

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

Oak Lawn Professional Firefighters Association, Local 3405, IAFF)	
)	
Charging Party)	
)	
and)	Case No. S-CA-08-271
)	
Village of Oak Lawn,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On May 7, 2008, Oak Lawn Professional Firefighters Association, Local 3405, IAFF (Charging Party or Local 3405) filed a charge in Case No. S-CA-08-271 with the State Panel of the Illinois Labor Relations Board pursuant to the Illinois Public Labor 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 Oak Lawn (Village or Respondent) had violated Section 10(a)(2) and (1) of the Act. The charges were investigated in accordance with Section 11 of the Act and, on June 19, 2008, the Executive Director of the Board issued a Complaint for Hearing.

A hearing was held on November 6, 12, 13, and 19, and December 3, 4 and 17, 2008, 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. 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 stipulated, and I find, the following:

1. At all times material herein, the Village has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material herein, the Village has been a unit of local government and is subject to the jurisdiction of the Board's State Panel, pursuant to Sections 5(a) and 20(b) of the Act.

3. At all times material herein, Local 3405 has been a labor organization within the meaning of Section 3(i) of the Act.

4. At all times material herein, Local 3405 has been the exclusive representative of a bargaining unit composed of the Village's Firefighters and Fire Lieutenants.

5. At all times material herein, the Village and Local 3405 have been parties to a collective bargaining agreement effective January 1, 2004, through December 31, 2006.

II. STATEMENT OF FACTS

The Village of Oak Lawn (Village) is governed by a Board comprised of an elected Village President, six elected trustees and a Village Manager. The Village Manager, Larry Deetjen, is responsible for appointing Department heads throughout the Village including the fire department chief and two fire division chiefs. He also is responsible for preparing and recommending a budget to the Board. The Board receives the recommended budget, holds a hearing on it, and adopts it with or without amendment. The Village's Mayor is Dave Hellman, and the Director of Human Resources is Dan Omiecinski.

The Oak Lawn Professional Firefighters Association, Local 3405, IAFF, has a President, Vice-President, and Secretary-Treasurer. The Oak Lawn Fire Department (OLFD) and Local 3405 are parties to two separate collective bargaining agreements. The first is an approximately 78-member bargaining unit of firefighters, firefighter/paramedics, engineers and lieutenants (Firefighters). The second unit includes fire officers in the ranks of Captain and Battalion Chief and consists of approximately eight employees (Fire Officers).

On December 31, 2006, the collective bargaining agreements for both OLFD bargaining units expired. The Fire Officers' contract covered the period from January 1, 2004 to December 31, 2006, and included a provision requiring a doctor's certificate when a bargaining unit member was sick more than 24 hours. The Firefighters' contract, which had run from January 1, 2003 to December 31, 2006, contained no similar provision. Both contracts contained a minimum manning provision requiring that each of the Village's three fire engines be staffed with four employees, each ambulance be staffed with two employees, and the squad be staffed with three employees. The Village and Local 3405 reached a tentative agreement with respect to both successor agreements through negotiations during the first half of 2007. Those tentative agreements reduced the minimum manning provisions of both contracts for the Village's squad to two employees. Additionally, changes were made to the sick leave provision that affected both contracts. Both bargaining units rejected the tentative agreements in June 2007.

In July 2007, the Fire Officers' unit ratified a successor agreement that maintained the sick leave provisions as set forth in the prior contract. The Village and Local 3405 were unable to reach a successor agreement with respect to the Firefighters' unit, however, and continued to negotiate. The parties were unable to reach an agreement on a successor contract for the Firefighters' unit in part due to changes proposed to the sick leave provisions.

On November 3, 2007, the Village submitted a new proposal maintaining the sick leave provisions from the earlier agreement but striking entirely the minimum manning provisions of the expired contract. On November 21, 2007, Local 3405 responded with an off-record proposal. By letter dated November 27, 2007, the Village canceled the contract negotiations set for the following day, November 28, and notified Local 3405 that it would be filing an unfair labor practice charge for its failure to bargain in good faith. The letter also stated that the Village would refuse to bargain with Local 3405 any further pending the outcome of the charge. In response to the letter, Local 3405 sent the Village notice that it was seeking a mediation panel through the Illinois Labor Relations Board due to the Village's refusal to continue to bargain and its refusal to join in Local 3405's request to proceed to mediation through the Federal Mediation and Conciliation Services. The Village ultimately withdrew the unfair labor practice and the parties continued to negotiate.

On or about December 14, 2007, the Village tendered to Local 3405 another proposal for a successor agreement with the same minimum manning provision contained in the Firefighters' expired agreement but with a proposed modification to increase the number of firefighter/paramedics from 24 to 30. It is unclear whether the proposal was part of a tentative agreement subsequently rejected by Local 3405, but it is clear the parties did not reach an agreement after December 14, 2007.

On or about January 9, 2008, Fire Chief Ed Folliard issued a general order announcing changes to the existing sick leave policy, effective January 14, 2008. The general order required fire department personnel, who were unable to report for work due to illness or injury while off-duty, to provide notice at least an hour before the start of their shift; submit a doctor's note before returning to active duty; sign a "Request for Medical Leave" form prepared by a Shift

Commander or secretary; and to remain at home unless receiving prior authorization from the Fire Chief. In order to enforce this last provision, the general order authorized the Fire Chief to make unannounced “well-being checks” at a sick employee’s residence. The general order indicated that an employee who failed to comply with the order would be considered absent without official leave (AWOL), denied compensation for the period of the absence, potentially considered ineligible to return to duty, and possibly subject to discipline. Local 3405 subsequently filed an unfair labor practice charge on January 10, 2008, alleging that the Village had unilaterally implemented a sick leave policy. The Village withdrew the policy the following day.

In February of 2008, the parties reached an impasse in their negotiations and participated in two mediation sessions through the Illinois Labor Relations Board. The sessions were unsuccessful in reaching a contract, and the Village subsequently paid the cost of the mediation after refusing to join in Local 3405’s request to use FMCS. The sick leave policy and minimum requirements continued to be the two main sticking points for the parties. After mediation failed, the parties proceeded to interest arbitration. An arbitration hearing was scheduled with Arbitrator Perkovich for July 16, 2008.

Between September of 2007 and February of 2008, Local 3405 filed several grievances that were ultimately either settled or ruled on in favor of Local 3405. On September 17, 2007, Local 3405 filed a grievance alleging the Village had violated the minimum manning section of the 2003-2006 Firefighters’ Agreement. On November 6, 2007, Local 3405 filed a grievance alleging that the Village had violated the 2003-2006 Firefighters’ Agreement after issuing a handbook to employees which was in conflict with the parties’ contractual sick leave provisions. On August 1, 2007, Local 3405 filed a grievance pertaining to an employee not receiving

overtime pay for attending mandatory continuing education classes while off on his regularly scheduled duty day.

On November 2, 2007, Local 3405 filed a grievance pertaining to an employee not receiving holiday pay to which he was entitled. Local 3405 withdrew the grievance after finding it was non-meritorious. The same day, November 2, Local 3405 filed another grievance on behalf of the same employee for wrongful termination. Local 3405 withdrew the grievance after it had proceeded to Step 3 because the employee filed for a disability pension.

On January 10, 2008, Local 3405 filed a grievance based on the Village's shutting down of the OLFD squad vehicle, reducing minimum manning below the required personnel, and failing to call in overtime. An arbitrator issued an award sustaining Local 3405's grievance on September 24, 2008. Based on that award, Local 3405 subsequently withdrew a second grievance filed February 7, 2008, which alleged minimum manning violations. On February 7, 2008, Local 3405 also filed a grievance alleging that the Village failed to fill a vacancy by promoting a bargaining unit member of the current lieutenant's eligibility list. The grievance was settled on December 2, 2008, prior to arbitration. Local 3405 also filed a grievance against the Village challenging the fact that the Chief suspended a bargaining unit employee for four shift days in violation of the collective bargaining agreement. This grievance settled on October 30, 2008, prior to arbitration. Local 3405 filed requests for arbitration on six of these grievances on April 17, 2008, shortly after the possibility of firefighter layoffs was first announced.

On April 10, 2008, the Village trustees held a special meeting. Approximately 40 Local 3405 bargaining unit members attended due to rumors that there might be firefighter layoffs. During a closed session, the trustees discussed an amended budget. The trustees also discussed the costs of sick time usage by the Fire Department and Local 3405's grievances during the

closed session. Village Manager Deetjen recommended eliminating 12 Village positions, including three layoffs in the fire department and the elimination of three vacant positions. The Board did not make any final decision at the April 10 meeting.

On April 11, the three lowest-in-seniority firefighters (Walter O'Neil, Sebastian Katzel, and Dana Bartunek) were notified that they were being placed on administrative leave pending a vote on the amended budget at the next Trustees' meeting, which was scheduled for April 22. The employees were informed by Village Manager Deetjen that layoffs needed to occur because of a budgetary shortfall. Deetjen explained to the employees that the Village was required to follow Local 3405 rules regarding layoffs. Deetjen described three types of employees: A, B, and C employees, and told the employees who were facing layoffs that he would lay off the C employees if Local 3405 rules did not require him to go by least seniority. Deetjen also intimated during the meetings with Katzel and Bartunek that the Village might be able to avoid any layoffs if the parties could reach an agreement concerning the firefighters' successor contract and the pending grievances.

On April 11, after the layoffs meetings with the three individual employees, Local 3405 and the Village held a final meeting attended by Local 3405 officers Scott Tsilis and Robert Wesselhoff, Firefighter William McCoy, Firefighter Ted Moran, Fire Inspector Gary Patrick, Village Manager Deetjen, Fire Chief Folliard, and Division Chief Norm Rick. During the meeting Deetjen remarked on the legal fees the Village was incurring in contract negotiations and grievance defense. He explained that these costs might result in the issuance of layoffs. Deetjen also said that the inability of the parties to settle grievances did not look good to the Trustees and that the grievances made Local 3405 look like a bunch of animals. Deetjen observed that the Public Works Department had no grievances and that it was able to resolve all

of its differences with the Village after changing unions. Deetjen also informed Local 3405 that additional personnel would be hired in other Village departments pursuant to the amended budget. The positions that would be added included a geographical information systems position and three positions in the property maintenance department.

During a meeting at Oak Lawn Fire Station 3 on April 12, Chief Ed Folliard told shift personnel that the budget shortfall was just an excuse for the layoffs and that the grievances and fighting between the Village and Local 3405 were the real reason for that decision. After the meeting with Folliard, Wesselhoff, Tsilis and another firefighter attended a meeting with Deetjen and Folliard. During that meeting, Deetjen again brought up the pending grievances, the abuse of sick time, and the fact that the Public Works Department had zero grievances because the employees in that department had switched unions. Wesselhoff asked Deetjen to produce the sick leave usage for the fire department, but Deetjen never provided the requested information. Deetjen asked Wesselhoff and Tsilis if Local 3405 would help with cost savings and revenue ideas and Local 3405 agreed to do so. Between April 12 and April 22, 2008, both Village and Local 3405 officials engaged in collective bargaining sessions but were unable to reach an agreement to avoid layoffs.

On April 19 and 20, 2008, in response to the notice of the potential layoffs, Local 3405 membership distributed leaflets throughout the Village encouraging residents to contact Village trustees and express their opposition to the firefighter layoffs. Village Trustee Carol Quinlan responded to the leaflets with her own letter to Village residents, in which she asserted that 99% of all calls to the OLFD were for ambulance service. Quinlan also made additional assertions about the quality of the Village's ambulance emergency service. In response to Quinlan's letter, Wesselhoff wrote a letter to the editor of the Southtown Star newspaper on April 30, 2008, in

which he refuted Quinlan's claims. Deetjen subsequently questioned Wesselhoff about the article. Approximately six months after the letter was written, Wesselhoff was disciplined with a written reprimand for misstating facts in his letter to the editor.

The Village's Finance Director, Brian Hanigan, had been hired in September 2007 and was given the directive by Deetjen to prepare a balanced budget that included no tax increases. Hanigan met with various department heads in October 2007 and developed an initial balanced budget for the Board in November or December 2007. Hanigan received no direction from the Board regarding the budget prior to that point. During a December meeting between Hanigan and the Board, the Board clarified that it did not want any tax or fee increase and directed Hanigan to cut expenses before increasing taxes and fees. The budget proposed by Hanigan and Deetjen did not address all of the trustees' concerns, but it was adopted at that time in order to meet the mandated December budget deadline. The Board then directed Hanigan and Deetjen to come back at the end of the first quarter of 2008 with a new budget proposal containing additional reductions in taxes and fees, as well as reductions in expenses.

On April 22, the Board of Trustees held a meeting and passed, by a 4-2 vote, an amended budget proposed by Deetjen and Hanigan which included the elimination of six firefighter positions, three of which were vacant. The amended budget also included the addition of the GIS position and three positions in the property maintenance department, and the reduction of positions within the equipment maintenance division of the Public Works Department. During the meeting, the Village presented a PowerPoint demonstration to support its contentions that the firefighter positions should be eliminated. At the meeting hundreds of firefighters showed up from surrounding communities to support Local 3405 and Local 3405 member John Travnik spoke out against the decision to lay off firefighters prior to the vote. Travnik had previously

sent emails to several Village Trustees regarding the layoffs and questioning the statistics that the Village was relying on to justify the layoffs.

On April 23, 2008, the day after the Village voted to approve the amended budget and lay off the three firefighters, Travnik and Village firefighter/paramedic, Kevin Lynn, along with other local area firefighters, were scheduled to take a continuing education paramedic licensure examination. The licensure exam was administered through Christ Hospital and held on the second floor of the Village Hall. During the exam, Ann Faragoi, EMS Coordinator for the continuing education classes, discovered that Travnik and Lynn were using a sheet alternatively characterized by the parties as a study guide or cheat sheet. The guide/cheat sheet, labeled at the top "SMO Test", included a list of 39 questions, with answers provided next to the questions in bold text. Faragoi confiscated the material from Travnik and Lynn and Division Chiefs Norman Rick and Peter Lombardi were informed about the paramedic exam incident.

The same day as the paramedic exam Rick and Lombardi had a meeting with Lynn, Travnik, and Local 3405 representative Bill McCoy, who was also a firefighter/paramedic. Lombardi informed Travnik and Lynn that they were being accused of cheating on the exam. He told them they would have to re-take the exam and that they may also be disciplined. Both Travnik and Lynn apologized for their actions and admitted to cheating. Neither Rick nor Lombardi told Deetjen about Travnik and Lynn's conduct at the paramedic exam.

Deetjen learned of the cheating incident on April 24, 2008, the following day, April 25, 2008, Deetjen held a meeting with Chief Folliard, Mayor Heilmann, and Village labor attorney Norm Chimenti. Deetjen expressed his opinion that the cheating incident was a grave matter and that a more thorough investigation was required than what had occurred to date. Folliard recommended an oral reprimand for the incident but Deetjen disagreed and directed Folliard to

conduct a thorough investigation of the matter. Folliard, Lombardi and Rick failed to investigate the scope of the cheating scandal to Deetjen's satisfaction. Instead, at a meeting on April 29, 2008, Lombard and Rick presented Travnik and Lynn with an oral reprimand for the incident and told them that this was the extent to which they would be disciplined for the exam incident.

Between April 29, 2008, and May 2, 2008, Folliard either retired or resigned. After discussions with Dr. Motzny, Christ Hospital's medical director, about what Motzny described as an elaborate cheating scandal, Deetjen determined that there was more to the cheating incident than had been uncovered to date. Before appointing an interim fire chief, Deetjen appointed himself as fire chief for approximately four to six hours, during which time he reopened the investigation of the Lynn/Travnik examination incident and demoted Division Chiefs Rick and Lombardi. On May 2, 2008, Deetjen without further explanation required that both Lynn and Travnik attend separate meetings with him that day. At both meetings were Deetjen, Village Human Resources Director Dan Omiecinski, Wesselhoff, Local 3405 President Bob Lanz, and Local 3405 Board Member Dan Grennan. At these meetings Deetjen notified Lynn and Travnik that he was reopening the cheating investigation and would be seeking additional discipline, including possible terminations. Deetjen then, without having given Lynn and Travnik prior notice of the allegations against them, began to question him about the cheating incident. Travnik and Lynn refused to answer any questions but Deetjen continued to question them even after they requested representation by counsel.

On May 3, 2008, Deetjen issued Travnik and Lynn a formal notice of administrative review, subsequently scheduled for August 11, 2008, which included a statement of the charges against them.

On August 11, 2008, Lynn and Travnik were interrogated about the scope of the cheating scandal and where they had obtained the study guide/cheat sheet. On September 18, 2008 Lynn and Travnik were notified by Deetjen that they were being placed on administrative leave pending discharge. Upon their discharge Lynn and Travnik filed a grievance which ultimately led to their reinstatement with a 10-day suspension.

III. DISCUSSION AND ANALYSIS

The issue in this case is whether the Village violated Section 10(a)(2) and (1) of the Act by laying off three firefighters, eliminating three additional positions, and disciplining two firefighters in retaliation for union activities.

A violation of Section 10(a)(2) and (1) occurs when a charging party establishes by a preponderance of the evidence that (1) public employees were engaged in union or protected, concerted, activity, (2) that the respondent had knowledge of that activity, (3) that the respondent took an adverse employment action against those employees and; (4) that such action was substantially motivated in whole or in part by the respondent's animus towards the employees' union activity. City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989). The Board may infer the requisite discriminatory motivation from either direct or circumstantial evidence including the timing of the adverse action in relation to the occurrence of the union activity; a pattern of the respondent's conduct directed at those engaging in union activity; disparate treatment of employees; shifting explanations for a respondent's actions; and inconsistency in the reasons given for its actions against the charging party as compared to other actions of the respondent. City of Burbank, 128

Ill. 2nd 335; Circuit Court of Winnebago County, 17 PERI ¶2038 (IL LRB-SP 2001); North Main Fire Protection District, 16 PERI ¶2037 (IL SLRB 2000).

If a charging party establishes a prima facie case that a violation of Section 10(a)(2) and (1) has occurred, the burden then shifts to the respondent to prove by a preponderance of the evidence that it had a legitimate business reason for the adverse action and that that action would have taken place absent the employee's union activity. City of Burbank, 128 Ill. 2nd 335; County of Rock Island, 14 PERI ¶2029 (IL SLRB 1998), aff'd, Grchan v. Illinois State Labor Relations Board, 315 Ill. App. 3d 459, 734 N.E.2d 33, 16 PERI ¶4008 (3rd Dist. 2000), appeal denied, 192 Ill. 2d 687 (2000); City of Decatur, 14 PERI ¶2004 (IL SLRB 1997). Merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden, however, as it must also be determined that the reason or reasons advanced are not a mere litigation figment and that they were in fact relied upon as the basis for the respondent's actions. If these requirements are not met, the respondent's explanation for its actions will be determined to be pretext and the respondent will be found to have violated the Act. City of Burbank, 128 Ill. 2nd 335.

The Firefighter Layoffs

The first issue is whether the Village retaliated against Local 3405 in violation of sections 10(a)(2) and (1) of the Act by approving a reduction in force of six positions in the Local 3405 bargaining unit, because Local 3405 opposed the Village's proposed changes to the firefighters' successor contract, filed grievances concerning violations under the contract, requested interest arbitration, and engaged in leafleting in protest of the proposal to lay off firefighters.

Applying the facts to the test set forth above, it is clear that Local 3405 was engaged in union activity by opposing certain changes to the firefighters' collective bargaining agreement

during negotiations for a successor contract in the months preceding the decision to lay off personnel in the Fire Department. Those negotiations eventually resulted in an impasse, at which time Local 3405 requested interest arbitration. Local 3405 also filed several grievances, including grievances related specifically to the issues that had become sticking points during negotiations. Additionally, Local 3405 engaged in protected activity when it distributed leaflets encouraging Village citizens to oppose the Village's upcoming decision to lay off firefighters. These actions clearly demonstrate that Local 3405 engaged in activity protected under the Act.

It is incontrovertible that the Village had knowledge of Local 3405's position in negotiations and its leafleting campaign and those bargaining unit members suffered an adverse action when their department faced a reduction in force. I also find based on the available evidence that the Village had knowledge of the grievances that Local 3405 had filed. It is undisputed that Village Manager Deetjen knew of the grievances. Deetjen further informed Local 3405 members that the grievances made them look like "a bunch of animals" to the trustees, further suggesting that the grievances were known to the trustees. Additionally, there is evidence that Deetjen discussed the six outstanding grievances with the trustees by email dated April 12, 2008. While the Village failed to produce monthly newsletters that Deetjen distributed to the Trustees, it is likely that such newsletters also would have included information concerning the Firefighters' grievances. Even if I were to discount such evidence, Deetjen's intimate knowledge of Local 3405's bargaining activities is reasonably attributable to the Village Trustees. Further, it was Deetjen who was responsible for preparing and recommending a budget to the Trustees. Therefore, I find that Local 3405 has established that the Village had knowledge of Local 3405's protected activities.

The question that remains is the one of greatest import to this issue, namely whether the decision to reduce the Fire Department's force was motivated by animus toward Local 3405's activities. There is evidence in the record suggesting that the decision to adopt an amended budget with layoffs in the Fire Department was a strategic choice designed to force Local 3405 to make concessions on the issues of sick leave and minimum manning policy. Specifically, Deetjen stated during his testimony that it was his hope that Local 3405 would be more proactive on negotiating a collective bargaining agreement in the wake of the layoffs. Deetjen also warned Wesselhoff about the costs associated with contract negotiations and interest arbitration during a meeting shortly after the April 22 budget meeting, stating, "What do we have to do, hit you on the head with a hammer again?" This evidence indicates that the decision to layoff firefighters was substantially motivated in part by the protracted negotiations and by Deetjen's perception that layoffs would serve to induce Local 3405 to make concessions.

There is also evidence that the costs associated with grievances, like the costs associated with contract negotiations, served as a substantial motivating factor for the Village in its decision to reduce the number of firefighters through a lay off and reduction in vacant positions. During the preliminary Village meeting to discuss the amended budget on April 10, 2008, there was a discussion about those costs. While Deetjen and Heilman denied that there was any such discussion, Trustee Streit specifically stated that Local 3405's grievances were discussed at that time. After the April 10 meeting, Chief Folliard informed on-shift personnel at Station 3 on April 12, 2008, that the budget deficit was only an excuse for the firefighter layoffs. Folliard expressed his opinion that the reason for the layoffs was the several grievances that had been

filed.¹ This evidence indicates that the decision to lay off three firefighters and eliminate three vacant positions was substantially motivated in part by Local 3405's grievances.²

There is insufficient evidence, however, to conclude that the Village's decision to lay off firefighters was substantially motivated in part by Local 3405's leafleting campaign in opposition to the layoffs. While there is ample evidence to show that Village officials were displeased with the campaign, this is not enough to demonstrate that the decision to lay off firefighters was motivated by the leaflets. Clearly the decision to lay off the firefighters predated the leaflets, which were aimed at thwarting that decision before it became official by a vote at the April 22 meeting. Chief Folliard's suggestion to Local 3405 member Scott Tsilis that the possibility of avoiding layoffs was precluded by the leafleting is insufficient to establish that the decision was substantially motivated in whole or in part by this union activity.

As Local 3405 succeeded in establishing that the Village's decision to lay off firefighters and eliminate three vacant firefighter positions was substantially motivated in part by Local

¹ The Village asserts that Folliard's opinion, that the decision was motivated by the grievances, is entitled to no weight. The Village is mistaken. While Folliard's opinion, taken on its own, would be insufficient to establish a causal connection between the layoffs and the grievances, it lends support to other evidence indicating that the decision to layoff firefighters was unlawfully motivated by animus toward Local 3405's activities.

² In addition to a violation of Section 10(a)(2) and (1) of the Act the Charging Party asserts that the facts also support a finding of an independent violation of Section 10(a)(1). The Board has held that if, as in this case, an alleged adverse employment action is taken against employees for engaging in protected, concerted activity under the Act, the motivation of the public employer must be examined in the same manner as cases arising under Section 10(a)(2) and (1) of the Act. City of Elmhurst, 17 PERI ¶2040 (IL LRB-SP 2001); Village of Oak Park, 18 PERI ¶2019 (IL LRB-SP 2002); City of Chicago (Department of Streets and Sanitation), 18 PERI ¶3014 (IL ILRB-LP 2002); Village of Schiller Park, 13 PERI ¶2047 (IL SLRB 1997); City of Chicago, 11 PERI ¶3002 (IL LRB 1995); Kirk and Chicago Housing Authority, 6 PERI ¶3013 (IL LRB 1990). This principle has led to the Board's conclusion in City of Elmhurst that it will not consider whether there is an independent Section 10(a)(1) violation in cases alleging that an employer's actions were unlawfully motivated. Instead, the finding with respect to the presence of an employer's unlawful motive will be determinative.

3405's stance in negotiating, including its decision to invoke the right to interest arbitration, and by the several grievances filed by Local 3405, the burden now shifts to the Village to prove by a preponderance of the evidence that it had a legitimate business reason for the layoffs and that they would have taken place absent the employee's union activity.

The Village's position is that the layoffs were necessary to close a gap in the budget, which was running a deficit. The Village demonstrated that cuts were necessary in order to avoid raising taxes, and that it had previously reduced its expenses in 2008 by cutting personnel in the equipment maintenance department. While the budget included additional expenses for a GIS position and three positions in the property maintenance, the Village maintains that these services were necessary additions. Indeed, other services were cut in addition to the reduction in force in the fire department. But demonstrating that there were cuts in other departments does not excuse unlawfully motivated cuts in retaliation for union activity in the fire department. In order to rebut a prima facie case of a 10(a)(2) and (1) violation, the Village must demonstrate that it would have made the decision even if it had not unlawfully considered the protected activity. The Village's proffered reasons for cutting staff in the fire department do not pass muster under this test.

The Village suggested through an analysis undertaken by Trustee Phelan that the fire department was overstaffed because numbers indicated that there were significantly more hours of sick time than hours of overtime coverage. This analysis seemed to suggest rampant sick leave abuse, but on closer examination the number of sick hours included employees of the fire department who were out "sick" due to on-duty injuries and other long term illness and disability. In fact, the Village was unable to provide evidence of sick time abuse, with the exception of one evaluation form dating back six years. Further, the numbers did not correspond

because each shift was governed by minimum manning provisions, which allowed a shift to run below the regularly assigned number of personnel in the event that an employee was unable to work on a given day. The Village provided reasons for its belief that the fire department was overstaffed, but those reasons were based on faulty statistical analyses which indicates that the purported legitimate business reason for the layoffs is pretextual. The Village, not having shown it had a legitimate reason for its decision to lay off firefighters and eliminate three vacant firefighter positions, did so in violation of Section 10(a)(2) and (1) of the Act.

Travnik and Lynn Discipline

The next issue is whether the Village violated 10(a)(2) and (1) of the Act by reopening the investigation of the Lynn and Travnik cheating incident after the Village had already issued oral reprimands, and subsequently terminated them, in retaliation for Travnik's support for Local 3405 during Local 3405's public opposition to the layoffs, in violation of 10(a)(2) and (1) of the Act.

Local 3405 failed to establish a prima facie case of a violation of 10(a)(2) and (1). Travnik was actively engaged in the campaign to thwart the Village's plans to lay off firefighters. He sent emails to trustees and spoke out at the April 22 meeting against the layoffs. And Travnik subsequently suffered adverse action – not when he received an oral reprimand which Local 3405 does not contend was retaliatory, but when the incident was reopened for investigation and resulted in harsher discipline. Local 3405, recognizing that Lynn did not engage in protected, concerted activity, argues in essence that Lynn was collateral damage – that the Village could not have increased Travnik's discipline and not Lynn's because the Village's unlawful motivation in doing so would have been too obvious. However, it is precisely because Lynn was disciplined along with Travnik that demonstrates the Village's lawful motivation in

disciplining Travnik. This is particularly true given the absence of any evidence that the Village has failed to take disciplinary action against other employees involved in circumstances similar to that of Lynn and Travnik or who were more active on behalf of Local 3405 than Travnik. Additionally, the Village's evenhanded treatment of all the individuals involved in the paramedic exam incident is demonstrated by the fact that Chief Folliard was forced into retirement and Division Chiefs Lombardi and Rick were demoted. Again, Local 3405 argues that the Village took these measures in order to provide cover for its unlawful disciplinary action against Travnik. However, given the absence of any record evidence to support this argument it is wholly unreasonable to suggest that the Village would have gone to such great lengths to punish one Local 3405 member for his relatively minor involvement in an unsuccessful campaign to avoid layoffs. Instead, Local 3405 has failed to establish that the decision to reopen the investigation into the cheating incident and to terminate Travnik and Lynn was substantially motivated in whole or in part by Travnik's opposition to layoffs.

The Village's proffered reason for reopening the investigation and terminating Travnik and Lynn is ultimately more credible than Local 3405's theory. Given indications of widespread cheating as described by Dr. Motzny of Christ Hospital to Deetjen, it was clearly reasonable to reopen the investigation after the cursory and ineffective discipline had been meted out, in contravention of Deetjen's orders. There can be no doubt that Travnik and Lynn attempted to cheat on a licensure exam, and that the offense was not treated as seriously as Deetjen wished for it to be. However, because Local 3405 has failed to establish a prima facie violation under 10(a)(2) and (1), the Village is under no affirmative duty to prove that its reason for reopening the investigation was legitimate.

IV. CONCLUSIONS OF LAW

1. Respondent, Village of Oak Lawn, violated Section 10(a)(2) and (1) of the Act by laying off three firefighters and eliminating three vacant firefighter positions in retaliation for the Charging Party, Oak Lawn Professional Firefighters Association, Local 3405, IAFF, filing grievances and collectively bargaining on behalf of Respondent's firefighters.

2. Respondent, Village of Oak Lawn, did not violate Section 10(a)(2) and (1) of the Act by disciplining firefighters Travnik and Lynn for having engaged in misconduct during a paramedic licensing examination.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Village of Oak Lawn, its officers and agents shall:

1. Cease and desist from:
 - a. Enforcing or giving effect to its April 22, 2008, decision to eliminate six firefighter positions; three by layoff and three by eliminating vacant firefighter positions.
 - b. Taking disciplinary or any other adverse employment action against its employees because they have engaged in union and or protected, concerted activities including negotiations and the filing and processing of grievances.
 - c. Discriminating in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or support for the Oak

Lawn Professional Firefighters Association, Local 3405, IAFF, or any other labor organization.

d. 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 designed to effectuate the policies of the Act:

a. Rescind its April 22, 2008, decision to eliminate six firefighter positions; three by layoff and three by eliminating vacant firefighter positions.

b. Make whole any employees represented by the Oak Lawn Professional Firefighters Association, Local 3405, IAFF, who have been adversely affected by the Village of Oak Lawn having implemented its April 22, 2008 decision to eliminate six firefighter positions including reinstatement of the three firefighters subject to the layoff, along with back pay plus interest at the rate of seven per cent per annum from the effective date of their layoff to the date of their reinstatement, and restoration of any loss of seniority or other benefit they would otherwise have received.

c. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "addendum". Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to ensure that these notices are not altered, defaced or covered by any other material.

d. Notify the Board in writing, within 20 days from the date of this decision, of what steps the Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant Section 1200.135 of the Board's Rules, parties 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 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 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 15th day of August, 2010.

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

**Philip M. Kazanjian
Administrative Law Judge**

NOTICE

After a hearing in which all parties had the opportunity to present their evidence, the Illinois Labor Relations Board found that the City of Harvey 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 or protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from enforcing or giving effect to the April 22, 2008, decision to eliminate six firefighter positions; three by layoff and three by eliminating vacant firefighter positions.

WE WILL cease and desist from taking disciplinary or any other adverse employment action against its employees because they have engaged in union and or protected, concerted activities including negotiations and the filing and processing of grievances.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or support for the Oak Long Professional Firefighters Association, Local 3405, IAFF, or any other labor organization.

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

WE WILL rescind the April 21, 2008 decision to eliminate six positions in the fire department: three by layoff and three by eliminating vacant positions.

WE WILL make whole any employees represented by the Oak Lawn Professional Firefighters Association, Local 3405, IAFF, who have been adversely affected by the Village of Oak Lawn having implemented its April 22, 2008 decision to eliminate six firefighter positions including reinstatement of the three firefighters subject to the layoff, along with back pay plus interest at the rate of seven per cent per annum from the effective date of their layoff to the date of their reinstatement, and restoration of any loss of seniority or other benefit they would otherwise have received.

DATE _____

Village of Oak Lawn (Employer)

(Representative) (Title)