

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

Illinois Fraternal Order of Police Labor	)	
Council,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-11-167
and	)	
	)	
Village of Summit,	)	
	)	
Respondent	)	

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

On February 3, 2011, the Illinois Fraternal Order of Police Labor Council (Charging Party or FOP) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Village of Summit (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended (Act). The charge was investigated in accordance with Section 11 of the Act and on March 30, 2011, the Board’s Executive Director issued a Complaint for Hearing. A hearing was conducted on August 11, 2011, in Chicago, Illinois, at which time FOP 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. 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 Village is a public employer within the meaning of Section 3(o) of the Act.
2. The Village is a unit of local government subject to the jurisdiction of the Board’s State Panel pursuant to Section 5(a) of the Act.
3. The Village is a unit of local government subject to the Act pursuant to Section 20(b) thereof.
4. FOP is a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material, FOP has been the exclusive representative of a bargaining unit comprised of all full-time, sworn peace officers below the rank of Lieutenant, employed by Respondent, originally certified by the Board on April 10, 1986, in Case No. S-RC-86-217.

## II. ISSUES AND CONTENTIONS

The issue is whether the Village violated Sec 10(a)(4) and (1) when it refused to bargain the use of video surveillance footage (i) to investigate suspected employee misconduct and (ii) to prove the existence of just cause to discipline bargaining unit members.

The Village argues that FOP waived its right to bargain the installation and use of video cameras because the parties' contract permits the Village to "add, delete or alter methods of operation, equipment or facilities" and to "discipline ... employees for just cause."<sup>1</sup> In the alternative, the Village argues that its use of video footage in investigatory and disciplinary processes is not a mandatory subject of bargaining because it does not affect employees' terms and conditions of employment. In support, the Village states that the footage never triggers an investigation or provides initial proof of employee misconduct and that it instead serves to supplement other evidence in an already ongoing investigation. The Village also notes that the cameras are overt and do not record any areas in which employees have an expectation of privacy. Next, the Village argues that the installation and use of video cameras is a security measure and is therefore also a matter of inherent managerial authority. Finally, the Village contends that it is not required to bargain the use of video footage as proof in the disciplinary process because the Illinois Rules of Evidence provide that video evidence is admissible in legal proceedings.

FOP argues that the Village's use of video footage in investigatory and disciplinary processes is a mandatory subject of bargaining. First, FOP contends that such use directly affects employees' terms and conditions because it helps prove employee misconduct, justifies employee discipline for viewed infractions and consequently has the potential to affect employees' job security. FOP also notes that the surveillance itself infringes on the employees' right to privacy. Second, FOP argues that the Village's decision was not a matter of inherent

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<sup>1</sup>The only issue in this case concerns the Village's duty to bargain the use of video footage, not its duty to bargain initial installation of cameras.

managerial authority and is instead one that is “almost exclusively an aspect of the relationship between the employer and employees.” In the alternative, FOP argues that the burden on the Village to bargain its use of video footage is minimal compared to the benefits of bargaining.

### III. FINDINGS OF FACT

#### 1. Summit Police Department cameras

The Summit Police Department (SPD) currently has nine surveillance cameras installed inside the station, five outside the station to film its perimeter, and four off station grounds, located throughout the Village to deter crime.<sup>2</sup> None of these cameras are hidden. All of the footage from the cameras is time-stamped.

Eleven of the cameras on station grounds were installed prior to 2008. Inside the station, these include one in the front lobby, two in the booking area, one in the common hallway between the lobby and the booking area, one pointing at the department’s safe, and one in the garage pointing at the evidence locker and seized vehicles. Outside the station, these include two cameras overlooking the west lot, one pointing toward the service door, one outside the Village Board hearing room, and another at the station’s entrance.

In June or July of 2010, the Village installed three new cameras inside the station, one in the interview room, one in the radio/dispatch room and one in the northeast corner of the garage. The northeast garage camera points towards employee mailboxes, the union bulletin board and a bank of lockers. The lockers are used mainly for part-time employees, though at least one bargaining unit member uses them too. They are not used for changing clothes. FOP became aware of these new cameras shortly after the Village installed them but FOP did not object to their installation.

Most of the police station is secured. Individuals may enter the secured areas only if they receive permission. Several cameras on station property were installed to maintain that security. The dispatch center camera was installed to deter loiterers. The north east garage camera, pointed at the locker and mailboxes, was installed at the request of employees to deter tampering of employee mail. The camera pointed at the evidence locker and at the seized vehicles was installed to secure seized property, as required by federal law.

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<sup>2</sup>These are located at 75th Avenue and 64th Place, Archer Avenue and 61st Street, the 7300 block of 59th Street and 7230 Park Avenue.

## 2. The Incident, Investigation and Discipline

A drive-by shooting occurred three blocks from the station at 12:45 am, September 15, 2010. It was witnessed by many people and spurred a number of 911 calls. Four sworn police employees were on shift that night: Officer Kevin Janettas, Officer Denis Easter, Sergeant Maureen Godsel and Lieutenant Michael Long, the watch commander. All of these employees except Lt. Long are bargaining unit members. Two officers were assigned street patrol duties, Janettas (early car detail - 10:30 pm to midnight) and Godsel (cover car detail – 12 am to 8 am). At 12:46 am, dispatch issued the call to officers that an individual had been shot. Officers responded to the call and Lt. Long wrote the police report.

The day after the incident, a Village alderman informed Chief Les Peterson that he heard SPD officers did not immediately respond to the dispatch call, as required, and that no officers were even patrolling the streets at the time. The Chief had a similar suspicion because the victim was no longer at the scene when the officers arrived, though the victim had been shot in the face and though the shooting occurred close to the station, about 40 seconds away by car.

The Chief then watched the department's video surveillance footage from the night of the shooting to determine whether the alderman's claim was true and whether his own suspicions were founded.<sup>3</sup> The footage confirmed that none of the officers on shift left the station between 12:10am and the time they received the dispatch call. Instead, they were milling around, drinking coffee, making coffee, reading, and lounging. The footage also showed that the officers did not promptly respond to the dispatch call.<sup>4</sup> Even before this incident, the Chief had received many complaints from residents that SPD officers did not adequately patrol the streets of Summit.

The Village disciplined all four officers based on the information obtained from the video footage. The Chief issued Easter and Godsel written warnings for "failing to leave the police station and congregating with the entire shift on 9/15/2010." He issued Janettas a one day suspension for "failing to perform his duties on 9/15/2010," specifically for "failing to attend to

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<sup>3</sup> This included both footage from cameras that were installed recently, in 2010, and footage from the older ones.

<sup>4</sup> In addition, the footage showed that Godsel arrived five minutes late for work. She was not disciplined for tardiness.

the early car detail and [for] failing to leave the station at all to patrol.”<sup>5</sup> Watch Commander Lt. Long was also given a one day suspension for allowing his entire shift to remain in the station and for failing to patrol. Prior to September 2010, the Village had never imposed discipline on employees based in whole or in part on evidence obtained from the department’s video surveillance cameras though the Village had used surveillance footage from cameras outside the station to investigate crimes and prosecute criminals.

The parties’ collective bargaining agreement contains a management rights clause. It permits the Village to “add, delete or alter methods of operation, equipment or facilities,” “to suspend, demote, discharge, or take other disciplinary action against officers for just cause,” and “to add, delete or alter policies, procedures, rules and regulations.”

On October 20, 2010, Joseph Kalita, field representative for the FOP, sent a letter to the Village president in which he made a formal demand to bargain over the Village’s decision to discipline bargaining unit members based on recorded video surveillance of the police department.<sup>6</sup> On November 9, the Village responded through its attorney, Michael McGrath, stating that it received the union’s “demand to bargain over the issue of Police Department Video Surveillance,” but that “the Village decline[d] [FOP’s] request to bargain.” McGrath noted that the Village’s use of the footage was a legally permissible “method of proof ... used to support the discipline itself.” At hearing, SPD detective Robert Mase testified that FOP sought to bargain the Village’s use of surveillance cameras, generally. The Village never bargained with FOP over the use of video surveillance footage in investigatory or disciplinary processes.

#### **IV. DISCUSSION AND ANALYSIS**

##### **1. Amending the Complaint**

FOP’s objections to the Village’s actions are broader than those set forth in the complaint. Accordingly, I amend the complaint to conform it to evidence presented at hearing. Section 1220.50(f) of the Rules and Regulations of the Illinois Labor Relations Board (Rules) provides that “[t]he Administrative Law Judge, on the judge’s own motion ... may amend a

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<sup>5</sup> Lt. Long was also suspended for one day; the video surveillance was used as evidence against him at a hearing before the Fire and Police Commission and the Chief stated during that hearing that he relied on the videotapes to issue that discipline.

<sup>6</sup> The letter was sent to the Village President, Honorable Joseph W. Strzelczyk.

complaint to conform to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order.” 80 Ill. Admin. Code § 1220.50(f). “The Board's case law provides two specific instances in which a complaint may be amended: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original charge, or grew out of the same subject matter during the pendency of the case.” Forest Preserve Dist. of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 746 (1st Dist. 2006) (citing, Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004)).

The evidence presented at hearing demonstrates that FOP objected not only to the Village’s unilateral decision to use video footage in formal disciplinary proceedings, as stated in the complaint, but also to the Village’s concurrent decisions to initially investigate and prove employee misconduct using that footage. First, a union witness testified that FOP filed its demand letter to bargain the Village’s use of camera footage generally, not solely (or specifically) to bargain the Village’s use of such evidence in formal disciplinary hearings.<sup>7</sup> Moreover, the Village in response to the demand acknowledged that FOP’s sought to “bargain over the issue of Police Department Video Surveillance” more broadly, though the Village maintained that its’ particular use of the footage as a “method of proof” was legally permissible.

Further, since I find that the Village’s investigatory use of video surveillance footage is not a mandatory subject of bargaining, there is no prejudice to the Village in addressing that matter here.

## **2. Duty to bargain/Central City test**

The Board has never addressed whether an employer’s dual uses of surveillance footage to (1) investigate misconduct and to (2) justify employee discipline are mandatory subjects of bargaining.

Parties are required to bargain collectively regarding employees' wages, hours and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State, County and Mun. Empl., Local 268, 122 Ill. 2d 353, 361-2 (1988); Am. Fed. of State,

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<sup>7</sup> Robert Mase, detective for the SPD testified that “[Joseph Kalita, FOP field representative] advised that he would be filing a demand to bargain with the village over the use of the cameras.”

County and Mun. Empl. v. Ill. State Labor Rel. Bd. (“AFSCME v. ISLRB”), 190 Ill. App. 3d 259, 264 (1st Dist. 1989); Ill. Dep’t of Cent. Mgmt Serv., 17 PERI ¶ 2046 (IL LRB-SP 2001); County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998). It is well-established that a public employer violates its obligation to bargain in good faith, and therefore violates Section 10(a)(4) and (1) of the Act, when it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, its employees' exclusive bargaining representative. County of Cook v. Licensed Practical Nurses Ass’n of Ill. Div. 1, 284 Ill App. 3d 145, 153 (1st Dist. 1996).

A topic is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: 1) is either not a matter of inherent managerial authority; or 2) is a matter of inherent managerial authority, but the benefits of bargaining outweigh the burdens that bargaining imposes on the employer's authority. City of Chicago (Dep’t of Police), 21 PERI ¶ 83 (IL LRB-LP 2005) (citing, Cent. City Educ. Ass’n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 599 N.E.2d 892 (1992), and City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 692 N.E.2d 295, 14 PERI ¶ 4005 (1998)).

i. Subject Concerning Wages, Hours or Terms and Conditions of Employment

Under NLRB case law, an employer changes terms and conditions of employment when it substantially varies the method by which it investigates suspected employee misconduct and when it changes the character of proof on which an employee's job security might depend. Johnson-Bateman Co., 295 NLRB 180, 182-184 (1989) (drug/alcohol testing of employees to investigate possible employee responsibility for a sharp increase in workplace accidents was a mandatory subject of bargaining); Medicenter, Mid-South Hospital, 221 NLRB 670, 675 (1975) (introduction of polygraph testing to discover source of workplace vandalism was a mandatory subject of bargaining). The NLRB applied this rule to an employer’s use of surveillance camera footage in investigatory and disciplinary processes, finding it similarly germane to the working environment and analogous to the use of other technologically-advanced investigatory tools. Colgate-Palmolive Co., 323 NLRB 515, 515 (1997); see also, Bloom Township High School, Dist. 206, 20 PERI ¶ 35 (2004 WL 6012606) (installation and use of surveillance

cameras affected employees' terms and conditions of employment because their use had the potential to affect the job security of monitored employees).<sup>8</sup>

Here, the Village's use of footage as an investigatory method and as proof to justify employee discipline is a significant change from its previous practices and therefore affects employees' terms and conditions of employment. The Village never used video footage to investigate or discipline employees prior to September 15, 2010. Indeed, there is no evidence in the record that the Village had ever used any other similar high-tech methods for such purposes. Rather, the Village's historical technique for determining culpability of bargaining unit members and proving just cause relied instead on the application of *human* skill, judgment, and experience. The Village's use of video footage to investigate crimes and prosecute criminals does not alter this analysis because the Village never used those methods to affect bargaining unit members' terms and conditions of employment.

Contrary to the Village's contention, the previous and historical existence of video surveillance cameras in and around the department is immaterial to this analysis because the matter at issue is the Village's new use of those cameras, not their installation.

ii. Matter of Inherent Managerial Authority / Balancing Test

Private sector labor law does not distinguish between an employer's decision to use video surveillance footage in investigatory proceedings and its decision to use footage as proof in the disciplinary process. Neither decision is a matter of inherent managerial authority because the matters are not fundamental to the basic direction of a corporate enterprise and instead impinge solely and directly upon employment security. Colgate-Palmolive Co., 323 NLRB at 515-16.

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<sup>8</sup> FOP also argues that use of footage from video surveillance cameras in the work environment may also raise privacy concerns which add to the potential effect upon employees' working conditions. Colgate-Palmolive Co., 323 NLRB at 515 (placement of hidden cameras in a restroom and fitness center clearly raise a concern over an individual's privacy); cf. Quazite Corp., 315 NLRB No. 132 (1994) (installation of single camera on employer's premises, trained only on the ceiling at the fire alarm system did not constitute part of the work environment and thus did not affect terms and conditions of employment). While such considerations are important, in this case the cameras were overt and in areas where employees either had no reasonable expectation of privacy because the cameras were in public areas, were installed pursuant to federal/state law or were explicitly requested for installation by the employees themselves. Accordingly, the Village's use of the footage has a negligible effect on terms and conditions of employment arising from privacy rights.

Public sector labor law takes a different approach, one that is tailored to the largely non-profit and service-oriented goals of public employers. Because the government has special responsibilities to the public not shared by private employers, the scope of negotiations in the public sector is more limited than in the private sector. Local 195, IFPTE, AFL-CIO v. State, 88 N.J. 393, 401-05 (NJ 1982). Accordingly, public sector case law imposes different bargaining obligations on the two decisions referenced above. AFSCME v. ISLRB, 190 Ill. App. 3d at 265 (drug testing of correctional officers permissive subject of bargaining, but nature of discipline imposed on employees based on test results or refusal to submit to testing was mandatory subject), but see, Johnson-Bateman Co., 295 NLRB at 182-184 (drug testing and disciplinary use of results both mandatory subjects of bargaining); Local 364, Int'l Brotherhood of Police Officers v. Labor Rel. Comm'n, 391 Mass. 429, 440 (MA 1984) (polygraph testing of employees suspected of criminal conduct not mandatory subject of bargaining, but union could have argued the employer was required to bargain over the impact of employer's decision on employee discipline), but see, Medicenter, Mid-South Hospital, 221 NLRB at 675 (polygraph testing of employees and disciplinary use of results both mandatory subjects of bargaining); Niagara Frontier Transit Metro System, Inc., 36 PERB ¶ 3036 (NY PERB 2003) (employer's use of video footage for investigative purposes not mandatory subject of bargaining, but the use of such footage in disciplinary proceedings was mandatory subject), but see, Colgate-Palmolive Co., 323 NLRB at 515 (use of surveillance cameras to investigate misconduct and disciplinary use of footage both mandatory subjects).

1. Use of video footage as a investigatory tool

As noted above, the Board has not yet addressed an employer's obligation to bargain its use of video footage to investigate suspected employee misconduct. However, the New York Public Employment Relations Board (PERB) has held that investigatory procedures are categorically permissive subjects of bargaining, including the use of video surveillance footage. Niagara Frontier Transit Metro System, Inc., 36 PERB ¶ 3036 (NY PERB 2003) (an employer's decisions concerning investigatory procedures are permissive subjects). Unlike the New York PERB, the Illinois Appellate Court has not set forth such a blanket rule concerning the bargainability of investigatory procedures. AFSCME v. ISLRB, 190 Ill. App. 3d at 265-266 (drug testing of employees permissive subject of bargaining); County of Cook, 284 Ill. App. 3d

at 156 (drug testing of employees mandatory subject). Instead, the Court examines the functions of the employer and the circumstances in which the employer uses its investigatory tool to determine whether the particular procedure at issue is a permissive or mandatory subject of bargaining. Id. While the Court has only ruled on an employer's unilateral implementation of drug testing, a different type of investigatory procedure, an analogy between drug testing and the use of video footage here is both permissible and appropriate because the Court references other investigatory procedures in its own decision. AFSCME v. ISLRB, 190 Ill. App. 3d at 265-266 (citing case on polygraph testing). Accordingly, instead of applying New York's blanket rule, I set forth the Illinois Appellate Court's approach with respect to drug testing and apply it the instant case, below.

In AFSCME v. ISLRB, the Court held that the IDOC's drug testing of correctional officers was a matter of inherent managerial authority because it was necessary for IDOC to perform its statutory function, securing persons and property in prison and because its use was limited to those occasions where the employer had a "reasonable suspicion" of employee drug use. Id.; cf. Bloom Township High School, Dist. 206, 20 PERI ¶ 35 (IELRB 2004) (installation of hidden surveillance camera in high school maintenance garage used to ascertain whether custodians were violating rules and policies did not require employer to negotiate over its function—educating students—and was therefore not a matter of inherent managerial authority). The Court also noted that an employer's managerial interest in investigating suspected employee misconduct is stronger where the employees perform public safety functions. Am. Fed. of State, County and Mun. Empl., 190 Ill. App. 3d at 265-266 (citing Local 364, Int'l Brotherhood of Police Officers, 391 Mass. at 440 (MA 1984) (polygraph testing of police officers suspected of criminal conduct, permissive subject)). The Court then determined that the burden on the employer to bargain the matter outweighed the benefits of bargaining because IDOC's mission was threatened by a pervasive and intractable drug problem which testing would help address. Id.; but see, County of Cook, 284 Ill. App. 3d at 156 (blanket drug testing of nurses, civilian employees returning from leave, mandatory subject of bargaining where court found no sufficient rationale for testing).

Applying the Court's rationale here, the Village's investigatory use of video footage in this case is a matter of inherent managerial authority because the Chief reviewed the footage upon reasonable suspicion of officer misconduct to further the department's primary goal of law

enforcement. Here, the Chief reviewed the footage only after his suspicions of misconduct were reasonably raised by the word of an alderman who believed officers had not patrolled that night and by the police report which revealed that the seriously injured shooting victim left the scene before officers arrived. Under these circumstances, it was essential for the Village to definitively ascertain whether its sworn officers were in fact performing their statutorily-mandated primary function, to keep the peace by patrolling the streets. See generally, Illinois Municipal Code, 65 ILCS 5/11-1-2 (2010) (describing police officer duties). Absent such certainty, the department could not remedy its past failures and ensure that officers patrol the streets in sufficient numbers to serve the needs of the community.

Further, the Village's interest in expediently uncovering the cause of deficient law enforcement outweighs any benefits bargaining could provide. The Village's interest is quite strong here because the problem addressed by the video surveillance investigation is severe and pervasive: The failure of SPD officers to patrol Summit has generated many complaints from the public. Further, such misconduct reaches the highest-ranked employees on shift who not only fail to patrol but who also fail to supervise. Finally, FOP did not present any compelling benefits that bargaining would provide; indeed, the Village's investigatory measure is not particularly amenable to bargaining in this case where the integrity and reliability of those near the top of the paramilitary structure are in question. Accordingly, the Village's investigatory use of video surveillance footage, triggered by a reasonable suspicion of employee misconduct, is a permissive subject of bargaining because the Village's need for law enforcement on the job outweighs the benefits of bargaining. See generally, AFSCME v. ISLRB, 190 Ill. App. 3d at 265-266.

## 2. Use of video footage as proof to justify discipline of employees

It is well-established that disciplinary and discharge procedures are clearly mandatory subjects of bargaining. County of Cook, 284 Ill. App. 3d at 154; County of Williamson, 15 PERI ¶ 2003 (IL SLRB 1999); County of Cook and Sheriff of Cook County, 6 PERI ¶ 3019 (IL LLRB 1990). Indeed, if an employer's new policy presents employees with the threat of disciplinary sanctions, the sanctions are mandatory subjects of bargaining, even if the policies are not. AFSCME v. ISLRB, 190 Ill. App. 3d at 268. On this basis, the Appellate Court held that the

Department of Corrections was required to bargain over the discipline it imposed on employees for misconduct which was revealed by the results of its investigatory drug tests. Id.

The drug test results, at issue in AFSCME v. ISLRB, and the video surveillance footage, at issue here, are both fruits of an employer's investigatory procedure which are used to justify disciplinary action against employees. As a result, the Court's holding in AFSCME v. ISLRB is equally applicable here, even though the investigatory method used by the Department of Corrections in that case is different from the one used by the Village. Accordingly, the Village's decision to discipline employees based on evidence obtained from video surveillance footage is a mandatory subject of bargaining.<sup>9</sup>

Contrary to the employer's contention, the Village's obligation to bargain this decision remains unchanged by the fact the investigation itself was spurred by other evidence and that the footage merely confirmed the Village's existing suspicion of employee misconduct. See, AFSCME v. ISLRB, 190 Ill. App. 3d at 267 (the fact that drug tests were ordered upon reasonable suspicion of intoxication did not obviate employer's obligation to bargain the use of their results in the disciplinary process).

Finally, the Village has a duty to bargain this issue even though the Illinois Rules of Evidence provide that video evidence is admissible in court. As a preliminary matter, a statute's mere reference to matters that relate to bargaining does not relieve a respondent of its duty to bargain. See also, County of Williamson, 15 PERI ¶ 2003 (IL SLRB 1999)(rejecting Respondent's argument that certain discipline and discharge procedures fell outside the scope of mandatory bargaining because they were "specifically provided for" in other laws). Moreover, the relevance of the Illinois Rules of Evidence to this case is doubtful since it explicitly applies only to court proceedings, not disciplinary ones at issue here. Ill. R. Evid. 1011 (2011) (providing that the Rules govern "proceedings in the courts of Illinois" but not in other miscellaneous proceedings) (emphasis added).

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<sup>9</sup> Such a holding accords with the approach taken by the New York Employee Relations Board which deems the use of video surveillance footage in disciplinary proceedings a mandatory subject of bargaining. Niagara Frontier Transit Metro System, Inc., 36 PERB ¶ 3036 (NY PERB 2003).

### 3. Waiver<sup>10</sup>

#### i. By Inaction

FOP did not waive, by inaction, its right to bargain the Village's decision to use video footage as a basis for employee discipline because FOP had no meaningful opportunity to bargain the matter. To successfully assert a defense of waiver by inaction, an employer must demonstrate that the union had clear notice of the employer's intent to institute a change, that the notice was sufficiently in advance of the actual implementation so as to allow a reasonable opportunity to bargain about the change, and that the union failed to make a timely request to bargain before the change was implemented. City of Waukegan, 28 PERI ¶ 42 (IL LRB-SP 2011) (citing, Forest Preserve Dist. of Cook County, 4 PERI ¶ 3013 (IL LLRB 1988)). However, a union cannot waive bargaining through inaction when it first receives notice of the change after the employer has implemented it or after the employer becomes committed to the change. City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987); See also, Cook County Hospital, 2 PERI ¶ 3001 (IL LLRB 1985).

Here, FOP became aware of the Village's decision only after the Village used footage as evidence in disciplining bargaining unit members, in other words, after the Village implemented its decision. Moreover, FOP had no reason to believe the Village would use footage for such disciplinary purposes when the Village claimed (and maintains) that the cameras were installed for security. See, Colgate-Palmolive Co., 323 NLRB at 515 and 519 (affirming ALJ who held Respondent was required to bargain its decision to change its "method of using the surveillance cameras" even though Union never sought to bargain the installation of other similar cameras). Thus, FOP did not waive its right to bargain this issue through inaction.

#### ii. Contractual Waiver

Nor did FOP waive the right to bargain this matter by agreeing to the contract's management rights clause. Contractual language serves as a waiver of a party's bargaining rights only where there is evidence of a clear and unequivocal intent by the party to relinquish its right to bargain over the subject matter at issue. AFSCME v. ISLRB, 190 Ill. App. 3d at 269; Vill. of Oak Park v. Ill. State Labor Rel. Bd., 168 Ill. App. 3d 7 (1st Dist. 1988); Vill. of

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<sup>10</sup> I do not address the question of FOP's waiver with respect to the cameras' investigatory use because I find such use is not a mandatory subject of bargaining.

Westchester, 16 PERI ¶ 2034 (IL SLRB 2000); State of Ill., Dep't of Cent. Mgmt Serv. (Dep't of Public Aid), 10 PERI ¶ 2006 (IL SLRB 1993); City of Quincy, 6 PERI ¶ 2003 (IL SLRB 1989); Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997).

Here, the management rights clause does not permit the Village to use video surveillance footage to prove employee misconduct for disciplinary purposes; nor does it permit the Village to unilaterally determine the disciplinary impact of its new policies more generally. Rather, the contract states in broad, non-specific terms that the Village may change its “policies, procedures, rules and regulations” and that it may “discipline ... employees for just-cause.” Neither provision explicitly permits the Village to unilaterally change the manner in which it proves the existence of just cause. Similarly, the Village’s authority to change its “methods of operation, equipment or facilities” does not permit the employer to unilaterally use information from such equipment to affect bargaining unit members’ terms and conditions of employment.<sup>11</sup> Accordingly, FOP did not contractually waive its right to bargain the Village decision to use video surveillance footage to justify the discipline it imposed on bargaining unit members.

#### V. CONCLUSIONS OF LAW

The Village violated Section 10(a)(4) and (1) of the Act when it failed and refused to bargain with FOP over the use of video surveillance footage as evidence to support the imposition of discipline on bargaining unit members.

#### VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, the Village of Summit, its officers and agents, shall

1. Cease and desist from:
  - a. Failing and refusing to bargain in good faith with the Charging Party, FOP, regarding the use of video surveillance footage in the disciplinary process.
  - b. In any like or related manner, interfering with, restraining or coercing public employees in the exercise of the rights guaranteed them under the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:

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<sup>11</sup> The Village’s right to install the video surveillance cameras is not at issue in this case. Accordingly, I make no determination as to whether the parties’ management rights clause allows their unilateral installation.

- a. Rescind the decision made on or about September 15, 2010, to use video surveillance footage in the disciplinary process.
- b. Rescind any discipline issued to employees in bargaining units represented by FOP, as a result of or in connection with the decision made on or about September 15, 2010, to use video surveillance footage in the disciplinary process and expunge from Respondent Village's files any reference to any such discipline;
- c. Make whole any employees in the bargaining unit represented by FOP for all losses incurred as a result of the Village's September 15, 2010, decision regarding the use of video surveillance footage in the disciplinary process, including back pay with interest as allowed by the Illinois Public Labor Relations Act, at seven percent per annum;
- d. Bargain collectively with the Charging Party, FOP, regarding the use of video surveillance footage in the disciplinary process.
- e. Post, at all places where notices to employees are normally posted, copies of the notice supplied by the Board attached hereto and marked "Addendum." 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 other material;
- f. Notify the Board in writing, within 20 days from the date of this Decision, 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 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 of 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 2nd day of November, 2011**

**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 Summit 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 failing and refusing to bargain collectively in good faith with the Charging Party, Illinois Fraternal Order of Police Labor Council, regarding the use of video surveillance footage in the disciplinary process.

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

WE WILL bargain collectively in good faith with the Charging Party, Illinois Fraternal Order of Police Labor Council, regarding the use of video surveillance footage in the disciplinary process.

WE WILL rescind the decision made on or about September 15, 2010, to use video surveillance footage in the disciplinary process until such time as we bargain to agreement or legitimate impasse with the Charging Party. WE WILL rescind any discipline issued to employees in bargaining units represented by FOP, as a result of or in connection with the decision made on or about September 15, 2010, to use video surveillance footage in the disciplinary process and expunge from Respondent Village's files any reference to any such discipline;

WE WILL make whole any employees in the bargaining unit represented by FOP for all losses incurred as a result of the Village's September 15, 2010, decision regarding the use of video surveillance footage in the disciplinary process, including back pay with interest as allowed by the Illinois Public Labor Relations Act, at seven percent per annum

DATE \_\_\_\_\_

\_\_\_\_\_  
Village of Summit  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor

160 North LaSalle Street, Suite S-400

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

Illinois Fraternal Order of Police Labor	)	
Council,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-11-167
	)	
Village of Summit,	)	
	)	
Respondent	)	

**AFFIDAVIT OF SERVICE**

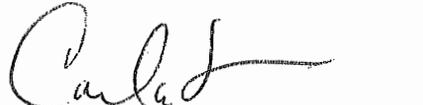
I, Elaine Tarver, on oath state that I have this 2nd day of November, 2011, served the attached **ADMINISTRATIVE LAW JUDGE RECOMMENDED DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

John Roche, Jr.  
Illinois Fraternal Order of Police  
5600 S. Wolf Road  
Western Springs, IL 60558

Michael McGrath  
Odelson & Sterk  
3318 W. 95<sup>th</sup> Street  
Evergreen Park, IL 60805



**SUBSCRIBED and SWORN to**  
before me this **2nd day**  
of **November 2011**.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

