STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Amalgamated Transit Union. Local 241,	)	
Charging Party	)	
	)	Case No. L-CA-14-022
and	)	
Chicago Transit Authority,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 18, 2013, 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 (2012). The charge was investigated in accordance with Section 11 of the Act and on April 30, 2014, the Board's Executive Director issued a Complaint for Hearing. The parties agreed to proceed on a stipulated record and filed briefs on March 13, 2015. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the CTA has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Union was a labor organization within the meaning of Section 3(i) of the Act.
3. At all times material, the Union has been the exclusive representative for a bargaining unit of the Respondent's employees, including those in the classifications of Cashier, Revenue Collector, Fare Media Operations Clerk, Student Riding Pass Representative,

Treasury Clerk, Money Handler II, Money Handler IV, and Vault Service Clerk, which classifications have now been abolished.

4. At all times material, the Union and the CTA have been parties to a collective bargaining agreement with a stated term of January 1, 2007 through December 31, 2011 ("2007-2011 CBA").
5. Article II, Section 2.7 of the 2007-2011 CBA provided as follows:

   > 2.7 SUBCONTRACTING – The Authority shall not subcontract or assign to others work which is normally and regularly performed by employees within the collective bargaining unit of Local 241, except in cases of emergency when the work or service required cannot be performed by the available complement of unit members. The Authority reserves the right to continue its present practice of contracting out certain work of the nature and type contracted out in the past.
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   > In addition to the foregoing, the CTA may outsource (subcontract) snow removal work and also any landscape work necessary to comply with any municipal landscaping ordinance so long as no Local 241 laborers are displaced due to such outsourcing.

6. The 2007-2011 CBA contained a grievance procedure culminating in final and binding arbitration.
7. The language contained in the first paragraph of Section 2.7 of the 2007-2011 CBA has been in the parties' prior collective bargaining agreements since 1985. Since that time, several arbitrators have issued awards interpreting that language, sometimes in favor of the CTA and sometimes in favor of the Union.
8. On December 7, 2012, the CTA and the Union signed a tentative agreement for a successor collective bargaining agreement with a stated term from January 1, 2012 through December 31, 2015 ("Tentative Agreement").
9. In December 2012, the Union's membership and the Chicago Transit Board ratified the Tentative Agreement.
10. The Tentative Agreement, which made no changes to Article II, Section 2.7 of the 2007-2011 CBA, provides for a grievance procedure culminating in final and binding arbitration.
11. Ventra, the open fare system at CTA, became operational in September 2013.

12. On September 3, 2013, the CTA's Office of the Secretary issued a Notice of Regular Board Meeting for the Chicago Transit Board's regular meeting to be held on September 11, 2013, at 10:00 am.
13. On September 4, 2013, the CTA for the first time informed the Union that it would be eliminating the following 8 classifications with 24 bargaining unit positions, Cashier, Revenue Collector, Fare Media Operations Clerk, Student Riding Pass Representative, Treasury Clerk, Money Handler II, Money Handler IV, and Vault Service Clerk.[1]
14. The Cashier position was responsible for, among other things, selling all types of CTA fare media.
15. Since September 4, 2013, non-bargaining unit individuals have been selling Ventra fare media.
16. The Revenue Collector position was responsible for, among other things, collecting revenue from automated vending machines and visitor pass machines at CTA rail stations.
17. Since September 4, 2013, non-bargaining unit individuals have been collecting revenue from Ventra automated vending machines and Ventra visitor pass machines at CTA rail stations.
18. The Fare Media Operations Clerk position was responsible for, among other things, processing CTA fare media items such as passes, permits, and transit cards.
19. Since September 4, 2013, non-bargaining unit individuals have been responsible for processing Ventra fare media items such as passes, permits, and transit cards.
20. The Student Riding Pass Representative position was responsible for, among other things, performing activities relating to the Student Riding Permit Program, including the annual distribution of student riding permits to Chicago area schools and the processing and distribution of mail sales for the student permit mail sale program.
21. Since September 4, 2013, non-bargaining unit individuals have been, as it relates to Ventra, performing activities relating to the Student Riding Permit Program, including the annual distribution of student riding permits to Chicago area schools and the processing and distribution of mail sales for the student permit mail sale program.

[1] The Respondent does not admit that this is the first notice it provided to the Union of manpower changes as a result of Ventra. The Union does not admit that the Respondent provided it with any prior notice of manpower change as a result of Ventra.

22. The Treasury Clerk position was responsible for, among other things, processing the printing and distribution of employee payroll checks and pay advances for employees in the Treasury/Cash Management Reporting & Services Department.
23. Since September 4, 2013, non-bargaining unit individuals have been, as it relates to Ventral, processing the printing and distribution of employee payroll checks and pay advices for employees in the Treasury/Cash Management Reporting & Services Department.
24. The Money Handler II and IV positions were responsible for, among other things, performing tasks related to the collection, processing, and deposit of system-generated revenue with respect to Ventra.
25. Since September 4, 2013, non-bargaining unit individuals have been responsible for performing tasks related to the collection, processing, and deposit of system-generated revenue with respect to Ventra.
26. The Vault Services Clerk position was responsible for, among other things, performing administrative, secretarial, and clerical support activities for Vault Operations, including Money Handlers.
27. Since September 4, 2013, non-bargaining unit individuals have been responsible for performing administrative, secretarial, and clerical support activities for Vault Operations, including Money Handlers.
28. On September 5, 2013, the Union filed Grievance No. 13-1443, claiming that the CTA violated Section 2.7 of the CBA by having work performed by bargaining unit employees be performed by Brinks, Guarda, individuals working on the Ventra card payments and other tasks related to the Ventra Card and unnamed call centers.
29. On September 11, 2013, the Chicago Transit Authority's Committee on Finance Audit and Budget and the Chicago Transit Board approved abolishing 8 classifications with 24 bargaining unit positions.
30. On September 11, 2013, the CTA notified 24 bargaining unit members that their positions were to be abolished.
31. On October 4, 2013, the CTA responded to Grievance No. 13-1443, stating that "Grievance No. 13-1443 is denied as a substantively inarbitrable dispute that is not cognizable by the parties' grievance-arbitration procedures."

32. The CTA did not offer the Union the opportunity to bargain over and did not bargain with the Union over its decision to abolish 8 classifications with 24 bargaining unit positions.
33. The CTA did not offer the Union the opportunity to bargain over and did not bargain with the Union over its decision to take the actions described in Paragraph 15, 17, 19, 21, 23, 25, and 27.
34. In 2009, articles appeared in Chicago newspapers about the development of a single smart card for use on the CTA, Pace, and Metra.
35. On August 12, 2009, the CTA issued a press release published on its website about an open fare system.
36. On August 13, 2009, the Chicago Sun-Times published a story entitled "New, Quicker Ways of Paying Fares."
37. On August 24, 2009, the CTA published on its website an initial Request for Proposals (RFP) for an Open Payment Collection System.
38. On December 15, 2009, the Chicago Sun-Times published a story about the initial RFP.
39. On September 28, 2010, the CTA published on its website a Request for Proposal to provide an Open Fare Payment System.
40. On September 28, 2010, the CTA issued a press release published on its website about the open fare procurement process.
41. On September 29, 2010, R. Gierut, then the CTA's Vice President for Human Relations, caused the Scope of Services Section of the follow-up RFP to be delivered to the President of ATU Local 241, Darrell Jefferson.
42. On July 7, 2011, Governor Quinn signed Public Act 97-85.[2]
43. On November 15, 2011, the CTA Board enacted Ordinance No. 011-143. The Ordinance was published on the CTA's website.[3]
44. On November 15, 2011, the CTA issued a press release published on its website about Ordinance 011-143.

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[2] Public Act 97-85 requires the CTA, Pace, and Metra to develop a universal fare payment system by 2015.

[3] The Ordinance authorizes an agreement with a subcontractor for an Open Standards Fare System (OSFS). In relevant part, it provides that the "contractor will supply all the equipment, software, materials and labor needed to provide the OSFS."

45. On November 15, 2011, the Chicago Tribune published a story about the CTA's contract with Cubic Transportation Systems.
46. On June 13, 2012, the CTA announced that Pace had joined the contract with Cubic. The Chicago Tribune reported this the next day.
47. On September 27, 2012, the CTA issued a press release published on its website about Ventra.
48. The unveiling of Ventra was reported on television and in radio news programs on September 27, 2012.
49. On March 11, 2013, the CTA held a public hearing about Ventra.
50. On June 25, 2013, the CTA issued a press release published on its website about Ventra.
51. On September 11, 2013, the CTA Board enacted Ordinance No. 013-128.[4]
52. Although the CTA sent termination notices to members of ATU Local 241 affected by the aforesaid Ordinance, none of these employees lost employment. Instead, on March 27, 2014, the CTA and ATU Local 241 completed negotiations for an agreement under which employees whose job classifications had been abolished were placed in different classifications without interruption of employment and without loss of progression.[5]
53. Although the parties reached an agreement under which employees whose job classifications had been abolished were placed in different classifications without interruption of employment and without loss of progression, those employees were subject to a loss of pay, changes in work location and schedule and a loss of seniority rights as it related to picking schedules and vacations in the different classifications.
54. Prior to September 4, 2013, the work performed by the 8 abolished classifications was normally and regularly performed by the Local 241 bargaining unit and had not been performed outside of the bargaining unit.
55. CTA is not claiming that it provided the Union with any written notices other than as set forth in Paragraphs 34-52.

[4] This ordinance abolished the bargaining unit positions at issue in this case.
[5] The parties' settlement agreement did not resolve and does not impact the issue presented in this case.

II. ISSUES AND CONTENTIONS

The agreed-upon issues are (1) whether the charge was timely filed and (2) whether the CTA violated Sections 10(a)(4) and (1) of the Act when it allegedly subcontracted bargaining unit fare-collection work and eliminated unit positions, without providing the Union with notice and an opportunity to bargain over its decision. On brief, the Charging Party additionally alleges that the CTA's decision to subcontract unit work and its refusal to arbitrate the Union's subcontracting grievance constitute repudiation of the CTA's bargaining obligations.

The CTA argues that the charge is untimely because the Union knew of the CTA's decision to cease using its own employees for fare collection tasks well before March 18, 2013, outside the limitation period. The Union asserts that it only received adequate notice of the changes on September 5, 2013, within the limitation period, when the CTA formally announced its decision to eliminate unit positions.[6]

On the merits, the CTA asserts that it had no obligation to bargain over its decision to subcontract unit work and eliminate unit positions because it was part of a legitimate reorganization that served to improve CTA's standards of service. It also claims that the Metropolitan Transit Authority Act (MTAA) preempts the statutory duty to bargain over such matters.

The Union denies that the CTA engaged in a legitimate reorganization and states that the CTA's decision instead concerned a mandatory subject of bargaining because it undeniably impacted employees' terms and conditions of employment and turned on labor costs. The Union rejects the CTA's assertions that the MTAA preempts the duty to bargain. It also claims that the CTA's decision to subcontract is a repudiation of the CTA's bargaining obligation because the parties' agreement clearly bars the CTA from subcontracting unit work. Similarly, it claims that the CTA's refusal to arbitrate the Union's subcontracting grievance constitutes a repudiation of the CTA's bargaining obligations because the grievance is clearly substantively arbitrable.

[6] The Union also argues that its charge is timely because the CTA decided to eliminate unit positions well after it decided to subcontract unit work.

III. DISCUSSION AND ANALYSIS

1. Timeliness

The Union's charge is untimely filed with respect to the allegations that the CTA violated the Act when it (1) unilaterally transferred bargaining unit work to non-unit employees and (2) repudiated the parties' agreement by subcontracting unit work. However, the Union's charge is timely filed with respect to the allegations that the CTA violated the Act when it (1) unilaterally eliminated unit positions and (2) repudiated the parties' collective bargaining agreement by refusing to arbitrate the Union's grievance over subcontracting.

Pursuant to Section 11(a) of the Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." The six-month limitation period begins to run when a charging party has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. Ill. State Labor Rel. Bd., 206 Ill. App. 3d 327, 335 (4th Dist. 1990); Serv. Empl. Int'l Union. Local 46 (Evans), 16 PERI ¶3020 (IL LLRB 2000).

The charge is untimely with respect to the allegation that the CTA unlawfully transferred bargaining unit work out of the unit. A charging party is deemed to know of a respondent's unilateral change when the change is unambiguously announced. City of Chicago, 30 PERI ¶ 126 (IL LRB-LP 2013); Vill. of Richton Park, 21 PERI ¶158 (IL LRB-SP 2005); see also Chicago Transit Auth., 19 PERI 12 (IL LRB-SP 2003). As a general matter, an employer's notice to a union that it seeks to solicit bids from contractors to perform bargaining unit work constitutes an unambiguous announcement of an allegedly unlawful transfer of unit work of out the unit. Manhasset Union Free School Dist., 41 PERB ¶ 3005 (NY PERB 2008).

Here, the Union should have known of the CTA's decision to transfer bargaining unit work out of the unit on September 29, 2010, when the CTA gave the Union notice of its intent to solicit bids to subcontract unit work. On that date, the CTA sent the Union President a Request for Proposal (RFP). The RFP states that the CTA sought to enter into an agreement with a contractor relating to the operation, maintenance, repair and replacement of a new fair payment system, and it describes the bargaining unit work that CTA intended the contractors to perform. For example, it provides that the contractor will "process...all payments, electronic and cash, due to CTA from the OSFS," tasks assigned to the bargaining unit titles Revenue Collector, Fair

Media Operations Clerk, Treasury Clerk, and Money Handler II and IV. Similarly, it provides that the contractor will "provi[de]...all required support functions needed to meet performance standards," at least some of which are performed by the Vault Services Clerk. Finally, the CTA established no pattern of declining to subcontract after soliciting such bids, such that the solicitation of bids in this instance would be inadequate notice of the CTA's decision to subcontract. Cf. Manhasset Union Free School Dist., 41 PERB ¶ 3005 (finding solicitation of bids did not constitute unambiguous announcement where employer previously established a pattern soliciting bids and declining to subcontract). Thus, the Union's charge is untimely with respect to CTA's unilateral decision to transfer unit workout of the unit because the Union had clear and unequivocal notice of that decision on September 29, 2010, but filed its charge nearly three years later on September 18, 2013.

By the same rationale, the charge is untimely with respect to the Union's allegation that the CTA repudiated the parties' collective bargaining agreement by subcontracting unit work.[7] A charging party is deemed to know of a respondent's repudiation when the respondent announces its intent to repudiate the parties' agreement, not when the respondent begins to act in conformity with its announcement. See generally, City of Chicago. 30 PERI ¶ 194 (IL LRB-LP 2014); see also A & L Underground, 302 NLRB 467 n. 9 (1991). The CTA's solicitation of bids for subcontracting bargaining unit work constituted a clear an unequivocal announcement of its intent not to abide by the contractual prohibition against subcontracting. The fact that the CTA implemented its plan to subcontract within the limitation period does not render the instant repudiation allegation timely filed where the Union had clear and unequivocal notice of the CTA's intent to subcontract outside the limitation period. A & L Underground, 302 NLRB 467 n. 9 (letter to union announcing employer's intent to repudiate all agreements with the union triggered the limitation period though employer did not act on its announcement until later).

However, the Union's charge is timely filed as to the allegation that the CTA eliminated bargaining unit positions without giving the Union notice and an opportunity to bargain. The Board's case law suggests that an employer's notice to a union of its intent to eliminate unit positions is adequate when it conveys that the employer intends to eliminate positions and allows

[7] This allegation was argued on brief, but an amendment of the Complaint to add this allegation would be improper because it is untimely. Vill. of Wilmette, 20 PERI ¶ 85 (ALJ may not amend a complaint if the allegations are untimely).

the union to easily identify the positions the employer plans to eliminate. Vill. of River Forest, 22 PERI ¶ 55. Here, the RFP, the news articles, and the website postings lack such substance and clarity.

First, RFP does not express an intent to eliminate unit positions and instead simply states that the contractor will "replace" the CTA's existing fare collection system. It thereby requires the Union to infer that the work of certain bargaining unit titles will no longer be needed and to foresee that the CTA's subsequent course of action would be to eliminate the unit titles that performed the transferred work. Thus, the RFP lacks the earmarks of an unambiguous announcement that would trigger the limitation period to file a charge over the CTA's elimination of bargaining unit positions. Cf. Vill. of River Forest, 22 PERI ¶ 55 (IL LRB-SP 2006) (Village Manager gave the union unambiguous notice of the employer's decision to eliminate the position of lieutenant when he described a new organizational structure, which omitted that title). Land Air Delivery, Inc., 286 NLRB 1131 (1987) ("The required adequate notice to start the tolling of the statute is not a matter of 'hare and hound' decipher play, but of required unequivocal notice").

Similarly, the news articles, press releases, and CTA website postings[8] do not provide the Union with clear and unambiguous notice of the CTA's decision to eliminate bargaining unit positions. They do not expressly reference CTA employees, they make no mention of particular bargaining unit titles, and they do not explain that the CTA planned to eliminate employees who performed CTA fair collection duties. At their most specific, they simply state that the CTA will no longer have "responsibility [for] day-to-day maintenance and [fare] collection activities" and announce that the contractor will "supply...all...the labor needed" for fare collection. The Union might surmise from these statements that the work of certain bargaining unit titles would no longer be needed and it might reasonably fear a future announcement of eliminations, but the statements themselves do not clearly and unambiguously describe a decision by the CTA to eliminate unit positions. Cf. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004)(employer's announcement at a televised public meeting that it would grant a pay increase to "non-union"

[8] Notably, the Employer introduced no evidence that Union representatives had an obligation to follow the CTA's website, such that the CTA's posting of notices there, even in less ambiguous terms, would constitute notice to the Union that would trigger the limitation period. Cf. Village of Skokie, Case No. S-CA-13-115 (IL LRB-SP December 4, 2014) (employer presented evidence that representative was required to read documents posted to clipboard and received by email, such that documents provided in that manner constituted notice to the Union).

employees constituted unambiguous announcement of its intent to grant wage increases only to non-union employees).

Moreover, the notices provided by the CTA to bargaining unit employees within the limitation period support the conclusion that the earlier RFP and the press releases failed to unambiguously announce the elimination of unit positions. They show that when the CTA wishes to announce the abolishment of unit positions, it does so in express and unmistakable terms: "the purpose of this letter is to provide you notice that...the Chicago Transit Authority is abolishing various positions [and that] the abolishment of these positions will necessitate the termination of your employment." In light of this clear language, the CTA's earlier, more general statements regarding reorganization and subcontracting fail to provide the clear and unambiguous notice required to toll the limitation period on the alleged unilateral elimination of unit positions.

Finally, the Union's charge is timely with respect to the allegation that the CTA repudiated the parties' collective bargaining agreement when it refused to arbitrate the Union's subcontracting grievance because the CTA's refusal occurred on October 4, 2013, during the pendency of this case.[9]

Thus, the charges are untimely where they allege that the CTA unilaterally subcontracted unit work and repudiated the parties' agreement by subcontracting unit work. However, the charges are timely where they allege that the CTA unlawfully eliminated unit positions and repudiated the parties' agreement by refusing to arbitrate the Union's subcontracting grievance.

2. Alleged Unilateral Elimination of Unit Positions, 10(a)(4) and (1)

The CTA did not violate the Act when it unilaterally eliminated unit positions because that decision was not a mandatory subject of bargaining. Although the decision impacted employees' terms and conditions of employment it was also intertwined with the CTA's

[9] This allegation was not contained in the charge. However, it is proper to amend the complaint to include this allegation because it grew out of the same subject matter at issue in the charge (subcontracting) during the pendency of the case. See Chicago Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998); City of Chicago (Chicago Police Dep't), 12 PERI ¶ 3013 (IL LLRB 1996); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Cnty. of Cook, 5 PERI ¶ 3002 (IL LLRB 1988).

legitimate reorganization and the burdens of bargaining over that reorganization outweigh the benefits of bargaining to the bargaining process in this case.

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 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).

In Central City, the court set forth a three-part test to determine whether a matter is a mandatory subject of bargaining. The first question is whether the matter is one of wages, hours and terms and conditions of employment. Cent. City Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd. ("Central City"), 149 Ill. 2d 496 (1992). If the answer to that question is no, the inquiry ends and the employer is under no duty to bargain. Central City, 149 Ill. 2d at 522-523. If the answer is yes, then the second question under the Central City test is whether the matter is also one of inherent managerial authority. Id. If the answer is no, then the analysis stops and the matter is a mandatory subject of bargaining. Id. If the answer is yes, the Board will balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the employer's authority. Id.

First, the CTA's decision to eliminate bargaining unit positions affects employees' terms and conditions of employment, even though the CTA ultimately rescinded its decision to terminate the incumbent employees and instead transitioned them to other positions. The employees lost pay and seniority rights. In addition, their work locations and schedules changed. City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994)(changes to benefits, wages, and seniority rights impact terms and conditions of employment); Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-SP 2014) (reorganization that gave employees the opportunity to change work locations and commute times affected terms and conditions of employment); see also

Board of Trustees, University of Ill., 20 PERI ¶ 84 (IL LRB-SP 2004); In re United Parcel Service, 336 NLRB 1134, 1135 (2001); Comm. College Dist. 508 (City Colleges of Chicago), 13 PERI ¶ 1045 (IL ELRB 1997).

Second, the CTA's decision to eliminate unit positions is also a matter of inherent managerial authority because it was part of the CTA's broader decision to effect a legitimate reorganization. An employer must demonstrate one or more of the following to establish that its action was a legitimate reorganization and thus a matter of inherent managerial authority: (1) that its organizational structure has been fundamentally altered; (2) that the nature or essence of the services provided has been substantially changed; or (3) that the nature and essence of a position has been substantively altered such that the occupants of that position no longer have the same qualifications, perform the same functions, or have the same purpose or focus as had the previous employees. State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 17 PERI ¶2046 (IL LRB-SP 2001).[10] Absent such a basic or substantial change to the employer's organizational structure or services provided, or to the fundamental essence of a position, the Board will not find an employer's decision a matter of inherent managerial authority. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 17 PERI ¶ 2046.

The Union correctly observes that the first and the third tests are not met here. The CTA did not fundamentally alter its organizational structure because it simply eliminated a number of titles that performed related duties and left the remainder of the organization unchanged. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011)(consolidation of two maintenance departments for increased efficiency did not constitute a fundamental change to organizational structure); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987) (consolidation of two City departments, made to centralize inspection functions and improve coordination, effected only a slight change in organization structure); but see City of Evanston, 29 PERI ¶ 162 (creation of centralized call center that accompanied elimination of switchboard operator positions located in separate departments constituted legitimate reorganization in light of other changes).

Likewise, the CTA did not make any substantive changes to the nature and essence of the positions at issue because both the eliminated positions and the successor positions perform fare

[10] A decision to eliminate unit positions will also be a matter of inherent managerial authority when it establishes a bona fide supervisory position. State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 17 PERI ¶2046. That is not at issue here.

collection duties. In light of this continuity, the CTA's installation of new equipment is irrelevant where the CTA has not shown that working with it required certifications, education, or licenses that bargaining unit employees did not possess. Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶3021 (IL LLRB 1996) (mere change in equipment or technology used does not alter job duties for purposes of reorganization analysis), aff'd by unpub. order, 14 PERI ¶4016 (1998); see also State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 17 PERI ¶2046 (bargaining unit correctional officers and non-unit canine specialists performed the same duties and functions even though the canine specialists use the "sophisticated technology" of "a dog's highly sensitive sense of smell"); Cnty. of Lake, 28 PERI ¶ 67 (ordering bargaining even where some of the repair work had increased in complexity).

However, the CTA did change the nature or essence of the services it provides, as the Board has interpreted this requirement, and its decision to eliminate unit positions was part of that change. An employer changes the nature and essence of its services when it alters the manner in which it communicates with the public and changes the way it provides its existing services. City of Evanston, 29 PERI ¶ 162. This rule is consistent with Section 4 of the Act, which provides that employer decisions concerning its standards of services are a matter of inherent managerial authority. 5 ILCS 315/4.

Here, the Respondent changed and improved the way it provided its existing services by increasing the ease with which customers paid for their fares and entered its mass transit system. It newly allowed customers to pay for fares using credit/debit cards instead of relying on CTA issued tickets, and permitted "tap and go" entrance to CTA mass transit instead of requiring customers to slip their cards into card readers. The CTA effectuated these improvements to its services by delegating the entire fare collection process—design, installation, operation, and maintenance—to an outside contractor and, in turn, eliminating the unit positions that performed fare collection under the antiquated system. Although the CTA provided mass transit services both before and after the reorganization, it nonetheless engaged in a legitimate reorganization because it fundamentally changed the way it provided those mass transit services to its customers. City of Evanston, 29 PERI ¶ 162 (creation of centralized 311 dispatch center to field

complaints and inquiries from the public changed the nature and essence of services provided by the City, even though the City had fielded such calls before the reorganization).[11]

Finally, the benefits of bargaining over the elimination of unit positions in this unique case are minimal compared to the burden that bargaining would impose on the CTA's inherent managerial authority. The usual benefits of bargaining over the elimination of unit positions do not exist in this case where the CTA's action is simply the final step of a broader change that the Union failed to timely protest. Ordinarily, decisions that are based in part on a desire to reduce labor costs, such as this one, are amendable to bargaining because the union can suggest cost saving measures to benefit the employer or it can offer concessions that could save employees' jobs. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (addressing whether the Union was in a position to offer concessions addressing the Village's financial concerns); see also City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). However, the Union in this case missed the opportunity to preserve for itself the work that the CTA transferred to a contractor because it did not file a timely charge over that removal of unit work. As a result, the Union can offer no valuable wage concessions in favor of maintaining Union positions because the positions' incumbents are redundant and the CTA's assignment of unit work to contractors is irrevocable.[12] The Union's potential cost-savings suggestions are similarly limited because the CTA can realize savings from the reorganization only by eliminating those now-redundant Union positions.

Furthermore, bargaining would significantly burden the CTA's inherent managerial authority to choose the means of improving its standards of service. For example, the CTA could have determined that delegating repair and collection functions to one outside entity would better maintain consumer access to CTA services by speeding the resolution of ticket-vending problems. Fare collectors best positioned to identify broken machinery would have no need to report the matter first to the CTA and might instead communicate directly with the entity responsible for dispatching maintenance. Alternatively, the CTA could have determined that the resolution of vending problems would be swifter if fare collection were performed by bargaining

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[11] In City of Evanston, the Board additionally noted that the City had also demonstrated a legitimate organization under the two alternate tests, which the CTA in this case has not done. However, an employer need only satisfy one of the three tests.

[12] The Board cannot order the CTA to restore that work to the Union because the only allegation over which the Board has jurisdiction is the unilateral elimination of positions and not the decision to subcontract. Notably, the parties agree that the Union no longer has a remedy in court for the alleged breach of contract based on the subcontracting of unit work.

unit employees more experienced than new workers in identifying such malfunctions (albeit on different machines). CTA's implicit selection amongst such options in effecting its reorganization illustrates the managerial calculus that bargaining would inevitably burden. That burden is rendered more acute in this case where the Union made a timely objection to only the elimination of unit positions and not the related decision to transfer bargaining unit work out of the unit.

Thus, the CTA did not violate the Act when it unilaterally eliminated eight unit classifications, including 24 unit positions, because the decision to do so is not a mandatory subject of bargaining in this case.

3. Alleged Repudiation Based on Refusal to Arbitrate Subcontracting Grievance

The CTA's single refusal to arbitrate the Union's grievance over the subcontracting of unit work does not constitute repudiation of the CTA's bargaining obligations.

A respondent's conduct constitutes repudiation when it demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working. City of Loves Park v. Illinois Labor Relations Board State Panel, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003) (finding repudiation where respondent did not merely challenge arbitration award reinstating employee but sought to nullify the entire bargained-for grievance provision); City of Collinsville, 16 PERI ¶ 2026 (IL SLRB 2000), aff'd, City of Collinsville v. Illinois State Labor Relations Board, 329 Ill. App. 3d 409, 263 (5th Dist. 2002). Repudiation requires a substantial breach of contract made without rational justification or reasonable interpretation such as to demonstrate bad faith. Cnty. of Boone and Boone Cnty. Sheriff, 31 PERI ¶ 120 (IL LRB-SP 2015); City of Chicago. 30 PERI ¶ 194.

Here, the CTA's refusal to arbitrate the Union's subcontracting grievance is a single, isolated refusal and therefore not a substantial breach which would constitute repudiation. Indeed, the Board has repeatedly held that an employer's refusal to process a grievance is not repudiation where it has happened just once or where the employer has a good faith defense to the grievance. Cnty. of Bureau and Bureau Cnty. Sheriff, 29 PERI ¶ 163 (IL LRB-SP 2012); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶3019 (IL LLRB 1990); Vill. of Creve Coeur, 3 PERI ¶ 2063 (IL SLRB 1988); Chicago Transit Authority, 4 PERI ¶ 3012 (IL LLRB 1988). Although the CTA's conduct may constitute a breach of contract grievance procedures, the

Board has no jurisdiction to resolve such matters. Vill. of Creve Coeur, 3 PERI ¶ 2063; 5 ILCS 315/16.

Thus, the CTA did not repudiate the parties' agreement when it refused to arbitrate the Union's subcontracting grievance.

IV. CONCLUSIONS OF LAW

1. The Union's charge is untimely filed with respect to the allegation that the CTA unlawfully transferred bargaining unit work out of the unit.
2. The Union's charge is untimely filed with respect to the allegation that the CTA repudiated the parties' collective bargaining agreement by subcontracting bargaining unit work.
3. The CTA did not violate Sections 10(a)(4) and (1) the Act when it eliminated unit positions without giving the Union notice and an opportunity to bargain.

VI. RECOMMENDED ORDER

The Complaint is dismissed.

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 General Counsel Kathryn Zeledon Nelson of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a

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

Issued at Chicago, Illinois this 1st day of July, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge