

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

John Gaw and Chris Loudon,)	Case Nos.	S-CA-05-009
)		
Charging Parties)		
)		
and)		S-CA-05-039
)		
Village of Lisle,)		
)		
Respondent)		

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On July 12, 2004, John Gaw and Chris Loudon (Charging Parties or Gaw and Loudon), filed a charge in Case No. S-CA-05-009 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Parts 1200 through 1240 (Rules), alleging that the Village of Lisle (Respondent or Village) violated Sections 10(a)(1), (2), and (3) of the Act. The charge was investigated in accordance with Section 11 of the Act and, on April 12, 2005, the Executive Director of the Board issued a Complaint for Hearing.¹

On August 30, 2004, Loudon filed a charge in Case No. S-CA-05-039 alleging that the Respondent violated Sections 10(a)(1), (2), and (3) of the Act. The charge was investigated in accordance with Section 11 of the Act and, on June 24, 2005, the Executive Director of the

¹ The complaint alleged that the Respondent violated Sections 10(a)(2) and (1) and Section 10(a)(3) of the Act by failing to appoint Charging Parties to the specialty positions of Field Training Officer and/or Alternate Officer in Charge because of their union activity and/or in retaliation for testifying during an arbitration proceeding or a Board hearing. The complaint does not allege an independent violation of Section 10 (a)(1) of the Act.

Board issued a Complaint for Hearing.² On January 12, 2006, the two complaints were consolidated for purposes of hearing.

A hearing was held on September 11, 12, 25, and October 19, 2006 in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, present evidence, examine witnesses, argue orally and file written briefs.³ On January 5, 2007, the Respondent filed a motion to strike portions of the Charging Parties' post-hearing brief. On January 10, 2007, the Charging Parties filed their response to the motion to strike. On January 17, 2007, the Respondent filed a reply to Charging Parties' response. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.⁴

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find that, at all times material herein, the Respondent has been a public employer within the meaning of Sections 3(o) and 20(b) of the Act.
2. The parties stipulate, and I find that, at all times material herein, the Charging Parties have been public employees within the meaning of Section 3(n) of the Act.

² The complaint alleged that the Respondent violated Sections 10 (a)(1), 10(a)(2) and (1), and 10(a)(3) and (1) of the Act by issuing a suspension to Charging Party Loudon because of his union activity and/or in retaliation for testifying during an arbitration proceeding or a Board hearing.

³ The Respondent filed a brief for each charge. The Charging Parties filed a single brief. The Village's motion to strike portions of Charging Parties' brief referencing Charging Parties' exhibit of a police report is granted. The exhibit was received into evidence only for purposes of identification rather than as evidence supporting Charging Parties' allegations.

⁴ Respondent exhibits and Charging Party exhibits are referred to as (RX -) and (CP -) respectively. The transcript of the hearing is referred to as (TR. -).

3. The parties stipulate, and I find that, at all times material herein, the parties have been subject to a collective bargaining agreement between the Village of Lisle and Policemen's Benevolent Labor Committee (PBLC) with a term of May 1, 2001 through April 30, 2005.⁵

II. ISSUES AND CONTENTIONS

The issue in Case No. S-CA-05-009 is whether the Village violated Sections 10(a)(1), (2), or (3) of the Act by failing to appoint the Charging Parties to either the position of Field Training Officer (FTO) or Alternate Officer in Charge (AOIC) because of their activity on behalf of and support for the PBLC.

Charging Parties assert that the Village discriminated against them when it did not select them due to their active and visible support of the PBLC including serving as PBLC president and vice president. They further assert that the Village discriminated against them due to Gaw and Loudon's testimony before an arbitration panel and Gaw's testimony before the Board.

The Village contends that not selecting the Charging Parties for the positions was not based on union animus. The Village contends that even absent their union activity the Charging Parties would not have been selected for either the positions of FTO or AOIC. The Village argues that the Charging Parties were not chosen because they were not the most qualified candidates for the positions.

The issue in Case No. S-CA-05-039 is whether the Village violated Sections 10(a)(1), (2), and (3) of the Act by suspending Chris Loudon because of his activity on behalf of and support for the PBLC. Loudon asserts that the Village discriminated against him by imposing a

⁵ Currently, the Metropolitan Alliance of Police, Lisle Police Officers, Chapter 87, is the collective bargaining representative of the Village's full-time peace officers below the rank of sergeant, having been so certified by the Board in February 2005. From May 1, 1998, to April 30, 2001, the certified bargaining representative for that unit was the Illinois Fraternal Order of Police Labor Council. From May 1, 2001, to April 30, 2005, the certified bargaining representative was the PBLC.

five day suspension without pay. He asserts this was due to his active status in the PBLC, his status as PBLC vice president, and his filing of the charge in Case No. S-CA-05-009.

The Village contends that the decision to suspend Loudon was not based on union animus. Rather, the Village contends that Loudon was suspended for violating Village policies in connection with an incident involving a flyer he posted on another's officer's locker. The Village contends that it had a legitimate, lawful reason to suspend Loudon and would have done so in spite of his union activity.

III. FINDINGS OF FACT

A. The FTO and AOIC Appointments

The Charging Parties are patrol officers with the Village of Lisle Police Department (Department). The Department employs 19 patrol officers. Gaw has been employed as a patrol officer with the Department since September 1993; Loudon since September 1996. The Charging Parties are members of the PBLC bargaining unit composed of full-time peace officers below the rank of sergeant. Since 1999, Gaw and Loudon have served as the PBLC president and vice-president, respectively.

Village patrol officers are eligible to take on specialty positions within the Department. The FTO and AOIC are two such positions. An FTO teaches newly hired officers during their probationary period how to enforce traffic and criminal laws. An FTO receives an annual stipend and one hour per day overtime for performing his or her duties. An AOIC acts as a supervisor on a shift if all three of his superior officers (watch commander, patrol sergeant, officer in charge) are not available. An AOIC receives an additional \$1 per hour when performing his or her duties.

In February 2004, Sergeant Ron Wilke sent an interoffice memo to all patrol officers indicating that the Department would be adding additional FTO positions. Applicants were told to contact their respective sergeant who would forward their application materials to Chief Michael Damico along with a "specialty position recommendation" sheet. On that sheet, the sergeant would mark "recommended" or "not recommended" along with an explanation of his or her decision. In April 2004, an opening became available for an AOIC position.

Meetings to Discuss the FTO Candidates

Four officers applied for the FTO assignments: Gaw, Loudon, Dennis Canik, and Dean Anders. Loudon and Canik's "specialty position recommendation" sheet were marked "recommended" by their immediate supervisor, Sergeant Wilke. Gaw was marked "not recommended" by his supervisor, Sergeant Robert Legg. Neither the Village nor the Charging Parties indicated whether Anders' sergeant marked his "specialty position recommendation" sheet "recommended" or "not recommended."

The Department held a meeting on April 7, 2004 to discuss the FTO applicants. Nine Department representatives were present at the meeting: Chief Damico, Chief Deputy James Kosatka, Watch Commander Sullivan, Watch Commander Pat O'Brien, Sergeant Flaherty, Watch Commander Dave Anderson, Sergeant Robert Legg, Sergeant Mark Lutz, and Sergeant Wilke. All four FTO applicants were discussed during the meeting.

The Department has developed no written guidelines or criteria that establish the qualifications to be an FTO. Instead, the longtime practice, which was followed at the April 7, 2004 meeting, is for the Department chief, commanders and sergeants to meet and discuss the FTO applicant. In doing so they consider a variety of factors including: work ethic, job performance, communication skills, job knowledge, motivation, ability to act as a role model,

and their own individual feelings, knowledge, and understanding of the suitability of a particular patrol officer to be an FTO. Though one factor considered is whether an FTO candidate has a clean disciplinary record officers have been appointed FTO's even after being disciplined.⁶ At the time of the selection of the FTO and AOIC positions, neither Loudon nor Gaw had received any suspensions.

Neither Gaw's role as PBLC president, Loudon's role as vice president nor their activities on behalf of the PBLC in general were discussed during the April 7, 2004 meeting. Ultimately, Officer Anders was unanimously selected for the FTO position.

Meeting to Discuss the AOIC Candidates

Following the April 7, 2004 FTO meeting, Watch Commander Flaherty, Watch Commander Anderson, and Chief Deputy Kosatka met to discuss the AOIC position. Loudon, Gaw, and Officer Wise were considered for their same shift.⁷ At the meeting Loudon's role as PBLC vice president and Gaw's role as president were not discussed. There was discussion over Loudon's "bad" attitude; that being the controversy he would stir up between officers and his general negativity toward the Department. Watch Commander Anderson was primarily responsible for making the recommendation. He recommended Officer Wise. Flaherty and Kosatka agreed. Their recommendation was passed onto Chief Damico who agreed with their recommendation.⁸ Officer Canik was chosen as the AOIC for another shift.

⁶ Though Chief Deputy Kosatka testified that for an officer to be appointed an FTO position he must not have been disciplined Kosatka also admitted that some officers appointed FTO's had previously been disciplined. Respondent's Exhibit 50 is a list of police department suspensions for the years 1995-2006. Officers Dempsey, Fitzgerald, and Munson had all served suspensions and then later were appointed to FTO and/or AOIC positions. Munson and Dempsey have never held union office. Fitzgerald at one time held PBLC office as Sergeant at Arms.

⁷ The Village contends that Wise was most qualified for the AOIC position and he has consistently ranked higher than the Charging Parties on his performance evaluations and self-initiated activities.

⁸ The description of the AOIC meeting is primarily based on Anderson's testimony. He also testified that appointment as an AOIC has never been based on seniority.

Gaw's Department Work History

While employed at the Department Gaw has held various specialty positions including evidence technician, firearms instructor, juvenile officer, breath test operator, and accident reconstructionist. Since becoming president of the PBLC, he has also been selected as a member of the Special Response Team. Gaw was initially chosen as a firearms instructor in 1995 but in 2000, he was removed from that position.⁹

Gaw's 2002-2003 performance evaluation was conducted by Sergeant Legg.¹⁰ For 2000-2001, 2001-2002, and 2002-2003, Gaw has received an overall "meets standards." For each evaluation, Gaw has included a written statement objecting to the merit system and what he sees as its discrepancies and flaws. He has also objected to some of the ratings he has received. In Gaw's 2002-2003 performance evaluation, Legg stated that "John [Gaw] meets standards, but could improve if he would increase his efforts in the work volume category." (RX 15) In describing ways Gaw could improve, Sergeant Legg wrote "John [Gaw] should endeavor to complete items in each of the work volume categories each work day and reach toward expanding those goals throughout the coming evaluation period. In addition, he should strive for no tardies this ratings period." (RX 15)

At the April 7, 2004, meeting where the FTO promotion decision was made, Gaw's position as firearms instructor was reinstated. During the meeting Gaw's expertise on matters of evidence, firearms, and the technical issues of police work were identified as factors supporting

⁹ Gaw filed an unfair labor practice charge when this position was taken away asserting that it was due to his union activity. The Village stated that it was taken away due to the fact that he was not writing enough traffic tickets. The charge was later withdrawn.

¹⁰ The Department's Officers Evaluation System is used to determine the merit pay step that will be earned by an officer. For each category of the performance appraisal, officers are rated as either exceeds standards, meets standards, or below standards. Officers also receive "specialty" points for specialty assignments, adding to their overall evaluation score. Officers are given their overall score and told whether they exceed, meet, or are below standards.

his selection as an FTO. The negative factors mentioned included his lack of self-initiated activities and his poor communication skills. Gaw's FTO application was marked "not recommended" by his supervisor, Sergeant Legg.¹¹ On the application, Legg described what he saw as Gaw's benefits as well as his concerns with him holding the position. Legg wrote:

John's benefits are that he is a detail-oriented individual, who gives his fullest attention to assigned tasks as well as being meticulous in his assigned specialties. His background in the military included the training of subordinates in weapons usage, as did his previous duties as a firearms instructor here with the PD. My concerns with John are that his personal views could be transmitted through his actions and words to a trainee, and that those are contrary to department philosophy as well as his lack of personal compliance with departmental goals. I have spoken with John about his views regarding the evaluation system, and he has assured me he can put aside his personal feelings and not transmit those to trainees. While John does not necessarily follow the status quo, he can be relied upon to follow through on an assignment until completion. It is with those reservations that I forward this application. (RX 7)

Loudon's Department Work History

Loudon has held a number of specialty assignments including evidence technician, bike officer, breathalyzer operator, gang specialist, and juvenile officer. In 2000, Loudon was removed from his evidence technician position allegedly for improperly storing evidence locker keys in his personal locker and street patrol bag. Loudon was also removed from consideration for a detective position due to this incident. Loudon was later reinstated as an evidence technician in 2003.

Loudon received a "meets standards" rating for the evaluation years 2000-2001 and 2001-2002. For 2002-2003, he received an "exceeds standards." (RX 18) Sergeant Wilke conducted Loudon's 2002-2003 evaluation. In the evaluation, Sergeant Wilke stated that

¹¹ A week after Gaw submitted his FTO application Legg told Gaw that he had recommended Gaw for the position. Gaw further testified that he did not know his application was marked "not recommended" until shortly before this hearing.

“Officer Loudon has been consistently prompt for work during this evaluation period. He has been reinstated as an Evidence Technician, and has completed several excellent processing assignments. He works very diligently to perform his work whether it be patrol duties, or bicycle patrol.” (RX 18) In describing ways Loudon could improve, Sergeant Wilke stated, “Officer Loudon can put more effort into his work volume specifically in the area of traffic enforcement. He can continue to keep his supervisor apprised of all issues that need supervisory assistance.” (RX 18)

In considering Loudon's application at the April 2004 FTO selection meeting, Loudon's improper handling of evidence in 2000 and his poor judgment in other areas of police work were discussed.¹² There was also a discussion about Loudon's negative attitude toward the Department and the controversy he would stir up between officers. That discussion included comments Loudon had made about the Department including the “chief sucks” and how Loudon “hates the department.”¹³

Sergeant Wilke checked “recommended” on Loudon's application, but stated that he thought that Anders would make a better FTO. On Loudon's application, Sergeant Wilke wrote:

Chris has performed well in the past year since I have had to supervise him. He is motivated to perform his duties and received an exceeds standards rating his last evaluation. He has served as an instructor for evidence related training, and offers help to new employees who are not experienced in all fields of law enforcement.
(RX 6)

¹² The discussion included Loudon's storing of evidence locker keys in his personal locker and street patrol bag, holding controlled substance evidence in his mailbox instead of properly dropping it into evidence containers, performing a garbage pull without proper authorization, and not following procedure in regard to consent searches. Loudon however was never disciplined for these incidents and they were never reduced to writing.

¹³ At the hearing Loudon testified that “have I been negative about different aspects, whether it's the evaluation, the way certain things are run there – have I been negative, I'm sure I have. I mean, I know I have.” (TR 390-391) In regard to the last round of negotiations, Loudon testified that he was “definitely frustrated”, but that he was not more negative than usual while at work. (TR 392)

Gaw Meeting with Kosatka

After Gaw found out that he was not selected for either the FTO or AOIC position, he met with Kosatka to discuss the decision. There is conflicting testimony as to what was said during this meeting.

Gaw testified that Kosatka said he had not been chosen for the FTO or AOIC positions because of his “past union activity” and that “management was concerned that my loyalties would lie with the [PBLC] as opposed to the Village because I was the president of the union.” (TR 122). Gaw also testified that Kosatka further stated that “if there was an important decision to be made on the road by an officer in charge, that [Gaw] could not make a good decision” and that Gaw was not chosen for the position because of his vocal opposition to the Department's ticket quota system. (TR 122) Gaw also asserts that Kosatka told Gaw “that my beliefs and the press statements that I had made on behalf of the [PBLC] could be transmitted to a new and impressionable recruit and that that would be bad for the Village” (TR 122). Kosatka also referred to a handbill that Gaw had passed out to new recruits stating that the “content of that letter and the things said in it would be considered disloyal to the Department and that based upon my beliefs, that could be transmitted to new recruits.” (TR 123)

Kosatka testified that at the meeting he talked to Gaw “about self-initiated work and – where he needs to be able to – you know, improve upon that area” (TR 794) and Gaw’s reluctance to enforce traffic laws. Kosatka admitted that he referred to the handbill that Gaw had passed out to new recruits telling Gaw that “I felt that was undermining the police department’s efforts in trying to hire new people.” (TR 794) Though Kosatka had not seen the handbill at that time, based on rumors that he had heard about it he understood it to be negative. The first time Kosatka actually saw the handbill was in preparation for the instant hearing.

Loudon's Meeting with Wilke

On or about April 16, 2004, Loudon met with Sergeant Wilke to discuss why he had not been selected as an FTO. Loudon testified that Wilke said that "basically the Department was concerned that I would express negative views to the recruits; and he [Wilke] even mentioned that because there were some contentious negotiations during the last contract round, that he was concerned that that would be transmitted to the new officers." (TR 303).

Wilke testified that he told Loudon about concerns with integrity, evidence processing, and garbage pulls as well as Loudon's negative attitude. Wilke testified that "as far as the negative remarks and negative comments and general about the – and specifically I said during the time period of the last PBLC negotiations about two years prior or so."¹⁴ (TR 717) Wilke testified that Loudon replied "you cannot hold that against me because – you can't not select me because I'm a union officer." to which Wilke responded "I'm not talking about the union. I'm specifically talking about a time period a couple years prior to when we were picking the FTOs here." (TR 718).

Anders' Department Work History

Officer Anders has worked for the Department since 1997. Neither Respondent nor the Charging Parties indicated whether Ander's application for the FTO position was marked "recommended" or "not recommended."

Officer Anders received an "exceeds standards" for 2000-2001 and 2001-2002. With his 2000-2001 evaluation, completed by Sergeant Milewski, Anders included a comment that he believed the "Village's method of evaluating an employee's attendance record is not a fair or

¹⁴ The last round of PBLC negotiations went to arbitration during which Loudon testified in support of PBLC's attempt to replace the Department's merit system. When Wilke was asked at the instant hearing if it was his intention to tell Loudon that his conduct during the PBLC negotiations was the reason he wasn't selected as FTO, Wilke answered that "it was my intention just to reference a time period of the couple years prior to this – prior to the selection process." (TR 718)

accurate method of evaluation.” (CPX 36) Sergeant Lutz conducted Anders’ 2002-2003 performance evaluation in which he received a “meets standards” rating. In this evaluation, Sergeant Lutz stated:

Dean has slowed down in his self-initiated activity from previous periods. Dean is a well-rounded officer, who can be counted on to perform well in any situation. Dean has improved greatly as an evidence technician over the course of the year, and is very thorough in these duties. Dean is beginning to show interest in several specialty positions (FTO, SRT), and is an asset to the department. Dean can be relied upon to exercise sound judgment and handle even the most difficult situations without direct supervision. (RX 9)

In describing ways Anders could improve, Sergeant Lutz wrote, “Dean should increase his self-initiated field activity to the level where it had been in previous rating periods. Dean has the intelligence and capability of handling additional responsibilities and should continue his interest in specialty positions to further his career.” (RX 9).¹⁵

Officer Wise's Department Work Record

Officer Bill Wise has worked for the Department since 1999. Wise received an “exceeds standards” rating for his 2000-2001, 2001-2002, and 2002-2003 evaluations. Sergeant Legg conducted Wise’s 2002-2003 performance evaluation. With this evaluation, Legg wrote, “Bill is an exceeds standards officer and should be expected to continue toward higher goals as he furthers his career within the department.” (RX 3) In describing ways Wise could improve, Legg wrote, “Bill needs to continue his enthusiasm for the job, while tempering it with his continued efforts to become more broad based in his delivery of services to the community.” (RX 3).

¹⁵ At hearing, Lutz testified that Anders was a better-rounded candidate than Loudon and also the most qualified. Kosatka testified that Anders was a self-starter, motivated, positive, and very enthusiastic.

Officer Canik's Department Work History

On Canik's application for the FTO position, Sergeant Wilke checked "recommended" and wrote:

Dennis has a variety of experience which could be applied to a Field Training Experience. He has served as a Detective, and has also been an instructor on subjects such as CPR and Bicycle Patrol. His attitude since returning to patrol duties has been very positive, and he appears motivated to perform his job. Dennis also has good relationship skills, and gets along well with other employees. (RX 5)

Canik received an "exceeds standards" rating for the evaluation years 2000-2001, 2001-2002, and 2002-2003. Watch Commander Anderson conducted Canik's 2002-2003 evaluation. In the evaluation Anderson stated that "Canik is an excellent detective who consistently does great work. He assists others in many different ways. He frequently creates line ups and other technical assistance to other officers. Canik operates and cares for all the technical equipment." (RX 12) In describing ways Canik could improve, Anderson stated, "Canik could be more consistent in his work habits. He goes through peaks and valleys in his work production. Overall he is a high producer." (RX 12).

Performance Evaluation Scores 2000-2003

The table below shows annual evaluation scores for the years 2000 through 2003 of five Department officers: Anders, Gaw, Loudon, Wise, and Canik.

Review Period	Anders	Gaw	Loudon	Wise	Canik
2000-2001	83.651	69.0	58.0	78.274	88.000
2001-2002	79.966	68.0	64.0	81.282	83.000
2002-2003	77.124	76.746	79.582	81.667	83.000
Average	80.247	71.249	67.194	80.408	84.666

In order to receive a “meets expectations” rating on their performance evaluations, the Department requires patrol officers to issue a certain number of traffic citations.¹⁶ The minimum number of required traffic citations to receive a “meets expectations” was 237-296 in 2001, 237-296 in 2002, and 237-295 in 2003. Gaw issued 49 in 2001, 49 in 2002, and 57 in 2003. Loudon issued 198 in 2001, 208 in 2002, and 187 in 2003.¹⁷ (RX 21) Gaw had the lowest number of traffic citations for 2001, 2002, and 2003 but not the lowest arrest totals for any of those same years. Loudon had the second lowest number of traffic citations for 2001 but he was not the lowest or second lowest for 2002 and 2003. He did not have the lowest arrest totals for 2001, 2002, or 2003.

Gaw and Loudon have been vocal opponents of respondent's minimum performance requirements with respect to traffic enforcement and have objected to an officer's salary being based on the number of traffic citations he or she issues. Kosatka believes that traffic stops are important because they lead to other arrests which, in turn, are then considered to be self-initiated activity. Traffic stops are also used to train new recruits and teach them how to deal with the public.

The Handbill Incident

Around June 2002, Gaw placed PBLC handbills on the cars of patrol officer applicants. The handbill, which was written by Gaw, discussed the “bitter labor dispute” that the PBLC and the Village were currently engaged in. The handbill stated:

¹⁶ The Village averages the overall number of traffic citations issued by each officer. Each officer is then required to issue 50% of the average in order to receive a meets expectations rating. An officer's performance evaluation rating determines his merit pay step increase.

¹⁷ Charging Parties argue that one of the Respondent's exhibits, a list of patrol officer traffic citation and arrest totals for 2001-2003, only included Respondent patrol officers who had higher citation numbers than Charging Parties. Because Charging Parties do not contend that officers with lower citation numbers were appointed FTO's or AOICs instead of Charging Parties I fail to see the relevance of Charging Parties' argument.

Upon being hired you may find (like we did) that much of what you were told at orientation was not true....Our officers are currently involved in a bitter labor dispute with the administration, and morale is at an all time low...We are currently in the process of interest arbitration... We are the lowest paid department in DuPage County...Our administration has been charged with committing Unfair Labor Practices. (RX 7)

The handbill also stated that if the candidate chose to become a Department police officer Gaw would “welcome you, and I will steadfastly fight for your rights and benefits; but before you consider employment with this department I feel you should know the truth that the administration is unwilling to tell...” (RX 7) Gaw was never disciplined or prosecuted criminally for distributing the handbill. Chief Damico did not physically see Gaw handing out the handbills, but remembered that they were placed on windshields.

Union Leaders who have been Promoted

The Village has a history of promoting union officers including: Chief Deputy Kosatka (former sergeant at arms), Sergeant O'Brien (former president and member of bargaining team), Watch Commander Anderson (former vice president and member of bargaining team), Sergeant Legg (former president and member of bargaining team), and Sergeant Simeral (treasurer).¹⁸ As a union officer, Kosatka never filed unfair labor practice charges, proceeded with interest arbitration, filed grievances or was an outspoken opponent of the Department merit system. As a union officer Anderson never filed any unfair labor practice charges, never proceeded with interest arbitration, and never attended board and fire or police commissioner meetings on behalf of the PBLC.

¹⁸ Counsel for the Village included the names and union officer position for all of these officers during its opening statement. Only the officers with a position next to their name were actually mentioned during testimony by sworn witnesses.

The Village has previously appointed PBLC officers to specialty assignments including Derice Pavoris (PBLC secretary appointed to Detective Division), Brett Lauten (PBLC treasurer selected as school resource officer), Dan Fitzgerald (sergeant at arms selected as FTO), and John Gaw (PBLC president selected as member of special response team and fire arms instructor). The record does not address whether any of these former PBLC officers ever filed unfair labor practices or testified at interest arbitrations.

B. Loudon's Suspension

In February 2004, the Department suspected prostitution was occurring at a local massage parlor. Patrol Officer S¹⁹ was sent in undercover to determine whether the masseuse would be willing to engage in sexual activity and then enter into an agreement for the sexual services and pay for them. Officer S had been hired in October 2003 and had completed his field training on June 15, 2004 and was assigned to the same shift as Loudon.

At the massage parlor, Officer S was to call for backup once payment was made for sexual services. The undercover operation did not go as planned which lead to Officer S being the target of jokes within the Department. For example, one Department officer referred to Officer S as "Quick Draw" when Officer S walked past him and at the annual Village festival²⁰, Chief Damico, in front of other Department officers, said Officer S had "copped a nut on the village dime."

In response to the prostitution sting incident, Loudon created a mock advertisement flyer for the massage parlor. The flyer had Officer S's photograph on it and text containing sexual innuendos referencing the undercover prostitution sting. Loudon had access to a photograph of

¹⁹ Given the circumstances described concerning this officer, I have decided not to divulge his name even though he no longer works for the Department.

²⁰ The Village of Lisle festival is officially called the "Eyes to the Skies Festival". It is held in a community park and includes balloon launches, carnival rides, bands, crafts, etc.

Officer S because he had been instructed to take photographs of all Department officers on his shift for use in Department publicity. Loudon showed the flyer to several officers including Sergeant Lutz Detectives Perrell and Pavoris and Officers Sommer, Gaw, Wise.

Loudon stated that when he showed Sergeant Lutz the flyer, Lutz laughed. Loudon told Sergeant Lutz that he thought it would be funny to put it up at the Village of Lisle festival. Lutz reportedly said, "I don't think that's a real good idea." Lutz testified that he told Loudon to not post the flyer anywhere believing that he was giving Loudon an order that to do so.²¹ Loudon did not end up posting the flyer at the festival but he did post it on Officer S's locker in the Department's men's locker room.²²

Around 12:30am on July 5, 2004, Officer S saw the flyer taped to his locker and called Watch Commander Anderson at home to tell him. Officer S allegedly told Anderson that the flyer offended him and that Officer S was concerned other officers and civilians may have seen the flyer. Officer S stated he did not want to become further involved in the incident but would like Anderson to investigate the matter fully. That same day Anderson called Chief Deputy Kosatka and Chief Damico to inform them of the situation and the next morning Damico told Anderson to conduct an internal affairs investigation. Officer S never filed a written complaint concerning the flyer.

On July 6, 2004, Kosatka and Anderson met with Officer S who stated that he was worried by the fact that he was voicing a complaint against a leader in the Department and that he felt betrayed that Loudon or another officer would create the flyer and show it to other officers and civilians. Officer S said he just wanted to feel comfortable at work and do his job.

²¹ Sergeant Lutz stated that Lisle is a small town and people would easily recognize Officer S on the flyer. Sergeant Lutz stated he was also concerned that the mayor or a Village trustee would see the flyer.

²² Loudon testified that he considered Officer S to be a friend and that they socialized together off-duty during which their conversations would often turn to matters of a sexual nature. Loudon says he never talked to Officer S after the flyer incident because he was told not to do so.

In a subsequent meeting with Damico Officer S told him that he was strongly considering resigning from the Department and was very concerned about his girlfriend and family finding out about the incident.

Watch Commander Anderson began his internal affairs investigation into the flyer incident on July 5, 2004. Anderson interviewed Officer S, Loudon, Fitzgerald, Perrell, Sommer, Gaw, Mayerhofer, Wise, Bowes, Pavoris, Venice, Munson and Sergeant Lutz. Nine of the officers agreed to make written statements.

Anderson's report of his investigation states that Perrell told him that during roll call while working the Village festival on July 1, 2004, Munson made a joke that they should send Officer S over for a massage at the hand massage spa booth. Perrell reported that several officers including some of the command personnel laughed at the comment. On July 3, 2004 Perrell said that Loudon approached him, Fitzgerald, and Canik and showed them the flyer. Loudon told them he already gotten approval from the spa booth operator at the Village festival to hang the flyer as a joke. Canik told him not to hang it and Fitzgerald agreed. Loudon asked Perrell to hang it instead and he said no.

Loudon also showed the flyer to Sommer. Sommer thought the flyer was hysterical but advised Loudon not to show it to anyone or post it because it would embarrass Officer S. Sommer stated that he did not get the impression that Loudon was trying to hurt Officer S by the flyer. Rather, he believed it was meant to be a practical joke. Gaw was also present at that time and Loudon showed him the flyer.

Mayerhofer saw the flyer on July 3rd when Loudon showed it to Officer Venice in the parking lot. Officer Anders was also present. Loudon reportedly said that he could not make fun

of Sergeant Johnson anymore now that he was a sergeant so Officer S was the next person to have fun with.²³

On July 4th, Loudon showed Wise the flyer and Wise laughed. Wise told Anderson he never saw the flyer posted on Officer S's locker and believed the flyer was a joke intending to tease a new officer and not done in a malicious manner. Wise also reported that numerous officers at the Village festival were laughing about the incident with Officer S but not in Officer S's presence.

Bowes stated to Anderson that he never heard Lutz order Loudon not to post the flyer but only heard Lutz say that he would not put it up if he were Loudon and did not think it was a good idea to post it. Bowes told Anderson that the whole thing was "stupid" and he felt the administration might be "trying to mess" with Loudon. (RX 38)

Pavoris told Anderson she only heard about the flyer while working at the festival and advised Loudon not to post it because he may get in trouble.

Munson reported to Anderson that Loudon had shown the flyer to him and Munson's wife and that Munson also saw the flyer posted on Officer S's locker. Munson stated he then contacted Officer S and told him to go to the locker room to see the flyer. After seeing the flyer, Officer S asked Munson to meet with him at which time Officer S appeared distraught and upset over the flyer. Munson advised him to notify Anderson if he wanted to report the incident.

During his investigation, Anderson was approached by some officers who had concerns with Loudon photographing material they had posted on their lockers. Anderson then told Loudon to stop his photography until further notice from the Department's legal counsel who subsequently advised Anderson that it was not appropriate for Loudon to be conducting his own

²³ In previous years Loudon had posted pictures at the Village festival making fun of Officer Johnson but was hesitant about using Johnson's picture this year since he had recently been promoted to Sergeant.

counter-investigation while on duty.²⁴ Loudon, at Anderson's direction, stopped taking photographs. At that point, Chief Damico told Anderson to remove any inappropriate or questionable items that officers had posted on mailboxes, lockers, or in the roll call room. On July 12, 2004 the Village received a copy of the unfair labor practice charge in Case No. S-CA-05-009 at which time the investigation into Loudon's conduct had already begun.

Loudon's Suspension

After finishing his investigation, Watch Commander Anderson reported his findings to Chief Damico and Chief Deputy Kosatka. Damico told him that he was going to seek discipline. On July 13, 2004, Damico served Loudon with notice requiring him to appear at 10 a.m. on July 22, 2004 for an administrative interview pursuant to the Peace Officer's Disciplinary Act.²⁵ After the administrative interview, Damico concluded that Loudon had violated the following Department rules and regulations: (1) General Order 96.006, "Arbitrary Discrimination", which prohibits unwelcome words or actions of a sexual nature; (2) Rule 300.49, which prohibits the posting or circulating of any notices of a non-official derogatory character; (3) Rule 300.09, which prohibits the misuse of Departmental resources and inattention to duty; (4) Rules 300.06 and 300.07, refusal to obey the order of Sergeant Lutz not to post the flyer anywhere; and (5) Rule 300.58, engaging in conduct unbecoming of a police officer and conduct that adversely affects the morale or efficiency of the Department for misrepresenting the reason for taking Officer S's picture and posting the flyer.

On August 11, 2004, Chief Damico served Loudon with a five day suspension dated August 9, 2004. Loudon appealed the suspension to the Board of Fire and Police

²⁴ Loudon maintains that the Village tried to stop him from preparing a defense to the charges against him.

²⁵ The S-CA-05-039 complaint alleged that the Village scheduled the administrative interview on this date due to Loudon's union activity and therefore was in violation of Section 10(a)(1). However, the Charging Parties do not make this argument in their post-hearing brief.

Commissioners, but eventually withdrew the appeal. On August 15, 2004, the Village served Loudon with a notice of a hearing to be held on September 1, 2004. On September 1, 2004, Loudon had been scheduled for a vacation.²⁶ Prior to this suspension, Loudon had never been disciplined or suspended.

Other Instances of Practical Jokes, Unauthorized Postings, and Sex Harassment

Gaw testified regarding Loudon's conduct that "we've seen these types of practical jokes and postings for many years throughout the Department, since I have been there, and we've never seen discipline for it, let alone this level of discipline." (TR 242) Gaw also stated that everyone in the department was making jokes about the Officer S case and no one else was investigated or disciplined for their behavior. Gaw further claims that it's common practice for new officers to be the butt of practical jokes that have involved sex. He gave an example of "cop cards" which are baseball cards that have a picture of a police officer's face on them. Gaw said it was a longstanding practical joke in the Department to place a cop card in an embarrassing location such as in and around urinals and toilets or on a picture of a woman's chest. Loudon testified that he was part of a group of officers that would tease then Officer Johnson with the cop cards at the Village festival but that they stopped teasing him when he became Sergeant Johnson and the joke "got old."

Some postings found during Watch Commander Anderson's investigation were the following: a flyer posted on Officer Jesse Marquez's mailbox that stated, "It's hard for me to

²⁶ The S-CA-05-039 complaint alleged that the Village scheduled the hearing on this date due to Loudon's union activity and therefore was in violation of Section 10(a)(1). However, the Charging Parties do not make this argument in their post-hearing brief. Further, the parties' joint stipulations state that the Board of Fire and Police Commissioner regularly scheduled meeting was already set for September 1, 2004.

concentrate with that hot cop Jesse staring at me” (CPX 48) and a flyer posted on Officer Pavoris’ mailbox that stated, “Officer B*#@H.” (CPX 48)

Within the Department other officers have also played practical jokes on each other that were of a sexual nature. One instance involved someone asking Officer S about Officer Jessie Marquez, and Officer S said “you mean the – one?” (making a reference to Marquez’s height and build). (TR 24) Marquez heard about the incident and was upset.

Roger Wanic, during his time as principal of the local high school, received complaints from school personnel about the conduct of a Department DARE officer working at the school sometime during the period of 1994-1996.²⁷ The complaint concerned the officer's inappropriate behavior towards female school personnel asking them personal questions such as "Are you married?" or "Do you have a boyfriend?" Wanic reported the problem to Chief Damico and a meeting was held with Wanic, Damico and then Assistant Chief Dennis Seccombe. Damico told Wanic he would investigate the situation but Wanic never heard anything more from either Damico or Seccombe. The DARE officer eventually became the liaison officer for the school, over the opposition of Wanic and the high school superintendent. Wanic was never asked to sign any formal complaint against the officer.

Other Suspensions at the Police Department

From 1995-2006, the following officers have received suspensions: Tim Demsey, 5 days for making a false police report; Brian Crile, 30 days for property damage/dui; Fitzgerald, 3 days for conduct unbecoming an officer; Jesse Marquez: 3 days for conduct unbecoming an officer; Munson: 10 days for conduct unbecoming an officer; Kuhn, 3 days for inattention to duty; Fornaro: 3 days for inattention to duty; Legg, 3 days for neglect of duty/incompetence;

²⁷ During the hearing, the officer was referred to as “Officer A.”

Legg, 10 days for neglect of duty; and Sergeant Lutz, 1 day for neglect of duty. None of these individuals were PBLC officers.

IV. DISCUSSION AND ANALYSIS

The first issue in this case is whether the Village violated Sections 10(a)(1), (2), and (3) of the Act by failing to select Charging Parties John Gaw and Chris Loudon for the Field Training Officer position and/or Alternate Officer in Charge position. The second issue is whether the Village violated Sections 10 (a) (1), 10(a)(2) and (1), and 10(a)(3) and (1) of the Act by issuing a suspension to Charging Party Loudon because of his union activity and/or in retaliation for testifying during an arbitration proceeding or a Board hearing.

Section 10(a)(1) prohibits an employer or its agents from interfering with, restraining, or coercing employees for exercising their rights guaranteed under the Act.²⁸ Section 10(a)(2) prohibits an employer or its agents from discriminating in regard to any term or condition of employment in order to encourage or discourage membership or support for any labor

²⁸ Section 10 of the Act states in relevant part:

(a) It shall be an unfair labor practice for an employer or its agents:

(1) 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 or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(2) to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization. Nothing in this Act or any other law precludes a public employer from making an agreement with a labor organization to require as a condition of employment the payment of a fair share under paragraph (e) of Section 6;

(3) to discharge or otherwise discriminate against a public employee because he has signed an affidavit or filed an affidavit, petition or charge or provided any information or testimony under this Act

organization. Section 10(a)(3) prohibits an employer or its agents from discharging or otherwise discriminating against an employee because that employee has signed or filed an affidavit, petition or charge or provided any information or testimony in furtherance of the rights guaranteed by the Act.

Section 10(a)(1) does not generally require proof of illegal motive. However, when an employee alleges adverse employment action in retaliation for engaging in protected activity, the motivation of the employer must be examined using the framework applied in Section 10(a)(2) claims. County of Jersey, 7 PERI ¶2023 (IL SLRB 1991), aff'd by unpublished order County of Jersey v. Illinois State Labor Relations Board, 8 PERI ¶4015 (4th Dist. 1992); Chicago Housing Authority, 6 PERI ¶3013 (IL LLRB 1990).²⁹

To establish a violation of 10(a)(2) a charging party must prove by a preponderance of the evidence that (1) an employee engaged in union or protected, concerted activity; (2) the respondent had knowledge of such activity; (3) the respondent took an adverse employment action against the employee; and (4) such action was based in whole or in part on union animus or that the employee's protected conduct was a substantial or motivating factor in the adverse action. City of Burbank v. Illinois State Labor Relations Board, 128 Ill.2d 335, 345 (1989). These same steps are followed with respect to alleged violations of Section 10(a)(3) except that under Section 10(a)(3) the motivation for the alleged adverse action is the charging party's participation in or use of the Board's regulatory function or procedures rather than Section 10(a)(2)'s focus on union activity. Village of Lisle, 24 PERI ¶53 (IL LRB-SP 2008), citing Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990).

²⁹ The complaint issued in Case No.-CA-05-039 alleges an independent violation of Section 10 (a)(1) of the Act. However, because the complaint alleges that the Village's suspension of Loudon was in retaliation for his union and/or protected, concerted activity as well as his exercise of other rights guaranteed by the Act, there can be no independent violation of Section 10(a)(1). City of Elmhurst, 17 PERI 2040 (IL LRB-SP 2001). Instead, there can only be derivative violations of Section 10(a)(1) upon a finding that the Village violated Sections 10(a)(2) and/or (3).

The employer's unlawful motive may be inferred by direct or circumstantial evidence, including an employer's expressed hostility toward unionization; proximity in time between the union activity and the adverse action; a pattern of targeting those engaging in union activity; disparate treatment of union employees and other employees; shifting explanations for the adverse action; and inconsistency in the reasons given for its actions against a charging party as compared to other actions of the respondent. City of Burbank, 128 Ill. 2d at 345-46. However, mere proximity in time between the protected activity and the alleged adverse employment action is not, by itself, sufficient to support an inference that an employer's actions were unlawfully motivated. City of Kewanee, 23 PERI ¶110 (IL LRB-SP 2007); Village of Lisle, 24 PERI ¶53, citing Metropolitan Sanitary District, 2 PERI ¶3012 (IL LLRB 1986). Direct admissions by an employer that a discharge was related to union activity will establish illegal motive. Village of Lyons, 5 PERI ¶2007 (IL SLRB 1989), citing NLRB v. Armstrong Circuit, Inc., 462 F.2d 355 (6th Cir. 1972).

If a charging party establishes the prima facie elements of a violation of either Section 10 (a) (2) or (3), the burden of proof shifts to the respondent to demonstrate by a preponderance of the evidence that it had a legitimate business reason for the adverse employment action and that it would have taken the same action notwithstanding the employer's unlawful animus. City of Burbank, 128 Ill. 2d at 346. However, merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden. Id. It must also be determined whether the employer's reasons are bona-fide or pretextual. Id. If the reasons offered are a mere litigation figment or were not relied upon, then the reasons offered will be determined to be pretext and the inquiry is over. Id. If an employer advances legitimate reasons for the action and relied upon them in part, the case is one of "dual motive" and the employer must demonstrate by a

preponderance of the evidence that it would have taken the adverse action notwithstanding the employee's exercise of his or her protected rights under the Act. Id. at 346-47.

A. S-CA-05-009

Regarding the Charging Parties' appointment as an FTO or AOIC, there is no dispute that Gaw and Loudon were (1) engaged in union and protected, concerted activity, (2) the Village was aware of that activity, and (3) the Charging Parties' failure to be appointed to such positions were adverse employment actions. The only remaining issue is whether the Village did not select the Charging Parties because of union animus .

There is no direct evidence that the Village had an unlawful motive for not selecting Loudon or Gaw for the FTO and AOIC positions. During the meeting held to appoint an AOIC neither Gaw's role as PBLC president nor Loudon's role as vice president were discussed. Watch Commander Anderson admitted that there was discussion over Loudon's bad attitude in that he would stir up controversy between officers and had a generally negative attitude about the Department. However, this discussion is unpersuasive as direct evidence of union animus. This is particularly true given Loudon's admission that he in fact had a negative attitude about the Department and the absence of evidence that the remarks about his attitude and propensity to stir up trouble are a veiled reference to his union activity.

During Loudon's meeting with Sergeant Wilke after the FTO appointment was made, Loudon alleges that Wilke referenced Loudon's negative attitude and specifically the last PBLC negotiations. One cannot conclude that this remark reveals Wilke's animus towards Loudon's union activity when it was Wilke who gave Loudon an "exceeds expectations" rating for his 2002-2003 evaluation and marked Loudon's application for the FTO position "recommended." Even if Wilke's remarks were taken as evidence of union animus, there is no proof that his union

animus was communicated to others involved in the FTO or AOIC selection or tainted that process. Wilke was not even present at the AOIC selection meeting nor was he the final decision maker for either the FTO or AOIC positions.

There is conflicting evidence about what was said during Gaw's meeting with Chief Deputy Kosatka after the FTO and AOIC appointments were made. Gaw stated that Kosatka mentioned Gaw's "past union activity" and the handbill he passed out to new recruits; a claim that Kosatka denies. Charging Parties have the burden of proof in this matter and with no independent evidence to support Gaw's assertion that Kosatka mentioned Gaw's union activity I cannot credit Gaw's testimony. With respect to the handbill the Village argues that it was not protected activity because it violated a Village ordinance and disparaged the reputation of the Village. Even if this were true, Gaw was engaged in other protected activity that the Village was aware of. Similarly even if it could be proven that Kosatka harbored union animus, there is no proof that his union animus tainted the whole promotion process or that his feelings were communicated to others. Eight other Department representatives were involved in making the FTO selection. Three others were involved in making the AOIC selection, and Watch Commander Andersen testified that he was primarily responsible for making that recommendation.

In regard to circumstantial evidence of unlawful motive, it should be noted that Gaw and Loudon are continually engaged in union activity and/or related Board activity. Thus, there is proximity in time between that activity and the complained of action. However, as stated previously, the Board has held that mere proximity in time is insufficient proof that an employer's conduct was motivated by union animus. Village of Lisle, 24 PERI ¶53. Charging Parties maintain that in addition to timing there is proof of disparate treatment in the appointment

of the FTOs and AOICs as evidenced by Kosatka's testimony that one of the criteria for being selected as an FTO is a clean disciplinary record. Charging Parties assert that at least three other officers, Dempsey, Fitzgerald and Munson, had been disciplined but were still appointed as FTOs. This fact might have some significance if at the time they were being considered for an FTO position Loudon and Gaw had prior discipline. Such is not the case as neither Gaw nor Loudon had any disciplinary record. The same is true of Officers Anders, Wise and Canik who were appointed as FTO's or AOICs instead of Gaw or Loudon. These facts simply do not evidence any disparate treatment accorded Gaw or Loudon on the basis of their having been disciplined. The Charging Parties note that Officer Dempsey and Officer Munson had never held union office at the time they were appointed FTO's. Officer Fitzgerald however was a Sergeant at Arms for the PBLC when he was appointed as an FTO.³⁰ For these reasons, the record does not support Charging Parties' contention of disparate treatment.

The Village argues that even absent their union/protected, concerted activity the Village still would not have selected Gaw or Loudon as FTOs or AOICs as the most qualified candidates were Officer Wise and Officer Anders. The Village asserts that Wise and Anders consistently ranked higher than Gaw or Loudon on their performance evaluations and outperformed them on self-initiated activities like arrests and traffic tickets. The Village maintains that Gaw has chosen to "flaunt" the Village's performance standards and therefore has not performed at the same level as other officers. The Village argues that Loudon has a "checkered work history" involving his handling of evidence and that he had also been warned about integrity issues.

The Charging Parties argue that the Village's argument regarding traffic tickets and "self-initiated" arrests is pretextual. The Charging Parties contend that the traffic citations and arrest

³⁰ Neither the Village nor the Charging Parties presented any evidence about whether other PBLC officers who had received specialty appointments ever filed unfair labor practice charges, proceeded to interest arbitration, attended Village board meetings or, in general, were as active in their representation of PBLC's interests as Gaw and Loudon.

totals the Village provided were not a full comprehensive list of all the Department officers which, if provided, would have shown officers with lower numbers than Gaw and Loudon. Even if true this does not alter the central fact that the officers chosen for FTO or AOIC instead of Charging Parties had higher citation and arrest totals than Gaw and Loudon. That other officers may have had lower totals than Charging Parties is also simply irrelevant since it has not been shown that these officers were appointed as FTOs or AOICs.

The Charging Parties also claim that the Village's argument regarding Loudon's "trust" and "judgment" issues is pretextual. Charging Parties first note that Loudon's most recent performance evaluation conducted by Sergeant Wilke stated he had a positive attitude. More to the point, Charging Parties claim that the Village's alleged proof of Loudon having "trust" and "judgment" issues is based on an incident in 2004 concerning a consent to search issue that was never documented and for which he was never disciplined while other incidents cited by the Village occurred in 2000. There being no evidence that the Village failed to evaluate other FTO/AOIC candidates in the manner it evaluated Loudon the record does not demonstrate that the Village's concern over Loudon's alleged "trust" and "judgment" issues is pretextual. A similar conclusion must be drawn with respect to Charging Parties' claim that the Village's reliance on the handbill incident involving Gaw is pretextual. The lack of record evidence that the Village limited consideration of the conduct of other FTO/AOIC candidates to a shorter time frame undercuts Charging Parties' pretext argument.

B. S-CA-05-039

With respect to the complaint concerning Loudon's suspension the only element at issue is whether the Village's decision to issue that suspension was motivated by union animus or in retaliation for Loudon's having filed an unfair labor practice charge. The Village argues that

Loudon has not presented any evidence that Chief Damico issued the suspension because of Loudon's union activity or any other evidence that the suspension was motivated by union animus or in retaliation for other activity protected by the Act. The Village argues that their reasons for disciplining Loudon are "clear and undisputed" as he himself admitted having engaged in misconduct which elicited a complaint of sexual harassment from a fellow officer.

In addition to his suspension being issued contemporaneously with his union and Board-related activity, Loudon asserts that there is a pattern of the Village disciplining Department officers who are engaged in union activity while those not so engaged not disciplined. Loudon claims he received a five day suspension for an unauthorized posting on Department premises, a common practice throughout the Department without any disciplinary consequences. Loudon also argues that he was the only person investigated and disciplined for the incident involving Officer S even though other officers had made jokes about the incident. Loudon asserts that the investigation proceeded at an "unheard of speed." Loudon compares his treatment to the Department's failure to investigate and/or discipline a Department DARE officer accused of making inappropriate comments to female staff members while he was on duty at a local school. For the following reasons, Loudon's claim of disparate treatment is unpersuasive.

Unlike Loudon's posting on Officer S's locker the other unauthorized postings were not sexual in nature³¹ and were posted by employees in or on their own mailboxes or lockers as opposed to being placed there by someone else. Of these other postings one that could be considered sexual or offensive is the sticker Officer Pavoris placed on her own locker that referred to herself as "officer b*#@h." At the time the photograph of Pavoris' posting was taken, she was an officer of the PBLC. Additionally, the Village has a history of disciplining Department personnel who are not union officers. In specific reference to suspensions, in the

³¹ Charging Parties stipulated that these other postings and photographs were not sexually offensive.

past ten years the Department has suspended eleven officers with some being given longer suspensions than Loudon and Loudon being the only one holding union office. There is also no record evidence of any posting, other than Loudon's, being the subject of a complaint to Department command personnel by another officer. As for Loudon's comparison to the DARE officer, Damico did have a meeting about the matter with the school superintendent during which Damico said he would investigate the situation. The record is silent on whether or not Damico did so but in any event no formal complaint was filed against the DARE officer by the school superintendent or a school staff member.

Loudon argues that the Village's version of events leading up to the five day suspension is not consistent. Loudon notes the fact that Chief Damico ordered an internal affairs investigation even though Officer S never filed a written complaint and that Officer S stayed on the same shift as Officer Loudon for 30 days after Officer S's complaint about the flyer. However, Loudon has failed to show that the submission of a written complaint was either required or the established practice before Damico would order an internal affairs investigation. Moreover, Loudon fails to demonstrate any connection between Officer S staying on Loudon's shift and any union animus on the part of the Village. As for Loudon's assertion that Lutz never ordered him not to post the flyer the record evidence is inconclusive on that issue as Lutz disagrees with Loudon on this point. Even if Loudon is correct, he was disciplined for other violations of Department rules in addition to failing to obey a direct order. For all these reasons, Loudon has failed to establish that the Village was motivated by union animus in issuing him a five day suspension.

Regarding the allegation that Loudon's suspension was in retaliation for his having filed the unfair labor practice charge in Case No. S-CA-05-009, Loudon supports that claim with

evidence that his administrative interview with Damico was ordered one day after Gaw and Loudon filed that charge. Damico, however, testified that he was not aware of the charge when he ordered a formal interrogation of Loudon's conduct concerning the flyer related to Officer S and there is no evidence to the contrary. Moreover, as Gaw admitted, at the time the Charging Parties filed the charge in Case No. S-CA-05-009 Gaw was already aware that the investigation into Loudon's conduct had already begun. Therefore, as even Gaw testified, the filing of the charge could not have been the motivation for the Village's investigation into Loudon's conduct.

I find Charging Parties have failed to establish by a preponderance of the evidence that the Village's decision to investigate Loudon's conduct regarding the flyer as well as his subsequent suspension were motivated by union animus or his having filed an unfair labor practice charge.³²

V. CONCLUSIONS OF LAW

- 1) Respondent, Village of Lisle, did not violate Section 10(a)(2) and (1) of the Act, when it failed to appoint John Gaw and Chris Loudon to the specialty positions of Field Training Officer or Alternate Officer in Charge.
- 2) Respondent, Village of Lisle, did not violate Section 10(a)(2) and (1) or Section 10(a)(3) and (1) of the Act when it issued a five day suspension to Chris Loudon.

³² Because Charging Parties have failed to establish a prima facie violation of Section 10 (a) (2) and (1) or Section 10 (a) (3) and (1) of the Act I need not consider whether the Village would have investigated and suspended Loudon in spite of his union activity or his having filed an unfair labor practice charge.

VI. RECOMMENDED ORDER

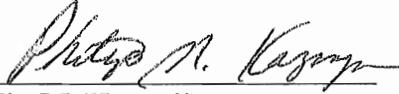
IT IS HEREBY ORDERED that the complaints issued in Case No. S-CA-05-009 and S-CA-05-039 be dismissed.

VII. EXCEPTIONS

Pursuant Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions 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 on this day 21st of September, 2011.

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

A handwritten signature in cursive script, reading "Philip M. Kazanjian", written over a horizontal line.

**Philip M. Kazanjian
Administrative Law Judge**

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

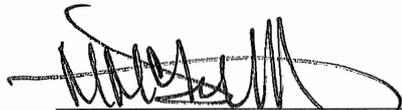
John Gaw and Chris Loudon,)	
)	
Charging Party)	
)	
And)	Case Nos. S-CA-05-009
)	S-CA-05-039
Village of Lisle,)	
)	
Respondent)	

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 21st day of September, 2011, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

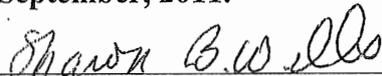
Mr. Richard J. Reimer
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Mr. Benjamin E. Gehrt
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Melissa L. McDermott, HLRB

SUBSCRIBED and SWORN to
Before me this 21st day of
September, 2011.



NOTARY PUBLIC

