STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Lake Forest Professional Firefighters Union, International Association of Firefighters, Local 1898,	)	
Charging Party	)	
	)	Case No. S-CA-10-115
and	)	
City of Lake Forest,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. Background

On October 21, 2009, Lake Forest Professional Firefighters Union, IAFF, Local, 1898, (IAFF or Union or Charging Party) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the City of Lake Forest (Respondent or City) engaged in unfair labor practices within the meaning of section 10(a)(4), (2) and (1) of the Illinois Public Labor Relations Act 5 ILCS 315 (2010), as amended (Act). The Union filed an amended charge on April 14, 2010. The charge was investigated in accordance with Section11 of the Act and on November 19, 2010, the Board's Executive Director issued a Complaint for Hearing.

A hearing was conducted on October 3 and 4, and December 12, 2011, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. On February 3, 2012, both parties filed briefs. On February 21, 2012, the City filed a Motion to Strike Allegations in Charging Party's Post-Hearing Brief. On February 28, 2012, the Union filed a response to the City's motion.

After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

II. Preliminary Findings

The parties stipulate and I find:

1. At all times material, the City has been a public employer within the meaning of Section3(o) of the Act.
2. At all times material, the City has been under the jurisdiction of the State Panel of the Board pursuant to Section5(a) of the Act.
3. At all times material, the City has been subject to the Act pursuant to Section20(b) thereof.
4. At all times material, the Union has been a labor organization within the meaning of Section3(i) of the Act.
5. The Union filed its majority interest petition for certification on February 5, 2009.
6. The Union has been the exclusive representative of a bargaining unit ("unit") composed of the City's full-time employees in the job titles or classification of Firefighter, Firefighter/Paramedic, and Firefighter Lieutenant/Paramedic, as certified by the Board on March 23, 2009, in Case No. S-RC-09-095.
7. From on or about March 23, 2009, the parties were negotiating their initial agreement.
8. On or about March 7, 2011, the parties executed their first collective bargaining agreement effective May 1, 2009 through April 30, 2012.
9. At all times material, Andrew Allan has been employed by the City in the Firefighter Lieutenant/Paramedic title.
10. At all times material, Allan has been a public employee within the meaning of Section3(n) of the Act.
11. Allan is a member of the unit and President of Local 1898.
12. Since at least March 23, 2009, the City has known that Allan has been engaged in activity on behalf of and in support of the Union.
13. Jeff Howell is the Fire Chief and Scott Robertson is a Battalion Chief.
14. In past years, on or about May 1, and prior to the certification of Charging Party, Respondent has granted annual pay raises and anniversary step raises to employees who are now members of the bargaining unit.
15. On or about July 28, 2009, Howell sent an email to Jon Bardi, Michael Mounts and Cory Kazimour with a copy to Fire Department Supervisors regarding integrity.

16. On or about October 12, 2009, Respondent suspended Allan.
17. On or about October 12, 2009, Respondent issued a Personnel Action Report to Allan regarding his suspension to be served on October 14, 2009.
18. On or about November 25, 2009, Battalion Chief Robertson met with Allan to discuss his semi-annual evaluation.
19. On or about November 27, 2009, Allan sent an email to Howell with a copy to Kazimour, Bardi and Mounts entitled, re: ULP.
20. On or about November 30, 2009, Allan sent an email to Robertson with a copy to Howell entitled, re: Evaluation Meeting.
21. On or about December 7, 2009, Respondent issued Allan his semi-annual performance rating.

III. Issues and Contentions

There are four main issues in this case: (1) whether the City violated sections 10(a)(2) and (1) of the Act by allegedly making discouraging remarks to employees concerning their union activity and by prohibiting employees from conducting union business while on duty, (2) whether the City violated 10(a)(4), (2) and (1) of the Act when it withheld bargaining unit members' annual wage and step increases on May 1, 2009; (3) whether the City violated 10(a)(4), (2) and (1) of the Act when it assigned lieutenant and firefighter shift overtime to the chiefs without first bargaining the issue with the Union; and (4) whether the City violated 10(a)(2) and (1) of the Act by removing Allan's May 2009 step increase, allegedly ordering Allan not to wear Union logo clothing while he was off-duty, issuing Allan a one-day suspension, referencing Allan's alleged lack of respect towards management in his evaluation, and sending an email to bargaining unit members questioning Allan's integrity.

1. Arguments on brief

The Union argues that the City violated sections 10(a)(2) and (1) by making discouraging remarks concerning employees' union activity and by prohibiting employees from discussing union business while on duty.

In addition, the Union argues that the City violated sections 10(a)(4) and (1) of the Act when it denied bargaining unit members' May 2009 wage and step increases because granting

those increases was an established past practice and the City's failure to pay them altered the status quo. Further, the Union argues that the City's same conduct violated sections 10(a)(2) and (1) of the Act since the City acted out of union animus and withheld the wages because of bargaining unit members' protected activity. Finally, the Union notes that it did not waive the right to claim retroactive wage and step increases for former bargaining unit member, Colin Barr, even though Barr was no longer employed by the department in 2011 when the City retroactively granted the May 2009 wages to current bargaining unit members, pursuant to the collective bargaining agreement.

The Union next argues that the City violated sections 10(a)(4) and (1) when it assigned lieutenant and firefighter shift overtime to the chiefs and when it changed its overtime assignment policy to require shift commanders to first offer such overtime opportunities to the chiefs, without bargaining. Further, the Union argues that the City's same conduct violated sections 10(a)(2) and (1) of the Act since the City acted out of union animus and because of bargaining unit members' protected activity.

In addition, the Union argues that the City violated sections 10(a)(2) and (1) when it prohibited Allan from wearing union logo attire, withheld Allan's step increase, disciplined him with a 24-hour suspension, gave him an allegedly negative evaluation, and questioned his integrity in an email to union members.

Lastly, the Union moved for sanctions on the basis that the City knowingly made allegedly false denials in its answer to the complaint.

The City denies that management made discouraging or anti-union statements in violation of section 10(a)(1). Similarly, the City argues that it did not violate sections 10(a)(2) and (1) by prohibiting discussion of union activity while employees were on duty because it was legally entitled to do so. Alternatively, the City argues that the Union's allegations on both these matters are untimely.

Next, the City argues that it did not violate sections 10(a)(4) and (1) of the Act when it withheld bargaining unit members' step increases on May 1, 2009, because it did not change the status quo and instead adhered to its well-established policy of granting salary increases to represented employees only once the parties had negotiated an agreement. Further, the City avers that its 2008 and 2009 pay plan does not constitute the status quo because it does not contain any promise or guarantee that employees would be paid according to those plans. The

City also notes that its action did not constitute a violation of sections 10(a)(2) and (1) because it harbored no union animus. In the alternative, the City argues that the Board should not award money damages because the City has already paid all owed wages and that an award of interest would grant the Union a windfall.

Next, the City argues that the Union's allegation concerning shift-overtime is untimely because the City had used chiefs to perform such work for more than six months prior to the date on which the Union filed its charge. Similarly, the City argues that it not violate sections 10(a)(4) and (1) by assigning chiefs shift overtime because the City adhered to a practice in place since 2001 and thus did not change the status quo.

In addition, the City asserts that it did not retaliate or discriminate against Allan for his union activity in violation of sections 10(a)(2) and (1) by removing Allan's May 2009 step increase, allegedly ordering Allan not to wear Union logo clothing while he was off-duty, issuing Allan a one-day suspension, referencing Allan's alleged lack of respect towards management in his evaluation, and sending an email to bargaining unit members questioning Allan's integrity.

First, the City asserts that the Union's claim with respect to Allan's step increase is untimely. In the alternative, the City notes that Allan's protected conduct played no role in the City's decision to freeze his step increase and that the collective bargaining agreement moots this allegation because it unfroze Allan's steps and granted him full backpay.

Second, the City contends it did not violate sections 10(a)(2) and (1) when it instructed Allan not to wear Union insignia because its actions were motivated by the "antagonizing manner" in which Allan wore his clothing, not by Allan's union activity, and that the City, in taking such action, merely sought to maintain harmonious relationships within the department. The City notes that it could not have acted out of union animus because it allowed other bargaining unit members to wear such logos without consequence.

Third, the City argues that it did not violate sections 10(a)(2) and (1) when it suspended Allan because it harbored no union animus and instead disciplined him for good cause.

Fourth the City contends that it did not violate sections 10(a)(2) and (1) by noting Allan's disrespect toward management in his evaluations because such criticism was both justified and consistent with past reviews.

Finally, the City argues that the Chief's email to bargaining unit members regarding Allan's integrity is protected speech under section 10(c) and not a violation of sections 10(a)(2)

and (1) because it contains neither a threat of reprisal or promise of benefit. Further, the City asserts that its email, authored by the Chief, was not motivated by Allan's protected activity and was simply a response to a statement by Allan which Howell viewed as false and defamatory.

2. Post-hearing motions

The City argues that the Union's request for sanctions should be stricken from its brief because it is frivolous. Further, the City reasserts that the Union raised allegedly untimely allegations which are outside the complaint and meritless.

The Union responds that the City's motion to strike should not be allowed because the rules do not provide for motions to strike or for response to briefs. It further asserts that the Union conclusively proved that the City's denial in the answer supports a finding to award sanctions. Finally, the Union notes that the additional facts which support its 10(a)(2) allegations were included pursuant to the ALJ's amendment of the complaint to conform it to evidence presented at hearing.

IV. Facts

1. Overview

The Lake Forest Fire Department has one Chief, Jeffrey Howell, two Deputy Chiefs (DCs), Kevin Issel and Chris Garrison, three Battalion Chiefs (BCs), Scott Robertson, Eric Montellano and Keith Siebert, six lieutenant/paramedics and 21 firefighter/paramedics. The fire department has two stations, Station I and Station II, and three shifts, A (gold), B (black) and C (red). Each firefighter and lieutenant works 24 hours on and 48 hours off.

Fire department employees first discussed unionization sometime in August 2008. In October, Andrew Allan[1], Jan-Pierre Bardi, Cory Kazimour and Michael Mounts were elected president, vice president, secretary and treasurer of the union, respectively. Allan, Bardi and Kazimour informed the chief of this development in October. Bardi testified that the City first obtained knowledge of the union's organizing efforts on October 1, 2008. However, Allan

[1] Allan was formally elected around November/December 2008 but was recognized as union president earlier.

testified that he emailed Chief Jeffrey Howell requesting permission to hold union-related meetings at the fire station as early as September 2008.[2]

On December 3, 2008, Bardi, Kazimour and Allan formally met with Howell to inform him of their intention to join the union. On February 5, 2009, the Union filed its majority interest petition. On March 23, 2009, the Board certified the Union as the exclusive representative of the City's full-time employees in the job titles or classification of Firefighter, Firefighter/Paramedic, and Firefighter Lieutenant/Paramedic. There are approximately 26 employees in the bargaining unit. The parties began negotiating their initial collective bargaining agreement on March 23, 2009. They executed that agreement on March 7, 2011.

1. Alleged Discouraging Statements by Management

Allan testified that around December 9, 2008, firefighters reported that Deputy Chiefs Kevin Issel and Chris Garrison informed them that they would "lose certain things [if] they chose to go union," that they should "be careful of what they were doing," and "that nothing [would] ever be the same again."

Bardi confirmed that Issel stated individuals would lose benefits if they joined the union. Specifically, Bardi recounted that Issel said, "everything is going to be black and white from now on" and that management would not be able to exercise discretion or "give employees breaks" because all the union's benefits would be "wiped clean." According to Bardi, Issel explained that the Union would "be starting from scratch" and that members would have to negotiate and "give something up in exchange for" every benefit that they currently enjoyed. Further, Bardi testified that Issel stated that the contract would be administered as written, that "everything would be black and white and that [management] would have no freedom for any sort of discretionary decisions." Specifically, Bardi noted that Issel said union members would not be able to wash their cars at the station and that Issel told one employee if he wanted to wash his car he'd "better make sure he got it clean now because [he would] not...be able to do that after [the Union got] a contract."

Similarly, Firefighter/paramedic Cory Kazimour testified that in February 2009, Issel stated that union-represented employees would lose benefits and that the department would no longer have discretion in the manner in which it treated bargaining unit members. Specifically,

[2] The Chief permitted that meeting.

Kazimour noted that Issel said he would no longer be permitted to grant an injured firefighter light duty and would instead require that employee to use up his sick time. Further, Kazimour testified that Issel stated bargaining unit members would not be able to wash their cars at the station unless the contract explicitly permitted them to do so. Finally, Kazimour stated that Issel said management would have absolutely no discretion to permit a firefighter to leave the station even in cases of a personal emergency unless there was "express written permission" for him to do so in the parties' contract.

All testifying firefighters and lieutenants noted that the comments commenced before the union was certified and continued after, spanning approximately a two-year period from December 2008 to March 2011. Issel and Garrison testified that they never told any bargaining unit members that they would lose pay, benefits, or privileges as a result of the union. I credit Allan's, Kazimour's and Bardi's statements because they testified similarly and in detail concerning the chiefs' statements.

In addition, sometime around November 25 or 26, 2009, Bardi attended a shift meeting where the chief discussed the union's unfair labor practice charge. At the end of the meeting, Bardi testified that Howell stated the union could "count on this unfair labor practice charge going to hearing." Howell testified to different wording, noting that he instead stated that "[he] wanted to let [the union] know the City was in receipt of the ULP, that [he] wasn't sure what was going to transpire but [his] guess was that it would go to hearing." I credit Bardi's testimony.

2. Discussion of union business

On December 30, 2008, Allan asked the chief if the Union could hold a meeting on January 13, 2009 at the station. On January 2, 2009, the Chief stated, in an email to union officers, that on-duty personnel would not be allowed to attend the meeting in person or via web cam and that "no union activities of any kind [would] be allowed while personnel [were] on duty." Similarly, around October 2008, Kevin Issel told Allan that he and other firefighters could not discuss union business while on duty. Union witnesses testified that Issel continued to make such comments through to the time of hearing. Specifically, Allan noted that a few weeks prior to hearing, when Allan received a subpoena from the Board, Issel stated, "you can take it, but you can't open it because you can't conduct union business while on duty."

3. Department participation with union in events

On April 15, 2009, Howell sent an email to union officers stating that the department would not cosponsor a golf outing with the union. Allan testified that the Chief stated he believed the union would use the money raised to pay for attorneys who would fight management and that the Chief refused to allow department participation in the outing on that basis.

Around June 20, 2009, Allan asked the department to join the union in a fundraiser to support the Muscular Dystrophy Association (MDA). On June 23, 2009, Howell informed union officers that the department would not support the MDA event, either. Allan testified that the department refused to take part in that function because the Chief stated he believed that some of the money would support the union.

On July 27, 2009, Allan sent an email to Beth Marquez, City Clerk, copied to the Chief, asking her to write the name of the union on the permit for the MDA event. Allan's email noted that, "the Chief doesn't want to have anything to do with MDA or our organization."

On July 28, 2009, Howell sent an email to union board members Bardi, Mounts, and Kazimour, and fire department supervisors. Howell quoted Allan's July 27, 2009, email which asserted, "the Chief doesn't want to have anything to do with MDA or our organization." In response to that language, Howell wrote, "you have entrusted yourselves with an individual who seems to lack integrity."

At hearing, the Chief testified that Allan's email misrepresented his views concerning the MDA event and that Allan did not "know the condition of [his] heart." The Chief noted that although the City chose not to participate fully in the MDA event, it did permit the firefighters to use their bunker pants and boots while in attendance. Accordingly, the Chief concluded that Allan's statement was not fair.

4. Dress code and union insignia

The standard operating guideline SOGA-102 for work uniforms, Class B and grooming standards provides that "all employees shall be in full Class B uniform by 7:00 a.m. when beginning their shift." The Class B uniform must be worn from 0700 to 1600, Monday through Saturday and from 0700 to 1200 on Sunday, except if the shift officer decides to alter the dress requirement for that day. The guidelines also provide that "with regards to all uniforms, including turnouts, no patches, decals, pins or other insignias shall be applied except for those

approved by the Fire Chief and the Quartermaster. Any approved award pin or other such item shall be worn for no more than ninety (90) day period, at which time they are to be removed from the uniform."

On September 29, 2009, Howell sent an email to Allan stating that "it has been noticed that when [Allan is] working and being paid by the city of Lake Forest [he has] been wearing T shirts and or a hat that represents [his] local 1898 or affiliation with union organizations."[3] He further stated Allan should "consider this a direct order [not to] wear and or display in any manner these items or any other items for these organizations while being paid...by the City of Lake Forest in any capacity." For those working on a 24-hour workday, the shift begins at 7:00 a.m. and ends at 7:00 a.m. the following day.

At hearing, the Chief explained that he issued this order in response to complaints by bargaining unit lieutenants, raised after the Board certified the union as the employees' exclusive representative. Those lieutenants, though represented by the local, did not support the union and claimed that the environment had become contentious for them as a result. Howell instructed Allan to refrain from wearing union logos to keep morale up for those lieutenants and to create an environment that was "not contentious." Similarly, Howell instructed Allan to refrain from displaying his union hat on the lieutenant's desk because, in his opinion, the way in which Allan wore the union logos and placed the hat on the desk in plain sight was "an antagonistic approach that Lt. Allan ha[d] chosen to take with management." To Allan's knowledge, he is still prohibited from wearing union logos at work while on duty. Notably, Michael Mounts had worn a Local 1898 t-shirt into the station and during a callback shift, while paid by the City and was not cited for it.

The department has never objected to on- or off-duty firefighters wearing sports team logos to officers meetings. Indeed, there is no dress code for officers meetings. Further, the department has never objected to firefighters wearing sports team logos into the station prior to the start of their shift. The Chief confirmed that there has never been a prohibition on employees wearing logoed attire when reporting for work and prior to the start of their shift.

5. Callbacks / shift overtime

[3] Howell's notes indicate that Allan attended the July officers meeting wearing an IAFF t-shirt, that he wore an MDA fundraiser T-shirt with the Lake Forest emblem along with a local hat. Allan was off duty during that meeting.

The department uses two main types of overtime: callback overtime and shift overtime. When residents make more fire calls than may be covered by available personnel, the department uses callbacks to obtain additional off-duty personnel with which to staff the station adequately. When an employee at the station calls in sick and must be replaced pursuant to the minimum manning guidelines, the department uses shift overtime to fill the vacancy.[4]

Since 2001, the department has regularly permitted the chiefs (the chief, the deputy chiefs and the battalion chiefs) to fill the shifts of lieutenants and firefighters who call in sick. Between 2001 to September 30, 2008, the chiefs performed a total of 1067.5 hours of lieutenant/firefighter shift overtime, the equivalent of 137.74 hours per year. From October 1, 2008 to May 31, 2011, the chiefs performed a total of 3099 hours of shift overtime, the equivalent of 1160.67 hours per year. The Union did not introduce evidence as to the number of shift overtime hours firefighters and lieutenants filled during these periods.

DeSha Kalmar, the City's Director of Human Resources, testified that the City's financial difficulties led it to increase its overtime hours because the 2009 the recession reduced income from the state, significantly impacted the City's budget, and caused the City to reduced its employment by 28 employees through attrition, layoffs and restructuring.

DC Garrison testified that the City's standard practice had been to assign overtime to firefighters and lieutenants until the City ran out of its overtime budget and to only then assign overtime to the chiefs.[5] Sometime in 2010, Battalion Chief Eric Montellano informed Allan that, when acting as shift commander, he was required to offer the chiefs the opportunity to cover

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[4] The Standard operating Guideline 0-304 for the station provides that "the minimum manning of each station shall be four personnel." It does not specify the ranks of such personnel.

[5] The City on brief states that "Kalmar testified that the City rejected the Union's initial bargaining proposal to limit overtime to non-unit personnel because 'we had done this for years'"... "'to save money.'" However, Kalmar's testimony does not unequivocally mean that the City had been exclusively assigning shift overtime to chiefs for a number of years. Rather, it could instead refer to the fact that the City had previously allowed chiefs to perform *some* lieutenant and firefighter shift overtime when money ran low, as Garrison also testified:

> **Q:** To what extent if any, was there a discussion on the record with respect to what the impact of this proposal [prohibition on chiefs performing lieutenant/firefighter overtime] would be on the City's use of battalion chiefs or deputy chiefs to fill in to cut back on overtime costs? [Mr. Clark]
> **A:** [...] I believe early on we had some on-the-record discussions about the fact that we had done this for years. It was in order to save money because overtime budgets were gone or very limited, and it really was sort of a status quo as far as we had been doing it for a number of years. [Ms. Kalmar]

To the extent that Kalmar's testimony conflicts with Allan's and Garrison's I credit their testimony over hers.

a sick/absent firefighter's or lieutenant's shift before offering that overtime to a bargaining unit member firefighter or lieutenant. According to that directive, bargaining unit members could fill shift overtime only if the chiefs first declined the opportunity to do so. The Union did not introduce evidence as to the circumstances under which Allan was instructed to offer shift overtime to the chiefs first. For example, the union did not show that the statement to Allan applied to all future overtime assignments or whether it was instead limited to the fiscal year in which the department's money for overtime had run out.

The employer introduced the minutes of the Officer's Meeting, dated September 27, 2010. It states, "Deputy Garrison advised: the overtime budget for FY11 is $201,711.00. Five months into FY11, there is approximately $60,000 left, which is the reason for coverage by the Chiefs and Battalion Chiefs.[6]

Bargaining unit members who work overtime are paid time and half. Chiefs who work overtime do not receive extra pay and receive comp time instead.[7] On September 27, 2010, Deputy Chief Garrison announced at an officers meeting that the chiefs were covering overtime because the overtime budget for fiscal year 2011 was low.

6. Wage and step freeze

The City's fiscal year starts May 1 and ends April 30. The City has established a step plan for firefighters and lieutenants. The City's 2009 pay plan documents the steps for that fiscal year. In addition, the City's May 1, 2008 Personnel Policies and Practices document states "the increment salary increase shall generally follow the pay steps established by the City Council for the particular salary class."[8]

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[6] On brief and at hearing, the Union objected to the introduction of this document, noting that it was produced after the Union filed its charges. Contrary to the union's contention, this document is relevant, probative and properly referenced here because the Union's own amended allegations refer to an alleged change in the status quo in 2010, the Chief's directive to Allan concerning overtime.

[7] Chiefs are paid a salary and are not paid by the hour.

[8] The plan also notes that "based on economic conditions and other factors, the pay plan may be periodically adjusted by the City Council" and that "at the time of such adjustments, all regular, full-time employees will be eligible for salary increase consideration at the newly assigned salary rate...depending on their evaluations." It additionally provides that "an employee's position may be re-established by the City Manager to a higher or lower salary range to properly reflect assigned duties and responsibilities and subject to budgetary constraints."

Newly hired firefighters start at step one of the pay plan. Non-probationary firefighters and lieutenants receive two evaluations per year, one in October/November and on in April. If the latter evaluation is positive, the firefighter or lieutenant moves up one step in the pay play. The City's Policies and Practices document confirms that "each pay increase will be based on the employee's annual May 1 evaluation and will take into consideration demonstrated satisfactory job performance."[9] The pay increases, based on the previous year's annual evaluation, go into effect on or around May 1 each year. Allan testified that in the 12 years of his tenure with the City's fire department, the City provided a step increase to eligible employees on May 1. However, in 2000, Allen actually received his pay increase on June 10 instead of May 1.

On May 1, 2009, the City's non-bargained-for employees received a 1% pay increase and they received their step increases.[10] Local 1898 bargaining unit employees did not receive a wage and step increase. The City noted that it withheld bargaining unit members' wage and step increases because IAFF was certified as the firefighter/paramedic and lieutenant/paramedics' exclusive representative in February 2009 and the parties had not reached agreement on their initial contract. The City introduced evidence that its uniform past practice in negotiations with its other two bargaining units has been to withhold wage and step increases for eligible employees until negotiations have been completed.[11] The City stated that it handled

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[9] In practice, according to the testimony, the City issues the annual evaluations earlier.

[10] These employees include clerical staff, finance employees, accounting employees, and those who work at City Hall.

[11] The City negotiates with three bargaining units, the Metropolitan Alliance of Police (police officers), the Lake Forest Employee Association (public works employees), and the International Association of Firefighters (firefighters and lieutenants). On May 1, 1998, when the City was negotiating its first contract with MAP, it implemented across the board salary adjustments for its unrepresented employees. The wage and step increases for employees in the bargaining unit represented by MAP were frozen until the parties had reached an agreement. The parties' contract was signed on March 1, 1999, and it contained a retroactivity section which granted bargained-for employees the salary increase that the non-bargained-for employees had received earlier. The MAP bargaining units' personnel action reports (PARs) reflect this retroactive wage increase. Similarly, the City likewise provided raises to the police department's unrepresented employees on May 1, 2004, while it held the MAP bargaining unit members' salaries static because the parties were negotiating a successor collective bargaining agreement. Once MAP's contract was signed, the employer granted retroactive pay raises, back to May 1, 2004, to bargaining unit members. The MAP bargaining unit members' PARs reflect this action.

In addition, the Lake Forest Employee Association was certified as the exclusive bargaining representative for the public works bargaining unit in June 2004. The City did not grant LFEA employees a wage increase on May 1, 2005 because the parties were still in negotiations for their first contract. The parties' executed contract contains a retroactivity provision which provides that bargaining unit members would receive the wage increases otherwise due to them on May 1 of the applicable fiscal year. The LFEA bargaining unit members' PARs reflect this provision.

IAFF employees' salaries in the same manner as it had handled the salaries of its other organized employees, represented by different unions. Thus, the City froze bargaining unit members' salaries and step increases on May 1, 2009 until March 7, 2011, the date on which the parties executed their agreement.

Pursuant to the parties' contract, IAFF employees, employed by the City on the date of the contract's execution, received a retroactive 3.5% wage increase, effective as of May 1, 2009 and a 1% wage increase effective as of May 1, 2010. In addition, parties bargained where each of IAFF's members would be situated in the step plan; the contract's retroactivity provision likewise granted bargaining unit members their retroactive step increases, according to the parties' agreement. The IAFF bargaining unit members' PARs reflect those retroactively-granted wage increases.

7. Allan's step freeze

On May 1, 2007, Allan received a Personnel Action Report (PAR)[12] reflecting a salary increase to step three of the official pay plan for 2008. The PAR noted that he had assumed the duties of Emergency Services Disaster Agency (ESDA) coordinator in 2007 and that he would continue those duties. These duties required additional meetings, training, certifications, and other responsibilities beyond that of a regular fire lieutenant. As a result, the PAR reflected that Allan would receive an additional merit step increase to step 4 to compensate him for his additional duties and responsibilities. The PAR further stated that his next merit step increase would be granted in May 2008. Allan understood that he was receiving the merit step increase for his ESDA coordinator functions and not for his duties as medical officer which he had also been performing. No individual serving as medical officer had ever received a pay increase for performing those duties. Allan testified that he had never received additional money for performing his medical officer duties.

In May 2008, Allan received a PAR which reflected his pay increase to step 5. It noted his next step merit increase would occur in May 2009. Allan was transitioned out of his role as medical officer on August 15, 2008. Sometime before August 15, 2008, Chief Howell told Allan that he would remain at the same step for the following fiscal year as well. The Union filed its

[12]Personnel Action Reports document and inform employees of raises, step increases, resignations, promotions, sick leave and discipline.

charge with the Board, objecting to the City's action on October 26, 2009, over a year later. Allan's May 2009, PAR confirmed that Allan was transitioned out of his role as medical officer in December so that he could focus on his ESDA duties and that he would remain at Step 5 as a result.

On March 1, 2011, Allan received a PAR stating that the May 2009 PAR was rescinded and that Allan would receive his step 6 increase.

8. Colin Barr's wages

All Local 1898 bargaining unit members received retroactive wage and step increases in March 2011, pursuant to the collective bargaining agreement, except Colin Barr, a firefighter employed by the department from July 24, 2006 to April 3, 2010. Barr was a bargaining unit member on May 1, 2009, the date on which the City froze bargaining unit members' wages. His wages were also frozen as of that date.

However, the collective bargaining agreement granted retroactive wage increases only to those bargaining unit members employed by the City as of March 7, 2011, the date of the agreement's execution. [13] Colin Barr was not employed on March 7, 2011, was not covered by the retroactivity clause, and therefore did not receive any retroactive wage increases.

The Union sought to include retroactivity for Barr in the parties' collective bargaining agreement, but did not succeed. Nevertheless, when the union signed the collective bargaining agreement, it included a side letter which states, "nothing contained [in] this Agreement [is] intended in any way to constitute a waiver of any position either party may have with respect to Case No. S-CA-10-115."

9. Boat incident and Allan's suspension

Allan was assigned to work at Station I on October 8, 2009. Around noon that day, he was directed to report to Station II. Before reporting to Station II, Allan stopped at his home to pick up his self-contained breathing apparatus (SCBA) mask and his boat. Allan admitted that he stopped home without the knowledge or permission of his immediate supervisor, Battalion Chief Robertson. He noted, however, that he had informed Lieutenant Gallo of his actions.

[13] The contract states "all employees who are employed by the City on the day this agreement is executed shall, if applicable receive retroactive pay for the period May 1, 2009, to the date of the signing of this agreement."

The fire department is structured as a paramilitary organization. The chain of command from the bottom up is as follows: firefighter, lieutenant, battalion chief, deputy chief and chief. A lieutenant who seeks permission to take a detour when leaving the fire station's premises must address that request to his battalion chief. One lieutenant does not have the authority to grant a lieutenant such permission.

Deputy Chief Garrison told Deputy Chief Issel that Allan had been absent for a half an hour or 35 minutes that day. Allan himself claimed he had been gone for 15 minutes. Lieutenant Gallo confirmed that Allan had been absent only for 15 minutes. The department credited Garrison's estimate and did not check the department's video surveillance cameras to verify his statement.

Issel recommended that Allan should receive a one-day suspension for his actions. Issel based his recommendation on his review of the discipline that the department had imposed on another employee for a similar infraction and a conversation with Kalmar, who stated that she believed Issel's proposed penalty was consistent with the department's past practices.

Specifically, Issel reviewed the case of firefighter Pete McWilliams who was similarly issued a one-day suspension for going home on duty without permission. McWilliams left the corporate limits of the City of Lake Forest on April 5, 2005, used a department vehicle without the knowledge or permission of his immediate supervisor, and went to his residence in Lake Bluff[14] and a school in Knollwood to vote, without informing his superiors. Nine days after McWilliams's infraction, on April 14, 2005, the City issued a PAR suspending McWilliams for one day. Issel recommended a one-day suspension for Allan because he considered Allan's conduct similar to Williams's on April 5, 2005. Howell agreed with Issel's recommendation.

Issel's investigation of McWilliams's file did not uncover the fact that McWilliams had in fact previously committed a similar infraction on June 30, 2004, when he had gone home after a Department scheduled stress test, without the knowledge of his supervisors, and failed to return to the station until one and a half hours later. McWilliams received a one-day suspension for this behavior, too, and the City issued a PAR documenting the suspension the following day,

[14] Lake Bluff is within the response area for the Lake Forest Fire Department.

on July 1, 2004.[15] Nor did it uncover the fact that McWilliams had received a written reprimand for other, unrelated, misconduct.

The Rules and Regulations of the City of Lake Forest Board of Fire and Police Commission govern suspensions. The Rules provide that the Chief shall have the right to suspend any Non-Exempt member of the Department for a period not exceeding five days without pay by serving a written notice of suspension on such member...." There is no indication that a department member must receive a warning or a written reprimand for certain behavior before the Chief is entitled to issue a suspension.

On October 14, 2009, Issel met with Allan in the Lieutenant's office at Station II at 7 am. Jan Bardi served as Allan's union representative at the meeting. The purpose of the meeting was to mete out the disciplinary action. Allan asked if he would be suspended. Issel confirmed that Allan was indeed suspended for the entire shift, effective as of 7 am that morning.

The remaining events of the meeting are in dispute. Issel testified that Allan became upset, that he stood up, put on his union hat and said the chiefs were "fucking up the fire department," that they were "poor fucking managers" and that "this is bullshit." However, Bardi and Allan both testified that Allan did not use profanity at the meeting and that he did not say what Issel claimed he said. Allan further noted that he only put his union hat on at the end of the meeting once he was informed that he was suspended and once he had signed the document confirming his suspension. I credit Issel's testimony based on his demeanor at hearing.

At the end of the meeting, Allan received a PAR which documented the discipline he received and noted that his actions violated Section3.2.0 Work Day Defined of the Rules and Regulations of the Lake Forest Fire Department and Section5.8.0 Absent without Leave of the City's Personnel Policies and Practices. The PAR reflected that Allan was suspended from duty for one day.

10. Allan's evaluations and allegations of disrespect

On March 12, 2005, Allan received excellent and exceeds standards ratings on his evaluation in all but one category evaluated.

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[15] Kalmar testified that she, like Issel, was unaware of McWilliams's first infraction at the time she supported Issel's decision to discipline Allan.

On October 14, 2005, Allan received excellent and exceeds standards ratings on his evaluation in all categories evaluated.

On March 25, 2006, Allan received excellent and exceeds standards ratings on his evaluation in all categories evaluated.

On October 16, 2006, Allan received meets standard of work and exceeds standards ratings on his evaluation in all categories evaluated.

On April 1, 2007, Allan received meets standard of work and exceeds expectations ratings on his evaluation in all categories evaluated.

On April 5, 2008, Allan received meets standard of work and exceeds expectations ratings on his evaluation in all categories evaluated. The evaluation stated that Allan "must work on curbing comments and criticisms" and that he "need[ed] to show [he] backed more department issues that related to management even if [he didn't] agree with that view."

On November 12, 2008, Allan received meets standard of work and exceeds expectations ratings on his evaluation in all categories evaluated. The evaluation stated that, "one area that I feel Andrew needs to work on [is] his diplomatic skills as it relates to management/supervisory issues. When conflict and issues arise which are a natural part of business, Andrew I feel needs to focus more on calming the waters than rocking the boat! Andrew is a very influential member of this department and although I am not asking him to agree with every decision made I do need him as a lieutenant to help support management decision and move forward."

On March 21, 2009, Allan received meets standard of work and exceeds expectations ratings in all categories evaluated. The evaluation stated that, "one area Lt. Allan needs to work on is effective communications upward. Although I know you may not agree with the way certain things are done we still need to respect upper management's intent to do the right thing." Further, the evaluation stated that, "it appears Lt. Allan's confidence with upper management or the direction they are moving this department is lacking. If these perceptions are untrue then I feel Lt. Allan needs to make a concerted effort to dispel the perceptions."

On December 7, 2009, Allan received a semi-annual evaluation that stated, "one area Andy needs to continue to work on is his issues that relate to management and to adhere to the core value Respect. Many instances have been brought to my attention of Andy's lack of respect as it relates to management. His mannerisms when talking to the Chief, DCs and some BCs needs to be addressed to be more respectful. We must see some improvement on Andy's part in

this within the next six months and if improvement isn't noticed Andy will be evaluated on a monthly basis after May 1, 2010 until change is noticed."[16] Battalion Chief Scott Robertson told Allan that he had not observed the disrespect mentioned in the evaluation himself and that the comments "were coming from the chiefs."

While the evaluation did not contain references to specific incidents, Allan's own comments noted two alleged occurrences which may have warranted such language. First, Allan mentioned an incident in which he had allegedly turned his back on Issel when Issel was speaking to him. At hearing, Issel described the incident. He stated it occurred some time after October 14, 2009 when he had approached Allan on the apparatus floor to discuss some "fire business." Issel testified that while he was speaking, Allan walked away, went around the other side of the battalion chief's vehicle, grabbed groceries and headed to the kitchen. Issel did not mention the incident to Allan nor did he document the incident at the time. Allan testified that he did not remember whether this even had occurred; I credit Issel's testimony that it did occur because Issel described the incident with specificity.

Second, Allan referenced an issue which was reported by Battalion Chief Montellano. While the details of the event are not described in the record, Allan admitted it occurred but noted that Montellano informed him the event "was not meant to end up on an evaluation" and that Montellano himself had "chalked [the incident] up to just a bad day."

This evaluation also provided Allan with positive feedback. It stated that Allan was "an energetic and enthusiastic member of the department" who had "done a great job working on calls as well as running scenes as shift commander." In addition, it noted that Allan "did a great job coordinating events at a major water leak" and that he had also done "an exceptional job coordinating the update of NIMS." Finally, the evaluator thanked Allan for his hard work.

Allan ultimately received all his scheduled step increases which were based on his annual evaluations. Although the City initially withheld Allan's May 2009 step increase, the City did not base its decision on the comments in Allan's December semi-annual evaluation. Rather, the PAR stated that Allan's scheduled increase was withheld because he had ceased performing certain duties.

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[16] The Department did not ultimately review Allan on a monthly basis.

V. Discussion and Analysis

1. Standalone 10(a)(1) allegations[17]

a. Alleged anti-union statements, amendments to the complaint and timeliness

The Union's allegations that the City made statements which interfered with, restrained or coerced public employees in the exercise of their rights in violation of section 10(a)(1) are, with one exception, untimely and may not be included in any amendment to the complaint made at hearing.[18]

The Act gives administrative law judges broad discretion to amend complaints. Section11(a) provides, in relevant part: "Any such complaint may be amended by the member or hearing officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon." The Board's case law is more specific, allowing for the amendment of complaints in two distinct instances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. See Chicago Park Dist., 15 PERI ¶3017 (IL LLRB 1999); City of Chicago (Police Dep't), 14 PERI ¶3010 (IL LLRB 1998); City of Chicago (Chicago Police Dep't), 12 PERI ¶3013 (IL LLRB 1996); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶3019 (IL LLRB 1990); Cnty. of Cook, 5 PERI ¶3002 (IL LLRB 1988).

However, Section11(a) of the Act also provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made. The six-month period begins to run once the Union has knowledge of the alleged unlawful conduct, or reasonably should have known of the conduct. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP

[17] The Union, on brief, alleges that some of these actions also violate section 10(a)(2). See, Union brief, "Issues Presented" section. Contrary to the Union's contention, these actions alone do not qualify as section 10(a)(2) violations because they do not constitute adverse job actions.

[18] However, they will be considered in support of the Union's bona fide section 10(a)(2) allegations to any extent that they evidence anti-union motivation. See, PACE, 25 PERI ¶ 188 (IL LRB-SP 2009) (A charging party may properly use events outside the limitations period to show the true nature of the event timely pled, however, charging party cannot prove the timely pled event simply by proving that the occurrences outside the six-month limitations period were in fact a series of unremedied unfair labor practices).

2004); Chicago Transit Auth., 16 PERI ¶ 3013 (IL LLRB 2000), citing Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998) aff'd by unpub. order, 14 PERI ¶ 4003 (1999); Ill. Dep't of Central Mgmt. Serv., 16 PERI ¶2011 (IL SLRB 2000) citing Moore v. Ill. State Labor Rel. Board, 206 Ill. App. 3d 327, 335, 564 N.E.2d 213, 7 PERI ¶4007 (4th Dist. 1990); Am. Fed. of State, Cnty. Mun. Empl., Local 3486 (Pierce), 15 PERI ¶ 2026 (IL SLRB 1999). Accordingly, an ALJ may not amend a complaint if the allegations are untimely and outside the six month limitation period, even if the other requirements for amendment are met. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004).

Here, with one exception, the Union's allegation concerning the City's allegedly coercive statements are untimely because the statements were made prior to six months before the Union filed its charge (October 26, 2009) and its amended charge (April 14, 2010). To be found timely, the City's allegedly coercive statements must have been made no earlier than April 26, 2009. Here, however, Allan testified that Issel's statements concerning loss of benefits occurred December 9, 2008, approximately four months outside the limitation period. Similarly, Cory Kazimour testified that Issel's statement concerning the department's lack of discretion to grant benefits not specifically bargained for in the contract occurred in February 2009, approximately three months outside the limitation period. Thus, these statements cannot support a standalone violation of section 10(a)(1) and this recommended decision and order therefore does not address the substance of these claims.

While the Union witnesses testified that the City's chiefs repeated such statements within the limitation period, the Union did not produce sufficiently specific evidence from which to find that the City violated the Act because it did not identify when and where the statements were made. The Union's vague assertions that such statements were in fact made within the limitation period and repeated to bargaining unit members over a two-year period does not demonstrate, by a preponderance of the evidence, that the City violated the Act.

The Union did advance one timely-charged statement made by the Chief concerning this unfair labor practice case. However, while the allegation is properly included[19] in the

[19] Applying the rules set forth above, the amendment with respect to this allegation was properly granted at hearing because the amendment conforms to evidence the Union presented at hearing. Further, the amendment does not prejudice the Respondent because the Respondent had an opportunity to rebut the Union's evidence and because, as discussed below, the Union's arguments on this issue fail to demonstrate a violation of the Act. See, Chicago Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999)

amendment to the complaint made at hearing, it does not prove a 10(a)(1) violation because it is neither a threat or an impermissible promise of a benefit and is instead protected speech under 10(c).

An independent violation of section 10(a)(1) of the Act is established by evidence that a public employer engaged in conduct which reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Illinois, Dep't. of Cent. Mgmt. Serv. (Dep't. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987). However, section 10(c) of the Act protects the expression of opinions, views and arguments regarding unionization, provided that "such expression contains no threat of reprisal or force or promise of benefit."

The statement by the Chief that the union could "count on this unfair labor practice charge going to hearing,"[20] is timely pleaded because it occurred on November 25 or 26, 2009, within the six months prior to April 14, 2010, the date on which the Union filed its amended charge. However, such a statement does not violate section 10(a)(1) because it merely constitutes a non-lawyer's prediction of the treatment of a charge before the Board and it is neither a threat of reprisal nor promise of a benefit.

Thus, none of the City's alleged statements support a standalone section 10(a)(1) violation.

b. Prohibition of conducting and discussing union business while on duty

Similarly, the Union's allegation that the City violated section 10(a)(1) of the Act when it specifically prohibited employees from discussing the union while on duty is untimely and, accordingly, the complaint cannot be amended to include that allegation, either.

As noted above, section 11(a) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made. The six-month period begins to run once the Union has knowledge of the alleged unlawful

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(amendment is proper where it conforms the pleadings to the evidence and would not unfairly prejudice any party).

[20] The City argues that the Chief phrased this comment differently. Though I credit Bardi's testimony, this credibility determination is immaterial to the outcome of this allegation.

conduct, or reasonably should have known of the conduct. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004); Chicago Transit Auth., 16 PERI ¶ 3013 (IL LLRB 2000), citing Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998) aff'd by unpub. order, 14 PERI ¶ 4003 (1999); Ill. Dep't of Cent. Mgmt. Serv., 16 PERI ¶2011 (IL SLRB 2000) citing Moore v. Ill. State Labor Rel. Board, 206 Ill. App. 3d 327, 335, 564 N.E.2d 213, 7 PERI ¶4007 (1990); Am. Fed. of State, Cnty. Mun. Empl., Local 3486 (Pierce), 15 PERI ¶ 2026 (IL SLRB 1999). Accordingly, an ALJ may not amend a complaint if the allegations are untimely and outside the six month limitation period. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004).

Here, the Union first learned of the City's policy prohibiting the discussion of union business on January 2, 2009, at the latest, when Howell sent the announcement to Union board members that "no union activities of any kind [would] be allowed while personnel [were] on duty." As such, an allegation concerning this matter would be timely only if the Union had filed its charge on or before July 2, 2009, yet the charge was actually filed three months later, on October 26, 2009. Thus, this allegation is untimely and it is unnecessary to address whether it meets the other requirements for amendment to the complaint.

2. Wage/step freeze, 10(a)(4), (2) and (1)

   a. 10(a)(4)

The City violated section 10(a)(4) of the Act by withholding bargaining unit members' 2009 expected wage and step increases during bargaining for their initial contract.

Under Section7 of the Act, parties are required to bargain collectively over employees' wages, hours and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State Cnty. and Mun. Empl., Local 268, 122 Ill.2d 353, 362 (1988); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). An employer violates its duty to bargain when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding that change. Vill. of Lisle, 23 PERI 39 (IL LRB-SP 2007); Cnty.of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); City of Peoria,11 PERI ¶ 2007 (IL SLRB 1994); Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1998); Cnty. of Cook (Dep't of Cent. Serv.),15 PERI ¶ 3008 (IL LLRB 1999). This general rule applies to the circumstances where an

employer is attempting to change the status quo as to terms and conditions of employment after the certification of an exclusive bargaining representative and during bargaining for an initial collective bargaining agreement. Cnty. of Cook, 15 PERI ¶ 3008; Waste Systems, Inc., 307 NLRB 52 (1992); Cent. Maine Morning Sentinel, 295 NLRB 376 (1989); NLRB v. Katz, 369 U.S. 736 (1962).

Thus, in order to make a prima facie case, the Charging Party must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria,11 PERI 2007 (IL SLRB 1994). Wages are a mandatory subject of bargaining. City of Decatur, 122 Ill.2d at 362. Accordingly, the only issue here is whether the Employer altered the status quo by freezing employees' wages and step increases while the parties bargained their initial collective bargaining agreement.

The status quo is established by the employer's promises or by a course of conduct which makes a particular benefit part of the established wage or compensation system. Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009); NLRB v. Katz, 369 U.S. 736 (1962); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998). An employer's failure to grant scheduled or expected pay increases constitutes an adverse action which changes the status quo. Village of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Cnty. of Kane, 3 PERI ¶ 2059 (IL LRB ALJ 2003). The test for determining whether a specific practice is sufficiently established is objective. Vienna School Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503, 515 (4th Dist. 1987); Village of Lisle, 23 PERI 39 (IL LRB-SP 2007). The status quo against which an employer's conduct is evaluated must take into account the regular and consistent past patterns or changes in the conditions of employment. City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). In other words, the Board has defined status quo not as stasis, but as maintenance of existing policies and procedures. Village of Downers Grove, 22 PERI ¶ 161 (IL LRB-SP 2006).

With respect to wage increases, the Board considers the reasonable expectation of the employees in continuance of their existing terms and conditions of employment, the amount of discretion vested in an employer with respect to an established practice, and whether the status quo would have been clearly apparent to an objectively reasonable employer at the time in question. Vienna School Dist. No. 55, 162 Ill. App. 3d at 515.

Here, employees had a reasonable expectation of receiving their wage and step increases on May 1, 2009, because Allan testified that the department had regularly provided wages and

step increases to all eligible employees on May 1 for 12 consecutive years. Allan's own Personnel Action Reports for the years prior to 2009 confirm this practice. The fact that Allan received his 2000 wage increase on June 21 instead of May 1 does not undermine Allan's testimony since his remaining, and most recent wage increases, were received on May 1, as stated. Further, the fact that the parties' contract provides that bargaining unit members would receive their withheld wages retroactive to the May 1 date lends additional support to the finding that they reasonably expected to initially receive wage increases by May 1.

Contrary to the Employer's contention, the City's Personnel Policies and Practices document does not grant the Employer discretion to unilaterally withhold employees' wage increases. Indeed, the City's policies affirm that eligible employees will receive their scheduled step increases, although potentially at an adjusted rate since the plan assures employees will receive at least some "salary increase consideration" even if the City is required to adjust the step system "based on economic conditions and other factors." Thus, the City's complete removal of such increases is not permitted by its policies and also flies in the face of employees' reasonable expectations.

Further, the City's practices with respect to other bargaining units, specifically, the fact that it regularly withheld wages from other units' members during initial and successor contract negotiations, does not create an alternate status quo which permits the City to withhold wages from bargaining unit members at issue here. On the one hand, the City correctly notes that ALJs have considered an Employer's evidence of past practice with respect to other unions relevant when evaluating the lawfulness of the employer's withholding of expected wages; but the Board has never held that such a past practice is so strong and sufficiently persuasive that it outweighs employees' reasonable expectation of receiving scheduled and expected wages historically provided by the Employer on a certain date when the parties are negotiating an *initial collective bargaining agreement.* Cnty. of Cook (Dep't of Cent. Serv.), 15 PERI ¶ 3008 (IL LLRB 1990) (addressing Respondent's argument that it did not change the status quo during contract negotiations for an initial agreement because its practice was to never grant such wage increases to employees in the midst of negotiations for an agreement, but noting that no such status quo existed where Respondent had budgeted and granted two of the four planned increases during negotiations); See also (Chief Judge of the 18th Judicial Circuit, 17 PERI ¶ 2037 (IL LRB-SP ALJ 2001) (ALJ considered respondent's argument that it did not change the status quo because

it was the established practice County of DuPage, which provided funds to Respondent for its merit and cost of living increases, to withhold such increases from all newly-certified bargaining units).

Moreover, the cases cited by the City in support of this proposition are inapplicable here because they address an employer's past practice concerning *successor* contracts with an established union, not an *initial* contract with a new union, at issue here. See, City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987)(union had no reasonable expectation of receiving merit raises during bargaining for successor agreement where (1) pay increases under the merit system were regularly withheld until the City and unions reached tentative agreement on economic issues; (2) the union's inquiries implied the existence of some questions as to the timing of merit pay disbursement; and (3) the union was informed of the city's intent to do so again and did not object); Wilmette School Dist. No. 39, 4 PERI ¶ 1077 (IELRB 1988) (Where district had consistently withheld salary increments during contract hiatus periods, teachers had reasonable expectation that they would not be paid salary increments until parties entered into their successor bargaining agreement; Oakwood Community School Dist. No. 76, 9 PERI 1090 (IELRB 1993) (past practice with respect to same bargaining unit demonstrated that employer's policy was not to grant vertical salary increments at the start of a school year until parties had finalized their successor agreement). In contrast, the City here is negotiating an initial contract with a new union and, as such, the case law cited by the City does not apply.

Notably, the City's argument concerning its own practices with other unions is even less persuasive to the extent that the City argues that such practices should have dispelled this unit's reasonable expectation of receiving wage increases. First, bargaining unit employees cannot be presumed aware of the City's past practices with other units and, accordingly, their reasonable expectations of receiving wage increases should be deemed preserved.

More importantly, even if bargaining unit members were aware of the Employer's conduct with respect to other unions, the other unions' failure to object to the Employer's wage freezes during bargaining over initial agreements should not detrimentally bind this unit. In other words, an employer that establishes a policy to consistently change the status quo by freezing wages during the initial contracts for all newly-organized units should not be permitted to use that policy to support another change of the status quo which would be unlawful but for

that established policy and which may have been deemed unlawful had it been timely challenged by the first affected union.[21]

Finally, even if the Board determines that the City's past practice with respect to other unions' initial collective bargaining agreements affects its conduct with this union, the Board is still be required to weigh that practice of wage freezes against the employees' demonstrated expectation of receiving wages. Here, the balance favors the employees' expectation of receiving the wages in question. As such, the Employer violated section 10(a)(4) of the Act when it withheld bargaining unit members' scheduled wage and step increases.

a. 10(a)(2) and (1)

The City violated sections 10(a)(2) and (1) of the Act when it failed to grant unit members the wage and step increases because it took such action as a result of the employee's union activity.

To establish a prima facie case that the Employer violated section 10(a)(2) of the Act, the Union must prove that: 1) the employees engaged in union activity, 2) the Employer was aware of that activity, and 3) the Employer took adverse action against the employees for engaging in that activity in order to encourage or discourage union membership or support. City of Burbank

[21] Without passing judgment on the City's earlier practices, it is noteworthy that the Board has held that an employer's failure to grant scheduled or expected pay increases during collective bargaining for an initial contract constitutes an adverse action which changes the status quo. Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009). The City's bald admission on this record that it froze other unions' wages during bargaining for an initial collective bargaining agreement in the same manner it did in this case raises the distinct possibility that those unions could have filed unfair labor practice charges concerning that conduct. The fact that the limitation period has run with respect to that conduct does not render the action lawful and instead merely removes the Board's jurisdiction to hear the case. Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004) ("Because the six-month period for filing an unfair labor practice charge under the Act is jurisdictional, once the Board determines that the charge is untimely, it lacks the authority to determine whether the charge raises the requisite legal or factual issue necessary for the issuance of a Complaint"); Cf., Special Educ. Dist. of Lake Cnty., 15 PERI ¶ 1047 (IELRB 1998) (The IELRB took administrative notice that no unfair labor practice charge was ever filed over an employer's denial of wage increase during the bargaining over a different union's initial collective bargaining agreement but that it could not be found unlawful because it occurred years earlier and that the employer's conduct could form the basis of past practice with respect to initial agreements). In rejecting the Employer's past practice argument here on this basis, the Board would not be exercising its jurisdiction to bind parties not before it to a determination on the merits; rather, it would be erring on the side of caution by preventing the employer from establishing and perpetuating a practice based on conduct that might be considered unlawful.

v. ISLRB, 128 Ill. 2d 335, 345, 538 N.E.2d 1146, 1149 (1989). With respect to the last element, the Union must introduce evidence that the adverse action was based, in whole or in part, on union animus, or that union activity was a substantial or motivating factor. City of Burbank, 128 Ill. 2d 335, 538 N.E.2d 1146. Union animus is demonstrated through the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Id.

Once, the union establishes a prima facie case, the employer can avoid a finding that it violated section 10(a)(2) by demonstrating that it would have taken the adverse action for a legitimate business reason notwithstanding the employer's union animus. Id. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. If the proffered reasons are merely litigation figments or were not, in fact relied upon, then the employer's reasons are pretextual and the inquiry ends. However, when legitimate reasons for the adverse employment action are advanced, and are found to be relied upon at least in part, then the case may be characterized as a "dual motive" case, and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union activity. Id.

A charging party may prove a respondent violated 10(a)(2), in cases such as this, by demonstrating that had bargaining unit employees not exercised their right under the Act to choose the union as their representative, respondent would have given them their full wage increases, as it did for its unrepresented employees. Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009) (citing, City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶ 4013 (1989)); County of Kane, 3 PERI ¶ 2059 (IL SLRB ALJ 1987) (Passage of ordinance which granted raises to unrepresented employees but denied them to employees represented by union violated 10(a)(2) of the Act).

Here, the employees engaged in union activity when they signed collective bargaining authorization cards and filed their majority interest petition. The Employer was necessarily aware of that activity because it was served with the petition. Further, as noted above, the City took adverse action against bargaining unit members by altering the status quo and withholding

scheduled and expected step increases. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995) (Failure to grant pay increases is ordinarily considered adverse action). Finally, the City admitted that it withheld the scheduled wage increases solely because the employees had unionized and were negotiating their initial contract with the employer. As such, the Union has established a prima facie case that the Employer violated sections 10(a)(2) and (1) of the Act because it demonstrated that Union employees would have received their wage increases had they not organized.

Moreover, the City has not advanced a legitimate reason for the adverse employment action—one that is unrelated to the employees' union activity. Instead, the City merely argues that it maintained the status quo and complied with past practice pertaining to collective bargaining, generally, when granting wages to non-bargaining unit members but withholding them from those who had joined the union. Yet, such an argument merely underscores the fact that the City was motivated to withhold the scheduled and expected wage increases by the employees' protected activity. Further, as noted above and contrary to the City's contention, it could have preserved the status quo only by granting bargaining unit members the expected and scheduled wage increases. While the City notes that it would have violated section 10(a)(4) if it had granted pay raises in contravention of its long-established practice, such a conclusion is not supported by the cases cited above, or the ones cited by the employer on brief. Cf., Cook County Sheriff, 14 PERI 2043 (IL LRB-LP ALJ 1998) (employer violated the Act when it unilaterally instituted a stipend and *changed an already contractually-settled*, mandatory subject of bargaining); Cf., Board of Trustees of the Univ. of Ill. At Chicago, 9 PERI 1112 (IELRB 1993) (addressing employer's unilateral changes *during the term of a collective bargaining agreement*).

Finally, an award of interest is appropriate here, despite the City's dual arguments that it already paid all wages owed under the collective bargaining agreement and that an award of interest would deprive the City of a substantial portion of the consideration it received for agreeing to the collective bargaining agreement. In cases such as this one, the Board's remedy is clear: if the Board determines that the Respondent has engaged in an unfair labor practice, by a preponderance of the evidence, the Board shall "issue and cause to be served upon the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action, including reinstatement of public employees with or without back pay, as will effectuate the policies of [the] Act." 5 ILCS 315/11(c). In other words, the Board uses the make-

whole remedy to put the charging party in the same position it would have been in, had the unfair labor practice not occurred. Sheriff of Jackson Cnty., 14 PERI ¶ 2009 (IL SLRB 1998); Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI ¶ 2025 (IL SLRB 1993); Vill. of Hartford, 24 4 PERI ¶ 2047 (IL SLRB 1998); Vill. of Glendale Heights, 1 PERI ¶ 2019 (IL SLRB 1985), aff'd by unpublished order, 3 PERI ¶ 4016. In this case, the Board can achieve that end only if it awards interest to bargaining unit members. Here, the City asks the Board to condone its unfair labor practice by permitting it to violate the Act without consequence. There is no Board case law to support this approach.

3. Colin Barr's wages and waiver

Contrary to the City's contention, the Union did not waive the right to obtain Barr's withheld wage increases by signing the collective bargaining agreement.

The Board will not infer the waiver of a statutory right. Rather, evidence of waiver must be clear and unmistakable. AFSCME v. ISLRB, 190 Ill. App. 3d 259, 546 N.E.2d 687, 6 PERI ¶ 4004 (1989); Village of Oak Park v. ISLRB, 168 Ill. App. 3d 7, 522 N.E.2d 161, 4 PERI ¶ 4014 (1988); Edgar P. Benjamin Healthcare Center, 322 NLRB 750 (1996).

There is no clear and unmistakable evidence of waiver here although the union failed to obtain retroactivity for Barr in the parties' collective bargaining agreement because the union preserved its rights to seek such retroactivity before the Board by executing a side letter. The City rightly noted at hearing that the contract states that only those unit members employed at the time of execution were eligible for retroactive wage increases and that Barr did not qualify under those terms. Nevertheless, the documents show that the Union took pains to preserve its rights to Barr's wage increase by including a side letter in the collective bargaining agreement which stated that "nothing contained [in] this Agreement [is] intended in any way to constitute a waiver of any position either party may have with respect to Case No. S-CA-10-115 [this case]." As such, the Union did not waive its right to Barr's retroactive wage increase.

Further, as noted above, a make-whole remedy is appropriate here. In granting such a remedy, the Board would not negate the parties' negotiated agreement and would instead act within its power to effectuate the agreement, in harmony with the parties' understanding that neither party waived their positions with respect to this case.

4. Shift overtime, 10(a)(4), (2) and (1)

The Union has not met its burden to show that the City violated sections 10(a)(4) and (1) of the Act when it assigned shift overtime opportunities to the chiefs prior to 2010 or when it required shift commanders to offer overtime opportunities first to the chiefs before offering it to bargaining unit members sometime during 2010.

As noted above, an employer violates its duty to bargain when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding that change. Village of Lisle, 23 PERI 39 (IL LRB-SP 2007); County of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); County of Jackson, 9 PERI ¶ 2040 (IL SLRB 1998); County of Cook (Department of Central Services), 15 PERI ¶ 3008 (IL LLRB 1999). Thus, in order to make a prima facie case, the Charging Party must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994).

Overtime assignment policies are mandatory subjects of bargaining. Cnty. of Cook, 23 PERI ¶ 147 (IL LRB-LP 2007); Vill. of Dixmoor, 16 PERI ¶ 2038 (IL LRB-SP ALJ 2000). Accordingly, the only issue here is whether the City's overtime assignment practices and policies altered the status quo.

As noted above, the test for determining whether a specific practice is sufficiently established is objective. Vienna School Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503, 515 (4th Dist. 1987); Vill. of Lisle, 23 PERI 39 (IL LRB-SP 2007). The status quo against which an employer's conduct is evaluated must take into account the regular and consistent past patterns or changes in the conditions of employment. City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). In other words, the Board has defined status quo not as stasis, but as maintenance of existing policies and procedures. Vill. of Downers Grove, 22 PERI ¶ 161 (IL LRB-SP 2006).

The City did not change the status quo when it assigned shift overtime opportunities to the chiefs prior to 2010 because there is ample evidence that the City had historically assigned at least some lieutenant and firefighter shift overtime to chiefs since 2001.

Further, contrary to the Union's contention, there is insufficient statistical evidence to show that the *percentage* of overtime granted to the chiefs increased during that time. While the

evidence shows that the *raw number* of chief overtime hours increased, the Union has made no comparison to the total number of shift overtime hours worked or to the shift overtime hours worked by bargaining unit members during the relevant years.[22] Absent these key figures, it is impossible to ascertain whether the percentage of chief shift overtime increased in comparison to total shift overtime. The mere fact that the chiefs' shift overtime hours increased does not mandate such a conclusion because overall shift overtime hours could also have increased concurrently.[23]

In addition, the City did not change the status quo when it instructed shift commanders to offer overtime opportunities first to the chiefs before offering it to bargaining unit members in 2010 because there is insufficient evidence to find that the City changed the status quo.[24] Here, it is unclear whether the department instructed shift commanders to offer shift overtime to chiefs forevermore, or whether the directive applied only to a single fiscal year after an assessment of the overtime budget.

This distinction is material because in the first scenario, shift commanders would receive blanket overtime preference, while in the second, the shift commanders would receive it only under circumstances in which such preference had been historically offered. To illustrate, Garrison testified that the City's standard practice had been to assign overtime to firefighters and lieutenants until the City ran out of its overtime budget and to only then assign overtime to the chiefs. Thus, if the City had categorically required the shift commanders to initially offer all

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[22] The union asserts that the percentage of all shift overtime performed by the chiefs rose to 25 and 33 percent in 2009 and 2010, respectively. However, those figures appear to reflect the percentage of the chief overtime per year with respect to the total *chief* overtime for all listed years, 2001 through 2011.

[23] While the City introduced its own chart of overtime hours, the City's figures collect the hours worked for all overtime, not just shift overtime. As such, it does not clarify this issue or help confirm the union's assertions.

[24] This issue is properly addressed here even though the conduct occurred after the initial charge was filed and even though it is not specifically mentioned in the complaint. The Board's case law allows for the amendment of complaints to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. Forest Preserve Dist. of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 746 (1st Dist. 2006). Here, the added allegations are closely related to the original allegations in the amended charge which refer to instances in which deputy chiefs worked in place of firefighters, allegedly in violation of section 10(a)(4). The instant allegation similarly pertains to the substitution of deputy chiefs for firefighters and lieutenants with respect to overtime opportunities, likewise allegedly in violation of section 10(a)(4), albeit on a different scale. Accordingly, the City's directive to Allan concerning shift overtime assignments, made after the complaint issued and first referenced by Allan at hearing, is properly addressed here.

shift overtime first to the chiefs for the foreseeable future, the City would have changed the status quo because prior overtime assignment policies were dependent on a yearly assessment of overtime money. However, if the directive was limited to a single fiscal year, and made upon an assessment of the City's finances, the City would not be considered to have altered the status quo. In short, the lack of clarity on the scope and nature of the City's directive must be construed against the Union to find that it did not prove a change in the status quo by a preponderance of the evidence.

Moreover, the Union's overtime statistics, according to the Union's own interpretation of them, support the City's testimonial evidence that preferential assignment of shift overtime to the chiefs constituted the status quo. Here, to the extent that those numbers indicate any relevant change at all,[25] they show that the increase began not in 2010, the year in which the Union alleges the City implemented its new policy, but rather, a full year earlier, in 2009. Consequently, those high numbers of chief shift overtime hours suggest that the City implemented its policy of granting chiefs shift overtime preference a year prior to 2010 and that it thus constitutes the status quo.

Thus, the City's practices of assigning shift overtime to chiefs and requiring shift commanders to offer shift overtime to chiefs first did not violate section 10(a)(4) of the Act because they did not change the status quo. Nor do those practices violate sections 10(a)(2) because the City's conduct did not effect a change in the employees' terms and conditions of employment.

5. Alleged Discrimination against Allan for union activity, 10(a)(2) and (1)

As noted above, to demonstrate discrimination under section 10(a)(2) of the Act, a charging party must show by a preponderance of the evidence that the (1) employee was engaged in union or protected concerted activity; (2) the employer knew of the employee's conduct; and (3) the employer took an adverse job action against the employee in whole or in part because of union animus or that the action was motivated by the employee's protected conduct. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335 (1989).

[25] As noted, the statistics show that the raw number of chiefs' shift overtime hours increased, but the Union has not sufficiently demonstrated the relevance of those numbers by comparing them to union shift overtime or total shift overtime.

a. Removal of Allan's May 2009 Step Increase

The Union's allegation that the City removed Allan's May 2009 step increase in violation of the Act is untimely.

Section11(a) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made. The six-month period begins to run once the Union has knowledge of the alleged unlawful conduct, or reasonably should have known of the conduct. Chicago Transit Auth., 16 PERI ¶3013 (IL LLRB 2000), citing Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998) aff'd by unpub. order, 14 PERI ¶4003 (1999); Illinois Dep't of Cent. Mgmt. Serv., 16 PERI ¶2011 (IL SLRB 2000), citing Moore v. Ill. State Labor Rel. Bd., 206 Ill. App. 3d 327, 335, 564 N.E.2d 213, 7 PERI ¶4007 (1990); Am. Fed. of State, Cnty. and Mun. Empl., Local 3486 (Pierce), 15 PERI ¶ 2026 (IL SLRB 1999).

Here, union president Allan knew that he would not receive his 2009 step increase more than eight months before the Union filed its unfair labor charge because Howell informed him of that fact sometime before August 15, 2008, explaining that Allan had ceased performing certain additional duties as medical officer yet retained his earlier merit raise and therefore did not warrant another step increase. Thus, to be timely filed, the Union was required to file a charge on this allegation by February 15, 2009. However, the union filed its charge on October 26, 2009, over eight months later. Thus, the Union's charge on this allegation is untimely because the Union did not file the charge within six months after Allan was informed that he would not receive his 2009 step increase.

Contrary to the Union's contention, the charge is untimely even though the City implemented its decision to freeze Allan's steps within the limitation period, on May 21, 2009, because according to Howell's uncontradicted testimony, Allan received informal notice of the action far earlier. See, Wapella Educ. Ass'n, IEA-NEA v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 168-169 (4th Dist. 1998) (limitation period for filing complaint alleging that school district made unilateral change which impacted salary schedule began when charging party became aware or should have become aware of change in policy, rather than date on which it was implemented).

b. Prohibiting Allan from wearing union insignia while being paid by the City

The City's directive to Allan, prohibiting him from wearing union logos while paid by the City, does not violate section 10(a)(2) because it does not constitute an adverse employment action. However, it violates section 10(a)(1) because the City applied its uniform rule discriminatorily by permitting another employee to wear union emblems without consequence and without remark.

As noted above, a Respondent violates section 10(a)(1) of the Act when it engages in conduct which reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Illinois, Dep't. of Cent. Mgmt. Serv. (Dep't. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987). The complained-of conduct must be evaluated according to an "objective" test and thus the Employer's motivation is irrelevant. Champaign-Urbana Public Health Dist., 24 PERI ¶ 122 (IL LRB-SP 2008).

With respect to an employee's right to wear union insignia at work, the Illinois Labor Relations Board has adopted the National Labor Relations Board's approach, holding that public employees have the right to wear union-related pins and insignia in the workplace, but that that right must be balanced against the employer's right to manage its operations in an orderly fashion. Dep'ts of Cent. Mgmt. Serv. and Corrections, 25 PERI ¶ 12 (IL SLRB 2009). An employer's rule "which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety." Id. (citing, Kendall Co., 267 NLRB 963, 965 (1983); Singer Co., 199 NLRB 1195 (1972); Fabric Services, 190 NLRB 540 (1971); Eckerd's Market, 183 NLRB 337 (1970)). Special circumstances exist as a matter of law when "where an employer enforces a policy that its employees may only wear authorized uniforms in a consistent and nondiscriminatory fashion and where those employees have contact with the public." Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984); See also Hertz Rent-A-Car, 305 N.L.R.B. 497 (1991).

Here, although the City has a facially non-discriminatory uniform rule, it has violated the Act by applying that rule in a discriminatory manner, prohibiting Allan, the union president, from wearing union logos while permitting firefighter Mounts to wear a union t-shirt without remark. The City's disparate application of its uniform policy would impress, upon a reasonable

employee, that Allan received different treatment because of his status as union president. The fact that Mounts was also a union board member does not dispel such an impression because the position of union president is unique since it represents the highest level of union authority within the fire department.

Thus, the City violated section 10(a)(1) by prohibiting Allan from wearing union insignia while on duty.

c. Suspension

The City did not violate sections 10(a)(2) and (1) of the Act when it suspended Allan for driving home without first obtaining permission from his supervisor.

As noted above, the employer's unlawful motive may be established by direct or circumstantial evidence, including the timing of the employer's action in relation to the protected activity, the employer's expressed hostility toward unionization, disparate treatment between union employees and other employees, inconsistent reasons between the employer's proffered reasons for the adverse action and other actions of the employer, shifting explanations for the adverse employment action, and a pattern of targeting union supporters. City of Burbank, 128 Ill. 2d at 345.

Once the charging party establishes a prima facie case, the burden shifts to the employer to demonstrate by a preponderance of the evidence that it had a legitimate business reason for its actions and that the employees would have received the same treatment absent their protected activity. Id. The Employer cannot end the inquiry by merely proffering a legitimate business reason for its adverse employment action because the Board must determine whether the proffered reason is bona fide or pretextual. Id. If the proffered reasons are merely litigation figments or were not in fact relied upon, then the employer's reasons are pretextual and the inquiry ends. Id. But if the Board finds that the Employer relied upon its reasons for the adverse employment action, at least in part, then the case is characterized as one of "dual motive," and the employer must establish by a preponderance of the evidence that it would have taken the same action notwithstanding the employee's union activity. Id.

It is undisputed that Allan engaged in protected activity and that the City knew of it. Accordingly, the only matter at issue is the City's motivation to suspend Allan.

Here, the Union presented insufficient evidence from which to infer unlawful motivation because while the Union presented evidence that the City harbored animus in some respects it has not shown that the City suspended Allan because of it. Although the City's prohibition of discussing union business while on duty, the chiefs' statements that employees might lose benefits if they joined the union, and the fact that the City singled out union president Allan and admonished him for wearing union clothing are suggestive of union animus,[26] there is no temporal proximity between Allan's discipline and the City's knowledge of his protected conduct, Allan was not treated disparately, and the City's reasons for discipline are legitimate and unshifting. As such, the Union has not made its prima facie case.

First, there is no proximity between the City's knowledge of Allan's union activity and the adverse action. Here, the City imposed discipline on October 14, 2009, many months after (i) Allan commenced unionization efforts and announced his union presidency in October 2008, (ii) the union filed the majority interest petition with the Board on February 5, 2009, and (iii) the union became certified as the employees' exclusive representative on March 23, 2009. Forest Preserve Dist. of Cook Cnty., 7 PERI ¶ 3016 (IL LLRB 1991) (four month time span between protected activity and adverse action did not demonstrate proximity to support a finding of anti union animus); Cf., Vill. of Calumet Park, 23 PERI ¶ 108 (IL LRB-SP 2007) (three weeks between protected activity and adverse action sufficient to demonstrate employer's anti-union animus though proximity); Cf., Sarah D. Culbertson Memorial Hosp., 25 PERI ¶ 11 (IL LRB-SP 2009) ("few weeks" between employees' testimony before board and adverse action sufficient to demonstrate proximity indicative of animus).

Second, Allan was not disparately treated because he received the same level of discipline, a one-day suspension, as non-union supporter Pete McWilliams, who had similarly left duty without the permission or knowledge of his superiors. Cf., City of Chicago Heights, 26 PERI ¶ 41 (IL SLRB ALJ 2010) (comparing loss of work time—two days compared to one hour—in measuring gravity of offense when employer imposed discipline on employees who were not first responders, but also noting punishment for union steward was more severe than non-steward because it included docked pay, not just a suspension). While the Union argues that Allan had received no previous discipline while McWilliams had received a written

[26] Contrary to the Union's contention, fact that the chief declined to participate in union events or voiced an opinion that he did not want to fund the union's attorneys is a mere expression of opinion, free of promises of benefit or threats of reprisal and does not support a finding of animus.

reprimand (albeit for conduct unrelated to leaving the station without permission) there is no indication from the Board of Fire and Police Commissioner Rules and Regulations that an employee may not receive a suspension without first receiving other discipline. Cf., North Shore Sanitary Dist. v. Illinois State Labor Rel. Bd., 262 Ill. App. 3d 279, 292 (2nd Dist 1994) (where employer had rules concerning progressive discipline, employer's failure to follow it demonstrated animus where it *both* disparately treated employees and failed to explain why progressive discipline policy was not followed). Although the Union has demonstrated that the City disparately treated union employees when it withheld their scheduled wage increases, there is no evidence that such treatment extended to Allan's conduct. Similarly, the fact that Allan, as union president, was singled out and cited for wearing union insignia does not demonstrate that the City likewise singled him out for suspension. Indeed, the mere fact that an employer makes one decision out of union animus does not demonstrate that all its decisions are similarly motivated, particularly when there is evidence to the contrary, as there is here. See, Bd. of Educ. of North Greene Comm., 16 PERI ¶ 1042 (IELRB 2000)(evidence of animus in the failure to rehire an employee did not support a finding of animus in the initial discharge where employer's reasons for discharge were legitimate).

In addition, contrary to the Union's contention, there is no evidence that Allan's punishment was disproportionate merely because Allan was absent from the station for a shorter period of time than McWilliams. Notably, the amount of time for which a firefighter leaves the station without the permission or knowledge of his superior does not appear determinative in issuing the suspension. Neither of McWilliams's PARs specify the amount of time for which the firefighter was absent without leave. More importantly, the Union has not demonstrated that the length of such an absence would or should affect the severity of the punishment in a paramilitary organization of first responders.

Furthermore, there is no merit the Union's argument that the City's investigation was hasty or that it demonstrates an eagerness to punish the union president. Here, the City's six-day investigation into Allan's conduct is standard compared to past practice since McWilliams's suspensions were imposed on the day of his violation, in one case, and nine days after his violation, in another case.[27]

[27] These time frames are drawn from the dates on McWilliams's PARs.

Finally, the City provided a plausible, unshifting, non-pretextual and non-arbitrary business reason for imposing the one-day suspension: Allan's admitted violation of rules on October 8, 2009, when he stopped at his home for around 30 minutes[28] without the knowledge or permission of his immediate supervisor, Battalion Chief Robertson, before reporting to Lake Forest Fire Department Station II, as ordered.

Under the circumstances set forth above, it is not the function of the Board or its administrative law judges to substitute this agency's judgment for that of the employer in the discipline of public employees. Cnty. of Rock Island and Sheriff of Rock Island Cnty, 14 PERI ¶ 2029 (IL SLRB 1998) (inferring unlawful motive only where there was lack of evidence indicating that deputy's actions contravened any rules or standards of conduct for sheriff's department employees and where disciplinary action appeared to have been taken on arbitrary, implausible or unreasonable grounds) aff'd, 315 Ill. App. 3d 459 (3rd Dist. 2000); see also, Cnty. of DeKalb, 6 PERI ¶ 2053 (IL SLRB 1990), aff'd, (2nd Dist. 1991), unpub. Ord. No. 2-90-1309.

Contrary to the Union's contention, the City's decision is not pretextual merely because the union argues it was ill-informed or ill-considered. See, Macon County Highway Dept., 4 PERI ¶ 2018 (IL SLRB 1988). Here, for example, the fact that Issel recommended Allan's discipline without discovering that his comparator, McWilliams, had been disciplined not once, but twice for the same conduct and that he had also received other unrelated discipline, makes the investigation incomplete, but does not render the City's reasons for discipline pretextual.

But, even if the Board determines that the facts support a finding that the City harbored union animus in suspending Allan, there is ample evidence, cited above, that the City would have taken the same action even absent such alleged anti-union motivation because its reasons for imposing the discipline were legitimate and the Union provided no evidence of disparate treatment. Thus, the City did not suspend Allan in violation of sections 10(a)(2) and (1).

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[28] The City was permitted to credit Garrison's statement that Allan had left the station for around a half hour instead of the 15 minutes referenced by Gallo. See, Cnty. of Rock Island and Sheriff of Rock Island Cnty, 14 PERI ¶ 2029 (IL SLRB 1998). Similarly, the City was permitted to rely on that superior officer's statement without verifying it against the department video surveillance tapes.

d. Negative comments on Allan's evaluation

i. 10(a)(2)

The City did not violate section 10(a)(2) when it noted Allan's alleged disrespect in his December 7, 2009, evaluation because the negative comments do not constitute an adverse employment action.

An action does not need to have an adverse tangible result or adverse financial consequences to constitute adverse employment action sufficient to satisfy the third prong of the 10(a)(2) analysis.[29] City of Chicago v. Illinois Local Labor Relations Board, 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988); Circuit Court of Winnebago, 17 PERI ¶ 2038 (IL LRB-SP 2001)(merely because Charging Party did not suffer any negative financial consequences due to her transfer to the traffic division does not defeat her section 10(a)(2) claim); County of Cook (Sheriff), 14 PERI ¶ 3005 (IL LLRB ALJ 1997) (rotation of employees constituted adverse action but ALJ concluded employer's decision was not driven by union animus); City of Chicago (Police Dep't), 8 PERI ¶ 3001 (IL LLRB H.O. 1991) (removal of officer from watch secretary duties and subjecting him to heightened job scrutiny constituted adverse employment action, but ALJ concluded employer had a legitimate business reason for doing so); City of Markham, 25 PERI ¶ 117 (IL LRB-SP ALJ 2009)(respondent violated the act by issuing employee an unsatisfactory employment evaluation even though it did not affect the employee's terms and conditions of employment because the evaluation was only used as a tool to help employees improve their performance); but see Northern Illinois University, 23 PERI ¶ 160 (IELRB ALJ 2007) (reduced performance evaluation did not amount to adverse action where there was no evidence that the performance evaluation adversely affected complainant's title, salary, benefits, or other working conditions).

However, to prevail under 10(a)(2) the union must show some effect on the employee's terms and conditions of employment. Chicago Park Dist. (Grant Park Music Festival), 26 PERI ¶ 76 (IL LRB-LP 2010) (change in hours supported finding of adverse action because it effected

[29] section 10(a)(2) explicitly states that an employer may not discriminate in regard to hire or tenure of employment or any term or condition of employment. See 5 ILCS 315/10(a)(2). To demonstrate discrimination under section 10(a)(2) of the Act, a charging party must show by a preponderance of the evidence that (1) employee was engaged in union or protected concerted activity; (2) the employer knew of the employee's conduct; and (3) the employer took an adverse job action against the employee in whole or in part because of union animus or that the action was motivated by the employee's protected conduct. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335 (1989).

employee's terms and conditions of employment. In other words, while the "definition of an adverse employment action is generous," the union must "show some qualitative change in the terms or conditions of ... employment or some sort of real harm." Atanus v. Perry, 520 F.3d 662, 675 (7th Cir. 2008); Vill. of Plainfield, 22 PERI ¶ 71 (IL LRB-SP ALJ 2006)(requiring the union to show adverse action by proving loss of employment status or any negative impact on his terms and conditions of employment).

Here, the Union has not demonstrated that the City's negative comments concerning Allan's alleged lack of respect toward management had any effect on his terms and conditions of employment. While an employee's negative evaluation may prevent him from moving up in the step system, all of Allan's evaluations were sufficiently positive to ultimately warrant his yearly increases.[30] Although the City initially withheld Allan's May 2010 increase, the City's stated reason for doing so was not based on the evaluation's negative comments but rather on the City's erroneous belief that it was entitled to freeze all bargaining unit members' wages during negotiations for an initial collective bargaining agreement. In addition, the Union has demonstrated no other connection between employees' evaluations and their terms and conditions of employment which would render a negative evaluation an adverse employment action.

ii. 10(a)(1)

Further, the City negative comments on Allan's December 2009[31] evaluation would not objectively tend to restrain, interfere or coerce a reasonable employee in the exercise of his rights under the Act, in violation of section 10(a)(1), because they addressed a problem that the City identified before Allan engaged in protected activity, they were justified, and they were made in the context of an overall positive evaluation.

First, the comments concerning Allan's strained relationship with management began before Allan engaged in protected conduct and therefore cannot be deemed to correlate with Allan's union activity. Further, the Union has not demonstrated that the subsequent evaluations which address the same problem do not merely indicate that Allan failed to remedy his initial pre-union deficiency. To illustrate, four months before Allan began organizing the union, the

[30] It is unclear from the record whether the step increases are based on solely the annual evaluations or whether the semi-annual evaluations also affect those increases. Nevertheless, the fact remains that Allan ultimately received all his scheduled steps.

[31] The Union has timely objected only to the negative remarks in the December 2009 evaluation.

City noted that Allan "must work on curbing comments and criticisms" and that he "need[ed] to show [he] backed more department issues that related to management even if [he didn't] agree with that view." The following evaluation, from March 21, 2009, restates that "one area Lt. Allan needs to work on is effective communications upward" and that even if Allan disagreed with management he "need[ed] to respect upper management's intent to do the right thing." Finally, the December 7, 2009 evaluation confirms that "Andy needs *to continue to work on* is his issues that relate to management and to adhere to the core value Respect." (emphasis added).

Second, there is evidence within the December 2009 evaluation document itself which justifies the negative comments and renders them non-coercive/interfering by the objective employee standard. In the comments to the evaluation, Allan himself admitted to one incident of disrespect although he protested that "it was not meant to end up on an evaluation" and that BC Montellano said he would just "chalk[] it up to a bad day." In addition, at hearing Issel testified concerning a second incident which Allan likewise referenced in the response section. While Allan argued that he could not remember whether that incident had occurred, I credit Issel's testimony that it did.

Finally, these comments are less likely viewed as coercive by an objective standard, even though the evaluators considered imposing monthly evaluations[32] if Allan did not improve, because they are contained in an evaluation which also sets forth glowing praise. For example, the evaluation states, "Andy has done a great job both working on call as well as running scenes as shift commander....great job Andy!" Further, it notes that "Andy has done an exceptional job coordinating the update of NIMS and setting a course for our city compliance in this area....thanks for the hard work." Viewed in this light, the negative statements and potential for more frequent evaluations can be read only as guidance for improvement rather than statements which might interfere with an employee's rights under the Act.

Thus, the City's negative comments on Allan's evaluation do not violate section 10(a)(1) of the Act.

[32] Notably, the City did not ultimately evaluate Allan on a monthly basis.

e. Integrity email

The chief's email, impugning Allan's integrity, does not violate section 10(a)(1) of the Act because it contains no threats of reprisal or force or promise of benefit and instead constitutes a permissible expression of views under section 10(c) of the Act. 5 ILCS 315/10(c).

An independent violation of section 10(a)(1) of the Act is established by evidence that a public employer engaged in conduct which reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Illinois, Dep't. of Cent. Mgmt. Serv. (Dep't. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987). No showing of anti-union motive is required in such cases, as section 10(a)(1) is concerned with the effect of an employer's actions on the free exercise of employee rights, regardless of the employer's purpose. City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Illinois, Dep't. of Cent. Mgmt. Serv. (Dept. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987).

However, the free speech provision contained in section 10(c) of the Act protects the expression of opinions, views and arguments regarding unionization, provided that "such expression contains no threat of reprisal or force or promise of benefit." Here, on its face, the chief's email to bargaining unit members which states that "you have entrusted yourselves with an individual [Lt. Allan] who seems to lack integrity" contains neither threats of reprisal nor promises of a benefit and therefore constitutes non-coercive, protected speech. See, City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995) (pre-election letter to employees noting that they faired better economically than similarly situated represented employees in other cities constituted protected speech); Village of Downers Grove, 22 PERI ¶ 161 (IL LRB-SP 2006) (Respondent's statement that unit employees could not "trust anyone with the last name of Gilbert" did not violate the act even though the remarks undermined Gilbert's status among his peers because it was protection speech under 10(c)).

6. Sanctions and Respondent's reply brief[33]

[33] Respondent's Motion to Strike Allegations in Charging Party's Post-Hearing Brief which addresses the Union's motion for sanctions and its allegedly untimely allegations, must be stricken. The Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Sections 1200 through 1240

Here, the Union moved for sanctions against the City, arguing that the City engaged in frivolous litigation because it "specifically denied knowledge, prior to the Union's certification on March 23, 2009, of Local 1898's role as the exclusive bargaining representative, union organizing...activity and Allan's role as Union President." Contrary to the Union's contention, sanctions against the City are not appropriate here because Union has not categorically demonstrated that the City made false denials without reasonable cause and because the scope and circumstances of the City's denial warrant some leeway.

The Board's order may include sanctions if one party has made "allegations or denials without reasonable cause [which are] found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation." 5 ILCS 315/11(c) (2010).

In determining whether a party has made false allegations or denials, the Board uses an objective test to ascertain whether the denials or allegations were made with "reasonable cause under the circumstances."[34] Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 (IL SLRB 1998) (imposing sanctions where respondent argued grievances were untimely filed though respondents were fully equipped with and in possession of all of the necessary factual information to know that the grievances were in fact timely) (citing, Fremarek v. John Hancock Mutual Life Ins. Co., 272 Ill. App. 3d 1067 (1st Dist. 1995)). However, the Board has recognized that there are limits on information available to parties and their attorneys at pleading, at the early stage of the adjudicative process. Thus, while the Board has reaffirmed Respondents' obligation to answer the allegations of complaints truthfully, it has denied sanctions based on such limitations even when the Respondent supplied demonstrably false answers which, after full factual development, were not even debatable. City of Bloomington, 26 PERI ¶ 99 (IL LRB-SP 2010) (declining to impose sanctions based on false pleadings, but imposing sanctions for other reasons). In addition, the Board has been less willing to impose sanctions based on a Respondent's allegedly false denial where a Respondent's denials concern a critical element of the Charging Party's prima facie burden of proof. City of Harvey, 18 PERI ¶

(Rules), clearly do not provide for the filing of this document. National Nurses Organizing Committee - California Nurses Assoc., 21 PERI ¶ 52 (IL LRB-LP 2005) (striking Charging Party's response brief arguing against Respondent's motion for sanctions); See also Section1200.135 of the Rules.

[34] In addition, the Board has held that whether a party has engaged in frivolous litigation must be determined based on whether its defenses to the charge were made in good faith or represented a "debatable" position. City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995); County of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty. (Teamsters Local Union No. 714), 12 PERI ¶ 3008 (IL LLRB 1996). That element is not at issue here.

2032 (IL LRB-SP 2002) (denying motion for sanctions on the basis that Respondent denied union animus, even though Respondent could have admitted the existence of that animus, based on evidence presented at hearing; granting sanctions on other grounds).

First, the City's denial it is not as specific as that articulated by the Union and thus is not is not categorically false. Here, contrary to the Union's contention, the City did not deny knowledge of Allan's Union activity prior to March 23, 2009; it merely disavowed having such knowledge "at all times material" while confirming that it had knowledge after March 23, 2009. Further, the City's statement that it did not have knowledge at all times material, is itself debatable because it is still not clear whether the City had knowledge of Allan's union activity prior to August 15, 2008, when Howell informed Allan that he would not receive his next year's step increase, a material date.[35]

Second, even if the City's denial were false, the City deserves some leeway in this matter because it made the denial at the pleading stage when the information available to the attorneys may have been limited and because the denial concerned an element of the Union's prima facie case. As noted above, the Board has granted Respondents some leeway in their pleading answers, given the limitations on available information during the early stages of adjudication. City of Bloomington, 26 PERI ¶ 99 (IL LRB-SP 2010). In addition, it is the Charging Party's burden to prove that Respondent knew of the at-issue employee's protected activity at the material time when Respondent took adverse action against that employee, under 10(a)(2). Thus, Respondent's denial that it had such knowledge at "all times material" properly placed the burden on the Charging Party to make its prima facie case, particularly given the scope of the denial and the existing factual ambiguities, noted above. See, City of Harvey, 18 PERI ¶ 2032 (IL LRB-SP 2002).

VI. Conclusions of Law

1. The City violated section 10(a)(1) when it prohibited Andrew Allan from wearing union logos while being paid by the City.

2. The City violated sections 10(a)(4), (2) and (1) when it froze bargaining unit members' expected wage and step increases while the parties bargained their initial contract.

[35] The materiality of this date is not altered by the fact that the Union's allegation on this matter was ultimately dismissed as untimely.

3. The Union did not waive its right to seek back pay for former bargaining unit member Colin Barr.

4. The City did not violate sections 10(a)(4), (2) and (1) of the Act when it granted chiefs firefighter/ lieutenant shift overtime opportunity or when it required shift commanders to offer firefighter/lieutenant shift overtime opportunities to the chiefs first before offering it to bargaining unit members.

5. The City did not violate sections 10(a)(2) and (1) when it removed Allan's May 2009 step increase, suspended him for driving home without permission, gave negative comments on his evaluation and questioned his integrity in an email.

6. The City did not violate section 10(a)(1) of the Act through its statements or when it prohibited employees from discussing the union while on duty.

VII. Recommended Order

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

1) Cease and desist from:
   a. Prohibiting Andrew Allan from wearing union insignia while on duty, to the extent that the City has not already done so.
   b. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.[36]
2) Take the following affirmative action necessary to effectuate the policies of the Act:
   a. Permit Allan to wear union insignia while on duty, to the extent that it has not already done so.
   b. Make whole members of the bargaining unit by paying them the statutory interest at the rate of 7% per annum on their retroactive wage and step increases to which they were entitled in May 2009, as required by the Act.
   c. Rescind the orders issued to Allan regarding union logo attire, to the extent that the City has not already done so.

[36] There is no order to bargain here because the parties have already negotiated their wage increases and because the City already granted employees their raises retroactively.

d. Pay Colin Barr the back wages owed him from 2009 with applicable statutory interest.

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

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

VIII. Exceptions

Pursuant to Section1200.135 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. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 16th day of April, 2012

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Lake Forest Professional Firefighters Union, International Association of Firefighters, Local 1898,	)	
Charging Party	)	
and	)	Case No. S-CA-10-115
City of Lake Forest,	)	
Respondent	)	

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 16th day of APRIL, 2012, 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.

Ms. Lisa B. Moss
CARMELL CHARONE WIDMER
MOSS & BARR
One East Wacker Drive
Suite 3300
Chicago, Illinois 60601

Mr. R. Theodore Clark, Jr.
Mr. Benjamin Gehrt
CLARK BAIRD SMITH LLP
6133 North River Road
Suite 1120
Rosemont, Illinois 60018

Melissa L. McDermott, ILRB

SUBSCRIBED and **SWORN** to
Before me this **16th** day of
April, 2012.

NOTARY PUBLIC

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
CARLA STONE
MY COMMISSION EXPIRES
OCTOBER 25, 2014