STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Fraternal Order of Police, Lodge #7,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-17-037
	)	
City of Chicago (Department of Police),	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 25, 2017, the Fraternal Order of Police, Lodge #7 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the City of Chicago, Department of Police, (Respondent or City) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. Specifically, the Union's charge alleged that the Respondent violated Sections 10(a)(4) and (1) of the Act when it breached the parties' Letter of Understanding (LOU) by (i) failing to provide proper notice and engage in discussions with the Union before announcing the Respondent's 2017 expansion of the Body Worn Camera (BWC) Pilot Program; (ii) failing to provide the Union with certain information during the term of the BWC Pilot Program, (iii) disciplining officers for losing or not properly caring for their BWCs; and (iv) failing to bargain disciplinary measures related to employees' participation in the BWC program. The Union also alleged that the Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally implemented an expansion of the BWC Pilot Program and also failed to bargain over the effects of that expansion on officer safety and discipline.

The charge was investigated in accordance with Section 11 of the Act. On April 17, 2017, the Executive Director issued a Partial Dismissal, a Partial Deferral to Arbitration, and a Complaint for Hearing.[1]

The Executive Director deferred to arbitration the allegation that the Respondent violated

[1] This case was initially consolidated with Case No. L-CA-17-037 by the Executive Director. I bifurcated the cases at the conclusion of the hearing, in consideration of the Respondent's earlier request to bifurcate and both parties' successful efforts to keep separate the issues presented in each case.

Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU by failing to bargain disciplinary measures related to employees' participation in the BWC program and disciplining officers for losing or not properly caring for the BWCs. The Executive Director applied the Dubo[2] standard for deferral, noting that the Union had initiated a grievance concerning these particular issues and that there was a reasonable chance that the grievance arbitration process would resolve the dispute.

The Executive Director dismissed the allegations that the Respondent violated Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU by failing to provide proper notice and engage in discussions with the Union before announcing the Respondent's expansion of the BWC program and failing to provide the Union with certain information during the term of the BWC Pilot Program. The Executive Director determined that these alleged breaches could not support a violation of the Act where the Respondent's conduct did not, as a threshold matter, qualify as a breach. She reasoned that the Respondent provided sufficient time for discussion between its announcement to the union of the BWC program's expansion and its implementation of the expansion. She further reasoned that the Respondent did not refuse to provide information, as required under the LOU, because the Union never made a request for the information.

In the partial dismissal, the Executive Director commented that she would issue a Complaint for Hearing "regarding the [Union's] allegation that the [Respondent] refused to bargain over the impact of implementing BWCs department-wide" and also "regarding the allegations that the [Respondent] did not create a district level committee in accordance with the LOU."

A hearing was conducted on July 27 & 29, 2017, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. 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. The City of Chicago is a municipal corporation organized under the laws of the State of Illinois.

[2] Dubo Manufacturing Corp., 142 NLRB 431 (1963).

2. The City of Chicago is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act ("Act"). The City of Chicago operates the Chicago Police Department (CPD).
3. The City of Chicago is a unit of local government under the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.
4. CPD is an executive department of the municipal government of the City. Its duties and responsibilities are established by ordinance at Chapter 2-84 of the Municipal Code of the City of Chicago ("MCC"), Chapter 2-84.
5. Fraternal Order of Police (FOP), Lodge No. 7 ("Charging Party") is the bargaining representative of a bargaining unit (Unit) consisting of all police officers employed by the City of Chicago Police Department below the rank of sergeant.
6. The FOP is and has been a labor organization within the meaning of Section 3(i) of the Act.
7. The City of Chicago and the Charging Party are parties to a collective bargaining agreement covering the unit effective by its terms, dated July 1, 2012, through June 30, 2017.
8. Dean Angelo Sr. was the President of FOP Lodge 7 from March of 2014 through April of 2017.

II. ISSUES AND CONTENTIONS

There are two issues in this case. The first issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly refused to bargain over the impact of the Body Worn Camera (BWC) Pilot Program's 2017 expansion.[3] The second issue is whether the Respondent repudiated the parties' letter of understanding (LOU) on the BWC Pilot Program.

The Union contends that the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to bargain over the disciplinary effects of the Body Worn Camera program. The Union contends that the disciplinary impact of BWCs is a mandatory subject of bargaining. It denies that the parties' meetings were good faith bargaining sessions. The Union further denies that it

[3] Although the Complaint may be read to allege that the Respondent violated the Act by refusing to bargain over the underlying decision to expand the BWC Pilot Program, the Union's brief and the commentary contained in the Executive Director's partial dismissal demonstrate that the initial issue in this case concerns the Respondent's alleged refusal to bargain over the BWC Pilot Program's effects.

contractually waived its right to bargain, that it waived its right to bargain by inaction, or that it waived its right to bargain by acquiescing to the Respondent's earlier expansion of the BWC Pilot Program.

Next, the Union contends that the Respondent violated the Act when it breached the parties' LOU. The LOU required the Respondent to bargain over the disciplinary and safety impacts of the BWC Pilot Program and to establish a district level committee that would provide input on the program to management. The Union asserts that the Respondent failed to do either.

The Respondent argues that it has no obligation to bargain over the effects of its decision to expand the BWC Pilot Program, apart from the obligation set forth in the parties' LOU. It asserts the BWC Pilot Program did not effect a material change from the existing in-car camera program and suggests that there are no effects to bargain. It contends that the parties already negotiated contract provisions addressing safety issues associated with equipment. It further observes that Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706, preempts the field of effects bargaining. Finally, the Respondent asserts that Section 14(i) limits the Respondent's obligation to bargain over the effects of the BWCs.

Next, the Respondent argues that it did not breach the parties' LOU. It contends that it had no obligation to bargain because the Union never made a timely request. In the alternative, the Respondent asserts that it satisfied its bargaining obligation. The Respondent contends that even if it did not, it cannot be found liable for refusing to engage in effects bargaining where the Union placed illegal conditions on such negotiations. The Respondent further argues that it did not violate the parties' LOU by failing to create the required district level committees because it created an informal committee, and the committee served its intended purpose.

III. FINDINGS OF FACT

The City of Chicago and the Union are parties to a collective bargaining agreement covering the unit, with a term of July 1, 2012 through June 30, 2017. Dean Angelo Sr. was the President of the Union from March of 2014 through April of 2017. The parties concluded negotiations for the 2012-2017 agreement in 2014, and they executed the agreement on November 18, 2014.

The parties' agreement included a zipper clause, which provided the following:

ARTICLE 32 – COMPLETE AGREEMENT

The parties acknowledge that during the negotiations which preceded this

> Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Except as may be stated in this Agreement, each party voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this agreement.

The parties' agreement also contains a provision set forth in Article 15 by which the parties could resolve questions regarding the safety of equipment. Article 15.2 states that the parties will establish a safety committee which will "discuss and investigate health issues related to Officers and to recommend reasonable safety and health criteria relating to equipment and facilities." The committee may make formal recommendations to the superintendent, which are not binding on the Employer or the Union. However, if the superintendent disagrees with the recommendation of the Committee or the Union, the Union "may request arbitration of any such dispute if such dispute raises a good faith issue regarding the use of equipment or materials which are alleged to present a serious risk to the health or safety of an Officer beyond that which is inherent in the normal performance of police duties."

In September 2014, Superintendent Gary McCarthy announced the Respondent's intent to investigate the use of Body Worn Camera (BWCs) for police officers. Jonathan Lewin, the Deputy Chief with the Technology and Records Group, became the technical manager of the Respondent's BWC program.

In November 2014, the Union's official newsletter informed the membership that the Respondent was working on a pilot program for BWCs.

The Department wished to implement the body worn cameras because it sought to gather more information about officer-citizen interactions on the street, to increase transparency. The Department sought to improve officer safety, reduce false allegations of misconduct against officers, improve both police and public accountability, and reduce the need for officers to use force. Lewin testified that the Department viewed body worn cameras as an alternative platform to in-car camera systems, which the Department had used since 2003.

1. Announcement of the BWC Pilot Program to the Union and to Officers

In late 2014, Angelo spoke with Superintendent McCarthy, then-Human Resources Director Donald O'Neill, and Union Vice President Ray Casiano. They agreed to meet together on the third watch in the 14th District to present officers with information on BWCs.

In early January 2015, the Respondent conducted an informational session in District 14 on the BWCs without Angelo.

At around this time, the Respondent tendered the Union a draft Department Notice document entitled "Body Worn Camera Pilot Program." It stated that the BWC Pilot Program would be operational for select members in District 14 and that it would take effect January 19, 2015.

On January 9, 2015, Angelo wrote a letter to then-Director of Management and Labor Affairs O'Neill on the Union's behalf. He demanded that the Respondent bargain with the Union "over any expansion of the use of body cameras beyond parameters set forth in the pilot program." He explained that "the method and manner in which the images recorded by the body cameras are maintained and utilized by the Department, including but not limited to, disciplinary action taken, are mandatory subjects of bargaining. In this letter, Angelo also asked the Respondent to present the Union with information that related to any issues, concerns, successes or failures that the Department observed during the pilot program. He expressed concern that the Respondent had conducted an informational session at the 14th District, which announced the pilot program to officers and sought volunteers, "without any meaningful input from the Lodge."

On January 15, 2015, the Respondent sent Angelo a revised copy of draft Department Notice entitled "Body Worn Camera Pilot Program – Phase 1," which stated that the BWC Pilot Program would be effective January 20, 2015.

2. Negotiation for a Letter of Understanding on the BWC Pilot Program

Between January 9 and January 22, 2015, O'Neill, Angelo, and the Union's lawyers negotiated a letter of understanding (LOU) that memorialized the parties' rights and obligations regarding the BWC Pilot Program and any expansion of that program.

Angelo provided the Respondent with a first draft entitled "Body Camera MOU." O'Neill prepared a modified, detailed, and more structured draft LOU. Angelo countered with a revised

draft, based on O'Neill's document. O'Neill then proposed modifications to Angelo's draft, and Angelo accepted O'Neill's modifications. The parties' proposed modifications focused on three subject areas: (1) the Respondent's use of BWC footage in disciplinary investigations, (2) the extent of the Respondent's obligation to bargain over the program's expansion, and (3) the creation of a pilot program committee.

Regarding the first issue, Angelo's draft stated that the "pilot program, will be administered subject to the parties['] collective bargaining Agreement, Department Notice 15-01, as well as the following additional terms," which the parties would negotiate at a future meeting. In response, O'Neill proposed the following language: "The Department will comply with the collective bargaining agreement concerning use of video in disciplinary investigations." Angelo proposed the following modification: "The Department will comply with the collective bargaining agreement concerning use of video in disciplinary investigations, including but not limited to Article 6 – Bill of Rights, Section 6.1 – Conduct of Disciplinary Investigation." O'Neill accepted Angelo's proposed modification and it became part of the agreement.

Regarding the second issue, O'Neill proposed the following language: "The Department will provide notice and meet and discuss with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1." Angelo rejected this change and offered the following two paragraphs instead: (1) "The Department will provide notice and bargain where appropriate with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1" and (2) "The Department will continue to be obligated to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline." O'Neill responded by rejecting and replacing the first paragraph, referenced above, but accepting the second paragraph and adding a third, as follows: (1) "The Department will provide notice and meet and discuss with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1[,]" (2) "The Department will continue to be obligated to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline[,]" and (3) "This Memorandum does not limit or alter in any way the Department's discretion or authority as set forth in Article 4 of the parties' collective bargaining agreement." Angelo accepted O'Neill's latest modification and it became part of the agreement.

Regarding the third issue, Angelo proposed the following language: "Going forward[,] the Department and a…BWC Pilot Program Committee consisting of individual Officers participating in pilot, their immediate field supervisors and others as determined by the Department; to meet on a quarterly basis to discuss and offer evaluative input as to the successes, problems[,] and future use of BWC's." O'Neill countered with the following modification: "The Department will establish a District level committee consisting of appropriate supervisors and officers using the BWC to provide input and advice concerning the BWC Pilot Program." Angelo accepted this language and it became part of the agreement.

The parties executed their LOU on January 22, 2015. O'Neill signed the letter on behalf of the Respondent, and Angelo signed on behalf of the Union. The parties' LOU states the following in its entirety:

LETTER OF UNDERSTANDING

BODY WORN CAMERA (BWC) PILOT PROGRAM

> The Department is committed to protecting the safety and welfare of both, the public and the Department's members, as well as providing equipment and establishing methods of operation to enhance and further its mission and objectives. The Use of body worn cameras will provide Department members with an invaluable instrument to enhance criminal prosecution, protect Department members from false accusations, and enhance Department members' interaction with the community. Accordingly, representatives of the Department and the Fraternal Order of Police, Lodge No. 7 (the Lodge) have met to discuss implementation of a BWC Pilot Program. The Program entails the following:

1. It is anticipated that the duration of Phase 1 of the BWC Pilot Program shall be ninety (90) days from the effective date of Phase 1. The duration of Phase 1 may be extended, at the discretion of the Department, provided that the Department notifies the Lodge at least seven (7) days prior to the effective date of any extension as well as provides the Lodge with the number of days for which the program will be extended.
2. Phase 1 of the BWC Pilot Program shall be limited to Officers currently assigned to the Third Watch within the Fourteenth (14th) District who volunteer or are selected to participate in the BWC Pilot Program. Initially volunteers will be sought by the Department. If an insufficient number of volunteers elect to participate, officers may be selected and designated to participate in the program. The Department affirmatively states that no Officer will be disciplined or subject to a penalty for failing to volunteer to participate in the BWC Pilot Program.
3. All Officers are required to comply with the provisions of Department Order D15-01; however, where it is not feasible to comply with an/or fail[ure] to comply was through inadvertence or operational error by the Officer, such situations will be treated by the Department as a training opportunity and [will] not subject the

Officer to discipline.

4. The Department will comply with the parties' Collective Bargaining Agreement concerning use and review of video in disciplinary investigations, including by not limited to Article 6 – Bill of Rights, Section 6.1 Conduct of Disciplinary investigation.
5. With respect to any incident involving a police shooting, the Department will follow the same protocol for the BWC recorded data and the Officer(s) involved in such police shooting incident as currently being applied with respect to the In-Car Video Systems.
6. The Department will establish a District level committee consisting of appropriate supervisors and Officers using the BWC to provide input and advice concerning the BWC Pilot Program.
7. The Department will provide notice and will meet and engage in discussions with the Lodge prior to any expansion of the use of BWC's beyond the parameters set forth in the BWC Pilot Program – Phase 1.
8. The Department will continue to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline.
9. This Memorandum does not limit or alter in any way the Department's discretion or authority as set forth in Article 4 of the parties' collective bargaining agreement, except as otherwise modified herein.

1. Implementation of BWC Pilot Program – Phase 1

On or about January 20, 2015, during negotiations for the LOU discussed above, the Respondent implemented the first phase of the BWC Pilot Program in the 14th District. The Respondent held a meeting in the community room of the district office, 14th District. Angelo and another union representative were present on behalf of the Union. Acting Commander Mark Buslik, other district supervisors, and Lewin were present on behalf of the Respondent. Dennis Rosenbaum, a professor from the University of Illinois at Chicago was also present because he was conducting a study on the officers' experiences with the BWCs.

The Respondent explained how the devices worked, explained how the Respondent would distribute and collect the BWCs, and described the conditions of the pilot program. The Respondent provided officers with a PowerPoint presentation, handouts, and hands-on training. The manufacturer's representatives were also present to answer questions.[4]

The Respondent trialed two different types of cameras as part of this program, the body worn camera and the flex camera. The body worn camera is a wireless device, mounted on an

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[4] There were no formal training sessions for officers on the use of the camera, prior to their distribution by the Respondent.

officer's chest, that captures video at a 143-degree field of vision. If the officer turns only his head, the camera does not turn with him and captures the video only in front of him. In addition, the officer can block the camera by drawing his weapon and holding his arms in front of his chest, where the camera is located. The user turns on the device by pressing a button at the top of the camera. The device then enters buffering mode. The user activates the camera to start recording by pressing the event button at the center of the camera. Once the user presses the event button, the audio and video begin to record. In addition, the device stores a recording of the 30 seconds of video footage captured prior to the user's activation of the camera. After the officer completes his assignment, he presses the event button again to return the device to buffering mode. The officer returns to his unit of assignment after his tour of duty and places the device into a docking station, which is a receiving station that holds up to six body-worn cameras. It recharges the power supply for the device, it uploads any video recorded to evidence.com, a cloud based service provided by the manufacturer, and it uploads firmware updates sent by the manufacturer.

The flex camera captures a more realistic perspective of what the officer views. If is mounted on the officer's eyeglasses, records what the officer himself sees. It captures video at a 120-degree field of vision. Unlike the body worn camera, it is a wired device that requires a battery pack. In addition, the officer must secure the wire through his body armor and equipment. If the camera is mounted on the officer's sunglasses, and the officer places the glasses on his forehead when entering the building, the device will not capture any useful video of an incident.[5]

2. April 28, 2015 meeting between the Respondent, the Union, and Union members

On April 28, 2015, the Respondent held an informal meeting in the community policing room in the 14th District office on the third watch. General Counsel to the Superintendent, Ralph Price, then-Deputy Chief of the Technology and Records Group, Jonathan Lewin, Commander Buslik[6] from District 14, and O'Neill attended on behalf of the Respondent. Professor Dennis Rosenbaum from the University of Illinois at Chicago was also present because he was conducting a survey of the officers' reactions to body worn cameras. Angelo appeared on behalf of the Union. The Respondent invited to the meeting all of the officers from District 14 who had trialed the

[5] The department piloted the flex camera for only 90 days. The department ceased using the flex cameras during the pilot program because the officers preferred the body worn cameras.
[6] Buslik holds the rank of Captain.

BWCs. Three or four offices were present at the meeting. None of the officers' sergeants or lieutenants were present.

The officers provided feedback on the cameras. Officers stated that they did not like the flex camera. In addition, some officers mentioned that the cameras were falling off, coming undone, or getting in the way. Members of management mentioned that there were different kind of clips available and that the next generation of clips would be more user friendly. Another officer expressed his concern that the cameras would change the officers' behavior by removing the discretion they otherwise might have exercised in the course of their duties. The officers were worried that the cameras might record them in the bathroom. The officers expressed confusion about when to turn the cameras on and off. The officers were also worried that the cameras would make them second-guess their proper police conduct. However, one officer noted that the cameras set the tone of an interaction in a positive way. The officers asked how long they would be required to wear the cameras. A member of management mentioned that the 15th District would get the cameras next because officers were asking for them. O'Neill mentioned that if the Respondent moved the cameras to another district, then the parties would enter another memorandum of understanding regarding their use in that new district. The meeting lasted approximately an hour or 45 minutes.[7]

O'Neill testified that all the officers who participated in the pilot program in District 14 constituted the District Level Committee. However, he testified that the April 28, 2015 meeting was not a District Level Committee Meeting and he further stated that he was not aware of any District Level Committee meetings. Angelo similarly testified that the meeting was not a District Committee Meeting. Although the Respondent issued a Department Notice (#D-15-01) on December 31, 2015 that established a BWC Pilot Program Evaluation Committee, the committee did not include officers.

Two days after the meeting, O'Neill called Angelo on the phone and discussed the expansion of the pilot program. Angelo wanted cameras removed from District 14 and moved into another district instead. O'Neill testified that the Respondent wished to further expand the program within District 14 and then into other districts. However, it is unclear whether he communicated this intent to Angelo at the time.

In October 2015, Wynter Jackson replaced O'Neill as the Director of Labor Management

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[7] Angelo testified that the meeting lasted approximately two hours.

Affairs for the Chicago Police Department.

On December 31, 2015, the Respondent issued a department notice that continued the body worn camera pilot program.

3. The Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706

In 2015, the legislature enacted the Law Enforcement Officer-Worn Body Camera Act ("WBC Act"), which was part of a larger piece of legislation Senate Bill 1304. The Union directed its lobbying efforts at shaping Senate Bill 1304. The Union published an article about the Bill in its September 2015 issue of its official magazine. One of its lobbyists wrote the article and commented, "[t]ogether we were able to limit management's ability to troll camera footage for discipline purposes."

The body worn camera statute became effective on January 2016. Section 10-20 of the WBC Act defines when officers must activate and deactivate the cameras, it specifies retention periods for the recordings captured by the BWCs, it explains when a recording must be retained for a longer period of time, and it limits the disciplinary use of the recordings.

Regarding discipline, it provides that "[r]ecordings shall not be used to discipline law enforcement officers unless: (A) a formal or informal complaint of misconduct has been made; (B) a use of force incident has occurred; (C) the encounter on the recording could result in a formal investigation under the Uniform Peace Officers' Disciplinary Act; or (D) as corroboration of other evidence of misconduct." 50 ILCS 706/10-20.

4. Subsequent Expansions of the BWC Pilot Program and the Union's Intervening BWC Grievance

In Spring 2016, the Respondent expanded the BWC Pilot Program to six additional districts. The Respondent waited until 2016 to expand the program because of financial constraints and because the Respondent wanted to wait until the manufacturer released its second-generation body worn cameras.

Most of the districts to which the Respondent expanded its BWC program in Spring 2016 had unit representatives. Angelo testified that unit representatives are the "eyes and ears" of the Union and that they would have been aware of the Respondent's expansion of the BWC program.

Angelo testified that Union members informed the Union of the Respondent's expansion of the body worn camera pilot program to other districts.[8]

On June 3, 2016, the Union filed a grievance because the stealth mode of the BWCs was malfunctioning and exposing officers to danger. Stealth mode allows an officer to operate the camera without activating the red light that, in non-stealth mode, would turn on to indicate that the camera was operational. The red light remained lit in stealth mode, thereby exposing officers to danger in situations that required covert action. The Union did not invoke the January 22, 2015 letter of understanding regarding the body worn camera pilot program when it raised the issue about the stealth mode.

Around this time, Angelo called Jackson and informed her that the BWCs were not functioning properly in stealth mode. Jackson informed Angelo that officers could turn the camera off for a limited time if they felt their safety was at risk. However, they would be required to justify their actions in writing.

Jackson then immediately informed Deputy Chief Lewin about the problem and Lewin, in turn, contacted the manufacturer. The manufacturer determined it was a software issue and fixed the issue by June 10, 2016.

On August 24, 2016, formally Jackson denied the grievance, noting that the Department had resolved the issue and she also asked the Union to withdraw the grievance. The Union withdrew its grievance less than three weeks later, noting that it "concur[red] that the matter was addressed by the Department, and appreciate[d] the steps that were taken to resolve the issue."

On December 27, 2016, the Respondent sent an email to all members of a department, which included a press release announcing the "Expedited Expansion of Body Camera Program." The email stated that "tomorrow, the Mayor's Office and CPD will be announcing an expedited expansion of the department's body worn camera program across all patrol districts – one full year earlier than originally planned. The district technology upgrades and physical expansion is slated to begin next month and all police districts will be outfitted by the end of 2017." Angelo learned of the expedited expansion when he received the December 27, 2016 email from unit members. By the end of 2017, the rollout will be complete and the Respondent will be using 6800 body worn camera devices.

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[8] Angelo testified that each watch should also have a watch representative, elected by his fellow watch members, who is the liaison with the FOP.

On December 28, 2016, Union attorney Pat Fioretto sent an email to Jackson. He stated that the Union recently learned of the Respondent's "unilateral decision to expedite the expansion of the Police Department's body worn camera program across all patrol districts, without any prior notice to the Lodge or the ability to engage in any meaningful opportunity to bargain." Fioretto then referenced the parties' January 22, 2015 letter of understanding, which he also attached to the email. Specifically, he quoted paragraphs 7 and 8, and asked the Department to comply with those provisions. Fioretto informed Jackson that the Union would seek legal recourse before the Board and through the contract's grievance procedure if the Respondent did not comply.

In response to the letter, Jackson called Angelo[9] over the telephone to explain the press release and to schedule a meeting between the Respondent and the Union. She testified that she started "to discuss…meetings that [the Union and the Respondent] would have to inform [the Union of] how the Respondent intended to move forward and to get [the Union's] input."[10] The parties settled on a meeting date.

On January 24, 2017, Angelo wrote an email to Jackson confirming that he would attend the planned meeting with one of the Union's labor attorneys. However, he stated that the Union did not consider the meeting a bargaining session. He "renewed [the Union's] request that the Department immediately comply with its obligation set forth in the Letter of Understanding, prior to expanding the [BWC Pilot] Program City-wide."

In that email, Angelo also requested information in advance of the meeting. He asked whether the Respondent had established a district level committee to assess the Pilot Program, who was part of the committee, what the committee discussed, how often they met, and whether they had an agenda. He asked the Respondent to share whatever information that the Respondent had gathered during the pilot program. In addition, he asked Jackson to provide information on the problems that the Respondent experienced with the Pilot Program overall. He asked about what happened with the data collected, the manner in which the Respondent stored it, and the individuals who had access to it. He also asked if, how, and for what purpose, the Respondent monitored the data collected. He asked about the kind of feedback that the Respondent had received from officers who piloted the cameras. He asked whether the Respondent was in compliance with the Law

[9] Although Jackson could not recall whether she spoke to Angelo or Fioretto, Angelo's subsequent email to Jackson confirming his attendance at the meeting with one of the Union's attorneys demonstrates that Jackson scheduled the meeting with Angelo.
[10] See Tr. P. 196.

Enforcement Officer-Worn Body Camera Act and whether the Illinois Law Enforcement Training Standards Board (ILETSB) implemented any guidelines that the Respondent was required to follow. Finally, he asked whether the Respondent had filed its mandatory annual report to the ILETSB and whether the Respondent had had any discussions with the ILETSB.

Jackson responded by email on January 25, 2017. She attached the following information to her email: (1) The draft BWC order, then under review; (2) the Law Enforcement Officer-Body Worn Camera Act, 50 ILCS 706; (3) a list of Complaint Register [CR] numbers the Respondent had opened to investigate alleged misconduct related to BWCs; (4) a list of Summary Punishment Action Reports [SPARs] the Respondent issued related to officers' use of BWCs; (5) a list of CR numbers that the Respondent opened, which addressed In-Car Cameras; and (6) a list of SPARs that the Respondent issued addressing In-Car Cameras.[11]

The Respondent issues summary punishment for minor infractions. The Respondent opens Complaint Register investigations into allegations of more severe misconduct and in response to complaints by citizens against officers. Summary punishment is not grievable. However, discipline issued pursuant to the Complaint Register process is generally grievable.[12]

The Respondent had issued SPARs to five officers between October 11, 2016 and December 13, 2016. Two resulted in no disciplinary action. In two cases, the accused officers received reprimands. In one case, the officer received a one-day suspension. The Respondent issued all SPARs because the officers had lost their BWCs.

Jackson's email did not inform the Union as to whether the Respondent had established a district level committee to assess the pilot program. Jackson testified that she could not recall whether the Respondent had ever answered that question.

That same day, January 25, 2017, the Union filed its charge in the instant case.

On January 27, 2017, Chief Labor Relations Negotiator Joseph Martinico sent an email to Union attorney Fioretto commenting on the email that Fioretto sent Jackson a month earlier, on December 28, 2016. In relevant part, he stated the following:

> [T]he Lodge quotes language from the BWC Pilot Program Letter of Understanding

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[11] Jackson provided the information on In-Car Cameras because she believed that the body worn cameras were an extension of that technology and she believed that the discipline imposed by the Respondent related to the use of In-Car Cameras would provide the Union with a frame of reference for discipline that issued related to the use of body worn cameras.

[12] The parties' contract provides that an officer may appeal his discharge only to the Police Review Board and that it does not proceed to arbitration.

> related to continued effects or impact bargaining over the BWC Pilot Program as it concerns Officer safety and/or discipline. We understand that the parties may have differing positions with regard to the existence and/or extent of any bargaining obligation on this issue. Nevertheless, we believe it is in our mutual interest to meet and discuss the BWC program, and for the parties to have the benefit of openly discussing each other's concerns and objectives regarding this important initiative, without waiving our respective claims and/or defenses regarding any bargaining dispute.

On February 2, 2017, parties met at the Respondent's headquarters on 3510 South Michigan Avenue. Fioretto, Angelo, and Brian Lavin appeared on behalf of the Union. Assistant Chief Labor Negotiator Cicely Porter Adams, Jackson, Bob Klimas from Internal Affairs, Deputy Director Tina Skahill, Deputy Chief Lewin, attorney David Johnson, and Captain Sean Joyce appeared on behalf of the Respondent. The meeting lasted approximately two to three hours. At the start of the meeting, the Union explained that it did not consider the meeting to be a bargaining session and that it simply wished to gather information and ask questions. The Union stated that it was only willing to bargain once the parties' contract expired.

During the meeting, Lewin answered the Union's questions about training related to the BWCs and the BWCs' technology. He explained how the officers in the pilot districts received training and gave the Union a copy of the PowerPoint training module.

Lewin also gave the Union a list of the districts in which the Respondent had already expanded the body worn camera program and the districts to which the Respondent intended to expand the program in the future. Lewin explained that the Respondent had established a priority level for districts that established the order in which they would receive cameras. The priority level was based on protest activity within the district and the officers' use of force.

The parties also discussed a study conducted by the University of Illinois at Chicago, related to the police officers' responses to body-worn cameras, and Lewin provided Angelo with the results of that study.

Further, Angelo asked the Respondent about an officer's ability to flag a video recording of an incident, in cases where the officer believed the individual involved in the incident might make a false allegation of misconduct.

Finally, the Respondent and the Union also undertook a detailed review of the draft BWC order. The Order identifies the circumstances under which officers must initiate, conclude and justify their recordings. It also identifies the circumstances in which an officer may use discretion

to activate the BWC for non-law enforcement related activities. The Order does not specify the discipline that officers may receive for failing to follow the order's directives. However, it provides that "the Department does not intend to use the BWC to discipline members for isolated minor Department rule infractions…." Angelo asked that the parties define the phrase "isolated minor Department rule infractions."

At the conclusion of the February 2, 2017 meeting, the Union's representatives stated that they did not wish to have another meeting, but that they would contact the Respondent if they had questions after reviewing the information that the Respondent had so far provided.

Between February 17 and February 28, 2017, the parties corresponded via email and successfully scheduled a second meeting, despite the Union's earlier assertion that it did not wish to meet again.

On March 7, 2017, the Respondent expanded the BWC Pilot Program to District 018.[13]

On March 15, 2017, Jackson provided the Union with information that the Union had requested at the February 2, 2017 meeting. Jackson provided the Union with a revised draft order addressing BWCs. She noted that the Respondent had made changes to the Order in consideration of the parties' discussion on February 2, 2017. She attached Summary Punishment Action Report (SPAR) documents regarding the body worn cameras. She noted that all but one of the Complaint Registers had been converted to SPARs.

On March 20, 2017, the parties met again at the Respondent's headquarters. The meeting included all those who had attended the February 2, 2017. It also included Chief Labor Negotiator Joe Martinico and William Bazarek from the Respondent's Office of Legal Affairs. The meeting lasted no more than two hours. During the meeting, the Respondent answered the Union's questions and explained the changes it made to the draft order regarding body worn cameras.

In addition, the Union made requests and suggestions related to discipline. Angelo suggested that officers should have a certain defined number of "free passes," where their failure to turn on their cameras would not result in discipline. He similarly suggested that the Respondent should change the way it logged complaints that alleged the impossible. Angelo drew attention to an incident in which a non-department member accused an officer of altering his own camera footage, which is not something an officer is able to do, and suggested that such claims should use a separate classification for such allegations. Angelo also stated that the Respondent needed to

[13] This fact is drawn from the Respondent's Answer to the Complaint.

exercise some flexibility in the department's approach to discipline arising from the use of body worn cameras because each officer's experiences were different. In turn, their reactions to circumstances that arose in the field would vary and would disparately impact their respective abilities to turn on their cameras.

Angelo asked whether officers would receive discipline for failing to turn on their cameras. The Respondent's agents stated that the department's general orders addressing the body worn camera pilot program would protected officers if they did not turn on their cameras in times of danger or high stress. Angelo commented that the parties' letter of understanding also provided officers with some protection.

Angelo raised the Union's concern that certain supervisors might take advantage of the body worn cameras to harass or bully a rank and file officer. The Department responded that any review of an officer's footage by a supervisory would leave a record of that review. Angelo proposed that the Respondent place a limit on the number of times that a supervisor could view the videos of a particular officer.

Angelo also complained to Lewin that the Respondent did not maintain enough computer terminals at which officers could upload video from their cameras at the end of their tours of duty.

On April 10, 2017, Respondent's attorney Johnson wrote union attorney Fioretto a letter concerning the "status of the parties' discussions regarding the Body Worn Camera Program." Johnson stated that he used the term "discussions" out of deference to the Union's "protestations that the meetings did not constitute 'bargaining' sessions." However, he added that the Respondent "participated in the meetings with an open mind and the goal of reaching agreement with the [Union] regarding any potential impact of BWCs on officer safety or discipline." Johnson's letter summarized the discussions that took place at the parties' February and March 2017 meetings.

On April 11, 2017, Fioretto responded. He noted that he did not view the letter as completely accurate. He particularly emphasized that neither party had considered the February and March 2017 meetings to be bargaining sessions. Finally, he stated that the Union had "additional proposals, which will be made at the appropriate time during upcoming bargaining sessions" for a successor contract.

IV. DISCUSSION AND ANALYSIS

1. Alleged Refusal to Bargain Over Effects of the Body Worn Cameras

The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed to bargain over the impact of the 2017 BWC Pilot Program's expansion on employees' terms and conditions of employment. The BWC Pilot Program had bargainable effects and the Respondent did not bargain in good faith prior to 2017 BWC Pilot Program's expansion. However, the circumstances of the case justify a limited remedy.

i. The BWC Pilot Program has Bargainable Effects

As a threshold matter, the Respondent's institution of the BWC Pilot Program gives rise to bargainable effects.

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer to "refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(a)(4). Section 7 of the Act provides that public employers are obligated to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of the Act. 5 ILCS 315/7

Section 4 states that employers "shall not be required to bargain over matters of inherent managerial policy, which shall 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." 5 ILCS 315/4. Section 4 adds that public employers "however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives." Id.; Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill., Division 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-LP 2014).

Here, the Respondent made a material change to employees' terms and conditions of employment when it instituted the BWC Pilot Program because the BWCs impact employee discipline, safety, and privacy.[14] Moreover, that impact is significantly different from the impact

[14] Whether the Union waived the right to bargain over these effects is addressed separately.

of the existing In-Car Camera Program and is not simply a *de minimis* change, as the Respondent contends. First, the BWCs create greater opportunities for employee discipline than the In-Car Cameras. The BWCs have the potential to record more of an employee's work time, and the review of BWC footage could subject employees to discipline for conduct that was not subject to capture by the In-Car Cameras. In addition, officers have broader custodial responsibilities for the BWCs than for the In-Car Cameras because they must wear the BWCs at all times and can be disciplined for losing them. Likewise, the BWCs impose new and different camera activation requirements, which may likewise present opportunities for discipline if an officer fails to comply with them. Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 268 (1st Dist. 1989) (requiring employer to bargain over disciplinary impact of new investigatory tool, drug testing); Chicago Transit Authority, 33 PERI ¶ 61 (IL LRB-LP 2016) (addressing decisional bargaining, use of rail cameras for discipline changed status quo where employer had never before used those cameras for discipline and where the cameras allowed the employer to view more of the employees' conduct than prior methods of employee surveillance).

Second, the BWCs have features that present new safety-related concerns which are different from the concerns presented by the In-Car Cameras. For example, the BWCs placed officers in danger when their stealth mode feature failed and the indicator light remained active when officers sought to engage in covert operations. The Respondent identified no comparable safety risk arising from the use of In-Car Cameras.

Third, the BWCs raise concerns over employee privacy because they have the potential to record employees in the restroom, whereas the In-Car Cameras do not. If an officer must unexpectedly activate the BWC within 30 seconds of restroom activity, the BWC will capture audio of that activity even though the officer could not have anticipated that the restroom activity would be recorded. Colgate-Palmolive Co., 323 NLRB 515, 515 (1997) (hidden surveillance cameras in restrooms raised privacy concerns that had a potential impact on employees).

Contrary to the Respondent's contention, the Law Enforcement Officer-Worn Body Camera Act ("WBC Act") does not preempt the field of effects bargaining. 50 ILCS 706. The Illinois Public Labor Relations Act specifies that other laws that pertain, in part, to matters that impact terms and conditions of employment "shall not be construed as limiting the duty to bargain collectively." 5 ILCS 315/7. It further provides that parties may enter into agreements that "that

supplement, implement, or relate to the effect of such provisions in other laws." Id. Here, the Union is entitled to bargain greater protections for its members than those conferred by the WBC Act. For example, the WBC Act limits the circumstances under which an employer may use the recordings from the BWCs to discipline law enforcement officers, but the Union may bargain additional limitations on the Respondent's disciplinary use of the recordings. 50 ILCS 706/10-20. In addition, the Union may bargain over those disciplinary impacts that the WBC Act does not address, including the discipline that the Respondent may impose for an officer's loss of a camera, damage to a BWC, misuse of a BWC, or failure to upload its footage.

Finally, Section 14(i) of the Act does not limit the Union's right to bargain over the effects of the BWCs because the Union in this case does not seek to bargain over the type of equipment the Respondent uses. Section 14(i) "is determinative as to whether a topic is a mandatory bargaining subject where it specifically excludes that topic from arbitration." Vill. of Oak Lawn v. Illinois Labor Relations Bd., State Panel, 2011 IL App (1st) 103417, ¶ 23. Relevant to this case, Section 14(i) provides that an interest arbitrator's award shall not include "the type of equipment, other than uniforms, issued or used," and therefore renders this subject a permissive subject of bargaining. However, nothing in Section 14(i) prohibits an arbitrator from issuing an interest arbitration award that addresses the effects of equipment already selected and used by the employer, at issue in this case.

The Respondent's argument to the contrary focuses on the exception to the rule, which provides that "nothing herein shall preclude an arbitration decision regarding equipment if such decision is based on a finding that the equipment used involve[s] a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties." 5 ILCS 315/14(i). However, this exception is irrelevant because the underlying rule does not apply where bargaining over the BWCs' disciplinary and safety effects does not bear on the Respondent's selection of equipment.

Thus, the BWC Pilot Program has bargainable effects.

ii. Notice and Opportunity to Bargain

The Respondent provided the Union with timely notice of its decision to expand the BWC Pilot Program in 2017, but failed to provide a sufficient opportunity to bargain effects.

The duty to bargain arises upon request of the union when it receives timely notice that the

employer intends to change a condition of employment. County of Cook and Sheriff of Cook County, 30 PERI ¶ 14 (IL LRB-LP 2013); Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991); Cnty. of Cook (Cook Cnty. Forest Preserve Dist), 4 PERI ¶3012 (IL LLRB 1988); Vermilion Cnty., 3 PERI ¶2004 (IL SLRB 1986). The employer must give actual notice of the intended change to a union official with authority to act, the employer's notice to the union of its planned change must be substantively adequate, and the employer must allow the union a reasonable opportunity to bargain. Georgetown-Ridge Farm Comm. Unit School Dist. 4., 7 PERI ¶ 1045 (IELRB 1991) aff'd 239 Ill. App. 3d 428 (4th Dist. 1992); City of Berwyn, 8 PERI ¶ 2038 (IL SLRB 1992)[15]; Chicago Transit Authority, 30 PERI ¶ 9 (IL LRB-LP 2013). These principles apply to effects bargaining because effects bargaining, like bargaining over the decision itself, should take place at a meaningful time, before the action is taken. Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997); Vill. of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); Cook County Hospital, 2 PERI ¶ 3001 (IL LLRB 1985) (stating principle, but finding no violation where case involved controversy over pre-Act events).

There is no question that the Respondent gave appropriate union agents actual, substantively adequate, and timely notice of its 2017 plan to expand the BWC Pilot Program. The Respondent distributed the announcement via email to all members of the unit, including designated union representatives. Chicago Hous. Auth., 7 PERI ¶3036 (LLRB 1991) (no formal notice required). The Respondent described the planned change in sufficient detail to allow the Union an opportunity to make a meaningful response. Finally, the Respondent gave the Union notice of its planned expansion on December 27, 2016, over three months before it implemented the expansion on March 7, 2017. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (notice is timely if given sufficiently in advance of implementation).

It is also clear that the Union made a timely demand to bargain over the effects of BWC Pilot Program's 2017 expansion because it demanded bargaining on December 28, 2016, just a day after it received notice of the expansion and over three months prior to its implementation. Cnty. of Cook, 15 PERI ¶3001 (IL LLRB 1998) (demand timely if made prior to implementation); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶3021 (IL LLRB 1996).

However, the Respondent did not give the Union an adequate opportunity to bargain over

[15] No particular form of notice is required. Chicago Hous. Auth., 7 PERI ¶3036; Forest Preserve Dist. of Cook Cnty., 4 PERI ¶3012.

the 2017 expansion's effects. The Respondent's agents made clear in advance of the parties' first meeting that it was not a bargaining session and that the Respondent had no obligation to bargain effects. An employer cannot satisfy its statutory duty to bargain by expressing a willingness to discuss a bargainable subject while maintaining that it has no duty to bargain. City of Highwood, 17 PERI ¶ 2021 (IL LRB-SP 2001); San Diego Cabinets, 183 NLRB 1014, 1020 (1970); Mi Pueblo Foods, 360 NLRB No. 116, slip op. at 10, 17 (2014).

Yet, when Jackson scheduled the first meeting with Angelo, she stated that its purpose was to "inform" the Union of how the Respondent "intended to move forward" and to get the Union's "input." Chief Labor Negotiator Martinico later echoed that sentiment on January 27, 2017, in his written response to the Union's bargaining demand. He acknowledged the Union's position on the Respondent's obligation to bargain effects, but stated that the parties "may have differing positions" on "the existence and/or extent of any bargaining obligation on this issue." He further emphasized that the Respondent planned to attend the February 2, 2017 meeting so that the parties could "discuss" their "concerns and objectives…without waiving [their] respective claims or defenses regarding any bargaining dispute." Thus, the Respondent did not attend the meeting with an open mind and a sincere desire to reach agreement. Rather, it sought "discuss" the expansion's effects while reserving its right to claim it had no duty to bargain at all. City of Chicago, 30 PERI ¶ 126 (IL LRB-LP 2013) (bargaining under reservation of rights is not good faith bargaining; union should have filed charge within six months of its awareness of such conduct); City of Highwood, 17 PERI ¶ 2021 (employer did not bargain in good faith where it reserved the right to renege on any agreement reached); Chicago Park Dist. v. Illinois Labor Relations Bd., Local Panel, 354 Ill. App. 3d 595, 609 (1st Dist. 2004) (union reasonably interpreted employer's statement as refusal to bargain when agent stated he did not believe subject was mandatory subject of bargaining).

The Respondent points to the Union's statements in support of its claim that, in fact, the Union refused to bargain with the otherwise willing Respondent, but the Respondent takes those statements out of context. President Angelo's statement, that the Union did not consider the parties' first meeting to be a bargaining session, is a response to Jackson's earlier characterization of the meeting as an opportunity for the Respondent to present an already-settled course of action on effects. Jackson planned to convey "how the Respondent intended to move forward." Although she also stated that the Union could provide "input," the parties' LOU demonstrates that they

understood the opportunity for input as lesser than, and distinct from, the opportunity to bargain.[16] Angelo's response simply disputed Jackson's characterization in writing and indicated that the Respondent had a greater obligation—an obligation to bargain effects. He referenced the parties' LOU, which describes the Respondent's continuing obligation to bargain effects, and he "renew[ed] the [Union's] request that the Department immediately comply" with the LOU's obligations. He even emphasized that the Respondent was "in the (bad) habit of making unilateral changes." The Union's subsequent claims, that the meetings were not bargaining sessions, must similarly be viewed in the context of the Respondent's assertions that the meetings were merely discussions, and that the Respondent reserved the right to dispute its bargaining obligation.

The Respondent also contends that the Union placed unlawful conditions on effects bargaining by stating it would bargain effects only during negotiations for a successor contract, but this too is an inaccurate description of the Union's bargaining posture. The Union's initial bargaining demand placed no such condition on bargaining. It was only after the Respondent reserved the right to dispute its bargaining obligation that the Union stated it would present its proposals on effects during successor contract negotiations. By that point, the Respondent had already deprived the Union of an opportunity to bargain in good faith by indicating that it had no obligation to consider the Union's proposals. Thus, the Union's refusal to present them during the 2017 meetings has no bearing on this case. Chicago Transit Auth. v. Ill. Local Labor Rel. Bd., 299 Ill. App. 3d 934, 944 (1st Dist. 1998) (employer violated the Act despite union's failure to show interest in bargaining where employer had already deprived union of opportunity to bargain by presenting it with a *fait accompli*); Northern Illinois Univ., 34 PERI ¶ 61 n. 3 (IELRB 2017) (union's refusal to bargain was irrelevant where it occurred after the employer had already refused to bargain in good faith by implementing the unilateral change); cf. Vill. of Bellwood, 25 PERI ¶ 95 (IL LRB-SP 2009) (union's insistence to impasse that the employer respond to information requests regarding permissive subject of subcontracting privileged the Respondent's ***subsequent*** implementation of its decision to subcontract unit work).

The Respondent's claim, that it engaged in good faith effects bargaining in February and March 2017, is further belied by the fact that it implemented the 2017 expansion on March 7, 2017, before the parties met a second time. Vill. of Glenwood, 32 PERI ¶ 159 (IL LRB-SP 2016)

[16] The LOU notes that the Union would have the opportunity to provide "input" at meetings with management, but separately articulates the Respondent's obligation to bargain effects.

(employer violates the Act when it implements a decision before completely bargaining over its effects).

Moreover, the Respondent also impeded good faith bargaining by failing to timely respond to Union's information requests. An employer's failure to provide a union with information relevant and necessary to bargaining may preclude a finding that the employer gave the Union an adequate opportunity to engage in meaningful bargaining. Chicago Park District, 20 PERI ¶ 110 (IL LRB-LP 2003). Here, the Respondent waited to provide the Union with certain requested, relevant, and necessary information until after it implemented the 2017 BWC Pilot Program's expansion, including specifics concerning discipline it had imposed against officers arising from their use of the BWCs. Although the Respondent had provided the Union an excel spreadsheet that offered some information concerning these Summary Punishment Action Reports (SPAR), the information contained in the spreadsheet was incomplete and did not contain a full narrative of the remarks included in the SPARs. The Union could have used this information to obtain a more complete understanding of the types of officer conduct that could trigger disciplinary action and/or the circumstances which may have warranted the Respondent's conclusion, in some cases, that no discipline would issue. Chicago Park District, 20 PERI ¶ 110 (employer violated the Act when it failed to provide requested information about its decision to reduce hours, and the union was therefore unable to bargain over that decision prior to its implementation).

In sum, the Respondent failed to provide the Union with an opportunity to bargain the effects of the 2017 expansion of the BWC Pilot Program.

iii. Waiver

The Union did not waive the right to demand effects bargaining over the 2017 expansion of the BWC Pilot Program.

A Union's waiver of its right to bargain must be clear, unequivocal and unmistakable. Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 274 Ill. App. 3d 327, 334 (1st Dist. 1995); Cnty. of Cook v. Illinois Local Labor Rel. Bd., 214 Ill. App. 3d 979 (1st Dist. 1991); Chicago Park Dist., 18 PERI ¶ 3036 (IL LLRB 2002). A union failure to protest, or demand bargaining over, earlier unilateral action does not act as a waiver of its right to bargain similar changes in the future. Chicago Board of Education and Chicago School Finance Authority, 10 PERI ¶ 1107 (IL ELRB 1994) (acknowledging this principal) (citing N.L.R.B. v. Miller Brewing

Co., 408 F.2d 12, 15 (9th Cir. 1969)); Owens-Brockway Plastic Products, 311 NLRB 519, 526 (1993) ("[a] union's acquiescence in previous unilateral changes does not operate as a waiver of its right to bargain over such changes for all time"); Colgate-Palmolive Co., 323 NLRB at 515.

The clear and unmistakable waiver standard similarly applies to effects bargaining. Chicago Transit Auth. v. Ill. Local Labor Rel. Bd., 299 Ill. App. 3d 934, 944-4 (1st Dist. 1998) (reviewing contract language to determine whether the charging party waived its right to bargain the effects of a reclassification; applying clear and unmistakable waiver standard but finding no waiver).

1. Alleged Waiver by Inaction

Here, the Union's acquiescence to the earlier 2016 expansion of the BWC Pilot Program does not constitute a waiver of its right to bargain over the effects of the subsequent 2017 expansion. The second expansion was more extensive than the first. It covered 14 districts, whereas the initial expansion covered just six. In addition, it impacts an entirely new set of employees who may have different concerns arising from the unique challenges that arise in their respective districts. Colgate-Palmolive Co., 323 NLRB at 515 (addressing decisional bargaining, Union did not waive the right to bargain over future installation of hidden surveillance cameras even though it declined to demand bargaining over earlier installation of other cameras); Owens-Brockway Plastic Products, 311 NLRB at 526 (union's failure to object to some transfer of work to a different location did not constitute waiver of the union's right to bargain over relocation of all unit work and plant closure).

Moreover, the parties' LOU undermines any claim that the Union's acquiescence to the 2016 expansion of the program waives the Union's right to bargain over the effects of the program's 2017 expansion. It illustrates that the Union anticipated expansions of the Pilot Program and did not intend for any earlier inaction on its part to be viewed as a waiver of the right to bargain effects of subsequent expansions. The LOU provides that the Respondent was required to provide the Union with notice "prior to ***any*** expansion" of the BWC Pilot Program. (emphasis added). It further emphasized that the Respondent will "continue to bargain…over any…effect of the BWC Pilot Program" on officer "safety and/or discipline." In short, viewing the Union's earlier inaction as a waiver would require the Board to ignore the Union's prescient attempt to protected itself against the very argument presented by the Respondent here.

2. Alleged Contractual Waiver

The Union also did not contractually waive the right to bargain the effects of the BWC Pilot Program. Indeed, the LOU itself specifically provides that the Respondent will continue to bargain the effects of the BWC pilot program on employee safety and discipline.

The Respondent's claim of contractual waiver[17] is untenable because it erroneously focuses on the parties' underlying contract, to the exclusion of the parties' LOU. Even assuming, *arguendo*, that the parties' underlying contract includes a clear and unmistakable waiver of the Union's right to bargain the effects of new equipment, the parties voluntarily modified that broad waiver when they entered into the LOU. Although the LOU did not reinstate all the Respondent's effects bargaining obligations, it rescinded any waiver of the Union's right to bargain the disciplinary and safety effects of the BWC Pilot Program by explicitly stating that the Respondent had an obligation to bargain those matters. Chicago Transit Authority, 14 PERI ¶ 3002 (parties are not required to bargain anew concerning matters settled by the contract, but they may do so voluntarily).

The Respondent's reliance on prior arbitration awards as evidence of alleged contract waiver is likewise misplaced. Those awards have no bearing on the Union's rights in this case because the Respondent negotiated a special agreement (the LOU), which imposed new obligations that the arbitrators in the cited cases never considered. Any alleged "integrated set of [contractual] understandings" outlined in those awards, which allegedly allowed the Respondent to introduce equipment without bargaining its effects, was modified by the LOU.

In sum, the Respondent violated the Act when it failed and refused to bargain the effects of its decision to expand the BWC Pilot Program in 2017.

2. Alleged Repudiation of the Parties' Letter of Understanding on the BWC Pilot Program

[17] The Respondent argues that the contract allows it to add new equipment and that it also addresses the manner in which the parties will address emergent equipment safety issues. The Respondent suggests that the inclusion of such safety language represents the Union's clear and unmistakable waiver of the right to bargain all of the BWC Pilot Program's effects.

The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU.

It is not the Board's function, in an unfair labor practice context, "to assume the role of policing collective bargaining agreements, or to allow parties to use the Board's processes to remedy alleged contractual breaches or to obtain specific enforcement of contract terms." Creve Coeur, 3 PERI ¶ 2063 (IL LRB-SP 1987). For a breach to constitute an unfair labor practice, it must be "substantial enough to indicate 'repudiation' or 'renunciation' of the collective bargaining agreement or bargaining obligation." Creve Coeur, 3 PERI ¶ 2063. Accordingly, to prove repudiation, the Union must demonstrate that the breach is both (1) substantial and (2) made without rational justification or reasonable interpretation such that it demonstrates bad faith. City of Loves Park v. Ill. Labor Rel. Bd. State Panel, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003); Byron Fire Protection District, 31 PERI ¶ 134 (IL LRB-SP 2015); City of Chicago, 30 PERI ¶ 194 (IL LRB-LP 2014) (setting forth two-step repudiation analysis); City of Elgin, 30 PERI ¶ 8 (IL LRB-SP 2013); City of Kewanee, 23 PERI ¶ 110 (IL SLRB 2007).

The Respondent breached the parties' LOU as alleged in the Complaint. As discussed above, the Respondent did not bargain the effects of the 2017 expansion of the BWC Pilot Program on employee discipline and safety. In addition, the Respondent failed to "establish a district level committee" comprised of "appropriate supervisors and officers" that would provide "input and advice" on the BWC Pilot Program. A committee is "a group of people officially delegated to perform a function." AMERICAN HERITAGE DICTIONARY, Second College Edition, p. 298. The Respondent did not officially delegate a group of officers to provide input and advice concerning the pilot program and it did not notify any bargaining unit members that they were members of a committee with defined responsibilities. The Respondent simply held one meeting on April 28, 2015, to which it invited all officers, so that they could share their experiences with the BWCs. While the officers' feedback may have been valuable, there is no merit to the Respondent's claim that their attendance is proof of a district level committee. Indeed, all witnesses agreed that the April 28, 2015 was not a district level committee meeting, and O'Neill testified that he was not aware of any district level committee meetings at all.

The Respondent contends that the LOU did not mandate that the district level committee take any particular form, but the term "committee" has a plain meaning and the Respondent established nothing at the district level that fits the description. The Respondent also blames the

Union, noting that it could have voiced its concerns over the "operation or composition of the committee," but the Union had no basis to complain about these particulars when the Respondent never established a committee to begin with. Finally, the Respondent asserts that its informal solicitations of feedback on the BWCs from unit members accomplished the same end as a formal committee, but this argument is flawed in two respects. First, the Respondent cannot compare results of its informal method of data collection with the result obtained using a committee where it never established a committee from which it could obtain any results. Second, the LOU plainly requires the Respondent to establish such a committee, and the Respondent's disregard of that obligation in favor of a less formal method of data collection is a breach of the LOU, regardless of how well that alternative method may have worked.

Nevertheless, as a threshold matter, the Respondent's breaches of the LOU are not substantial enough to rise to a repudiation the parties' collective bargaining agreement or even the LOU. First, the LOU included nine paragraphs and the Complaint in this case alleges a breach of just two of them: (1) the obligation to establish district level committee consisting of appropriate supervisors and officers using the BWCs that would provide input and advice concerning the BWC Pilot Program and (2) a continuing obligation to bargain with the Union over the effect of the BWC Pilot Program on Police Officer safety and/or discipline. Moreover, the Executive Director, in partially dismissing the Union's charge, found that the Respondent did not breach other paragraphs of the LOU and she found questions of contract interpretation at the heart of the other alleged breaches.

Moreover, the first breach, viewed on its own, does not have the type of impact on employees' terms and conditions of employment that the Board has previously found to constitute a substantial breach. Indeed, the Respondent's alleged failure to establish a district level committee that could provide input and advice on the BWC Pilot program has no immediate or tangible impact on employees' terms and conditions of employment. Cf. Chicago Transit Authority, 15 PERI ¶ 3018 (IL LLRB 1999) (employer violated the contract by implementing multiple new shift schedules and eliminating daily overtime); cf. City of Kewanee, 23 PERI ¶ 110 (employer changed insurance coverages and performed a layoff in violation of the contract); cf. Chicago Transit Auth., 16 PERI ¶ 3021 (employer changed the manner of overtime calculation).

The second alleged breach is simply a violation of a provision that incorporates some aspects of the statutory obligation to bargain in good faith over the effects of the Respondent's

change. The Union cites to no case that would indicate that an isolated breach of a contract provision, even one that in part incorporates a statutory obligation, rises to the level of repudiation of the agreement as a whole. Nor has the Union shown that the Respondent's breach of such a contract provision constitutes a violation of the Act separate and apart from the violation of the underlying statutory provision that the agreement incorporates.

Thus, the Respondent did not violate Sections 10(a)(4) and (1) when it breached the parties' LOU.

3. Remedy

The facts of this case justify a limited remedy. That limited remedy requires the Respondent to bargain the safety and disciplinary effects of the BWCs distributed in 2017, to rescind the discipline it issued arising from their misuse/loss, and to cease issuing such discipline until the parties complete effects bargaining. It does not require the Respondent to recall the BWCs it distributed in the 2017 expansion or to rescind the discipline it issued based on BWC footage.

The standard remedy for an employer's unlawful failure to engage in effects bargaining is to order the parties to return to the status quo ante and to make whole any affected employees. Chicago Transit Auth., 14 PERI ¶ 3002. As applied in this case, that remedy would require the Respondent to recall the cameras distributed in the 2017 expansion, to rescind any discipline imposed as a result of their use, and to make employees whole. It would also bar the Respondent from redistributing those BWCs until the parties reached agreement on effects or resolved their impasse through interest arbitration. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.) v. State, Labor Relations Bd., State Panel, 373 Ill. App. 3d at 254.

However, the Board has sometimes limited its standard remedy, and such a limitation is warranted in this case. Vill. of Glenwood, 32 PERI ¶ 159. For the reasons set forth below, the Respondent is not required to rescind the 2017 expansion or to rescind the discipline it issued based on BWC footage.

First, the parties in this case acknowledge that the obligation to bargain effects is limited. The parties' LOU specifies that the Department will bargain over the impact of effect of the BWC Pilot Program, but specifies that the obligation extends simply to effects "relate[d] to a Police Officer's safety and/or discipline." Requiring the Respondent to rescind the entire expansion would prevent the Respondent from collecting valuable footage, even though the parties agreed

that the Respondent had no obligation to bargain the methods of collection.

Second, the Law Enforcement Officer-Worn Body Camera Act ("WBC Act") already provides the Union with significant protections against the disciplinary use of footage from the BWCs. It specifies that BWC recordings can be used to discipline law enforcement officers only if "a formal or informal complaint of misconduct has been made, a use of force incident has occurred, the encounter on the recording could result in a formal investigation under the Uniform Peace Officers' Disciplinary Act" or if there is already some evidence of misconduct and the recording is used to corroborate that evidence. 50 ILCS 706/10-20. The parties' interests are therefore adequately balanced by requiring the Respondent rescind only the discipline arising from the BWCs' misuse/loss but permitting the Respondent to continue the limited disciplinary use of footage while the parties' complete effects bargaining.

Thus, the remedy is limited in this case and does not require the Respondent to recall the BWCs distributed in the 2017 expansion, to cease collecting footage from those BWCs, to abandon the disciplinary use of BWC footage, or to rescind discipline it issued based on BWC footage.

V. <u>CONCLUSIONS OF LAW</u>

1. The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed and refused to bargain over the effects of the BWC Pilot Program's 2017 expansion.
2. The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU.

VI. <u>RECOMMENDED ORDER</u>

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

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.
    b. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a. On request, bargain collectively in good faith with the Charging Party, Fraternal

Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

b. Rescind any disciplinary action that the Respondent imposed on Police Officers arising from the misuse/loss of the BWCs that it distributed as part of the 2017 expansion of the BWC Pilot Program.

c. Make unit members whole for any losses they may have suffered as a result of the discipline they received arising from the misuse/loss the BWCs that the Respondent distributed as part of the 2017 expansion of the Pilot Program.[18]

d. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

e. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses

[18] West Northfield School Dist. No. 31, 10 PERI ¶ 1056 (IL ELRB 1994) (reversing ALJ's decision not to award a make whole remedy for a unilateral change, finding that whether any employee suffered actual loss was a matter for the compliance hearing).

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 2nd day of January, 2018

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-17-037

The Illinois Labor Relations Board, Local Panel, has found that the City of Chicago (Department of Police) has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

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

WE WILL rescind any disciplinary action that we have imposed on Police Officers arising from the misuse/loss of the BWCs that we distributed as part of the 2017 expansion of the BWC Pilot Program.

WE WILL on request, bargain collectively in good faith with the Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

WE WILL make unit members whole for any losses they may have suffered as a result of the discipline they received arising from the misuse/loss the BWCs that we distributed as part of the 2017 expansion of the Pilot Program

DATE ____________

____
City of Chicago (Department of Police)
(Employer)

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.