STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Firefighters, Local 26,	)	
Charging Party	)	
and	)	Case No. S-CA-12-017
City of Rock Island,	)	
Respondent	)	

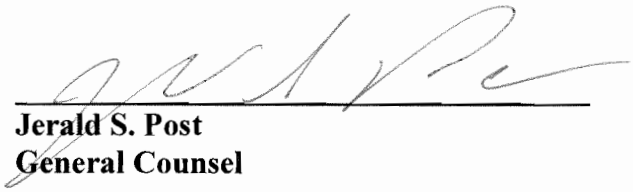
ORDER

On July 15, 2013 Administrative Law Judge Kimberly Faith Stevens, 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 September 10, 2013 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 10th day of September 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Firefighters, Local 26,	)	
Charging Party	)	Case No. S-CA-12-017
and	)	
City of Rock Island,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 12, 2011, International Association of Firefighters, Local 26 (Union), filed an unfair labor practice charge with the Illinois Labor Relations Board's State Panel (Board) in Case No. S-CA-12-017, alleging that the City of Rock Island (Respondent) violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended. The charges were investigated in accordance with Section 11 of the Act, and, on September 27, 2011, the Board's Executive Director issued a Complaint for Hearing. A formal hearing in this matter was held before Administrative Law Judge Eileen Bell at the Board's offices in Chicago, Illinois, on April 20, 2012. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.[1]

I. PRELIMINARY FINDINGS

1. I find that the Board has jurisdiction to hear this matter pursuant to Sections 5 and 20(b) of the Act.

[1] This case has been reassigned to the undersigned for purposes of issuing a Recommended Decision and Order as ALJ Bell has left the Board's employment.

2. I find that the Charging Party is a labor organization within the meaning of Section 3(i) of the Act.

3. I find that the Charging Party has been the exclusive representative of a bargaining unit composed of certain of the Respondent's employees.

4. I find that the Respondent is a public employer within the meaning of Section 3(o) of the Act.

5. I find that the Respondent is subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.

II. ISSUES AND CONTENTIONS

The Charging Party alleges that Respondent has engaged in an unfair labor practice in violation of Sections 10(a)(4) and (1) of the Act by failing to reach agreement or proceed to interest arbitration with the Union regarding Respondent's decision to disallow unit members' off-duty use of City vehicles and by failing to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings pursuant to Section 14(l) of the Act, in violation of Sections 10(a)(4) and (1) of the Act. Charging Party also alleges in its Post-Hearing Brief that the Respondent failed to bargain the impact of its decision with the Union. The Respondent alleges that it was not required to maintain the status quo with regard to the off-duty use of City vehicles because it is not a mandatory subject of bargaining. Moreover, Respondent alleges that the Complaint did not properly allege a failure of the duty to bargain the impact of its decision to disallow off-duty use of City vehicles.

III. FINDINGS OF FACT

The City of Rock Island provides services for residents and guests through City-run departments, including the fire department. Certain employees of the fire department are

represented by IAFF Local 26. Jeff Hindman has been employed by the City since September 6th, 1977 and has served as fire marshal for the City since May 2001. Hindman is a member of IAFF Local 26 and has been since 1978. Hindman has served as a firefighter, lieutenant, captain, and battalion chief in the fire department. As fire marshal, Hindman oversees inspection of commercial, business, and residential properties to ensure that the buildings conform to the City fire code and life safety code. Hindman also oversees public relations programs regarding fire safety and the department. In addition, Hindman is responsible for conducting fire investigations and ensuring that all fires within the City are investigated for cause and origin.

Prior to May 16, 2011, Hindman used a City-owned vehicle off-duty. The vehicle was known as the fire marshal's car. He used it even when off-duty from approximately May 2001 until May 16th, 2011. Hindman's use of the vehicle included taking it home, traveling to and from fire investigation sites, attending meetings, and traveling to interview witnesses. Hindman took the car home so that he could drive to the scene of an incident while he was off duty if such a situation arose. City policy requires that the fire marshal use the City-owned vehicle to travel to a fire scene to investigate. For instance, prior to May 16, 2011, if he was called to the scene of a fire while on a personal errand in his personal car, Hindman would be expected to take his personal car home and drive the City vehicle to the scene.

The vehicle is equipped with investigatory tools such as a camera, mobile radio, forms, digging tools, and collection canisters. After arriving at the scene, Hindman would complete his investigatory work and then return to home or work in the City vehicle. The vehicle was maintained, fueled, insured, and equipped by the City. Hindman reimbursed the City for all mileage to and from his home that he incurred in the City vehicle.

At hearing, Hindman testified that a former fire marshal, Glenn Rousey, who held the position from 1990-1997, utilized the fire marshal's car in the same way that Hindman did prior to May 16, 2011, in terms of taking the car home during his off-duty hours. Hindman also testified that Rousey utilized the City vehicle for personal matters, such as driving to a golf course while off duty. Hindman testified that his predecessor in the position, Jerry Shirk, utilized the fire marshal's car in a similar way to Hindman, and Shirk also used the City vehicle for personal trips within the area while off duty. Shirk was subsequently promoted to Fire Chief and Hindman was promoted to fire marshal at that time.

Hindman testified that Shirk provided instructions to him regarding use of the car during the first week of May in 2001. Shirk informed Hindman that Hindman could take the car home and would be required to report personal mileage. Hindman testified that Shirk further informed him that he would be allowed to take the car on personal business in the area so that if Hindman received a call or page to a scene, he would be able to respond while driving the City vehicle. At some times, the fire marshal's car has been marked with a decal; it is no longer marked. The current fire marshal's car is a white Ford Escape with municipal license plates. Hindman testified that, three or four years prior to the hearing, Chief Shirk asked him to curtail personal use of the fire marshal's car because of budgetary issues. Hindman agreed, noting that, from that time to the time the policy was instituted prohibiting take-home use of the car, he had left the car at his residence while off-duty and used it to respond to calls from that location. Hindman also noted that Shirk did not ask him to eliminate personal use of the car, only to curtail it. Every two weeks, at the end of each pay period, Hindman reported his mileage on the car including business and personal mileage. From 2001-2011, Hindman lived approximately 3 miles from his

office. Hindman indicated that personal miles are taxable income under IRS rules and regulations and that they were listed as a "fringe benefit" on his pay stubs.

On or about May 4, 2011, Fire Chief James Fobert showed Hindman a memo stating that, beginning Monday, May 16, 2011, no City vehicles would be allowed to be taken home by employees. Since May 16, 2011, Hindman no longer takes the fire marshal's car home. Local 26 did not consent to Rock Island's termination of the off-duty use of City vehicles. Rock Island did not give the union the opportunity to bargain over the issue. In August 2011, the parties reached a successor collective bargaining agreement.

At the time of hearing, the fire marshal's car was being parked at Fire Station No. 3 in Rock Island, which is not the same location as Hindman's office at the Central Fire Station. Hindman testified that, on a normal work day, he commutes via his personal vehicle or on foot to Fire Station 3, picks up the City vehicle, drives it to his office at the Central Fire Station, and then does the reverse when his work day is ended. Hindman further testified that his hours in the office have been shortened approximately 30 minutes per day due to the fact that he has to pick up the City vehicle from another location before going to his office. However, his work day has not been shortened because he is considered to be on duty when he reaches Fire Station 3. Hindman also testified that the change in the vehicle use policy has slightly lengthened his response times to calls, which he opined could affect the safety of other firefighters, including IAFF Local 26 members, who are fighting fires that Hindman is called to investigate. Hindman may offer advice on fire suppression at such scenes, and the firefighters remaining on scene are at risk of injury while at the scene of the fire from smoke and other dangers. Moreover, Hindman confirmed that a fire company fighting a fire must remain on the scene until the fire marshal arrives. Therefore, if Hindman is delayed, that fire company may be delayed in being

able to respond to another emergency. Chief Frobert testified, as did Hindman, that there is not a specific length of time within which the fire marshal must respond to a scene. Rather, the standard is that the fire marshal is to respond within a "reasonable" amount of time.

Firefighter Andrew West testified that, at the time of hearing, he was Local 26 president and became a member of the bargaining team for the union during the 2006 contract negotiations. West was also a member of the bargaining team in 2011 for a successor agreement to the contract that began on March 22, 2010, and expired on March 20, 2011. West sent the request to bargain that successor agreement to the City, asking that negotiations begin after January 1, 2011. The City indicated its acceptance of this request. West confirmed that use of a City-owned vehicle was not a bargaining subject that the City and the union intended to address during negotiations. Around April 15, 2011, the union and the City sent a joint request to the Federal Mediation and Conciliation Services to request mediation prior to the first bargaining session. West testified that this request was made because the negotiations were being undertaken within 30 days of expiration of the agreement and because there was a need to protect the status quo regarding wages, hours, and conditions of employment. Negotiations for the successor agreement concluded in August 2011 without the parties engaging in interest arbitration. The City and the union did not bargain over or reach impasse on the issue of the take-home use of the fire marshal's car.

In June 2011, Hindman notified West of the change in policy regarding use of the car. The unfair labor practice charge here followed.

IV. DISCUSSION AND ANALYSIS

The Complaint issued against Respondent alleges violations of Sections 10(a)(4) and (1) of the Act. Those sections provide, in pertinent part:

(a) It shall be an unfair labor practice for an employer or its agents: (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay...(4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative[.]

A. Mandatory Subject of Bargaining

When considering whether an employer has refused to bargain in good faith, it is necessary to determine whether the issue to be bargained is considered a mandatory subject of bargaining. The Illinois Supreme Court set out the test for determining whether an issue is a mandatory subject of bargaining in Central City Education Association v. IELRB, 149 Ill. 2d 496 (1992). Specifically, that case outlined a three-part balancing test. Id. at 523. The first part of the test requires a determination of whether the matter is one involving wages, hours, and terms and conditions of employment. Id. If the answer to this first question is "no", the inquiry ends, and the employer does not have a duty to bargain that issue. Id. If the answer to the first question is "yes", the analysis proceeds to the second question, which considers whether the issue is one of inherent managerial authority. Id. If the answer to the second question is "no", the analysis stops, and the issue is a mandatory subject of collective bargaining. Id. If the answer to the second question is "yes", this analysis requires a third part, which is a balancing of the benefits of bargaining to the decisionmaking process with the burdens imposed by bargaining on the employer's authority. Id. The court contemplated that such balancing determinations would be very fact-specific. Id.

Under the first prong of the Central City analysis, an issue involves wages, hours, and terms and conditions of employment where it (1) involves a departure from previously

established operating practices; (2) effects a change in the conditions of employment; or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit. City of Belvidere v. ISLRB, 181 Ill. 2d 191, 208 (1998), citing Westinghouse Electric Corp., 150 N.L.R.B. 1574 (1965). In this case, the facts make clear that the decision to disallow off-duty use of the fire marshal's car was most certainly a departure from previously established operating practices. Indeed, as Respondent has admitted, it had been providing the fire marshal with such a benefit for many years. Although Hindman previously agreed to curtail his personal use of the vehicle in response to the City's budgetary situation, he did not agree to cease use of it for personal reasons. Indeed, he continued to use the vehicle for personal use when commuting to his office at the Central Fire Station.

Similar situations have arisen in determining whether an issue is a mandatory subject of bargaining. For instance, in a declaratory ruling by the Board's General Counsel in Village of Wilmette, the use of an employer's equipment for personal use by firefighters during off-duty hours was found to affect terms and conditions of employment. 18 PERI ¶ 2045 (ILRB-SP GC 2002). Specifically, the ruling in Village of Wilmette agreed with similar reasoning in other states in finding that an economic benefit from an employer is a form of compensation and therefore a term and condition of employment, even where the benefit is not connected to an employee's work. 18 PERI ¶ 2045.[2]

[2]The General Counsel stated: "To the extent that the proposal allows employees the personal use of the Employer's equipment, I find that it involves unit members' terms and conditions of employment. Personal use of employer vehicles during non-working hours confers an economic benefit to employees, and thus involves their terms and conditions of employment. County of Nassau, 26 NYPER ¶ 3040 (NY PERB 1993), aff'd, 28 NYPER ¶ 7011 (NY Sup.Ct. 1995); County of Cattaraugus, 8 NYPER ¶ 4516 (NY PERB 1975); Wil-Kil Pest Control Co. v. NLRB, 181 NLRB 749 (1970), enf'd, 440 F.2d 371 (7th Cir. 1971) (employer's restriction of privileges of using the employer's vehicles for personal use constituted a material change in working conditions); Duval County School Board, 25 FPER ¶ 30,036 (FL PERC G.C. 1998) (permitting employees to use employer vehicles for lunch breaks is a term and condition of employment which requires the employer to bargain). The availability of an employer's tools or shop facilities for employees' personal use confers a similar benefit, and thus involves a term or condition of employment. Westbury Water and Fire District, 13 NYPER ¶ 3019 (NY PERB 1980). As explained by the New

Other vehicle-related policies have also been held to be mandatory subjects of collective bargaining. For instance, in State of Illinois, Department of Central Management Services (Department of Agriculture), the Board found that issuance of State-owned vehicles to employees was a mandatory subject of bargaining. 13 PERI ¶ 2014 (ISLRB 1997). In Chicago Housing Authority, the Board held that a mileage reimbursement policy was a mandatory subject of bargaining under the Act because it constituted wages. 7 PERI ¶ 3036 (ILLRB 1991). Moreover, the Board rejected the respondent's reasoning that the mileage reimbursement policy was not a mandatory subject of bargaining because employees could choose not to use personal vehicles. 7 PERI ¶ 3036. The Board reasoned that even fringe benefits provided to employees on a regular basis that cannot be characterized as gifts are mandatory subjects of bargaining, so the mileage reimbursement at issue was similarly a mandatory subject of bargaining. 7 PERI ¶ 3036. Moreover, in Board of Trustees of University of Illinois v. IELRB, the Illinois Supreme Court held that parking fees for use of University lots were a mandatory subject of bargaining because they affected employees' terms and conditions of employment. 224 Ill. 2d 88 (2007). The court reasoned that, even though employees could choose other parking options for purposes of parking at work, the University lots were more convenient and more conducive to workplace efficiency than the limited, competitive alternative parking options. Id. at 101-102.

Prior to this Board's consideration of such an issue, the question of whether mileage reimbursement, travel pay, car rental fees, and the like constituted wages was considered by the National Labor Relations Board. The NLRB consistently found that such benefits from the

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Jersey Public Employment Relations Commission in Township of Bridgewater, 7 NJPER ¶ 12193 (NJ PERC 1981), personal use of an employer's garage or equipment allows employees to reap an economic benefit, which is a form of compensation, and thus a term and condition of employment. This is true regardless of whether there is any connection between the benefit and the employee's work. Insofar as the Union's proposal allows the unit employees to continue to use Fire Department vehicles and equipment for their personal use, I conclude that it meets the first prong of the Central City/Belvidere test." 18 PERI 2045.

employer were wages because they were "'emoluments of value' which accrue to the 'employees out of their employment relationship' in addition to the actual rate of pay earned." Community Electric Service, 271 N.L.R.B. 598, 599 (1994). See also Branch Motor Express Company, 260 N.L.R.B 108 (1982) (vehicle rental fees paid by employer to employees for using personal vehicles for work purposes are mandatory subject of bargaining); Pepsi Cola Bottling Company, 200 N.L.R.B. 922 (1972) (annual reimbursement benefit to driver-salesmen is a mandatory subject of bargaining). The Board has adopted the reasoning of the NLRB in considering similar questions, as in the Board decisions discussed above.

In the case of off-duty use of a City vehicle, when used for commuting purposes, it is indeed connected to an employee's work but also provides an economic impact on the employee associated with their work and wages. Indeed, the personal use of the vehicle was previously listed as a "fringe benefit" on Hindman's pay stub, and, as such, was taxable under the U.S. income tax code. Moreover, the ability to use the fire marshal's car for personal use not related to commuting is similarly a benefit to the employee because it obviates the need for the employee to utilize a personal car for that purpose. In a broader sense, the use of the fire marshal's car while off-duty does impact the conditions of employment of Hindman as well as other members of the bargaining unit. Hearing testimony established that Hindman spends less work time in the office under the new policy and that Hindman's response time to incidents has been impacted by the decision to disallow off-duty use of the vehicle in that he is unable to simply respond from home or other off-duty locations. Instead, he must travel to the location where his City vehicle is parked and proceed from that location to the scene of an incident. Not only does this impact the way in which Hindman completes his work, but it also impacts the working conditions of the firefighters responding to a scene to which Hindman is called.

Specifically, firefighters are required to remain at a scene until the fire marshal arrives. Therefore, if Hindman's response is delayed, the ability of those firefighters to leave the scene and respond to other emergencies is delayed. Moreover, the parties' witnesses agreed that, the longer a firefighter is on a fire scene, the more likely it is that that firefighter might suffer injury. Therefore, the fire marshal's delayed response time could impact the working conditions of firefighters as well. For the reasons described, the off-duty use of City vehicles meets the first prong of the Central City test because the issue is similar to other vehicle-related issues considered by the Board and Illinois courts and because it impacts the wages and terms and conditions of employment for the employees.

With regard to the second prong of the test, the Respondent has not demonstrated that the off-duty use of City vehicles is a matter of inherent managerial authority. "In order to establish that its managerial discretion is implicated under the second prong of Central City, an employer must present particularized factual evidence linking its objectives with one or more of the enunciated managerial rights stated in Section 4 of the Act." Fraternal Order of Police, Lodge 7, and City of Chicago (Police), 26 PERI ¶ 115 (ILRB-LP 2010), citing County of Cook v. Illinois Labor Relations Board Local Panel, 347 Ill. App. 3d 538, 552 (1st Dist. 2004). Under Section 4 of the Act, managerial rights that involve inherent managerial authority 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." Moreover, Section 4 of the Act provides that employers "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." Inherent managerial authority concerns those issues that go to the heart of

entrepreneurial control of the employer's business operations. Fraternal Order of Police, Lodge 7, and City of Chicago, 28 PERI 72 (ILRB-LP 2011); see also Board of Trustees, 224 Ill. 2d at 104; Central City, 149 Ill. 2d at 518.

In this case, it appears that the Respondent is attempting to argue that it retains inherent managerial authority over the use of the fire marshal's car pursuant to Section 14(i) of the Act, which prohibits an interest arbitrator from addressing "equipment" that is provided to firefighters. The Respondent argues that, because such an issue could not be submitted to interest arbitration, it is inherently a permissive subject of bargaining. Section 14(i), however, provides that an interest arbitration decision pursuant to that Section may not address "(ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used[.]" The plain language of this Section does not support the Respondent's argument that "equipment" in a general sense is not a mandatory subject of bargaining, nor is this interpretation consistent with the Board's past decisions, similar decisions from other states, or the decisions of the NLRB. Even if the fire marshal's car does constitute "equipment", personal use of an employer's vehicle confers an economic benefit to an employee. Such an issue is therefore a mandatory subject of bargaining as it relates to the terms and conditions of employment. Moreover, I find that Section 14(i) does not bar interest arbitration on all questions relating to equipment, because to do so would obviate the words "type of" preceding "equipment," would run contrary to established precedent, and would be inconsistent with the list of management rights under Section 4 of the Act, as it is not listed therein.

Moreover, the Respondent has not provided evidence linking its actions to an enumerated right in Section 4 of the Act. There appears to be little or no articulation from the Respondent as to how continuing to provide this benefit to employees impacts its ability to operate the

department generally or what part the off-duty use of vehicles plays in the overall budget of the City or the department In absence of such evidence linking Respondent's objectives in disallowing the off-duty use of City vehicles to a specific management right, I must find that Respondent has not met the second prong of the Central City test and that the issue does not involve inherent managerial rights as contemplated by the Act.

Even if the Respondent had shown that the issue of disallowing the off-duty use of City vehicles was an issue of inherent managerial authority, the Respondent has not satisfied the third prong of the Central City test. Indeed, the Respondent has not presented evidence that shows that the burden to Respondent of negotiating this issue would outweigh the benefit of negotiating this issue with the Unions. The Respondent has not demonstrated an emergency need for this change in policy, nor has it provided evidence that it is experiencing a financial crisis that would necessitate such action. Respondent has demonstrated no reason why it could not have also sought input from the unions and bargained the issue before taking action. Therefore, Respondent should be estopped from asserting that negotiation would be too burdensome.

Benefits of negotiation in this case would include the ability for the employees' representatives to bargain over the de facto reduction in benefits resulting from the inability to use City vehicles off-duty and the ability for the unions to participate in providing suggestions to the Respondent as alternative solutions. At any rate, Respondent has not demonstrated how any perceived burden on it would outweigh the obvious benefits of negotiating such a policy. Therefore, the third prong of the Central City test has not been met by the Respondent. Because the Central City test has not been met by the Respondent, I must find that the off-duty use of City vehicles, specifically, the fire marshal's car, is a mandatory subject of bargaining.

B. Failure to Maintain Status Quo during the Pendency of Interest Arbitration

Section 14 of the Act governs disputes regarding the contracts of security employees, peace officers, and firefighters. The process by which these disputes are resolved, commonly referred to as interest arbitration, begins with a request for mediation pursuant to Section 14(a). Section 14(j) provides, in pertinent part: "Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a)[.]" Pursuant to Section 14(k), interest arbitration awards are reviewable in circuit court. Section 14(l) further provides: "During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under this Act." Therefore, under the plain language of the Act, proceedings before the arbitration panel are deemed to be pending upon initiation of arbitration procedures, which in turn are deemed to be pending upon filing a request to the Board for mediation pursuant to Section 14(a). Therefore, at any time after the filing of this request, the interest arbitration proceedings are pending.

In this case, the parties were engaged in negotiations for a successor agreement after the expiration of the 2010-2011 agreement. On April 15, 2011, the parties jointly requested a mediation panel from the FMCS, and that request constitutes the commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act. As discussed above, the off-duty use of the fire marshal's car is a mandatory subject of bargaining under the Central City analysis. As the parties commenced the interest arbitration process on April 15, 2011, and that process was still pending as of May 4, 2011, it is clear that the City took the complained-of actions during the pendency of the interest arbitration regarding the successor agreement. By the

plain language of the Act, the City violated Section 14(l) by failing to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings as defined in the Act. Essentially, the City's actions resulted in changing terms and conditions of employment without bargaining with the Union over these matters, which constitutes a failure to bargain in good faith pursuant to Section 10(a)(4) of the Act. Therefore, I find that the City did violate the Act by failing to maintain the status quo with regard to the off-duty use of City vehicles during the pendency of interest arbitration.

C. Failure to Bargain in Good Faith Regarding Impact of the Respondent's Decision

The Union alleges that the Respondent also violated the Act when it failed to bargain the effects, or impact, of its decision on the bargaining unit members. The Union urges that the Complaint be amended at this point to reflect that allegation. The Respondent argues that such amendment is not appropriate at this stage and that it was not provided sufficient notice of such a claim so that it could defend against it. The Respondent does not dispute that it did not allow the Union the opportunity to bargain over its decision or the impact of its decision. The Union alleges that it would not have been required to demand to bargain over the decision or its impact because the Respondent's action constituted a *fait accompli.*

As stated above, I find that the Respondent violated the Act when it failed to maintain the status quo during the pendency of interest arbitration proceedings with regard to a mandatory subject of bargaining. The remedy for such action in violation of Section 4 is generally a return to the status quo ante, a make-whole remedy for adversely impacted employees, and the condition that, should the employer wish to make such a change in the future, it must give the union notice and opportunity to bargain. If I were to address the Union's contention that Respondent failed to engage in impact bargaining and were to find in the Union's favor, I would

recommend the same remedy. Therefore, I do not find it necessary to address this issue as the Union has already received the relief it could reasonably expect if it were to prevail.

V. CONCLUSIONS OF LAW

I find that the Charging Party has proved by a preponderance of the evidence that the Respondent committed an unfair labor practice when it refused to bargain in good faith as required by Section 10(a)(4) of the Act by failing to maintain the status quo during the pendency of interest arbitration with regard to a mandatory subject of bargaining.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, its officers and agents, shall:

1. Cease and desist from:
    a. Failing and/or refusing to bargain collectively in good faith with the Charging Party with respect to the failure to maintain the status quo in accordance with the parties' collective bargaining agreement during the pendency of interest arbitration.
    b. Failing and/or refusing to bargain in good faith with the Charging Party over changes in mandatory subjects of bargaining.
    c. In any like or related matter, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Restore the policy and practice in effect prior to May 16, 2011, with respect to the off-duty use of City vehicles as it pertains to the fire marshal's car, insofar

as this policy and practice is in compliance with the parties' current collective bargaining agreement.

b. Make Fire Marshal Hindman whole for any benefit he would have received but for the Respondent's action in disallowing the off-duty use of the fire marshal's car on May 16, 2011, along with interest on any monetary sums computed at seven percent per annum.

c. Preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of lost benefits, as well as interest thereon, as set forth in this Recommended Decision and Order.

d. Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 30 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.

e. Notify the Board in writing, within 20 days from the date of this Decision, of the steps Respondent has taken to comply herewith.

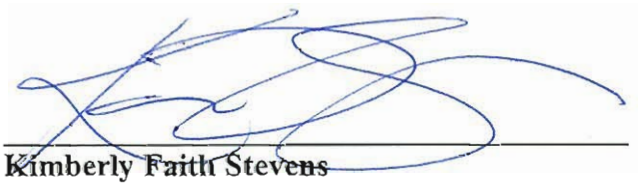
VII. EXCEPTIONS

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 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 General Counsel of the Illinois Labor Relations Board, 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 15th day of July, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Kimberly Faith Stevens
Administrative Law Judge

EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

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

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

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

Accordingly, we assure you that:

WE WILL NOT fail or refuse to bargain collectively in good faith with International Association of Firefighters, Local 26, as the exclusive representative of a bargaining unit composed of firefighters, by failing and/or refusing to maintain the status quo with regard to the off-duty use of City vehicles, specifically, the fire marshal's car, in accordance with the parties' collective bargaining agreement during the pendency of interest arbitration.

WE WILL NOT in any like or related manner interefere with, restrain, or coerce employees in the exercise of their rights guaranteed them under the Act.

WE WILL make Fire Marshal Hindman whole for any benefit he would have received but for the Respondent's action in disallowing the off-duty use of the fire marshal's car on May 16, 2011, along with interest on any monetary sums computed at seven percent per annum, but for the Respondent's failure to maintain the status quo.

WE WILL preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of lost benefits, as well as interest thereon.

This notice shall remain posted for 30 consecutive days at all places where notices to our bargaining unit members are regularly posted.

Date: _____

City of Rock Island, Illinois
(Employer)

ILLINOIS LABOR RELATIONS BOARD