, 7 PERI ¶ 2019 (IL SLRB 1991); Conservation, 2 PERI ¶ 2032. There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Calumet Park, 23 PERI ¶ 108, citing Vill. of Bolingbrook, 12 PERI ¶ 2012 (IL SLRB ALJ 1996); City of Evanston, 5 PERI ¶ 2041 (IL SLRB H.O. 1989); City of Freeport, 3 PERI ¶ 2046 (IL SLRB H.O. 1987). Employer statements to employees which contain threats of reprisal violate Section 10(a)(1). Vill. of Calumet Park, 23 PERI ¶ 108, citing Vill. of Calumet Park, 22 PERI ¶ 23 (IL SLRB 2005); City of Highland Park, 18 PERI ¶ 2012 (IL SLRB 2002); City of Chi. (Mulligan), 11 PERI ¶ 3008 (IL LLRB 1995); City of Chi. (Chi. Police

Dep't), 3 PERI ¶ 3028 (IL LLRB 1987); City of Freeport, 3 PERI ¶ 2046. A threat does not need to be direct, indirect and implied have been found to violate Section 10(a)(1). Vill. of Calumet Park, 23 PERI ¶ 108, citing Calumet Park, 22 PERI ¶ 23; Corrections, 16 PERI ¶ 2019 (IL SLRB ALJ 2000), citing NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), Eldorado Tool, 325 NLRB 222 (1997).

Regardless of whether Martin said that he was not sure whether probationary employees could go on strike or whether he explicitly stated that probationary employees would be fired if they went on strike, the action of Martin initiating a conversation with two probationary employees about whether they are lawfully allowed to strike would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their right to strike guaranteed by the Act. As noted, it is irrelevant whether the employees were actually coerced or whether Martin intended to coerce the employees. Martin may have had good intentions for initiating the discussion with the probationary employees concerning whether they were allowed to strike. However, as noted, Martin's intention or motive is irrelevant. A reasonable employee in a probationary employee's position, and in the position of other members of the bargaining unit, would feel coerced by an employer initiating a discussion with employees regarding the lawfulness of probationary employees going on strike. Thus, I find that the City violated Section 10(a)(1) of the Act, when Martin initiated a conversation with Woeckener and Runkle regarding probationary employees' right to strike.

I also find that the Cit violated Section 10(a)(1), when Supervisor Woeckener stated to Stanforth and Slaight that probationary employees would be fired if they went on strike. This statement reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act as it contains a clear threat of reprisal. Vill. of Calumet Park, 23

PERI ¶ 108. This statement contains a clear threat of reprisal in violation of Section 10(a)(1).

Id. Thus, I find that the City violated Section 10(a)(1) of the Act, when Supervisor Woeckener told employees that probationary employees would be fired if they went on strike.

V. CONCLUSIONS OF LAW

- 1) Respondent, City of Rock Island, violated Sections 10(a)(4) and (1) of the Act, when it unilaterally changed the terms and conditions of employment with regard to employee work clothing by requiring an employee to remove a hat displaying a supplier's logo.
- 2) Respondent, City of Rock Island, violated Sections 10(a)(4) and (1) of the Act, when it unilaterally changed the terms and conditions of employment with regard to employee work clothing by instituting a policy which banned the wearing of union buttons.
- 3) Respondent, City of Rock Island, did not violate Sections 10(a)(4) and (1) of the Act, when it unilaterally increased the number of stops required to receive the yard waste incentive.
- 4) Respondent, City of Rock Island, violated Section 10(a)(1) of the Act, when it banned the wearing of union buttons by employees.
- 5) Respondent, City of Rock Island, violated Section 10(a)(1) of the Act, when it threatened probationary employees with termination if they participated in an anticipated work stoppage or strike, and when Respondent informed other employees of this threat.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, City of Rock Island, its officers and agents shall

A. Cease and desist from:

- (1) refusing to bargain with American Federation of State, County and Municipal Employees as the exclusive bargaining representative of its Public Works' employees by unilaterally implementing changes in wages and terms and conditions of employment of the bargaining unit employees;
- (2) interfering with or restraining employees in the exercise of their right to wear union buttons, pins, and other insignia;
- (3) interfering with or restraining employees in the exercise of their right to participate in work stoppages and strikes; and

(4) in any other like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in the Act.

B. Take the following affirmative action designed to effectuate the policies of the Act:

(1) on request, reinstate the wages and terms and conditions of employment that existed before the unlawful unilateral changes, and make whole all bargaining-unit employees for any loss suffered as a result of these unilateral changes;

(2) permit bargaining unit employees to wear union buttons, pins, and other insignia while on duty;

(3) post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material; and

(3) notify the board in writing, within 20 days from the date of this Recommended Decision, of the steps Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant 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 Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the 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 on this 30th day of April, 2014.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

A handwritten signature in black ink, appearing to read "Michelle N. Owen", written over a horizontal line.

**Michelle N. Owen
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the City of Rock violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act gives you, as an employee, these rights:

- To engage in protected, concerted activity.
- To engage in self-organization.
- To form, join, or assist unions.
- To bargain collectively through a representative of your own choosing.
- To act together with other employees to bargain collectively or for other mutual aid or protection.
- And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT refuse to bargain with American Federation of State, County and Municipal Employees as the exclusive bargaining representative of its public works' employees by unilaterally implementing changes in wages and terms and conditions of employment of the bargaining unit employees.

WE WILL NOT interfere with or restrain employees in the exercise of their right to wear union buttons, pins, and other insignia.

WE WILL NOT interfere with or restrain employees in the exercise of their right to participate in work stoppages and strikes.

WE WILL on request, reinstate the wages and terms and conditions of employment that existed before the unlawful unilateral changes, and make whole all bargaining-unit employees for any loss suffered as a result of these unilateral changes.

WE WILL permit bargaining unit employees to wear union insignia while on duty.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of relief due under the terms of this decision.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

Date of Posting

City of Rock Island (Employer)

ILLINOIS LABOR RELATIONS BOARD

320 West Washington, Suite 500
Springfield, Illinois 62701
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
