

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Charging Party)	
)	Case No. S-CA-13-175
and)	
)	
Chief Judge of the Circuit Court of Cook)	
County,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On May 6, 2013, the American Federation of State, County, and Municipal Employees, Council 31 (Charging Party or AFSCME) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Chief Judge of the Circuit Court of Cook County (Respondent or Chief Judge) 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 (2012). The charge was investigated in accordance with Section 11 of the Act and on August 22, 2013, the Board’s Executive Director issued a Complaint for Hearing. A hearing was conducted on January 10, 2014, in Chicago, Illinois, at which time AFSCME 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. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent has been subject to the jurisdiction of the Board’s State Panel pursuant to Section 5 of the Act.

3. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's employees in the Juvenile Probation Department (Department) in the classification of Probation Officer (Unit).
5. The Charging Party and Respondent are parties to a collective bargaining agreement (Agreement) setting out terms and conditions of employment, and having a term of December 1, 2008 through November 30, 2012.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it filled a vacant Supervisory Probation Officer (SPO) position in the Bridgeview courthouse, allegedly without providing the Charging Party notice and an opportunity to bargain its effects and without completing impact bargaining over the Respondent's reorganization plan.

The Union argues that the Respondent violated the Act when it transferred SPO Alicia Ortiz into the Bridgeview vacancy because, in doing so, it implemented its reorganization plan without completing effects bargaining. The Union contends that there were no exigent circumstances that justified the Respondent's decision to implement the plan prior to completely bargaining its effects.¹

Next, the Union argues that it did not contractually waive the right to bargain over the Respondent's decision to fill the Bridgeview SPO vacancy or the effects of that decision. The Union acknowledges the Respondent's contractual authority to implement transfers, but notes that the contract also requires the Respondent to bargain changes to its employees' working conditions. In turn, the Union argues that the contract requires the Respondent to bargain those changes to employees' terms and conditions of employment which result from transfers made pursuant to the Respondent's reorganization plan. Similarly, the Union acknowledges that the contract addresses transfer procedures, but argues that the Respondent is nevertheless required to bargain the effects of the instant transfer because it impacts employees whose positions are subject to the reorganization.

¹ The Union also argues that the reorganization is a mandatory subject of bargaining, but does not clearly tie this conclusion to its remaining arguments.

Finally, the Union requests a make-whole remedy, but asserts that there is no need for an order to restore the status quo ante since Ortiz would have received the Bridgeview position through the reorganization process, had the Respondent not transferred her there earlier.

The Respondent argues that the Union contractually waived its statutory right to bargain over the Respondent's decision to fill the SPO vacancy in Bridgeview. The Respondent points to its contractual authority to transfer employees and notes that the parties already negotiated the manner in which the employer effectuates such transfers.

In a similar vein, the Respondent reasons that its decision to transfer Ortiz during realignment discussions was lawful because the transfer was distinct from any transfers made pursuant to the parties' negotiations. The Respondent explains that the parties had not yet begun the process of filling vacancies identified during realignment discussions and had not yet frozen the bid list at the time of Ortiz's transfer.

Finally, the Respondent asserts that neither the decision to reorganize nor the decision to transfer Ortiz involve mandatory subjects of bargaining.

III. FINDINGS OF FACT

AFSCME Local 3477 represents a bargaining unit composed of probation officers in the Respondent's Juvenile Probation Department. Over the past several years, the Respondent lost officers through attrition because the Respondent did not receive funding to hire or promote officers as employees left. Consequently, the Respondent operated with a number of vacancies.

These deficits spurred the Respondent to plan a "realignment" or "compression" of its workforce. The Respondent intended to reallocate its resources and staff to the areas of greatest need by eliminating units and by transferring those units' staff to other units within the Department. In past realignments, the Respondent filled vacancies with employees whose positions were subject to elimination, and affected employees had the opportunity to bid for those vacant positions.

On March 18, 2013, Director of Probation and Court Services Michael J. Rohan wrote a letter to AFSCME President Michael Willis seeking to schedule a meeting with AFSCME to discuss the projected compression of divisions and realignment of units. Rohan noted that the Respondent had identified a series of strategies which "should promote more equitable distribution of responsibilities and supervision of staff."

On March 27, 2013, a judge at a Chicago courthouse in the Chicago Northwest Division held Supervisor Probation Officer (SPO) Alicia Ortiz in contempt of court. Ortiz's duties included testifying in court. A finding of contempt reflects poorly on a probation officer's credibility and makes it difficult for the officer to continue to appear in that courtroom.

On March 29, 2013, AFSCME and the Respondent met to discuss the realignment. AFSCME staff representative Margaret Lorenc, Union President Willis, Director Rohan, and Director of Human Resources Rose Golden were present at the meeting. Rohan explained that the Respondent sought to realign the Department because the hiring freeze left several positions vacant. Golden then gave AFSCME an oral list of positions it wished to fill through the realignment. This list included an SPO position located at the Bridgeview courthouse formerly held by John Collins. Lorenc testified that the Respondent proposed to fill the Bridgeview vacancy by eliminating an SPO's unit in Markham, transferring an SPO to the Bridgeview vacancy, and reallocating the eliminated SPO position's subordinates to other Markham SPOs. AFSCME representatives asked some questions and made an information request. They also asked the Respondent to provide AFSCME with a written statement of the proposed realignments. The Respondent promised to provide AFSCME with the requested information at the parties' next meeting and agreed to give AFSCME a written list documenting its proposals.

At the meeting, the parties did not reach an agreement concerning the issues discussed and AFSCME did not ask the Respondent to freeze the bid list. AFSCME preferred to wait to freeze the bid list until it knew the full scope of the reorganization and the positions it affected so as to afford its members the broadest choice in making their transfer bids.

On April 11, 2013, Ortiz wrote an email to Golden urgently requesting a transfer from her Chicago position. She noted that the "dreadful event" at the Chicago courthouse on March 27, 2013, caused her "a great deal of anxiety and mental anguish which...affected [her] work performance." She requested an emergency transfer to the Bridgeview vacancy and attached the bid list for that position which indicated that she was the most senior bidder on the list.

On April 18, 2013, Golden informed Willis that the County planned to transfer Ortiz into the Bridgeview vacancy because of the events that had occurred at the Chicago courthouse. The following day, Golden informed Ortiz that she would be transferred to Bridgeview, effective April 29, 2013.

On April 25, 2013, Willis sent an email to Golden and Rohan informing them that AFSCME had not yet received a written outline of the proposed staffing changes that the Respondent promised to provide. Further, he asserted that the Respondent bargained in bad faith and effected a unilateral change during impact bargaining when it transferred Ortiz into the Bridgeview vacancy. He noted that the Bridgeview vacancy was one that the parties specifically mentioned at the March 29, 2013 meeting. Willis explained that it was AFSCME's position that the Respondent would suspend all transfers via the bid list while the Respondent compressed or eliminated the officers' units so that all bargaining unit members would have as many potential transfer opportunities as possible. Further, he noted that the Respondent did not give AFSCME an opportunity to respond to the proposed realignments, that there was no emergency situation cited for the immediate transfer, and that the Respondent eliminated one potential vacancy that could have been presented to an officer impacted by the realignment.

Sometime in April, AFSCME and the Respondent met again. Lorenc asked to bargain over the Respondent's decision to move Ortiz to Bridgeview. She also asked the Respondent to reverse its decision and to conclude its impact bargaining with AFSCME before making further changes. The Respondent refused to discuss the matter and refused to reverse its decision to transfer Ortiz.

Lorenc testified to the various options that AFSCME could have proposed in bargaining over Ortiz's transfer. She noted that AFSCME could have asked the Respondent to transfer Ortiz to another vacancy or to arrange for Ortiz to oversee her subordinates remotely. Lorenc further testified that the Respondent sought to eliminate Irene Porter's unit in Markham through realignment and that Porter could have successfully bid into the Bridgeview position, had it remained vacant, because Porter was more senior than Ortiz.

On April 29, 2013, Golden sent President Willis a memo regarding the proposed restructuring. It set forth the rationale for the realignment, listed the affected positions, and noted programmatic changes included in the plan. The Bridgeview vacancy does not appear on the Respondent's list of affected positions. The memo provides the following in its entirety:

In recognition of continued fiscal constraints, the need to analyze the deployment of staff remains a priority. In recent years our department has sustained unprecedented budgetary cuts. In order to address workload equity, staffing parity and departmental needs, the following restructuring has been proposed:

- The Department has requested the promotion of two probation officers to the position of supervisor.
- The following new/open positions are projected to be filled (order does not indicate priority):
 - Open SPO position in the Chicago East Division (formerly SPO Tom Schneider's Unit)
 - Open SPO position in the Chicago Northwest Division (formerly SPO Alicia Ortiz' Unit)
 - SPO position in the Clinical Services Division
 - Open SPO position in the Intensive Probation Services Division
 - Proposed new SPO position for the Detention Reduction Project
- Due to long-standing high intake in SPO Stamborski's unit, it is proposed that SPO Herner's unit receive cases from the 6th Police District either as overflow or by adjusting her unit's boundary north. An additional PO position will be added to SPO Herner's Unit to accommodate the additional intake.
- It is proposed that the Chicago Unit (Police District 24) located in Skokie will be realigned. Two probation officers from that unit will be assigned to the Skokie unit. The third probation officer, if remaining, will be realigned.
- The Markham Division Screening/Adjudication Unit is proposed to be compressed. The supervisor position will be realigned and the three screening/adjudication officers will be reassigned to another Markham Division supervisor.

The following programmatic changes to the Jumpstart Unit will be initiated:

- A sanctions program will be added to provide services to youth who are suspended from school.
- The Jumpstart sessions will be extended from 10 weeks to 12 weeks.
- Classroom and outreach officers will share outreach duties.

All units consisting of four or fewer officers have been assessed for possible realignment. All specialized units will be re-evaluated relative to productivity and pro-social client outcomes. Caseload statistics reported to AOIC will continue to be assessed over time to determine trends and needs. Staffing levels in low intake units may be adjusted to address the needs of high intake units. Although these changes have been prioritized, there are other staffing requests and proposals which have merit. The evaluation of workflow and staffing needs is an ongoing challenge. We will continue to propose adjustments as needed and will carefully evaluate new options and proposals to better serve the needs of the court and our clients.

Thank you for your consideration regarding this matter.

On August 13, 2013, Golden issued a memo to all Deputy Chief Probation Officers entitled “Restructuring Initiatives – Revised,” which added new vacant positions that the Respondent planned to fill through reorganization. The Bridgeview vacancy does not appear on the list.

AFSCME met with the Respondent in August, September, and October regarding the revised realignment proposals.

On October 22, 2013, AFSCME proposed to freeze the bid list because it believed that it knew of all the Respondent’s planned realignments.

On October 23, 2013, Deputy Director Charles Young issued a memo to all sworn staff stating that the Department would freeze the bid list as of November 1, 2013 at 5:00 pm, pursuant to AFSCME’s request.

In November, the County Board approved the budget. It included an appropriation of funds to the Department for probation officer promotions and it granted the Department approval to hire new employees. The parties recommenced bargaining in light of these changes.

On December 16, 2013, the parties concluded negotiating the effects of the realignment.

Markham SPO Irene Porter did not bid for any vacant positions because she retired on December 31, 2013. As a result, Ortiz would have been the most senior employee on the bid list for the Bridgeview vacancy when the Respondent froze the list during realignment, had the Respondent not transferred Ortiz into that position earlier.

Except for Ortiz, the Respondent did not transfer any employees into the vacancies subject to the parties’ discussions until after December 16, 2013.²

Article III, Section 1 of the parties’ contract addresses the Employer’s rights and authority. It provides the following in relevant part:

The Employer reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon it and vested in it by the statutes of the State of Illinois, and to adopt and apply all rules, regulations and policies as it may deem necessary to carry out its statutory responsibilities including: [the right to] transfer, promote and demote employees from one classification or department to another; to select employees for promotion or transfer to other positions, and to determine the qualifications and competency of employees to perform available work; except as amended, changed or modified by this agreement and

² On March 29, 2013, the County proposed to fill a position formerly held by M. Garrety, an employee on long-term leave. Garrety returned from leave prior to the realignment and resumed working in her position. Accordingly, the Respondent did not seek to fill her position. AFSCME did not object to this change.

provided that the Employer recognizes its obligation to negotiate with the Union over changes in the conditions of employment pursuant to the Illinois Public Labor Relations Act.

Article XVIII of the parties' contract addresses the procedures by which the employer fills vacancies. In particular, it provides that "transfers will be filled by the most senior person provided said candidate meets the following requirements: (1) has not received a suspension in the past year; (2) has achieved meets on the standards [sic] on the past performance appraisals; (3) has completed training hour requirements for previous year; (4) possesses specialized skill or expertise in an area when applicable." There is no dispute that the Respondent filled the Bridgeview courthouse vacancy in accordance with the procedures outlined in this section of the contract.

IV. DISCUSSION AND ANALYSIS

The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it unilaterally transferred Ortiz to the Bridgeview courthouse. First, it did not implement the reorganization plan, prior to completing impact bargaining, by effecting that transfer. Rather, it implemented a standalone transfer, over which the Union contractually waived the right to bargain. Moreover, the Respondent lawfully refused to bargain the impacts of that standalone transfer, in light of the Union's stated demands.

1. Alleged Unilateral Change – Implementation of Reorganization

The Respondent did not implement the reorganization plan prior to completing impact bargaining when it transferred Ortiz to Bridgeview because the Respondent lawfully removed that vacancy from the plan's coverage. The reorganization plan was subject to change by the Respondent because it is not a mandatory subject of bargaining.³

Section 10(a)(4) provides that it is an unfair labor practice for an 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." 5 ILCS 315/10(a)(4). Section 7 provides that public

³ While a Respondent may modify a decision it is entitled to make unilaterally, it is nevertheless required to bargain the effects of the modified decision prior to its implementation. There is no dispute that the Respondent did so in this case. Indeed, the parties bargained the modified plan for 7.5 months after the Ortiz transfer and finally reached agreement as to its effects on December 16, 2013.

employers are obligated to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of the Act. Section 4 states that employers “shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees.” Section 4 adds that public employers “however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.” *Id.*; Cnty. of Cook v. Licensed Practical Nurses Ass’n of Ill., Division 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996). Where a decision of managerial prerogative impacts employees’ terms and conditions of employment, an employer cannot, as a general matter, implement the decision without first bargaining its effects. Cnty. of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998)(also addressing remedy); State of Ill., Dep’t of Cent. Mgmt. Serv., 5 PERI ¶ 2001 (IL SLRB 1988) aff’d by Am. Fed. of State, Cnty. and Mun. Empl., AFL-CIO, 190 Ill. App. 3d 259 (1st Dist. 1989).

In Central City, the court set forth a three-part test to determine whether a matter is a mandatory subject of bargaining. The first question is whether the matter is one of wages, hours and terms and conditions of employment. Central City Education Association, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496 (1992). If the answer to that question is no, the inquiry ends and the employer is under no duty to bargain. Central City, 149 Ill. 2d at 522-523. If the answer is yes, then the second question under the Central City test is whether the matter is also one of inherent managerial authority. *Id.* If the answer is no, then the analysis stops and the matter is a mandatory subject of bargaining. *Id.* If the answer is yes, the Board will balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the employer's authority. *Id.*

Although the plan in this case affects employees’ terms and conditions of employment, it also implicates matters of inherent managerial authority so significant that the benefits of bargaining do not outweigh the burden that bargaining places on that authority. First, the reorganization affects employees’ terms and conditions of employment because “the transfer of bargaining unit employees is clearly a matter concerning wages, hours or conditions of employment.” City of Collinsville, 16 PERI 2026 (IL LRB-SP 2000) (employer’s decision to

unilaterally discontinue its long-established practice of allowing bargaining unit members to transfer to vacant unit positions constituted an unlawful unilateral change). Indeed, an employee could receive more favorable hours or advantageous working conditions by transferring positions. *Id.* at FN 14. Here, for example, the reorganization gave bargaining unit members the opportunity to reduce their commute times by transferring to locations closer to their homes. Board of Trustees, University of Ill., 20 PERI ¶ 84 (IL LRB-SP 2004) (employer decision which affects employee commute time affects employees' terms and conditions of employment); see also In re United Parcel Service, 336 NLRB 1134, 1135 (2001) (employer's decision to move a parking lot affected employees' terms and conditions of employment where it increased commute time by 20 minutes); Comm. College Dist. 508 (City Colleges of Chicago), 13 PERI ¶ 1045 (IL ELRB 1997) (consolidation of sites affected employees' terms and conditions of employment where it affected the location at which employees performed their duties).

Second, the reorganization is also a matter of inherent managerial authority because the Respondent used it to raise its standards of service, modify its organizational structure, and add functionality. Decisions concerning an employer's standards of service, its organizational structure, and the direction of the employer's function are matters of inherent managerial authority. 5 ILCS 315/4 (2012); Cnty. of Perry and Sheriff of Perry Cnty., 19 PERI ¶ 124 (IL LRB-SP 2003); City of Dearborn, 20 MPER ¶ 110 (MERC 2007). Here, the Respondent sought to "better serve the needs of the court and [the Respondent's] clients" by "address[ing] workload equity, staffing parity, and departmental needs." To that end, the Respondent proposed to eliminate vacant positions, consolidate units, and adjust staffing levels to match intake levels. Cnty. of Perry and Sheriff of Perry Cnty., 19 PERI ¶ 124 (employer's decision to eliminate the rank of captain and demote the position holder was a matter of inherent managerial authority); City of Dearborn, 20 MPER ¶ 110 (The elimination of positions is an employer's prerogative where there is no direct impact on incumbent employees and where no transfer of work out of the bargaining unit has occurred). Further, the Respondent planned to make programmatic changes to the Jumpstart Unit by adding a sanctions program to serve youth suspended from school and changing classroom officers' duties to include outreach work. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013) (decision to add a 3-1-1 call center, to eliminate positions, and to change employees' duties constituted a matter of inherent managerial authority). In sum, the

Respondent's reorganization is a matter of inherent managerial authority, in light of its purpose and the manner in which the Respondent implemented it.

The Union erroneously argues that the reorganization is not legitimate and therefore not a matter of inherent managerial authority. Yet, the legitimacy of the Respondent's reorganization is not in question because the reorganization does not involve the transfer of bargaining unit work out of the unit. City of Evanston, 29 PERI ¶ 162 (applying legitimate reorganization test where aspects of employees' work was indirectly transferred to other employees); State of Ill. Cent. Mgmt. Servs. (Dep't of Corrections), 17 PERI ¶ 2046 (finding employer did not engage in a legitimate reorganization where it abolished two union positions and transferred their duties to a newly created non-union position); see also, City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1994) (finding that decision to transfer environmental inspections work from firefighters to workers outside the bargaining unit was "fundamentally a transfer of work rather than organizational restructuring").⁴

Finally, the burdens that bargaining imposes on the employer's managerial authority outweigh the benefits of bargaining to the negotiation process. As a general matter, the balance favors bargaining where the issues are amenable to resolution through the negotiating process, i.e., where the union is capable of offering proposals that are an adequate response to the employer's concerns. Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011), aff'd by unpub. ord., 2012 IL App (5th) 110317-U (union need not present evidence of its actual proposals). For example, there are significant benefits to bargaining where the employer's decision is economically motivated because the union can provide helpful suggestions to reduce labor costs. Id. at ¶ 45. Chicago Park Dist. v. Ill. Labor Rel. Bd., 354 Ill. App. 3d 595, 603 (1st Dist. 2004); Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); Vill. of Bensenville, 19 PERI ¶ 119; City of Peoria, 3 PERI ¶ 2025; State of Ill. (Dep't of Cent. Mgmt. Servs.), 1 PERI ¶ 2016 (IL SLRB 1985). In contrast, the balance favors unilateral decision-

⁴ The cases from other jurisdictions cited by the Board in State of Ill. Cent. Mgmt. Servs. (Dep't of Corrections) likewise pertain to circumstances in which the Respondent transferred bargaining unit work out of the unit. Ingham Cnty. Bd. of Commissioners, 7 MPER ¶ 25,087 (MI ERC 1994) (addressing legitimacy of reorganization where the Respondent reclassified and removed a position from the bargaining unit); City of Newburgh, 32 NYPER ¶ 3015 (NY PERB 1999)(addressing the Respondent's decision to abolish animal control officer position and unilaterally transfer those duties to non-unit police officers), aff'd, 2000 NYPER LEXIS 171 (NY App.Ct. June 22, 2000); City of Jersey City, 25 NJPER ¶ 30,164 (NJ PERC 1999)(addressing Respondent's decision to civilianize two peace officer bargaining unit positions).

making where the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Vill. of Franklin Park, 8 PERI ¶ 2039 (“the scope of bargaining in the public sector must be determined with regard to the employer's statutory mission and the nature of the public service it provides”); State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, affirmed, 190 Ill. App. 3d 259 (1st Dist. 1989). As such, the benefits of bargaining are minimal when the employer's decision effects a fundamental change in the manner in which the employer conducts its business. City of Evanston, 29 PERI ¶ 162; State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, affirmed, 190 Ill. App. 3d 259 (1st Dist. 1989).⁵

Here, the benefits of bargaining are minor because the Respondent initiated the reorganization to increase work efficiency, and not to reduce costs. Although budgetary constraints created the circumstances which led to the reorganization—excessive vacancies and a diluted work force—the reorganization was not itself a cost-saving measure. Rather, the reorganization sought to improve standards of service by consolidating units and balancing workloads, in light of the realization that a limited budget barred the Respondent from filling existing vacancies. Indeed, the Respondent's current labor costs are the same as they were before the reorganization because no employees lost their jobs or wages.

By contrast, the burden on the Respondent's managerial authority is substantial because bargaining would force the Employer to negotiate over the manner in which it fulfills its primary function: the provision of probationary services. For example, the Respondent would be required to bargain its initial decision to consolidate units, a matter intimately connected to its ability to accommodate intake in high volume areas. Further, the Respondent would also be required to bargain over its initiative to broaden the scope of its services, here, the addition of the sanctions program and the modification of employees' duties to meet new public needs. These matters are so closely tied to the Respondent's mission that bargaining would place a significant burden on the Respondent's managerial authority. City of Evanston, 29 PERI ¶ 162 (employer reorganization was not a mandatory subject of bargaining where it created a 3-1-1 call center, changed how it provides services to the public, and altered how its component parts interact);

⁵ The Board also considers whether the employer has a special need for speed, flexibility, or secrecy in making certain policy decisions in determining whether bargaining is required. Vill. of Franklin Park, 8 PERI ¶ 2039.

State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, affirmed, 190 Ill. App. 3d 259, 546 N.E.2d 687 (1989)(drug testing policy, intended to maintain institutional safety and security, was not a mandatory subject of bargaining when it was limited to testing employees upon a reasonable suspicion of drug use).

In sum, the Respondent's reorganization plan is not a mandatory subject of bargaining and the Respondent therefore acted within its managerial authority when it unilaterally removed the Bridgeview vacancy from that plan. Consequently, the Respondent did not implement the reorganization plan, prior to completing effects bargaining, when it transferred Ortiz to Bridgeview because the Bridgeview vacancy was no longer part of that plan.

2. Waiver

The Union contractually waived the right to bargain over the Respondent's decision to transfer Ortiz to Bridgeview. Waiver of a statutory right must be clear and unmistakable. Am. Fed. of State Cnty. and Mun. Empl. v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989); Vill. of Oak Park v. Ill. State Labor Rel. Bd., 168 Ill. App. 3d 7, 20-21 (1st Dist. 1988); Metro. Edison Co. v. NLRB, 460 U.S. 693, 708 (1983); Rockwell Int'l Corp., 260 NLRB 1346, 1347 (1988). The contractual language must evince an unequivocal intent to relinquish such rights. City of Aurora, 24 PERI ¶ 25 (IL LRB-SP 2008) (citing, Am. Fed. of State Cnty. and Mun Empl., 190 Ill. App. 3d at 269. There can be no contractual waiver of a statutory right where the language of the contract is ambiguous. Id. Waivers by express agreement are construed as applicable only to the specific item mentioned. Illinois Secretary of State, 24 PERI ¶ 22 (IL LRB-SP 2008). Moreover, where a contract is silent on the subject matter in dispute, a finding of waiver by contract is absolutely precluded. Cnty. of Bureau and Bureau Cnty. Sheriff, 29 PERI ¶ 163 (IL LRB-SP 2013); Illinois Secretary of State, 24 PERI ¶ 22. Here, the contract clearly and unequivocally gives the Respondent the right to "select employees for ... transfer to other positions." As noted above, Ortiz's move to the Bridgeview vacancy qualified as a standalone transfer, squarely covered by this contractual language. Thus, the Union waived the right to bargain the Respondent's decision to transfer Ortiz to Bridgeview.

3. Right to Bargain the Effects of Ortiz's Transfer

The Union is not entitled to bargain the effects of the transfer because the issues it identifies as effects are not severable from the Respondent's underlying decision.

Not every impact of a managerial prerogative decision requires bargaining. Decatur Bd. of Educ., Dist. No. 61 v. Illinois Educ. Labor Rel. Bd., 180 Ill. App. 3d 770, 781 (4th Dist. 1989) ("nothing contained in this opinion should be taken to indicate that all cases, where impact is present, are subject to bargaining"). Rather, the employer must bargain only where the effects are not an inevitable consequence of the decision itself. City Colleges of Chicago, 13 PERI ¶ 1045 (adopting approach of the private sector with respect to impact bargaining). This rule preserves the employer's right to decline bargaining over permissive matters by ensuring that impact bargaining does not inevitably lead to questioning of the underlying decision. Id.; see also Brookville Borough, 27 PPER ¶ 27005 (PA PLRB 1995) (finding that Employer was not required to bargain the impact of its managerial prerogative decision where the effects were not severable from the underlying decision).⁶

Here, the Union's proposals, presented at hearing, demonstrate that the Union sought to bargain over the Respondent's underlying decision and not its effects. In fact, AFSCME's proposals sought to avoid Ortiz's transfer to Bridgeview and aimed to preserve that vacancy for employees whose positions would be realigned through reorganization. First, AFSCME proposed that the Respondent could have arranged for Ortiz to oversee her subordinates remotely so that she would not need to transfer. Similarly, AFSCME suggested that the Respondent could have transferred Ortiz to a different vacancy.⁷ In short, the Union identified no bargainable effects because each proposal presented by the Union challenges the underlying decision and the Respondent's undisputed managerial authority to transfer employees.

⁶ The Respondent's obligation with respect to impact bargaining is not subject to a Central City-like balancing test. Decatur Bd. of Educ., Dist. No. 61, 180 Ill. App. 3d at 781 ("We withdraw our statement as to the use of the balancing test in regard to determining whether impact is subject to bargaining.").

⁷ To the extent that this latter proposal indicates a desire to bargain over transfer procedures, these matters are already settled by the contract's detailed provisions and the Charging Party therefore waived the right to bargain them. Chicago Transit Auth. v. Ill. Local Labor Rel. Bd., 299 Ill. App. 3d 934 (1st Dist. 1998) (reviewing contract language to determine whether the charging party waived its right to bargain the effects of a reclassification; applying clear and unmistakable waiver standard but finding no waiver); Waubensee Community College, 4 PERI ¶ 1137 (IL ELRB 1988) (employer had no duty to bargain the effects of reduction in force where the contract's provisions fully addressed those matters.)

Thus, the Respondent is not required to bargain the effects of the Ortiz transfer because the Union has identified none that are severable from the underlying decision.

V. CONCLUSIONS OF LAW

The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it unilaterally transferred Ortiz to the Bridgeview vacancy during the pendency of bargaining the effects of its reorganization plan.

VI. RECOMMENDED ORDER

The Complaint is dismissed.

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 General Counsel of the Illinois Labor Relations Board, 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 1st day of July, 2014

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Anna Hamburg-Gal

Anna Hamburg-Gal
Administrative Law Judge