

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

Metropolitan Alliance of Police,	)	
Chapter # 612,	)	
	)	
Charging Party,	)	
	)	Case No. S-CA-14-019
and	)	
	)	
Village of Glenwood,	)	
	)	
Respondent.	)	

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

On August 5, 2015, Administrative Law Judge Anna Hamburg-Gal (ALJ) issued a Recommended Decision and Order (RDO) dismissing in part and sustaining in part the complaint in the above-captioned case. In the complaint, Charging Party Metropolitan Alliance of Police, Chapter # 612 (Charging Party or MAP) alleged that Respondent Village of Glenwood (Respondent or Village) had violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended, by implementing a decision to promote three sergeants without first completing effects bargaining. MAP also amended its complaint at hearing to include an allegation that the Village had violated Section 10(a)(2) and (1) of the Act by retaliating against two MAP Executive Board members for disagreeing with the Police Chief over the promotion process.

In her RDO, the ALJ concluded that MAP's Section 10(a)(2) allegations were untimely but that the Village had violated Section 10(a)(4) by implementing the promotions without first

completing effects bargaining.<sup>1</sup> As a remedy, the ALJ ordered the Village to bargain the effects of the promotion decision, restore the status quo ante by rescinding the promotions until the parties completed effects bargaining, and make whole bargaining unit members for any lost wages. The Village filed timely exceptions of the RDO pursuant to Section 1200.135(b) of the Board's Rules and Regulations, 80 Ill. Adm. Code § 1200.135(b). MAP filed a timely response and cross-exceptions challenging the ALJ's conclusion that its retaliation claim was untimely. After reviewing the exceptions, cross-exceptions, the responses, and the record, we affirm and adopt the ALJ's conclusion that the Village violated Section 10(a)(4) and (1) by implementing its decision regarding the promotions without first completing effects bargaining and her conclusion that MAP's Section 10(a)(2) claim was untimely for the reasons stated in the RDO. However, we find that the Village's exceptions regarding the remedy have merit and modify the order as discussed below.

As the ALJ correctly noted, when crafting an unfair labor practice remedy, we have typically ordered the parties to return to the status quo ante and make whole any affected employees. However, we have on occasion limited or altered our remedy when the facts of a case have warranted such action. See State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Agriculture), 13 PERI ¶ 2014 (IL SLRB 1997); State of Ill., Dep't of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001 (IL SLRB 1988), aff'd Am. Fed'n of State, Cty. & Mun. Employees, AFL-CIO v. Ill. State Labor Relations Bd., 190 Ill. App. 3d 259 (1st Dist. 1989). Both the National Labor Relations Board (NLRB) and the Illinois Educational Labor Relations Board (IELRB) have issued limited remedies in cases where an employer has unlawfully refused to bargain. See Transmarine Navigation Corp. (Transmarine), 170 NLRB 389 (1968); East St. Louis Sch. Dist.

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<sup>1</sup> The ALJ also denied MAP's motion for sanctions. As neither party has excepted to this portion of the RDO, it will stand as non-precedential.

No. 189, 16 PERI ¶ 2029 (IELRB 2000); Lombard Sch. Dist. No. 44, 5 PERI ¶ 1038 (IELRB 1989). After reviewing the facts of the instant case, we believe a more limited remedy is warranted and would better effectuate the purposes of the Act. 5 ILCS 315/11(c).

First, we agree with the Village that a complete return to the status quo is not appropriate. The ALJ's recommendation ordered the Village to rescind the three promotions until the parties fully bargained over the effects of the decision. The ALJ also noted that the "remedy does not require the Respondent to repeat the promotion selection process once the parties have bargained to agreement or impasse on the promotions' effects . . . ." In its exceptions, the Village contends that the ALJ's premise that the remedy would not necessitate repeating the promotion selection process may be faulty as that process is governed by the Illinois Fire and Police Commissioner Act and its Rules, which mandate that a promotion list expires after a set period of time. Accordingly, it is unclear whether the promotion list the Village used in 2013 could still be used once the parties complete effects bargaining. This leaves open the possibility that three employees, legally promoted and acting in their new titles for three years, would not only be demoted, but have no guarantee of reinstatement. Furthermore, MAP does not challenge the Village's actual promotion of the employees, only the effects of those promotions. As such, we do not find that a rescission of the promotions is appropriate.

Additionally, we do not believe the Village's failure to bargain over the effects of the promotions necessitates complete make whole relief. Rather, we find a Transmarine type remedy would sufficiently address the Village's misconduct. 170 NLRB 389. In Transmarine, after finding that an employer had failed to bargain over the effects of a decision, the NLRB held:

in order to assure meaningful bargaining and to effectuate the purposes of the [National Labor Relations Act], we shall accompany our order to bargain over [effects] with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the violation and to recreate in some

practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences. . . .

Id. at 390 (limited remedy when employer had no duty to bargain over the decision but did have duty to bargain over the decision's effects). We believe issuing a similar limited back-pay award in this case would grant the affected employees relief and proportionately penalize the Village for committing the instant unfair labor practice.

Therefore, IT IS HEREBY ORDERED that the Village, its officers and agents, shall:

1. Cease and desist from:
  - a. Failing and refusing to bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter # 612, as the exclusive representative of the bargaining unit including patrol officers and sergeants, regarding the effects of its decision to promote three officers to the position of sergeant;
  - b. 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. On request, bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter # 612, as the exclusive representative of the bargaining unit including patrol officers and sergeants, regarding the effects of its decision to promote three officers to the position of sergeant;
  - b. Pay the affected employees the amount they would have earned but not for the Village's failure to complete effects bargaining from the time this Decision issues until:
    - i. The parties complete effects bargaining;
    - ii. The parties reach bona fide impasse;

- iii. The Union fails to request bargaining within five days of the issuance of this decision or to commence negotiations within five days of the Village's notice of its desire to bargain; or
  - iv. The Union fails to bargain in good faith;
- c. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material;
- d. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/s/ John J. Hartnett  
John J. Hartnett, Chairman

/s/ Michael G. Coli  
Michael G. Coli, Member

/s/ John R. Samolis  
John R. Samolis, Member

/s/ Keith A. Snyder  
Keith A. Snyder, Member

/s/ Albert Washington  
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on December 15, 2015, written decision issued in Chicago, Illinois on March 10, 2016.

**STATE OF ILLINOIS  
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Metropolitan Alliance of Police,	)	
Chapter # 612,	)	
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Charging Party	)	
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and	)	
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Respondent	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On July 30, 2013, the Metropolitan Alliance of Police, Chapter # 612, (Charging Party or Union) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Village of Glenwood (Respondent or Village) 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 (2014). The charge was investigated in accordance with Section 11 of the Act. On April 1, 2014, the Board’s Executive Director issued a Complaint for Hearing. A hearing was conducted on February 9, 2015, 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**

The parties stipulate and I find that:

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent 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, the Respondent has been subject to the Act pursuant to Section 20(b) of the Act.
4. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative for the Police Officers and Police Sergeants employed by the Respondent, as certified by the Board on April 19, 2010 in Case No. S-RC-10-085.
6. The Respondent and the Union began bargaining over a successor agreement in February 2012.
7. During FMCS mediation on July 13, 2012, the parties reached a verbal agreement on all issues except for the Union's proposal with regard to the examination procedure for promotion of patrol officers to the rank of sergeant.
8. The final sergeant's promotional eligibility roster was posted on January 29, 2013.
9. On or about March 19, 2013, the Respondent enacted an ordinance providing for an increase of sergeants from four (4) to seven (7).
10. On or about April 11, 2013, the Union demanded to bargain the impact and effect of the increased number of sergeants per the Village ordinance, enacted on March 19, 2013.
11. On or around May 7, 2013, the Respondent promoted three patrol officers to the rank of sergeant from the January 29, 2013 promotional list.

## **II. ISSUES AND CONTENTIONS**

The Union narrowed the issues for hearing on brief by addressing only the following matters: (1) whether the Respondent violated Sections 10(a)(2) and (1) of the Act when Police Chief Demetrious Cook awarded Union Executive Board members Glenn White and Daniel Fisher zero merit and efficiency points during the promotional process, allegedly to retaliate against them for disagreeing with him over the proposed promotional process,<sup>1</sup> and (2) whether

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<sup>1</sup> The Union moved to amend the Complaint at hearing to include this allegation and I granted that motion. As discussed more completely below, the motion was improperly granted.

the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly implemented its decision to promote three sergeants, without completing effects bargaining.<sup>2</sup>

Addressing the first issue, the Union argues that the Chief applied a secret method for calculating merit and efficiency points and awarded White and Fisher zero points under the new method shortly after they complained to him about his earlier method. The Union further claims that the Chief's reasons for awarding White and Fisher zero points were pretextual because the Chief was not authorized to award zero points and the method he applied did not fairly represent the applicants' actual productivity.<sup>3</sup>

The Respondent counters that the Union's allegation of retaliation is untimely filed because it knew of the alleged retaliation on December 14, 2012, outside the limitation period. On the merits, the Respondent denies that it retaliated against Fisher and White because of their protected concerted activity. First, it asserts that Fisher and White did not engage in protected, concerted activity. In the alternative, the Respondent denies any causal connection between their protected activity and the Chief's award of zero points: The Chief did not gauge employees' productivity before choosing that criterion for the award of points; he did not know how employees ranked on the oral and written exams when he awarded the points; and his award of zero points was both consistent with the Board of Fire and Police Commissioners' (BFPC) rules and legitimately based on productivity.

Addressing the second issue, the Union argues that the Respondent acknowledged that the parties were in the midst of effects bargaining over promotions, stated that it would implement the promotions on May 7, 2013, regardless, and then followed through with its plan.

The Respondent counters that it bargained in good faith over the promotions' effects, despite meeting only once because the Union never requested another bargaining session and never presented any proposals. It further asserts that its conduct overall did not evidence bad faith bargaining.

Finally, the Union moves for sanctions based on an allegedly frivolous prehearing motion submitted by the Respondent, in which the Respondent sought to defer the instant matter to

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<sup>2</sup> All other issues raised by the Complaint are properly deemed waived on appeal. Vill. of Bensenville, 10 PERI 2009 (IL SLRB 1993) aff'd by unpub. order no. 2-94-0089 (2d Dist. 1995) (Respondent waived the argument that employee conduct was unprotected because the Respondent did not argue the issue before the ALJ).

<sup>3</sup> The Union also suggests that the Chief harbored union animus because he wanted patrol officers and sergeants to be in separate units.

interest arbitration. The Respondent responds that its prehearing motion is not sanctionable because it timely withdrew the motion pursuant to the Board's Rules.

### **III. FINDINGS OF FACT**

Kerry Durkin is the Mayor of the Village of Glenwood (Respondent). The Union represents patrol officers and sergeants employed by the Respondent. The collective bargaining agreement between the Respondent and the Union was effective from May 1, 2010 through December 31, 2011. Glenn White is a patrol officer and the Union President. Daniel Fisher is the Union's Recording Secretary and is on the Union's Executive Board.

In 2010, Demitrous Cook became Chief of Village's Police Department (Department). When he arrived, he assessed the Department's organizational structure. At the time, the Department had three sergeants to cover three eight-hour shifts: day, afternoon, and midnight. When sergeants were unavailable to supervise a shift, the Department designated a patrol officer as "watch commander" to perform supervisory duties. The supervising patrol officers earned two hours of pay in addition to their base wages when acting in that capacity.

In mid-2011, Chief Cook approached the Mayor about increasing the number of sergeants. He wished to have a greater number of well-trained individuals making critical decisions about police operations. The Chief believed that the increase in number of sergeants would save the Respondent money by reducing the Department's liability and saving on the costs of wages.<sup>4</sup> The Chief had not sought to increase the number of sergeants earlier because there were other matters that took precedence, including an incident involving a resident who was killed by the SWAT team and an officer-involved shooting.

The Board of Fire and Police Commissioners (BFPC) establishes the eligibility list of candidates applying to become policemen or fire fighters. The BFPC statute requires that the Commission conduct a promotional examination every three years. The statute further requires the Commission to have a valid promotion list prior to the date on which the prior promotional list expires or shortly thereafter. The Respondent's existing promotional list was scheduled to expire at the end of 2012.

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<sup>4</sup> The Chief initially claimed that it would be cheaper to substitute sergeants for patrol officer watch commanders who were earning overtime.

On August 9, 2011, Union attorney Keith Karlson wrote a letter to Mayor Durkin, requesting to bargain over the parties' successor agreement.

In February 2012, the Respondent and the Union began bargaining over a successor agreement. Chief Cook testified that the Union made proposals around this time to bargain over promotions.

On October 3, 2012, the BFPC posted a notice announcing promotional testing for the police sergeant rank. Chapter 4 of the BFPC's Rules and Regulations addresses the promotional testing. In relevant part, it provides that the final promotional score is based on a written test score, which accounts for 45% of the grade; an oral test score, which accounts for 45% of the grade; and department merit and efficiency, which accounts for 10% of the grade. It further states that the merit and efficiency scores are based on a 1 to 100 scale, which translates to a maximum of 10 points. Each candidate may also receive a maximum of five points for seniority. The rules set forth no criteria by which the Chief must award Department merit and efficiency points and they therefore allow the Chief to award points at his discretion. The Respondent scheduled the written examination for November 14, 2012 and the oral assessment for December 1, 2012.

On November 12, 2012, the Union sent a memorandum to the Chief requesting that the Respondent refrain from promotional testing until the Union and the Respondent had the opportunity to bargain over the impacts and effects of the promotional testing on unit employees. After receiving this memo, the Respondent consulted with counsel and proceeded with the testing.

On December 5, 2012, the Chief issued a departmental memo regarding the manner in which the Chief would award merit and efficiency points. The Chief stated he would calculate points based on a physical fitness test called the Peace Officer Wellness Evaluation Report (POWER) run, a candidate productivity review, and a thirty minute oral interview. The test runs were scheduled for December 20, 2012. The run was a new requirement. The Chief did not explain how he would measure productivity for the purposes of awarding merit and efficiency points.

Sometime after December 5, 2012, Fisher and White met with Chief Cook in his office to object to the POWER run requirement. They stated that it was unfair to include a run as part of the promotional testing process where the Department did not give candidates enough time to

prepare for it. Chief Cook testified that Fisher and White did not complain to him about the memorandum. Instead, he asserts that they met with him prior to the issuance of the memo to request greater transparency concerning the manner in which the Chief awarded merit and efficiency points. I credit White's assertion that he and Fisher complained to Cook about the run.

On December 7, 2012, the Chief rescinded his December 5, 2012 memo that outlined the criteria he had planned to use in awarding merit and efficiency points. He testified that he rescinded the memo because the Union threatened to file an unfair labor practice charge.

The Chief then consulted with the BFPC. The BFPC informed him that he had discretion to award merit and efficiency points as he saw fit.

The Chief chose employee productivity as the sole basis for awarding merit and efficiency points because he believed it was a fair measure. He based his point calculations on productivity scores awarded by sergeants to patrol officers across nine categories.<sup>5</sup> The Chief calculated the mean officer productivity using seven of the nine categories.<sup>6</sup> If a patrol officer scored above the mean, the Chief awarded the officer 10 points. If a patrol officer scored below the mean, the Chief awarded the officer zero points. The Chief admitted that he did not award points on a 1 to 100 scale. The Union received no notice that the Chief would base his award of merit and efficiency points on productivity.<sup>7</sup> The Chief did not inform the Union as to how he ultimately awarded the merit and efficiency points.

The Chief developed the criteria for awarding merit and efficiency points after the officers had completed their written and oral exams. However, the Chief was unaware of the officers' scores at the time he developed the criteria because the third party examiner did not provide him with the scores. Further, the Chief did not review the productivity data for each individual officer before determining that he would use productivity criteria to administer the merit and efficiency points.

On January 17, 2013, the BFPC posted a list ranking the officers who had applied for the promotion to sergeant. The list reflected the merit score, seniority, and written and oral scores. The following four officers received zero merit and efficiency points: Glenn White, C. Allen,

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<sup>5</sup> The sergeants base those scores on sheets completed by patrol officers that record the various types of tickets and the different kinds of arrests they make. There is a varying level of sincerity with which officers complete these forms and not all sergeants award points in the same manner.

<sup>6</sup> The Chief did not explain the basis for the exclusion of two categories.

<sup>7</sup> The merit and efficiency points were calculated differently for Detective T. Morache because he performs different work than the patrol officers and his work is not easily quantified.

and Daniel Fisher. The following officers received 10 merit and efficiency points: Christopher Burke, Curtis Perry, Patrick Owens, Don Stone, K. Wilbanks, and T. Morache.

Before the Chief awarded merit and efficiency points, the top three candidates for promotion were Curtis Perry, Glenn White, and Paul Schmidt. After the Chief awarded merit and efficiency points, the top three candidates were Curtis Perry, Patrick Owens, and Christopher Burke. White testified that his point tally would have changed had the Chief used all the criteria included on the productivity sheets.

On March 19, 2013, the Respondent enacted an ordinance providing for an increase of Patrol Sergeants from four (4) to seven (7).

On April 11, 2013, Karlson wrote a letter to Respondent attorney Violet Clark demanding impacts and effects bargaining over the Respondent's decision to increase the number of police sergeants. His letter further stated, "this change to the status quo impacts and effects the current hours, wages, terms, and conditions of employment of bargaining unit members...as you know, we are currently bargaining and going to arbitration over the promotional system."

On April 18, 2013, Respondent attorney Jeremy Edelson wrote a letter responding to the Union's demand. In that letter, he disagreed with the Union's assertion that the vote to increase the number of police sergeants changed the status quo. He further stated that the Respondent maintained the status quo by following the BFPC's rules and regulations with respect to the sergeant promotional examinations. Edelson concluded by stating that the Respondent was prepared to "meet and discuss" the effects of the promotions. He stated that the Respondent intended to implement the promotions on May 7, 2013 and that the Village was available to bargain effects on April 26, 29, or 30, 2013.

The parties scheduled an effects bargaining session for April 30, 2013. At the bargaining session, the Union asked Village Administrator Donna Gayden to delay the promotions. Gayden stated that the Respondent would not do so. When the Union asked Gayden what the promotional process would look like in the future, Gayden said, "that's the way we like it, that's the way we want it, and that's the way it's going to be." At this session, the Union also asked for the information on which the Respondent based its decision to increase the number of sergeants from three to seven, including calculations demonstrating the amount of money the Respondent would save. According to White, the Union never received those calculations. Gayden initially

testified that she provided the Union with a spreadsheet containing the requested information, but later stated that she was not sure whether she did so.

On April 24, 2013, Chief Cook announced the promotion of the following three Patrol Officers to the rank of sergeant: Curtis Perry, Patrick Owens, and Christopher Burke.

On May 6, 2013, Karlson sent an email to Edelson and Clark asking when the Union would receive the documents it requested at the parties' earlier bargaining session. Karlson expressed an eagerness to continue bargaining over the effects of the Respondent's decision to increase the number of sergeants. He noted that the Respondent would commit a per se unfair labor practice if it implemented the promotions before fully bargaining their effects. Karlson added that the promotions themselves and the manner in which the Respondent selected officers for promotion likewise constituted unfair labor practices.

On May 7, 2013, Clark responded to Karlson stating that the Respondent would continue bargaining over effects, but that it would implement the promotions as planned.

That day, the Respondent promoted three patrol officers to the rank of sergeant from the January 29, 2013 promotional list.

#### **IV. DISCUSSION AND ANALYSIS**

##### **1. The Union's Allegation that the Respondent Retaliated Against Smith and Fisher is Untimely**

My earlier decision to amend the Complaint to add an uncharged retaliation allegation is hereby reversed. At hearing, the Union moved to amend the Complaint to include the allegation that the Respondent retaliated against Union Executive Board members Smith and Fisher by awarding them zero merit and efficiency points, thereby eliminating their prospects for promotion.<sup>8</sup> The Respondent objected to the amendment, but did not claim that the allegations were untimely. I granted Union's motion. Upon further consideration, I reverse that decision and deny the Union's motion because the allegation falls outside the six month limitation period and is therefore untimely.

The Act gives administrative law judges broad discretion to amend complaints. Section 11(a) provides, in relevant part: "Any such complaint may be amended by the member or hearing

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<sup>8</sup> The issues statement agreed to by the Union at hearing is not precisely what is argued by the Union on brief. The discussion below addresses the amendment as it is interpreted and argued by the Union.

officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon.” The Board’s case law is more specific, allowing for the amendment of complaints in two distinct instances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. See Chicago Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); City of Chicago (Police Dep’t), 14 PERI ¶ 3010 (IL LLRB 1998); City of Chicago (Chicago Police Dep’t), 12 PERI ¶ 3013 (IL LLRB 1996); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Cnty. of Cook, 5 PERI ¶ 3002 (IL LLRB 1988).

However, Section 11(a) of the Act also provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made.” 5 ILCS 315/11(a) (2010). The six-month period begins to run once the charging party has knowledge of the alleged unlawful conduct, or reasonably should have known of the conduct. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004); Chicago Transit Auth., 16 PERI ¶ 3013 (IL LLRB 2000), citing Teamsters (Zaccaro), 14 PERI ¶ 3014 (IL LLRB 1998) aff’d by unpub. order, 14 PERI ¶ 4003 (1st Dist. 1999); Ill. Dep’t of Central Mgmt. Serv., 16 PERI ¶ 2011 (IL SLRB 2000) citing Moore v. Ill. State Labor Rel. Board, 206 Ill. App. 3d 327, 335, 564 N.E.2d 213, 7 PERI ¶ 4007 (4th Dist. 1990); Am. Fed. of State, Cnty. Mun. Empl., Local 3486 (Pierce), 15 PERI ¶ 2026 (IL SLRB 1999). Accordingly, an ALJ may not amend a complaint if the allegations are untimely and outside the six-month limitation period, even if the other requirements for amendment are met. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004).

The Union’s allegation that the Respondent retaliated against Smith and Fisher is untimely filed because the Union knew or should have known of the facts underlying the charge as of December 14, 2012, but filed its charge more than six months later on July 30, 2013. The limitation period begins to run on the date of the alleged discriminatory act, rather than the point at which the consequences of the act become most painful. Wapella Educ. Ass’n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 177 Ill. App. 3d 153 (4th Dist. 1988) (discussing federal precedent addressing timeliness with respect to adverse actions and applying that case law to alleged unilateral changes) (citing Delaware State College v. Ricks, 449 U.S. 250 (1980)).

Here, the alleged discriminatory act is the Chief's award of zero merit and efficiency points to Fisher and White, which allegedly eliminated their prospects for promotion. The Union knew or should have known that the Chief awarded Fisher and White zero merit and efficiency points on December 14, 2012, when Fisher and White received a departmental memo to that effect. The Union's ignorance of the Chief's particular method for calculating points does not render the argued allegation timely where the Union had full knowledge that the Chief denied Fisher and White merit and efficiency points outside the limitation period. See Wapella Educ. Ass'n, IEA-NEA, 177 Ill. App. 3d at 167; see also Delaware State College v. Ricks, 449 U.S. at 504.

Notably, in this case the Union also knew outside the limitation period that the Chief allegedly abused his discretion in awarding zero points and that the Chief's decision had an adverse effect on the identified employees' promotional prospects. On December 14, 2012, the Union knew that the Chief had awarded points in a manner that purportedly contravened the BFPC's rules because the zero points he awarded to White and Fisher did not fall within the 1-100 scale required by the BFPC's rules. On January 17, 2013, the Union knew that White and Fisher were not eligible for promotion because the Respondent posted the Sergeant's Promotion Eligibility Register that showed they were not among the top three candidates.

Thus, the Union's motion to amend the Complaint to add the retaliation allegation is denied because that allegation is untimely.

## 2. Alleged Refusal to Bargain Effects of the Promotions

The Respondent violated Sections 10(a)(4) and (1) of the Act when it implemented the promotions without bargaining to agreement or impasse over the promotions' effects.

Section 10(a)(4) provides that it is an unfair labor practice for an employer to "refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(a)(4). Section 7 provides that public employers are obligated to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of the Act. Section 4 states that employers "shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination

techniques and direction of employees.” Section 4 adds that public employers “however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.” Id.; Cnty. of Cook v. Licensed Practical Nurses Ass’n of Ill., Division 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-LP 2014). Where a decision of managerial prerogative impacts employees’ terms and conditions of employment, an employer cannot, as a general matter, implement the decision without first bargaining its effects. Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998)(also addressing remedy); State of Ill., Dep’t of Cent. Mgmt. Serv., 5 PERI ¶ 2001 (IL SLRB 1988) aff’d by Am. Fed. of State, Cnty. and Mun. Empl., AFL-CIO, 190 Ill. App. 3d 259 (1st Dist. 1989).

As a preliminary matter, the parties effectively agree that the promotion of three sergeants impacts the remaining officers’ terms and conditions of employment,<sup>9</sup> that the Union demanded effects bargaining, and that the parties began effects bargaining on April 30, 2013.

However, the parties had not concluded bargaining over the effects of the promotions when the Respondent implemented the promotions on May 7, 2013. Indeed, on that date, the Respondent’s counsel conceded that there were matters left to bargain by pledging, in an email to the Union, that “the Village [would] to continue to bargain over the impact and effects of the promotions.”

Nor had the parties reached impasse in bargaining over the promotions’ effects as of the date of their implementation. A finding of impasse is based on an examination of the facts of each case, giving consideration to the following factors: (1) bargaining history; (2) the good faith of the parties in negotiations; (3) the length of negotiations; (4) the importance of the issue; and (5) the contemporaneous understandings of the parties as to the state of negotiations. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992).

Here, the length of the parties’ negotiation, and more importantly, the contemporaneous understanding of the parties indicate that no impasse was reached. The parties had met only once to bargain effects and the Union was still waiting on information it requested from the Respondent at the time the Respondent implemented the promotions. Furthermore, although the

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<sup>9</sup> The Respondent makes no argument to the contrary. Moreover, the promotions would reasonably have such an effect because those not promoted would perform shift commander duties less frequently and their schedules might also change.

Union did not expressly schedule another negotiation date, it informed the Respondent a day before implementation that the first bargaining session was a “nice start” and that it was “eager to return to the table.” The reply from the Respondent’s attorney Clark indicates that she was in accord with that position because she stated that the Village would continue to bargain the impact of the promotions and would supply information previously requested by the Union.

Under these circumstances, the Union’s alleged failure to offer proposals does not support a finding of impasse, as the Respondent suggests.<sup>10</sup> Chicago Park District, 20 PERI ¶ 110 (IL LRB-LP 2003) (union’s failure to make bargaining proposals did not indicate impasse where union lacked information necessary to make meaningful offers). In turn, the Respondent’s implementation of the promotions demonstrates bad faith because there was no confusion over the fact that the parties were still the midst of negotiations. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (one bargaining session suggested that negotiations were not at a point at which neither party had more to offer); Cf. Village of Steger, 31 PERI ¶ 157 (IL LRB-SP 2015) (employer was entitled to presume an impasse existed after one meeting where the union made no proposals, did not request additional bargaining dates, and made no information requests; parties expressed no mutual understanding that bargaining would continue).

The Respondent’s argument, that its conduct overall demonstrates good faith, fails to acknowledge that the Respondent’s implementation of a decision without first bargaining over its effects is a unfair labor practice even absent other indicia of bad faith bargaining. State of Ill. Dep’t of Cent. Mgmt. Servs. (Dep’t of Agriculture), 13 PERI ¶ 2014 (IL SLRB 1997)(considering solely whether the Respondent implemented change without bargaining over effects).

Thus, the Respondent violated the Act when it implemented the promotions without first completing impact bargaining.

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<sup>10</sup> Clark’s failure to object to the relevancy of the requested information as it pertained to effects bargaining suggests that it was relevant, particularly in light of the discovery standard applied by the Board in ascertaining such relevancy. City of Chicago, 23 PERI ¶ 120 (IL LRB-LP 2007) (Relevancy is determined by a discovery standard, not a trial type standard and thus “a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process”). Furthermore, the Respondent reasonably understood the nature of the Union’s request for information because Clark showed no confusion at the request and instead promised to provide the information.

### 3. Sanctions

The Union's motion for sanctions is denied because the Respondent timely withdrew the document that was the subject of the Union's motion.

A brief timeline follows: On April 28, 2014, the Respondent filed a consolidated motion to defer the charge to interest arbitration and to dismiss the case. On June 2, 2014, the Union filed a timely response, which included a motion for sanctions. In relevant part, the Union argued that the Respondent's motion was frivolous because the Act expressly authorizes the Board to defer unfair labor practice charges only to grievance arbitration procedures and not to interest arbitration. Sometime before June 16, 2014, the Respondent requested an extension until June 30, 2014 to respond to the Union's motion. I granted the request. On June 30, 2014, the Respondent withdrew its consolidated motion to defer the charge to interest arbitration and to dismiss the case.

Section 1220.90(d) of the Board Rules provides that a "party subject to the motion for sanctions shall have 14 days after service of the motion to respond or withdraw the paper or position that is the basis of the motion." 80 Ill. Admin. Code 1220.90(d).

Here, the Respondent made a timely request for an extension to respond to the Union's motion for sanctions that is reasonably construed more broadly as a request to consider the appropriate response to that motion. The Respondent's withdrawal of its original motion was made within the extended timeframe for a response. Accordingly, the Respondent's motion cannot serve as the basis for sanctions, even though more than 14 days elapsed between the Union's motion for sanctions and the Respondent's withdrawal of the offending document.

Thus, the Union's motion for sanctions is denied.

### 4. Remedy

The remedy for a respondent's refusal to bargain in good faith over a decision or its impacts requires the respondent to restore the status quo ante, to make employees whole, and to bargain. State of Ill., Dep't of Cent. Mgmt. Servs. Dep't of Agriculture, 13 PERI ¶ 2014 (IL SLRB 1997); State of Ill., Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2001 (IL SLRB 1988) aff'd by Am. Fed. of State, Cnty. and Mun. Empl., AFL-CIO, v. State Labor Relations Board, 190 Ill.

App. 3d 259 (1st Dist. 1989); City of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

Applying these principals here, the Respondent must bargain over the effects of its decision to promote three patrol officers to sergeant and it must rescind the promotions until the parties have completed that effects bargaining. It must also make whole members of the bargaining unit for any lost wages they would have earned in performing shift commander duties had the Respondent not promoted three officers to the rank of sergeant before completing effects bargaining. State of Ill, Dep't of Cent. Mgmt. Servs. Dep't of Agriculture, 13 PERI ¶ 2014 (requiring respondent to rescind decision where respondent implemented it before completely bargaining its effects); State of Ill., Dep't of Cent. Mgmt. Serv., 5 PERI ¶ 2001 (same) aff'd by Am. Fed. of State, Cnty. and Mun. Empl., AFL-CIO, v. State Labor Relations Board, 190 Ill. App. 3d 259 (1st Dist. 1989).

Notably, this remedy does not require the Respondent to repeat the promotion selection process once the parties have bargained to agreement or impasse on the promotions' effects because it is only the implementation of the promotions, prior to completing effects bargaining, that violates the Act. The manner in which the Respondent selected its candidates was not at issue here.

## **V. CONCLUSIONS OF LAW**

1. The Union's allegation that the Respondent violated Sections 10(a)(2) and (1) of the Act when it awarded Fisher and White zero merit and efficiency points is untimely.
2. The Respondent violated Sections 10(a)(4) and (1) of the Act when it implemented the promotions without first completing effects bargaining.
3. The Union's motion for sanctions is denied.

## **VI. RECOMMENDED ORDER**

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

- 1) Cease and desist from:
  - a. Failing and refusing to bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter # 612, as the exclusive representative of

the bargaining unit including patrol officers and sergeants, regarding the effects of its decision to promote three officers to the position of sergeant.

- b. In any like or related manner, 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. On request, bargain collectively in good faith with the Union, Metropolitan Alliance of Police, Chapter # 612, as the exclusive representative of the bargaining unit including patrol officers and sergeants, regarding the effects of its decision to promote three officers to the position of sergeant.
  - b. Restore the status quo by rescinding the promotions until the parties have completed effects bargaining.
  - c. Make whole members of the bargaining unit for any lost wages they would have earned in performing shift commander duties had the Respondent not promoted three officers to the rank of sergeant before completing effects bargaining.
  - d. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The 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 the Respondent has taken to comply with this order.

## **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 seven 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 General Counsel Kathryn Zeledon Nelson 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 of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois this 5th day of August, 2015**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

*/S/ Anna Hamburg-Gal*

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**Anna Hamburg-Gal  
Administrative Law Judge**

# NOTICE TO EMPLOYEES

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## FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-14-019

The Illinois Labor Relations Board, State Panel, has found that the Village of Glenwood has 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 (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist 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 and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from refusing to bargain collectively in good faith with the Charging Party, Metropolitan Alliance of Police, Chapter # 612, as the exclusive representative of the bargaining unit including patrol officers and sergeants, regarding the effects of our decision to promote three officers to the position of sergeant.

WE WILL restore the status quo by rescinding the promotions until the parties have completed effects bargaining.

WE WILL make whole members of the bargaining unit for any lost wages they would have earned in performing shift commander duties had we not promoted three officers to the rank of sergeant before completing effects bargaining.

DATE \_\_\_\_\_

\_\_\_\_\_  
Village of Glenwood  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor

Springfield, Illinois 62702

(217) 785-3155

160 North LaSalle Street, Suite S-400

Chicago, Illinois 60601-3103

(312) 793-6400

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**THIS IS AN OFFICIAL GOVERNMENT NOTICE  
AND MUST NOT BE DEFACED.**

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