STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Amalgamated Transit Union, Local 241,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-09-193
	)	
PACE West Division,	)	
	)	
Respondent	)	

ORDER

On October 16, 2012, Administrative Law Judge Anna Hamburg-Gal, 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 December 11, 2012 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 11th day of December 2012.

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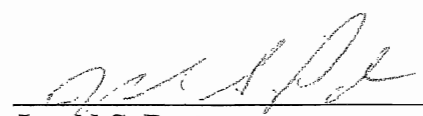

Jerald S. Post
General Counsel

STATE OF ILLINOIS
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On March 11, 2009, the Amalgamated Transit Union, Local 241 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that Pace West Division (Respondent or Pace) engaged in unfair labor practices within the meaning of sections 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 February 9, 2011, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on August 17, 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

1. At all times material, Pace has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Pace has been under the jurisdiction of the State Panel of the Board pursuant to section 5(a) of the Act.
3. At all times material, Pace has been subject to the Act pursuant to section 20(b) of the Act.

4. At all times material, Local 241 has been a labor organization within the meaning of section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative for a bargaining unit of Pace's employees including bus operators.
6. At all times material, Pace and the Union have been parties to a collective bargaining agreement that established the terms and conditions of employment for certain Pace employees including bus operators.
7. The most recent agreement has effective dates of January 1, 2006, through December 31, 2010.

II. ISSUES AND CONTENTIONS

The issue is whether Pace violated sections 10(a)(4) and (1) of the Act when it installed Drive Cam on its buses and used evidence from Drive Cam to justify employee discipline, allegedly without providing the Union with notice or the opportunity to bargain.

Pace argues that it did not violate the Act when it installed Drive Cam and used it for disciplinary purposes because its decision to install and use those cameras is not a mandatory subject of bargaining. First, Pace asserts that it did not materially change employees' terms and conditions of employment when it installed and used Drive Cam because the installation and disciplinary use of video surveillance cameras does not constitute a material change in employees' terms and conditions of employment under the Board's Village of Summit decision. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012). Pace asserts this case is analogous to Village of Summit because the Union acquiesced to the installation of security cameras and the Employer did not change its disciplinary rules and sanctions. Pace also contends that this case presents a clearer outcome in favor of the Employer than Village of Summit did because, unlike the employer in Village of Summit, Pace has always disciplined employees for rule violations captured by video surveillance cameras. Further, Pace asserts that the audio capability of Drive Cam does not materially change employees' terms and conditions of employment, even though the old cameras did not record audio, because Pace has never relied on audio recordings to justify employee discipline and because the Union previously acquiesced to the audio surveillance of bus operators by live bus monitors.

Second, Pace argues that the decision to install and use Drive Cam is also one of inherent managerial authority because it is a method of operation, is used for safety and security purposes, is consistent with Pace's statutory mission, and does not turn on labor costs. In the alternative, Pace argues that it is not required to bargain its decision to install and use Drive Cam because Pace's interest in ensuring the safety of the public, its operators, and its passengers, outweighs the effects of Drive Cam on employees' terms and conditions of employment.

Next, Pace argues that the Union waived its right to bargain because it failed to object to the previous system.

Further, Pace argues that the Union waived its right to bargain because the Union failed to demand bargaining even though Pace asserts that it gave the Union timely and sufficient notice that it would use Drive Cam. In addition, Pace urges the Board to make credibility determinations in its favor to find that the Pace training manager never told employees that Drive Cam would not be used for disciplinary purposes.

Finally, Pace asserts that it did not present the Union with a fait accompli which removed the Union's obligation to demand bargaining because Pace gave the Union sufficient notice and an opportunity to bargain and never objectively communicated to the Union that bargaining would be futile.

The Union argues that Pace violated the Act when it installed Drive Cam and used it for disciplinary purposes because Pace materially changed employees' terms and conditions of employment and did not act within its inherent managerial authority. First, the Union notes that the installation of new surveillance cameras is a mandatory subject of bargaining under NLRB precedent. Further, the Union asserts that Drive Cam is neither an upgrade nor an augmentation of a pre-existing camera system because Drive Cam automatically forwards footage to Pace upon a triggering event while the existing system did not automatically alert Pace to potential employee rule violations and did not permit Pace to routinely and regularly audit employees' compliance with its rules and procedures. The Union notes that Drive Cam's automated alert system constitutes a significant change because Pace previously retrieved images from its video cameras only after it had first learned of suspected employee misconduct through other means. Moreover the Union notes that the existing system was used primarily for security while the new Drive Cam system is used specifically to monitor driver conduct.

Second, the Union argues that Pace's use of Drive Cam for disciplinary purposes changed employees' terms and conditions, even though Pace had always used video surveillance footage to support employee discipline, because Pace affirmatively stated that it would not use Drive Cam for disciplinary purposes and would only use it for safety and security. The Union urges the Board to make credibility determination in its favor to find that the Pace training manager told employees that Drive Cam would not be used for disciplinary purposes.

Third, the Union argues that Pace did not act within its inherent managerial authority when it installed or used Drive Cam since Pace made no changes to its basic function or service standards, budget, organizational structure, or selection of its employees. In addition, the Union argues that Pace does not fall within a special class of employers whose managerial authority deserves greater deference because Pace's primary function is transportation and not public safety. Further, the Union notes that Drive Cam was not necessary for Pace to provide safe public transportation since Pace already had a different camera system in place and also used a program of unidentified monitors to ensure drivers complied with Pace's rules. In the alternative, the Union argues that even if Pace had an overriding managerial interest to install Drive Cam, the balance of interests changed when Pace began using it for disciplinary purposes.

Next, the Union argues that Pace failed to provide the Union with notice and an opportunity to bargain its decision to install and use Drive Cam.

Finally, the Union argues that it did not waive its right to bargain over the installation and use of Drive Cam because Pace presented the Union with a fait accompli. First, the Union asserts that it received no notice or opportunity to bargain the installation of Drive Cam because Pace installed it before notifying the Union. Second, the Union asserts that it had no opportunity to bargain the use of Drive Cam because Pace's conduct indicates that it had no intention of bargaining over its decision to use the system. In support, the Union asserts that Pace would not have bought the system or trained its employees on the system if it had not finally decided to use it. Third, the Union argues that Pace gave the Union no opportunity to bargain over the disciplinary use of Drive Cam because the Union first received notice that Pace would use Drive Cam for disciplinary purposes when Pace began to discipline bargaining unit members based on Drive Cam footage and because Pace had affirmatively represented that it would not use Drive Cam for such a purpose.

III. FINDINGS OF FACT

Pace West Division operates public transit buses in the near western Chicago suburbs. The legislature created Pace because it determined that, "comprehensive and coordinated regional public transportation is essential to the public health, safety and welfare." Regional Transportation Authority Act, 70 ILCS 3615/1.02 (2010). Part of Pace's mission is to "enforce and facilitate [the] achievement and maintenance of standards of safety against accidents with respect to public transportation." 70 ILCS 3615/2.11 (2010).

For years, Pace has had a monitoring program which uses anonymous undercover individuals employed by Pace to observe bus driver performance and to ensure that the drivers collect fairs, call stops, and otherwise conduct themselves properly. Monitors are not present on buses every day.

In 2002 or 2003, Pace bought buses installed with the Safety Vision camera system. Each new bus came equipped with between five and seven visible cameras, including one that faces the driver. The cameras record video continuously onto a hard drive located on the bus. Pace cannot access the Safety Vision footage without boarding the bus. The hard drive records over itself roughly every 72 hours.

Pace only reviews Safety Vision footage when there is an accident or incident on the bus or when Pace receives a complaint from the public concerning a driver. Pace then boards the bus to access the Safety Vision hard drive and reviews the Safety Vision footage. Ernest Jones, bus operator and Union executive board member, testified that to his knowledge Pace did not regularly review the Safety Vision footage to monitor employees and never consulted that footage unless prompted to do so by some accident or incident. Pace has used the Safety Vision footage as proof of employee misconduct and has issued employees discipline as a result of images captured by Safety Vision.

The Union never filed an unfair labor practice charge against Pace for installing Safety Vision. The Union never filed an unfair labor practice charge related to the use of Safety Vision to justify employee discipline.

In December 2008, Pace installed the Drive Cam camera system on its bus fleet over a period of three days to a week. Drive Cam is a single, visible camera unit which consists of a pair of lenses mounted in a single enclosure on the bus's windshield; one lens faces forward out the windshield and the other faces rearward into the bus, at the operator. Drive Cam operates

continuously by buffering audio and video, but it does not store audio or video unless the system is triggered by a sufficient g-force, such as a sharp turn, bump, or accident, or manually, by the operator. When Drive Cam is activated, the light on the console changes from green to a flashing red and the unit transmits twelve seconds of the buffered video and audio to a Pace subcontractor. The transmission includes a record of the eight seconds before and the four seconds after the triggering event. Cecil Crum, regional manager of Pace, testified that the contractor reviews the footage and determines which footage they will send to Pace for further review; he later testified that the contractor forwards all footage to Pace and does not filter any of it out. The image and scope of the Drive Cam system is the same as the image and scope of the forward most Safety Vision cameras, except for the fact that Drive Cam also records audio while Safety Vision does not.

Pace did not consult the Union about its decision to order the Drive Cam system. Pace installed the Drive Cam system without providing the Union formal or written notice or an opportunity to bargain. Drive Cam may be installed on a bus without being in active service. Once Drive Cam is activated, it may be deactivated.

Pace first notified employees of the Drive Cam system on December 11, 2008, in a bulletin from Shari Pappas, Pace Safety and Training Manager. The bulletin was either delivered to each employee's mailbox or posted on a bulletin board in the driver's room. It stated that all employees were required to attend a training session pertaining to "Drive Cam [and] Pace Rules and Regulations" on either December 16, 17, or 18, 2008. The notice further stated that the sessions would last approximately thirty minutes and that Pace would compensate employees for their time.

Pappas conducted the training which took place in the training room at Pace West Division.[1] The purpose of the training was to inform employees of Drive Cam's uses and how it worked. All witnesses agreed that the training was comprised of a short video and a question and answer period. The witnesses disagreed as to the extent to which Pappas discussed the disciplinary effects of Drive Cam and as to Pappas's explanation of Drive Cam's purpose.

Pappas testified that she played the Drive Cam video, discussed Pace's rules, policies and procedures, and answered questions about Drive Cam. She further testified that she discussed

[1] At the time the classes took place, Pace had installed Drive Cam on some of the buses but had activated none of them.

those rules and regulations with respect to the sorts of movements which would trigger Drive Cam and that she told employees that Drive Cam footage would subject employees to discipline if they broke Pace's rules or the law. Specifically, Pappas recalled that she stated employees "would see [Pace superintendent] Randy [Vales] and not [Pappas]" if the footage revealed misconduct. Pappas explained at hearing that Vales issues discipline while she only conducts coaching and training. She explained that she conveyed this information to employees because the Drive Cam DVD did not address Pace's rules and regulations and could consequently lead employees to believe that Pace would use Drive Cam only for coaching purposes. Pappas testified that she never affirmatively stated that employees would not be disciplined as a result of conduct displayed on Drive Cam footage. Similarly, Pappas testified that she never said that drivers would be subject to only coaching and training if they triggered Drive Cam. Pappas testified that she instead told employees that they would in fact be subject to discipline if Drive Cam recorded their rule violations.

Ernest Jones attended a training session on December 16, 2008. Jones recalled that he and other employees asked questions concerning the cameras' disciplinary use. Jones testified that Pappas stated employees would be coached if they activated the cameras and that the coaching would help employees become better, safer operators. According to Jones, Pappas explained that coaching would show employees how they triggered the cameras and that it would explain how employees could drive in a manner that would prevent their activation. Jones testified that Pappas told employees that Pace installed the cameras for safety and security, and that "there would be no discipline" from the cameras. Finally, Jones testified that Pappas stated that Pace would activate the cameras. As of December 16, 2008, Jones had no concerns that Pace would use Drive Cam for disciplinary purposes.

Shana Deneen Brown, Pace bus operator, attended a training session on December 16, 2008. Brown testified that she asked Pappas whether Pace would use Drive Cam for disciplinary purposes. Brown testified that Pappas stated that Pace would not. Brown further testified that Pappas told employees that Pace installed Drive Cam for safety and security purposes. Accordingly to Brown, Pappas explained that drivers could use the Drive Cam footage to defend themselves against allegations of operator misconduct and prove that a passenger's complaint was meritless or that an operator was not at fault in an accident. Next, Brown testified that she did not remember Pappas having said that employees would see Vales for discipline if Drive

Cam revealed a rule violation. Finally, Brown testified that Pappas told employees that Pace was going to put Drive Cams on the buses.

James Ferguson, Pace bus operator, attended Drive Cam training on December 17, 2008. Ferguson testified that he asked Pappas about Drive Cam's purpose. He recalled that Pappas stated it was strictly for security and training. He also testified that Pappas said that Drive Cam would not be used for discipline. Finally, Ferguson testified that as far as he remembered, Pappas did not mention Vales and did not state that drivers would receive discipline if Drive Cam revealed rule violations.[2]

Gregory Butler, currently a dispatcher and non-bargaining unit member, attended a Drive Cam training session. He testified that Pappas did not say anything about discipline resulting from Drive Cam, one way or the other.

Joseph Haimann, a supervisor at Pace but also a bargaining unit member, similarly attended a Drive Cam training session. Although Haimann initially testified that Pappas did not assure employees that Pace would not use Drive Cam footage for disciplinary purposes, he later testified to the opposite and conceded that Pappas did in fact give employees assurances that Pace would not use Drive Cam for disciplinary purposes. Accordingly, Haimann's testimony is not credible because he contradicted himself.

Taken as a whole, the testimony supports the finding that Pappas told employees that Pace would not use Drive Cam footage to justify employee discipline. The Union witnesses were most credible on this point because they testified uniformly that Pappas gave employees such assurances. Pace witnesses, on the other hand, were less credible because they contradicted each other or themselves. For example, while Pappas testified that she affirmatively stated that Pace would use Drive Cam footage for disciplinary purposes, Butler testified that Pappas did not discuss Drive Cam's disciplinary effects one way or the other. Further, as noted above, Haimann contradicted himself.

Pace requires employees to undergo retraining when there is an accident or incident on a bus. Retraining constitutes discipline because the driver receives a Notice of Personnel Action (NOPA) on his record. In contrast, coaching is not discipline because it is not reflected in a driver's safety record and Pace does not issue the driver a NOPA.

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[2] Ferguson told employer witness Joseph Haimann, prior to testifying, to "remember that [he was] union."

Crum testified that he spoke with Jones in Randy Vales's office sometime after December 11, 2008, and before Drive Cam's activation in early January 2009. According to Crum, Jones approached him and asked how the cameras worked and "what they were about." Crum explained how the cameras worked and how Pace intended to use them. He also told Jones that the footage from Drive Cam could support the imposition of discipline against employees. Crum testified that Jones replied he could not agree to that and that he would have to discuss the matter with others in the Union. Jones testified that he never received any notice from Pace management that Pace intended to use Drive Cam for disciplinary purposes prior to the date on which Pace activated the system. Jones further testified that he could not remember whether he talked to Crum between December 11, 2008 and early January, 2009. Jones later testified that he did meet with Crum before Pace activated Drive Cam but that he did not remember whether he met with Crum to discuss Drive Cam, specifically. Finally, Jones testified that it was possible that he met with Crum to discuss Drive Cam some time after the trainings session, though the meeting could not have occurred immediately, or even shortly after, training.

Pace implemented Drive Cam in early January 2009 by activating the outside contracting service which reviews Drive Cam footage. Pace began using Drive Cam for disciplinary purposes within two weeks of Drive Cam's activation. From in or about February 2009, and continuing to date, Pace has disciplined employees for rule violations discovered through review of Drive Cam recordings. Pace has changed none of its disciplinary rules or sanctions.

The number of Pace bus accidents has decreased since Pace implemented Drive Cam. Drive Cam has been used to exonerate employees. It has also been used to press criminal charges against an individual who punched an operator.

On February 23, 2009, Jones drafted and filed the first grievance over discipline issued for employee misconduct that Pace discovered using Drive Cam. Jones continued filing similar grievances.[3]

The Union never demanded to bargain over Pace's installation or disciplinary use of Drive Cam. Crum never received a demand from the Union to bargain over the effects of Drive

[3] The grievances asserted the following: "It has come to the attention of Local 241 that Pace West has started using the Drive Cam camera to discipline our members." Further, "this camera's purpose was supposed to be for security and safety" and "when [Pace] first installed Drive Cam they said it was for safety and security."

Cam's implementation. However, Crum expressed to the Union, on Pace's behalf, that he was willing to discuss Drive Cam's effects.

IV. DISCUSSION AND ANALYSIS

Pace's decision to install and use Drive Cam is not a mandatory subject of bargaining because the installation and use of Drive Cam does not materially change employees' terms and conditions of employment.

1. Central City Test

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, 361-62 (1988); Am. Fed. of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 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 sections 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 Board determines that the benefits of bargaining on the decision-making process outweigh the burdens that bargaining imposes on the employer's managerial 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)).

i. Subject Concerning Wages, Hours or Terms and Conditions of Employment

Pace did not materially change employees' terms and conditions of employment when it installed Drive Cam and used it for disciplinary purposes, even though the system substantially varied Pace's method of investigating employee misconduct, because Drive Cam did not similarly vary the character of proof on which Pace relies to discipline employees.

Under NLRB case law, an employer changes terms and conditions of employment when it substantially varies both the method by which it investigates suspected employee misconduct and the character of proof on which an employee's job security might depend. Johnson-Bateman Co., 295 NLRB 180, 182-84 (1989) (drug/alcohol testing of employees to investigate possible employee responsibility for a sharp increase in workplace accidents was a mandatory subject of bargaining); Medicenter, Mid-South Hosp., 221 NLRB 670, 675 (1975) (introduction of polygraph testing to discover source of workplace vandalism was a mandatory subject of bargaining). The NLRB applied this rule to an employer's installation and use of video surveillance cameras, finding it similarly germane to the working environment and analogous to the use of other technologically-advanced investigatory tools. Colgate-Palmolive Co., 323 NLRB 515, 515 (1997); see also, Bloom Township High School, Dist. 206, 20 PERI ¶35 (IL ELRB 2004) (installation and use of surveillance cameras affected employees' terms and conditions of employment because their use had the potential to affect the job security of monitored employees).

However, in the public sector, the disciplinary use of video surveillance footage does not automatically constitute a material change in employees' terms and conditions of employment, even if it is a new use. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012). Rather, the Board has held that such use does not constitute a material change where (1) the cameras are preexisting, (2) employees are "aware of both [their] presence and functionality," and when (3) the employer did not change its disciplinary rules or sanctions, or (4) subject employees to a new procedure as part of the investigation. Id.

As a preliminary matter, Pace substantially varied the method by which it investigates employee misconduct because it implemented an automated system to initiate review of employee performance when it had previously use only consumer complaints, monitors' reports, and accidents to initiate such review. This change varied Pace's method of investigation because

Pace's historical technique for uncovering bargaining unit member misconduct relied on the application of human skill, judgment, and experience, rather than on an automated system. See Medicenter, Mid-South Hosp., 221 NLRB at 675. Further, the change is substantial because it allows Pace to pinpoint driver misconduct that it otherwise might not have identified through its previous method of investigation since monitors are not on the buses daily and since not every rule violation by an operator causes an accident which would trigger review of that driver's conduct.

However, Pace did not also substantially alter the character of proof on which an employee's job security might depend because Pace did not broaden the scope or quantity of footage it uses to justify employee discipline. First, it is undisputed that Pace used video footage recorded by its preexisting Safety Vision system to justify employee discipline before it installed Drive Cam. More importantly, the scope of the video recorded by Drive Cam is no broader than the scope of video recorded by Safety Vision. Further, the addition of audio capability in this case is negligible because there is no evidence in the record Pace has issued discipline to employees based solely, substantially, or even partially, on the audio portion of the recording and because the video portion of the recording would supply sufficient evidence of such misconduct even absent the audio recording since the sorts of events that trigger Drive Cam require some g-force movement of the bus, not mere vocalization. Finally, the quantity of video produced by Drive Cam is even smaller than that produced by Safety Vision because Drive Cam records only 12 seconds of footage at a time while Safety Vision records continuously throughout a driver's run. Thus, Pace did not substantially change the character of proof on which an employee's job security might depend because it did not broaden the scope or quantity of footage Pace uses to justify employee discipline. But see Johnson-Bateman Co., 295 NLRB at 182-84, Medicenter, Mid-South Hospital, 221 NLRB at 675, Colgate-Palmolive Co., 323 NLRB at 515, (employer substantially changed ***both*** its method of investigation and the character or proof on which an employee's job security might depend).

Contrary to the Union's contention, Drive Cam does not materially change employees' terms and conditions of employment, even though Pace did not regularly consult Safety Vision to catch employee misconduct now pinpointed by Drive Cam, because an employer effects no material change when it "initiate[s] a more dependable method of enforcing its longstanding rule[s]" under circumstances, such as these, where the employer possesses substantially the same

information concerning employee misconduct after the technological change as it possessed before and where the employer has not altered its rules and regulations. See Rust Craft, 225 NLRB 327, 327 (1976) (quoted text); Trading Port, Inc., 224 NLRB 980 (1976)(employer was permitted to unilaterally institute a more scientific and technologically advanced method of determining individual productivity through use of a time clock, even though that method increased the potential for employee discipline by increasing scrutiny of employees, where the employer imposed no new rules and possessed substantially the same amount of information concerning productivity before and after the change); See also Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012) (first time use of video surveillance footage for disciplinary purposes did not change employees' terms and conditions of employment where Village had access to footage but had never before consulted it for that purpose). Accordingly, Pace has not materially changed employees' terms and conditions of employment here because Drive Cam records no new footage and because Pace continues to investigate employees only upon reasonable suspicion of misconduct without instituting new rules.

Further, it is unnecessary to determine whether this analysis might change if Pace management had ultimately assured employees that it would not use Drive Cam to justify employee discipline because Pace conveyed to the Union that it would in fact use Drive Cam for disciplinary purposes and communicated that information to the Union sometime after Pappas told employees otherwise.

First, the testimony indicates that Pace Regional Manager Crum met with Jones and informed him that Pace would use Drive Cam footage for disciplinary purposes. While Jones testified that he never received any notice from Pace management that Pace intended to use Drive Cam for disciplinary purposes prior to the date on which Pace activated the system, Crum's testimony concerning this issue is more credible than Jones's. Here, Crum testified unequivocally as to when and where the meeting occurred. In contrast, Jones's testimony on the same subject was somewhat contradictory and his memory of the events appeared less clear. Crum stated that the meeting occurred sometime between December 11, 2008, and January 1, 2009, and recalled that it occurred in Randy Vales's office. On the other hand, Jones initially testified that he could not remember whether he had met with Crum prior to Drive Cam's activation, but later testified that he did meet with Crum during that time period, though he did not remember whether they discussed Drive Cam, specifically. Finally, Jones admitted that it

was possible that he met with Crum to discuss Drive Cam some time after the trainings session, though the meeting could not have occurred immediately or even shortly afterwards.[4]

Further, the testimony suggests that the meeting occurred some period of time after December 16, 2008, yet before Drive Cam's activation, which took place after January 1, 2009. First, Crum credibly testified that the meeting occurred between December 11, 2008, and early January, 2009. Further, Jones's testimony suggests that the meeting occurred a time after his training session on December 16, 2010, because as of that date, Jones had no concerns that Drive Cam would be used for disciplinary purposes and because Jones likewise testified that any meeting he had with Crum would not have occurred immediately or shortly after his own training session and instead possibly occurred at a later date.[5] Consequently, the Union has not demonstrated that it had a reasonable expectation that Pace would not use Drive Cam footage for disciplinary purposes because Crum informed Jones of Drive Cam's disciplinary use before Drive Cam's implementation but after Pappas stated otherwise.

Thus, Pace did not change employees' terms and conditions of employment when it installed Drive Cam and used it for disciplinary purposes.

V. CONCLUSIONS OF LAW

Pace did not violate sections 10(a)(4) and (1) of the Act when it unilaterally installed Drive Cam and used it for disciplinary purposes.

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

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[4] These credibility determinations are supported by the witnesses' demeanor.

[5] The assertions in the Drive Cam grievances do not undermine this determination because they were made by the very individual whose credibility on this point is questionable because of his equivocal testimony.

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. 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 16th day of October, 2012

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge