

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

Barbara A. Martenson,	)	
	)	
Charging Party	)	
	)	
and	)	
	)	Case Nos. S-CA-11-255
County of Boone & Boone County Sheriff	)	S-CB-11-063
and International Union, United Automobile	)	
Aerospace and Agricultural Implement	)	
Workers of American, Local 1761,	)	
	)	
Respondents	)	

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

On June 23, 2011, Barbara Martenson (Charging Party) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CA-11-255, alleging that the County of Boone and Boone County Sheriff (County), engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). On June 23, 2011, the Charging Party also filed a charge with the Board in Case No. S-CB-11-063 alleging that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1761 (Union), engaged in unfair labor practices within the meaning of Section 10(b) of the Act. The Executive Director conducted an investigation pursuant to Section 11 of the Act and on November 28, 2011, issued a Complaint for Hearing and Order Consolidating Cases and a Partial Dismissal dismissing the unfair labor practice charges filed by the Charging Party in Case No. S-CA-11-255. On December 14, 2011, the Board received the Union’s Answer and Affirmative Defenses to the Complaint for Hearing in Case No. S-CB-11-063.

The Charging Party filed a timely appeal of the Executive Director's Partial Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. Respondent did not file a response. On May 14, 2012, after reviewing the record and the appeal, the Board issued a decision reversing the Executive Director's Partial Dismissal and remanding the case for issuance of a Complaint for Hearing. On May 16, 2012, the Executive Director issued an Amended Complaint for Hearing. On May 29, 2012, the Board received the County's Answer to the Amended Complaint for Hearing.

A hearing in the consolidated cases was held in the Chicago office of the Board on January 22, 23, February 26 and March 1, 2013. The Charging Party presented evidence in support of the allegations, and all parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

The Parties stipulate and I find as follows:

1. At all times material, the County has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
3. At all times material, the County and Union have been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a) of the Act.
4. At all times material, the County and Union have been subject to the Act pursuant to Section 20(b) of the Act.

5. At all times material, the Charging Party was a public employee within the meaning of Section 3(n) of the Act.
6. At all times material, the Union and County have been parties to a collective bargaining agreement (Agreement), containing a grievance procedure for the resolution of disputes concerning its application and interpretation.
7. At all times material prior to January 28, 2011, the County employed the Charging Party in the job classification of Dispatcher.

## **II. ISSUES AND CONTENTIONS**

At issue for hearing was whether the Union acted with intentional misconduct when it withdrew the Charging Party's suspension and termination grievances, in violation of Section 10(b)(1) of the Act.

Also at issue was whether the County interfered with, restrained or coerced public employees in the exercise of rights guaranteed by the Act, in violation of Section 10(a)(1) of the Act when it prohibited the Charging Party from discussing the substance of the investigation of workplace performance with other employees, directing her to receive prior approval from her supervisor prior to receiving any documents from other employees, and directing other employees not to speak to the Charging Party concerning the substance of the investigation.

## **III. FINDINGS OF FACT**

Barbara Martenson worked as a Dispatcher for the County for approximately 27 years. In 2007, Lieutenant Perry Gay became Martenson's immediate supervisor. Martenson worked as a dispatcher along with Denise Hagan, Dawn Lutwiz, Teresa Nyman, Bonnie Pearson and LaWanna Turnipseed. At all times material Hagan and Nyman were representatives for the Union.

Beginning in 2007, Martenson planned and held meetings with the Fraternal Order of Police (FOP), Metropolitan Association of Police (MAP) and American Federal, State, and County Municipal Employees (AFSCME) for all union members because she was interested in voting on new bargaining unit representation. On October 17, 2007, Martenson scheduled a meeting so that the FOP could speak with all union members. There was another meeting in 2010. Although Martenson was interested in changing unions, both Hagan and Nyman made it clear that they were not interested and did not feel it was in the best interest of the unit.

On May 3, 2010, Lt. Gay issued Martenson her first documented letters of counseling. Martenson received one letter in her file because she did not respond fast enough to an officer and the other because she gave an officer inaccurate information. The letters stated that they would remain in her personnel file, but were not considered disciplinary action.

In or around September 2010, Martenson inaccurately told an officer that a suspect's license was suspended. Martenson corrected herself immediately, but not until after the suspect was arrested for driving with a suspended license. For her error, she received a one-day suspension as discipline. Martenson recognized that she was responsible for her error and did not file a grievance.

In or around November 2010, Martenson received her second disciplinary action for improperly responding when an officer's emergency button accidentally went off. Out of three available dispatchers, Martenson was the only one to check on the officer's status, but she did not follow up after receiving no response. For her error, she received a five-day suspension as discipline. Martenson filed a grievance over the disciplinary action because she was not the only person working at the time, felt the punishment was excessive and maintained that she was never trained on the proper procedures. The County denied the grievance claiming that because she

had received two previous written reprimands and a one-day suspension the punishment was not excessive and her claims lacked merit. The Union withdrew the grievance at the third step because it lacked merit.

On or about December 22, 2010, Martenson was placed on a paid administrative leave while the County investigated her alleged mishandling of two orders of protection, one from in-county and one from out-of-county. That day the County issued a written investigative notice to Martenson and others that provides as follows:

An Investigation into conduct or performance of an employee(s) is in process. The purpose of the investigation is to determine if there are facts to support the specific complaint filed against an employee. Because the investigation is ongoing and may involve several other employees you are hereby ordered not to speak to any other person as to the nature of the questions asked or the reason for your appearance at this interview on this date. You are not to speak to any employee about this interview or advise any other employee as to what was said during the interview. Everything within this interview that is asked or discussed is confidential and can only be divulged by the investigating authority as it relates to charges filed and testimony in future hearings.

A violation of this direct order will result in disciplinary action up to and including termination of your employment.

On or about January 28, 2011, Martenson received notice that she was being terminated for the mishandling of the orders of protection. She filed a grievance for unjust termination. The Union initiated the grievance for the termination but withdrew its grievance after the third step, deciding not to take it to arbitration.

Since 2007, only one other dispatcher, Denise Hagan, had been disciplined several times. On or about July 16, 2007, Hagen failed to enter a warrant for her son's arrest and for her misconduct she was given a verbal reprimand. On or about March 9, 2008, Hagen failed to forward an order of Protection involving her father and for this misconduct she was given a written reprimand. On or about June 1, 2010, Hagan failed to send police to her own house for a

domestic violence dispute and instead stepped away from her work area and used her cell phone to communicate. For this incident she received a one-day suspension and her suspension was served outside of the 30-day period in which the County has to impose discipline according to the parties' agreement. Hagan and the County were both aware of this and agreed to an "extension" because the 30-day period included a holiday. Hagan did not file a grievance regarding this issue.

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

##### **a. Legal Standard of Review**

The Amended Complaint in this case alleges violations of Section 10(b)(1) and 10(a)(1) of the Act. The Executive Director's Partial Dismissal alluded to the issues in these cases being issues of first impression for the Board because the Board would have the opportunity to analyze these cases under Section 301 of the Labor Management Relations Act. In their post-hearing briefs, the parties analyzed the allegations for the Board to consider the relation of Section 301 hybrid claims to Section 10 of the Act. Section 301 of the Labor Management Relations Act provides, in relevant part, as follows:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. 29 U.S.C. § 185(a).

To recover against a union under Section 301, the union member must prove both (1) that the employer breached the collective bargaining agreement and (2) that the union breached its duty of fair representation. White v. Anchor Motor Freight, Inc., 899 F.2d 555, 559 (6th Cir. 1990). These are "the two constituent claims in every hybrid 301 action." Id. If the union member fails to prove that the union breached its duty, he will, obviously, recover nothing from

the union. If the union member fails to prove that the employer breached the collective bargaining agreement, he also will recover nothing, because the union member's grievance would have failed regardless of the union's representation.

A hybrid Section 301 suit implicates the interrelationship among a union member, his union, and his employer. White, 899 F.2d at, 561. However, the Section 301 hybrid claim specifically relates to lawsuits “that may be brought in any *district court* of the United States” and not charges brought before the Board. Moreover, Section 301 requires the Board to decide whether the employer “breached the collective bargaining agreement” and it is well-established that the Board does not have jurisdiction to enforce provisions of collective bargaining agreements where there is a good faith dispute as to the agreement's meaning. Vill. of Creve Coeur, 3 PERI ¶ 2063 (IL SLRB 1988). The Board does not allow parties to “use the Board's processes to remedy alleged contractual breaches or to obtain specific enforcement of contract terms.” Id.

Therefore, I find that the Board does not have jurisdiction to decide the issues in this matter under Section 301 of the Labor Management Relations Act and I have analyzed the issues in this case strictly as violations of Section 10(a)(1) and 10(b)(1) under the Act.

**b. Charge Against the Union**

The Charging Party argues that the Union breached its duty of fair representation under Section 10(b)(1) of the Act when it withdrew two of Martenson’s grievances in retaliation. The Charging Party claims that Union did not adequately represent Martenson in the grievance process when Denise Hagan improperly agreed to an extension of the agreement, against the advice of her international union representative and to the benefit of the County, and because Martenson was actively looking to replace the Union.

Section 10(b)(1) of the Act provides “ that a labor organization or its agents shall commit an unfair labor practice...in duty of fair representation cases only by intentional misconduct in representing employees under this Act.” Because of the intentional misconduct standard, demonstration of a breach of the duty to provide fair representation, a violation of Section 10(b)(1), requires a charging party to “prove by a preponderance of the evidence that: (1) the union's conduct was intentional, invidious and directed at charging party; and (2) the union's intentional action occurred because of and in retaliation for some past activity by the employee or because of the employee's status (such as race, gender, or national origin), or animosity between the employee and the union' s representatives (such as that based upon personal conflict or the employee' s dissident union practices).” Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 Ill. App. 3d 579, 588 (1st Dist. 2003).

To prove unlawful discrimination, a charging party must demonstrate, by a preponderance of evidence, that: (1) the employee has engaged in activities tending to engender the animosity of union agents or that the employee's mere status, such as race, gender, religion or national origin, may have caused animosity; (2) the union was aware of the employee's activities and/or status; (3) there was an adverse representation action taken by the union; and (4) the union took an adverse action against the employee for discriminatory reasons, i.e. because of animus towards the employee' s activities or status. Id. at 588-89.

In this case, there is no evidence that the Union intentionally took any action either designed to retaliate against Martenson or due to her status, nor is there evidence that the Union's conduct in connection with the grievances filed by Martenson was based on something other than an assessment of the merits of those grievances. Martenson and Turnipseed testified that after Martenson began planning meetings with different unions, Hagan was “horrible” to Martenson.

The evidence suggests that from 2007-2010 Hagan yelled at and belittled Martenson. However, neither Martenson nor Turnipseed could provide specific instances when Hagan exhibited this kind of behavior. Hagan testified that she did not treat Martenson any differently. Other than these vague statements, Martenson and Turnipseed focused most of their testimony on how Lt. Gay showed favoritism toward Hagan and Nyman. Therefore, I find there is no evidence of animosity between Hagan and Martenson.

The evidence also suggests that even if the County and the Union had a mutual understanding of the 30-day period in which to discipline union members, the Union had knowledge of the County extending that period at least twice in the past and did not file a grievance. At least one of those times the employee being disciplined was Hagan, a Union representative. Therefore, there is no evidence the Union treated Martenson differently from other similarly situated employees.

Moreover, following the decision to allow the County to extend the time in which it had to discipline Martenson, the Union still filed a grievance against the County on Martenson's behalf and that grievance went through the second step. The Union states that it relied on Martenson's disciplinary record and the severity of the infraction when making its decision. At hearing, both the Union and County agreed that the Martenson's failure to answer the officer's emergency call button was a terminable offense. The Union maintains that the five-day suspension was a far less severe discipline than the action warranted and that was the reason it felt that the grievance was not winnable.

Martenson's position is that the Union should have fought harder on her behalf and Martenson was obviously dissatisfied with the manner in which the Union interpreted the CBA and believed that its enforcement was not aggressive enough. However, simply displeasing or

dissatisfying a bargaining unit member, or disagreeing as to the manner or degree in which to enforce the parties' Agreement, is not unlawful under the Act. The standard in cases such as this is quite high, as the exclusive representative has a wide range of discretion in representing the bargaining unit, and as the Board has previously held under Section 6(d) of the Act, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate the Act, unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶ 3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶ 3008 (IL LLRB 1987).

The Union maintains that the Charging Party has failed to prove that the Union withdrew Martenson's grievances for invidious reasons, and claims that the Union withdrew the grievances because the bargaining committee honestly believed they were not winnable. Accordingly, a union must be accorded substantial discretion in deciding whether, and to what extent, a particular grievance should be pursued... and the Board will not second guess a union's administrative decision regarding grievance handling. See Benny Eberhardt and International Brotherhood of Teamsters, Local 700, 29 PERI ¶77 (ILRB-SP 2012); Amalgamated Transit Union, 2 PERI ¶3021 (IL LLRB 1986). No such evidence was presented in this case.

**c. Charge Against the Employer**

The Charging Party argues that the County's acts independently violated Section 10(a)(1) of the Act. Specifically, the Charging Party argues that her collective bargaining rights were restricted by not being able to communicate with other employees during the pending investigation into her discipline. The Charging Party also alleges that the County's failure to

impose discipline on Martenson within the 30-day timeframe allotted in the parties' agreement was also a violation of the Act.

Section 10(a)(1) of the Act states, in relevant part, that it is an unfair labor practice for an employer or its agents to interfere with, restrain, or coerce public employees in the exercise of the rights guaranteed in the Act. In order to establish a violation of Section 10(a)(1) of the Act, Charging Party must prove, by a preponderance of the evidence, that Respondent attempted to or effectively did interfere with, restrain, or coerce the employees in such protected activity. Chicago Housing Authority, 6 PERI ¶3013 (IL LLRB 1990).

The Board has held that, in general, proof of illegal motivation is unnecessary in establishing a Section 10(a)(1) violation. Village of Schiller Park, 13 PERI ¶ 2047 (IL SLRB 1997); see also Chicago Housing Authority, 1 PERI ¶ 3010 (IL LLRB 1985). Thus, if a respondent's actions have the clear effect of restraining employees' exercise of protected rights, and those actions are not independently justified, a Section 10(a)(1) violation may be established even though illicit motivation is not proved. Chicago Housing Authority, 6 PERI ¶ 3013; City of Chicago, 3 PERI ¶ 3011; Chicago Housing Authority, 1 PERI ¶ 3010.

The County argues that during the hearing on this matter, the Charging Party offered no evidence that Martenson either engaged in concerted activity or was prevented from engaging in protected concerted activity. Board precedent, however, supports the conclusion that Martenson's action constituted protected concerted activity within the meaning of Section 6 of the Act.<sup>1</sup>

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<sup>1</sup> Section 6 of the Act provides, in pertinent part:

Employees of the State and any political subdivision of the State...are protected in the exercise of, the right of self-organization, and may form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, not excluded by Section 4 [Management Rights] of this Act, and to

Martenson sought to speak with other employees regarding the investigation of her discipline, and in doing so, Martenson was invoking rights contained in Article IX of the parties' agreement, Section 1, 2 and 3 respectively – the right to be disciplined only for just cause, the right to an accurate investigation and the right to respond to charges.<sup>2</sup> Pace West Division, 13 PERI ¶ 2027 (1197), citing City Disposal Systems, 465 U.S. 822 (1984) (concerted activity may be engaged in by a sole employee as long as that employee is invoking a right grounded in a collective bargaining agreement). Therefore, I find that Martenson's actions constituted engaging in protected concerted activity.

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engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid protection, free from interference, restraint or coercion.

<sup>2</sup>Article IX states as follows:

#### Section 1. Discipline

The Employer agrees herein that disciplinary action shall be in a timely manner and shall not exceed thirty (30) calendar days from the date the incident giving rise to such disciplinary action or from first becoming aware of such incident and shall recognize only that disciplinary action appropriately documents and filed in the employee's central personnel files and not other working files maintained by other management staff. Furthermore, the Employer shall, prior to actual imposition of discipline, afford the subject employee an opportunity to discuss his/her views concerning the conduct causing such disciplinary action. Such discussion should take place as soon as practicable and not be unduly or unreasonably delayed, and the employee should be informed clearly and concisely of the basis of such action. Furthermore, upon request of the employee, a Union Representative shall be allowed to be present and, if the employee approves, participate in such discussions. Any employee who alleges that disciplinary action is not based on just cause may grieve such action pursuant to the grievance procedures

#### Section 2. Investigations

The parties agree that disciplinary action must be supported by timely and accurate investigation. An employee shall be entitled upon request to the presence of a Union Representative at any meeting which discipline may or will take place, or at an investigatory interview of the employee by the Employer regarding charges which, if substantiated, could result in suspension or discharge. The employee will be advised of the nature of any disciplinary or investigatory meeting before it commences.

#### Section 3. Disciplinary Conferences

Whenever an employee is to be formally charged in a violation of any rule, regulation or policy, a disciplinary conference shall be scheduled and the employee shall be notified of the charge and shall have Union representation at this conference if so desired. The employee shall be informed of the nature of the charges against him/her and the reasons that disciplinary action is intended. The employee shall have the right to respond to the results of the disciplinary conference.

i. Lt. Gay's December 22, 2010 Order

I also find that the County's directive to employees to refrain from discussing discipline and disciplinary investigations with co-workers constituted a violation of employees' rights to engage in protected concerted activity. The NLRB case law has provided guidance to the Board in its determination regarding this issue. The NLRB has consistently held that when an employer's directives interfered with employee's rights to discuss discipline or disciplinary investigation involving other employees, the employer could escape a finding of a violation of Section 8(a)(1) of the NLRA by demonstrating a legitimate and substantial business justification that outweighs the employee's Section 7 interests. SSC Oakland Cambridge LLC d/b/a Cambridge East Healthcare Center and Patrick Gordon, 2011 WL 5971219 (NLRB Nov. 29, 2011) aff'g, 2011 WL 4499438 (NLRB Div. Judges Sept. 28, 2011); Desert Palace Inc. d/b/a Caesar's Palace and Richard Zollo, 336 NLRB 271, 272 (2001); Westside Community Mental Health Center, Inc. and SEIU, Local 790, AFL-CIO, 327 NLRB 661, 666 (1997).

The NLRB has found that an employer's rule violated Section 8(a)(1) of the NLRA because it imposed the following overly broad confidentiality directive:

Depending upon the circumstances of a particular investigation employees may be requested and expected not to disclose any confidential information that could compromise an ongoing investigation, including not only the scope and content of the investigation, but also the fact that an investigation is being conducted.

The NLRB held that this directive was overly broad because it did not limit the time-period of the investigation and it restricted the accused employee from discussing the investigation and the allegations against him. Oakland Cambridge LLC, 2011 WL 5971219 (NLRB Nov. 29, 2011) aff'g, 2011 WL 4499438 (NLRB Div. Judges Sept. 28, 2011).

In Phoenix Transit System, the Board reasonably found that the employer's directive to the employees--never to talk about the matter, at any time, to anyone, even about their *own* observations and complaints—was unduly broad, and that employer's asserted confidentiality interest was weak where the employer asserted that the success of its sexual harassment policy depended on confidentiality. Phoenix Transit System v. NLRB, 524, 2003 WL 21186045 (NLRB Div. Judges May 14, 2003). The NLRB found that this assertion lacked evidentiary support, and is particularly unconvincing in light of the fact that the confidentiality directive's effect was to silence sexual harassment witnesses and victims. Id.

The NLRB also rejected an employer's business justification when the employer's rule prevented an employee from possibly obtaining information from co-workers that might be used in her defense. Westside Community Health Center, 327 NLRB 661. The employer's justification included concerns of other employees and avoidance of work place disruption. Id.

In specific circumstances involving an investigation of illegal drug activity in the work place, the NLRB held that the employer's rule not to discuss anything related to their investigations with anyone at anytime or in any way, shape or form—in or out of the work place—constituted a substantial and legitimate business justification that outweighed the restriction on the employees' Section 7 rights. Desert Palace 336 NLRB 271 (2001).

Here, the County maintains that it restricted the “in-house discussion” of the pending discipline to protect the integrity of the investigation by assuring that employees who were interviewed could not warn or prepare each other before Lt. Gay had the opportunity to speak with them. To support its contention, the County cites County of Cook v. ILRB, where the court held that witness statements or reports may be withheld during grievance proceedings to maintain confidentiality. County of Cook, 266 Ill. App. 3d 53 (1st Dist. 1994).

I find that the case the County relies on does not support the County's argument. In County of Cook, the court specifically discusses situations where the employer is refusing to disclose seemingly confidential information on other employees, to an employee being disciplined, strictly for the use of said information during their disciplinary matter. County of Cook, 266 Ill. App. 3d 53. This is not the issue in this case.

After review of the NLRB case law, I find that the County's order issued December 22, 2010, was overly broad and the County failed to provide a legitimate reason for the restriction. Contrary to the County's contentions, the order issued by Lt. Gay did not limit the discussion of the investigations to "at work" discussions. Instead, the order states "[employees] are hereby ordered not to speak to any other person as to the nature of the questions asked or the reason for your appearance at this interview on this date." This directive is overly broad.

Consistent with the finding in Westside Community Health Center, I also find that County has provided no legitimate reason. It is not enough to restrict the exercise of an employees' rights merely so that the County can protect the integrity of an investigation. Martenson's ability to discuss the investigation with other employees and obtain information to defend her termination, in my opinion, weighs more heavily than the County's desire to limit possible collusion among coworkers.

ii. Repudiation

The Charging Party also argues that the County breached the collective bargaining agreement when it issued Martenson discipline outside of the 30-day timeframe allotted in the parties' collective bargaining agreement. As stated above, the Board does not allow parties to obtain specific enforcement of contract terms, but instead the Board has jurisdiction to adjudicate those breaches of contract involving conduct so sufficiently lacking in good faith that they

amount to a repudiation of the collective bargaining process. City of Loves Park v. Ill. Labor Rel. Bd. State Panel, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003), citing City of Collinsville, 16 PERI ¶ 155 (IL SLRB 2000), aff'd City of Collinsville v. Ill. State Labor Rel. Bd., 329 Ill. App. 3d 409, 767 N.E.2d 886 (5th Dist. 2002); City of Kewanee, 23 PERI ¶ 110 (IL SLRB 2007); Cnty. of Cook (Office of the Public Defender), 13 PERI ¶ 3005 (IL LLRB 1997).

Repudiation therefore requires (1) a substantial breach by the Respondent (2) made without rational justification or reasonable interpretation such that it demonstrates bad faith. City of Loves Park v. Ill. Labor Rel. Bd. State Panel, 343 Ill. App. 3d 389, 395 (repudiation requires outright refusal to abide by a contractual term or disregard for the collective bargaining process), citing City of Collinsville, 16 PERI ¶ 155 (IL SLRB 2000), aff'd., 329 Ill. App. 3d 409; City of Kewanee, 23 PERI ¶ 110 (IL SLRB 2007) (repudiation requires a substantial breach and a contractual argument by the employer that is without rational justification or reasonable interpretation of that contract but there can be no repudiation where the contract's language is open to more than one reasonable interpretation).

The agreement between the parties covered December 1, 2008 through November 30, 2009, and its terms were extended until November 30, 2011, by agreement of the parties.

The Charging Party argues that the undersigned must decide the meaning of Article IX, of the parties' agreement<sup>3</sup> and that the words in this section should be given their plain and ordinary meaning consistent with the long-standing rule in Illinois. Young v. Allstate Insurance Co., 351 Ill. App. 3d. 151, 158 (1st Dist. 2004). While the Charging Party maintains that this section of the agreement requires the County to issue disciplinary action within the 30-day time limit, the County argues that the section merely requires the notification of intended disciplinary action and an opportunity to respond with 30 days of the infraction charged.

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<sup>33</sup> Supra note 2.

The Charging Party provides several examples as evidence that the County understood and operated under the interpretation that management has 30 days from the time in which they learn of an incident, to impose disciplinary action. Such evidence includes Sheriff Wirth's testimony that per the agreement the County has 30 days from the date it becomes aware to conduct an investigation and to issue disciplinary action. The International Union Representative Ted Dever also testified that he informed Hagan and Gay of the 30-day requirement for the County to issue discipline. Hagan also testified that she received discipline on conduct that occurred on June 1, 2010, and she was aware that she could have filed a grievance for being issued discipline July 7, 2010, more than 30 days after the infraction. Hagan testified that she did not file a grievance because she was guilty and felt the discipline issued was warranted. Hagan also testified that she was aware of the 30-day requirement in Martenson's case but that she allotted the County additional time to complete its disciplinary action in Martenson's case.

Lt. Gay testified that he found the 30-day requirement in the parties' agreement to mean that an investigation for disciplinary action has been started, the County has within 30 days given the employee notice, held a conference, and let them know that there is an investigation. Lastly, the evidence is such that at least two other employees were disciplined beyond the 30-time frame allotted for in the parties' agreement and neither filed a grievance.

It is clear that the County did not repudiate the agreement because the parties have each offered reasonable interpretations of the contract's language which demonstrates that the parties have a good faith disagreement as to the contract's meaning. The County's actions did not amount to an outright refusal to abide by contractual terms and the County provided a reasonable

interpretation of the contract terms. As such, I find that the County has not repudiated the parties' agreement.

### **CONCLUSIONS OF LAW**

I find that the Charging Party failed to prove, by a preponderance of the evidence, that the Union violated Section 10(b)(1) of the Act. However, I find that the County violated Section 10(a)(1) of the Act when it issued an overly broad directive to its employees.

### **VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that Count II of the Complaint against the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1761 be dismissed its entirety.

IT IS ALSO HEREBY ORDERED that the County of Boone and Boone County Sheriff, its officers and agents, shall:

1. Cease and desist from implementing overly broad policies limiting a bargaining unit member's rights to engage in protected activities.
2. Rescind any discipline imposed pursuant to the overbroad policy and remove all reference to that discipline from employees' personnel files.
3. Make whole any employees in the bargaining unit for all losses incurred as a result of the Respondent's overly broad policy, including back pay with interest as allowed by the Illinois Public Labor Relations Act, at seven percent per annum.<sup>4</sup>

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<sup>4</sup> “[W]here discipline is imposed pursuant to an overbroad rule, that discipline is unlawful regardless of whether the conduct could have been prohibited by a lawful rule.” N.L.R.B. v. Northeastern Land Services, Ltd., 645 F.3d 475 (1st Cir. 2011)(citing Double Eagle Hotel & Casino, 341 N.L.R.B. 112, 112 n. 3 (2004), enforced, 414 F.3d 1249 (10th Cir. 2005) and Opryland Hotel, 323 N.L.R.B. 723, 728 (1997)); see also Saia Motor Freight Line, Inc., 333 N.L.R.B. 784, 785 (2001) (“Because [the employee]

4. Take the following affirmative action designed to effectuate the purpose and policies of the Act:

- a. Post at all places where notices to employees are normally posted, copies of the notice 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. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
- b. 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

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was disciplined for violating the [employer]'s unlawful overly broad ... rule, that discipline itself constitutes a violation of Section 8(a)(3) and (1), without consideration of Wright Line's dual-motivation analysis." A make-whole remedy is required in such cases. Northeastern Land Services, Ltd., 352 NLRB No. 89, 5 (2008), aff'd 645 F.3d 475 (1st Cir. 2011); Double Eagle Hotel & Casino, 341 N.L.R.B. at 112, enforced, 414 F.3d 1249 (10th Cir. 2005); Opryland Hotel, 323 N.L.R.B. at 728; Saia Motor Freight Line, Inc., 333 N.L.R.B. at 785.

General Counsel of the Illinois Labor Relations Board 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 29<sup>th</sup> day of April, 2014.**

A handwritten signature in cursive script that reads "Elaine L. Tarver" is written over a horizontal line.

**Elaine L. Tarver  
Administrative Law Judge  
Illinois Labor Relations Board**