STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party and Petitioner,	)	
and	)	Case Nos. S-CA-11-057
	)	S-UC-11-015
International Brotherhood of Teamsters, Local 700,	)	S-UC-11-019
Petitioner	)	
and	)	
City of Evanston,	)	
Respondent and Employer	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On October 12, 2012, Administrative Law Judge (ALJ) Martin Kehoe issued a recommended decision and order (RDO) in the above-captioned consolidated cases finding that the Illinois Labor Relations Board, State Panel, should dismiss an unfair labor practice complaint in Case No. S-CA-11-057 alleging a violation of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), based on charges of a failure to bargain filed by the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) against the City of Evanston (Employer). The ALJ further found with respect to competing unit clarification petitions filed by AFSCME in Case No. S-UC-11-015 and by the International

Brotherhood of Teamsters Local 700 in Case No. S-UC-11-019, that the Board should conduct a secret ballot election to determine employee preference for representation.

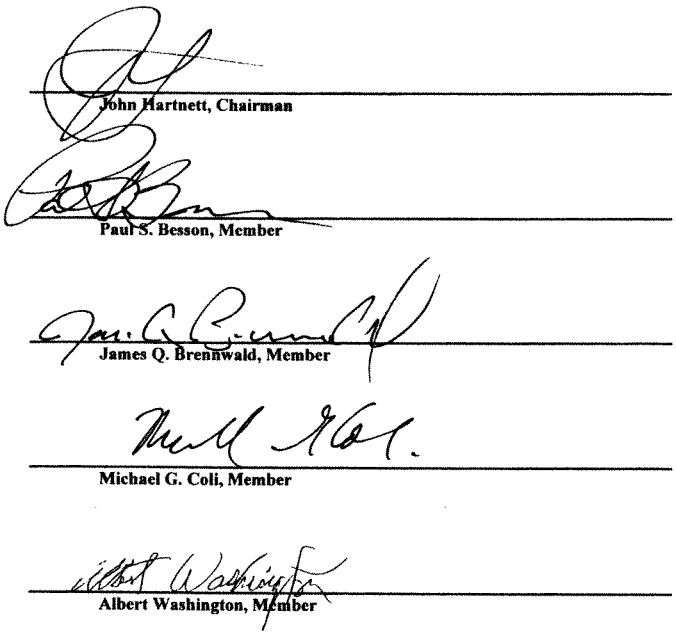
Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, AFSCME filed timely exceptions to the RDO, confined to the unfair labor practice issue. Employer responded and filed cross-exceptions, also confined to the unfair labor practice issue, to which AFSCME filed its own response.

For the reasons articulated by the ALJ, we affirm his findings (1) that the Employer had no obligation to bargain concerning its decision to implement a 3-1-1 call system for the City of Evanston or the associated layoffs of some employees within the bargaining unit represented by AFSCME, and (2) that AFSCME waived its right to bargain over the effects of the Employer's decision by failing to request bargaining. We do not adopt that portion of the ALJ's RDO which finds AFSCME did not expressly waive its rights to bargain by agreeing to a management rights provision contained in the parties' collective bargaining agreement. We offer no opinion on that topic because a finding on it is unnecessary to a resolution of this case. Based on those portions of the RDO we do adopt, we dismiss the unfair labor practice complaint filed in Case No. S-CA-11-057.

Finally, because no exceptions were filed to the ALJ's recommended resolution of the unit clarification petitions filed in Case Nos. S-UC-11-015 and S-UC-11-019, the portion of the ALJ's recommendation addressing those petitions is non-precedential, but binding on the parties. Consistent with the ALJ's recommendation, we direct that a secret ballot election be conducted among the employees employed by the City of Evanston in the position of Service Desk Officer I. Employees eligible to vote shall be given an opportunity to vote between representation by AFSCME in the bargaining unit originally certified in Case No. S-UC- (S)-11-013 or by the

Fraternal Order of Police, Labor Council,[1] in the bargaining unit originally certified in Case No. S-RC-12-047.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



John Hartnett, Chairman

Paul S. Besson, Member

James Q. Brennwald, Member

Michael G. Coli, Member

Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on February 5, 2013, written decision issued in Chicago, Illinois on April 8, 2013.

[1] The unit formerly represented by Teamsters Local 700 is now represented by the Fraternal Order of Police Labor Council which has intervened in the Teamsters' petition and now stands in its stead.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party and Petitioner	)	
and	)	
International Brotherhood of Teamsters, Local 700,	)	Case Nos. S-CA-11-057 S-UC-11-015 S-UC-11-019
Petitioner	)	
and	)	
City of Evanston,	)	
Respondent and Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 27, 2010, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed unfair labor practice charges in Case No. S-CA-11-057 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Evanston (Evanston or the Employer) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act). On the same date, AFSCME also filed a unit clarification petition in Case No. S-UC-11-015 with the State Panel of the Board pursuant to the Act and the Board's Rules. Subsequently, on October 14, 2010, AFSCME filed an amended charge against the Employer. On November 12, 2010, the International Brotherhood of Teamsters, Local 700 (IBT) filed its

own unit clarification petition in Case No. S-UC-11-019 with the State Panel of the Board pursuant to the Act and the Rules.[1]

AFSCME's unfair labor practice charges were investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On December 29, 2010, the Board's Executive Director issued a Complaint for Hearing. A hearing for all three cases was held on June 13, 14, 15, and 16, 2011 before Administrative Law Judge John Clifford in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by all parties. Subsequently, the instant consolidated matter was reassigned to the undersigned Administrative Law Judge.[2] After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate and I find that the Employer is a public employer within the meaning of Section 3(o) of the Act, a unit of local government subject to the Act pursuant to Section 20(b) of the Act, and subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.

2. The parties stipulate and I find that AFSCME is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit)

[1] AFSCME's unit clarification petition seeks to include the newly created service desk officer I (SDO I) position employed by Evanston in the existing bargaining unit originally certified in Case No. S-UC-(S)-11-013 while IBT's unit clarification petition seeks to include the same position in the existing bargaining unit originally certified in Case No. S-AC-11-007.

[2] As addressed in greater detail below, on July 18, 2012, the Fraternal Order of Police Labor Council (FOP) filed a motion to intervene.

comprised of persons employed by Evanston in various job classifications and departments.

3. The parties stipulate and I find that IBT is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Police Unit) comprised of persons employed by Evanston in various job classifications within the police department.

4. The parties stipulate and I find that, during the relevant time period, AFSCME and Evanston were parties to a collective bargaining agreement effective March 1, 2010 to December 31, 2011.

5. The parties stipulate and I find that, during the relevant time period, IBT and Evanston were parties to a collective bargaining agreement.

6. The parties stipulate and I find that, on September 10, 2010, Evanston sent an e-mail to AFSCME and IBT announcing a new position of service desk officer I (SDO I) and appending the job description for that position.

7. The parties stipulate and I find that, on or about September 24, 2010 and September 28, 2010, Evanston issued layoff notices to six Unit employees informing them that they would be laid off effective December 31, 2010 due to a business reorganization establishing a 3-1-1 call center. Of these six Unit employees, three were switchboard operators employed in the office of the city manager (Donald Westman, Akasha Terrier, and Jean Bauer), one was a public works department clerk II (Paulina Albazi), one was a water billing clerk (Juanita Henderson), and one was a health department clerk II (Barbara Lee).

8. The parties stipulate and I find that, of these employees, Donald Westman, Akasha Terrier, and Jean Bauer were actually laid off effective February 28, 2011. Pauline Albazi's position was eliminated but, due to a vacancy in another clerk II position in public works, she remained with the department and was not laid off.

9. The parties stipulate and I find that the 3-1-1 call center became operational on March 1, 2011. It is currently staffed by eight full-time and three part-time employees classified as SDO Is. It is open for calls seven days per week from 7 a.m. to 7 p.m.

10. The parties stipulate and I find that the service desk officer position within the Police Unit prior to September 2010 was subsequently changed to the position title of service desk officer II (SDO II).

11. The parties stipulate and I find that Evanston's police department currently houses Evanston's 9-1-1 call center and 3-1-1 call center. The police department has a non-emergency telephone number which is answered by SDO IIs, who work within the police department's support services division.

12. The parties stipulate and I find that, prior to March 1, 2011, telephone calls to Evanston's main number, 847-328-2100, were answered at Evanston's civic center by switchboard operators from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday. Public works, water, and health department calls for service or information were answered at each of the departments by the public works clerk II, water billing clerk, and health department clerk II, respectively. All calls to 847-328-2100 are now routed directly to Evanston's 3-1-1 call center.

II. ISSUES AND CONTENTIONS

As characterized by the Complaint for Hearing, in Case No. S-CA-11-057, AFSCME contends that the Employer committed unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Act when it laid off six Unit employees and transferred their duties to employees in the SDO I position without notice to AFSCME or offering it an opportunity to bargain. The Employer denies these charges. In addition to these initial unfair labor practice issues, the instant consolidated matter involves two competing unit clarification petitions. In Case No. S-UC-11-015, AFSCME contends that the SDO I position belongs in its Unit while, in Case No. S-UC-11-019, IBT contends that the Board should clarify its Police Unit to include the same SDO I title. IBT's contention is supported by the Employer.

III. FINDINGS OF FACT

Chronology of Events

Evanston provides a variety of services through a number of separate departments. Some of these departments are divided into smaller divisions. The administrative services department, for example, is divided into four divisions: finance, human resources, IT, and parking services. In addition, the utilities department includes Evanston's water and sewer divisions.

Before the creation of Evanston's 3-1-1 call center, each department created and handled its own service requests using its own employees. Though Evanston once employed a small number of switchboard operators, these employees did not create service requests for any of Evanston's departments. In general, switchboard operators simply transferred calls to an appropriate department.

In August of 2009, Wally Bobkiewicz took office as the city manager of Evanston. Shortly thereafter, Bobkiewicz determined that, in order to respond to popular concerns about Evanston's poor customer service and a perceived need for improved communication, Evanston needed to establish a 3-1-1 service. Unlike the decentralized services provided by Evanston at the time, under a 3-1-1 model, most calls would be directed to a central 3-1-1 call center that could provide information and handle service requests for all of Evanston's departments. The establishment of this 3-1-1 call center would be one part of a larger "360 Degrees of Communication" initiative which was meant to improve the way Evanston communicated with its residents and generally make Evanston more accessible.

In December of 2009, Bobkiewicz mentioned the 3-1-1 call center idea to Joseph McRae, the assistant city manager. Subsequently, in January and February of 2009, McRae researched a variety of 3-1-1 models and sought to determine whether such a project was possible in Evanston. Since March 1, 2010, McRae has formally served as "project leader" of the 3-1-1 call center project. On March 17, 2010, McRae presented the 360 Degrees of Communication initiative to Evanston's city council and explained the role of a 3-1-1 call center. At this time, it had not yet been determined whether the 3-1-1 project would be implemented. Nonetheless, in April of 2010, Richard Eddington, Evanston's chief of police, directed Sue Pontarelli, the main supervisor of the police department service desk, to assist McRae with various aspects of the 3-1-1 call center reorganization. Subsequently, McRae and Pontarelli toured the call centers of Aurora, Chicago, and Naperville.

In the spring of 2010, Cheryl Chukwu of Evanston's human resources division prepared a preliminary reorganization list for McRae.[3] This list generally included all of Evanston's secretaries, clerks, and related positions. Additionally, between April and August of 2010, McRae met with the directors of all of Evanston's departments in order to find out which employees took calls from individuals looking for information or initiating service requests. During this time, McRae also sought to determine the specific systems each department used to handle these calls, if any.

During a June 2, 2010 meeting, agents of the Employer determined that Pontarelli should supervise the 3-1-1 call center's employees. After considering a variety of options, it was also determined that the 3-1-1 call center should be located within the police department. This location was chosen because of its available space, its proximity to the 3-1-1 call center employees' supervisor, its relative safety, and its emergency power source.[4] During this meeting, it was not discussed which bargaining unit would include this position.

A separate June 2010 meeting, which took place in a police training room, concerned a number of citywide issues. During this meeting, Bobkiewicz spoke to a variety of Evanston employees about the creation of a 3-1-1 call center. At that time, Bobkiewicz indicated to Sarah Jones, a police department review officer and an AFSCME local vice president, that AFSCME employees would be laid off but, because the 3-1-1 call center's new position would be included in the AFSCME bargaining unit, AFSCME would not lose members. Later that week, Jones reported this information, in person, to Florence Estes, an AFSCME staff representative who

[3] At that time, Chukwu officially served as organizational development manager. However, since January of 2010, Chukwu had been transitioning into the role of Evanston's human resources division manager. Chukwu has officially served as the human resources division manager since March 1, 2010.

[4] While a location in the basement of the civic center was considered, that location allegedly raised concerns about flooding issues and employee safety after normal business hours. As originally conceived, the 3-1-1 call center would have been operational 24 hours a day. The police department's building is the only "consistently manned, 24-hour facility" in Evanston.

serves as chief negotiator when bargaining with the Employer, and Kevin Johnson, AFSCME's local union president.

During a July 27, 2010 meeting, Chukwu was presented with a preliminary draft of a job description for the then-unnamed 3-1-1 call center operator position which would later be described as a service desk officer I (SDO I).[5] During this meeting, Chukwu indicated to those in attendance that she felt that this new position appeared to be a "feeder position" for the service desk officer II (SDO II) position, a position represented by IBT, because, according to Chukwu, this new position's responsibilities appeared to be similar to the responsibilities of an SDO II. However, the new position did not have any of an SDO II's responsibilities that related to the jail or walk-ins. During this same meeting, McRae and Pontarelli also presented a timeline that included a hiring and training schedule. This timeline indicated that the 3-1-1 call center should be operational by March 1, 2011.

During an August 5, 2010 meeting in Chukwu's office, Chukwu and Johnson discussed a variety of pending matters including, inter alia, setting up regularly scheduled labor relations meetings. At this time, Chukwu also notified Johnson that, though a final determination had not been made, the new 3-1-1 call center position could be placed in an IBT bargaining unit. In response, Johnson suggested that, if AFSCME employees were laid off and the Employer decided not to make the new position an AFSCME position, AFSCME "would have a very big problem with that." Testimony also suggests Johnson indicated to Chukwu that, if this change occurred, it would not go over well. Johnson later reported this information to Estes.

[5] This draft was prepared by McRae and Pontarelli. To create this draft, McRae and Pontarelli used elements of the job descriptions of similar positions in Chicago and Naperville as well as aspects of the job description of a service desk officer II (SDO II). When this job description was being created, it had not yet been determined which bargaining unit should include this position.

On August 23, 2010, Estes sent an e-mail to Judith Napoleon, a human resources specialist working for Evanston, asking whether a job description existed for the new position. Soon after, Napoleon replied that a job description did not exist at that time. Responding, Estes indicated that, if created, AFSCME expected the position to be an AFSCME position.

In the late summer of 2010, representatives of the Employer determined that the SDO I position seemed to fit into IBT's Police Unit and, around the beginning of September of 2010, the initial draft of a job description for the SDO I position was submitted to Evanston's human resources division. Around the same time, Eddington asked representatives of IBT (including Kevin Camden, an attorney for IBT, and Ted Schienbien, an IBT union steward) whether their bargaining unit included and would accept part-time employees. Responding, IBT's representatives indicated that IBT did not have a problem with representing part-time employees. However, Eddington and IBT did not enter into a formal agreement on the matter.

On September 10, 2010, Chukwu sent an e-mail to representatives of AFSCME and IBT indicating that the new SDO I position would likely be classified as an IBT position. This e-mail also included, as an attachment, the job description for this new position. During a September 14, 2010 phone call about the 3-1-1 call center reorganization, Estes asked Joellen Earl, the director of Evanston's administrative services department, why the position was being classified as an IBT position. Earl initially responded that the placement had not yet been determined. However, later that same day, Earl sent Estes an e-mail clarifying that the position had indeed been classified by the Employer as an IBT position. Estes did not respond to Earl's e-mail, but did send an e-mail to Johnson to advise him of the Employer's position.

In an e-mail sent on September 17, 2010, Chukwu requested a meeting with Estes and Johnson in order to provide updates concerning the 3-1-1 call center. Separately, it was

determined that this meeting was to occur on September 24, 2010. Thus, on September 17, 2010, the city manager's office confirmed this September 24, 2010 meeting date with Estes and Johnson by e-mail. The subject line of this confirmation e-mail read "Tentative - Layoffs."

The job description for the SDO I position was posted on the Evanston's website on September 21, 2010. Applicants could apply for this new position online. Although this posting indicated that an SDO I's work would be guided, in part, by a "Teamster contract," testimony suggests that, at this point, the SDO I position was not yet officially an IBT position.

On September 22, 2010, at the close of a grievance meeting unrelated to the 3-1-1 call center reorganization, Chukwu indicated to Estes that she wanted to speak with Estes about the SDO I position. Estes replied that she did not have time to discuss the 3-1-1 call center because she had to attend another meeting in Aurora later that same day. Estes' testimony also indicates that, at that time, she felt there was no reason to discuss this topic because, in Estes' mind, a related meeting had already been scheduled and the Employer had already made up its mind.[6]

In accordance with standard procedure, at some point shortly before the September 24, 2010 meeting, Bobkiewicz instructed certain department directors and supervisors to meet with those employees who would later be given layoff notices and alert them of what was expected to occur. As the supervisor of the switchboard operators, McRae met with each switchboard operator and made him or her aware of what the later meeting would entail.

A September 23, 2010 e-mail notified AFSCME of another meeting that would take place on September 28, 2010. This e-mail also listed the specific AFSCME employees that would be given layoff notices at this September 28, 2010 meeting. The subject line of this e-mail read, "Layoff notices."

---

[6] However, Estes also testified that, at least when she received the September 17, 2010 e-mail confirming the September 24, 2010 meeting, she believed that the parties involved could still possibly talk about ways to avoid proposed layoffs during the September 24, 2010 meeting.

The next day, the September 24, 2010 meeting occurred as scheduled. During this meeting, after an initial dispute concerning the purpose of the meeting, certain employees were called in one at a time and provided packets with layoff notices. At this time, according to her testimony, Estes told the Employer's representatives that she thought that what the Employer was doing was wrong.[7] Layoffs did not occur immediately, however. As set out in the stipulations above, depending on the employee, these layoffs would not take effect until December 31, 2010 or February 28, 2011. After the September 24, 2010 meeting, Estes filed an unfair labor practice charge with the Board.

On September 27, 2010, Chukwu sent an e-mail to Estes, Johnson, and Shawn Pestka, AFSCME's local executive vice president, that included copies of the documents that were provided to the notified employees during the September 24, 2010 meeting. In this e-mail, Chukwu noted that she and Johnson had conducted "preliminary discussions about this process since late July" and reaffirmed that her prior offer to have a formal meeting regarding the elimination of the AFSCME positions remained on the table. Chukwu was not contacted about this offer. Subsequently, the second layoff meeting occurred, as scheduled, on September 28, 2010.

All of the employees who were laid off as part of the 3-1-1 call center reorganization were encouraged to apply for the new SDO I position and were offered free tutorial sessions to help them do so. Although the deadline for applying for this position had already passed, this date was extended for the laid off employees. Nonetheless, even these applicants were expected to go through the normal testing process.

---

[7] Estes' testimony also alleges, without additional clarification, that Estes tried to get the Employer's representatives to stop the layoffs.

After submitting an application, each applicant took a test. This test was followed by a panel interview. All initial interviews were completed by October of 2010. Those applicants that passed the test and the panel interview were fingerprinted and subjected to a background check. If the chief of police approved a background check, the successful applicant was sent for a psychological exam.

Two former switchboard operators, Terrier and Bauer, applied for the SDO I position but failed the initial test. Westman, the third former switchboard operator, chose not to apply for an SDO I position. Although she passed the initial test, Juanita Henderson, a former public works employee, performed poorly during her interview and was unable to timely supply a high school diploma as required.[8]

In October of 2010, McRae presented the city council with a range of information related to the proposed 3-1-1 call center, including a list of positions that would be impacted by the 3-1-1 call center reorganization. Soon after, in November of 2010, the city council approved of the 3-1-1 call center implementation. After this approval, the Employer put out a bid for the physical conversion of the police department's conference and mail rooms that were to house the 3-1-1 call center.

All elements of initial hiring for SDO I position were completed by January 26, 2011. In January and February of 2011, the Employer initiated the process of implementing the physical modifications to the police department's conference and mail rooms. Later, the 3-1-1 call center officially opened, as scheduled, on March 1, 2011.

[8] Henderson is currently employed as a full-time records input operator for Evanston's police department. The record does not appear to reveal why Barbara Lee, who was also laid off, was not hired or whether she applied for an SDO I position.

3-1-1 Call Center: Service Desk Officer Is

Since March 1, 2011, Evanston has maintained a 3-1-1 call center that answers a wide variety of calls on behalf of Evanston and all of its departments. The 3-1-1 call center is physically located inside the police department building and is situated across the hall from the police department's service desk. While its schedule is constantly under review, at the time of the hearing, the 3-1-1 call center operated from 7:00 a.m. to 7:00 p.m., seven days a week.

The 3-1-1 call center is largely operated by uniformed SDO Is. At the time of the hearing, there were eight full-time and three part-time SDO Is. All of these employees were represented by IBT. SDO Is are supervised by Pontarelli, who is supported by Pandora Pratt, Pontarelli's assistant supervisor. In general, SDO Is answer calls for all of Evanston's services, provide answers to callers' questions, and, when appropriate, create work order tickets known as service requests.

To create a service request, SDO Is use Evanston's GovQA computer program. After determining a particular caller's needs and selecting the most applicable service request category from a list, an SDO I inputs the necessary details and contact information into the program. Completed requests are then transmitted to the appropriate department. At this point, an SDO I can send a confirmation to the caller that indicates that the request been made. This confirmation also includes a unique confirmation number that can be used by the caller to check on the status of his or her request. If numerous service requests concern the same event, an SDO I can use a tagging and mapping option to group service requests together.

Once a service request is received by the appropriate department, a separate employee working for that department is expected to document how and by whom the service request is being addressed. When the requested service is completed, the individual who performed the

requested service "closes" the service request and indicates that the service has been completed. As SDO Is do not typically perform service requests, this step is usually not performed by an SDO I.

SDO Is can reopen or add notes to any service request at any time. This could occur, for example, when someone calls back and indicates that his or her request has not been completed or if that caller simply wants to check on the status of a request. One SDO I can modify the service requests created by another SDO I. If a service request is "closed out," the service request can be reopened by a supervisor.

In addition to creating and working with service requests, SDO Is can also answer callers' questions about a wide variety of topics and explain Evanston's many procedures and services. For example, SDO Is have provided driving instructions and have helped callers with inquiries about their bills. To do so, SDO Is can, if necessary, use Evanston's frequently asked questions (FAQ) system and can search the Internet. Also, if necessary, SDO Is can offer to call an individual back and provide an answer at a later time.

As a matter of policy, SDO Is are generally not expected to transfer calls. However, transfers do occur when necessary. All calls that are transferred from the 3-1-1 call center are supposed to be "warm transfers." To conduct a warm transfer, an SDO I dials the telephone number of the department or individual that will be receiving the transferred call. If possible, the SDO I describes the caller and his or her issue to an intended recipient before transferring the call. Alternatively, if the SDO I's call reaches a voice mail system, the SDO I must ask the caller if he or she would like to leave a message. If the caller is willing to be transferred to the voice mail system, the SDO I transfers the call. However, if the caller does not want to be transferred to the voice mail system, the SDO I can send the intended recipient an e-mail or provide the

caller with the relevant department's hours of operation. In general, an SDO I would not provide a caller with a department's telephone number. In fact, many if not all of the departments' main numbers are now automatically transferred to the 3-1-1 call center.

Evanston's telecommunicators work out of the police department's 9-1-1 call center and generally answer incoming emergency calls for service on behalf of Evanston's police and fire departments. If an SDO I determines that a caller has an emergency call and should have dialed 9-1-1, the SDO I warm transfers the call to a telecommunicator and hangs up. Subsequently, the SDO I is expected to conduct a follow-up to make sure a 9-1-1 telecommunicator spoke with the caller and dispatched the appropriate personnel. SDO Is can determine whether police or fire personnel have been dispatched by monitoring Evanston's computer-aided dispatch (CAD) system and by listening to a scanner. If it appears to an SDO I that the appropriate personnel have not been dispatched, the SDO I is expected to call the 9-1-1 call center and inquire about the matter.

Regardless of the type of call received, at the end of each call, an SDO I completes a "wrap-up box" on his or her screen by selecting an appropriate category or department from a list. This action labels and tracks the type of the telephone call the SDO I received. After selecting from this list, the SDO I returns to "ready status" and can receive another call.

In addition to the call-in component described above, the 3-1-1 call center also maintains an online component. Through this online service, individuals can create their own service requests, at any time, without the assistance of an SDO I. After an individual creates his or her service request, he or she receives a confirmation number that can later be used to check on the status of that request. Individuals can also e-mail questions to the 3-1-1 call center through this online component.

Police Department Service Desk: Service Desk Officer IIs

Evanston's police department service desk is manned by a number of uniformed SDO IIs that have been included in IBT's Police Unit.[9] SDO IIs are supervised by Pontarelli, who is assisted by Pratt. The service desk's three shifts cover every hour of every day as well as all weekends and holidays. In general, the duties of the SDO IIs have not changed since the creation of the 3-1-1 center. SDO IIs manage the service desk's walk-in traffic, write reports, and may perform a "lockup function." In addition, SDO IIs answer the police department's nonemergency telephone line.

When an SDO II receives an appropriate nonemergency call, the SDO II collects information about the caller and enters this information into the police department's CAD system. A CAD "event" is created anytime a police presence is needed and an SDO II requests a dispatch. If an individual calls back, an SDO II can update the caller's information, if necessary. Further, an SDO II may call someone back in order to get additional information or provide an update.

To clarify, an SDO II does not dispatch officers on his or her own. Instead, all dispatching is handled by the dispatchers of the police department's 9-1-1 call center. However, SDO IIs do use the CAD system and monitor a scanner in order to determine whether a dispatcher has addressed a caller's concerns.

Under some circumstances, an SDO II may transfer a call to another area within the police department. If an SDO II receives an emergency call, for example, he or she is expected to transfer that call to the 9-1-1 call center. During Evanston's normal business hours, calls that are unrelated to the police department are transferred to the 3-1-1 call center. Under different circumstances, SDO IIs may attempt to answer a caller's basic questions or work with a separate

[9] Originally, SDO IIs were simply called "service desk officers."

department. Additionally, SDO IIs can access the software used by SDO Is and can create service requests.

Civic Center Information Desk: Switchboard Operators

The switchboard operator position was eliminated when the 3-1-1 call center was created. However, before the establishment of the 3-1-1 call center, Evanston employed one full-time switchboard operator, Donald Westman, and two part-time switchboard operators, Jean Bauer and Akasha Terrier. All of these switchboard operators were supervised by McRae and were represented by AFSCME. Switchboard operators worked at a public information desk in Evanston's civic center Monday through Friday from 8:30 a.m. to 5:00 p.m., Evanston's normal business hours. Switchboard operators did not wear uniforms.

Centrally, the switchboard operators were responsible for answering Evanston's general telephone number and transferring these calls to the appropriate department. This general telephone number also functioned as the main line for the civic center. The civic center's main line and Evanston's general telephone number are now answered by the SDO Is of the 3-1-1 call center.

Unlike SDO Is, it was not mandatory for switchboard operators to conduct warm transfers. Generally, after answering the telephone and offering an initial greeting, each switchboard operator determined what the caller needed help with and where to transfer a call. When the switchboard operator transferred a call to a department, he or she put the caller on hold and dialed the department's telephone number. If someone from the department answered the switchboard operator's call, the switchboard operator simply patched the call through to the department. However, if the department's line was busy or no one answered the call, the switchboard operator updated the caller and provided him or her the department's telephone

number and office hours. A switchboard operator did not transfer the call to a busy signal. If the switchboard operator reached a department's voice mail system, the switchboard operator gave that caller the option of either leaving a message with the department or receiving basic information from the switchboard operator.

Switchboard operators were not responsible for creating service requests, taking messages, helping callers leave messages, or leaving messages on a caller's behalf. Additionally, the switchboard operators did not have discussions with a department's employees. Rather, the switchboard operator simply transferred the caller as soon as a department employee answered the telephone. Further, the switchboard operators did not follow-up with a caller or a department after a call. Likewise, switchboard operators did not write reports or take down any information about callers.

If a switchboard operator did not answer a call, the caller was provided with automated prompts for different departments and individuals. Through this system, switchboard operators could receive voice mail. However, switchboard operators generally did not respond to a caller's voice mail. If a voice mail message concerned an issue related to a particular department, that message was simply transferred to the appropriate department. Switchboard operators only used the phone system's caller ID function to call someone back if a call was disconnected. Calls that came in outside of Evanston's normal business hours were automatically transferred to the police department service desk.

In addition to transferring callers, switchboard operators were also expected to answer some "basic, nontechnical questions." For example, in response to a caller's inquiry, switchboard operators could provide hours of operation, locations, and general information about departments. Other, more technical calls were transferred. However, if a switchboard operator

happened to know the answer to a caller's question, the switchboard operator could provide that answer.

Switchboard operators were also responsible for greeting and responding to the civic center's walk-ins. If an individual walked up to the civic center's information desk, a switchboard operator attempted to point the individual in the right direction. If a walk-in needed a transfer stamp, for example, the switchboard operator directed that individual to the city clerk's office.[10]

Separately, switchboard operators also performed mailroom duties which included sorting, metering, preparing, sending, and accepting mail. Additionally, switchboard operators distributed incoming mail received from the post office and placed that mail in the appropriate mailboxes. If a package was too large for a mailbox, a switchboard operator performing this function might also alert an individual that a package has arrived and needed to be picked up.[11]

IV. DISCUSSION AND ANALYSIS

Alleged Unfair Labor Practices

The Complaint for Hearing in Case No. S-CA-11-057 alleges that Evanston violated Sections 10(a)(4) and (1) of the Act when, without notice to AFSCME or offering AFSCME an opportunity to bargain, it laid off six Unit employees and transferred the duties of those Unit employees to employees in the SDO I position. As a general rule, in order to prove a violation of Section 10(a)(1) of the Act, a charging party must establish, by a preponderance of the evidence,

[10] Currently, incoming foot traffic is largely guided by a sign that directs to the city clerk's office. Occasionally, walk-ins are now assisted by a high school volunteer.

[11] After the 3-1-1 call center was implemented, these mailroom duties were transferred to the city clerk's office. As a result, that office had to create and fill a new, part-time mailroom attendant position. Currently, this mailroom attendant handles mailroom tasks exclusively and does not greet walk-ins or answer a telephone. The mailroom attendant position is an AFSCME position and, since April 25, 2011, has been filled by Akasha Terrier, a former part-time switchboard operator.

that the employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of their rights under the Act. State of Illinois, Department of Central Management Services (Department of Mental Health and Developmental Disabilities), 12 PERI ¶2037 (IL SLRB 1996); Chicago Housing Authority (Kirk), 6 PERI ¶3013 (IL LLRB 1990).[12] Pursuant to Section 10(a)(4) of the Act, it is an unfair labor practice for a public employer or its agents "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." If the public employer fails to bargain in this way, it violates not only its Section 10(a)(4) duty but, derivatively under Section 10(a)(1), those employees' rights to have a representative as the Act envisions. A public employer also 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 notice to and an opportunity to bargain with its employees' exclusive bargaining representative. County of Lake, 28 PERI ¶67 (IL LRB-SP 2011); City of Chicago (Department of Police), 21 PERI ¶83 (IL LRB-LP 2005); County of Perry and Sheriff of Perry County, 19 PERI ¶124 (IL LRB-SP 2003). However, a public employer's duty to bargain extends only so far as the employees have a right under the Act. See Aurora Sergeants Association and City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008); County of Perry and Sheriff of Perry County, 19 PERI ¶124.

Together, Sections 7 and 4 of the Act govern the issue of mandatory bargaining under the Act. County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶3008 (IL LLRB 1998). Generally, according to Section 7 of the Act, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment – the "mandatory"

[12] In unfair labor practice cases, the burden of proof is generally upon the charging party. See Village of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010).

subjects of bargaining. See County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18 (IL LRB-SP 2011); City of Peoria, 3 PERI ¶2025 (IL ISLRB 1987).[13] However, under Section 4 of the Act, some subject, itself a matter of wages, hours, or other conditions of employment, may yet be something about which employees have no right to bargain and consequently the employer is under no duty to bargain. See American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d 327, 331, 653 N.E.2d 1357, 1360 (5th Dist. 1995); City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008); State of Illinois, Departments of Central Management Services and Corrections, 5 PERI ¶2001 (IL SLRB 1988); State of Illinois, Department of Central Management Services, 1 PERI ¶2016 (IL SLRB 1985).[14]

If there is a dispute as to whether a bargaining proposal is a mandatory bargaining subject or instead constitutes the exercise of the public employer's inherent managerial authority, the issue must be examined pursuant to the Illinois Supreme Court's analysis in City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 692 N.E.2d 295 (1998) and Central City Education Association v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496, 599 N.E.2d 892 (1992). Pursuant to this analytical framework, the first determination that is required concerns whether the employer's action involves wages, hours, or terms and conditions of employment. If it is determined that the disputed action does not concern wages, hours, or terms

---

[13] Specifically, Section 7 of the Act, in relevant part, defines the public employer's and exclusive representative's duty to bargain collectively as "the mutual obligation"

> to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

[14] Section 4 of the Act provides, in part, that public employers

> shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

and conditions of employment, the inquiry concludes and the employer does not have any duty to bargain about the proposal. However, if the disputed action does involve wages, hours, or terms and conditions of employment, the analysis instead must consider whether the action also concerns the employer's inherent managerial authority. If the action does not involve any inherent managerial authority, the inquiry concludes and, in that case, the employer would then be required to bargain in good faith with the union concerning its action. Alternatively, if the analysis concludes that the action also involves the employer's inherent managerial authority as well as wages, hours, or terms and conditions of employment, the final step of the required analysis is to balance the benefits that bargaining will contribute to the decision-making process against any burdens that bargaining might impose on the employer's authority. City of Belvidere, 181 Ill.2d at 205, 692 N.E.2d at 302; Central City Education Association, 149 Ill.2d at 508, 599 N.E.2d at 897.[15]

Thus, AFSCME must first show that there has been a unilateral change in a matter which is a mandatory bargaining subject. In this instance, it is relatively clear that the 3-1-1 call center reorganization necessarily affected employees' wages, hours, and terms or conditions of employment because, as a result of the reorganization, a number of employees were laid off. Moreover, to some degree, certain aspects of their work were indirectly transferred to other employees. See American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d at 333, 653 N.E.2d at 1362; State of Illinois, Department of Central Management Services (Department of Corrections), 17 PERI ¶2046 (IL LRB-SP 2001);

[15] To put it differently, a decision is a mandatory subject of bargaining if it concerns wages, hours, or 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 outweigh the burdens bargaining imposes on the employer's authority. City of Belvidere, 181 Ill.2d at 205, 692 N.E.2d at 302; Central City Education Association, 149 Ill.2d at 508, 599 N.E.2d at 897; City of Chicago (Department of Police), 21 PERI ¶83.

County of Cook and Cook County Sheriff, 12 PERI ¶3021 (IL LLRB 1996); Community College District 508 (City Colleges of Chicago), 13 PERI ¶1045 (IL ELRB 1997); Jacksonville District No. 117, 4 PERI ¶1075 (IL ELRB 1988). It is also clear that the Employer implemented these changes without bargaining with AFSCME. Nevertheless, an employer's decision to create a position and/or transfer bargaining unit work to that position is a matter of inherent managerial authority when that employer has engaged in a "legitimate reorganization." State of Illinois, Department of Central Management Services (Department of Corrections), 17 PERI ¶2046; see County of Cook v. Illinois Labor Relations Board Local Panel, 347 Ill. App. 3d 538, 552, 807 N.E.2d 613, 625 (1st Dist. 2004); County of Cook and Cook County Sheriff, 12 PERI ¶3021.

To establish that its action was a legitimate reorganization, and thus a matter of inherent managerial authority, an employer must demonstrate one or more of the following: (1) that its organizational structure has been fundamentally altered; (2) that the nature or essence of the services provided has been substantially changed; or (3) that the nature and essence of a position has been substantively altered such that the occupants of that position no longer have the same qualifications, perform the same functions, or have the same purpose or focus as had the previous employees. Absent such a basic or substantial change to the employer's organizational structure or services provided, or to the fundamental essence of a position, the Board will not find an employer's decision a matter of inherent managerial authority. State of Illinois, Department of Central Management Services (Department of Corrections), 17 PERI ¶2046. In the instant case, the Employer argues that its actions have satisfied all three elements of this legitimate reorganization test. Accordingly, the Employer argues that its reorganization is a matter of inherent managerial authority and thus not a mandatory subject of bargaining.

Indeed, the record clearly suggests that the 3-1-1 call center reorganization included the creation of a new SDO I position as well as the elimination of the switchboard operators and certain clerk positions in three of Evanston's departments. According to this new organizational structure, SDO Is are supervised by Pontarelli and Pratt, who also supervise the SDO IIs of the police department service desk. All of these employees now ultimately report to Eddington, Evanston's chief of police. In contrast, prior to the reorganization, the switchboard operators were immediately supervised by McRae while each of the eliminated clerks immediately reported to the applicable supervisor of her department. Moreover, by implementing this particular reorganization, the Employer has consciously and significantly changed how it communicates with and provides services to the public and appears to have appreciably altered how many of its various component parts interact. In addition, many of these changes have involved a range of physical and technological modifications.

Intuitively, the 3-1-1 call center reorganization allows department-specific employees to focus on providing their particular services and frees up time and resources that, prior to the reorganization, would have been spent handling call volume and generating service requests. However, the 3-1-1 call center reorganization was not simply a rearrangement or consolidation of existing positions or duties. Before the 3-1-1 call center was established, for example, Evanston did not maintain a central service that could handle, issue, and track service requests for all of its departments. Furthermore, no central service provided callers with in-depth answers, guidance, and follow-up concerning a wide variety of subjects. Instead, individuals called a specific department that independently handled its own service requests with its own employees. While individuals could also call Evanston's general telephone number, these calls, in general, were simply transferred to a particular department by a switchboard operator. In this

way, I find that the 3-1-1 call center reorganization can reasonably be viewed as the introduction of an appreciably novel service or, alternatively, as a bona fide or substantial change in the way the Employer provided its existing services. See County of Perry and Sheriff of Perry County, 19 PERI ¶124; County of Cook and Cook County Sheriff, 12 PERI ¶3021.[16]

I also find that SDO Is plainly do not serve the same basic functions or purposes as the eliminated employees. Unlike SDO Is, for example, switchboard operators regularly directed walk-ins and worked in a mailroom. In addition, SDO Is are largely not intended to routinely transfer incoming calls, and thus do not perform a primary function of the switchboard operators. Further, when SDO Is do need to transfer a call, they do so in a different way and for different reasons. To put it simply, what occurs once a call is received by an SDO I is materially or fundamentally different than what occurred once a call was received by a switchboard operator. These calls can also be received for appreciably different reasons. Granted, like the switchboard operators, SDO Is do answer Evanston's main telephone line. However, when doing so, SDO Is uniquely handle calls and service requests on behalf of a number of Evanston's departments and are also uniquely expected to provide callers with a wide range of substantive answers and guidance. To some degree, these distinguishing characteristics also serve to differentiate the functions and purposes of an SDO I from those of the eliminated clerk positions. While the eliminated clerk positions presumably performed a variety of work, by design, this work was largely specific to a particular department or division.[17]

---

[16] Also, because of the nature of this change, it is not evident that the Employer, as a result of new equipment or technology, has simply modified and updated the manner in which its employees performed their jobs. See County of Cook and Cook County Sheriff, 9 PERI ¶3019 (IL LLRB 1993). Put differently, I find that SDO Is are not simply using an updated call transferring or switchboard system to better perform preexisting functions.

[17] Accordingly, the instant matter cannot easily be characterized as a case in which a new position simply absorbed existing functions from other employees. See County of Lake, 28 PERI ¶67; State of Illinois, Department of Central Management Services (Department of Corrections), 17 PERI ¶2046. Separately, I also note that, much like the newly-created position at issue in County of Cook and Cook County Sheriff, 9 PERI ¶3019, Evanston's SDO I

Under these circumstances, I find that the Employer's 3-1-1 call center reorganization can be considered a legitimate reorganization and therefore a matter of inherent managerial authority. However, identifying a matter as one of inherent managerial authority does not preclude the duty to bargain. Village of Franklin Park v. Illinois State Labor Relations Board, 265 Ill. App. 3d 997, 1003, 638 N.E.2d 1144, 1148 (1st Dist. 1994). As outlined above, if it is found that the employer's action concerns wages, hours, or terms and conditions of employment and also involves a matter of inherent managerial authority, then the benefits that bargaining would have on the decision-making process must be weighed against the burdens that bargaining would impose on the employer's authority. City of Belvidere, 181 Ill. 2d at 203, 692 N.E.2d at 302; Central City Education Association, 149 Ill. 2d at 523, 599 N.E.2d at 905, 599 N.E.2d at 905. Accordingly, at this point in the analysis, one must employ a very fact-specific balancing test to determine if this matter is mandatorily negotiable. Central City Education Association, 149 Ill. 2d at 523, 599 N.E.2d at 905; County of Perry and Sheriff of Perry County, 19 PERI ¶124.

To be sure, the Employer's 3-1-1 call center reorganization resulted in the removal of Unit work and Unit positions. Moreover, this reorganization may well have adversely affected the Unit's perceived strength. Under these circumstances, remaining Unit employees may justifiably fear that their positions could similarly be removed from the Unit and that AFSCME would be unable to prevent the Employer's action. In this way, at least, AFSCME's membership, with its strong employee interests, would presumably benefit from bargaining. See Illinois Department of Central Management Services (Department of Corrections), 17 PERI ¶2046.

---

position was clearly developed in conjunction with a newly established program. See County of Cook and Cook County Sheriff, 12 PERI ¶3021.

Furthermore, though the Employer has identified a reasonable motivation for its reorganization, it has not convincingly identified exigent or unusual circumstances which would clearly allow it to avoid its bargaining obligations. See Central City Education Association, 149 Ill. 2d 496, 523, 599 N.E.2d 892, 905 (1992). Presumably, the public concerns which allegedly compelled the changes at issue have existed for some time. Thus, on its own, the Employer's self-imposed, saccharine preference for a March 1, 2011 launch date does not obviously justify the implementation of the 3-1-1 call center prior to bargaining with AFSCME. See County of Lake, 28 PERI ¶67; County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶3008; County of Cook and Cook County Sheriff, 12 PERI ¶3021. Nonetheless, I find that the instant circumstances do not immediately invite the use of the collective bargaining process in this instance.

Routinely, the critical factor in determining whether an employer's decision is subject to mandatory bargaining is the essence of the decision itself, that is, whether it turns on a change in the nature or direction of the employer's operation or turns on labor costs. See City of Peoria, 3 PERI ¶2025; State of Illinois, Department of Central Management Services, 1 PERI ¶2016; Otis Elevator Company, 269 NLRB 891, 892 (1984). Here, both parties seem to agree that the Employer's reorganization is not the result of economic necessity or an attempt to reduce labor costs or other expenses, which would have been particularly amendable to collective bargaining. See County of Lake, 28 PERI ¶67; County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18; Village of Ford Heights, 26 PERI ¶145; City of Peoria, 3 PERI ¶2025. Regarding this issue, the record consistently shows that the 3-1-1 call center reorganization was not viewed as "a cost-saving measure," but rather a larger, "fundamental" change in the way the Employer conducted its business. To the extent that the Employer's decision to restructure and eliminate certain

positions affected employees' wages, hours, and terms and conditions of employment, it did so indirectly.

Whether the issues are amenable to resolution through the negotiations process will also influence whether the employer must bargain in a given situation. Village of Franklin Park, 8 PERI ¶2039 (IL SLRB 1992). Further, in order for bargaining to benefit the decision-making process, the exclusive representative must be able to offer some proposal which addresses the basis of the employer's decision and adequately respond to the employer's concerns. See County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18; Board of Trustees of Southern Illinois University at Edwardsville, 15 PERI ¶1063 (IL ELRB 1998); Community College District 508 (City Colleges of Chicago), 13 PERI ¶1045; Anna-Jonesboro Community High School, District #81, 20 PERI ¶3 (IL ELRB ALJ 2003). Presumably, in this case, an offer by AFSCME to decrease salaries or benefits, for example, would not have addressed the Employer's central concerns. See Illini Bluffs Community Unit District No. 327, 14 PERI ¶1038 (IL ELRB 1998).

In theory, one could speculate that AFSCME might have proposed that its employees be retrained to perform those new tasks presented by the implementation of the 3-1-1 call center reorganization. However, no evidence demonstrates that AFSCME ever offered such a proposal in this instance. Moreover, it is not immediately clear from the record that these employees were particularly amenable to such training or otherwise demonstrated an aptitude for the new position. Notably, although all of the employees that were laid off as part of the 3-1-1 call center reorganization were encouraged to apply for an SDO I position and were offered free tutorial sessions, it appears that all of those employees who did apply were unsuccessful. Furthermore, it

is not clear that such a proposal, even if offered, would necessarily overcome the compelling governmental policy considerations presented by the instant circumstances.

To explain, this analysis recognizes the Employer's inherent managerial right to determine its own organizational structure and function. When conducting this balancing test, the Board should also consider the public employer's mission and the extent to which collective bargaining would interfere with its ability to formulate and implement public policy. County of Cook, 15 PERI ¶3001 (IL LLRB 1998); County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶3008; County of Cook and Cook County Sheriff, 12 PERI ¶3021; Village of Franklin Park, 8 PERI ¶2039; State of Illinois, Departments of Central Management Services and Corrections, 5 PERI ¶2001. Indeed, the Board has recognized that public employers should not be required to bargain over policy decisions which are intimately connected to their governmental mission. City of Belvidere, 11 PERI ¶2042 (IL SLRB 1995); City of Chicago, 9 PERI ¶3001 (IL LLRB 1992); Village of Franklin Park, 8 PERI ¶2039; County of Cook (Cermak Health Services), 3 PERI ¶3030 (IL LLRB 1987); see Board of Trustees of Southern Illinois University at Edwardsville, 15 PERI ¶1063; Community Colleges District 508 (City Colleges of Chicago), 13 PERI ¶1045; Jacksonville District No. 117, 4 PERI ¶1075. Compellingly, when viewed from one angle, this issue essentially concerns the Employer's determination of what is the most effective way to provide public services, presumably a basic function or mission of the Employer. See City of Chicago, 9 PERI ¶3001. Alternatively, this issue might also fairly be characterized as an important governmental policy question of whether or not Evanston should provide a 3-1-1 service at all. Thus, in sum, I find that the burdens of bargaining such a core determination would have been substantial.

Accordingly, in weighing the benefits that bargaining will contribute to the decision-making process against the burdens that bargaining imposes on the Employer's managerial authority, I conclude that, under the facts of this case, the Employer's inherent managerial authority eclipses whatever benefits might be achieved by requiring the Employer to bargain in this instance. Nonetheless, in accordance with Section 4 of the Act, while the decision to reorganize or the reorganization itself may not be mandatorily negotiable, the Employer may yet have an independent duty to bargain over the "impact or effects" of that reorganization. County of Perry and Sheriff of Perry County, 19 PERI ¶124; State of Illinois, Departments of Central Management Services and Corrections, 5 PERI ¶2001; State of Illinois, Department of Central Management Services, 1 PERI ¶2016. Indeed, such bargaining is generally required regardless of whether the employer's underlying decision is a mandatory subject of bargaining. See State of Illinois, Department of Central Management Services, 1 PERI ¶2016; Illini Bluffs Community Unit District No. 327, 14 PERI ¶1038; Community College District 508 (City Colleges of Chicago), 13 PERI ¶1045.

However, a union may waive its statutory right to bargain and obviate any violation. County of Cook, Cook County Hospital, 2 PERI ¶3001 (IL LLRB 1985). The general rule is that a waiver will be found if the evidence shows that the union received sufficient notice of a proposed change, and yet failed to demand bargaining on the issue. See Village of Western Springs, 27 PERI ¶4 (IL LRB-SP 2011); Chicago Housing Authority, 7 PERI ¶3036 (IL LLRB 1991); State of Illinois, Department of Central Management Services, 1 PERI ¶2016; Gratiot Community Hospital v. National Labor Relations Board, 51 F.3d 1255 (6th Cir. 1995); Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013 (1982). Put differently, once adequate notice is received by the labor organization, it is incumbent upon the union, rather than the employer, to

act with due diligence in requesting bargaining. See County of Lake, 28 PERI ¶67; City of Chicago, 9 PERI ¶3001; Chicago Housing Authority, 7 PERI ¶3036; WPIX, Inc., 299 NLRB 525, 526 (1990).[18]

Thus, to determine whether a waiver occurred, it must first be ascertained whether the charging party received sufficient notice of the change at issue. To be timely, notice must be given sufficiently in advance of actual implementation of the change to allow a reasonable opportunity to bargain. Chicago Housing Authority, 7 PERI ¶3036; see Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1013. Generally, a union is not put on sufficient notice that it should demand bargaining until an employer gives it unequivocal and unconditional notice of its intention to take an action affecting bargaining unit employees. County of Cook and Cook County Sheriff, 12 PERI ¶3021 (IL LLRB 1996). However, formal notice of an intended unilateral change is not essential where the union in fact knows of the plan and a formal announcement would be futile. See Chicago Housing Authority, 7 PERI ¶3036; County of Cook, Forest Preserve District of Cook County, and Civil Service Commission of Cook County, 4 PERI ¶3012 (IL LLRB 1988); Citizens National Bank of Willmar, 245 NLRB 389, 403 (1979); U.S. Lingerie Corporation, 170 NLRB 750, 752 (1968).

Here, the record suggests that AFSCME was informed of some of the Employer's planned changes during the June 2010 meeting in which Bobkiewicz orally informed Jones of the planned creation of a 3-1-1 call center and communicated that AFSCME employees would be

[18] In other words, to successfully assert the defense of waiver by inaction, an employer must demonstrate that the union had clear notice of the employer's intent to institute the change, that the notice was sufficiently in advance of the actual implementation so as to allow a reasonable opportunity to bargain about the change, and that the union failed to make a timely request to bargain before the change was implemented. County of Cook, 15 PERI ¶3001; County of Cook and Cook County Sheriff, 12 PERI ¶3021 (IL LLRB 1996). In general, the Board will deem a union to waive its right to bargain mandatory subjects only when it delays making known its desire for such a period of time as, under the circumstances, reasonably suggests it has acquiesced in the matter. See County of Lake, 28 PERI ¶67; City of Chicago, 9 PERI ¶3001; County of Cook, Forest Preserve District of Cook County, and Civil Service Commission of Cook County, 4 PERI ¶3012 (IL LLRB 1988).

laid off as a result. As noted, shortly thereafter, Jones notified Estes and Johnson of these proposed changes. Later, on August 5, 2010, Johnson was informed by Chukwu that that the new 3-1-1 call center position could be placed in an IBT bargaining unit, though the Employer had not yet made a final determination about that issue. Subsequent e-mails sent to AFSCME representatives also concerned various aspects of the Employer's reorganization plans.

In one sense, the record also indicates that the Employer did not truly begin to implement any of its proposed changes until layoff notices were provided in late September of 2010. However, it must be considered that AFSCME was promptly made aware that these layoff notices were not intended to actually go into effect until several months later. Similarly, one might also note that, while an SDO I job description was posted online on September 21, 2010, the Employer's reorganization plans were not formally approved by its city council until November of 2010 and the Employer did not hire any SDO Is until January of 2011. Furthermore, despite the physical modifications and hiring that might have occurred as early as January of 2011, the 3-1-1 call center was not formally operational until March 1, 2011. Presumably, this protracted timeline afforded AFSCME with a meaningful opportunity to bargain. With such advance notice, a request to bargain was warranted.

Concerning this issue, AFSCME argues that, in order to ascertain whether the new position encapsulated Unit work and thus know whether to demand bargaining, AFSCME first needed a job description that detailed the essential functions of the SDO I position. Indeed, notice of proposed changes must adequately set forth what the changes entail, as well as grant sufficient time to bargain. See EIS Brake Parts, 331 NLRB 1466, 1490 (2000). Yet, on September 10, 2010, Chukwu sent AFSCME a copy of the SDO I job description by e-mail. Thus, at least according to AFSCME's proffered logic, it was provided with meaningful notice,

on September 10, 2010. However, even this suggested notice date sufficiently preceded the subsequent implementation of the changes at issue. Notably, even short notice of several days is sufficient to permit an employer to implement a proposed change in conditions if the union had not requested bargaining in that short space of time. See Jim Walter Resources, Inc., 289 NLRB 1441, 1442 (1988); Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1018; Hartmann Luggage Company, 173 NLRB 1254, 1255 (1968).

On the other hand, it is clear that AFSCME did not formally or explicitly request to bargain over the changes announced by the Employer. Instead, during the August 5, 2010 meeting described above, for example, Johnson merely indicated to Chukwu that AFSCME "would have a very big problem" if any AFSCME members were laid off because of the 3-1-1 call center reorganization and that such a change would not go over well. Similarly, according to her testimony, during the September 24, 2010 "layoff meeting," Estes simply indicated to some of the Employer's representatives that she personally thought the purpose of that meeting was "to discuss the 311 positions," that AFSCME had hoped it "would figure something out" for its members, and that Estes "thought that what they were doing was wrong."

Although such evidence establishes that AFSCME representatives have communicated some disagreement with some aspects of the Employer's plans, merely objecting to or protesting a managerial decision does not necessarily constitute an effective request to bargain over the impact of such decisions. See County of Lake, 28 PERI ¶67; County of Perry and Sheriff of Perry County, 19 PERI ¶124; Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1017; Citizens National Bank of Willmar, 245 NLRB 389, 390 (1979); American Buslines, Inc., 164 NLRB 1055, 1056 (1967). No matter how vociferously a union objects to a change, it must also make clear to the employer its desire to bargain about the proposed changes. See Jim Walter

Resources, Inc., 289 NLRB at 1442; Owens-Corning Fiberglas, 282 NLRB 609, 613 (1987); Kentron of Hawaii Ltd., 214 NLRB 834, 835 (1974). In addition, neither a union's filing of an unfair labor practice charge nor an allegation that a proposed change is illegal relieves that union of its obligation to request the employer to bargain over the proposed change. See Chicago Housing Authority, 7 PERI ¶3036; Associated Milk Producers, Inc., 300 NLRB 561, 563 (1990); Illinois-American Water Company, 296 NLRB 715, 722 (1989); Owens-Corning Fiberglas, 282 NLRB at 613; but see County of Lake, 28 PERI ¶67.

As noted, on August 23, 2010, Estes sent Napoleon an e-mail asking whether a job description for the new position existed. After Napoleon responded that the Employer did not have a job description at that time, Estes' subsequent e-mail merely stated, ostensibly in the form of an "FYI," that AFSCME expected that the position, if created, would be an AFSCME position. In my view, such a message does not put the Employer on notice of anything AFSCME believes is negotiable. While it may have been plain that AFSCME wanted this new title included in its Unit, this sort of decision is ultimately a matter for the Board's determination and, presumably, is largely not a matter for negotiations. As parties may not create a new bargaining relationship without the explicit approval of the Board, likewise parties may not add positions to a unit without the Board's involvement. Chief Judge of the 13th Judicial Circuit, 15 PERI ¶2006 (IL SLRB 1999). Likewise, during a September 14, 2010 phone call, Estes asked Earl why this should be an IBT position, a question which similarly concerns a matter more appropriately handled by the Board. Furthermore, under the circumstances presented by this case, it is difficult to view Estes' question as anything more than a routine, investigative inquiry. Notably, these determinations are generally supported by Estes' own testimony, which clarifies that, at least in her view, during August and September of 2010, she never issued a demand to

bargain with respect to either the 3-1-1 call center reorganization or the related layoffs. To be clear, a waiver is not lightly inferred. See County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18; The City Hospital of East Liverpool, Ohio, 234 NLRB 58, 60 (1978). Nevertheless, each case depends on its own facts and, under these circumstances, I must find that AFSCME's failure to make such a request constitutes a waiver of its right to bargain over these issues.

Indeed, it is well established that a union's bargaining request need not take any special form so long as there is a clear communication of meaning. See County of Lake, 28 PERI ¶67; City of Chicago, 9 PERI ¶3001; Armour and Company, 280 NLRB 824 (1986). Consistent with this general principle, the National Labor Relations Board has held that a union's request for information about the subject matter is tantamount to a request for bargaining. See City of Chicago, 9 PERI ¶3001; Dubuque Packing Company, Inc., 303 NLRB 386, 398 (1991); Grand Islander Health Care Center, 256 NLRB 1255, 1256 (1981); Nappe-Babcock Company, 245 NLRB 20, 21 (1979). Moreover, the Illinois Educational Labor Relations Board has held that letters from the union, although not explicitly requesting bargaining over the decision and impact, were broad enough to constitute a valid request for bargaining over both issues. See City of Chicago, 9 PERI ¶3001; Board of Education of the City of Chicago, 5 PERI ¶1092 (IL ELRB 1989). However, in general, no rigid rules can be formulated regarding waivers. See Meharry Medical College, 236 NLRB 1396, 1408 (1979); Radioear Corporation, 199 NLRB 1161 (1972). Rather, whether a waiver of bargaining rights occurred by failing to request bargaining depends on the facts of each case and the surrounding circumstances. See Chicago Housing Authority, 7 PERI ¶3036; County of Cook, Forest Preserve District of Cook County, and Civil Service Commission of Cook County, 4 PERI ¶3012; Pinkston-Hollar Construction Services, Inc., 298 NLRB 1, 2 (1990); The City Hospital of East Liverpool, Ohio, 234 NLRB at 60.

AFSCME has not alleged that a climate of bad faith existed between the parties and the record does not suggest that their relations were strained. In fact, in May of 2010, when the Employer (represented by Chukwu) presented AFSCME (represented by Estes, Johnson, and Pestka) with proposed changes entirely unrelated to the 3-1-1 call center reorganization and expressed the Employer's desire to set up meetings involving the same, Estes, ostensibly in accordance with the "standard operating procedure in such instances," promptly sent the Employer a letter formally and clearly demanding that the Employer bargain over the impact of the new developments. Later, after several meetings, the parties were able to reach a formal agreement. This kind of unambiguous, direct response is unmistakably inconsistent with AFSCME's subsequent, more sinuous approach to the instant matter.

Instead of providing clear examples of alleged bargaining requests, AFSCME's post-hearing brief largely argues that it was relieved of its obligation to request bargaining because it was presented with a fait accompli. Generally, a fait accompli will be found if a plan is implemented too quickly after notice is given or if an employer has no intention of changing its mind. See County of Lake, 28 PERI ¶67 (IL LRB-SP 2011); City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008); Chicago Housing Authority, 7 PERI ¶3036; Gratiot Community Hospital v. National Labor Relations Board, 51 F.3d at 1255; Haddon Craftsmen, Inc., 300 NLRB 789, 790 (1990); Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1017. A union cannot be held to have waived bargaining over a change that is presented to it as a fait accompli. See Chicago Housing Authority, 7 PERI ¶3036; Pontiac Osteopathic Hospital, 336 NLRB 1021, 1023 (2001); Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1017. In determining whether a union was presented with a fait accompli, objective evidence is required to show that an employer acted in a manner that relieved the union of its obligation to request bargaining. Chicago Park District, 9

PERI ¶3011 (IL LLRB 1993). Subjective impressions, taken alone, are insufficient to excuse the union from requesting bargaining. County of Cook and Cook County Sheriff, 12 PERI ¶3021.

In this case, the Employer, by providing timely notice, has afforded AFSCME a reasonable opportunity to bargain and thus the evidence here does not approach a factual basis for a fait accompli. See County of Lake, 28 PERI ¶67; Village of Western Springs, 27 PERI ¶4. In addition, regarding the Employer's intentions, the totality of the circumstances does not objectively demonstrate, for example, that the Employer was irreversibly entrenched in particulars. Similarly, the record does not suggest that bargaining would have been futile or that the Employer was not generally open to negotiation. To the contrary, the record demonstrates that the Employer has consistently expressed a willingness to discuss its reorganization plans and has largely been responsive to AFSCME's various inquiries. Furthermore, these parties have bargained separate reorganization issues in the past. Thus, I do not find a fait accompli in this instance.

It is worth noting that AFSCME specifically characterizes Chukwu's September 10, 2010 e-mail as evidence of a fait accompli. Indeed, on the surface, this e-mail notified the unions of the newly created SDO I position and indicated that the Employer was classifying it as an IBT position. However, after considering the entire chronology of this case, I find that this particular e-mail, in effect, simply acknowledged plans that had already been communicated and, for all practical purposes, would not be implemented until a much later time. Importantly, by that time, no irrevocable step had been taken and thus the Employer was not strictly committed to the proposed changes. Accordingly, AFSCME was provided a reasonable opportunity to present proposals to the Employer.

In general, an employer is entitled to present a fully-developed proposal to a union and to use positive language to describe it. County of Lake, 28 PERI ¶67; Chicago Housing Authority, 7 PERI ¶3036; see Haddon Craftsmen, Inc., 300 NLRB at 790. Customarily, employers are entitled to first reach a decision. This provides a starting point for any bargaining which then might follow. See The Lange Company, 222 NLRB 558, 563 (1976). In addition, while it is true that this September 10, 2010 e-mail does not specifically declare that the Employer's plans were bargainable, the Act requires no special form of words calculated to reveal a readiness to negotiate. See Southern California Stationers, 162 NLRB 1517, 1545 (1967). The Employer is not obligated to make an affirmative offer to bargain. Rather, the duty to bargain arises upon request. Chicago Housing Authority, 7 PERI ¶3036; County of Vermilion and the Vermilion County Auditor, Circuit Clerk, Coroner, Clerk, Recorder, Treasurer, State's Attorney and Supervisor of Assessments, 3 PERI ¶2004 (IL SLRB 1986).

Before passing from this subject, I must also consider the Employer's argument that AFSCME contractually waived its ability to bargain a decision to lay off Unit employees through Article IV of the parties' collective bargaining agreement (i.e., the contract's "management rights" article), a claim that AFSCME denies. In part, the Employer argues that, in American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d 327, 653 N.E.2d 1357 (1st Dist. 1995), the exact language contained in Article IV was held to be a contractual waiver of a municipal employer's duty to bargain layoff decisions. Regarding this narrow issue, although both contracts do appear to provide the employer with the right to "relieve employees from duty because of lack of work or other legitimate reasons," for the following reasons, I am nonetheless unconvinced that this common language is determinative in this instance.

As noted by the cited case and others, a party to a collective bargaining agreement may waive its rights to bargain under the Act where contractual language evinces unequivocal intent to relinquish such rights. Evidence of such a waiver must be clear and unmistakable.[19] American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d at 334, 653 N.E.2d at 1362; Village of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003); Village of Westchester, 5 PERI ¶2016 (IL SLRB 1989); Bancroft-Whitney Co., Inc., 214 NLRB 57, 60 (1974); Radioear Corporation, 199 NLRB at 1161. Further, where a contract is silent on the subject matter in dispute, a finding of waiver by contract is absolutely precluded. Chicago Transit Authority, 14 PERI ¶3002 (IL LLRB 1997). Significantly, the language sustaining a waiver of a statutory right by a party to a labor agreement must be specific; waiver is never presumed. American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d at 334, 653 N.E.2d at 1362; see Metropolitan Edison Company v. National Labor Relations Board, 460 U.S. 693, 708, 103 S. Ct. 1467, 1477 (1983) (It cannot be inferred from a general contractual provision that parties to a bargaining agreement intended to waive protected rights unless the undertaking is explicitly stated.); New York Mirror, 151 NLRB 834, 840 (1965).

In sum, I find that the contract language in question does not provide what is required for a finding of waiver. On its face, the contractual language highlighted by the Employer does not expressly address the particular circumstances of this case. Rather than a traditional "lack of work" scenario, I find that the reorganization at issue more accurately involves an organizational change, the establishment of a new service, and the consequent creation and elimination of certain positions. Nowhere in the cited clause does the Employer explicitly reserve the right to

[19] Moreover, it is the respondent's burden to show the existence of such a clear, unequivocal, and unmistakable waiver. City of Chicago (Department of Police), 21 PERI ¶83; Village of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003).

unilaterally implement these actions. Similarly, I also find that the more general provision noting "other legitimate reasons" is too broadly worded to constitute or infer a clear waiver in this instance. Moreover, by simply focusing on this incidentally common language, I find that, in effect, one glosses over the remainder of the analysis of the cited First District case which addressed additional contractual language and factual circumstances not presented by the instant case.

Despite this narrow determination, in light of the foregoing, I nevertheless find that AFSCME, by failing to request bargaining once it had notice of the forthcoming changes, acquiesced to the Employer's plans. Thus, I must also find that the Employer did not violate Sections 10(a)(4) or (1) of the Act. Accordingly, I would dismiss AFSCME's unfair labor practice complaint in its entirety.

Competing Unit Clarification Petitions

In addition to the unfair labor practice charges addressed above, the instant consolidated proceeding involves separate and competing unit clarifications filed by AFSCME and IBT, two existing labor organizations that similarly seek to represent the employees serving as SDO Is. As noted, the unit clarification petition filed by AFSCME (Case No. S-UC-11-015) would include the SDO Is in its existing Unit while IBT's unit clarification petition (Case No. S-UC-11-019) would include the SDO Is in its existing Police Unit. The Employer supports the IBT petition.

Broadly speaking, a unit clarification petition is appropriate to accrete positions that have been created since an existing unit was established. See Chief Judge of the 13th Judicial Circuit, 15 PERI ¶2006; State of Illinois, Dept. of Central Management Services (Departments of Transportation and Natural Resources), 14 PERI ¶2019 (IL SLRB 1998); City of Chicago, 2 PERI ¶3014 (IL LLRB 1986); State of Illinois, Department of Transportation and Department of

Central Management Services, 1 PERI ¶2011 (IL SLRB 1985); National Labor Relations Board v. Magna Corporation, 734 F.2d 1057, 1062 (5th Cir. 1984); Massachusetts Teachers Association, 236 NLRB 1427, 1429 (1978). Often, the resolution of this sort of case turns on the question of which bargaining unit or units are appropriate for inclusion of the petitioned-for employees. In resolving such unit appropriateness issues, the Board typically looks to the seven factors set forth in Section 9(b) of the Act. State of Illinois, Dept. of Central Management Services (Departments of Transportation and Natural Resources), 14 PERI ¶2019; Pleasure Driveway and Park District of Peoria, 13 PERI ¶2033 (IL SLRB 1997); see Overnite Transportation Company, 322 NLRB 723, 725 (1996). These Section 9(b) factors include: (1) historical patterns of recognition; (2) community of interest including employee skills and functions; (3) degree of functional integration; (4) interchangeability and contact among employees; (5) fragmentation of employee groups; (6) common supervision, wages, hours, and other working conditions of the employees involved; and (7) the desires of the employees.

Determinations of unit appropriateness must be made on a case-by-case basis. See County of Cook (Provident Hospital), 22 PERI ¶12 (IL LRB-LP 2006). Accordingly, this analysis shall first consider the appropriateness of placing the SDO Is in AFSCME's Unit, which allegedly includes, for example, the animal control warden, the crime prevention specialist, the property officer, the records input operators, and the review officers of the Evanston police department. Notably, although the new 3-1-1 call center exists in a self-contained room, because SDO Is physically work in Evanston's police department building, SDO Is share at least some working conditions, such as a common break room, with Unit employees who share the same building. Because of this relative proximity, some personal contact is reasonably assured. See Chief Judge of the First Judicial Circuit, 10 PERI ¶2004 (IL SLRB 1993). Further, it must be

noted that Pontarelli, who supervises the SDO Is, also supervises the police department's custodian and court liaison, two additional Unit positions. Moreover, it appears that, like the SDO I position, many of the Unit's police department positions ultimately report to Eddington and Jeff Jamraz, a deputy chief of the police department.[20] See Village of Morton Grove, 23 PERI ¶72 (IL LRB-SP 2007). Presumably demonstrating some degree of functional integration, an examination of the record also reveals that some AFSCME-represented employees that work in Evanston's other departments (such as Johnson) are responsible for actually performing and subsequently documenting the work required by the SDO Is' service requests in the regular course of their duties. Alternatively, SDO Is may need to transfer calls to Unit employees. Under these circumstances, I find that AFSCME's petitioned-for unit can reasonably be considered a sufficiently legitimate or appropriate unit within the meaning of Section 9(b) of the Act.

Nevertheless, in addition to a consideration of the AFSCME unit discussed above, this analysis must separately consider the appropriateness of IBT's petitioned-for unit. As an initial matter, however, it must be noted that, while all of the parties seem to agree that the SDO IIs are represented by IBT, notably, the Board's most recent certification-related filings specifically appear to have limited IBT's Police Unit to Evanston's police officers and telecommunicators. Put differently, although the parties' collective bargaining agreement suggests that IBT represents the SDO IIs, no evidence clearly indicates that the Board has officially certified that the SDO IIs are represented by IBT's Police Unit. Significantly, the Board has held that parties may not simply by their labor agreement agree on their own to add job titles to a bargaining unit. The agreement is recognized by the Board only when the parties file a unit clarification petition

[20] The record also appears to suggest that the SDO I position's pay grade is the same as that of certain positions that have been represented by AFSCME and are employed by Evanston.

with the Board. See Chief Judge of the 13th Judicial Circuit, 15 PERI ¶2006; County of LaSalle and Sheriff of LaSalle County, 23 PERI ¶15 (IL LRB-SP G.C. 2007). Presumably, this apparently unforeseen wrinkle complicates the arguments provided by the parties. Yet, because the instant analysis also includes a decidedly valid consideration of IBT's telecommunicators, I nevertheless find that the appropriateness of IBT's Police Unit may still be considered, albeit to a lesser degree than contemplated by the parties.

To the extent that SDO IIs might properly be considered by this Section 9(b) analysis, one could observe that SDO Is and IIs clearly perform a number of related functions. Generally speaking, SDO Is and IIs similarly receive a high volume of calls that can concern a wide range of topics. Furthermore, both of these positions may take messages and call individuals back. To some degree, SDO Is and IIs also similarly use computerized systems to track and follow-up on events and create work order tickets. While SDO Is generally create service requests and SDO IIs generally create CADS tickets to perform this relatively comparable function, both positions have been trained to use Evanston's GovQA program and have done so. Also, both positions have provided driving instructions and viaduct heights and similarly respond to incoming emergency calls.[21]

Additionally, testimony indicates that SDO Is and IIs commonly work together and have "overlapping responsibilities." For example, if an SDO I receives a call concerning graffiti or illegal dumping and determines that, in that instance, it is a police department matter, he or she may transfer the call to the police department service desk. Under these circumstances, an SDO I may create a service request while an SDO II completes a police report. Further, when an SDO

[21] Testimony also suggests that, in the future, the tasks of the SDO Is and IIs may merge. Allegedly, there is a "distinct possibility" that the service desk telephone number for nonemergency police calls will go away and that all such calls will go to the 3-1-1 call center. Indeed, according to Pontarelli's testimony, the SDO Is have already taken over a lot of the calls that were once handled by SDO IIs.

I receives a call about an abandoned vehicle, that SDO I provides an SDO II with the vehicle's license plate information in order to determine whether the vehicle was stolen. If the abandoned vehicle was not stolen, the SDO I completes the service request. Alternatively, if the abandoned vehicle was stolen, responsibility for the matter is transferred to the SDO II. Under other circumstances, SDO IIs may also transfer a call to an SDO I. For example, if an SDO II receives a call indicating that one of Evanston's streetlights is out, the SDO II routes that call to an SDO I at the 3-1-1 call center.

Other common indicators of appropriateness might also be observed. For example, one might note that the 3-1-1 call center is physically housed within the police department's building and is located near the police department's service desk. To this extent, it could be also observed that SDO Is and IIs work in a similar part of the same facility. Moreover, SDO Is and IIs are similarly directly supervised by Pontarelli and Pratt and ultimately report to Eddington and Jamraz. In addition, these two positions wear similar uniforms, may work weekend shifts, and are considered non-sworn personnel.

More importantly, SDO Is also appear to perform some work which is similar to that of Evanston's telecommunicators. In a broad sense, both positions regularly respond to incoming telephone calls, gather necessary information, and use this information to create work order tickets that will help other Evanston employees appropriately provide a particular service. Also, signaling a degree of functional integration, SDO Is regularly work with the telecommunicators by transferring emergency calls and providing them with relevant information. When an SDO I receives a call about an ambulance, a fire, a shooting, or a suicide attempt, for example, the SDO I is expected to patch the call through to the 9-1-1 call center by warm transfer and then determine whether the appropriate personnel have been dispatched. As noted above, if it appears

that the appropriate personnel were not dispatched, an SDO I is expected to call the telecommunicators' 9-1-1 call center and inquire about the matter. Additionally, it must be observed that, while the 9-1-1 call center is physically isolated from the SDO Is' 3-1-1 call center to some degree, both workrooms are nonetheless located in the same police department building. Finally, one might also note that, though the two positions do not appear to report directly to the same superior, it does appear that both positions ultimately report to Eddington and Jamraz. In this way, I find that IBT's Police Unit might also be viewed as a sufficiently appropriate unit for the purposes of collective bargaining in this instance.

Significantly, the Act merely requires that the petitioned-for unit be an appropriate unit, which frequently is not the most appropriate or comprehensive unit conceivable.[22] See County of Cook v. Illinois Labor Relations Board, Local Panel, 369 Ill. App. 3d 112, 118, 859 N.E.2d 80, 86 (1st Dist. 2006); Village of Frankfort, 20 PERI ¶83 (IL LRB-SP 2004); Rend Lake Conservancy District, 14 PERI ¶2051 (IL SLRB 1998); Chicago Transit Authority, 11 PERI ¶3022 (IL LLRB 1995); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988). Correspondingly, the Board has long held that, where more than one petitioned-for unit is appropriate within the meaning of Section 9(b) of the Act, the resolution is a vote among the petitioned-for employees. State of Illinois, Department of Central Management Services, 23 PERI ¶119 (IL LRB-SP 2007); State of Illinois, Dept. of Central Management Services (Departments of Transportation and Natural Resources), 14 PERI ¶2019; Pleasure Driveway and Park District of Peoria, 13 PERI ¶2033; State of Illinois, Department of Central Management Services and Office of the Illinois State Fire Marshall, 6 PERI ¶2002 (IL SLRB 1989); State of

[22] Moreover, it is well-settled that there is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. The Board need not decide which unit is the best. See County of Macoupin, Treasurer, Clerk, and Recorder of Macoupin County, 24 PERI ¶129 (Il LRB-SP G.C. 2009); Overnite Transportation Company, 322 NLRB 723, 725 (1996).

Illinois, Department of Central Management Services, 1 PERI ¶2025 (IL SLRB 1985); State of Illinois, Department of Transportation and Department of Central Management Services, 1 PERI ¶2011. As determined above, pursuant to the factors set forth in Section 9(b) of the Act, the unit petitioned for by AFSCME is appropriate for the purposes of collective bargaining, as is the placement urged by IBT and the Employer. Accordingly, the question of representation presented by this case is properly resolved through an election (or "unit preference poll") among the petitioned-for employees. Thus, I recommend that the Board order the Executive Director to conduct a unit preference poll of the SDO I employees to determine which unit they prefer, and then order the SDO I employees accreted to the prevailing unit. See State of Illinois, Department of Central Management Services and Office of the Illinois State Fire Marshal, 5 PERI ¶2023 (IL SLRB 1989).

The use of the unit clarification procedure to place employees in an existing collective bargaining unit without affording them a representation vote should be strictly limited. State of Illinois, Department of Central Management Services, 1 PERI ¶2025; State of Illinois, Department of Transportation and Department of Central Management Services, 1 PERI ¶2011; see GHR Energy Corp., 294 NLRB 1011, 1016 (1989). With this result, the Board will allow the desires of the petitioned-for employees to be the deciding factor which will determine which unit is more appropriate. The desires of the employees are appropriately considered because, as noted, Section 9(b) of the Act obligates the Board to consider the desires of the employees in determining the appropriateness of a bargaining unit. See Pleasure Driveway and Park District of Peoria, 13 PERI ¶2033.

Yet, before concluding, one final unit clarification issue remains to be addressed. Specifically, on February 22, 2012, in Case No. S-DD-12-003, the certification of IBT's Police

Unit was revoked. However, later, on March 26, 2012, in Case No. S-RC-12-047, the Illinois Fraternal Order of Police Labor Council (FOP) became the exclusive representative of a bargaining unit that includes all of Evanston's police officers, telecommunicators, and towing coordinators. Because IBT's Police Unit included Evanston's police officers and telecommunicators, FOP's new bargaining unit appears to include all of those positions which were once included in IBT's Police Unit. Thus, on June 25, 2012, FOP issued a memorandum which stated that, although FOP chose not to intervene in the legal proceedings of the instant matter, FOP believed that it is a "party of interest" and that the instant decision would impact the composition of the bargaining unit it represents.

Subsequently, on July 18, 2012, FOP filed a separate motion to intervene. In this motion, FOP stated that it was requesting to intervene so that it could "replace" IBT and seek to add the SDO I position "to the bargaining unit with which it has historically been associated" and noted that it did not seek to open the evidentiary record and assumes the record as it has been presented to the Board. Later, on September 13, 2012, the FOP confirmed via e-mail that it does not object to its motion to intervene being accepted as a motion to substitute for IBT. As the parties do not object to FOP's motion and have agreed to allow FOP to substitute for IBT, I hereby grant FOP's motion to intervene and will adjust the recommended order accordingly.

V. CONCLUSIONS OF LAW

1. I find that AFSCME failed to prove that the Employer violated either Section 10(a)(4) or Section 10(a)(1) of the Act.
2. I find that AFSCME's unit clarification petition in Case No. S-UC-11-015 is appropriate and that AFSCME's petitioned-for unit is an appropriate unit for collective bargaining.

3. I find that IBT's unit clarification petition in Case No. S-UC-11-019 is appropriate and that IBT's petitioned-for unit is an appropriate unit for collective bargaining.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the complaint in Case No. S-CA-11-057 be dismissed in its entirety. Furthermore, it is hereby ordered that a secret ballot election shall be conducted among the employees employed by Evanston in the position of Service Desk Officer I in accordance with the Notice of Election to be issued by the Board. In accordance with the Act and the Board's Rules, eligible employees shall be given an opportunity to vote between representation by AFSCME in the bargaining unit originally certified in Case No. S-UC-(S)-11-013 and by FOP in the bargaining unit originally certified in Case No. S-RC-12-047.

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 10 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 5 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 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 Springfield, Illinois, this 12th day of October, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge