

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

4/26/12

Illinois Fraternal Order of Police Labor Council,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-11-167
)	
Village of Summit,)	
)	
Respondent)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On November 2, 2011, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) in the above-captioned case, recommending that the Illinois Labor Relations Board, State Panel (Board) find that the Village of Summit (Respondent or Village) violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), by failing and refusing to bargain with the Illinois Fraternal Order of Police (Charging Party) before using video surveillance footage as evidence to support the discipline of three police officers represented by Charging Party.

Respondent filed timely exceptions to the ALJ's RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240 (Board Rules), and Charging Party filed a timely response. After reviewing the record, exceptions and response, we reverse the ALJ's conclusion that Respondent violated Sections 10(a)(4) and (1) of the Act, and dismiss the charge for the reasons outlined below.

The ALJ's Findings of Fact

We adopt the ALJ's findings of fact in their entirety. In summary, the ALJ found that Respondent's Police Department (Department) currently uses 18 video surveillance cameras, 14 of which are located in and around the Department's police station. None of Respondent's video surveillance cameras are hidden from plain view. Of the 14 police station cameras, 11 were installed prior to 2008; the other three were installed in June or July 2010. Charging Party was aware of the installation of the three new cameras in 2010, and did not object. In fact, the new camera in the northeast garage, pointed in the direction of employees' mailboxes and a bank of employee lockers, was installed at the specific request of the employees to deter tampering with employee mail.

At 12:45 a.m. on September 15, 2010, there was a drive-by shooting which generated a number of 911 calls from witnesses. A police dispatch call was issued to the Department at 12:46 a.m. At the time, four of Respondent's sworn police officers were on duty, including three officers in the bargaining unit represented by Charging Party. The next day, a Village alderman informed Respondent's Chief of Police that he had heard that there were no officers on the street at the time of the shooting, and that the officers on duty failed to respond immediately. The Chief had suspected as much, as reports indicated that, by the time responding officers arrived, the victim had already left the scene, even though the shooting had occurred close to the station, which was approximately 40 seconds away by car. In addition, the Chief had previously received complaints from Village residents that Respondent's officers did not adequately patrol the streets.

Based on this information, the Chief proceeded to view footage from several of Respondent's police station video cameras. This footage confirmed that, at the time of the

shooting, rather than patrolling the streets, all four officers were still at the station, making and drinking coffee, reading and lounging. The video footage also confirmed that the officers failed to promptly respond to the dispatch call. Based on the video footage evidence, Respondent issued written warnings to two of the bargaining unit officers, and a one-day suspension to the third. The non-unit watch commander also received a one-day suspension. Prior to this incident, Respondent had never imposed discipline on employees based on evidence obtained from its surveillance cameras. Charging Party subsequently sent Respondent a written demand to bargain over the decision to use video camera footage as a basis for discipline. Respondent rejected this demand in a reply letter. The instant unfair labor practice charge and complaint for hearing followed.

The ALJ's Conclusions of Law

In her RDO, the ALJ concluded that Respondent's decision to use the video surveillance footage as a basis for discipline was a mandatory subject of bargaining, and that Respondent's refusal to bargain following Charging Party's demand therefore worked a violation of Sections 10(a)(4) and (1) of the Act. The ALJ's RDO included a recommendation that Respondent be ordered to rescind the discipline issued to each of the three officers, and to bargain with Charging Party before implementing any decision to use video surveillance footage as a basis for discipline.

Discussion and Analysis

As the ALJ correctly noted in her RDO, this Board has never previously addressed the question of whether the first-time use of video surveillance evidence as a basis for discipline is a mandatory subject of bargaining under the Act. Under the specific facts presented to us by this case, we find that Respondent's use of the video surveillance footage was not a mandatory

subject of bargaining, because the use of that evidence under the circumstances presented here did not constitute a material change in terms and conditions of employment for bargaining unit employees.

In her RDO, the ALJ correctly cited relevant case authority regarding the scope and extent of an employer's duty to bargain over changes involving disciplinary rules, policies and investigatory procedures, including cases involving the installation and use of video surveillance cameras. However, we see important differences between each of those cases and the situation presented by the case before us.

In both Colgate-Palmolive Co., 323 NLRB 515 (1997), and Bloom Twp. H.S. Dist. 206, 20 PERI ¶35 (IL ELRB ALJ 2004), a duty to bargain was found with respect to the employer's installation of hidden cameras for the specific purpose of monitoring employees. In our case, the installation and presence of the employer's video surveillance cameras was never an issue. At the time of the conduct that gave rise to the discipline of the officers, both the Charging Party and the employees were well aware of both the presence and functionality of the cameras, and, as far as the record in this case reveals, Charging Party had never raised any issue with respect to the presence of the cameras.

In addition, unlike the situations presented in the other cases cited in the RDO, this case does not involve the issuance of a new disciplinary policy, such as a drug testing or polygraph testing policy, the implementation of which would involve the introduction of new, physically intrusive investigative procedures directly impacting employees, and/or new disciplinary rules and sanctions. See Am. Fed'n of State, Cnty. & Mun. Empl. v. Ill. State Labor Relations Bd., 190 Ill. App. 3d 259 (1st Dist. 1989) (new "reasonable suspicion" drug testing policy introduced by Department of Corrections; issue of disciplinary sanctions for positive test or for refusing to

take test a mandatory subject of bargaining); Johnson-Bateman Co., 295 NLRB 180 (1989) (duty to bargain prior to implementation of new post-injury drug/alcohol testing policy); and Medicenter, Mid-South Hosp., 221 NLRB 670 (1975) (introduction of mandatory polygraph testing as a condition of continued employment a mandatory subject of bargaining). In contrast to all of these cited cases, the three officers in this case were disciplined entirely on the basis of disciplinary rules, procedures and sanctions already in place, and none of the officers was made to submit to any sort of physical examination or other new procedure as part of the investigation.

Nor are we persuaded by the ruling of the New York Public Employment Relations Board in Niagara Frontier Transit Metro System, Inc., 36 PERB ¶3036 (NY PERB 2003), where the New York Board found that the employer had a duty to bargain over the impact of its decision to use footage from a video camera installed on a bus as a basis for disciplining a bus driver. We find the reported decision in that case to be somewhat incomplete in its description of the relevant factual circumstances bearing on the Board's ruling. Also, it is significant that, despite finding a breach of the duty to bargain over the impact of the decision to use the video footage for purposes of discipline, the New York Board did not require the employer to rescind the discipline. As reflected in the decision, under New York law, the employer's duty to bargain over the impact of its decision to use the video footage did not require the employer to forestall issuance of the discipline pending completion of impact bargaining. Under Illinois law, the finding of a duty to bargain over either the decision to use video footage in support of discipline, or the impact of that decision, would necessitate rescission of the discipline issued, and require employers in similar circumstances to forestall the imposition of discipline pending completion of negotiations. Chicago Transit Auth., 14 PERI ¶3002 (IL LLRB 1997).

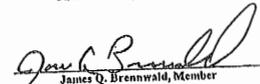
In the absence of any indication in this case that Respondent had ever affirmatively represented to Charging Party that it would not use footage obtained from the employer's video cameras as a basis for employee discipline, we do not see how Respondent's merely evidentiary use of the video footage, from surveillance cameras whose presence was already well known to both the employees and the Charging Party, constitutes a material change in the employees' terms and conditions of employment which would trigger a duty to bargain. Any concerns regarding the authenticity, reliability or persuasiveness of video surveillance footage in any discipline case are matters which, like any other evidentiary issues, can be appropriately addressed through the parties' existing disciplinary review procedures.

In conclusion, we find that Respondent's decision to use surveillance camera footage as a basis for disciplining employees, under the specific facts of this case, did not constitute a material change in terms and conditions of employment for bargaining unit employees, and that Respondent therefore had no duty to bargain over the matter.¹ Accordingly, we order that the charge be dismissed.

BY THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL


Jacalyn J. Zinglerman, Chairman


Paul S. Dason, Member


James Q. Brennwald, Member


Michael G. Coll, Member


Albert Washington, Member

¹ Because we conclude that the decision to use the video footage as a basis for discipline did not implicate a mandatory subject of bargaining, we need not address the ALJ's ruling, and the Respondent's exceptions thereto, with respect to whether Charging Party had waived any right to midterm bargaining by virtue of the terms of the parties' collective bargaining agreement.

Decision made at the State Panel's public meeting in Chicago, Illinois, on April 12, 2012; written decision issued at Chicago, Illinois, April 25, 2012.