STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Council of Police,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-14-057
	)	
Village of Elburn,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On December 15, 2014, Administrative Law Judge Martin Kehoe issued a Recommended Decision and Order dismissing a charge filed by the Illinois Council of Police (Charging Party or Union) against the Village of Elburn (Respondent or Employer) alleging that the Respondent violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), when it allegedly refused to bargain over its decision not to fill a vacant bargaining unit position and thereby eroded the unit.

The Charging Party filed timely exceptions to the Administrative Law Judge's Recommended Decision and Order pursuant to Section 1200.135 of the Illinois Labor Relations Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. The Respondent filed a response and the Charging Party filed a reply.[1] After reviewing the exceptions, the response, and the record, we affirm the Administrative Law Judge's Recommended Decision and Order and dismiss the complaint for the reasons articulated in that document. We also note that

[1] We do not consider the Charging Party's reply in reaching our decision because a reply is not permitted under the Board's rules. 80 Ill. Admin. Code 1200.135(b)(1)(parties may file exceptions, responses, cross-exceptions and cross-responses); Tri-State Fire Protection Dist., 31 PERI ¶ 78 (IL LRB-SP 2014).

the Administrative Law Judge properly declined to address the Charging Party's motion for sanctions because it consisted of a single, unsupported sentence and consequently did not comply with the Board's rules. 80 Ill. Admin. Code 1220.90(d) (requiring parties to identify the "allegations and/or denials and/or incidents of frivolous litigation alleged to be subject to sanctions, with citations to the record, and succinct arguments").

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 Springfield, Illinois on April 14, 2015, written decision issued in Chicago, Illinois on April 28, 2015.

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Village of Elburn,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 21, 2013, the Illinois Council of Police (Charging Party) filed a charge in Case No. S-CA-14-057 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Elburn (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(1) and (4) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Board's Executive Director issued a Complaint for Hearing on January 23, 2014.

The case was heard on August 7, 2014 by the undersigned administrative law judge. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Later, written briefs were timely filed on behalf of both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS[1]

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 Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
3. At all times material, the Charging Party represented a bargaining unit (Unit) comprised of patrol officers and sergeants employed by the Respondent.
4. At all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement setting forth the terms and conditions of employment for employees in the Unit.
5. In or around March 2012, Officer Steven Furlan, a member of the Unit, was injured in the line of duty.
6. The assignment of bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining.

II. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Respondent failed and refused to bargain in good faith with the Charging Party in violation of Sections 10(a)(1) and (4) of the Act when the Respondent failed to fill a vacant Unit position and thereby eroded the Unit. The Respondent disputes that allegation and asks that the Complaint for Hearing be dismissed.

[1] These preliminary findings emanate from the Respondent's Answer to the Complaint for Hearing.

III. FINDINGS OF FACT

The Respondent's police department currently employs six full-time police officers, a number of part-time police officers, and Chief Steven Smith. The Charging Party represents all of the department's police officers except for Chief Smith, but full-time police officers and part-time police officers belong to separate bargaining units. (The part-time police officers were not yet represented when the underlying unfair labor practice charge was filed.)

Previously, the police department also employed an additional full-time police officer, Steven Furlan. However, Officer Furlan was injured on December 25, 2008, later retired on May 5, 2014, and as of the date of the hearing has not been replaced by a new full-time police officer. Since his injury, Officer Furlan's vacant shift (the midnight shift) has been covered by a combination of other full-time police officers working overtime, part-time police officers, and Chief Smith.

The foregoing approach has led to fatigue and burnout, and police officers have had to work on days they want off. The police department has also spent more money than before on overtime for full-time police officers and on part-time police officers. In an April 14, 2012 letter to the Respondent, the Charging Party alleged that using part-time officers to cover Officer Furlan's vacant shift was an erosion of the Unit and a mandatory bargaining subject. Later, on May 30, 2013, the Charging Party filed a grievance alleging that the Respondent had improperly replaced a full-time officer with part-time officers.

In a June 20, 2013 meeting, the Respondent agreed to offer the vacant shift to the full-time police officers first, and if no full-time police officers wanted to cover the shift it would then be offered to the part-time police officers. The Respondent also agreed to repay the full-time police officers for the shifts that had been covered by part-time police officers.

Additionally, the Respondent agreed to produce a list of individuals who could be hired as a full-time police officer. During the same meeting, Village of Elburn Mayor David Anderson stated that the Respondent would hire a new full-time officer to fill Officer Furlan's vacancy.[2]

Since the June 20, 2013 meeting, the Respondent has followed the parties' shift selection agreement and generated a valid eligibility list. Further, in May or June of 2014 Village Administrator Erin Willrett asked the Respondent's Board of Trustees whether it would like to hire a new full-time police officer. However, after a discussion about the matter and consideration of the costs involved, the Board of Trustees determined that it would not hire a new full-time police officer at that time.

IV. DISCUSSION AND ANALYSIS

As noted, the Complaint for Hearing alleges that the Respondent violated Sections 10(a)(1) and (4) of the Act. Section 10(a)(1) provides in relevant part that an employer may not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in the Act or dominate or interfere with the formation, existence, or administration of any labor organization. Pursuant to Section 10(a)(4), 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." If the employer fails to bargain in that way, it violates not only its Section 10(a)(4) duty but, derivatively under Section 10(a)(1), those employees' right to have a representative as the Act envisions. County of Lake, 28 PERI ¶67 (IL LRB-SP

[2] Purportedly, Mayor Anderson, Chief Smith, and Village Administrator Erin Willrett do not have the authority to unilaterally hire police officers. Only the Respondent's Board of Trustees can do that. According to the testimony, although Mayor Anderson is a member of the Board of Trustees, he has no more power than the Board of Trustees' other members.

2011); City of Chicago (Department of Police), 21 PERI ¶83 (IL LRB-LP 2005); County of Perry and Sheriff of Perry County, 19 PERI ¶124 (IL LRB-SP 2003).

The key determination in this case is whether the Respondent's failure to fill a vacant position is a mandatory subject of collective bargaining. In accordance with Section 7 of the Act, an employer generally has an obligation to bargain over issues and policy matters which directly affect wages, hours, or other terms or conditions of employment. However, as Section 4 of the Act states, employers are generally not required to bargain over matters of inherent managerial authority. City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 202, 692 N.E.2d 295, 301 (1998); Central City Education Association v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496, 508, 599 N.E.2d 892, 897 (1992); City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008).

Central City Education Association asserts that an employer's decision is a mandatory subject of bargaining if it concerns wages, hours, or terms or conditions of employment and (1) is either not a matter of inherent managerial authority or (2) is a matter of inherent managerial authority but the Board determines that the benefits of bargaining outweigh the burdens bargaining imposes on the employer's authority. Significantly, it is the Charging Party's burden to prove the elements supporting a violation of the Act. Central City Education Association, 149 Ill. 2d 496, 508, 599 N.E.2d 892, 897 (1992); Village of Marengo, 20 PERI ¶99 (IL LRB-SP 2004).

The Respondent contends in its brief that it has inherent managerial authority to determine the number of police officers it employs, and generally views this case through that lens. In support of that contention, the Respondent cites Section 14(i) of the Act, which states in

relevant part that an arbitrator's decision shall not include the total number of employees employed by a police department. The Charging Party's brief does not address that issue.

I find merit in the Respondent's argument. If there is no right to resolve the issue with an arbitrator, it generally follows that there is no duty to bargain about it in this context. It also follows that, where Section 14(i) specifically excludes a topic from interest arbitration, application of the Central City Education Association balancing test is unnecessary. Village of Oak Lawn, 26 PERI ¶118 (IL LRB-SP 2010), aff'd. 2011 IL App (1st) 103417, 964 N.E.2d 1132; City of Highwood, 17 PERI ¶2021 (IL LRB-SP 2001) (It cannot be denied that a public employer has the right to reduce the number of its personnel for legitimate business reasons.); Village of Streamwood, 26 PERI ¶122 (IL LRB-SP G.C. 2010); City of Mattoon, 13 PERI ¶2004 (IL SLRB G.C. 1997); City of Highland Park, 12 PERI ¶2020 (IL SLRB G.C. 1996).

Granted, assigning full-time work to part-time employees (one result of the Respondent's failure to fill the vacancy) could understandably be found to affect the Unit's conditions of employment. Village of Marengo, 20 PERI ¶99; County of Cook and Cook County Sheriff, 12 PERI ¶3021 (IL LLRB 1996). Indeed, one could argue that any managerial policy has some impact on them. American Federation of State, County and Municipal Employees v. State Labor Relations Board, 190 Ill. App. 3d 259, 265, 546 N.E.2d 687, 691 (1st Dist. 1989). Moreover, one can appreciate the full-time police officers' concerns. However, under these circumstances, I do not find that the Respondent unlawfully failed to bargain its assignments or fill a vacancy. If the Respondent's inaction affected conditions of employment, it did so indirectly. See City of Evanston, 29 PERI ¶162 (IL LRB-SP 2013); Waubonsee Community College, Board of Trustees of Community College District No. 516, 4 PERI ¶1137 (IL ELRB 1988); Jacksonville District No. 117, 4 PERI ¶1074 (IL ELRB 1988).

I also find that a number of factors distinguish this case from others and weigh against finding a failure to bargain. For one, the parties have reached some agreement regarding the matter.[3] Further, unlike the facts of City of Marengo, 20 PERI ¶99, or County of Cook or Cook County Sheriff, 12 PERI ¶3021, the Respondent's part-time police officer position is not new and has been used in a similar supplementary capacity for many years. In addition, the full-time police officer position has not been eliminated and the single vacancy at issue may yet be filled. Put differently, the police department has not been significantly restructured. See National Labor Relations Board v. King Radio Corporation, Inc., 416 F.2d 569, 572 (10th Cir. 1969). It is also unclear from the mixed record whether the Respondent's inaction was ultimately motivated by economic considerations which would have been amenable to collective bargaining. See City of Peoria, 3 PERI ¶2025 (IL SLRB 1987). Moreover, animus has not been shown. See City of Highwood, 17 PERI ¶2021.

V. CONCLUSION OF LAW

I find that the Charging Party has failed to demonstrate by a preponderance of the evidence that the Respondent violated Section 10(a)(1) or (4) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing be dismissed in its entirety.

[3] The Charging Party's brief contends that its May 30, 2013 grievance, which roughly parallels the allegations of Complaint for Hearing, was settled to the Charging Party's satisfaction on June 6, 2013. However, there is still some dispute regarding whether the settlement was a "permanent deal" or a "temporary fix until the Village hired another full-time officer."

VII. EXCEPTIONS

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

Issued in Chicago, Illinois on December 15, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe

Martin Kehoe
Administrative Law Judge