

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

Service Employees International Union)	
Local 73,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-10-061
)	
City of Chicago,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On March 26, 2010, Service Employees International Union, Local 73 (Union), filed an unfair labor practice charge with the Illinois Labor Relations Board’s Local Panel (Board), in accordance with the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Sections 1200 through 1240 (Rules), alleging that the City of Chicago (City) 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 (2012), as amended. The charge was investigated in accordance with Section 11 of the Act and, on April 17, 2012, the Executive Director of the Board issued a Complaint for Hearing.

A hearing was conducted on August 7, 2012 in Chicago, Illinois, at which the Union presented evidence in support of the allegations and all parties were given a full opportunity to participate, present evidence, examine witnesses, argue orally and file written briefs. After full consideration of the parties’ stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

1. At all times material, the City has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the City has been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
3. At all times material, the City 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 of a bargaining unit composed of certain of the City's employees, including various classifications of custodial workers.
6. At all times material, the City and the Union are parties to a collective bargaining agreement (agreement) effective from July 1, 2007 to June 30, 2017.

II. ISSUES AND CONTENTIONS

At issue is whether the City's implementation and installation of hidden surveillance cameras, without providing the Union with notice or an opportunity to bargain, violated Section 10(a)(4) and (1) of the Act.

The City argues that it did not violate the Act when it installed and used surveillance cameras to catch intruders in response to a string of break-ins at the West Pullman library. Specifically, the City contends that the decision to install the cameras was for the exclusive purpose of implementing safety and security measures, in accordance with its authority in the management rights clause, and not to specifically record and monitor bargaining unit employees.

Further, the City maintains that the installation and use of the surveillance cameras is a permissive subject of bargaining because it does not impact wages, hours or working conditions or involve the issuance of a new disciplinary policy or procedure, which are necessary to trigger the statutory obligation to bargain.

The Union argues that the installation and use of hidden surveillance cameras is a mandatory subject of bargaining and that the City does not have an inherent managerial right to unilaterally install and use hidden surveillance cameras.

III. FINDINGS OF FACT

The West Pullman Library is a branch of the Chicago Public Libraries. This library is a City facility that is free and open to the public. The City's Department of General Services acts as the landlord to all city buildings and is responsible for ensuring the safety and security of all of the City's public libraries.

In or around May 2007, the West Pullman Library experienced a series of break-ins where City property was vandalized and City and employee property was burglarized. Within a seven-day period, and on three separate occasions, an intruder smashed windows, entered into the library, and stole City computers and employees' personal belongings.

Shortly thereafter, the City's Department of General Services consulted with the Chicago Police Department regarding security measures. The police department recommended the installation of surveillance cameras to capture the intruders. Two surveillance cameras were installed inside the library. One camera is facing the east window where the intruder presumably entered into the library. This camera also has a clear view of the circulation desk where employees are staffed. The other camera is pointed toward the employee staff area which had previously been ransacked. This is a public staff area open to all employees that work at the

library and is used primarily for storing personal belongings, taking lunches and breaks. The cameras are recording 24 hours a day, seven days a week, and record up to 90 days at a time. The City maintains that the cameras were not hidden. The installation and use of these cameras were not disclosed to the Union or bargaining unit employees. The Union's witness, Matt Brandon, testified that he had to look into the ceiling tiles for the cameras. He also stated that if he had not known that the cameras existed, he would not have seen them. The City's witness, Director of Security Glen Cross, testified that the cameras installed are "covert."

On or about December 22, 2009, the City was notified that a copier machine had been tampered with or vandalized. The incident report noted that the machine's coin tower was significantly damaged. Based on the report, the City reviewed the surveillance footage to see if the incident had been caught on tape. Based on the footage reviewed, the City determined that an employee, Darrell Pope, was responsible for the damage to the machine. On or around January 23, 2010, relying on footage from a security camera, the City notified the Union that it intended to discipline Pope for damaging the copier machine.¹ After learning that the City installed surveillance cameras at the library, the Union demanded to bargain over the implementation and use of the surveillance cameras. The Union later demanded the City cease and desist the use of cameras to monitor bargaining unit employees. Despite the Union's demands, the parties have not bargained. On March 26, 2010, the Union filed the present unfair labor practice charge.

¹ Darrell Pope was terminated for knowingly and intentionally damaging the coin tower on the copier machine at the West Pullman library. A hearing was conducted by the City's Human Resources Board where the City submitted footage from the surveillance camera as evidence in support of its decision to terminate Pope. The Board found that the footage was not clear enough to conclude that Pope knowingly and intentionally damaged the coin tower on the copier machine. The Board reduced Pope's termination to a three day suspension based on a finding that the damage to the coin tower was accidental rather than purposeful.

IV. DISCUSSION AND ANALYSIS

The Board has never addressed whether an employer's installation and use of hidden surveillance cameras is a mandatory subject of bargaining.

1. Hidden Camera

First, although the City does not argue it in its post-hearing brief, at hearing the City maintained that the surveillance cameras were not hidden. However, the City's witness, Glen Cross, testified as a security expert that the City installed "covert" cameras. In its post-hearing brief, the City also refers to the cameras as "hidden" surveillance cameras. Moreover, the Union's witness, Matt Brandon, testified that the cameras were in the ceiling tile and if he had not known where to look, he would not have been able to easily identify them. As such, I find that the "covert" cameras, located inside ceiling tiles and not easily visible are, in fact, hidden surveillance cameras.

2. Mandatory Subject of Bargaining

Section 7 of the Act requires parties to bargain collectively regarding employees' wages, hours and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State, County and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-2 (1988); Am. Fed. of State, County and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 264 (1st Dist. 1989); Ill. Dep 't of Cent. Mgmt Serv., 17 PERI ¶ 2046 (IL LRB-SP 2001); County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). The Board has consistently found that an employer violates its obligation to bargain in good faith, when it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, its employees' exclusive bargaining

representative. County of Cook v. Licensed Practical Nurses Ass 'n of Ill. Div. 1, 284 Ill App. 3d 145, 153 (1st Dist. 1996).

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

i. Whether the Installation and Use of Hidden Cameras Concern Wages, Hours or Terms and Conditions of Employment

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). This case specifically outlines 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 decision making 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).

Under the NLRB case law, terms and conditions of employment are those considered “plainly germane to the working environment and not among those managerial decisions which lie at the core of entrepreneurial control.” Ford Motor v. NLRB, 441 U.S. 488, 498 (1979). An employer changes terms and conditions of employment when it substantially varies the method by which it investigates suspected employee misconduct and when it changes the character of proof on which an employee's job security might depend. Johnson-Bateman Co., 295 NLRB 180, 182-184 (1989) (drug/alcohol testing of employees to investigate possible employee responsibility for a sharp increase in workplace accidents was a mandatory subject of bargaining); Medicenter, Mid-South Hospital, 221 NLRB 670, 675 (1975) (introduction of polygraph testing to discover source of workplace vandalism was a mandatory subject of bargaining). The NLRB applied this rule to an employer's use of hidden surveillance camera footage finding it a mandatory subject of collective bargaining because it is germane to the working environment and analogous to the use of other technologically-advanced investigatory tools. Colgate-Palmolive Co. 323 NLRB 515 (1997); Anheuser Busch, Inc., 342 NLRB 560 (2004); Trailmobile Trailer, LLC 343 NLRB 95, 97-98 (2004); see also, Bloom Township High School, Dist. 206, 20 PERI ¶ 35 (2004 WL 6012606) (installation and use of hidden surveillance

cameras affected employee's terms and conditions of employment because their use has the potential to affect the job security of monitored employees).

Here, the City's installation and use of hidden surveillance cameras concerns an employee's wages, hours and other conditions of employment. The facts are uncontested. The City monitored the video footage to investigate an incident and subsequently used that footage as proof to justify an employee's discipline. The City argues that the facts in this case are synonymous to those in the Village of Summit where the Board found that there was no "material change in terms and conditions of employment for bargaining unit employees" because the employer's use of video surveillance footage did not impose any new disciplinary rules and procedures. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012).

Contrary to the City's contention, the facts in Village of Summit are not analogous to those in this matter. The Board in the Village of Summit decided that the employer did not have to bargain over the use of the video footage to justify discipline where the installation of the cameras were known and never objected to by the Union. Village of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012) (employees were aware of both the cameras' presence and functionality). Knowledge of the cameras is a dispositive factor that this case lacks. Moreover, the Board made it clear that its holding was limited to the "specific facts presented" in that case. Id. Therefore, the decision in Village of Summit should not be strictly construed here because the different facts require a different analysis.

The City goes further to argue that the facts in this case are distinguishable from those in Colgate-Palmolive Co., 323 NLRB 151 (1997); National Steel Corp., 324 F. Supp 3d 938 (7th Cir. 2003) and Bloom Twp. H.S. Dist. 206, 20 PERI ¶ 35 (IL ELRB ALJ 2004) where the use of hidden surveillance cameras was consistently found to be a mandatory subject of bargaining,

because here, the City did not suspect employee misconduct and install the cameras for the specific purpose of monitoring and disciplining bargaining unit employees. As such, the City maintains there is no threat to employee's job security. The City also contends that the cameras are located in public areas within the library, negating an employees' expectation of privacy.

Contrary to the City's argument, I find the Seventh Circuit and NLRB case law to be on point with the facts of this case. The courts have grappled with what exactly constitutes a mandatory subject of bargaining – the institution of a new circumstance or using such to discipline bargaining unit employees. AFSCME V. ISLRB, 190 Ill. App. 3d 259, 265 (Ill. App. 1st Dist. (1989) (drug testing of correctional officers permissive subject of bargaining, but nature of discipline imposed on employees based on test results or refusal to submit to testing was mandatory subject); Local 364, Int'l Brotherhood of Police Officers v. Labor Rel. Comm'n, 391 Mass. 429, 440 (MA 1984) (polygraph testing of employees suspected of criminal conduct not mandatory subject of bargaining, but union could have argued the employer was required to bargain over the impact of employer's decision on employee discipline); but see, Johnson-Bateman Co., 295 NLRB at 182-184. (drug testing and disciplinary use of results both mandatory subjects of bargaining); Medicenter, Mid-South Hospital, 221 NLRB at 675 (polygraph testing of employees and disciplinary use of results both mandatory subjects of bargaining).

However, the use of hidden video surveillance to discipline employees is a new circumstance that constitutes a mandatory subject of bargaining. Niagara Frontier Transit Metro System, Inc., 36 PERB ¶ 3036 (NY PERB 2003) (employer's use of video footage for investigative purposes not mandatory subject of bargaining, but the use of such footage in disciplinary proceedings was mandatory subject), see also, Colgate-Palmolive Co., 323 NLRB at

515 (use of hidden surveillance cameras to investigate misconduct and use of footage for disciplinary purposes are both mandatory subjects); Springfield Day Nursery a/k/a/ Square One, 2013 WL 1191225 (March 21, 2013) citing, Pepsi-Cola Bottling Co. of Fayetteville, Inc., 330 NLRB 900 (2000) (presence of cameras under which employees are exposed to surveillance and possible discipline based on recorded information is a new circumstance that constitutes a mandatory subject of bargaining).

The Seventh Circuit affirmed the NLRB's holding that the use of hidden surveillance cameras in the workplace is a mandatory subject of bargaining where the cameras focused primarily on the "working environment" and were used to "expose employee misconduct or violations of the law." National Steel Corp. v. NLRB, 324 F. 3d 928 (7th Cir. 2003).

Contrary to the City's argument, its obligation to bargain does not attach *only if* it installed video surveillance with the intent to monitor bargaining unit employees. For the reasons below the City is obligated to bargain the installation and use of hidden surveillance cameras. The City installed hidden surveillance cameras to catch an intruder and even though it did not suspect an employee to be the intruder, the City did not limit the scope of the surveillance. This is confirmed by the fact that the surveillance cameras do in fact record bargaining unit employees. The cameras at issue are located in areas where employee conduct is recorded and can be monitored 24 hours a day, 7 days a week, 90 days at a time. Employees are even being filmed after hours, when patrons are not allowed in the library and the City intended to record areas where bargaining unit employees frequent. Moreover, the City has monitored and used the footage from the cameras on at least one occasion when it disciplined Pope. If the City only intended to monitor the premises to catch an outside intruder, the City could have informed the Union, installed visible surveillance cameras, installed hidden cameras outside of the working

and break areas of the facility as to not record employees or perhaps record only when no one is in the building under the same circumstances that were present when the break-ins occurred..

Moreover, if the City's installation of the hidden cameras is found not to effect terms and conditions of employment, it is clear that the City's use of the footage to discipline bargaining unit employees does. The courts have consistently found that the use of hidden surveillance cameras to discipline bargaining unit employees constitutes a mandatory subject of bargaining. Colgate-Palmolive Co., 323 NLRB 151 (1997); National Steel Corp. v. NLRB, 324 F. 3d 928 (7th Cir. 2003); Bloom Twp. H.S. Dist. 206, 20 PERI ¶ 35 (IL ELRB ALJ 2004). The NLRB has even gone further and held that the presence of hidden surveillance cameras where employees are recorded and their possible use to discipline violates the Act. Springfield Day Nursery a/k/a/ Square One, 2013 WL 1191225 (NLRB March 21, 2013).

Furthermore, the surveillance does intrude upon employee interests including job security and privacy because the data collected can and has been used as the basis of discipline. The affect on an employee's job security was realized when Pope was terminated after the City reviewed video footage as a investigatory procedure. (Bloom Twp. H.S. Dist. 206, 20 PERI ¶ 35 (IL ELRB ALJ 2004)) (installation and use of surveillance cameras affected employees' terms and conditions of employment because their use had the potential to affect the job security of monitored employees).

According to the NLRB, hidden surveillance cameras in working areas and break rooms are areas in which an employee has an expectation of privacy. Fremont-Rideout Health Group, 357 NLRB 158 (2011) (respondent's installation of hidden surveillance cameras in the wound care business office and the break room without notice to or bargaining with the union violated the act) see also Anheuser Busch, Inc. 342 NLRB 560 (2004) (employer monitoring break areas);

National Steel Corp. v. NLRB, 324 F. 3d 928 (7th Cir. 2003), enfg. 335 NLRB 747 (2001). (cameras in work and break areas where employees regularly perform assigned duties and were permitted to take breaks constituted unilateral installation of use of cameras which was a violation of the Act.) As such, the camera located in the area where City employees take breaks and have lunch, along with the camera that records the circulation desk where employees work regularly, effects terms and conditions of employment.

Therefore, I find that the installation and use of the hidden surveillance cameras satisfy the first prong of the Central City test as it concerns wages, hours and terms and conditions of employment. I will now discuss the second prong of the Central City test of whether the use of the cameras is a matter of inherent managerial authority.

ii. Matter of Inherent Managerial Authority

The City has not demonstrated that the installation and use of the hidden surveillance cameras is either a negotiated right within the parties' management rights clause or an inherent managerial authority. The City claims that it negotiated the right to install and use hidden surveillance cameras based on the parties' detailed management rights clause that reserves to the City the right to act in its discretion with respect to matters concerning the operation of its own business. The City quotes the following language of the parties' management rights clause as evidence of its argument:

“The Union recognizes that certain rights, powers, and responsibilities belong solely to and are exclusively vested in the Employer, except only as they may be subject to a specific and express obligation of this Agreement. Among these rights, powers and responsibilities, but not wholly inclusive, are all matters concerning or related to the management of the Employer's operations and the administration thereof, and the direction of the working forces, including (but not limited to) the right to suspend, discipline, or discharge for just cause; to layoff by reason of lack of work, or abolition of a position, or material changes in duties or organization of the Employer's operations, or other economic reasons; to hire, classify, transfer and assign work, promote, demote, or recall; to make and

enforce reasonable rules and regulations; to maintain order and efficiency; to schedule the hours of work, to determine the services, processes and extent of the Employer's operation, the types and quantities of machinery, equipment and materials to be used, the nature, extent, duration, character and method of operation, including (but not limited to) the right to contract out or subcontract; the right to determine the number of employees and how they shall be employed, and the quality and quantity of workmanship and work required to insure maximum efficiency of operations; to establish and enforce fair production standards; and to determine the size, number and location of its departments and facilities. All of the provisions of this Article are vested exclusively in the Employer, except as expressly abridged by a specific provision of this Agreement.”

I find this argument unpersuasive. The City is relying on the entire clause as “affirmative language broadly stated” that “clearly and unambiguously permits the City the broad authority to install security measures to protect its operations.” The City does not provide any evidence concerning the parties' bargaining history in negotiating the management rights clause to prove that it intended to include the City's authority to install surveillance cameras. The record is silent as to what the parties intended when the contract granted the City the right and responsibilities noted within the management rights clause. Moreover, there is no evidence that the Union, in agreeing to the clause, gave the City the right to install hidden surveillance cameras and use the video footage to discipline bargaining unit employees. Lastly, the City also fails to rely on any specific language in the clause in support of its argument. Accordingly, I find that the City has failed to establish that the contractual management rights clause expressly grants the City the authority to install and use hidden surveillance cameras to monitor or discipline bargaining unit employees.

Under Section 4 of the Act, “in order to establish its inherent managerial discretion, 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.” 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. 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.

The National Labor Relations Board has held that matters that are both “plainly germane to the working environment” and “not among those ‘managerial decisions, which lie at the core of entrepreneurial control’ ” to be mandatory subjects of bargaining. Ford Motor Co. v. NLRB, 441 U.S. 448, 898-99 (1979). The Board found that neither the installation nor use of devices such as hidden surveillance cameras are a matter of inherent managerial authority because these matters are not fundamental to the basic direction of a corporate enterprise and instead impinge solely and directly upon employment security. Colgate-Palmolive Co., 323 NLRB at 515-16.

However, the Illinois Appellate Court has held that an employer’s use of similar investigatory tools is a matter of inherent managerial authority when it is tied to the employer’s statutory function. See County of Cook, 248 Ill App. 3d 145, 155 (1st Dist. 1996)(where the county’s drug testing of nurses constituted a matter of inherent managerial authority because Cermak Health Services was a part of the County jail and the County had a managerial interest in maintaining security within the jail by preventing drug trafficking). Further, in the public sector,

the installation and use of video cameras is a matter of inherent managerial authority where the employer provides public safety functions because the employer's delay in providing its services has serious public health or safety implications. City of Paterson, 36 NJPER ¶ 114 (NJ PERC 2010).

The City does not argue or address whether the installation and use of hidden surveillance cameras is a matter of inherent managerial authority. However, there is no indication that the authority to use and install hidden video cameras meets any of the Section 4 criteria which includes the employer's functions as to "standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees."

Moreover, there is no indication that the installation and use of the cameras is necessary for the library to perform its statutory functions. The West Pullman Library's primary function is to loan reading materials. There is no evidence the previous break-ins eliminated or stifled the City's ability to perform its primary functions. The installation of hidden surveillance cameras is not a matter of inherent authority where the parties are not required to negotiate the employer's functions. Bloom Township High School, Dist. 206, 20 PERI ¶ 36 (IELRB 2004) (hidden camera installed in maintenance garage at high school did not require the employer to negotiate over its function of educating students and thus was found not to be a matter of inherent managerial authority).

Lastly, ordering the City to negotiate this issue does not eliminate its management rights to run its operations to install and use hidden cameras. Colgate, 323 NLRB at 516 (ordering the parties to bargain in good faith has no bearing on the content of the agreement or establishment of the employer's practices. It is only the duty to bargain at issue.) In absence of such evidence

linking City's objectives installing and using hidden surveillance cameras, I must find that City has not met the second prong of the Central City test and that the issue does not involve inherent managerial rights in accordance with the Act. As such, the City's installation and use of hidden surveillance cameras is a mandatory subject of bargaining.

Even if the City had shown that installing hidden surveillance cameras and using the footage to discipline bargaining unit employees is a matter of inherent managerial authority, the City has not satisfied the third prong of the Central City test. Indeed, the City has not presented evidence as proof that its burden of negotiating this issue would outweigh the benefit of negotiating this issue with the Union. The City has demonstrated no reason why it could not have sought input from the union and bargained the issue prior to taking action. Although at hearing the City objected to any line of questioning that may have revealed the existence and location of other hidden cameras, the City strongly argues that the cameras were not installed to monitor bargaining unit employees but instead to catch outside intruders. If that is the case, I see no reason why disclosing the location and use of the hidden surveillance cameras would be a hindrance. Moreover, the Union argues that the City would benefit from bargaining the issue as it could offer proposals to address the City's security concerns and members could be "eyes and ears" at the West Pullman Library. As such, the City's burden to bargain seems minimal.

Therefore, the third prong of the Central City test has not been met by the City. Not meeting the second or third prongs of the Central City test, the City has an obligation to bargain the installation and use of hidden surveillance cameras.

V. CONCLUSIONS OF LAW

1. The installation and use of hidden surveillance cameras is a mandatory bargaining subject.

2. The City's decision to unilaterally install hidden video cameras and use footage from them to aid in disciplining bargaining unit employees violated Section 10(a)(4) and (1) of the Act.

VI. RECOMMENDED ORDER

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

1. Cease and desist from:

(a) Failing and refusing to bargain collectively in good faith with the Charging Party, Service Employees International Union, Local 73, as the exclusive representative of a bargaining unit including various classifications of custodial workers, regarding the installation and use of video surveillance footage for disciplinary purposes.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Illinois Public Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind the decision made on or about May 2007 to install video surveillance cameras that monitor bargaining unit employees.

(b) Rescind the decision made on or about December 22, 2009 to use the footage from the hidden surveillance cameras in the disciplinary process.

(c) Rescind any discipline issued to any employees in this bargaining unit represented by SEIU, Local 73, as a result or in connection with the decisions made to install and use video surveillance footage in the disciplinary process and expunge from the City's files any reference to any such discipline;

(d) Make whole any employees in the bargaining unit represented by SEIU, Local 73 for all losses incurred as a result of the City's decision to install and use hidden surveillance cameras in the disciplinary process, including back pay with interest as allowed by the Illinois Public Labor Relations Act, at seven percent per annum;

(e) 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 maintained for a period of 60 consecutive days. The City of Bloomington shall take reasonable efforts to ensure that the Notices are not altered, defaced or covered by any other material;

(f) Notify the Board, in writing, within 20 days of this recommended decision and order regarding the steps that the City of Bloomington has taken to comply herewith.

VII. EXCEPTIONS

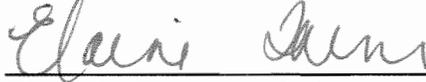
Pursuant to Section 1220.60 of the Rules, parties may file exceptions to the Administrative Law Judge's Recommendation and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 30 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 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 on this 26th day of November 2013

Illinois Labor Relations Board

Local Panel



Elaine L. Tarver, Administrative Law Judge