

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

Painters District Council No. 14,)		
)		
Charging Party)	Case No.	L-CA-14-035
and)		
)		
Chicago Transit Authority,)		
)		
Respondent)		

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On November 8, 2013, Charging Party, Painters District Council No. 14 (“Union”) filed a charge in the above-captioned case with the Local Panel of the Illinois Labor Relations Board (“Board”) alleging that Respondent, Chicago Transit Authority (“CTA”) violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (“Act”), 5 ILCS 315 (2014), as amended. The charges were investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code §§ 1200-1300 (“Rules”). On March 14, 2014, the Board’s Executive Director issued a Complaint for Hearing (“Complaint”). On March 31, 2014, Respondent answered the Complaint. The undersigned heard the case in Chicago, Illinois, on February 27, March 2, April 8, and April 9, 2015. At the hearing, the Union presented evidence in support of its allegations, the CTA was given the opportunity to provide evidence in its defense, and both parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties’ stipulations, motions, 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 CTA has been subject to the jurisdiction of the Local Panel of the Board, pursuant to Section 5 of the Act.
3. At all times material, the CTA has been subject to the Act, pursuant to Section 20(b) thereof.
4. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative of a bargaining unit composed of certain of the CTA's employees ("Unit"), including those in the job classification or title of Painter and Painter Leader.
6. At all times material, the Union and the CTA have been parties to a collective bargaining agreement ("CBA") for the Unit, with effective dates of January 1, 2007 through December 21, 2011; the CTA and the Union extended the terms of the CBA except as modified by a Memorandum of Agreement, for the time period January 1, 2012 through 11:59 p.m. December 31, 2016.
7. Michael Salas worked at the CTA as a Painter Leader.
8. Salas was a public employee within the meaning of Section 3(n) of the Act until his discharge on September 30, 2013.
9. Salas was a member of the Union before his discharge on September 30, 2013.
10. Percy Hale worked at the CTA as a Painter Leader.

11. Hale was a public employee within the meaning of Section 3(n) of the Act until his discharge on October 11, 2013.
12. Hale was a member of the Union before his discharge on October 1, 2013.
13. William White worked at the CTA as a Painter.
14. White was a public employee within the meaning of Section 3(n) of the Act until his discharge on September 30, 2013.
15. White was a member of the Union before his discharge on October 1, 2013.
16. On October 15, 2013, the Union filed Grievance No. 1405-13 with the CTA on White's behalf challenging General Manager Kevin Loughnane's decision to terminate White's employment with the CTA.
17. On October 1, 2013, the Union filed Grievance No. 1404-13 with the CTA on Salas' behalf challenging General Manager Kevin Loughnane's decision to terminate Salas' employment with the CTA.
18. On October 8, 2013, the Union filed Grievance No. 1406-13 with the CTA on Hale's behalf challenging General Manager Kevin Loughnane's decision to terminate Hale's employment with the CTA.
19. On January 14, 2015, and January 15, 2015, Grievance No. 1404-13 was partially arbitrated before Arbitrator Sinclair Kossoff. The matter will continue to be arbitrated on March 12, 2015.¹
20. Prior to November 8, 2013, the CTA did not bargain with the Charging Party over CTA's use of video footage of employees in public or in areas where CTA paying customers had access to support discipline of such employees.

¹ The parties filed these stipulations on February 20, 2015. The record does not reflect whether the parties actually continued to arbitration.

II. FINDINGS OF FACT²

The CTA operates the country's second largest public transportation system consisting of buses and rapid transit rail cars. The CTA's rail coverage includes multiple rail lines, with 146 rail stations. In 2001 and 2002, the CTA began installing cameras in four of its rail stations. In May 2010, the CTA held a press conference where it informed the public that it had placed at least one camera in each of its rail stations as well as more cameras at the Pink line and Red line stations, totaling approximately 1500 cameras. The CTA did not specifically inform the Union. By 2015, the CTA had installed approximately 4300 cameras at its rail stations. Every station has at least one pan-tilt-zoom camera, which is capable of an operator manipulating the camera angle from the "video room" at CTA headquarters. The operator is able to manipulate the camera to provide wide area coverage and the zoom feature allows the operator to focus on specific details. To date, the CTA has installed approximately 430 pan-tilt-zoom cameras CTA-wide. All the cameras capture live video feed and record the feed. An authorized CTA employee can view the footage in the video room at CTA headquarters. The CTA routinely retains the videos for six or seven days. The CTA can retain video footage longer by

² My findings of fact do not exceed the facts included in the hearing record. In its post-hearing brief, the CTA cites fact patterns from previous arbitration awards as evidence of its past conduct. However, the CTA did not seek to enter those arbitration awards as exhibits into evidence during the hearing, and identified that the arbitration awards were "annexed to CTA's response to the ILRB's first request for information and a copy [of each award] is also available upon request." I infer that Respondent has asked me to take judicial notice of these adjudicative facts from the arbitration awards. Illinois Rule of Evidence 201 provides that I must take judicial notice of an adjudicative fact that is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned if a party requests and it supplies me with the necessary information. Ill. R. Evid. 201(a)(b)(d). Illinois Administrative Code provides, "[p]osition statements and evidence submitted to the Board in the course of any investigation in an unfair labor practice proceeding" are not open to public disclosure. 2 Ill. Admin. Code § 2501.220. At the conclusion of the investigation if the Executive Director issues a Complaint for Hearing, the hearing record is public, but no documents submitted solely to the Board during its investigation into the initial charge are included in the public hearing record. Thus, the CTA's request that I make findings based on facts is has not provided for the hearing record does not comply with Illinois Rules of Evidence.

downloading it to an external device. Prior to 2014, the Union and the CTA never bargained or otherwise discussed the installation or the use of the rail platform cameras. The Union did not seek to bargain the effects of the cameras, nor did the CTA specifically promise that it would not use the rail platform cameras to prove the existence of just cause to discipline Unit employees.

The CTA operates its own sign shop that has generated signs that read, “Attention! Security cameras are on board and any activity will be recorded” and “Attention, There may be a security camera aboard capable of recording any activity.” The sign shop also generated the following sign that the CTA has posted on most of its rail station platforms, “Surveillance Camera on Premises” with a graphic of a rectangular shaped camera. CTA’s Director of Technology Engineering, Herb Nitz testified that in order to capture the area the CTA intends the camera to survey, the rail platform cameras are visible, and the camera lenses are unobstructed. Nitz also testified that the rail platform cameras are visible in order to deter abnormal behavior.

The CTA has a General Rule Book establishing a code of conduct that all CTA employees are expected to follow. The current Rule Book has been revised since becoming effective in October 1989. The CTA also has a Corrective Actions Guidelines that apply to all bargained-for employees. The Guidelines address probationary periods, progressive discipline, absenteeism, safety violations, behavioral violations, etc.

The parties’ collective bargaining agreement includes a “non-interference clause” which provides as follows:

The Authority shall be at liberty at all time during the existence of this Agreement and subject to the provisions hereof, to operate its property according to its best judgement and the orders of lawful authority.

The Union agrees that it will in no way interfere with or limit the right of the Authority to discharge or discipline its employees where sufficient cause can be shown. The Authority will not discriminate against any employee because of his membership in the Union or because he is serving as a representative of the

Union. Where the employee feels he has been unfairly dealt with, he may resort to the grievance procedure.

It is expressly agreed that all rights and powers of management are retained by, reserved to, and exclusively vested in the Authority, including but not limited to the right to plan, direct, curtail, determine and control the employer's operations, hire, suspend, discipline or discharge for proper cause, layoff, transfer, to promote efficiency, to contract or subcontract and all rights customarily exercised by an employer, except as may be specifically limited by this Agreement, are vested in the Authority. The Authority and the Union expressly reserve their rights under this Agreement as set forth in Section 4 of the Illinois Public Relations Act. No such right shall be exercised in a manner inconsistent with or contrary to the provisions of this Agreement or the law.

The Union bargains with the CTA through a trade coalition (“Coalition”), which contain eleven separate unions. The CTA and the Coalition bargain over issues involving all the Coalition members, and the CTA bargains with individual union to negotiate issues particular to each union. The Union began representing the Unit in 2009, as successor to Metal Polishers, Sign Pictorial & Display, Automotive Equipment Painters, Production & Novelty Workers Union, Local 8A-28A, IBPAT (“Local 8A-28A”) who formerly represented the Unit. Prior to 2009, the Union and Local 8A-28A were not affiliated. In 2001, CTA’s Office of Inspector General (“OIG”) conducted an investigation of a Local 8A-28A CTA painter. In its investigation, the OIG used “mobile and video surveillance” to monitor the painter who the investigator observed leaving work early on several occasions and observed at home or at a restaurant while he submitted time sheets reporting that he was working during those events.³

Katharine Lunde, CTA’s General Manager Contract and Labor Relations testified that since she began at the CTA in 2010 the CTA has been using video from rail stations, video from buses, and video from hand held cameras to discipline CTA employees. Lunde testified that

³ Pursuant to Illinois Rule of Evidence 201 and Board Rule §1200.60, I take judicial notice of the adjudicative facts contained in the unpublished Decision and Award of Arbitrator in Chicago Transit Authority, Metal Polishers, Sign Pictorial & Display, Automotive Equipment Painters, Production & Novelty Workers Union, Local 8A-28A, IBPAT, Grievance No. 2085-01 (Newman, 2003) that the CTA attached to its post-hearing brief. See Ill. R. Evid. 201(a)(b)(d); 80 Ill. Admin. Code § 1200.60.

most of the disciplinary cases she has been involved in were regarding the discipline of Amalgamated Transit Union, Local 241 employees, which are not part of the Coalition. Lunde further testified that the CTA has typically used handheld cameras in worker's compensation cases to prove fraud. The CTA took such video footage while the employees were off duty, and often while they were at home. The CTA has disciplined employees based on customer complaints, including complaints where customers have taken photos or video recording of the complained of conduct. Examples include videos or photographs of CTA bus drivers, represented by Amalgamated Transit Union, Local 241, using their cell phone while operating the bus, and CTA customer assistance employees sleeping in the kiosk. Lunde never received customer complaints regarding Salas, Hale, or White, nor has any customer provided her with photographs or video footage of any CTA painters. Former Union Business Representative Gerald Thanos testified that since becoming the Unit's certified bargaining representative in 2009 through his retirement in April 2013, the CTA did not use video surveillance footage to discipline Unit employees.

In 2013, the CTA's System Maintenance Department implemented "station renews" at its rail stations throughout the CTA system, which entailed multiple tradesmen performing renovations and improvements on a specific rail station for approximately one week. They would then move on to complete the same renovations and improvements at another rail station. CTA painters were included in these renewal projects. At that time, Salas was completing the station renews. System Maintenance Manager Kevin Loughnane and Painter Manager Tim Webb provided the painters with a schedule, a calendar of which stations to complete, and each station was scheduled to be completed in a week. Carlton Barnes was the foreman who oversaw Salas and his crew. At the end of each week, Loughnane and Webb would inspect and rate

Salas's work at the assigned station. Salas did not receive any negative ratings during the station renews.

The CTA's Performance Management Department is responsible for looking for ways to improve the CTA's efficiency. On July 22, 2013, the Performance Maintenance Director instructed Sarah Guidone to lead a team to observe the station renews, which began at the CTA Roosevelt elevated station.⁴ The Performance Maintenance team spent approximately four hours observing the tradesmen arriving at the station in CTA vehicles, talking, standing around, and gathering materials. Guidone recorded video and images using her blackberry. Afterwards, Guidone and her team decided to continue observing Salas and his crew, but they decided to document their observations using stationary rail station cameras, rail station cameras with the pan-tilt-zoom functions and handheld cameras. Guidone and her team also collected video from the rail station footage from that day. The CTA did not provide Guidone with any written instructions on how she should proceed in her assignment.

Between July 22, and September 9, Guidone and her team recorded video footage of Salas, Hale, and White on at least twelve occasions, at or around at least five different CTA stations. When Guidone and her team took footage using handheld cameras they were not on CTA property, rather they were often inside vehicles parked near the station taking footage of CTA employees who were at or adjacent to the CTA station. The Performance Management team mostly sat inside a CTA issued vehicle while they obtained the handheld camera footage. Sometimes the person taking the footage would take the footage from outside of the vehicle.

Every time Guidone or one of her team members took video footage they also wrote an unusual occurrence report that narrated the conduct depicted in the footage. The unusual occurrence reports often identified that video footage supported the report, but only some of the

⁴ All events occurred in 2013 unless otherwise specified.

reports specifically identified the file name of the footage. For example, the unusual occurrence report dated July 22, for the time 12:48 p.m. through 1:22 p.m. provides “Supplementary video is included. File name ‘2013-07-22_12-48-26_GL-Roosevelt-Wabash-C02_Observation.mkv.[.]’” However, the unusual occurrence report dated September 4, from 8:42 a.m. through 9:52 a.m. only provides “Supplementary videos included.” At the conclusion of their investigation, Guidone and her team gave Loughnane unusual occurrence reports, the supporting video footage, and Salas’s, Hale’s and White’s timesheets that corresponded to the date and times of the video footage. Painters report for duty by clocking in on the CTA provided cell phone, which contains a GPS function that tracks the employees’ location. Painters also take their breaks by clocking in and out on these cell phones. Prior to September 23, the CTA never advised Salas that it was investigating his performance or that the CTA was taking video footage using handheld cameras and rail platform cameras in its investigation.

Along with the video footage and unusual occurrence reports, Guidone and her team provided Loughnane with Salas’s, Hale’s, and White’s timesheets that corresponded to the date and times of the video footage. Timesheets are generated from the CTA provided cell phones. Timesheet contain the employees’ start times, departure time, start location, end location, and the distance traveled during that day. Loughnane reviewed the video footage and unusual occurrence reports to ensure that the reports were accurate depictions of the video footage taken. After his review, Loughnane gave the documentation from Guidone’s investigation to Webb and Geraldine Fielder. Fielder has since retired, but at the time, she was the Administration Manager responsible for imposing discipline and monitoring absenteeism. Fielder then independently compared the video footage to the unusual occurrence reports, and referenced the employee’s timesheets to confirm their locations, and the CTA’s payroll records for Salas, Hale, and White.

Upon viewing the footage, Fielder determined that Salas was not performing his duties as a Leader/Painter on at least twelve days when he was standing around, smoking, walking around, kneeling, and sitting/smoking in the SUV and when talking on his personal cell phone. Fielder determined that Hale was also not performing his duties as a Painter on nine days when he was standing around, walking around, talking, sitting in the SUV, sitting on benches, and sitting on stairwells. Finally, Fielder determined that White was also not performing his duties as a Painter on four days when he was standing around, walking around, sitting on a platform bench, and sitting in his personal vehicle. Upon comparing the date and times the video footage was taken to Salas's, Hale's and White's timesheets, and the CTA's payroll records for Salas, Hale and White, Fielder determined that they had stolen company time because they received pay for time that they were not performing work.

Fielder charged Salas, Hale, and White with violating General Rules regarding personal conduct, reporting for duty, obedience to rules. Specifically, Fielder determined that Salas, Hale, and White "repeatedly and blatantly stole company time. [They] violated the Authority's rules, policies, and procedures related to behavior for the theft/stealing of company time; accepting pay for time not worked; conduct unbecoming an employee[;] falsification[;] and abuse of company time; [and] poor work performance." Fielder recommended to Loughnane that the CTA discharge Salas, Hale, and White. Loughnane accepted Fielder's recommendation.

On September 23, at Barnes's instruction, Salas met with Fielder, Webb, and a Union representative. Fielder told Salas that the CTA determined that he was stealing time. She showed him video footage the Performance Management team recorded. Fielder took Salas out of service for five days without pay and instructed him to report to Loughnane on September 30, for a discharge hearing. On Monday, September 30, the CTA discharged Salas.

Hale also met with Fielder, Webb and a Union representative on September 23. Fielder informed Hale that the CTA determined that he was stealing time. She showed him video footage the Performance Management team recorded. Fielder took Hale out of service for five days without pay and instructed him to report to Loughnane on September 30, for a discharge hearing. Between September 23 and September 30, Hale filed his retirement papers. On October 11, the CTA issued a notice of discharge to Hale, informing him that his discharge was effective on September 30.

On October 2, White met with Fielder, Webb, and a Union representative. Fielder told White, that the CTA determined that he was stealing time. She showed him video footage the Performance Management team recorded. Fielder took White out of service without pay for five days and instructed him to report to Loughnane on October 9, for a discharge hearing. Between October 2 and October 9, White filed his retirement papers. On October 11, the CTA issued a notice of discharge to White, informing him that his discharge was effective on October 9.

Beginning in 2014, the CTA and the Coalition have engaged in bargaining over the CTA's camera policy.

III. ISSUES AND CONTENTIONS

The issues are whether the CTA violated Sections 10(a)(4) and (1) of the Act when it refused to bargain the use of video surveillance footage and the footage from CTA's rail platform cameras as evidence to discipline bargaining unit members.⁵

⁵ The Complaint alleges that the CTA violated Sections 10(a)(4) and (1) of the Act when it (1) conducted video surveillance of Unit members as they traveled to various construction sites located throughout the CTA system without providing the Union notice or the opportunity to bargain; (2) used concealed, 24-hour security cameras to conduct video surveillance of Unit members at various construction sites located throughout the CTA system without providing the Union notice or the opportunity to bargain; and (3) discharged employees Hale, White, and Salas based on information and footage captured from the video surveillance and the CTA's 24-hour security cameras in various locations through the CTA system

The Union argues that the CTA's use of video footage as evidence to discipline Unit employees is a mandatory bargaining subject because it affects employees' terms and conditions of employment but is not a matter of inherent managerial authority. First, the Union argues that the use of the camera footage directly affects Unit employees' terms and conditions because the footage has the potential to affect monitored employees' job security because the Union and the Unit employees were unaware of the handheld cameras and the CTA never provided it information regarding the capabilities or purposes of the platform rail cameras. The Union also insists that the handheld cameras are essentially "covert" cameras because not only did the CTA never inform the employees that the CTA was recording them on handheld surveillance cameras while they were off CTA property, the employees were not otherwise aware of the surveillance at the time of the recordings. The Union further contends that it is not reasonable for the Union or its bargaining members to have been aware that the CTA was using rail station cameras were to monitor them because the CTA's signs intended to mislead the reader as to the cameras' appearance.

Regarding the CTA's inherent managerial authority, the Union maintains that the CTA waived any argument that its use of the cameras is an inherent managerial right when the CTA and the Coalition began bargaining over the use of the CTA's camera policy in 2014. Aside

because the CTA did not provide the Union an opportunity to bargain a disciplinary policy relating to footage taken from surveillance cameras and the effects thereof. The Complaint also alleges that the CTA independently violated Section 10(a)(1) of the Act when it terminated Salas, Hale, and White in that the CTA interfered with, restrained or coerced employees in the exercise of rights guaranteed by the Act. In its post-hearing brief the Union argues that CTA violated the Act when it failed and refused to bargain over its "use of video surveillance footage as evidence to support the imposition of discipline on unit members, its use in disciplinary hearings and the repurpose of safety video and security footage to evaluate performance and measure time and productivity." In its post-hearing brief, the Union does not allege that the CTA violated Sections 10(a)(4) and (1) when it collected the video footage itself and does not address the independent 10(a)(1) allegation. Thus, I consider the allegations not specifically addressed in the Union's post-hearing brief waived. I also decline to consider any additional allegations that the Union raises for the first time in its post-hearing brief, i.e., that the CTA violated the Act by "repurposing [the] safety and security footage to evaluate performance and measure time and productivity."

from waiver, the Union argues that recording painter's performance is not within the CTA's inherent managerial authority because it is unrelated to safety or CTA's core function.

Finally, the Union argues that because the CTA's conduct was a mandatory bargaining subject, and it did not notify the Union that it began documenting bargaining unit employees' work using handheld cameras and the existing rail platform cameras, the CTA failed to provide the Union with an opportunity to bargain the matter.

The CTA argues that the use of video footage as evidence to discipline Unit employees is not a mandatory bargaining subject because it does not concern a matter of wages, hours, and terms and conditions of employment and because it is a matter of inherent managerial authority. The CTA further argues that even if the use of video footage is a matter of wages, hours, and terms and conditions of employment, the burden on the CTA to bargain the matter outweighs any benefit bargaining would have on the decision-making process. The CTA contends that using video evidence for disciplinary purposes is not a matter of wages, hours, and terms and conditions of employment because capturing video footage is merely a method of documenting the employees' violations of pre-existing rules. The employees worked in areas recorded on video footage and the employees should have been aware that they were being recorded, and the CTA has previously used handheld video surveillance footage to discipline Unit employees.⁶

Regarding the CTA's inherent managerial authority, the CTA contends that the use of video footage to establish just cause to discipline bargaining unit members is a matter of inherent managerial authority because the purpose of the cameras is to promote safety in public transportation and the CTA must be able to monitor its employees to ensure that they are not engaging in misconduct that could affect passenger or employee safety. The CTA additionally

⁶ The CTA also argues that the employees had no expectation of privacy in the areas that it recorded but because the Union does not argue that the cameras infringed on bargaining unit employees' privacy, this issue is not before me.

states that the use of cameras assist it in its duty to use its resources effectively by ensuring that its employees perform their duties diligently.

The CTA argues that the burden on the CTA to bargain over its installing the rail platform cameras outweighs any benefit that bargaining could have on the decision-making process because its use of video footage is tied directly to achieving its public safety goals.

With respect to any duty to notify the Union of its intention to use video footage to establish just cause, the CTA argues that the Union waived its right to bargain this matter when it did not demand to bargain when the CTA first installed the cameras and when the Union agreed to the non-interference clause in the parties' CBA.

Finally, the CTA argues that even if it did violate the Act, the Board cannot provide a remedy to Hale and White because the record is unclear as to whether the CTA terminated them or they retired.

IV. DISCUSSION AND ANALYSIS

The CTA violated Sections 10(a)(4) and (1) of the Act when it failed and refused to bargain with the Union over a disciplinary policy relating to footage taken from surveillance cameras and the effects thereof.

Section 7 of the Act provides that a “public employer and the certified exclusive bargaining representative have the authority and the duty to bargain collectively[.]” 5 ILCS 315/7. Section 7 further provides that “‘to bargain collectively’ means the performance of the mutual obligation of the public employer [...] and the representative of the public employees to meet at reasonable times, [...] and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act[.]” *Id.* Wages, hours, and other conditions of employment are “mandatory” bargaining subjects. Forest Pres. Dist. of Cook

Cnty. v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 754 (1st Dist. 2006). Section 10(a)(4) of the Act provides, in relevant part, that it is an unfair labor practice for a public employer or its agent “to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit[.]” 5 ILCS 315/10(a)(4). Section 10(a)(1) provides, in relevant part, that it is an unfair labor practice for a public employer or its agents “to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization[.]” 5 ILCS 315/10(a)(1).

An employer violates its duty to bargain in good faith as identified in Sections 10(a)(4) and (1) of the Act when it either unilaterally implements a change to a mandatory topic without bargaining with the exclusive representative, or bargains with the exclusive representative but then implements the change without reaching an agreement or an impasse.⁷ Cnty. of Cook v. Licensed Practical Nurses Ass’n of Ill. Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Cnty. of Cook (Dep’t of Cent. Serv.), 15 PERI ¶3008 (IL LLRB 1999) citing Litton Syst., 300 NLRB No. 37 (1990).

A. Mandatory Subject of Bargaining

The CTA’s use of video surveillance footage from rail platform cameras as evidence in Unit members’ disciplinary proceedings is a mandatory bargaining subject, but its use of video surveillance footage from handheld surveillance cameras as evidence in Unit members’ disciplinary proceedings is not a mandatory bargaining subject.

⁷ Where alleged violations of Sections 10(a)(4) and (1) stem from the same conduct, the 10(a)(1) violation is derivative, i.e. a result of the 10(a)(4) violation. City of Chicago, 31 PERI ¶129 (IL LRB-LP 2015); State of Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Pub. Aid), 10 PERI ¶2006 (IL SLRB 1993); see also Bloom Twnshp. High Schl. Dist. 206, Cook Cnty. v. Ill. Educ. Labor Rel. Bd., 312 Ill. App. 3d 943, 957 (1st Dist. 2000) (using the same analysis in interpreting very similar provisions of the Illinois Educational Labor Relations Act).

The Illinois Supreme Court has established a three-part test for determining whether a matter is a mandatory subject of bargaining in Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., 149 Ill. 2d 496, 522 (1992), and City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191 (1998). The Central City test first considers whether a topic concerns the wages, hours, and terms and conditions of employment of employees in the bargaining unit. Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI ¶70 (IL LRB-LP 2015); City of Chicago, 31 PERI ¶3 (IL LRB-LP 2014). If it does, the second prong of the Central City test asks whether the topic is also a matter of inherent managerial authority. City of Chicago, 31 PERI ¶3. Finally, if the topic concerns both a change to the wages, hours, and terms and conditions of employment of the employees in the bargaining unit and is a matter of inherent managerial authority, the third step of the Central City test requires weighing the benefits that bargaining will have on the decision making process against the burdens that bargaining imposes on the employer's authority. Id. If the benefits outweigh the burden on the employer's inherent managerial authority, then the matter is subject to mandatory bargaining. Id.

1. Change to Wages, Hours, and Terms and Conditions of Employment

The CTA materially changed Unit employees' terms and conditions of employment when it used video footage from rail platform as evidence in Unit employees disciplinary proceedings. The CTA did not materially change Unit employees' terms and conditions of employment when it used video footage from handheld surveillance cameras as evidence in Unit members disciplinary.

In order for the CTA's use of video footage from cameras to discipline employees to constitute a change to the status quo, any changes must be material, substantial, and significant. Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI ¶70. An employer materially changes the

status quo regarding wages, hours, and terms and conditions of employment where it (1) involves a departure from previously established operating practices; (2) effects a change in the conditions of employment; or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit. City of Chicago, 31 PERI ¶3; Westinghouse Electric Corp., 150 N.L.R.B. 1574 (1965). Implementing or modifying a policy that creates new opportunity for discipline constitutes a material change. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d 538, 551-552 (1st Dist. 2004); Ill. Sec’y of State, 24 PERI ¶22 (IL LRB-SP 2008). An employer changes terms and conditions of employment when it substantially varies the method by which it investigates suspected employee misconduct and when it changes the character of proof upon which the employer relied to discipline employees. City of Chicago, 31 PERI ¶3 (installation and use of hidden surveillance to investigate misconduct and support discipline was a material change); Vill. of Summit, 28 PERI ¶154 (IL LRB-SP 2012) (using preexisting plain-view surveillance cameras to investigate misconduct and support discipline was not a material change); Johnson-Bateman Co., 295 NLRB 180, 182-184 (1989).

In the two instances where the Board has addressed whether an employer’s use of surveillance footage to justify employee discipline is a mandatory subject of bargaining, whether an employer varies the method by which it investigates employee misconduct hinges on the employees’ knowledge of the cameras’ presence and functionality. See City of Chicago, 31 PERI ¶3; Vill. of Summit, 28 PERI ¶154. In Village of Summit, the Board found that there was no material change in terms and conditions of employment for bargaining unit employees such that the Village had not varied the method by which it investigated suspected employee misconduct when the Village reviewed video surveillance footage taken from pre-existing

cameras because 1) the cameras were not hidden but in plain view, 2) the union and the employees were well aware of both the (i) presence and (ii) functionality of the cameras, 3) the union never objected to the installation of the camera, and 4) the Village did not impose any new disciplinary rules and procedures. Vill. of Summit, 28 PERI ¶154. By contrast, in City of Chicago, the Board found that there was a material change in the bargaining unit employees' terms and conditions of employment where the City installed hidden video cameras and used the footage from those cameras to discipline employees because the 1) cameras were hidden and 2) the (i) presence and (ii) functionality of the cameras were unknown to the union and to the employees. City of Chicago, 31 PERI ¶3. At first glance, one could conclude that employer's use of hidden rather than plain view cameras was the basis for the Board reaching different conclusions in City of Chicago and Village of Summit. See Id.; Vill. of Summit, 28 PERI ¶154. However, in City of Chicago the Board specifically found that the employees' knowledge was the distinguishing factor between the facts in Village of Summit and City of Chicago, requiring different analysis. City of Chicago, 31 PERI ¶3.

i. Rail platform cameras

The CTA materially changed the status quo regarding wages, hours, and terms and conditions of employment when it used video footage from rail platform cameras as evidence in Unit employees disciplinary proceedings which resulted in a significant impairment of employment security for Unit employees because. The CTA substantially varied the method by which it investigates suspected employee misconduct and it changed the character of proof that the CTA relies upon to discipline Unit employees.

a. Method of Investigation

The CTA substantially varied its method of investigating Unit employee's misconduct

because while platform cameras were in plain view, not hidden, Unit employees were not aware of both the cameras (i) presence and (ii) functionality and the rail platform cameras subject Unit employees to full-time surveillance while they are within view of the rail platform cameras which increases the potential for employee discipline.

The rail platform cameras are pre-existing and the Unit employees were aware of their presence. The CTA has been installing safety cameras at its rail stations since 2003, and has had at least one camera at every single rail station since 2010. The CTA never formally informed the Union that it had installed cameras at every CTA station. The record is vague as to whether “surveillance on premises” sign was posted at every rail station the CTA recorded footage of Salas, Hale, and White. Based upon the language of the other signage, it is obvious that the CTA intends to post those signs inside buses and or rail cars. Unit employees in this case did not work in or have any reason to be in CTA buses or rail cars, thus they would not have had the opportunity to see these signs. Regardless of whether the CTA posted the signs where the employees’ would see them, or whether the graphic on the signs are misleading, Salas testified that he was aware that there were cameras on the platforms that he was painting because he had to make sure not to paint them. He testified that “there [were] lights and cameras” and he did not try to distinguish between the two because he was mainly concerned with not getting paint on either cameras or light fixtures. Thus, Salas and arguably the other Unit employees were aware that cameras were present on the platform.

While the Unit employees were aware of the cameras’ presence, Unit employees were unaware of the cameras’ functionality. Employees are aware of a camera’s functionality when they know that the camera is capturing images, and they know *where* the camera is capturing those images. Vill. of Summit, 28 PERI ¶154 (the employees were aware of the images captured

because the Village pointed the cameras in such a manner that the location it was monitoring was apparent). Here, Salas and the other Unit employees were aware that the rail platform contained cameras, and there is no indication that they thought that the cameras were not in working order. Given this awareness, I find that it is unreasonable for the Unit employees to assume that the station cameras were not recording them while they were on station platforms. However, I also find that it is unreasonable for the Unit employees to be aware of the cameras' capabilities. A dome surrounds the platform cameras such that their direction is undetectable. At least one camera at every station is equipped with the pan-tilt-zoom functions. Where a pan-tilt-zoom camera is capturing footage is unknown to anyone that is subject to recording because this feature allows the camera operator to manipulate the camera's focus in real time from the CTA video room. The record reflects that station cameras took footage of employees' while they were on the sidewalk next to the CTA's elevated platform, in a parking lot next to the platform, and while they were in CTA van parked on the street. There is no evidence that Salas or any other Unit employee was aware that they were subject to monitoring by the platform cameras while they were not on the rail platform. Thus, they were not aware where the cameras lens could reach, and they were not aware of all the instances that the station cameras were recording them.

b. Character of Proof

The CTA's use of video footage from rail platform cameras substantially varied the character of proof on which the employee's job security might depend. The record indicates that at the conclusion of their investigation, the Performance Management team gave Loughnane copies of the videos, the unusual occurrence reports, and timesheets. Loughnane then independently reviewed the video footage before he referred the matter to Fielder who also reviewed the footage and documents. Since the CTA had never before used video footage from

rail platform cameras to support discipline of Unit employees, and Loughnane relied upon the footage in referring the matter for discipline, the CTA's use of video footage from rail platform cameras varies the character of proof the CTA previously relied upon when issuing such discipline to Unit employees.

ii. Handheld surveillance cameras

The CTA's use of video footage from handheld surveillance cameras as evidence to impose discipline is not a substantial change to Unit employees' wages or terms and conditions of employment. The CTA did not substantially vary the method it used to investigate suspected Unit employee misconduct, though it did substantially vary the character of proof on which a Unit employee's job security might depend.

a. Method of Investigation

The CTA's use of handheld cameras did not substantially vary the method it used to investigate suspected Unit employee misconduct. The Performance Management team members were physically present in the location where they were obtaining the footage, and thus independently witnessing the events contained in the footage. These circumstances are distinguishable from City of Chicago, and from the CTA's use of rail platform cameras where the Board held that hidden surveillance cameras did substantially vary the method it used to investigate suspected employee misconduct because in that case the video footage was automated and reviewed subsequent to the City recording the footage. City of Chicago, 31 PERI ¶3. Here, the Performance Management Team member watched the Unit employees and began recording their observations, and then documented his/her findings in an unusual occurrence report. There is no indication that the CTA's use of unusual occurrence reports is new.

Whether the Unit employees were actually aware that the CTA was using handheld cameras to investigate their suspect misconduct is irrelevant, because the cameras did not substantially change the manner of investigation where the CTA had people viewing the employees' conduct without cameras.

b. Character of Proof

The CTA's use of video footage from handheld video cameras substantially varied the character of proof on which a Unit employee's job security might depend. Since Fielder and Loughnane each independently reviewed all the video footage and did not simply rely upon the unusual occurrence reports, the CTA used the handheld video footage as evidence independently from the unusual occurrence reports. The record is clear that the CTA did not use any video surveillance footage to discipline Unit employees between 2009 and September 2013. While the record demonstrates that the CTA has used handheld surveillance cameras as evidence to discipline a Unit employee in 2000, this incident took place over a decade ago and alone is insufficient to conclude that the CTA regularly uses handheld video surveillance footage as evidence to discipline Unit employees.

2. Inherent Managerial Authority

The CTA has demonstrated that conducting a lengthy investigation into Unit employee's alleged misconduct using rail platform cameras and handheld video cameras is within its inherent managerial authority. Any bargaining the CTA and the Union have subsequently engaged in does not waive the CTA's ability to argue that using rail platform video footage to establish just cause to discipline Unit employees is within its inherent managerial authority.

The CTA's use of the platform surveillance cameras to establish just cause to discipline Unit employees is within its inherent managerial authority because it is necessary to ensure the

CTA's integrity. The burden is on the employer to satisfy the second prong of the Central City test. Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI ¶70; see Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552. In order to satisfy this burden, the employer must do one of the following: link the policy's objective with any of the enumerated managerial rights stated in Section 4 of the Act, establish that the rule in question is necessary to protect the core purposes of the employer's business, or establish that the rule is necessary to ensure the integrity of the government.⁸ Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI ¶70; City of Chicago, 31 PERI ¶3 (installing and using hidden surveillance cameras to discipline a library employee was not within the employer's inherent managerial authority because it was not one of the rights identified in Section 4 of the Act, nor was it necessary for the library to perform its statutory functions); see City of Chicago (Police Dep't), 26 PERI ¶115 (IL LRB-LP 2010) citing Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552; City of Springfield, 9 PERI ¶2024 (IL SLRB 1993) citing Commw. of Penn., 13 PPER ¶13097 (PA PPER 1982); see Cnty. of Cook, 248 Ill App. 3d 145, 155 (1st Dist. 1996).

The CTA has established that conducting video surveillance of Unit employees to ensure that they are performing productively is necessary to ensure its integrity. See City of Springfield, 9 PERI ¶2024. A rule or policy is necessary to ensure the integrity of the CTA when it "will enhance the public's perception of the integrity of public officials, it will increase the actual honesty and integrity of the public employees, and it will help to make government

⁸ Section 4 of the Act states that matters of inherent managerial policy include "such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees." Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI ¶70; City of Chicago, 31 PERI ¶3; Vill. of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010). The CTA does not attempt to link its use of platform surveillance cameras to investigate and establish just cause to discipline Unit employees to any of the enumerated managerial rights stated in section 4 of the Act. Thus, the CTA has waived this argument, and I will not address it in my analysis.

more effective and efficient.” Council 13, AFSCME v. Commw. of Pa., Penn. Labor Rel. Bd., 84 Pa. Commw. 458, 465 (Penn. 1984) aff’g Commw. of Penn., 13 PPER ¶13097 (governor’s implementation of an employee code of conduct amongst appointed public officials and executive branch employees was sufficiently linked to the state employer’s duty to ensure governmental integrity). The CTA argues that using video surveillance to monitor employees in order to avoid wasting tax dollars is within its inherent managerial authority because as a municipal agency it has a duty to use its resources efficiently. Here, the CTA is taking video footage of its Unit employees while they are in the full view of the public, and the appearance of inefficiency on the part of a CTA employee in view of the public, may lead to public mistrust. Disciplining Unit employees based upon video footage taken while those employees were in public view may increase the employees’ honesty and integrity if they know their actions are being monitored via video recordings, may enhance the public’s perception of the of the Unit employees as a result, and may help to make CTA more effective and efficient by allowing it to allocate its financial resource elsewhere. See Council 13, AFSCME v. Commw. of Pa., Penn. Labor Rel. Bd., 84 Pa. Commw. at 687-688.

The CTA has not established that using platform surveillance cameras to establish just cause to discipline Unit employees is necessary to protect the core principals of the CTA’s business. In the public sector, the installation and monitoring of video cameras is a matter of inherent managerial authority where the monitored employees provide a public safety function because the employer’s delay in providing its services has serious public health or safety implications. City of Chicago, 31 PERI ¶3; citing City of Paterson, 36 NJPER ¶114 (NJ PERC 2010) (the employer was not required to bargain over the installation over surveillance cameras in the radio room of a 911 center because it had a significant interest in making sure that the

employees assigned to that room were performing their public safety duties). The Union does not argue that the CTA's installation of the platform cameras violates the Act, only, that the CTA violated the Act when it used the video footage taken from the platform cameras to discipline Unit employees and did not inform the Union prior to doing so. Thus, the CTA's installation of the rail platform cameras is not at issue. Rather, the question is whether it is necessary to protect the CTA's core principals to use the footage from platform cameras to discipline CTA painters who are members of the Unit. The CTA argues that because Unit painters work on rail's right of way, sometimes with continuing rail traffic, and on scaffolding over pedestrian and vehicle traffic, it is "essential that [the] CTA monitor that painters are not engaging in misconduct that could affect passenger or employee safety." Here, the CTA's use of the video footage was not related to safety, and solely related to the work performance of the Unit employees who it tasked with painting the station. There is no evidence that these employees were ever in a position to affect the safety of the public. Thus, the CTA's safety argument fails.

The CTA did not waive any argument that using video surveillance to discipline Unit members is within its inherent managerial authority by bargaining over its camera policy with the Coalition in 2014. As identified above, the Act requires that parties bargain over mandatory subjects, and the way the Board determines that a topic is a mandatory subject is by applying the Central City test. Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., 149 Ill. 2d at 523. Under the Central City test a topic can be a matter of inherent managerial authority and still a mandatory bargaining topic if it concerns employees' wages, terms and other conditions of employment and the burden on the employer's inherent managerial authority does not outweigh the benefits that bargaining would have on the decision making process. Id. The fact that the CTA is now bargaining over its camera policy does not require me to conclude that it is not

within the CTA's inherent managerial authority, nor does it require me to conclude that the CTA is now of that opinion. Additionally, the Act only requires that the parties bargain over mandatory topics, but the Act does not prohibit the parties' from bargaining over permissive topics if they so desire. Thus, the CTA's subsequent conduct is not a concession that using rail platform camera footage to establish just cause to discipline Unit members is not within its inherent managerial authority, nor is it a concession that it is a mandatory bargaining topic.

3. Balancing

On balance, the benefits of bargaining to the decision making process outweigh the burdens bargaining would impose on the CTA's inherent managerial authority.

The third prong of the Central City test is to balance the benefits that bargaining over the changes the policy will have on the decision-making process against the burdens that bargaining imposes on the County's statutory safety and security responsibilities. Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., 149 Ill. 2d at 523. The balance favors bargaining where the issues are amenable to resolution through the negotiating process. Chief Judge of the Cir. Ct. of Cook Cnty., 31 PERI ¶114 (IL LRB-SP 2014). Essentially, the Union must be capable of offering proposals that adequately address the CTA's stated concerns for using video surveillance to monitor and discipline Unit employees. Cnty. of Cook and Cook Cnty. Sheriff, 32 PERI ¶70; see Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI ¶18 (IL LRB-SP 2011). The Board has found that the balance favors the employer's unilateral authority when the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Chief Judge of the Cir. Ct. of Cook Cnty., 31 PERI ¶114; City of Springfield, 9 PERI ¶2024 citing Peerless Pub., Inc., 283 NLRB 334 (1987). The employer's statutory mission and

the nature of the public service it provides are relevant considerations when applying the balancing step of the Central City analysis. Vill. of Franklin Park, 8 PERI ¶2039 (IL SLRB 1992). This balancing requires analyzing the specific facts at hand including the reasons for the at-issue decision, and the governmental policies underlying the decision. Id.

Bargaining over the CTA's decision to use video footage to discipline Unit employees would at the very least have put those employees on notice that their conduct was subject to monitoring from rail platform cameras even when off the CTA's property, and the employees may have very well corrected their behavior. This would sufficiently address the CTA's concerns that its employees who are engaging in misconduct while in public may affect the CTA's perceived credibility and integrity.

Furthermore, the CTA's conduct in this case seriously undermines the persuasiveness of its argument that bargaining would be too burdensome to its inherent managerial authority of ensuring its integrity amongst the public. However, the CTA's actions negate its own argument that "bargaining would substantially hamper" its interest in using tax payer resources efficiently because instead of disciplining these employees at the first instance of misconduct, which occurred on July 22, it recorded these employees over the course of several weeks, and then terminated these employees for multiple violations.

The CTA's decision to use video footage from rail platform cameras to discipline Unit employees is not intimately connected to its governmental mission nor would bargaining over its decision diminish the CTA's ability to effectively perform its services. The CTA's public safety goals do not outweigh its duty to bargain over its use of video footage to discipline Unit employees, because, as I have already found, that CTA's public safety responsibility is not relevant to its conduct in this case because safety was not a concern when it began investigating

Painters for “stealing time.” The record contains no information regarding how the CTA’s ability to use video footage to discipline Unit employees who paint objects on a rail platform might have a negative effect on the CTA’s ability to perform its services.

B. Notice and Opportunity to Bargain

The CTA did not provide the Union the opportunity to bargain over its use of rail platform cameras as evidence in disciplinary proceedings of Unit employees. Since the CTA’s use of video from platform surveillance cameras to establish just cause to discipline Unit employees is a mandatory subject of bargaining, it could not engage in such conduct without giving the Union adequate notice and a meaningful opportunity to bargain with the Union to impasse.

While an employer is *not* obligated to make an affirmative offer to bargain, it is required to provide the union with adequate notice of its intent to change a mandatory topic such that the notice provides the union with a meaningful opportunity to demand to bargain over the proposed change. Chicago Transit Auth., 30 PERI ¶9 (IL LRB-LP 2013); Chicago Hous. Auth., 7 PERI ¶3036 (LLRB 1991). Upon receiving adequate notice of the change and a meaningful opportunity to demand to bargain, the union must then actually demand to bargain in order to preserve its right to bargain on the subject. Chicago Hous. Auth., 7 PERI ¶3036. 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.

Adequate notice requires that the employer give actual notice of the intended change to a union official with authority to act. Chicago Transit Auth., 30 PERI ¶9. In addition, the notice must be *substantively* adequate by providing sufficient details such that the union understands the contemplated change, and has an opportunity to make a meaningful response. Id.

For the employer to provide the union a reasonable opportunity to demand to bargain, the notice must a) be timely and b) the employer must intend to bargain over the contemplated change. *Id.* Timeliness requires that the employer give the union notice sufficiently in advance of its actual implementation of the change. *Id.*; City of Chicago, 9 PERI ¶3001 (IL LLRB 1992). The employer fails to give adequate notice if it implements the change *before* announcing it to the union. Chicago Transit Auth., 30 PERI ¶9; Chicago Hous. Auth., 7 PERI ¶3036. Regarding intent, the employer objectively must show that it is receptive to bargaining by giving notice to the union of its decision before it is final. Chicago Transit Auth., 30 PERI ¶9; Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶3021 (IL LLRB 1996); Chicago Hous. Auth., 7 PERI ¶3036. If either element is missing, the employer has presented the union with a *fait accompli* and the union has no obligation to demand to bargain over the issue. Chicago Transit Auth., 30 PERI ¶9.

Here, the CTA presented the Union with a *fait accompli* because it only informed the Union of its intent to use platform surveillance footage to establish just cause at Salas's disciplinary meeting after it spent several weeks gathering the footage.

1. Waiver by Inaction

The Union did not waive its right to bargain over the CTA's ability to use video footage from the platform cameras as evidence to discipline Unit employees when it did not request to bargain over the CTA's installation of the rail platform cameras. The mandatory topic at issue here is not the installation of the cameras, but the use of the video footage to discipline Unit members, thus the Union was only required to request to bargain over the issue once CTA informed it that it was contemplating implementing such a policy.⁹

⁹ The Board's holding in Village of Summit is inapplicable in analyzing whether the Union received proper notice. In Village of Summit, the Board held that using the footage was not a mandatory topic

2. Contractual Waiver

The Union also did not waive its right to bargain over the CTA's ability to use video footage from the platform cameras as evidence to discipline Unit employees when it agreed to the non-interference clause in the parties CBA.

“[A] party to a collective bargaining agreement may waive its rights to bargain under [the Act] where the contractual language evinces an unequivocal intent to relinquish such rights.” Chicago Transit Auth. v. Amalgamated Transit Union, Local 241, 299 Ill. App. 3d 934, 943, (1st Dist. 1998) quoting Am. Fed'n. of State, Cnty. and Mun. Emps., AFL-CIO v. Ill. State Labor Rel. Bd., 274 Ill. App. 3d 327, 334 (1995). A party must clearly, unmistakably, and explicitly state its intent to waive a statutory right. Chicago Transit Auth. v. Amalgamated Transit Union, Local 241, 299 Ill. App. 3d 934, 943 (1st Dist. 1998); Am. Fed'n. of State Cnty. and Mun. Emps., AFL-CIO v. Ill. State Labor Rel. Board, 274 Ill. App. 3d 327, 334; Metro. Edison Co. v. NLRB, 460 U.S. 693, 708-09 (1983). Waiver is never inferred or presumed. State Dep't. of Cent. Mgmt. Serv. (Dep't of Corr.) v. State Labor Rel. Bd., State Panel, 373 Ill. App. 3d 242, 256 (2007). Metro. Edison Co. v. NLRB, 460 U.S. 693, 708-09.

Here, the non-interference clause does not explicitly permit the CTA to use video surveillance footage from its rail platform cameras to prove employee misconduct for disciplinary purposes. The contract provides that it will in not interfere with CTA's ability to discharge or discipline its employees where it can demonstrate sufficient cause. However, the paragraph does not explicitly provide the CTA unfettered discretion to determine the method for determining just cause. Thus, the Union has not waived its right to bargain over the CTA's decision to use rail platform camera footage in Unit employees' disciplinary proceedings.

because it did no change the status quo, and never reached the question of whether the Village was required to notify the Union of its decision prior to implementation. See 28 PERI ¶154.

The CTA does not provide any evidence concerning the parties' bargaining history in negotiating the non-interference clause to prove that it intended to include the CTA's authority to use video footage to prove sufficient cause. The record is silent as to what the parties intended when the contract granted the CTA the right and responsibilities noted within the non-interference clause.

In addition, the record is clear that the CTA's imposition of discipline is not limited to the terms of the parties' CBA. The CTA argues that, "No other section of the relevant the Collective Bargaining Agreement [is] applicable because, as a general proposition, the parties do not negotiate disciplinary matter as part of their collective bargaining agreement." CTA is correct; the collective bargaining agreement does not address discipline. However, the CTA imposes discipline in accordance with its "Corrective Actions Guidelines" and "General Rule Book." The fact that discipline is not included in the parties' collective bargaining agreement does not require me to conclude that the non-interference clause precludes them from negotiating discipline as identified in "Corrective Actions Guidelines" and "General Rule Book." Thus, I find that the CTA has failed to establish that the Union waived its right to bargain over the CTA's decision to use platform camera footage in Unit employees' disciplinary proceedings by agreeing to the non-interference provision.

Therefore, Respondent's use of the rail platform video footage as evidence in Unit members disciplinary proceedings was an unlawful unilateral change to a mandatory subject of bargaining in violation of Sections 10(a)(4) and (1) of the Act.

C. Remedy

The record sufficiently demonstrates that the CTA terminated Salas, Hale, and White. Hale and White filed their retirement papers before the CTA terminated them, but only after

Fielder informed them that they were required to attend a discharge hearing. I infer that Hale and White retired in order to avoid termination. Since the CTA's decision to terminate Hale and White relied upon video footage obtained in violation of the Act, a remedy of reinstatement is required to return them to the position they would have been absent the CTA's illegal conduct.

However, under these circumstances, the most equitable remedy requires the CTA to offer to reinstate Salas, Hale, and White, but once reinstated the CTA may use the handheld surveillance footage and the unusual occurrences report completed based upon that footage to determine whether they engaged in misconduct that warrants discipline or even discharge. The standard remedy in an unfair labor practice case is to make the charging party whole and to restore the status quo ante by placing the parties in the position they would have been absent the respondent's illegal conduct. Sheriff of Jackson Cnty. v. Ill. State Labor Rel. Bd., 302 Ill. App. 3d 411, 415-416 (5th Dist. 2007); Vill. of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010). As I have found that CTA violated the Act when it discharged Salas, Hale, and White based upon evidence from the rail platform footage, rescission of that discipline is an appropriate remedy. However, the CTA's reliance upon handheld surveillance footage and the unusual occurrences report completed based upon that footage did not violate the Act. To find that the CTA would have disciplined Salas, Hale, even absent the rail platform footage would be substituting my judgment for the CTA's because the record provides that Fielder considered all the footage that the Performance Management team collected when deciding to terminate Salas, Hale, and White. Since the severity of the discipline is not before me, and this case does not involve alleged animus, I can only find that the CTA improperly considered rail platform footage when making its decision and the appropriate remedy is to reconsider whether just cause exists to discharge Salas, Hale, and White absent the illegal video footage.

V. CONCLUSIONS OF LAW

1. Respondent violated Sections 10(a)(4) and (1) of the Act when it used rail platform surveillance cameras as evidence to discharge Michael Salas, Percy Hale, and William White.
2. Respondent did not violate Sections 10(a)(4) and (1) of the Act when it used handheld surveillance cameras as evidence to discharge Unit members Michael Salas, Percy Hale, and William White.

VI. RECOMMENDED ORDER

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

A. Cease and desist from:

1. Failing to bargain collectively in good faith with Painters District Council No. 14 over the use of rail platform surveillance cameras as evidence to discipline, including to discharge Unit employees.
2. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. Bargain collectively in good faith with Painters District Council No. 14 over the use of the footage from rail platform cameras as evidence to discipline or discharge Unit employees.
2. Offer to reinstate Michael Salas, Percy Hale, and William White to their previous positions.

3. If it chooses to reevaluate whether it has established just cause to discipline or discharge Michael Salas, Percy Hale and William White it must do so without considering any footage taken from rail platform cameras or any unusual occurrence forms documented based upon footage from rail platform cameras.
4. If the reevaluation results in the CTA determining that it lacks just cause to discharge Michael Salas, Percy Hale, and William White, it shall make Michael Salas, Percy Hale, and William White whole by paying them back pay plus interest at the rate of 7% per annum calculated from the date of their unlawful termination until the date of their reinstatement.
5. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced or covered by any other material.
6. Notify the Board in writing, within 20 days from the date of this decision, of the steps the Respondent has taken to comply herewith.

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 in briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation.

Within seven (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 Kathryn Nelson, 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 20th day of July, 2016.

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



**Deena Sanceda
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

L-CA-14-035 Addendum

The Illinois Labor Relations Board, Local Panel is charged with protecting rights established under the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). The Board has found that the Chicago Transit Authority has violated Sections 10(a)(4) and(1) of the 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 protected, concerted activity;
- Engage in self-organization;
- Form, join or assist unions;
- Bargain collectively through a representative of your own choosing;
- Act together with other employees to bargain collectively or for other mutual aid and protection;
- Choose to refrain from these activities.

Accordingly, we assure you that:

WE WILL NOT fail to bargain collectively in good faith with Painters District Council No. 14 over the use of rail platform surveillance cameras as evidence to discipline, including to discharge Unit employees.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce its employees in the exercise of rights guaranteed them under the Act.

WE WILL bargain collectively in good faith with Painters District Council No. 14 over the use of the footage from rail platform cameras as evidence to discipline Unit employees.

WE WILL offer to reinstate Michael Salas, Percy Hale, and William White to their previous positions.

WE WILL NOT consider any footage taken from rail platform cameras or any unusual occurrence forms documented based upon footage from rail platform cameras if we choose to reevaluate whether we have established just cause to discipline or discharge Michael Salas, Percy Hale and William White.

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

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

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

WE WILL make Michael Salas, Percy Hale, and William White whole by paying them back pay plus interest at the rate of 7% per annum calculated from the date of their unlawful termination until the date of their reinstatement if the reevaluations result in the us determining that we lack just cause to discharge Michael Salas, Percy Hale, and William White.

WE WILL post, for 60 consecutive days, at all places where notices to Chicgo Transit Authority employees are regularly posted, signed copies of this notice.

WE WILL take reasonable efforts to ensure that these notices are not altered, defaced, or covered by any other material.

WE WILL notify the Board, in writing within 20 days of the date of the Board's Order, of the steps we have taken to comply herewith.

DATE _____

Chicago Transit Authority

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
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