STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Amalgamated Transit Union, Local 1561,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-11-087
	)	
PACE Southwest Division,	)	
	)	
Respondent	)	

ORDER

On October 16, 2012, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its December 11, 2012 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 11th day of December 2012.

STATE OF ILLINOIS
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Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Amalgamated Transit Union, Local 241, as successor to Amalgamated Transit Union, Local 1561,	)	
Charging Party	)	Case No. S-CA-11-087
and	)	
Pace Southwest Division,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 4, 2010, the Amalgamated Transit Union, Local 1561 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that Pace Southwest Division (Respondent or Pace) engaged in unfair labor practices within the meaning of sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on February 9, 2011, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on July 10, 2012, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

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

4. At all times material until May 1, 2011, Local 1561 was a labor organization within the meaning of section 3(i) of the Act.
5. At all times material, Local 241 has been a labor organization within the meaning of section 3(i) of the Act.
6. Effective May 1, 2011, Local 1561, pursuant to the constitution and bylaws of the Amalgamated Transit Union and Local 241, merged into Local 241.
7. Local 241 is the successor of Local 1561 within the meaning of the Act and stands in the stead of Local 1561 for purposes of this proceeding. Local 1561 and its successor Local 241 are collectively referred to herein as the "Union."
8. At all times material, the Union has been the exclusive representative for a bargaining unit of Pace's employees including bus operators and bus mechanics.
9. At all times material until May 1, 2011, Richard Chiaramonte was the president of Local 1561. From May 1, 2011, until about August 2011, Chiaramonte was a union steward for Local 241 assigned to serve Pace Southwest.
10. At all times material, Pace and the Union have been parties to a collective bargaining agreement that established the terms and conditions of employment for certain Pace employees including bus operators and bus mechanics.
11. The most recent agreement has effective dates of July 1, 2009 through June 30, 2012.

II. ISSUES AND CONTENTIONS

The issue is whether Pace violated sections 10(a)(4) and (1) of the Act when it implemented and used the surveillance camera system known as G.E. Vision in buses operated by bargaining unit members for the purpose of viewing and recording activity within the buses, allegedly without providing the Union with notice or the opportunity to bargain.

Pace argues that it did not violate the Act when it implemented G.E. Vision because the decision to implement and use those cameras is not a mandatory subject of bargaining. First, Pace asserts that it did not materially change employees' terms and conditions of employment when it implemented G.E. Vision because the cameras were visible, because Pace did not change its rules or policies, and because Pace never represented that the footage would not be used for discipline. Second, Pace argues the decision to implement G.E. Vision is also one of inherent managerial authority because it is used for safety purposes, is consistent with Pace's statutory

mission and does not turn on labor costs. In the alternative, Pace argues that it is not required to bargain its decision to implement G.E. Vision because the benefits of bargaining do not outweigh the burden bargaining would place on Pace's inherent managerial authority. Specifically, Pace notes that bargaining would burden Pace because it acted within its statutory mission, to promote its core functions, and that the Union has set forth no benefits that bargaining could provide.

Next, Pace argues that the Union waived its right to bargain because the Union failed to demand bargaining although Pace asserts that it gave the Union timely and sufficient notice that it would implement G.E. Vision. In particular, Pace asserts that the Board should evaluate notice with respect to Pace's implementation of the G.E. Vision system and not its decision to purchase buses equipped with the G.E. Vision cameras. As such, Pace argues that the Union had actual notice of the system in June 2010[1] when Pace first took delivery of the new buses because the cameras were visible from outside the buses. Also, Pace asserts that the Union received notice of G.E. Vision from an announcement to employees posted on the garage wall which referenced G.E. Vision by name. In the alternative, Pace asserts that the Union had notice of the new cameras on August 10, 2010, when a Pace safety and training manager informed the Union president of the cameras during a training session and when the Union president viewed the cameras when he performed mechanical work on the buses some time later, prior to the date on which Pace placed the buses into service. In addition, Pace states that the general information provided by Pace in the posting and through training was sufficient to establish actual notice and that the Union was obligated to make some inquiries concerning the new cameras if matters were unclear. Further, Pace argues the Union did not satisfy its obligation to bargain by filing grievances and unfair labor practice charges.

Finally, Pace asserts that it did not present the Union with a fait accompli which removed the Union's obligation to demand bargaining because the change at issue concerns the implementation of G.E. Vision and not the decision to purchase the new buses on which the system came preinstalled. As such, the Union had an opportunity to demand bargaining prior to the date on which Pace placed the new buses into service and implemented the G.E. Vision system.

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[1] The parties stipulated in their pre-hearing memo that the buses with G.E. Vision arrived on July 29, 2010.

The Union argues that Pace violated the Act when it implemented the G.E. Vision system because, in doing so, Pace materially changed employees' terms and conditions of employment and did not act within its inherent managerial authority. First, the Union notes that the installation and use of surveillance cameras is a mandatory subject of bargaining because such cameras give the employer new information which it may use to discipline employees. Next, the Union distinguishes the Board's Village of Summit case arguing that the case only discussed the disciplinary use of existing cameras, not the installation and use of new cameras at issue here. Further, the Union asserts that G.E. Vision is neither an upgrade nor an augmentation of a pre-existing camera system. Instead, the system vastly expands Pace's opportunity for employee surveillance because it provides continuous footage of employees while working, unlike the prior camera system, which only provided seconds of footage before and after certain triggering events.

Next, the Union argues that it did not waive its right to bargain because Pace presented the Union with a fait accompli. According to the Union, the change that triggered bargaining was Pace's installation of cameras and not Pace's use of them for disciplinary purposes. Thus, since Pace purchased the buses with a fully operational surveillance system, the Union had no opportunity to bargain. In the alternative, the Union argues it did not receive adequate notice of Pace's decision to implement G.E. Vision because Pace did not send the Union any official notice, because the Union president learned of the new system only in his capacity as an employee, and because only days elapsed between the employees' knowledge of the system and Pace's implementation of it.

Finally, the Union argues that it did not contractually waive or acquiesce to Pace's new system by permitting different, but more limited, types of employee monitoring such as in-person monitors and the Drive Cam system.

III. FINDINGS OF FACT

Pace provides public transportation to the southwest suburban Cook County area including Bridgeview and the DuPage County suburbs. The legislature created Pace because it determined that, "comprehensive and coordinated regional public transportation is essential to the public health, safety and welfare." Regional Transportation Authority Act, 70 ILCS 3615/1.02 (2010). Pace's mission is to "enforce and facilitate [the] achievement and

maintenance of standards of safety against accidents with respect to public transportation." 70 ILCS 3615/2.11 (2010).

Since 1995, Pace has had a monitoring program which uses anonymous undercover individuals employed by Pace to observe bus driver performance and to ensure that the drivers collect fairs, call stops, and otherwise conduct themselves properly.

Since February 2010, all Pace buses have been equipped with the Drive Cam camera system. Drive Cam consists of a pair of cameras mounted in a single enclosure on the bus's windshield; one camera faces forward out the windshield and the other faces rearward into the bus, at the operator. Drive Cam operates continuously by buffering video, but it does not store audio or video unless the system is triggered by a sufficient g-force, such as a sharp turn, bump, or accident, or manually, by the operator. When Drive Cam is activated, the unit transmits twelve seconds of the buffered video and audio to a Pace subcontractor. The transmission includes a record of the eight seconds before and the four seconds after the triggering event. The subcontractor reviews the transmitted video. If the subcontractor finds an "event" by the operator, the subcontractor notifies Pace and sends Pace the twelve seconds of video.[2]

Starting on July 29, 2010,[3] Pace began to take delivery of newly-purchased "Eldorado" buses which came preinstalled with a camera system known as G.E. Vision. Pace did not notify the Union before deciding to purchase those buses or before taking delivery of them. By the date of hearing, Pace's mechanics knew that they could have turned off the system before the buses were placed into service.

G.E. Vision is comprised of six cameras installed at various locations throughout the bus: one points at the operator, one points out the windshield, one points at the front door, one points down the aisle toward the rear from the front, one points up the aisle toward the front from the rear, one points from the back towards the driver's side mirror, and one points backwards

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[2] On around July 28, 2010, the Union filed an unfair labor practice charge, Case No. S-CA-11-025, challenging Pace's alleged implementation in June, 2010, of a policy of discharging employees observed three times within a rolling twelve-month period by either the Drive Cam or a municipal automatic red-light camera system violating a traffic control device. In an order dated September 22, 2010, the Executive Director deferred processing of the Union's charge pending the outcome of a grievance challenging the same policy. On May 9, 2011, Arbitrator Michael Wojcik issued an award finding that Pace had a right under the collective bargaining agreement to implement the disciplinary policy challenged by the Union. The Union's unfair labor practice charge in case S-CA-11-025 is still pending.

[3] This date is drawn from the stipulated facts. However witnesses testified that Pace received delivery of new Eldorado buses in June 2010.

along the side of the bus near the driver's side window. There are controls for G.E. Vision on the buses located on the front dashboard in a box with two lights and a button. The lights, red and green, indicate if the camera is functioning. The time stamp button between the lights may be pressed to bookmark, or create a reference point, for an event which occurs on the bus.

Unlike the Drive Cam cameras, the G.E. Vision cameras record audio and video continuously when the bus is turned on. A hard drive located on the bus saves the audio and video recordings. After several days, the hard drive fills up and records over itself.[4] Pace can retrieve any images saved on the hard drive by uploading them to a computer when the bus is in the garage; it views the images using proprietary software supplied by the camera manufacturer. Pace may download and save footage after viewing it.

Pace stored the new Eldorado buses in the Pace garage alongside in-service buses between July 29, 2010, and October, 2010. Union president and master mechanic, Rick Chiaramonte, testified that Dave Ralia, Pace's superintendent of maintenance, told Pace employees to stay away from the new buses. Mark Klafeta, Pace's regional manager, on the other hand, testified that Pace management encouraged employees to look at them and that he never issued a directive to his subordinates to keep employees away from the new buses. I credit Chiaramonte's testimony based on his demeanor. However, there was no barrier which prevented employees from looking at the outside of the buses.

Sometime after Pace took delivery of the Eldorado buses, Pace's superintendent of maintenance posted a notice concerning G.E. Vision near the back of the garage by the maintenance area. The notice contained a picture of the G.E. Vision control box and stated the following:

> "The Eldorado Buses are equipped with the G.E. Mobile View [G.E. Vision] camera system. The picture below shows the time stamp button and the red and green status lights. After approx. 1 minute after you start the bus both the red and green status lights will come on. After another 30 seconds the red status light will go out and the green status light will stay on. This is normal operation. If the red light stays on or neither light comes on or stays on then there is a defect with the system and a defect ticket should be made out for the vehicle. In any case it must be brought to the attention of a supervisor."

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[4] The rate at which hard drives fill up depends on how often the buses are in service. Typically, hard drives become full after several days in service.

Chiaramonte saw the notice. The notice did not explain the cameras' capabilities. Pace never provided Chiaramonte with any other documentation concerning the G.E. Vision system.

On August 9, 2010, Pace began training employees on the new Eldorado buses. On that date, six employees, including Russel Bailey, Pamela Goffin, Willie McGee, Henry Cembala, Jonathan McNair, and Isaiah Sutton, all received a 15-minute one-on-one training sessions with a Pace safety manager. The safety manager familiarized employees with the inside of the bus and had employees drive the bus around the block. During training, the safety manager pointed out the new cameras on the bus.

On August 10, 2010, Pace safety manager Brenda Dillard gave Chiaramonte a 15-minute one-on-one training session on an Eldorado bus. Dillard familiarized Chiaramonte with the inside of the bus and had him drive the bus around the block. During training, Dillard pointed out the new cameras on the bus. Chiaramonte testified that Dillard did not explain the difference between Drive Cam and G.E. Vision and that she did not tell him that the G.E. Vision cameras operated continuously. Dillard, on the other hand, testified that she did explain that G.E. Vision cameras recorded continuously. I credit Chiaramonte's testimony based on his demeanor.

Both Dillard and Chiaramonte testified that Dillard did not address whether the footage from the cameras would be used for disciplinary purposes. Indeed, Chiaramonte testified that Dillard did not tell him how Pace would be using the cameras at all. No one at Pace ever told Chiaramonte or other employees that G.E. Vision would not be used to support the imposition of discipline on employees. Chiaramonte did not ask any questions about the new cameras during training.

On August 13, 2010, Dillard issued a notice to employees announcing mandatory training on the Eldorado buses for all employees. The training sessions were scheduled for August 17, 18, and 19, 2010. Jacqueline Gerasch performed some of the training. During that training, Gerasch identified the new cameras but did not explain how they worked and did not tell employees that they recorded continuously. Gerasch made no comment concerning the use of G.E. Vision footage for disciplinary purposes. No employees asked questions about how the cameras worked or how Pace intended to use them. Pace trained a total of over 80 employees on the new Eldorado buses and compensated them for the training time.

Between August 31, 2010 and October 7, 2010, Chiaramonte and other mechanics installed the Drive Cam system on the Eldorado buses, before they were placed into service.

Chiaramonte testified that he noticed the G.E. Vision control box and cameras on the Eldorado buses when he installed Drive Cam. However, Chiaramonte did not know the control box's purpose and did not ask Pace management about the additional cameras.

Chiaramonte informed the Union that the new buses had six new cameras installed on them. The Union never demanded to bargain over the implementation, use, or effects of the G.E. Visions system. No Pace official ever told Chiaramonte that Pace was not interested in bargaining with the Union over the G.E. Vision system. Klafeta testified that he never told Chiaramonte that he would not discuss Pace's implementation of G.E. Vision or its effects.

Starting in August or September of 2010, Pace put the first Eldorado buses, equipped with G.E. Vision, into service.[5]

Pace uses G.E. Vision to promote the safety of employees, passengers and the general public and to secure its equipment. For example, Pace has used G.E. Vision cameras to assist the police in capturing suspects. In addition, G.E. Vision footage has helped apprehend individuals who have assaulted bus drivers. Currently, Pace reviews footage from the G.E. Vision system only to investigate accidents and other safety-related incidents.

Pace may discipline employees for misconduct viewed on video even if it is unrelated to the initial incident which spurred the investigation. Further, it may also make a wider review of footage than that related to the incident in question and may similarly impose discipline for rule violations observed during that wider review.

For example, when operator Emily Thomas got two flat tires on her route, Pace reviewed G.E. Vision to ascertain their cause. Pace found Thomas was blameless for the flat tires. Nevertheless, in the course of review, Pace observed Thomas talking on her cell phone while driving and charged her with a violation in connection with the cell phone use.

In another case, operator Connie Dye asked to see additional footage of a traffic violation incident which triggered her discipline because she asserted that the Drive Cam image was blurry. Pace reviewed the G.E. Vision footage from her run, observed Dye using a cell phone and/or ear bud device, smoking, eating and drinking while operating the bus, and terminated

[5] While Chiaramonte testified that Pace placed the buses in service in October, Chiaramonte was referencing the date supplied by Pace's counsel, stating "you [counsel] said October they went" into service. Pace's witness, Brenda Dillard, testified that Pace placed the buses into service "August, September, 2010."

Dye's employment based on the newly-observed rule violations and Dye's entire work record. Dye is currently still employed under a last chance agreement.

IV. DISCUSSION AND ANALYSIS

Pace's decision to implement and use G.E. Vision is not a mandatory subject of bargaining, even though G.E. Vision materially changes employees' terms and conditions of employment, because the burden on Pace's inherent managerial authority to bargain this change outweighs the benefits of bargaining.

1. Central City Test

Parties are required to bargain collectively regarding employees' wages, hours and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-62 (1988); Am. Fed. of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 264 (1st Dist. 1989); Ill. Dep't of Cent. Mgmt Serv., 17 PERI ¶ 2046 (IL LRB-SP 2001); Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). It is well-established that a public employer violates its obligation to bargain in good faith, and therefore sections 10(a)(4) and (1) of the Act, when it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to and an opportunity to bargain with its employees' exclusive bargaining representative. Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill App. 3d 145, 153 (1st Dist. 1996).

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

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

Pace changed employees' terms and conditions of employment when it implemented G.E. Vision because the system substantially varied Pace's method of investigating employee misconduct and similarly varied the character of proof on which Pace relies to discipline employees in a manner that increased the potential for employee discipline.

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

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

As a preliminary matter, Pace substantially varied the method by which it investigates employee misconduct because G.E. Vision newly imposes full-time surveillance on employees and newly grants Pace direct, unfettered access to video surveillance footage which thereby increases the potential for employee discipline.

First, unlike Drive Cam, G.E. Vision allows Pace to review footage from a driver's entire run, not just a twelve second clip which documents a triggering event, and accordingly enables Pace to document a driver's every misstep. Further, it enables Pace to use any such footage for disciplinary purposes even if the recorded conduct is unrelated to, and separated in time from, the matter Pace initially investigated. Such a change substantially varies Pace's investigatory method because G.E. Vision's extended footage exponentially increases the instances of employee conduct available to Pace for review, which correspondingly increases an employee's exposure to future discipline. Medicenter, Mid-South Hosp., 221 NLRB at 675 (applying this analysis in analogizing change from oral warning to written warnings to the change from investigatory interview to polygraph testing); See also Johnson-Bateman Co., 295 NLRB at FN 18 (1989).

Second, G.E. Vision allows Pace far more discretion to identify employee misconduct, unencumbered by a third party's judgment, because it grants Pace direct, unhampered access to video surveillance footage. To illustrate, the existing Drive Cam system transmits footage to an independent contractor who analyzes the video, and forwards footage to Pace if it determines that the employee engaged in misconduct. In contrast, G.E. Vision permits Pace employees to directly review video surveillance footage from the hard drive of the bus and does not require a third party to prescreen and cull any of the footage. This change likewise substantially varies Pace's investigatory method because it increases employees' exposure to discipline by permitting Pace to directly review footage documenting conduct which might otherwise have been overlooked by an independent contractor.

In addition, G.E. Vision also changed the character of proof on which an employee's job security might depend because it substantially increased both the quantity and scope of video footage Pace may use to support the imposition of discipline against employees. Id.[6] As noted above, before Pace implemented G.E Vision, Pace had access to only the twelve seconds of footage that were recorded around the time of a triggering event. After Pace implemented G.E. Vision, however, Pace had access to footage which documents a driver's entire work day, regardless of triggering events or other driving conditions. As such, the difference in scope of

[6] Indeed, although the NLRB in Medicenter found the change in "character" of proof to be a change in medium (polygraph versus the application of human skill), quantity and scope are equally valid descriptors of the "character" of proof. Medicenter, Mid-South Hosp., 221 NLRB 670 (1975).

the footage available to Pace is so substantial and marked that it constitutes a change to the character of proof that Pace uses to support the imposition of discipline against employees.

Taken together, these differences change employees' terms and conditions of employment even though Pace has historically used some form of video footage for disciplinary/ investigatory purposes and even though Pace has not changed its work rules. First, as stated above, the G.E. Vision cameras so substantially expand the quantity of footage available to Pace that the difference qualifies as a change to both Pace's investigatory method and the character of proof Pace uses to support the imposition of discipline against employees. Second, the mere fact that work rules have not changed does not eliminate an effect on employees' terms and conditions of employment when the employer has introduced sophisticated new technology with significantly expanded recording capabilities and when the employer's use of that technology has the potential to expose employees to discipline, as it does in this case. See Id. (drug testing as method of investigation of suspected employee misconduct was deemed a mandatory subject of bargaining because it introduced relatively sophisticated technology, changed the method of investigation, and changed the character of proof on which an employee's job might depend even though the employer's work rules regarding intoxication remained the same).

Contrary to Pace's contention, this case is distinguishable from Village of Summit in the following respects. First, the presence of cameras here constituted a change in employees' terms and conditions of employment because the cameras were newly-installed, not preexisting, and because Pace simultaneously implemented the system and used it for disciplinary purposes. Cf. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012) (cameras were installed and functional for years; disciplinary use followed long after cameras' installation).[7] Second, the cameras in this case introduced a new procedure and also greatly broadened the scope of employee surveillance. Cf. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012) (employer's cameras historically permitted 24-hour employee video surveillance although the employer had never used it for disciplinary purposes; no new invasive investigatory procedure used and scope of employee surveillance remained the same). Finally, the employees in this case were not aware of the cameras' functionality because Dillard never informed Union president Chiaramonte that they

[7] As such, contrary to Pace's contention, the Union's failure to demand bargaining over the cameras' installation or alleged failure to object to the cameras, does not support the proposition that Pace maintained employees' terms and conditions of employment, unchanged, in a manner analogous to the employer in Village of Summit.

recorded continuously. Id. (employees were aware of both the cameras' presence and functionality).

Further contrary to Pace's assertion, Village of Summit does not stand for the proposition that "the use of video surveillance does not affect a term or condition of employment" because the Board in that case considered several factors, set forth above, to reach its conclusion and noted that its holding was limited to the "specific facts presented." Id.

ii. Matter of Inherent Managerial Authority / Balancing Test

The implementation and use of G.E. Vision is a matter of inherent managerial authority and the burdens that bargaining imposes on Pace's managerial authority in this case outweigh any benefits bargaining could provide to the decision-making process.

In the private sector, the installation and use of surveillance cameras is a mandatory subject of bargaining, one that is plainly germane to the working environment and not a managerial decision that lies at the core of entrepreneurial control. Colgate-Palmolive Co., 323 NLRB at 515 (addressing hidden surveillance cameras); Chemical Solvents, Inc. and Turn-to Transport, LLC, 2012 WL 1712448 (N.L.R.B. Div. of Judges) (applying same rationale to cameras clearly visible to employees).

Similarly, in the public sector, the decision by an employer to engage in videotape surveillance of a workplace for monitoring and investigating employees is generally a mandatory subject of bargaining "because it intrudes upon employee interests including job security, privacy and personal reputation," and because "the data collected and stored can form the basis for counseling, discipline or demotion." Nanuet Union Free School Dist., 45 PERB ¶ 3007 (NY PERB 2012) ("in general, the decision by an employer to engage in videotape surveillance of a workplace for monitoring and investigating employees is mandatorily negotiable" because "it bears a direct and significant relationship to working conditions").

Nevertheless, the installation and use of surveillance cameras in the public sector is not always a mandatory subject of bargaining because government has special responsibilities to the public not shared by private employers and the scope of negotiations in the public sector is therefore more limited. Local 195, IFPTE, AFL-CIO v. State, 88 N.J. 393, 401-05 (NJ 1982) (noting the difference between public and private sector bargaining obligations). As such, public sector labor relations boards undertake a "fact-specific examination" to determine whether

a particular decision by an employer to use videotape surveillance in the workplace is mandatorily negotiable. Nanuet Union Free School Dist., 45 PERB ¶ 3007 (NY PERB 2012).

For example, the installation and use of video cameras is a matter of inherent managerial authority where the employer provides public safety functions because the employer's delay in providing its service has serious public health or safety implications. City of Paterson, 36 NJPER ¶ 114 (NJ PERC 2010). Accordingly, under those circumstances, the employer has an interest in ensuring that its employees perform their duties diligently. Id. (employer was not required to bargain the installation of overt cameras in the radio room where 911 calls were received; case involved only the installation of the cameras and not their impact). Similarly, the installation and use of video cameras may also be a matter of inherent managerial authority when a public safety employer must address security concerns that cannot be addressed in any other manner. City of Paterson, 33 NJPER ¶ 50 (NJ PERC 2007) (installation of overt cameras in a police department building for the purpose of protecting people and property not mandatory subject of bargaining where certain areas were accessible to the public). Further, the Illinois Appellate Court has held that an employer's use of similar investigatory tools is a matter of inherent managerial authority when it is tied to the employer's statutory function. Am. Fed. of State, Cnty. v. Mun. Empl., Council 31, Ill. State Labor Rel. Bd. ("DOC")., 190 Ill. App. 3d 259, 265-266 (addressing drug testing of correctional officers); see also Cnty. of Cook, 284 Ill. App. 3d 145, 155 (1st Dist. 1996) (county's drug testing of nurses constituted a matter of inherent managerial authority because Cermak Health Services was a part of the County jail and the County thus had a managerial interest in maintaining security within the jail by preventing drug trafficking and its attendant problems).

Here, the implementation and use of G.E. Vision is a matter of inherent managerial authority because its purpose is to promote safety in public transportation which is integral to achieving Pace's statutory mission. Pace concededly provides transportation and not the sort of public safety services which directly impinge on individuals' health and personal security. Nevertheless, one significant aspect of Pace's statutory mission is to "enforce and facilitate [the] achievement and maintenance of standards of safety against accidents with respect to public transportation." Regional Transportation Authority Act 70 ILCS 3615/2.11 (2010). G.E. Vision furthers this mission because the cameras promote the safety of passengers and drivers by recording potential criminal activity on the buses and by helping police apprehend criminals. In

addition, the cameras allow Pace to enforce its safety standards by identifying operators' rule violations. Thus, the cameras advance Pace's statutory mission to provide the quality of coordinated transportation which the legislature has deemed "essential to the public health, safety and welfare." 70 ILCS 3615; DOC, 190 Ill. App. 3d at 266 (performing balancing test where employer tied its new policy to the security needs of the prison system and its statutory mission).[8]

Further, the burden on Pace's inherent managerial authority to bargain over this decision outweighs any benefits that bargaining could provide because G.E. Vision represents Pace's chosen method of ensuring public safety which helps achieve Pace's safety goals in a manner unrelated to its effect on employees' terms and conditions of employment, and because the Union has not presented any potential benefits to bargaining. As a preliminary matter, public safety is a matter of significant managerial concern and the burden on Pace to bargain over its chosen method to further that goal is therefore considerable. In addition, the manner in which G.E. Vision promotes public safety also illustrates the burdens of bargaining because G.E. Vision protects Pace's passengers and property through means other than the identification of driver misconduct since it helps the police apprehend criminals and deters bus crime. Indeed, the specific cameras arguably directed towards affecting employees' terms and conditions of employment are part of an overall security system that is not solely or even primarily used to catch employees in wrongdoing. City of Paterson, 33 NJPER ¶ 50 (NJ PERC 2007)(installation of overt cameras in a police department building for the purpose of protecting people and property not mandatory subject of bargaining where the cameras were not primarily used to catch employees in wrongdoing, but were part of an overall security system). Finally, the Union has presented no potential benefits of bargaining to the decision-making process. Thus, bargaining would substantially hamper Pace's ability to determine the manner in which it provides safe public transportation because G.E. Vision represents Pace's chosen method to promote passenger, driver, and public safety, which are integral to achieving Pace's statutory mission, and because it advances those goals through means other than those which impact employees' terms and conditions of employment. State of Ill. Dep'ts of Cent. Mgmt. Serv. and Corrections, 5

[8] This case was decided before Cent. City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 599 N.E.2d 892 (1992) and City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 692 N.E.2d 295, 14 PERI ¶ 4005 (1998).

PERI ¶ 2001 (IL SLRB 1988), aff'd 190 Ill. App. 3d 259 ("the scope of bargaining in the public sector must be determined with regard to the employer's statutory mission").

Accordingly, under these circumstances, Pace's implementation and use of G.E. Vision is not a mandatory subject of bargaining.[9]

V. CONCLUSIONS OF LAW

Pace did not violate sections 10(a)(4) and (1) of the Act when it unilaterally implemented and used the G.E. Vision video surveillance system.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the complaint be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

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[9] For this reason, it is unnecessary to address the parties' arguments concerning notice, opportunity to bargain, waiver, and fait accompli.

Issued at Chicago, Illinois this 16th day of October, 2012

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge