

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

Illinois Fraternal Order of Police Labor	)	
Council,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-11-016
	)	
Illinois Secretary of State,	)	
	)	
Respondent	)	

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

On July 26, 2010, the Illinois Fraternal Order of Police Labor Council (Charging Party or Union) filed an unfair labor practice charge in Case No. S-CA-11-016 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Illinois Secretary of State (Respondent or Employer), engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).

The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On September 22, 2010, the Board's Executive Director issued a Complaint for Hearing. The case was heard on March 11, 2011, in Springfield, Illinois, by the undersigned Administrative Law Judge. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. Timely briefs were filed on behalf of both 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**

1. The parties stipulate, and I find, that Respondent is a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate, and I find, that Respondent is subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5 of the Act.
3. The parties stipulate, and I find, that Charging Party is a labor organization within the meaning of Section 3(i) of the Act.
4. The parties stipulate, and I find, that Charging Party is the exclusive representative of all persons employed by Respondent in its Department of Police, below the rank of Sergeant, in the job title or classification of Investigator (Unit).
5. The parties stipulate, and I find, that Charging Party and Respondent have been parties to a collective bargaining agreement for the Unit, effective July 1, 2004 to June 30, 2009, which contains a grievance procedure culminating in final and binding arbitration.
6. The parties stipulate, and I find, that on or about March 2, 2009, Charging Party served on Respondent a demand to bargain a successor collective bargaining agreement.
7. The parties stipulate, and I find, that on or about June of 2009, the parties commenced negotiations for the successor agreement.
8. The parties stipulate, and I find, that on or about June 23, 2009, Charging Party and Respondent agreed to ground rules which they would follow in negotiating the successor agreement.

9. The parties stipulate, and I find, that on or about February 5, 2010, Charging Party requested from Respondent a copy of the Inspector General's findings and special reports from an audit conducted of the Department of Police.
10. The parties stipulate, and I find, that at all times relevant, the information requested by Charging Party was within Respondent's control and available to it.
11. The parties stipulate, and I find, that since February 5, 2010, to date, Respondent has failed and/or refused to supply the information requested by Charging Party.

## **II. ISSUES AND CONTENTIONS**

Charging Party alleges that Respondent engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Act when Respondent refused to comply with Charging Party's request for information. In addition, Charging Party alleges that by refusing to provide the requested information, Respondent repudiated the ground rules agreed to by the parties on June 23, 2009, in violation of Sections 10(a)(4) and (1) of the Act. Respondent maintains that its refusal to provide the information did not violate the Act and did not repudiate the ground rules in violation of the Act.

## **III. FINDINGS OF FACT**

The Illinois Secretary of State's Office of the Inspector General (IG) conducts audits of all departments within the Secretary of State's office and investigates misconduct involving Secretary of State personnel. The IG's audits review each department for actual or potential misconduct and inefficiencies.

To complete its audits, the IG uses its own auditors to conduct a series of interviews. These auditors create reports of their findings which are merged into a single master document. This master document is reviewed during an exit conference with the audited department's director. A department director may provide input, but the audited department does not have the right to change the audit report. After this conference, the audit report is finalized.

Finalized audit reports are submitted to the IG's audit review committee, which is an informal grouping of administrators within the Secretary of State's office. This committee makes recommendations to the Secretary of State based on the audit's findings. The IG has no final decision-making authority in this context.

Nathan Maddox, Executive Inspector General of the Secretary of State's office, sits on the audit review committee. Maddox testified that the IG has been working on an audit of the Department of Police since 2008.<sup>1</sup> This audit has been submitted to the audit review committee, but the committee has not made a final recommendation to the Secretary of State.

Maddox maintained that subjects such as the scheduling of the Department of Police's investigators, the training of these investigators, and the equipment that these investigators use are within the scope of this kind of audit report. Furthermore, the record indicates that this audit report begins with the reports of the IG auditors who interviewed individuals employed by the Department of Police.

Maddox also identified a confidentiality notice on the cover page of the audit of the Department of Police. This confidentiality notice, which is present in all such audit reports, alerts a recipient that the document should not be distributed beyond that recipient. According to Maddox, this confidentiality notice is a statement made by the Secretary of State's office based on its understanding of the law.

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<sup>1</sup> This department is also commonly called the Secretary of State Police.

Pursuant to the Union's demand to bargain, in June of 2009, the parties commenced negotiations for a successor collective bargaining agreement. During these negotiations, Jerry Lieb served as the Union's chief spokesperson while Mark Bennett served as chief spokesperson for the Employer.

At the initial negotiation meeting which took place on June 23, 2009, Lieb presented a document to both parties' bargaining teams. This document, which Lieb drafted, contained proposed ground rules which the parties would follow while negotiating the successor agreement. The second paragraph of the ground rules states, "Both parties agree to exchange information or comply with reasonable requests for information as long as that information is available to the parties, at no cost."

No member of the Employer's bargaining team specifically asked Lieb any questions about the ground rules after the rules were presented. Furthermore, no member of the Employer's bargaining team proposed changes to the presented document. Nevertheless, after a brief caucus, both parties signed off on the ground rules at the June 23, 2009 meeting.

In the spring of 2009, after the Union and the Employer commenced negotiations for a successor collective bargaining agreement, IG auditors asked Terry Trueblood to participate in a series of interviews as part of the audit of the Department of Police.<sup>2</sup> These interviews discussed topics such as scheduling, training issues, equipment (for example, vehicles and related safety issues), manpower issues, the history of the Department of Police, how to improve the department, and Trueblood's thoughts on administration. The IG's auditors did not indicate to Trueblood that the audit would be kept a secret.

Toward the end of 2009 or the beginning of 2010, a member of Lieb's bargaining team advised him that an audit was being prepared by the Employer through the IG. This team

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<sup>2</sup> Trueblood is an Investigator for the Department of Police and was part of the Unit's bargaining team.

member had been interviewed by the IG and was asked for information concerning how employees were scheduled, training, the efficiency of the department's operation, and how employees were assigned throughout the state. Following his discovery of the audit, on February 5, 2010, Lieb sent Bennett an email that asked for a copy of the IG's audit and special reports in regard to the audit conducted of the Department of Police.

Lieb testified that he requested this information because he felt that the information being garnered specifically related to proposals offered by the Employer during negotiations. The record indicates that these proposals concerned subjects such as scheduling, shift changes, shift bidding, seniority, and training, for example. Lieb also testified that the Union has an ongoing need for this information as it allegedly impacts the terms and conditions of employment of Unit members.

Initially, Lieb did not receive a response to his email and the Employer did not provide the requested information. At the next negotiation session, Lieb personally approached Bennett and asked him if he was going to provide Lieb with the requested information. In response, Bennett indicated that the Employer did not feel that it had to give Lieb the audit report.

Lieb testified that he also tried to contact the Employer's chief of staff in order to avoid the filing of an unfair labor practice charge. Lieb alleged that his phone call and emails in this regard were not returned. Subsequently, Lieb urged David Wickster, the Union's executive director, to contact Secretary of State Jesse White. Allegedly as a result of Wickster's ensuing letter to White, Bennett contacted Wickster to discuss the audit. In May of 2010, Lieb received a phone call from Wickster and was informed that the Employer would not supply the requested information. Ultimately, on July 26, 2010, the Union filed the instant unfair labor practice charge.

#### IV. DISCUSSION AND ANALYSIS

The Complaint for Hearing alleges that the Employer violated Sections 10(a)(4) and (1) of the Act when it failed and/or refused to supply the information requested by the Union and by doing so, violated the ground rules it agreed to with the Union for negotiating the parties' successor collective bargaining agreement. Generally, in order to prove a violation of Section 10(a)(1) of the Act, the Union must establish that the Employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of their rights under the Act. State of Illinois, Department of Central Management Services (Department of Mental Health and Developmental Disabilities), 12 PERI ¶2037 (IL SLRB 1996). Pursuant to Section 10(a)(4) of the Act, it is an unfair labor practice for a public employer "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." If the public employer fails to bargain in this way, it violates not only its Section 10(a)(4) duty but, derivatively under Section 10(a)(1), those employees' rights to have a representative as the Act envisions. However, a public employer's duty to bargain extends only so far as the employees have a right under the Act. See City of Aurora, 24 PERI ¶25 (IL LRB-SP 2008).

The parties' arguments separate the alleged violations of the Act into two separate but related issues. As suggested above, the Union alleges that the Employer engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Act when the Employer refused to comply with the Union's request for information. The Union also alleges that by refusing to provide the requested information, the Employer repudiated the ground rules agreed to by the parties on June 23, 2009, in violation of Sections of 10(a)(4) and (1) of the Act.

### The Union's Information Request

The Employer argues that the Union has not met its burden of proof to establish that the Employer's refusal to produce the audit report constitutes a violation of the Act. As the Employer observes, the Board will only find a violation of the Act based on an employer's failure to produce information which has been requested by the union where (1) the employer has failed to act in good faith or (2) the employer's failure to produce the requested information has meaningfully interfered with the union's ability to fulfill its role as a bargaining representative. City of Bloomington, 19 PERI ¶11 (IL LRB-SP 2003), citing Chicago Transit Authority, 4 PERI ¶3013 (IL LLRB 1988). Furthermore, the Board has held that the duty to bargain collectively in good faith requires public employers to provide information within their control to exclusive bargaining representatives where the information is "relevant and necessary" in order that the exclusive representative may properly discharge its statutory duty. County of Champaign, 19 PERI ¶73 (IL LRB-SP 2003); State of Illinois, Department of Central Management Services, 9 PERI ¶2032 (IL SLRB 1993); Village of Franklin Park, 8 PERI ¶2039 (IL SLRB 1992), aff'd. Village of Franklin Park v. Illinois State Labor Relations Board, 265 Ill. App. 3d 997, 1004, 638 N.E.2d 1144, 1148 (1st Dist. 1994); see also Chicago School Reform Board of Education v. Illinois Educational Labor Relations Board, 315 Ill. App. 3d 522, 528, 734 N.E.2d 69, 74 (1st Dist. 2000); Water Pipe Extension, Bureau of Engineering, Laborers Local 1092 v. City of Chicago, 195 Ill. App. 3d 50, 60, 551 N.E.2d 1324, 1328 (1st Dist. 1990); National Labor Relations Board v. Truitt Manufacturing Co., 351 U.S. 149, 150, 76 S. Ct. 753, 754 (1956).

The standard for judging whether a particular request is "relevant and necessary" is whether, based on a liberal discovery-type standard, the requested information is (1) related to

the union's function as the employee's bargaining representative and (2) the information appears to be reasonably necessary for the performance of this function. County of Champaign, 19 PERI ¶73; State of Illinois, Department of Central Management Services, 9 PERI ¶2032; City of Chicago (Chicago Fire Department), 12 PERI ¶3015 (IL LLRB 1996); National Labor Relations Board v. Acme Industrial Company, 385 U.S. 432, 435, 87 S. Ct. 565, 568 (1967). However, an employer is not required to provide information that relates to nonbargainable subjects such as matters involving the employer's inherent managerial authority. County of Champaign, 19 PERI ¶73; Village of Franklin Park, 8 PERI ¶2039; Chicago School Reform Board of Education v. Illinois Educational Labor Relations Board, 315 Ill. App. 3d at 528, 734 N.E.2d at 74.

Information that pertains to the terms and conditions of employment for employees represented by a union is presumptively relevant. City of Bloomington, 19 PERI ¶11; Chicago Transit Authority, 4 PERI ¶3013. However, even where the information requested is presumptively relevant, a bargaining representative is required to show the precise relevance if an employer offers bona fide reasons not to disclose the requested information. Village of Franklin Park, 8 PERI ¶2039; National Labor Relations Board v. A. S. Abell Company, 624 F.2d 506, 510 (4th Cir. 1980).

The Union argues that the information it requested concerns matters that are mandatory subjects of bargaining. Section 7 of the Act generally provides for mandatory bargaining over matters affecting the wages, hours, and working conditions of public employees. Further, the Board has stated that if information is related to a mandatory subject of bargaining, an employer is obligated to furnish that information upon request. Village of Franklin Park, 8 PERI ¶2039; citing National Labor Relations Board v. Truitt Manufacturing Co., 351 U.S. at 155, 76 S. Ct. at 757.

While the precise contents of the audit report and related special reports have not been revealed, the record does generally indicate that the audit covered subjects such as scheduling, shift bidding, training, equipment, and the assignment of employees, for example. Prima facie, I find that these matters generally concern the Unit's wages, hours, and working conditions. See City of Aurora, 24 PERI ¶25; Village of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003); Village of Wilmette, 18 PERI ¶2045 (IL LRB-SP G.C. 2002); Village of Arlington Heights, 6 PERI ¶2052 (IL SLRB G.C. 1990); City of Chicago, 2 PERI ¶3008 (IL LLRB G.C. 1986). These subjects also largely appear to implicate unit members' terms or conditions of employment to some degree. To this extent, these subjects are intuitively related to the Union's functioning as the bargaining representative and are presumptively relevant. Furthermore, information concerning these subjects, on its face, appears reasonably necessary for the performance of the Union's function as bargaining representative, especially in light of a number of related proposals made by the Employer during negotiations and the liberal discovery-type standard noted above.<sup>3</sup>

Nevertheless, certain affirmative defenses for not producing the requested information, such as the confidentiality of the requested information or a claim of employee privacy, are to be taken into consideration. City of Bloomington, 19 PERI ¶11; Chicago Transit Authority, 4 PERI ¶3013; see also Detroit Edison Company v. National Labor Relations Board, 440 U.S. 301, 318, 99 S. Ct. 1123, 1132 (1979). Indeed, employers need only turn over relevant documents if their necessity to the representative for statutory purposes outweighs the legitimate interests of the

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<sup>3</sup> As stated in Village of Franklin Park, the general rule, as established by decisions of the National Labor Relations Board and courts, is that an employer's duty to bargain includes the obligation to furnish an exclusive bargaining representative with sufficient information to enable it to bargain intelligently, to understand and discuss the issues raised by the employer in opposition to the bargaining representative's demands, and to administer and police the contract. Village of Franklin Park, 8 PERI ¶2039; see also The Item Company, New Orleans Newspaper Guild, 108 NLRB 1634 (1954); Sandpiper Convalescent Center, 279 NLRB 1129 (1989); Westinghouse Electric Corporation, 239 NLRB 106 (1978).

employer in controlling access to them. City of Bloomington, 19 PERI ¶11; City of Chicago, 4 PERI ¶3025 (IL LLRB 1988). However, in this case, the Employer, as the party claiming that confidential considerations justify a refusal to provide requested information, has the burden of proof. County of Champaign, 19 PERI ¶73, citing City of Chicago (Chicago Fire Department), 12 PERI ¶3015.

The Employer notes that in City of Bloomington, 19 PERI ¶11, the Board applied a “balancing of interests analysis” in holding that the Union was not entitled to a copy of the written portion of a promotional exam. In City of Bloomington, it was clear that the union had not demonstrated that the requested information was necessary for it to perform its representative functions. In that case, for example, the information requested concerned a non-mandatory subject of bargaining. Additionally, the Board determined that the union was not entitled to the exam’s questions and answers for the purpose of representing its members’ contractual rights because the parties’ collective bargaining agreement did not cover the format of the exam and its questions. Furthermore, in City of Bloomington, the employer “articulated a rational and compelling basis for its refusal.” Id. Specifically, the Board noted that the employer successfully argued that the content of the exam must remain confidential so as to preserve the integrity of the examination process, an interest which had been “recognized and found determinative by the U.S. Supreme Court.” Id.; see Detroit Edison Company, 440 U.S. at 318, 99 S. Ct. at 1132. Accordingly, the Board indicated that under those circumstances, the employer’s interest “clearly outweighs” the purported interest of the union. City of Bloomington, 19 PERI ¶11.

The cited City of Bloomington case, however, can be distinguished from the instant case to some degree. Here, as outlined above, the information requested by the Union more clearly

concerns mandatory bargaining subjects and appears reasonably necessary for the performance of the Union's representative functions. Further, the evidence of record indicates that the requested information very likely concerns subjects that are covered by the parties' expired collective bargaining agreement. Importantly, here, the information requested also appears relevant to the Union's formulation of an informed bargaining position during contract negotiations.

In City of Bloomington, the issue of whether an examination technique was a mandatory subject of bargaining was more clearly addressed by the Act. Id. As that case acknowledges, an employer's duty to bargain over particular subjects is specifically delineated in Section 4 of the Act. Id. While Section 4 leaves the scope of the term undefined, Section 4 does indicate that an employer shall not be required to bargain over "examination techniques" and other matters of inherent managerial policy. Section 4 appears to provide less immediate guidance concerning internal audit reports and related information.

On the other hand, the Employer has articulated a number of considerable confidentiality- and privacy-related interests that generally warrant protection. For example, the Employer suggests that the IG "cannot do its job if its investigatory findings and recommendations are made available for public inspection." Furthermore, according to the Employer, if this information is available to the public, the individuals asked to aid the IG in conducting the audit will conduct themselves differently and the IG will lose its ability to provide an unbiased assessment "and the audits would no longer serve their purpose."<sup>4</sup>

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<sup>4</sup> During the hearing, Maddox provided a number of related justifications. For example, Maddox generally explained that reports that are written for public distribution are written differently than reports that are written confidentially. According to Maddox, the Secretary of State needs honest, candid, and "unvarnished" reports that will not be released to the public. Allegedly, if the Employer does not reveal the identities of the interviewed employees, the Employer is ensured honest answers from the protected employees. Maddox also suggested that if an audit report was a public document, it could be used to undermine or "torpedo" an employee's superior or the

However, while testimony suggests that the IG has never intentionally released an audit report to the public, the record does indicate that audit information is shared with directors and administrators. This kind of internal disclosure is unlikely to alleviate all of an interviewed employee's fears of recrimination. Furthermore, it may be noted that the Employer has not offered to give the Union a redacted version of the audit report at issue. In this case, certain confidentiality and privacy concerns could theoretically have been protected to some degree by redacting aspects of the requested information. This theoretical approach, though, seems less likely to address the Employer's concerns about external or public disclosure.

In its post-hearing brief, the Employer also argues that even if the Union can establish that the IG's audit report is reasonably related to its duties as a bargaining representative, the Union is still not entitled to the information due to the Employer's "pre-decisional, deliberative process privilege." Apparently in support of this argument, the Employer references ASARCO, Incorporated, Tennessee Mines Division v. National Labor Relations Board, 805 F.2d 194, 199 (6th Cir. 1986), in which the employer prepared extensive self-critical reports after serious accidents in order to improve safety and prevent future similar mishaps.<sup>5</sup> These reports contained, for example, speculative material and opinions, criticisms of persons, events, and equipment, and recommendations for future practices. Id. That case noted that the ability of an employer to engage in self-critical analysis and speculation unhindered by concern that such material will be disclosed to the union is a substantial, legitimate interest. Id. The Court then recognized that a chilling effect on a substantial interest is a legitimate concern which militates against disclosure. Id. at 200; see also International Union of Electrical, Radio and Machine

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Secretary of State. Further, Maddox testified that this audit report could potentially be critical of the operation of the department.

<sup>5</sup> Citing Sheriff of Jackson County, 14 PERI ¶2009 (IL SLRB 1998), the Employer also suggests that it is appropriate for the Board to use decisions from the National Labor Relations Board and other courts as guidance.

Workers, AFL-CIO-CLC v. National Labor Relations Board, 648 F.2d 18, 28 (D.C. Cir. 1980).

Accordingly, the Employer argues that its interest in the audit reports remaining confidential “heavily outweighs any possible union interest in internal managerial discussions.”

Although a liberal discovery-type standard is used in information request cases to determine relevance, this does not mean that the requested information is automatically subject to disclosure in the collective bargaining context. See ASARCO, 805 F.2d at 199. Rather, relevance and any resulting duty to disclose must be evaluated in light of the rights and obligations created by the Act. Id. As outlined above, for example, the Union’s need for information must be balanced against the legitimate confidentiality interests of the Employer. A union’s interest in arguably relevant information does not always predominate over other legitimate interests. Id.; see also Detroit Edison Company, 440 U.S. at 318, 99 S. Ct. at 1132 (1979).

In the present case, IG audit reports may similarly be understood as reports which could contain self-critical opinions, criticisms, and recommendations. To this extent, the chilling effect put forward by the Employer may accurately be identified as a “substantial, legitimate interest.” Under these circumstances, the Employer’s interest in protecting the integrity of the audit process generally outweighs the interest the Union has in obtaining the requested information. Therefore, as the Employer’s interest outweighs the interest of the Union, the Employer has no general duty to furnish the Union with the desired information.

#### The Employer’s Alleged Repudiation of the Ground Rules

The Union also argues that the Employer violated the Act by repudiating the parties’ ground rules. When an employer’s conduct demonstrates a disregard for the bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process

from working, that conduct represents a repudiation and violates Sections 10(a)(4) and (1) of the Act. See Cook County Hospital, 21 PERI ¶50 (IL LRB-LP G.C. 2005); City of Loves Park v. Illinois Labor Relations Board State Panel, 343 Ill. App. 3d 389, 395, 798 N.E.2d 150, 155 (2nd Dist. 2003). In order to demonstrate that the Employer refused to comply with an agreement, the Union must establish that there was a “meeting of the minds” as to the alleged agreement. County of Tazewell and Sheriff of Tazewell County, 19 PERI ¶39 (IL LRB-SP 2003); City of Chicago (Police Department), 14 PERI ¶3010 (IL LLRB 1998); City of Burbank, 4 PERI ¶2048 (IL SLRB 1988). Whether there had been a meeting of the minds is determined by the parties’ objective conduct rather than any party’s subjective belief. City of Chicago (Police Department), 14 PERI ¶3010 (IL LLRB 1998); Mack Trucks, Inc. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, 856 F.2d 579, 591 (3rd Cir. 1988), cert. denied, 109 S. Ct. 1316 (1989); Mt. Vernon School District No. 80, 9 PERI ¶1050 (IL ELRB 1993). Further, for a binding agreement to be found, the parties must truly assent to the same things in the same sense on all of its essential terms and conditions. City of Chicago (Police Department), 14 PERI ¶3010, citing City of Chicago (Department of Police) 12 PERI ¶3024 (IL LLRB G.C. 1996); LaSalle National Bank v. International Limited, 129 Ill. App. 2d 381, 394, 263 N.E.2d 506, 513 (2nd Dist. 1970). Therefore, this analysis must determine whether both parties agreed that the relevant language of the ground rules was designed to ensure the exchange of information such as the IG’s findings and special reports from the audit conducted of the Department of Police.

The Union argues that there was a plain meeting of the minds to provide reasonable information and that this “is clear from the objective conduct of the parties when they entered the agreement to provide this information.” The record, however, provides only a limited account of

the proceedings which lead to the adoption of the ground rules. Further, this limited record indicates that the parties did not discuss the ground rules in significant detail before signing the agreement.

During the hearing, Lieb initially testified that no language restricted what could be requested by the Union under the parties' agreement. Subsequently, during the cross-examination of Lieb, the Employer proposed a number of hypothetical scenarios in order to establish that there were implicit exceptions to the agreement. Lieb's responses to these scenarios suggest that Lieb agreed that some internal documents would be off limits under the ground rules. However, Lieb also credibly clarified that in his opinion, under the ground rules, the Union would have access to information to the extent that it impacts the terms and conditions of employment of Unit members.

While this kind of testimony may provide some insight into a party's interpretation of an agreement, a party's subjective belief is not enough to establish the requisite meeting of the minds. See City of Chicago (Police Department), 14 PERI ¶3010; Warehouseman's Union Local No. 206 v. Continental Can Co., Inc., 821 F.2d 1348, 1350 (9th Cir. 1987). In this case, the clearest objective expression of the parties' intent, rather than their subjective beliefs, can be found in the actual language of the parties' signed June 23, 2009 agreement. By simply consenting to unambiguous ground rules which had been reduced to writing, the Employer's objective conduct largely manifests an intention to be bound by the terms of the parties' agreement. See City of Collinsville, 16 PERI ¶2026 (IL SLRB 2000). Furthermore, I find that under the present circumstances, the parties' objective conduct establishes a meeting of the minds, as necessary to find a valid agreement.

The objective facts of this case are relatively straightforward and not in dispute. As noted above, the agreed upon ground rules simply state, in relevant part, “Both parties agree to exchange information or comply with reasonable requests for information as long as that information is available to the parties, at no cost.” The Union fairly suggests that its request was reasonable because the audit and special reports “contained information that clearly related to Respondent’s bargaining proposals.” It is my determination that the Employer should reasonably have known that the “reasonable requests” at issue could cover matters clearly related to collective bargaining issues. It might also be noted that, as stipulated, the requested information is clearly within the control of the Employer and “available” to it in the traditional sense. Furthermore, the Employer was likely able to supply the requested information at an insignificant cost. In this way, the plain language of the agreed upon ground rules supports the Union’s interpretation.

While citing only City of Highland Park, 14 PERI ¶2023 (IL SLRB G.C. 1998), the Employer argues that “Board precedent weighs heavily in favor of the proposition that violation of negotiations ground rules does not constitute an unfair labor practice.”<sup>6</sup> However, as the Board stated in City of Burbank, 3 PERI ¶2009 (IL SLRB 1986), a party’s commitment to live up to its agreements is the cornerstone of good faith collective bargaining and effective labor relations. See also Illinois Departments of Corrections and Central Management Services, 4

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<sup>6</sup> In County of Kane (Kane County Sheriff), 4 PERI ¶2031 (IL SLRB 1988), the Board recognized that most parties establish bargaining ground rules and that such guidelines serve as a helpful device to streamline the negotiation process and to avoid petty disputes and unfair surprises. Nevertheless, the Board indicated that disputes over the terms of these guidelines, and even the very existence of them, cannot be permitted to detour negotiations over wages, hours, and terms and conditions of employment. *Id.* The Board further opined that if negotiations were allowed to break down over mere threshold issues, the policy of the Act would be violated and those who wish to impede the collective bargaining process would have a “tool of avoidance” to wield at the expense of those willing to bargain in good faith. *Id.*; see also National Labor Relations Board v. Bartlett-Collins Company, 639 F.2d 652 (10th Cir. 1981), cert. denied, 452 U.S. 961 (1981). However, I find the precise issue in this case to be factually distinguishable because it has a clearer and more direct relationship to the employees’ wages, hours, and terms and conditions of employment. Furthermore, I do not find that the preceding discussion and analysis significantly opposes the policies of the Act or inhibits effective negotiations.

PERI ¶2043 (IL SLRB 1988). In the instant matter, the Employer's plain refusal to supply the requested information violated the parties' unambiguous written agreement. In light of the foregoing discussion and analysis, I find that the Employer's repudiation of the parties' ground rules constitutes a violation of Sections 10(a)(4) and (1) of the Act.

#### **V. CONCLUSIONS OF LAW**

I find that the Respondent, Illinois Secretary of State, repudiated the ground rules agreed to by the parties on June 23, 2009 by failing and/or refusing to provide Charging Party the requested Inspector General's findings and special reports from an audit conducted of the Department of Police, in violation of Sections 10(a)(4) and (1) of the Act.

#### **VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that Respondent, Illinois Secretary of State, and its representative officers and agents shall:

1. Cease and desist from:
  - (a) Refusing to bargain in good faith with Charging Party, Illinois Fraternal Order of Police Labor Council, by repudiating the ground rules signed by the parties on June 23, 2009;
  - (b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
  - (a) Abide by the provisions of the ground rules signed by the parties on June 23, 2009;

- (b) Comply with Charging Party's request for the Inspector General's findings and special reports from the audit conducted of the Department of Police;
- (c) Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "Addendum." Copies of this notice shall be posted, after being duly signed by Respondent, in conspicuous places for a period of 60 consecutive days. Respondent shall take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material;
- (d) Notify the Board in writing, within 20 days from the date of this order, of the steps Respondent has taken to comply herewith.

## **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 10 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 5 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 Springfield, Illinois, this 12<sup>th</sup> day of August, 2011.**

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

  
\_\_\_\_\_  
**Martin Kehoe**  
**Administrative Law Judge**

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

Illinois Fraternal Order of Police Labor )  
Council, )  
 )  
Charging Party )  
 )  
and )  
 )  
Illinois Secretary of State, )  
 )  
Respondent )

Case No. S-CA-11-016

DATE OF  
MAILING: August 12, 2011

**AFFIDAVIT OF SERVICE OF**

I, Lori Novak, on oath, state that I have 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 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

John R. Roche, Jr.  
Illinois FOP Labor Council  
5600 S. Wolf Road  
Western Springs, IL 60558

Mark W. Bennett  
Jeremy L. Edelson  
Laner, Muchin, Dombrow, Becker, Levin and Tominberg, Ltd.  
515 North State Street, Suite 2800  
Chicago, Illinois 60654

*Lori Novak*

\_\_\_\_\_  
Lori Novak

**SUBSCRIBED and SWORN to**  
before me, **August 12, 2011**

*Shannon L. Trumbo*  
\_\_\_\_\_  
NOTARY PUBLIC

