

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL

Metropolitan Alliance of Police	)	
Barrington Hills Chapter 576	)	
	)	
Charging Party	)	Case No. S-CA-10-189
	)	
and	)	
	)	
Village of Barrington Hills,	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER**

On February 8, 2010, Metropolitan Alliance of Police Barrington Hills Chapter 576 (MAP or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that Village of Barrington Hills (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a)(1), (2) and (3) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and the Board's Executive Director issued a Complaint for Hearing on June 23, 2010.

A hearing was conducted on November 9 and 10, 2010, by Administrative Law Judge John Clifford in Chicago, Illinois, at which time MAP 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. The case was transferred to the undersigned for decision upon agreement of the parties.

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

**I. PRELIMINARY FINDINGS**

The parties stipulate and I find:

1. At all times material, the Village has been a public employer within the meaning of section 3(o) of the Act.
2. At all times material, the Village has been subject to the jurisdiction of the state panel of

- the Board pursuant to section 5(a) of the Act.
3. At all times material, the Village has been subject to the Act pursuant to Section 20(b).
  4. At all times material, MAP has been a labor organization within the meaning of section 3(i) of the Act.
  5. At all times material, the Village has employed Gary Deutschle.
  6. At all times material, Deutschle has been a public employee within the meaning of section 3(n) of the Act.
  7. MAP is the exclusive representative of patrol officers employed by the Village of Barrington Hills.
  8. The Village is a municipal corporation with its principle place of business in Barrington Hills, Illinois. It is organized and exists under the law of Illinois.
  9. Compensation paid by the Village of Barrington Hills to its employees represents an economic condition of employment as set forth by the Act.
  10. Patrol Officer Deutschle is the president of MAP Chapter 576 and a member of the union's negotiating team.
  11. On September 4, 2009, Officer Deutschle requested to use the Village's employee education benefits for 2010.
  12. On November 24, 2009, Police Chief Michael Murphy sent a memorandum to all personnel of the police department stating that the Village Board had approved the 2010 budget including a 2% budget [wage] increase for all department members.
  13. On November 26, 2009, Gary Deutschle received an email from Alice Runvik, an administrative assistant in the police department, referencing the educational benefits Deutschle requested on September 4, 2009.
  14. On November 30, 2009, MAP filed its majority interest petition, Case No. S-RC-10-049, with the Board seeking to organize the patrol officers employed by the Village. The petition excluded the chief of police, the lieutenants and the sergeants of the Village police department. On the same date and in the same matter, union attorney Steve Calcaterra sent a letter to the Village president regarding the majority interest petition.
  15. On December 1, 2009, Calcaterra faxed Village Attorney George Lynch a copy of the petition.
  16. On January 1, 2010, the Chief of Police received a 1.8% wage increase, the lieutenants

- received a 3% wage increase and the sergeants received a 2% wage increase.
17. The 2% wage increase for all members of the Barrington Hills Police Department referenced by Chief Murphy in the November 24, 2009 memorandum has not since been received by patrol officers, the members of the bargaining unit.
  18. Patrol officers who are part of the union are presently engaged in negotiations for their initial collective bargaining agreement with the Village.
  19. Patrol officers have not yet "put in" for educational reimbursement for 2010.

## II. ISSUES AND CONTENTIONS

The issues are whether the Village violated sections 10(a)(1) and (3) of the Act when it (1) rescinded a previously-announced 2% pay increase for patrol officers during the pendency of their representation petition, while granting a similar pay increase to non-petitioned-for police department employees, and when it (2) withheld a previously-announced and previously-approved educational benefit from petitioned-for Patrol Officer Gary Deutschle, MAP chapter president and union organizer, allegedly for his participation in representation proceedings before this Board.<sup>1</sup>

MAP contends that the Village failed to maintain the status quo and therefore violated Section 10(a)(1) when it withheld previously-announced pay increases for petitioned-for patrol officers during the pendency of their representation petition. In support, MAP argues that petitioned-for officers had a reasonable belief that they would receive the promised 2% increase and that, as such, the Village's discretion to alter the budget or its motivations to do so are immaterial to finding a 10(a)(1) violation.

Similarly, MAP argues that the Village violated Section 10(a)(1) when it granted preapproval for Deutschle's education reimbursement and then rescinded it without explanation.

Further, MAP argues that the Village took these actions with anti-union animus and thus also violated section 10(a)(3) of the Act. Specifically, MAP asserts that the Village's disparate treatment of petitioned-for and non-petitioned-for employees, the temporal proximity of the Village's adverse actions to the union's petition, and statements by Village agents, demonstrate

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<sup>1</sup> The complaint also alleges that the Village violated Section 10(a)(2) of the Act in taking these actions. MAP does not advance any arguments concerning those allegations on brief. Accordingly, they are waived and are not addressed below. See, Village of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004); County of Cook (Department of Central Services), 15 PERI ¶ 3008 (IL LRB 1999)(union's Section 10(a)(2) allegation, set forth in complaint, but not argued on brief, was waived).

the Village acted out of anti-union animus because of the employees' protected activities. Moreover, MAP contends that the Village's justifications for its actions should be disregarded because they are shifting and pretextual. Finally, MAP requests an order sanctioning the Village for its alleged willful violation of the Act.

The Village argues that it did not violate 10(a)(1) and (3) of the Act when it rescinded the patrol officers' previously-promised 2% wage increase because it did not change the status quo.<sup>2</sup> The Village contends that it did not substantially change patrol officers' benefits because it maintained their 2009 salaries; alternatively, the Village states that patrol officers had no reasonable expectation of receiving the promised wages because those are implemented at the Village's sole discretion. Next, the Village asserts that it harbored no anti-union animus and that its decision was instead based on economic hardships, its pre-established salary goals for employees, and the advice of counsel. The Village concludes that it would have rescinded the promised wage increases even if the patrol officers had not filed a representation petition with the Board. Finally, the Village argues that even if the Board does find the Village violated the Act when it rescinded patrol officers' promised increases, the Board should not order a make-whole remedy because patrol officers would then effectively receive two raises for the same time period, one imposed by the Board to enforce the Village's previous promise and one obtained through subsequent collective bargaining.

Further, the Village argues that it did not violate 10(a)(1) and (3) of the Act and when it withdrew Deutschle's previously-promised educational reimbursements. First, the Village argues that Deutschle waived his right to have this aspect of the case heard before the Board because he did not grieve the matter internally first.<sup>3</sup> Further, the Village notes that it was not required to reimburse Deutschle's educational expenses because he neglected to submit his grades and receipts, as required by the Village's policy.

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<sup>2</sup> The Village does not address the alleged 10(a)(1) violation separately.

<sup>3</sup> This argument is not addressed in the body of the RDO. It is sufficient to note that neither the Act nor the rules requires employees to exhaust their internal remedies before filing a charge. Further, any waiver of a statutory right must be clear and unmistakable; there is no such waiver here. Am. Fed. of State, County and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989); Vill. of Oak Park v. Ill. State Labor Rel. Bd., 168 Ill. App. 3d 7 (1st Dist. 1988). No such waiver is present here.

### III. FINDINGS OF FACT

#### 1. Background

Barrington Hills covers an area of three square miles and has a population of between 4000 and 4200 people. It is incorporated in the County of Cook but is situated in four counties<sup>4</sup> and receives tax revenues from all of them. Barrington Hills has a "strong-mayor" form of government in which all Village employees and all primary officers report to the Village President. The Village is governed the President, Robert Abboud,<sup>5</sup> and a Board of six trustees. The President functions as the Village's chief executive officer and chairman of the Board of Trustees. The Board of Village Trustees constitutes the Village's legislative body. It controls the Village's expenses. The Village may make no expenditure without the Board's authorization.

The Village of Barrington Hills is an appropriation-based municipality with a fiscal year that runs from January 1 to December 31. Each year, the Village allocates funds for the next fiscal year by first drafting a budget. The budget is assembled by the officers of the Village under the direction of the Village president. The officers submit their departments' projected expenses to the finance committee.<sup>6</sup> The documents and proposals are then reviewed by the committee and the Village treasurer. Together, they balance those expenses against projected revenues to formulate the budget. The budget is then viewed by the trustee committees. It is approved by a consensus of the Board, not by resolution or ordinance.

Robert Kosin, Director of Administration for the Village of Barrington Hills, characterized the budget as a forecast, not essential to the appropriation process. However, he also stated that the budget is a reliable document for planning purposes. The Village Officers use the budget to identify the amount of revenue needed for the coming fiscal year and compare it to the availability of property tax, the Village's main source of revenue. Next, the Village Officers and the treasurer draft a levy with the assistance of the Village attorney and present it to the Board of Trustees at a public meeting. The levy must be adopted in December of the year in which it is presented. It is used to collect property taxes.

The Village treasurer, with the assistance of the Village attorney, then drafts an

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<sup>4</sup> These counties are Cook, Lake, Kane and McHenry.

<sup>5</sup> He is also sometimes referred to as the mayor.

<sup>6</sup> Police Chief Michael Murphy is Village officer for the police department and he submits the department's financial information

appropriation ordinance based on the levy. The appropriation ordinance is submitted to the Board of Trustees for public review and consideration. The appropriation ordinance grants the Village permission to spend money within a predetermined cap and defines the maximum amount of money and resources that may be released at any one time without prior public hearing.

Once the appropriation ordinance is completed, the Village President submits monthly lists of "warrants" or expenses to the Board through the year. The Board approves each expense as it arises and issues a check, signed by the Village president and the treasurer. All pay checks to patrol officers follow this procedure; they are issued every two weeks.

## 2. Union organization and the budget

The Village of Barrington Hills currently employs a total of 19 sworn police officers, including one police chief, three lieutenants, three sergeants and 12 patrol officers. The Village also employs non-sworn employees. At the time of the hearing, only the patrol officers were organized and the Village was in the process of negotiating their initial collective bargaining agreement.

The patrol officers began to organize sometime after October 2009. Chief Murphy became aware of their organizing efforts in November 2009. Patrol Officer Gary Deutschle played an active role in the union's organization and has been MAP Chapter 576's president since October or November 2009. Patrol Officer Eric Stokes, union vice-president, and Patrol Officer Patrick McKinney, union secretary/treasurer, also helped organize support for MAP.

On November 23, 2009, the Village president and the other Trustees approved the Village's 2010 fiscal year budget at a Board meeting by a roll call vote. The budget included a 2% wage increase for all police department employees. No one at the meeting stated that the Board should adopt a budget which would keep the tax levy at or below 5%. None of the Village Trustees rejected the budget, though it required a 5.7% tax levy.<sup>7</sup>

At the time of the November 23, 2009, vote, the Board was aware of financial uncertainties that might impact the Village's financial position. First, Village trustees understood that the Village would be required to increase its contribution to the Illinois Municipal Retirement Fund (IMRF) by approximately \$50,000. Second, they knew that the

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<sup>7</sup> One Trustee was absent.

price of salt was in flux and would likely increase.<sup>8</sup> Third, they were aware of declining property values caused by impending foreclosures which would result in decreased tax revenue. Finally, they knew that they could no longer rely on the consumer price index (CPI) to establish the projected costs of goods and services because the rate was set at zero instead of at 1% to 1.5%, as the Village had anticipated. The Village voted to pass the November 23 budget, as written, despite these uncertainties.

On November 24, 2009, Police Chief Murphy sent a memorandum to all personnel of the police department stating that the Village Board had “approved the 2010 budget, including a 2% wage increase for all department members.” The memo was posted in the police department and sent out electronically. The Chief also posted a pay scale<sup>9</sup> on the bulletin board which reflected the Village Board’s approval of the salary increases; he wanted department personnel to know “where the department [was] and where it [was] going.” The pay scale document stated that the increases were effective as of January 1, 2010.

Murphy posted these documents because it was his understanding and experience from the prior four years that officers were assured their raises once the Board’s finance committee approved the budget. In those previous years, Chief Murphy put up postings on wages after the Village passed its budget. The Village never failed to increase wages as indicated in the postings; wages were never changed after the documents were posted. When Deutschle saw the November 24, 2009 memo, he interpreted its language to mean that he would receive a 2% increase in salary on January 1, 2010. Deutschle noted that he trusted the Chief’s word on matters related to police work or official business.

On November 30, 2009, MAP attorney Steve Calcaterra sent a letter to the Village president informing him that MAP was filing a majority interest petition to represent the Village’s patrol officers.<sup>10</sup> Calcaterra stated that the Village should maintain the status quo regarding patrol officers’ wages, and terms and conditions of employment, as required by the Act. On that same date, Calcaterra mailed the petition to the Board by certified U.S. mail. On December 1, 2009, Calcaterra faxed Village attorney George Lynch a copy of the petition. According to the date stamp on the petition, it was filed with the Board on December 4, 2009.

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<sup>8</sup> The Village learned of changing salt prices between September 2009 and November 2009.

<sup>9</sup> There was a separate pay scale listed for sergeants, lieutenants, and the chief.

<sup>10</sup> The letter was sent by certified mail.

Service upon the Village was deemed complete on December 7, 2009.<sup>11</sup> Village officials were aware that patrol officers were engaged in protected activity when patrol officer's filed their petition.

In early December, Murphy dropped by President Abboud's office and spoke to him about the budget. Abboud notified Murphy that the Village's budget was subject to change and that the budget would not be final until it completed the appropriation process. He noted that the budget was only a planning document even after it was approved. Abboud also informed Murphy that he wanted to keep the tax levy below 5%. Finally, Abboud directed Murphy to inform department personnel that the budget and the raises as approved on November 23, 2009, were "not locked in stone or concrete or gospel" and that the final budget would be available on December 21, 2009. At hearing, Abboud characterized Murphy's first memo as a wish list that would not necessarily come to fruition.

Between November 23, 2009, and Abboud's meeting with Murphy, the Village received its Equalized Assessed Valuation (EAV) results and its estimated revenues from its other taxes and fines. However, the Village received no new and unexpected bills and its liabilities did not change during that time. While the Village reevaluates its levy projections upon receipt of the EAV results, the Village reevaluates its levy projections every month.

On December 15, 2010, Chief Murphy issued a memo concerning the budget and salary information posted on November 24, 2009. The chief's memo stated, "I want to advise all personnel that the 2010 budget I posted on the board after the November Board meeting is not a binding document." (emphasis in original) The memo further explained that the Village was still discussing the levy, which was up for approval on December 21, 2009, and that the Village was concerned about raising taxes in hard economic times. Finally, the Chief stated "no employee of this Police Department should have the view that what I posted as the 2010 budget will indeed be implemented as is" and that the budget as posted was "subject to modification." Murphy placed the document in the roll call room in a glass case and sent it out through the department's electronic document management system.

On December 21, 2009, the Village Board modified the budget. The budget was amended at the direction of the various boards, commissions and the Board of Trustees. It did

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<sup>11</sup> The petition specifically excluded the chief of police, the lieutenants and sergeants. The Board ultimately certified MAP as the patrol officers' exclusive representative in June 2010 in Case No. S-RC-10-049.

not require approval by the Board of Trustees, however the change occurred after a discussion among the Board members. The patrol officer' salaries did not include the previously announced 2% increase and were instead held at the 2009 level.

Murphy stated that he understood the patrol officers would have obtained their promised 2% wage increase for 2010 had union attorney Calcaterra not told the Village to maintain the status quo. However, he noted that the Village was not trying to retaliate against the patrol officers as a result of Calcaterra's letter. Murphy and Abboud testified that the Village withheld the increase upon the advice of counsel. Specifically, Abboud believed that granting patrol officer's a 2% salary increase would not maintain the status quo.

In addition, Abboud did not believe the Village was obligated to provide the previously-announced wage increases. He understood that the Village government could alter its budget at any time and that it lost discretion over expenditures, including salaries, only once they were paid out via a check signed by the Village president, the treasurer and the clerk of the Village. Further, Abboud stated that the union would have to bargain for those raises.<sup>12</sup>

Abboud also testified that he was "offended and surprised" that the union had filed its majority interest petition and that the union attorney's letter helped him decide what to cut from the budget in December. However, Abboud clarified that the union's letter and MAP's majority interest petition only marginally affected his decision to withhold the patrol officers' promised wage increase. Abboud later testified that the Village withheld the patrol officers' promised wage increase solely because of the Village's dire economic circumstances. Abboud added that the decision also reflected the Village's strategy to conform its salaries to match those of police department employees in neighboring communities: the Village had established salary goal for its employees, set forth in "matrices"; patrol officers did not receive the promised wage increase because they had already met their pre-established salary goals.<sup>13</sup> In contrast, non-petitioned-for employees did receive the 2% raises because they had not yet achieved those goals.

On January 1, 2010, the Chief received a 1.8% pay increase, lieutenants received a 3% pay increase and sergeants received a 2% increase. Patrol officer have not received the 2% increase passed in the Board's November 23, 2009, budget and announced in Chief Murphy's November 24, 2009, memorandum.

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<sup>12</sup> This statement was made in a conversation between Abboud and Calcaterra on January 7, 2010.

<sup>13</sup> In previous years, the patrol officers had received increases, sometimes two in a single year, while sergeants, lieutenants and the chief did not.

### 3. Deutschle's education reimbursements

The Village has an educational assistance and reimbursement program under which it provides employees with financial support to pursue education that would enhance their skills in current or future working areas. The educational assistance policy sets forth some of the program's requirements. To be eligible, the candidate must be a full-time police department employee who has been employed by the Village for at least a year. He must take the courses during non-working hours. Further, the employee must submit a memorandum requesting educational reimbursement through the chain of command to the Chief of Police. Finally, he must submit proof of the course's completion with a passing grade and must provide the Chief with proof of purchase for the tuition and books. The policy notes that the program is subject to limitations imposed by budgetary constraints. Educational reimbursement is at the discretion of the Village.

Deutschle first took advantage of the educational reimbursement program in 2006 when pursuing his Masters Degree; the department funded that portion of his education. Deutschle later requested tuition reimbursement in early 2009, before beginning his first year of law school at Northern Illinois College of Law. He received preapproval for those classes, submitted the required documentation and obtained reimbursement for his first year. Deutschle again requested educational preapproval on September 4, 2009 for his spring and fall 2010 law school classes.<sup>14</sup> On November 26, 2009, Deutschle received an email from police department administrative assistant Alice Runvik stating that the Village had approved his budget request for educational funding.

Deutschle enrolled in law class for Spring 2010. He was later orally informed by the lieutenant of his shift that the Village would not reimburse him for the costs of his books and tuition for that semester.<sup>15</sup> Deutschle never received any written documentation to that effect. While Deutschle testified that he understood the Village could alter its educational assistance program, he was never informed that his educational allowance or educational benefits were withheld due to the Village's budgetary constraints. In fact, the Village never offered him any reason for withdrawing the promised reimbursement.

On December 21, 2009, the Village cut its educational budget down to \$7000. Abboud

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<sup>14</sup> He then resubmitted his request on September 25, 2009 because his immediate supervisor had lost the original.

<sup>15</sup> The date of Deutschle's discussion with the Lieutenant is not clear from the record.

testified education reimbursement was a benefit for which patrol officers should bargain. Abboud also testified that MAP's petition did not impact the Village's decision to deny Officer Deutschle's educational reimbursement.

Spring law school classes at Northern Illinois University Law School began on January 11, 2010.<sup>16</sup> Deutschle attended classes but did not submit the documents required for reimbursement. He instead paid for the classes and books himself, at a personal cost of approximately \$7000. The Village never compensated or reimbursed Deutschle for tuition and books for spring 2010 law school classes.

Deutschle was the only Village employee enrolled in an educational program during this period.

#### 4. Christmas cards

All Village of Barrington Hills employees receive a gift card in the amount of \$50 around Christmas. In prior years, all employees received the gift at the same time, by mail. In 2009 however, petitioned-for employees received the cards two weeks after non-petitioned-for employees. Further, while non-petitioned-for employees received their cards in the mail, petitioned-for employees received their cards in person from President Abboud himself.

Abboud testified that he handed patrol officers their gifts in person to facilitate open communications. In contrast to prior years, he and the officers did not have their yearly meeting comprised of both shifts. As a result, Abboud was concerned that he did not have an opportunity to meet with the patrol officers.

He testified that patrol officers received their gifts later than non-petitioned-for employees because it took him time to find the individual patrol officers and hand them the gift personally. Deutschle testified that he believed petitioned-for employees did not receive the cards earlier because of MAP's organizational activities.

Deutschle received his Christmas card on his shift at night when President Abboud summoned him to the police station. Deutschle testified that he was nervous about meeting and asked a dispatcher to accompany him. He was particularly concerned that Abboud would try and influence or intimidate him because of his organizational efforts. Deutschle stated he was

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<sup>16</sup> I take administrative notice of this fact which was not introduced into evidence but which is documented on Northern Illinois University School of Law's website. [http://www.niu.edu/u\\_council/reports/UC-Univ-Affairs/2008-2009/Academic-Calendars-2009-2019.pdf](http://www.niu.edu/u_council/reports/UC-Univ-Affairs/2008-2009/Academic-Calendars-2009-2019.pdf)

uneasy during their meeting.

#### IV. DISCUSSION AND ANALYSIS

MAP argues that it may demonstrate the Village violated 10(a)(1) merely by showing that the Village took adverse action against petitioned-for employees because of their participation in representation proceedings and without proving the Employer harbored anti-union animus. The Village, in contrast, contends that MAP must show evidence of the Village's anti-union animus to prevail on the 10(a)(1) claim because the alleged violation is based on the Village's purported adverse employment actions. Thus, the first issue raised by this case is a matter of law: whether a union must demonstrate that an employer harbored anti-union animus to prove an independent 10(a)(1) violation, as it must under 10(a)(3), when the claim is based on the employer's alleged adverse action against employees during the pendency of a representation proceeding.

The motive or intention of an employer is not usually considered in the context of an alleged Section 10(a)(1) violation, where a public employer violates the Act if it engages in conduct that reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Village of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998); Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993); Clerk of Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Ill., Dep't of Cent. Mgmt Serv. (Dep't of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986). The applicable test in determining whether a violation has occurred is whether the employer's conduct, when viewed objectively from the standpoint of an employee, had a reasonable tendency to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by the Act. Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998); State of Ill. Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2032 (IL SLRB 1986).

On the other hand, the employer's motive is at issue where the union alleges that the employer violated Section 10(a)(3) by discharging or "otherwise discriminating against a public employee because he has signed or filed an affidavit, petition or charge or [has] provided any information or testimony under" the Act. 5 ILCS 315/10(a)(3). To establish a prima facie violation of Section 10(a)(3), the Union must show by a preponderance of the evidence that it was (1) engaged in the protected activity set forth in Section 10(a)(3); (2) that the employer had

knowledge of the activity; and (3) that the employer took the action against the employees in whole or in part because of anti-union animus or that it was motivated by their protected conduct. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010)(citing City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 345 (1989) and applying the court's 10(a)(2) analysis to 10(a)(3)); Cook Cnty. Sheriff and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990).

In light of these two approaches, the Board has set forth one exception to the 10(a)(1) rule: it does examine the employer's motivation under 10(a)(1), as under 10(a)(3), where the allegation concerns an employer's adverse employment action against employees, taken because they engaged in protected, concerted activity under the Act. PACE Northwest Division, 25 PERI ¶ 188 (IL LRB-SP 2009); Vill. of Oak Park, 18 PERI ¶ 2019 (IL SLRB 2002); Cnty. of Cook, (Dep't. of Cent. Serv.), 15 PERI ¶ 3008 (IL LLRB 1999) (addressing 10(a)(2) and (1) violations together and requiring the union to demonstrate employer's anti-union animus when it denied union members a promised wage increase *after certification and during bargaining*). Cnty. of Jersey, 7 PERI ¶ 2023 (IL SLRB 1991), *aff'd* Cnty. of Jersey v. Ill. State Labor Rel. Bd., Docket No. 4-91-0462, 8 PERI ¶ 4015 (1992); Kirk and Chicago Housing Auth., 6 PERI ¶ 3013 (IL LLRB 1990).

However, the Board has also limited the application of this exception by holding that a union need not demonstrate anti-union animus where the employer has withheld scheduled wage increases or benefits because of the pendency of a representation proceeding. City of Mattoon, 11 PERI ¶ 2016 (IL LRB-SP 1995) (addressing Employer's increase of employees' payroll deduction for health insurance during the pendency of a representation petition; requiring the union to prove causation but not anti-union animus to demonstrate a violation of 10(a)(1); finding no violation where the Employer did not deviate from its established wage and benefit policies). Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993)(similarly requiring no showing of animus for 10(a)(1) violation when employer withheld scheduled wages after election but before certification); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987) (City unlawfully interfered with employees' protected rights by withholding wage increases during pendency of decertification proceedings; Board found violation of 10(a)(1) but not 10(a)(3), addressing alleged violations separately though they stemmed from the same set of facts).

Thus, the facts of this case fit the Board's more narrow rule which permits a union to prove 10(a)(1) violations without demonstrating the Employer's anti-union animus: While the

union does generally contend that the Employer took adverse employment actions against petitioned-for employees arguably triggering the broader rule, the allegations also state more specifically that the Employer withheld promised wages and benefits during and because of the employees' participation in representation proceedings before this Board, rendering the narrower rule more applicable here. Accordingly, the union may prove the 10(a)(1) allegation without demonstrating the Employer harbored anti-union animus. See City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987) and cases cited supra. Notably, the union must still demonstrate that the employees were engaged in protected activity, that the employer had knowledge of the activity and that there was a causal connection between the employer's adverse action and employees' conduct protected under the Act.

1. Patrol Officer's Wages

- a. 10(a)(1)

The Village conceded on brief that the employees at issue were engaged in conduct protected by the Act and that the Village knew of it. As noted above, a public employer violates section 10(a)(1) the Act if it engages in conduct that reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Thus, the threshold issue here is whether the Village took adverse employment action against the petitioning employees or otherwise changed the status quo of their terms and conditions of employment, thereby engaging in conduct which would reasonably tend to interfere, restrain or coerce employees in the exercise of rights protected by the Act in violation of 10(a)(1). 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)

Here, the Village altered the status quo of patrol officers' terms and conditions of employment when it rescinded their previously-promised 2% wage increase because patrol officers had a reasonable expectation that they would receive those wages. For four years in a row, the Village through its Police Chief posted and announced salary increases for patrol

officers and then granted the promised increases after each announcement, unaltered. Such a practice created a reasonable expectation in patrol officers that they would receive the wage increases which were posted by the Chief in his yearly memo. Indeed, even the Chief testified that he believed department employees would receive the increases as posted.

The Village argues that it did not alter or substantially change the status quo because it paid petitioned-for employees the same wages as it paid them before the Village knew of their organizational efforts and that the petitioned-for employees therefore “lost nothing.”<sup>17</sup> Contrary to the Village’s contention, the revocation of a financial promise constitutes a loss. See generally, Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009)(failure to grant *expected* wages increases constitutes adverse action). More importantly, such action is inherently coercive because it “inevitably conveys the message that [the employer], not the union, controls the purse strings” and it therefore “interfere[s] with the employee free choice” in violation of section 10(a)(1) of the Act. Vill. of Elk Grove Vill, 10 PERI ¶ 2001 (IL SLRB 1993); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987); College of DuPage, 4 PERI ¶ 1078 (IL ELRB 1988).

Further, the Village argues that its conduct did not alter the status quo because the amount of the employees’ wage increase was within the Village’s sole discretion. Nevertheless, “the fact that the Respondent may have discretion as to the timing and amount of salary increases has no bearing on whether the increases constitute the status quo” because that is defined by the reasonable expectations of the employees in light of the employer’s past practices. Chief Judge of the 18th Judicial Circuit, 17 PERI ¶ 2037 (IL LRB ALJ 2001) (noting the Employer’s discretion was immaterial where it granted its employees exercising merit and cost of living increases on or about the same date for a number of years, with the exception of one year).<sup>18</sup> Here, the Village’s practice of granting the wages set forth in the Chief’s memo fostered the expectation that employees would receive the announced wages; accordingly, the Village changed the status quo by failing to grant them. Under these circumstances, the Village’s ultimate discretion to initially determine patrol officer’s wages is less important.

Next, the Union must demonstrate a causal connection between the employees’ union

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<sup>17</sup> The Village further notes that the petitioned-for employees were not fired, reassigned or denied promotions.

<sup>18</sup> Moreover, the case cited by the Employer for this proposition concern an employer’s actions after certification, once the duty to bargain has attached. In this case, the Employer took its actions during the pendency of a representation petition and before it had a duty to bargain. Thus, the applicability of the cited cases to these facts is questionable.

activity and Village's conduct. If the employer's conduct is altered by virtue of the union's presence, then the employer has violated the Act since the employer maintains compliance with the Act only if it conducts itself precisely as if the union were not on the scene. Vill. of Elk Grove Vill, 10 PERI ¶ 2001 (IL SLRB 1993).

Here, the evidence demonstrates that the Employer did not conduct itself as it would have absent the union's presence and that the patrol officers' protected activities triggered Village's decision to withhold patrol officers' previously-promised wages. First, Chief Murphy stated that he understood patrol officers would have obtained their promised 2% wage increase had the union attorney not instructed the Village to maintain the status quo in his November 30, 2009, letter announcing MAP's petition. Similarly, Abboud testified that the union attorney's letter affected his decision to withhold the patrol officers' promised wage increase and helped him decide what to cut from the revised December budget. Indeed, President Abboud stated that the union would have to bargain for those raises, instead. In sum, these statements support a finding that the Village violated 10(a)(1) of the Act when it withheld patrol officers' previously-promised wage increases because they demonstrate that the union's petition caused the Village's adverse action, at least in part. See, Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009) (An employer's act of withholding promised or expected wage increases after employees' choice to organize is so egregious that even in asserting a 10(a)(2) violation, Charging Party need only prove that "had the bargaining unit employees not exercised their right under the Act to choose Charging Party as their representative, Respondent would have given them the ... increase as it did for its unrepresented employees").

In addition, though the Village announced that the budget might change because of the Village's economic circumstances, such explanations do not dispel the coercive effect of the Village's action because an economic justification which impacts all employees does not adequately explain the Village's disparate treatment of patrol officers in particular. Indeed, there is no evidence in the record that the Village informed patrol officers that it withheld their wage increases to avoid an unfair labor practice charge or that it did so because patrol officers, unlike other department employees, had already reached their stated salary goals. Absent such specific explanations, the employer appeared to "penalize the employees for exercising their statutory right to choose a representative" in violation of Section 10(a)(1). See, College of DuPage, 4 PERI ¶ 1078 (IELRB 1988)(finding that an explanation may mitigate coercive effect of

employer's disparate denial of a wage increase to petitioned-for employees during the pendency of a representation petition).

While the Village states there is no evidence that the salary increase to petitioned-for employees would have been granted in the ordinary course of the Village's business, but for the employees' union activity, such an argument ignores relevant testimony and the fact that the Village did change the status quo as determined by the employees' reasonable expectations in light of the employer's past practice.

b. 10(a)(3)

In addition, the timing of the Village's action and its disparate treatment of petitioned-for and non-petitioned-for employees demonstrate the Village also violated Section 10(a)(3) because these factors show the Village harbored anti-union animus when it revoked the patrol officers' previously-promised wage increases.

The union may demonstrate an employer's animus through circumstantial or direct evidence including expressions of hostility toward union activity, 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 shifting explanations for the adverse action. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); see also Circuit Court of Winnebago Cnty., 17 PERI ¶ 2038 (IL LRB-SP 2001); North Main Fire Protection Dist., 16 PERI ¶ 2037 (IL SLRB 2000).

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. City of Burbank, 128 Ill. 2d at 345; Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010). 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. 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.

First, the proximity of the Village's decision following its knowledge of the Union's petition raises suspicions of anti-union animus. Here, the Village informed the officers (Dec. 15, 2009) that it was not bound by its wage promise a mere week after it had formal notice of MAP's petition (Dec. 7, 2009) and just three weeks after the Village initially decided to grant the increases (Nov. 23, 2009). Further, the Village formally rescinded the promised wage increases (Dec. 21, 2009) less than a month after the Village was first apprised of the union's intent to file the petition (post- Nov. 30, 2009) and less than three weeks after the Village had formal notice that MAP had filed it with the Board (Dec. 7, 2009). 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).

The Village's disparate treatment of petitioned-for and non-petitioned-for police department employees buttresses this finding. Here, the Village granted all non-petitioned-for department personnel the wage increases promised in the Chief's November 24, 2009, memo.<sup>19</sup> The Village denied the promised wage increases only to the petitioned-for patrol officers. Taken together, the timing of the Village's action with respect to the Union's petition and the Village's disparate and preferential treatment of non-petitioned-for employees with respect to promised wages demonstrates anti-union animus and satisfies MAP's burden to present a prima facie case under 10(a)(3).

Further, the Village's purported legitimate explanations for its actions are shifting, pretextual, and do not rebut MAP's prima facie case. An employer is entitled to put forth more than one legitimate reason for its action. However, the legitimacy of all of those reasons is called into question when, as in this case, witnesses testify that any one of the stated explanation served as the exclusive basis for the employer's actions.

In this case, the Village's reasons for the adverse action are shifting because Abboud first testified that the Village withheld the patrol officers' wage increase "solely" because of the Village's dire economic circumstances and then later provided different reasons for the Village's actions. For example, Abboud also testified that the Village refused to grant the increase to maintain the status quo, upon the advice of counsel; indeed, Chief Murphy conceded at hearing

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<sup>19</sup> While the wage increases to all non-petitioned for employees was not exactly 2%, as promised, all those employees received between 1.8 and 3%.

that the petitioned-for employees would have obtained their promised 2% wage increase absent the union's request to maintain the status quo. Finally, Abboud additionally stated that patrol officers did not receive the promised wage increase because they had already met their pre-established salary goals and that by contrast, non-petitioned-for employees did receive those wages because they had not yet achieved those goals.

Even if the Board finds that the Village's shifting explanations are insufficient to demonstrate pretext, the Village's "sole" motive—economics—is pretextual because the Village did not rely on it when making its decision. In fact, the Village's economic circumstances did not change from the time when the Village first granted the patrol officers' wage increases (Nov. 23, 2009) and when the Village revoked them (Dec. 21, 2009). The Village received no new and unexpected bills during that time and its liabilities remained the same. In particular, the Village knew the price of salt would likely increase and that it would be required to substantially increase its contribution to the Illinois Municipal Retirement Fund. Further, while the Village received its estimated revenues during that period, it had known for at least a year that property taxes revenue would be much lower than expected due to the recession and the high rate of foreclosures.

The Village argues that it made no distinction between petitioned-for and non-petitioned-for employees with respect to wages and that it instead distinguished between those who had reached the employer's pre-determined salary goals (patrol officers) and those who had not (non-patrol officers). However, the Village's reason does not qualify as legitimate because (i) as noted above, its justifications are shifting, and (ii) because it did not explain why it would grant wage increases to patrol officers who had already met pre-established salary goals, despite preexisting, dire economic circumstances, and then in short order use those same salary goals as justification to revoke the promised increases. See, Cnty. of Kane, 3 PERI ¶ 2059 (IL LRB ALJ 2003) (anti-union animus demonstrated where non-represented employee classifications received pay raises and represented classifications did not, and where employer provided no legitimate explanation); Cf. College of DuPage, 4 PERI ¶ 1078 (IELRB 1988) (Anti-union motivation was not inferred from fact that only nonunion employees were granted wage increases absent other evidence of animus, though IELRB did find a violation of Section 14(a)(1) of the IELRA, equivalent to a 10(a)(1) violation under the IPLRA).

## 1. Educational reimbursement

Applying the rules set forth above, the Village similarly violated 10(a)(1) when it revoked Deutschle's preapproved educational reimbursement because withdrawal of such a promised benefit altered the status quo of Deutschle's terms and conditions of employment during the pendency of MAP's representation proceeding.<sup>20</sup> Here, the Employer established a practice where it would provide employees with tuition reimbursement after granting such preapproval, if the employee met the policy's remaining requirements. Specifically in Deutschle's case, the Village preapproved his masters and first year law school classes then followed its preapproval with reimbursement. In turn, it was reasonable for Deutschle to expect that the Village would hold its promise, and that reimbursement would again follow preapproval.

The Village argues the reimbursement policy dispelled any reasonable expectation of continuing reimbursement because it explicitly noted that the policy's implementation was subject to limitations imposed by budgetary constraints. Here, however, the origin of Deutschle's reasonable expectation is the Village's customary and predictable reimbursement following the Village's explicit promise to pay (the preapproval). Thus, the language of the policy does not undermine an employee's reasonable expectation of reimbursement once the Village has committed to preapproval.

As a result, the Village cannot rely on Deutschle's expectations after the Village revoked his preapproval to demonstrate that the Village maintained the status quo. In other words, it is immaterial that Deutschle knew he would not receive reimbursement once he started classes because Deutschle's reasonable expectations of the status quo must be gauged from when he received preapproval, prior to MAP's filing the petition.

Next, the evidence demonstrates that the Village took its action at least in part because of Deutschle's participation in MAP's petition, in violation of 10(a)(1), since President Abboud stated that the union would be obligated to bargain such educational reimbursements. Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993)(failure of employer to act as if union were not in the picture during pendency of a representation proceeding violates 10(a)(1)). Moreover, the Village's failure to provide Deutschle with any explanation for the adverse action and its concurrent disparate treatment of petitioned-for employees, described above, would have a

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<sup>20</sup>It is immaterial that the date on which the Village rescinded its promise of reimbursement does not appear in the record because the Village concedes that it knew of the employees protected activity at all times relevant to these allegations.

reasonable tendency to interfere with, restrain or coerce Deutschle, in the exercise of the rights guaranteed by the Act. College of DuPage, 4 PERI ¶ 1078 (IELRB 1988) (employer's failure to explain adverse action to petitioned-for employees increased risk of coercive effect under similar provision of IELRA).

Further, the timing of the Village's action demonstrates that the Village revoked Deutschle's educational reimbursement to retaliate against him for participating in the Board's processes, in violation of 10(a)(3). While timing alone does not establish anti-union animus,<sup>21</sup> here, the Employer's adverse action against Deutschle is not just temporally connected to his protected activity, but rather also to the Village's disparate denial of petitioned-for employees' wage increases, described above. As such, the employer's motivation to deny Deutschle's educational reimbursements cannot simply be severed from its clear disparate treatment of patrol officers which occurred around the same time.<sup>22</sup> Cf. PACE Suburban Bus Division, 406 Ill. App. 3d at 498 (temporal proximity of protected activity to adverse employment action did not demonstrate employer's anti-union animus where alleged disparate treatment of employees "hazy" and unclear). Here, Village officials granted Deutschle preapproval for education reimbursement four days before Calcaterra informed the Village attorney of MAP's petition (Dec. 1, 2009), but revoked that preapproval soon after, within five weeks after the petition was filed.<sup>23</sup> Sarah D. Culbertson Memorial Hosp., 25 PERI ¶ 11 (IL LRB-SP 2009) ("few weeks"

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<sup>21</sup> See, PACE Suburban Bus Division v. Ill. State Lab. Rel. Bd. State Panel, 406 Ill. App. 3d 484, 498 (1st Dist. 2010)

<sup>22</sup> The union may prevail on this allegation even though Deutschle was not disparately denied educational reimbursement. Although Deutschle was the only employee seeking such reimbursement and thus cannot point to comparable non-petitioned-for employees who were treated differently, disparate treatment is just one factor of several which demonstrates anti-union animus. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (listing several factors indicative of animus).

<sup>23</sup> The exact date on which the Village revoked its preapproval does not appear in the record. However, it is undisputed that the Village reduced its educational reimbursement budget on December 21, 2009. In addition, revocation must have occurred between the first week of December, 2009, and January 10, 2010, based on the following rationale: The Village admits that it had knowledge of the employees' protected activity at times material to this case, on brief. The Village had knowledge of the employees' union activity at the earliest, upon receipt of the union attorney's fax, received December 1, 2009, and at the latest, by December 7, 2009, when service of the petition on the Village was deemed complete. Thus, the Village revoked its preapproval no earlier than the first week of December, 2009. Next, Deutschle had knowledge of the Village's revocation by the time he started spring semester law school classes at North Eastern University School of Law. I take administrative notice that those classes began on January 11, 2010. Thus, the Village revoked its preapproval no later than January 10, 2010. Accordingly, the Village must have revoked its preapproval between the first week of December, 2009, and January 11,

between employees' testimony before board and adverse action sufficient to demonstrate proximity indicative of animus); Vill. of Calumet Park, 23 PERI ¶ 108 (IL LRB-SP 2007) (three weeks demonstrates proximity) Cf. 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). Further, the Village revoked petitioned-for employees' wage increases on December 21, 2009, the same date on which it reduced the budget for educational reimbursements and within weeks of notifying Deutschle that he would not receive the previously preapproved funding. Taken together, these facts demonstrate suspicious circumstances which warrant an inference that the Village harbored anti-union animus when it denied Deutschle's educational reimbursement.

In addition, the Village's proffered reasons for its actions further support this conclusion because they are pretextual and shifting. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (pretextual and shifting explanations support a finding of anti-union animus). First, the Village argues that it denied Deutschle the reimbursements because he did not file the proper forms. However, the Village cannot object to Deutschle's lack of documentation when it effectively informed him that submitting such forms would be fruitless since reimbursement would anyway be denied. Next, the Village states that it revoked Deutschle's preapproval because of economic conditions. However, as noted above, there were no surprising or unexpected economic events that intervened between the Village's grant of Deutschle's benefit and the Village's revocation of it, a few weeks later. Accordingly, the Village's explanations fail to rebut MAP's prima facie case that the Village violated 10(a)(3).

## 2. MAP's Motion for Sanctions<sup>24</sup>

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)

In determining whether a party has made false allegations or denials, the Board uses an

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2010—between the time the Village knew of the union's activity and the time Deutschle knew the Village rescinded its promise.

<sup>24</sup> To obtain sanctions after a complaint has been issued, the moving party must file its motion "no later than 7 days after the receipt of the last post hearing brief scheduled to be filed, or no later than 7 days after the close of the hearing, if no briefs are to be filed." Section 1220.90(c). Here, the Union timely moved for sanctions by requesting them in its post-hearing brief.

objective test to ascertain whether the denials or allegations were made with “reasonable cause under the circumstances.” 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 (1995)). Here, the Union did not specifically set forth the basis for the motion or otherwise demonstrate the Village made untrue factual assertions without reasonable cause which would warrant the imposition of sanctions.

Further, there is no indication that the Village engaged in frivolous litigation because the Village represented a debatable position and because there is no evidence that the Village’s defenses were not made in good faith. See, County of Cook and Sheriff of Cook County (Teamsters Local Union No. 714), 12 PERI ¶ 3008 (IL LLRB 1996); City of Chicago, 12 PERI ¶ 3022 (IL SLRB 1996).

Accordingly, MAP’s request for sanctions must be denied.

### 3. Remedy

The Village argues that the Board should not award a make-whole remedy because it would interfere with the Village’s pre-contractual discretion to set salaries and the parties’ post-certification negotiations. Specifically, the Village argues that the make-whole remedy would permit the patrol officers to receive two wage increases for the same time period, one granted freely by the employer before it had knowledge of union’s petition, and one obtained through the parties’ collective bargain process.

The Village’s arguments are unavailing because 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 County, 14 PERI ¶ 2009 (IL SLRB 1998); County of Jackson (Jackson County Nursing Home), 9 PERI ¶ 2025 (IL SLRB 1993); Village of Hartford,

4 PERI ¶ 2047 (IL SLRB 1998); Village of Glendale Heights, 1 PERI ¶ 2019 (IL SLRB 1985), aff'd by unpublished order, 3 PERI ¶ 4016. Here, the Village 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.<sup>25</sup>

## V. CONCLUSIONS OF LAW

1. The Village violated sections 10(a)(3) and (1) of the Act when it failed to provide petitioned-for patrol officers a previously-promised 2% wage increases and altered the status quo of patrol officers' terms and conditions of employment during the pendency of a representation proceeding before the Board.
2. The Village violated sections 10(a)(3) and (1) of the Act when it revoked preapproval for Patrol Officer Deutschle's educational reimbursement because of his participation in MAP's representation proceeding.

## VI. RECOMMENDED ORDER

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

- 1) Cease and desist from:
  - a. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:

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<sup>25</sup> The cases cited by the Employer demonstrating the courts' hesitance to interfere with an employer's discretion to set salaries are inapplicable here because they were either decided outside the context of the Act's limitations, or because they are factually dissimilar to this case. See, Cook County Police Ass'n v. City of Harvey, 8 Ill. App. 3d 147, 148-149 (1st Dist. 1972)(reversed a mandatory injunction requiring public employer to bargain with police officers' chosen representative in 1972, prior to the Act's passage, noting the Employer retained discretion not to bargain with the chosen representative because there was no statute at the time requiring the employer to do so); Bd. of Ed. of Springfield Public Schools, Dist. No. 186 v. Springfield Educ. Ass'n, 47 Ill. App. 3d 193, 197 (4th Dist. 1977) (requiring employer to maintain status quo by paying teachers their salaries pursuant to their expired contract); Grillo v. Sidney Wanzer & Sons, Inc., 26 Ill. App. 3d 1007 (1st Dist. 1975) (addressing the contractual obligations of a milk supplier to a milk distributor under terms of an assignment and a security interest); People ex rel. Bier v Scholz, 77 Ill.2d 12, 18-19 (1979) (granting writ of mandamus to expunge portions of the administrative order which set salaries for chief probation officer and superintendent of county youth home at level higher than the board had set them where authority to set salaries was vested in the board and where the board had not acted unreasonably; outside the context of public sector labor relations); Ickes v. Bd. of Sup'rs of Macon County 415 Ill. 557 (1953) (reversing grant of a writ to challenge salary appropriations made by a Board for officers' salaries where there was no evidence that the board had abused its discretion; outside the context of public sector labor relations).

- a. Make whole the Village of Barrington patrol officers, represented by Metropolitan Alliance of Police Barrington Hills Chapter 576, by granting them the two percent wage increase promised in the November 24, 2009, memo to Village police department employees, retroactive to January 1, 2010, and interest thereon in accord with Section 11(c) of the Act.
  - b. Upon patrol officer Gary Deutschle's production of receipts for law school tuition and books, and upon demonstration that he received satisfactory grades pursuant to the Village's reimbursement policy, make whole Patrol Officer Gary Deutschle for his Spring 2010 law school classes.
  - c. 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.
- 3) Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

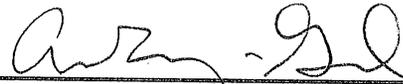
## VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 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 10th day of January, 2012**

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



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**Anna Hamburg-Gal  
Administrative Law Judge**

# NOTICE TO EMPLOYEES

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## FROM THE ILLINOIS LABOR RELATIONS BOARD

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

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

Accordingly, we assure you that:

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

WE WILL make whole the Village of Barrington patrol officers, represented by Metropolitan Alliance of Police Barrington Hills Chapter 576, by granting them the two percent wage increase promised in the November 24, 2009, memo to Village police department employees, retroactive to January 1, 2010, and interest thereon in accord with Section 11(c) of the Act.

WE WILL make whole Patrol Officer Gary Deutschle for his Spring 2010 law school classes, upon patrol officer Gary Deutschle's production of receipts for law school tuition and books, and upon demonstration that he received satisfactory grades pursuant to the Village's reimbursement policy.

DATE \_\_\_\_\_

\_\_\_\_\_  
Village of Barrington Hills  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor

Springfield, Illinois 62702

(217) 785-3155

160 North LaSalle Street, Suite S-400

Chicago, Illinois 60601-3103

(312) 793-6400

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**THIS IS AN OFFICIAL GOVERNMENT NOTICE**

**AND MUST NOT BE DEFACED.**

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STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL

Metropolitan Alliance of Police,	)	
Barrington Hills Chapter 576,	)	
	)	
Charging Party	)	
	)	
And	)	Case No. S-CA-10-189
	)	
Village of Barrington Hills,	)	
	)	
Respondent	)	

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 10<sup>th</sup> day of January, 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.

Mr. Thomas McGuire  
Thomas McGuire & Associates, LTD.  
4180 RFD Route 83  
Suite 206  
Long Grove, Illinois 60047

Mr. Steven Calcaterra  
Steven Calcaterra & Associates  
1220 Iroquois Avenue  
Suite 204-B  
Naperville, Illinois 60563



\_\_\_\_\_  
Melissa L. McDermott, ILRB

SUBSCRIBED and SWORN to  
Before me this 10<sup>th</sup> day of  
January, 2012.

  
NOTARY PUBLIC

