

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL

Amalgamated Transit Union.	)	
Local 241,	)	
	)	
Charging Party	)	Case Nos. L-CA-11-052,
	)	L-CA-11-056
	)	
and	)	
	)	
Chicago Transit Authority,	)	
	)	
Respondent	)	

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

On April 22, 2011, Amalgamated transit Union, Local 241 (Union or Charging Party) filed a charge with the Illinois Labor Relations Board's Local Panel (Board), alleging that the Chicago Transit Authority (CTA or Respondent) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on December 28, 2011, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on July 19 and 20, 2012, 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. On September 20, 2012, the Union filed a motion to amend the complaint to conform it to evidence presented at hearing. The motion was granted in part and denied in part. 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, CTA has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, CTA was subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
3. At all times material, CTA was subject to the jurisdiction of the Act pursuant to Section 20(b) thereof.
4. At all times material, the Union was a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union was the exclusive representative of a bargaining unit of CTA employees, including those in the title or classification of bus operator (unit).
6. At all times material, the Union and CTA were parties to a collective bargaining agreement for the unit.
7. At all times material, Herman Reyes was a public employee within the meaning of Section 3(n) of the Act and a member of the unit.
8. At all times material, Reyes was a local Union agent for ATU.
9. At all times material, Patrick Sachell was the General Manager of CTA's Forest Glen Garage.
10. At all times material, Jim Lachowicz was employed as the Transportation Manager II at CTA's Forest Glen Garage.
11. At all times material, Lisa Gregory was employed as the Transportation Manager I at CTA's Forest Glen Garage.

## II. ISSUES AND CONTENTIONS

The issues are whether CTA (1) violated Sections 10(a)(4) and (1) of the Act when it allegedly locked the Union out of the office it had occupied for many years in the Forest Glen Garage without providing notice to the Union and without offering the Union an opportunity to bargain; (2) violated Section 10(a)(1) of the Act when its agents allegedly threatened to move the Union bulletin board at the Forest Glen Garage and replace it with a smaller one,<sup>1</sup> and allegedly

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<sup>1</sup> The complaint, as amended by the Charging Party, alleges that CTA threatened to move the bulletin board to a remote location. This allegation reflected the issue statement to which the parties agreed at hearing and replaced the one in the complaint which asserts that CTA in fact moved the board. The complaint is further amended here to conform the complaint to evidence presented at hearing and accordingly reflects the actual statement allegedly made by CTA's agents, noted above. Section 1220.50(f) of the Board's Rules provides that "[t]he Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform it to the evidence presented in the

deprived the Union of the parking space which CTA had designated for the Union's use; (3) violated Sections 10(a)(2) and (1) of the Act when a CTA agent affixed an orange parking violation warning sticker on Union executive board member Herman Reyes's car and when CTA issued Reyes a one-day suspension allegedly because of Reyes's activities as a local Union agent and in order to discourage support for the Union.<sup>2</sup>

First, the Union asserts that CTA violated the Act when it unilaterally locked the Union out of the Union office because depriving a Union of its office changes employees' terms and conditions of employment. Further, though the Union concedes that CTA's decision on this issue is also a matter of inherent managerial authority, the Union asserts that the benefits of bargaining to the decision-making process outweigh the burdens that bargaining places on CTA's inherent managerial authority.

Next, the Union asserts that CTA violated the Act when it took away the Union's designated parking space and threatened to move the Union bulletin board because those actions

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hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order." 80 Ill. Admin. Code § 1220.50(f). Case law provides that the ALJ may amend the complaint to conform to evidence presented at hearing if such an amendment would not unfairly prejudice any party. Forest Preserve Dist. of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 746 (1st Dist. 2006). Here, the amendment is proper because it does not unfairly prejudice CTA since CTA was put on notice of the facts pertaining to the amendment at hearing and because its defenses to this amended allegation are substantially the same as those presented against the original. To illustrate, CTA argues on brief that its agents never made any threats to move the bulletin board at all and that executive board members' response to the alleged statement referenced at hearing demonstrates that they did not in fact feel threatened by it. Those arguments are equally applicable to defend against the amended allegation because the bulletin board appears built into the wall (or at least affixed using semi-permanent measures) such that CTA could not reduce the board's size without relocating it, and because the employees' reactions to the alleged statement remain unchanged. See, Forest Preserve Dist. of Cook Cnty., 369 Ill. App. 3d at 746 (no prejudice where Respondent was not precluded from filing an answer to the amendment and was able to address the issue relating to the amendment in its post-hearing brief) Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011) (addressing Respondent's opportunity to defend against the allegations on brief; permitting amendment after parties had filed briefs).

<sup>2</sup> The complaint contains an additional allegation which asserts that CTA violated Sections 10(a)(4) and (1) of the Act when CTA agents informed Reyes that, henceforth, when he arrived at the Forest Glen garage he would be required to check with CTA to explain why he was on the premises and to notify CTA who he was there to meet. The Union put forth no evidence concerning this allegation at hearing and did not address this allegation on brief. Thus, the complaint is dismissed as to this allegation because the Union has not met its burden of proof.

interfered with, restrained or coerced employees in the exercise of their rights guaranteed under the Act.<sup>3</sup>

Finally, the Union argues that CTA violated the Act when it placed a warning sticker on Reyes's car and issued him a one-day suspension because CTA agents knew of Reyes's status as an executive board member within the Union and acted out of union animus. In support, the Union asserts General Manager Patrick Sachell's comments to Reyes that "you're either union or management," and Sachell's "many attempts to take away certain rights" which the Union had enjoyed for years demonstrate such animus.

CTA argues that it did not violate the Act when it unilaterally locked the Union out of its office because CTA agents never locked that office at all.

Next, CTA asserts that it did not violate the Act when its agents allegedly threatened to move the bulletin board because CTA agents never made such threats. Further, CTA asserts that Union members must have fabricated the threat because the Union bulletin board was not in fact suitable for CTA's alleged purpose. While the Union asserts that CTA sought to use the Union board to comply with the terms of an arbitration award which required employees to make notations on the CTA's posting, the Union bulletin board could not have been used for that purpose because the board is covered in glass and does not permit employees to make notations on documents posted inside.

In addition, CTA contends that it did not violate the Act when it removed the Union's parking spot because doing so did not have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by the Act. Further, CTA notes that it later offered the Union a different spot, to which the Union objected, but to which the Union also provided no counteroffer.

Next, CTA argues that it did not violate the Act when it placed a warning sticker on Reyes's car because the sticker was issued by a manager who harbored no union animus. Further, CTA asserts it had a legitimate business reason for placing a sticker on Reyes's car because Reyes was not permitted to park in that spot on the day he received the sticker.

Finally, CTA argues that it did not violate the Act when it issued Reyes a one-day suspension and a final written warning because CTA agents did not act out of union animus and

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<sup>3</sup> The Union also requested that the Board award costs and attorneys fees but did not move for sanctions or set for a basis on which sanctions should be granted. On this basis alone, sanctions are denied. See Vill. of Barrington Hills, 29 PERI ¶ 15 (IL LRB-SP 2012).

instead based the discipline solely on Reyes's insubordination. First, CTA asserts that the discipline was actually issued by Transportation Manager I, Lisa Gregory, who harbored no union animus and that Sachell, the alleged "bad actor," did not even know that Gregory had issued it.<sup>4</sup> Second, CTA contends that the discipline was justified because it was based solely on Reyes's abusive language. In support, CTA urges that the Board make credibility determinations in its favor noting that Union witness Reyes contradicted himself when he stated that he did not use profanity or abusive language during the meeting which spurred the disciplinary action yet admitted that he used the word "bullshit."

### III. FINDINGS OF FACT

#### 1. Duties of Union Executive Board Members

Herman Reyes and Jose Colon are CTA bus operators who also serve as executive board members of the Union. They represent bargaining unit members in disciplinary interviews and ensure that CTA adheres to the collective bargaining agreement. When the international union placed the local into trusteeship, Reyes and Colon became assistants to the trustees. Their duties remained the same as they had been prior to trusteeship.

The Union board member job is a part time position. CTA designates certain days as "union days" on which board members do not drive buses and instead solely perform union duties. Union days included discipline days,<sup>5</sup> executive board meeting days, and certain pay days. CTA scheduled Reyes's discipline days on Thursdays; CTA scheduled Colon's discipline days on Tuesdays. Colon also took union days on every other pay day Wednesday. Executive board members may request that CTA designate other days as union days if they needed to perform union duties on a day that they are scheduled to operate a bus. Under those circumstances, CTA designates the requested date as a union day and finds another driver to fill in for the executive board member's run.

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<sup>4</sup> The parties stipulated in the prehearing memo that Sachell issued the suspension. The testimony from all witnesses indicates that the suspension was actually issued to Reyes by Gregory, although Sachell initially referred Reyes for discipline.

<sup>5</sup> Discipline days are days on which managers set up meetings with employees who they plan on disciplining.

Reyes and Colon testified that they perform Union business every day, even on days when they are scheduled to drive a bus, regardless of whether those days are designated union days. They emphasized that Union members approach them with problems on non-union days before and after their runs and during lunch.

## 2. The Union's Historical Benefits

### a. Bulletin Board

In 2005, CTA granted the Union use of a bulletin board. The board is large, comprised of three panels, is covered in glass, and appears at least semi-permanently affixed to the wall. The Union uses the board to posts memos, arbitration awards and meeting notices.

### b. Union Office

In or around 2005 or 2006, the Union obtained space at the Forest Glen garage for a Union office on the northwest side of the building near the washroom. The office allowed the Union to privately interview its members. It had an outer door which was normally kept open and an inner door which was kept locked. There was a small room between those two doors which housed a desk where bargaining unit members would fill out paperwork. The inner door led to the main Union office where the Union kept personal information concerning its members. Union executive board members would access the locked portion of the office by fetching the key which was kept in the clerk's area.

### c. Parking Spot

In 2007, the CTA General Manager of the Forest Glen Garage at the time assigned the Union a parking space. The Forest Glen Garage has two parking lots, a north lot and a south lot. The north lot borders Elston Street; its farthest end is approximately 240 feet from the garage building. The south lot abuts the garage itself. The Union's spot was located in the south parking lot next to the General Manager's parking spot, near the garage building.

### 3. Events at Issue

In August 2010, Patrick Sachell became acting General Manager of the Forest Glen Garage; he received the permanent position in January, 2011. A couple days after Sachell became the General Manager, Reyes approached Sachell to introduce himself as an executive board member and suggested a meeting. Sachell rejected the meeting and stated "you're either Union or management." Reyes responded that they both worked for the same company. Sachell repeated his statement.

In late 2010, Colon informed Sachell that a non-executive board member had parked in the Union spot. Sachell responded that union executive board members were "no longer going to be parked there" because the spot would be reserved for instructors instead. Sachell testified that he decided to take away the Union parking spot and reassign it somewhere else because some managers did not have a place to park.<sup>6</sup> As of December 2010 or early 2011, the Union no longer had a parking space.

During some time prior to January 2011, no one could park in the south lot because it was under construction. CTA granted other employees interim spots in which to park, but granted no such interim spot to the Union. No other employees who had enjoyed assigned parking spaces lost their parking privileges while the lot was under construction.

The parties contest the extent of the Union's permissible use of that parking spot. Sachell testified that an executive board member's car is properly parked in the Union spot only on union days, those days which the CTA officially designates for union business. Sachell further testified Union executive board members historically parked in that spot only on union days and not every day. Finally, Sachell testified that he told Reyes and Colon separately and personally that they could park in the spot only on union days.<sup>7</sup>

On the other hand, Reyes and Colon testified that they always used the parking space whenever they came into work and that they took turns to share the space. Colon testified that Sachell never restricted when the union board members could park in the designated parking spot and that he never told them that they could only park in the Union parking spot on official union days. Colon further testified that between 2007 and 2011, no manager had ever restricted union

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<sup>6</sup> Sachell stated that when he first started working at the Forest Glen garage, no one told him that the Union had an official parking space.

<sup>7</sup> According to Sachell, neither board member told him that they conduct union business every day.

board members' use of the space to official union business days. I credit Reyes's and Colon's testimony based on their demeanor.

On February 4, 2011, Arbitrator Benn issued an award in the automatic voice annunciator system (AVAS) arbitration case. AVAS calls out the street names as the bus passes them and helps CTA determine if an operator leaves early or late. It also has a GPS installed so that it can track the operators' location. The arbitrator's award provided that CTA would be able to discipline operators based on information received from the system, but that CTA would be required to post the percentages of operators who left early or late, every five days.

Colon testified that Sachell told him CTA would need the Union bulletin Board to post the AVAS information to comply with the arbitration award. Sachell said, "we're going to replace the Union bulletin board and put it over there" and stated that the new boards would be smaller.<sup>8</sup> Colon testified that he replied such action was unnecessary because CTA had another bulletin board that was not in use which could serve CTA's purpose.

Sachell testified that he never told any Union member that he would take the Union bulletin board away to post the information required by Arbitrator Benn's award. Sachell further testified that CTA had no plans to move the bulletin board at all. He explained that the posting related to the arbitration award would need to be in a location where operators could initial their performance. The Union bulletin board would not have worked for that purpose because it was covered by glass.

On March 31, 2011, James Lachowicz, Forest Glen Garage Manager II, and Reyes met in Lachowicz's office. Lachowicz told Reyes that the Union would no longer be able to use the Union office because CTA planned on using it for "other CTA purposes." Reyes asked Lachowicz to provide notice of this change in writing, but Lachowicz refused. After this conversation, the Union continued using the office for a short time.

Reyes then contacted the Union officers to inform them of this development. They scheduled a meeting with CTA management. On April 7, 2010, Union President Darrell Jefferson, Recording Secretary Michael Simmons, Colon and Reyes met with Vice President of Operations Earl Swopes, and Sachell at CTA headquarters to discuss the Union parking spot and "the different situations that were occurring at the garage." There is no evidence that the Union

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<sup>8</sup>Specifically, Colon testified that Sachell said "I need to take that bulletin board because we're getting smaller bulletin boards, and we're going to replace yours and put your bulletin board over there so we can put the AVAS information there."

demanded to bargain over CTA's plan to deny the Union access to its office or that the parties even addressed CTA's proposed use of the Union office during this meeting.

After the meeting, the Union was permitted to park in the area where buses are parked during non-rush hours times, near the supervisor's area.<sup>9</sup>

Colon testified that on April 14, 2011, Tony Paytes, CTA Transportation Manager I and lead manager, spoke with Colon in the manager's office. According to Colon, Paytes said the Union would no longer have access to the Union office and that the Union would have to move out as soon as possible, within a week. Colon informed Paytes that he would not move the Union's things out of the Union office and that if management wanted those items removed, they could move those items out themselves. Paytes replied that he was just the messenger, following someone else's instructions. Paytes testified that he did not remember this conversation. Colon later asked Sachell why the Union could no longer use its office. Sachell answered that a broom or a mop was stolen from the janitorial cage or storage room and that CTA needed to put mops and brooms in the Union office instead.

That same day, CTA began storing janitorial equipment and supplies in the small room outside the main Union office. Reyes and Colon testified that no janitorial supplies were ever kept in that office before. Instead, those supplies were kept in a special closet and a cage near the clerk's area. Since CTA first granted the Union access to the office, the Union was never denied the right to use that space at the Forest Glen Garage.

On Monday, April 18, 2011, Reyes reported to work at approximately 6:34 am and finished his run at approximately 3:06 pm. He returned to the garage at approximately 3:30 pm to fill out and return his trip sheet. At approximately 3:40 or 3:50 pm, Reyes went to his car, which was parked in the designated Union space next to the supervisor's parking area, to retrieve some Union materials. Reyes had placed an Official Union Business placard on the inside of the driver's side window, as he customarily did when parked in that spot. The placard served to inform CTA that the vehicle belonged to an executive board member.

When Reyes approached his car, he saw a big orange sticker placed on the driver's side window, obscuring the Official Union Business placard. The sticker was a warning notice that stated "this conveyance has been parked illegally on CTA property. We respectfully request that

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<sup>9</sup> Sachell's testimony that he later offered the Union a new space demonstrates that the location in which the Union was permitted to park after the April 7, 2011, meeting was a temporary one.

you refrain from doing so in the future. The license number has been recorded, and a second violation will cause the vehicle to be ticketed and towed away at the owner's expense."

Reyes went to Sachell's office to determine why he received an orange sticker. Paytes answered the door and informed Reyes that Sachell was on the phone. Reyes testified that he said he would wait. Reyes waited for another 20 minutes, retrieved his car and parked it in front of the door to the garage entrance so that he could show Sachell the sticker. Reyes then rang the bell again. Paytes again answered the door and informed Reyes that Sachell was still on the phone. Paytes testified that Reyes stated, "I don't give a fuck. I need to talk to him." Reyes denied making this statement. Paytes asked what was going on. Reyes asked Paytes to follow him outside and showed Paytes the orange sticker on the window of his car. Reyes asked Paytes who put the sticker on his car. Paytes replied that a manager probably did it because Sachell told managers to sticker vehicles that were illegally parked. Reyes stated that that was wrong and reiterated that he wished to speak with Sachell. Paytes then went back inside and Reyes continued to wait. Approximately fifteen minutes later, Reyes rang the door bell again. Paytes came out again and let Reyes in.

Reyes met with Sachell in Sachell's office. Paytes was also present. Reyes asked Sachell why his car had received an orange warning sticker. Sachell responded, "you tell me." Sachell testified that he responded in this manner because operators know that their cars get orange stickered only if they are illegally parked. Sachell assumed that Reyes's car was stickered for that reason. At hearing, Sachell explained that managers check the lots for cars that are illegally parked. He further stated that the manager knew to ticket or sticker any vehicle parked in certain areas on non-union days. Sachell testified that he did not know where Reyes's car was parked when it received the sticker.<sup>10</sup>

Reyes testified that he told Sachell that CTA management was "disrespectful" when it placed a sticker on his car, that he "wasn't going to tolerate the bullshit," and that he "didn't have time for [Sachell's] bullshit games." He also told Sachell that he felt CTA was depriving the Union of previously enjoyed benefits including use of the Union bulletin board, parking spot, and the Union office. According to Paytes, Reyes raised the level of his voice a bit during the conversation. Sachell similarly testified that Reyes used a raised tone of voice. Sachell testified

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<sup>10</sup> Prior to the conversation with Reyes, Sachell did not know that an orange sticker had been placed on Reyes's car.

that Reyes cursed and used the word “fuck.” Likewise, Paytes stated in his report documenting the event that Reyes used the word “fucking.” Sachell testified that he agreed with Paytes’s written account of the incident which stated that Reyes complained that the General Manager had taken away the Union’s bulletin board, parking spaces and “fucking office.” At hearing Sachell additionally recounted that Reyes said “ever since you fucking got here, there’s been all type of issues.” Reyes testified that he never cursed at Sachell during the meeting of April 18, never stated “I don’t give a fuck,” and did not use the word “fuck” at all during his meeting with Sachell and Paytes. Further, Reyes testified that he was never abusive towards CTA management in any way on that date. I credit Sachell’s and Paytes’s assertions that Reyes used the word “fuck” in the April 18 meeting because those witnesses testified similarly on this point and because Reyes contradicted himself when he stated that he was never abusive towards CTA management *in any way* yet admitted that he used the word “bullshit” and told Sachell that he “didn’t have time for [Sachell’s] bullshit games.”

Both Paytes and Reyes testified that Reyes ended the conversation by leaving the office. In contrast, Sachell testified that he ended the conversation saying that “if we can’t talk and communicate...then you need to leave.” Paytes testified that Sachell attempted to call Reyes back so that he could address the issue in a professional manner but that Reyes just left. In contrast, Sachell testified that he made no attempt to continue the conversation, although he did try to calm Reyes down.

That same day, Sachell decided to discipline Reyes for this incident and informed Paytes of his intent to do so. First, Sachell told Paytes to describe the incident in a Report to Manager, a document that is generated when there is an unusual incident with an operator which does not require a legal report. Paytes wrote the report and gave it to Sachell. Sachell did not tell Paytes what to write but he read the report, approved of it, and made no changes to it.<sup>11</sup> Next, Sachell referred Reyes for discipline by telling Paytes to prepare the Employee Interview Record in the CTA system so that Reyes could be interviewed concerning the April 18, 2011, incident. The only information placed in the Employee Interview Record during that initial preparation is an operator’s badge number, the date and time of the offense, the location, and other necessary work information. The remaining information is filled out by the manager who conducts the

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<sup>11</sup> Sachell testified that he also wrote an account of the incident in his office and gave the document to his lead manager, Paytes.

disciplinary interview. The manager assigned to the interview determines the level of discipline imposed based on the incident and the operator's work record.

Paytes instructed Transportation Manager I Lisa Gregory to interview Reyes. Gregory possessed the information Paytes had entered on the Employee Interview Record but did not have access to the Report to Manager that Paytes had drafted. However, Paytes told Gregory of the events which took place on April 18, 2011, and informed her that Reyes had engaged in conduct unbecoming of an employee.

On April 19, 2011, Reyes received a phone call from Colon during his run, stating that CTA management had locked the Union out of its office. Colon explained that he went to use the office and found the outer door locked. The Union had no key to the outer door.

On April 20, 2011, Reyes met with Lachowicz and Administrative Manager Mercia Basic in Basic's office. Both Basic and Lachowicz informed Reyes that the Union would no longer be able to use the Union office. Reyes testified that Sachell said that CTA was going to use the office to store janitorial supplies.

Paytes testified that he was not aware of a time when the Union office or the Union office's keys were taken away from the Union. He also testified that he was not aware that the outer door of the Union office had ever been locked. Similarly, Sachell testified that there was never a time when the Union was locked out of its office or that the Union did not have access to the office key. Further, he testified that he never locked the Union out of its office and that he never directed anyone to do so. Finally, Sachell testified that CTA had always used the area between the inner and outer doors of the office as a place to store brooms and mops. He acknowledged that there is a janitor's closet next to the hall near the Union office but explained that the closet is small. He also noted that CTA has a special cage where it keeps janitorial supplies.

On May 2, 2011, Reyes reported to work. Reyes testified that Gregory approached him in the morning before his run in the training room and informed him that he was suspended that day for an incident that occurred on April 18, 2011.<sup>12</sup> Gregory also issued Reyes a final written warning. Reyes responded that he was entitled to a fair hearing and Union representation. According to Reyes, Gregory informed him that the paperwork was already completed and that

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<sup>12</sup> Sachell testified that the reason there was a lag between the April 18 incident and the discipline imposed was because Reyes was unable to secure union representation earlier.

CTA had already removed Reyes from service for that day. Gregory handed Reyes the Employee Interview Record which documented the discipline.

The Interview Record stated that Reyes had committed a Category 11 behavioral violation which encompasses disrespect to management, supervisory personnel, or members of the public and use of profane language on duty or on CTA property. In this case, the document stated that the violation included "conduct unbecoming" and "abusive language." The Interview Record further states that "per Lead Manager (Paytes)[,] operator was abusive and [engaged in] conduct unbecoming of an employee in the general manager's office."<sup>13</sup> Finally, it provides that the "operator was interviewed" and that "corrective action guidelines were discussed."

Reyes testified that Gregory never interviewed him or asked him what happened. In addition, Reyes asserted that he never refused to sign the interview record and that he instead was given no opportunity to sign because Gregory handed Reyes the sheet with "refused [to sign]" already written on it.<sup>14,15</sup> On the other hand, Sachell and Paytes assert that CTA followed standard disciplinary protocol by granting Reyes an interview before issuing him discipline. Further, Sachell testified that he did not take any action against Reyes to discourage support for the Union.

CTA's corrective action guidelines provide that CTA may apply accelerated discipline depending on the situation. CTA did not issue Reyes accelerated discipline and instead issued Reyes the level of discipline warranted for a first offense. Paytes testified that in his experience as a Lead Manager and Transportation Manager, Reyes's behavior on April 18, 2011, warranted the behavioral charge Reyes received because his conduct was very unprofessional and did not conform to CTA standards.

On May 9, 2011, Union officers met with CTA management at the Forest Glen Garage. The meeting included CTA's Director of Operations, Peter Ousley, Vice President of Bus Operations Swopes, Sachell, General Manager for Employee Relations Cary Morgan, Union President Jefferson, Union Vice President West, Union Recording Secretary Simmons, Colon and Reyes. All the meeting attendees walked out to the parking lot to survey the area. Ousley remarked that there was a lot of space in the parking lot. He and Sachell suggested that the

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<sup>13</sup> Although Paytes testified that he did not specifically label Reyes's conduct as abusive when he spoke to Gregory, Gregory's report rebuts this assertion, as noted above.

<sup>14</sup> Reyes testified that he always signs his interview sheets.

<sup>15</sup> CTA waived the right to have Lisa Gregory testify.

Union should have a parking space on Elston, close to the street approximately 240 feet from the garage. Colon noted that that was too far from the garage building. Ousley replied that Sachell, Colon, and Reyes should pick a spot that was suitable for the Union or Ousley would pick one on their behalf. During that meeting, CTA management and the Union also discussed Reyes's suspension. They offered to remove Reyes's suspension from his record but refused to pay him for the time he was suspended. The Union also discussed their access to the Union office. Union officials noted that CTA had several other locations in which they could store janitorial equipment.

Despite Ousley's suggestions at the meeting, Sachell has not given the Union an assigned parking spot near Elston or anywhere else.<sup>16</sup> However, Reyes and Colon testified that after that meeting, the Union once again had access to the Union office because the CTA had unlocked the outer door. Further they testified that janitorial supplies are no longer stored in any part of the office.

#### IV. DISCUSSION AND ANALYSIS

##### 1. 10(a)(4) and (1) – Union Office

CTA did not violate the Act when it locked the Union out of its office, even though employees' access to a union office is a mandatory subject of bargaining, because the Union never demanded to bargain CTA's decision even though CTA gave the Union timely and sufficient notice of the planned change.

##### i. Central City Test

CTA's decision to deprive the Union of its office is a mandatory subject of bargaining.

Parties are required 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, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-62 (1988); Am. Fed. of State, Cnty. 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); Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). It is well-established that a

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<sup>16</sup> Sachell asserts that he did assign the Union a new spot. I credit Union witness's testimony that he did not.

public employer violates its obligation to bargain in good faith, and therefore sections 10(a)(4) and (1) of the Act, 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. Cnty. 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 Board determines that the benefits of bargaining on the decision-making process outweigh the burdens that bargaining imposes on the employer's managerial 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, 599 N.E.2d 892 (1992), and City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 692 N.E.2d 295, 14 PERI ¶ 4005 (1998)).

This Board left undisturbed an Administrative Law Judge's Recommended Decision and Order which held that the location of a union office is a condition of employment because it affects employees' ability to communicate with, and be represented by, their bargaining representative concerning the terms and condition of their employment. Ill. Dep't of Cent. Mgmt Serv., 17 PERI ¶ 2014 (IL LRB-SP ALJ 2001) (citing Dow Jones & Company, 318 NLRB 574 (1995)). The ALJ reasoned that "it is difficult to imagine many matters that so fundamentally affect the employees' right under the Act to be represented by their exclusive representative" as employees' access to their bargaining representative. Id.; See also City of Markham, 25 PERI ¶ 117 (IL LRB-SP 2009)(finding that the location of union filing cabinet on employer's premises was a condition of employment because used by the Union to represent the membership concerning the terms and conditions of their employment; analogizing filing cabinet to union office).

Applying that rationale here, CTA changed employees' conditions of employment when it locked the Union out of its office because it eliminated employees' access to that office entirely and thereby impaired employees' ability to confidentially communicate with their bargaining representative concerning the terms and conditions of their employment.

ii. Matter of Inherent Managerial Authority/Balancing Test

The Union concedes that CTA's chosen use of its premises constitutes a matter of inherent managerial authority. Accordingly, the issue is whether the burden to bargain over the Union's access to its office outweighs the benefits of bargaining to the decision-making process.

Here, the benefits of bargaining to the decision-making process outweigh the burden on the employer's managerial authority because CTA has not demonstrated an overriding or pressing need for the Union's office space which would necessitate unilateral action and because the Union could have offered alternatives to CTA's chosen course of action which could have adequately met both parties' needs. In fact, CTA has not shown that the thefts of janitorial equipment were so wide spread and pervasive that CTA needed to take immediate action since only a single item, "a mop or a broom," had been stolen. Second, the Union could have offered alternatives to CTA's course of action which would have preserved the Union's access to its office while accommodating CTA's need to secure its equipment. For example, the Union could have suggested that CTA store janitorial equipment in the locked outer office while giving the Union a key to the outer door thereby permitting the Union to maintain access to its inner office. Thus, the benefits of bargaining the decision to deprive the Union access to its office outweigh the burdens on CTA's managerial authority. See City of Chicago, 20 PERI ¶ 13 (IL LRB-LP ALJ 2003) (balancing test favored bargaining where there was no evidence of an immediate crisis or other compelling reason which would warrant unilateral action).

iii. Notice and Opportunity to Bargain<sup>17</sup>

However, the Union waived the right to bargain over CTA's decision to deprive the Union access to its office because the Union failed to demand bargaining even though CTA gave the Union timely and sufficient notice of its planned change.

The duty to bargain arises upon request of the exclusive representative when the union receives timely notice that the employer intends to change a condition of employment. Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991) (citing, Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013, 1017-8 (1982) enf'd, 722 F.2d 1120 (3rd Cir. 1983); Cnty. of Cook (Cook Cnty. Forest Preserve Dist.), 4 PERI ¶ 3012 (IL LLRB 1988); Clarkwood Corp., 283 NLRB 1172

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<sup>17</sup> The Union has made no argument that CTA failed to grant the Union notice and an opportunity to bargain or that it presented the Union with a fait accompli.

(1977)); Vermilion Cnty., 3 PERI ¶ 2004 (IL SLRB 1986). The union must make such a request in order to preserve its right to bargain on the subject.<sup>18</sup> Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991). If the union fails to exercise due diligence and demand bargaining in a timely manner after it receives such notice, the union may waive its right to bargain the issue. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992).

The employer's notice to the union of its planned change (1) must be transmitted to an authorized agent; (2) must be substantively adequate; and (3) must allow a reasonable opportunity to bargain.

First, the employer must give actual notice of the intended change to a union official with authority to act. City of Berwyn, 8 PERI ¶ 2038 (IL SLRB 1992). However, no particular form of notice is required. Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991) (no formal notice required); see also, McGraw-Hill Broadcasting Co. Inc., KGTV, 355 NLRB No. 213 (2010), Forest Preserve Dist. of Cook Cnty., 4 PERI ¶ 3012 (IL LLRB 1988), Medicenter, Mid-South Hosp., 221 NLRB 670 (1975) and Hartmann Luggage Co., 173 NLRB 1254 (1968).<sup>19</sup>

Second, the employer's notice to the union of its planned change must be substantively adequate. Thus, the union must possess sufficiently detailed notice of the contemplated change to give it the opportunity to make a meaningful response. Georgetown-Ridge Farm Comm. Unit School Dist. 4., 7 PERI ¶ 1045 (IELRB 1991) aff'd 239 Ill. App. 3d 428 (4th Dist. 1992).

Third, the employer's notice must allow the union a reasonable opportunity to bargain. This element is comprised of two necessary and related components: (i) timeliness and (ii) intent. If either element is missing, the employer is deemed to have presented the union with a fait accompli and the union, accordingly, has no obligation to demand bargaining. Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). First, the employer must give the

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<sup>18</sup> However, a request to bargain need not invoke "any special formula or form of words"; it is sufficient that the request to bargain be made by clear implication. City of Collinsville v. Ill. State Labor Rel. Bd., 329 Ill. App. 3d 409 (5th Dist. 2002); City of East St. Louis v. Ill. State Labor Rel. Bd., 213 Ill. App. 3d 1031 (5th Dist. 1991). The employees must at least signify to respondent their desire to negotiate. NLRB v. Columbian Enameling and Stamping Co. Inc., 306 U.S. 292 (1939). However, the union cannot be content with merely protesting the action or filing an unfair labor practice charge over the matter. Citizens Nat'l Bank of Willmar, 245 NLRB 389, 389-90 (1979).

<sup>19</sup> However, the Union does not receive actual notice of the intended change when its knowledge is based on conjecture or rumor. NLRB v. Rapid Bindery, Inc., 293 F.2d 170, 175 (2d Cir. 1961) (conjecture or rumor is not an adequate substitute for an employer's formal notice to a union of a vital change in working conditions).

union notice sufficiently in advance of its actual implementation of the change. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (citing Owens-Corning Fiberglass Corp., 282 NLRB 609, 609 fn. 1 (1987)). The National Labor Relations Board has held that an employer's notice, given even a relatively short period of time prior to the change, may constitute adequate advanced notice. Jim Walter Resources, 289 NLRB 1441, 1442 (1988) (ten days); Kentron of Hawaii, 214 NLRB No. 116 (1974) (three weeks). However, the employer does not give adequate notice if it implements the change before announcing it to the union. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991). Second, the employer must show that it is receptive to bargaining by giving notice to the union of its decision before it is final. Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). The Board examines objective evidence, including the employer's statements and conduct, to determine whether the employer presented the union with its final decision, such that the employer had no intention of changing its mind. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶ 3021 (IL LLRB 1996). A union's subjective impressions of the employer's state of mind, taken alone, are insufficient to excuse the union from demanding to bargain. Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991). Further, an employer is entitled to fully develop a proposal before presenting it to the union and may use positive language to describe it. Id.

Applying these standards here, CTA gave the Union sufficient notice that it would no longer have use of its office because CTA transmitted that information to a union agent, with actual authority to act, in a timely and substantively adequate manner. Here, CTA transmitted notice to a proper agent because Reyes, as Union executive board member, had authority to act on behalf of the Union. Further, CTA gave the union timely notice because Garage Manager II James Lachowicz told Reyes of the planned change on March 31, 2011, nearly three weeks prior to the date on which CTA implemented the change by locking the office on April 19, 2011. Notably, although, Lachowicz did not give Reyes a date on which CTA would implement the change, the Union received notice a second time, two weeks later, on April 14, 2011, when Paytes told Union executive board member Colon more definitely that the Union would have to move out of its office as soon as possible, within a week. Finally, CTA gave the Union substantively adequate notice because it gave the Union enough information from which to formulate bargaining proposals by clearly expressing that the Union would no longer be permitted to use its office space. Thus, CTA gave the Union sufficient notice of the change.

Further, CTA gave the Union an opportunity to bargain, even though it presented the plan to deprive the Union of its office in positive terms and began to store equipment in the outer union office in mid-April because an employer may use such language to describe its planned change, as it did here, and did not implement its plan until three weeks after it gave notice to the Union of that change. See, Chicago Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991) (the fact that employees received a form that was attached to the notice of a change to the reimbursement policy which would be used to formulate reimbursements under the policy did not render employer's plan a final one); see also, Medicenter, Mid-South Hosp., 221 NLRB 670 (1975)(focus on time between initial notice and implementation rather than on employer's preparatory steps to determine whether Union had an opportunity to bargain).

However, the Union waived the right to bargain CTA's decision to remove the Union's office because there is no evidence in the record that the Union ever demanded to bargain CTA's proposed change. While Colon and Reyes expressed disapproval of the planned change, such comments cannot be construed as a demand to bargain. See, Citizens Nat'l Bank of Willmar, 245 NLRB at 389-90. Similarly, although the Union met with CTA management some time after the Union received notice of the change but prior to implementation, the mere fact that the meeting occurred did not trigger CTA's duty to bargain because there is no evidence that (i) the Union demanded to bargain over CTA's use of the space at that time, that (ii) the Union informed CTA that it scheduled the meeting in order to discuss CTA's use of the Union office, or (iii) that the parties even discussed the Union office specifically during that meeting.

Thus, CTA did not violate Sections 10(a)(4) and (1) of the Act when it locked the Union out of its office because the Union waived the right to bargain over the CTA's decision to use the Union's office space when it failed to demand bargaining.

## 2. 10(a)(1) – Bulletin Board & Parking Space

Section 10(a)(1) of the Act prohibits public employers and their agents from interfering with, restraining or coercing public employees in the exercise of their rights under the Act. A public employer violates Section 10(a)(1) of the Act if it engages in conduct that reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009); Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998); Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993); Clerk of

Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986). The applicable test in determining whether a violation has occurred is whether the employer's conduct, when viewed objectively from the standpoint of an employee, had a reasonable tendency to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by the Act. Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998). There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009).

Although the public employer's motive or intention is usually not considered in the context of a Section 10(a)(1) violation, if an alleged adverse employment action is taken against an employee for engaging in protected, concerted or union activity under the Act, the public employer's motivation is examined in the same manner as in cases arising under Section 10(a)(2) of the Act. Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991).

Under Section 10(a)(2) of the Act, a charging party must show, by a preponderance of the evidence, that (1) he was engaged in union or protected concerted activity; (2) the employer knew of his conduct, and (3) the employer took the action against him in whole or in part because of union animus or that it was motivated by his protected conduct. City of Burbank, 128 Ill. 2d at 345.

With respect to the last element, the Union must introduce evidence that the adverse action was based, in whole or in part, on union animus, or that union activity was a substantial or motivating factor. Id. Union animus is demonstrated through the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Id.

Once, the union establishes a prima facie case, the employer can avoid a finding that it violated the Act by demonstrating that it would have taken the adverse action for a legitimate business reason notwithstanding the employer's union animus. Id. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. If the proffered reasons are merely litigation figments or were not, in fact relied upon, then the employer's reasons are

pretextual and the inquiry ends. However, when legitimate reasons for the adverse employment action are advanced, and are found to be relied upon at least in part, then the case may be characterized as a “dual motive” case, and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union activity. Id.

i. Bulletin Board

CTA violated Section 10(a)(1) of the Act when Sachell threatened to move the Union bulletin board and replace it with a smaller one because Sachell made that statement in a context which reasonably gave employees the impression that CTA would adversely affect employees' conditions of employment if they participated in the grievance arbitration process.

As a preliminary matter, the Union bulletin board constitutes a condition of employment because it is a primary means by which the Union communicates with its members concerning employee's terms and conditions of employment. See Ill. Dep't of Cent. Mgmt Serv., 17 PERI ¶ 2014 (IL LRB-SP ALJ 2001) (location of union office was condition of employment because affected employees' ability to communicate with, and be represented by, their bargaining representative). Thus, an employer's change to the board's size and location therefore has the potential to adversely affect employees' ability to communicate with their collective bargaining representative.

Here, the circumstances surrounding Sachell's statement illustrate that statement's chilling potential on employees' protected activity because Sachell made the statement on the heels of the Union's arbitration award, connected his intentions to the Union's receipt of that award, and expressed a desire to appropriate the Union's board even though it was not suitable for CTA's stated purposes and even though there were other boards which CTA could have used instead. First, employees would reasonably believe that CTA's decision to move the board and assign a smaller one was related to their protected activity because Sachell made his announcement immediately after the Union received an arbitration award and explained that CTA needed the board to post information as the arbitrator required. Similarly, the particular characteristics of the Union's bulletin board amplify the coercive effect of Sachell's statement because they demonstrate that CTA's stated purpose for removing and reassigning the Union's board was pretextual. Though CTA asserted that it needed the bulletin board to comply with the

requirements of the arbitration award, the Union board could not serve CTA's purpose because it was covered by glass and would not permit employees to mark the posted documents as the award required. Finally, the fact that CTA had other available bulletin boards on which it could have posted these documents similarly adds to the statement's coercive effects. Taken together, these facts demonstrate that employees could reasonably infer that CTA sought to move the Union board because the Union had participated in the grievance arbitration process.

Contrary to CTA's contention, the fact that the Union bulletin board was not suitable for CTA's purposes does not render CTA's threat to usurp that board incredible and instead underscores that statement's reasonable tendency to coerce employees in the exercise of rights guarantee by the Act because it demonstrates that CTA had no legitimate reason to move the bulletin board at all, let alone to reduce its size.

Thus, CTA violated Section 10(a)(1) of the Act when Sachell threatened to move the Union bulletin board and replace it with a smaller one.

#### ii. Removal of Parking Space

CTA violated Section 10(a)(1) of the Act when it removed the Union's parking space because CTA took adverse employment action against executive board members, motivated by Union animus, and has not demonstrated that it would have taken the same action absent executive board members' protected conduct.

First, there is no dispute that CTA knew that Reyes and Colon served as executive board members and that they engaged in protected activity by representing employees in disciplinary matters and processing their grievances.

Second, CTA took adverse employment action against Reyes and Colon when it removed the Union's parking space by failing to reassign the Union a space during the period in which CTA performed construction on its parking lot and by failing to provide the Union with a new, permanent space. An action does not need to have an adverse tangible result or adverse financial consequences to constitute adverse employment action sufficient to satisfy the third prong of the 10(a)(2)-type analysis. City of Chicago v. Illinois Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988); City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Circuit Court of Winnebago, 17 PERI ¶ 2038 (IL LRB-SP 2001) (merely because Charging Party did not suffer any negative financial consequences due to her transfer to the traffic division does

not defeat her section 10(a)(2) claim); Cnty. of Cook (Sheriff), 14 PERI ¶3005 (IL LLRB ALJ 1997) (rotation of employees constituted adverse action but ALJ concluded employer's decision was not driven by union animus); City of Chicago (Police Dep't), 8 PERI ¶3001 (IL LLRB H.O. 1991) (removal of officer from watch secretary duties and subjecting him to heightened job scrutiny constituted adverse employment action, but ALJ concluded employer had a legitimate business reason for doing so); City of Markham, 25 PERI ¶117 (IL LRB-SP ALJ 2009) (respondent violated the act by issuing employee an unsatisfactory employment evaluation even though it did not affect the employee's terms and conditions of employment as the evaluation was only used as a tool to help employees improve their performance); but see Northern Illinois Univ., 23 PERI ¶160 (IELRB ALJ 2007)(reduced performance evaluation did not amount to adverse action where there was no evidence that the performance evaluation adversely affected complainant's title, salary, benefits, or other working conditions). However, to prevail under this analysis the union must show some effect on the employee's terms and conditions of employment. Chicago Park Dist. (Grant Park Music Festival), 26 PERI ¶ 76 (IL LRB-LP 2010) (change in hours supported finding of adverse action because it affected employee's terms and conditions of employment). In other words, while the "definition of an adverse employment action is generous," the union must "show some qualitative change in the terms or conditions of... employment or some sort of real harm." Atanus v. Perry, 520 F.3d 662, 675 (7th Cir. 2008); Vill. of Plainfield, 22 PERI ¶ 71 (IL LRB-SP ALJ 2006)(requiring the union to show adverse action by proving loss of employment status or any negative impact on terms and conditions of employment).

Here, the Union has demonstrated that CTA's action effected a qualitative negative difference in executive board members' conditions of employment because an employer's removal of parking privileges constitutes an adverse change in an "auxiliary service[] [which] affect[s] workers' welfare and permit[s] them to perform their duties in a timely and efficient manner." Bd. of Tr. of the Univ. of Ill. v. Ill. Labor Rel. Bd., 224 Ill. 2d 88, 101 (Ill. 2007) (noting that the "key to the analysis is the critical relationship these auxiliary services have to employees' working lives"; addressing unilateral change); Cnty. of Cook (Stroger Hospital), 28 PERI ¶ 23 (IL LRB-SP ALJ 2011)(emphasizing that analysis did not differ based on the number of employees to whom the employer granted parking; case concerned unilateral change, not alleged 10(a)(1) violation).

Third, the evidence demonstrates that CTA took this action out of union animus because it treated executive union board members disparately from the way it treated other employees with parking spots, and because direct evidence demonstrates that Sachell, the decision-maker, harbored union animus.

First, CTA treated Union executive board members differently from the way it treated other employees with parking spots because all other employees who had enjoyed reserved parking places prior to construction on the parking lot were assigned new spots to use during the period of construction while only Union executive board members Reyes and Colon were not assigned new spots.

Contrary to CTA's contention, Sachell's treatment of Union Board members must be viewed in light of his treatment of similarly situated employees, in this case, all those employees who had enjoyed the use of a parking space prior to the institution of Sachell's change. As such, it is immaterial that, after CTA removed the Union spot, Reyes and Colon were treated the same as other operators who also lacked parking privileges.

Second, Sachell's statements demonstrate union animus because he equated Reyes's union activity with disloyalty to the employer by telling Reyes that "you're either Union or management" when Reyes first approached Sachell to introduce himself in his capacity as executive board member. See, Harper Collins San Francisco v. NLRB, 79 F.3d 1324, 1330 (2d Cir. 1996)("statements equating union activity with disloyalty to the employer constitute coercion in violation of Section 8(a)(1)"); American Girl Place, Inc., 355 NLRB No. 84 (2010)(finding that employer's statement implying that union member was disloyal could not support a standalone violation of 8(a)(1) because it did not contain a direct reference equating protected activity with disloyalty to the employer, but using that statement to support a finding of union animus in the 8(a)(3) allegation); Medicare Associates, Inc., 330 NLRB 935, 941-942 (2000)(employer unlawfully equated loyalty to the employer with opposition to the union by telling an employee that she must take sides in a union campaign and was needed on the employer's side).

Finally, CTA has not advanced a legitimate business reason for removing the Union spot because its reason is premised on the disparate treatment of Union executive board members in favor of management. Here, Sachell implied that he removed the Union's spot because Reyes and Colon uniquely enjoyed parking as operators while some managers did not have a place to

park. However, CTA cannot justify the removal of the Union's spot based on the occupants' status as mere operators when CTA initially granted these operators a spot solely based on their union activity. Indeed, such reasoning demonstrates that Sachell believed that executive board members' union duties were no longer important enough to warrant special treatment and shows that Sachell was motivated solely based on his evaluation of executive board members' protected activity. Further, even if the Board determined that CTA's business reason is legitimate, CTA has presented no evidence that it would have taken the same action in the absence of the executive board members' union activity since CTA would have never initially assigned Reyes and Colon a spot if they had not been singled out as Union executive board members.

### 3. 10(a)(2) and (1) – Stickered of Vehicle & Suspension

CTA violated the Act when it stickered Reyes's vehicle, but not when it issued Reyes a final written warning and a one-day suspension for his conduct on April 18, 2011.

To establish a prima facie case that the Employer violated section 10(a)(2) of the Act, the Union must prove that: 1) the employees engaged in union activity, 2) the employer was aware of that activity, and 3) the employer took adverse action against the employees for engaging in that activity in order to encourage or discourage union membership or support. City of Burbank v. ISLRB, 128 Ill. 2d 335, 345, 538 N.E.2d 1146, 1149 (1989). With respect to the last element, the Union must introduce evidence that the adverse action was based, in whole or in part, on union animus, or that union activity was a substantial or motivating factor. City of Burbank, 128 Ill. 2d 335, 538 N.E.2d 1146. Union animus is demonstrated through the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Id.

Once, the union establishes a prima facie case, the employer can avoid a finding that it violated section 10(a)(2) by demonstrating that it would have taken the adverse action for a legitimate business reason notwithstanding the employer's union animus. Id. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. If the proffered reasons are merely litigation figments or were not, in fact relied upon, then the employer's reasons are

pretextual and the inquiry ends. However, when legitimate reasons for the adverse employment action are advanced, and are found to be relied upon at least in part, then the case may be characterized as a “dual motive” case, and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union activity. Id.

i. Stickers of Reyes's vehicle

CTA violated the Act when it placed a warning sticker on Reyes's vehicle because CTA took adverse employment action against Reyes out of union animus and has not demonstrated that it would have taken the same action absent his protected conduct.

As noted above, Reyes engaged in protected activity and CTA was aware of it. Further, CTA took an adverse employment action against Reyes when it stickered his vehicle because, in doing so, CTA negatively affected the conditions of Reyes's parking in the CTA lot by removing Reyes's opportunity to park once illegally without serious consequence. As stated *supra*, parking is a condition of employment since such “auxiliary services affect workers' welfare and permit them to perform their duties in a timely and efficient manner.” Bd. of Tr. of the Univ. of Ill., 224 Ill. 2d at 101. Here, employees are permitted to park illegally in a CTA lot once without serious consequence. The only repercussion under such circumstances is that the employee receives a sticker bearing a warning notice which provides that CTA has recorded the employee's license plate number and that a second violation of the parking rules will cause the vehicle to be ticketed and towed at the owner's expense. Therefore, receipt of an initial warning eliminates an employee's safe harbor to park once improperly in the lot without consequence and thus exposes the employee to receiving a far more serious penalty when parking improperly in the lot the next time. As such, CTA adversely affected Reyes's conditions of employment when it placed a warning sticker on Reyes's car because the sticker eliminated Reyes's safe harbor to park in the CTA lot improperly, once.

Further, CTA acted out of union animus, even though Sachell did not directly sticker Reyes's car or know where the car was parked when a CTA manager stickered it, because CTA's placement of the sticker on Reyes's car was the inevitable consequence of Sachell's unannounced decision to change the parking policy by disallowing Union executive board members to park in the Union spot daily.

First, the evidence demonstrates that Sachell effected an unannounced change to parking policy because Reyes had never previously received a warning sticker when he parked in the Union spot even though executive board members had historically shared the spot daily and managers routinely checked the lot for improperly parked vehicles. As noted above, I credit Reyes and Colon's testimony that prior to April 18, 2011, Union board members had shared the parking spot every day, such that one Union executive board member was always parked in that spot.<sup>20</sup> In addition, I credit Reyes's and Colon's testimony that Sachell never told them that they could park their cars in the Union spot only on official union days. Further, the evidence demonstrates that managers routinely checked the lot for improperly parked vehicles and issued warning stickers or tickets. Taken together, these credibility determinations and corresponding facts show that Sachell must have changed the parking policy without informing Union executive board members because if he had not done so, the manager would not have known to sticker Reyes's car on April 18, 2011, a non-union day, and Reyes's car would have been stickered and towed long ago since Reyes had regularly parked his car in the Union spot on non-union days.

Second, direct and circumstantial evidence demonstrate that Sachell was motivated by union animus when he established this new parking policy which prohibited executive board members from parking in the Union spot on non-Union days. As noted above, Sachell's statement to Reyes that "you're either Union or management" is direct evidence of union animus. Notably, the fact that Sachell did not utter his statement around the time CTA stickered Reyes's vehicle does not immunize it because the statement was not made so far in the past as to render it irrelevant, particularly in light of the other evidence which suggests union animus, described below. But see, Board of Trustees of the University of Illinois, 22 PERI ¶ 110 (IL ELRB ALJ 2006) (anti-union statement made by employer three years prior to adverse action against bargaining unit member could not alone support a finding of animus)(citing City of Chicago (Chicago Police Dep't), 12 PEI ¶ 3013 (IL LLRB ALJ 1996); see also Vill. of Skokie, 13 PERI ¶ 2011 (IL SLRB ALJ 1997)). Next, Sachell's prior unlawful attempt to curtail union parking by failing to reassign the union's parking spot during construction, referenced above, lends weight to the finding that this new change in policy was similarly motivated by union

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<sup>20</sup> In contrast, Sachell testified that Union executive board members only parked in that spot on Union days.

animus. Vill. of Barrington Hills, 29 PERI ¶ 15 (IL LRB-SP 2012) (close timing of Village's denial of educational reimbursements to union president to Village's other unlawful conduct demonstrated animus with respect to denial of reimbursements). Finally, Sachell's unlawful threat to move the Union bulletin board, made approximately two months earlier, likewise weighs in favor of finding Sachell's decision concerning the Union parking spot was motivated by animus. Id.

Notably, given the circumstances set forth above, CTA should not be permitted to avoid liability in this case by asserting that Sachell did not directly place the sticker on Reyes's vehicle, know where Reyes's car was parked when it received the sticker, or expressly tell the manager to sticker Reyes's car, because Reyes's receipt of the sticker was an inevitable, and foreseeable consequence of Sachell's new parking policy. Indeed, after Sachell had instituted such a policy, it was only a matter of time before a manager placed a warning sticker on an executive board member's car.

Finally, CTA has not offered a legitimate business reason for placing a sticker on Reyes's car because CTA has presented no evidence that the new rule which warranted the sticker's placement served a non-discriminatory purpose and because CTA's reliance on an unwritten, previously unknown rule to justify adverse action against Reyes demonstrates that its reason for issuing Reyes the warning was not legitimate. See, Town of Cicero, 27 PERI ¶ 5 (IL LRB-SP 2011) (employer's proffered business reason is not legitimate when the employer has claimed the existence of an "unwritten and previously unknown rule for the sole purpose of justifying discipline" against an employee; ALJ dismissed the complaint finding that broader rule encompassed the employee's misconduct and warranted discipline).

Thus, CTA violated section 10(a)(1) of the Act when it placed a warning sticker on Reyes's car.

#### ii. Suspension and Written Warning

CTA did not violate the Act when it issued Reyes a final written warning and a one-day suspension because the evidence demonstrates that CTA would have disciplined Reyes for his behavior even if Reyes had not engaged in protected conduct.

Here, the Union presented a prima facie case that CTA retaliated against Reyes for his Union activity when it suspended him and issued him a final written warning. As noted above,

Reyes engaged in protected activity as a Union executive board member and Sachell knew of Reyes's protected activity. Further, Sachell demonstrated union animus when he impliedly equated Reyes's union activity with disloyalty by telling him "you're either Union or management," and when he disparately treated executive board members by depriving them of the Union parking spot.

Contrary to CTA's contention, the Union need not show that Lisa Gregory, the individual who issued Reyes discipline, harbored union animus because Sachell did, and he effectively recommended that discipline. Macon Cnty. Highway Dep't, 4 PERI ¶ 2018 (IL SLRB 1988); Cnty. of Menard, 3 PERI ¶ 2043 (IL SLRB 1987)(it is sufficient to demonstrate that an employer's agent with the authority and responsibility to effectively recommend or carry out the adverse action made anti-union statements). Here, Sachell recommended Reyes for discipline when he told Paytes to prepare the Employee Interview Record and to assign that interview to a manager. Further, Sachell's recommendation was effective because it predetermined both the fact of Reyes's discipline and the minimum penalty he ultimately received. To illustrate, CTA always disciplines employees following such referrals, regardless of their comments at the employee interview, and in this case Reyes received no more than the minimum penalty for his alleged infraction.<sup>21</sup>

However, CTA proffered a legitimate business explanation for disciplining Reyes and introduced evidence that it would have disciplined Reyes for his conduct on April 18, 2011, even if he had not engaged in protected activity. First CTA proffered a legitimate business reason for disciplining Reyes because CTA asserted that it disciplined Reyes for a "Category 11 behavioral violation" which encompasses disrespect to management, supervisory personnel or members of the public, and use of profane language on duty or on CTA property. Further, CTA relied upon this reason to discipline Reyes, at least in part, because Reyes did act disrespectfully to his superiors and used profane language on CTA property when he spoke the word "fuck" and admitted that he "didn't have time for [Sachell's] bullshit games." Finally, CTA demonstrated that it would have disciplined Reyes even absent his union activity because Paytes testified Reyes's conduct was very unprofessional, did not conform to CTA standards, and warranted the Category 11 behavioral charge.

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<sup>21</sup> For this reason, it is immaterial that Sachell allegedly did not know that Gregory had issued Reyes a suspension.

Thus, CTA did not violate Section 10(a)(1) of the Act when it disciplined Reyes for his conduct on April 18, 2011.

**V. CONCLUSIONS OF LAW**

1. CTA violated Section 10(a)(1) of the Act when it threatened to move the Union bulletin board and to assign the Union a smaller one instead.
2. CTA violated Section 10(a)(1) of the Act when it removed the Union's parking space.
3. CTA violated Section 10(a)(1) of the Act when it placed an orange warning sticker on Reyes's vehicle.
4. CTA did not violate Section 10(a)(1) of the Act when it issued Reyes a written reprimand and a one-day suspension for his conduct on April 18, 2011.
5. CTA did not violate Sections 10(a)(4) and (1) of the Act when CTA agents allegedly informed Reyes that, henceforth, when he arrived at the Forest Glen Garage he would be required to check with CTA to explain why he was on the premises and notify CTA as to who he was there to meet.
6. CTA did not violate Sections 10(a)(4) and(1) of the Act when it denied the Union use of its office for 20 days by locking the office's outer door.

**VI. RECOMMENDED ORDER**

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

- 1) Cease and desist from:
  - a. Threatening to move the Union bulletin board and reduce its size;
  - 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. Restore the Union's designated parking space or assign the Union a space comparable in location to the parking space the Union initially occupied, if it has not already done so.
  - b. Remove reference to Reyes's alleged parking violation from CTA records.
  - 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.

## 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, 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 3rd day of December, 2012

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL 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

The Illinois Labor Relations Board, Local Panel, has found that the Chicago Transit Authority have 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 threatening to move the Union bulletin board or replacing it with a smaller one.

WE WILL cease and desist from in any like or related manner, interfering with, restraining or coercing our employees in the exercise of the rights guaranteed them in the Act.

WE WILL restore the Union's designated parking space or assign the Union a space comparable in location to the parking space the Union previously occupied, if we have not already done so.

WE WILL remove reference to Reyes's alleged parking violation from CTA records.

DATE \_\_\_\_\_

\_\_\_\_\_  
Chicago Transit Authority  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD