STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

City of Park Ridge,	)	
	)	
Employer	)	
	)	
and	)	Case Nos. S-CA-13-197
	)	S-CB-13-047
	)	
International Union of Operating Engineers,	)	
Local 150,	)	
	)	
Labor Organization	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 28, 2013, the International Union of Operating Engineers, Local 150 (Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the City of Park Ridge (City or Employer) engaged in unfair labor practices within the meaning of sections 10(a)(4), (7), and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2012). On June 7, 2013, the Employer filed a charge with the Board alleging that the Union engaged in unfair labor practices within the meaning of sections 10(b)(4), (8), and (1) of the Act. Both charges were investigated in accordance with Section 11 of the Act and on September 18, 2013, the Executive Director issue a Complaint for hearing on each charge. I consolidated the two cases. A hearing was conducted on November 19, 20, and 21, 2014, in Chicago, Illinois.[1]

[1] On February 20, 2015, the Union moved to reopen the record to seek the admission of an invoice for legal services issued to the Employer by its law firm, Clark, Baird, Smith, LLP. The invoice shows that attorney Bob Smith billed the Employer for a telephone call with a union attorney on December 5, 2012 regarding the "outcome of a union membership meeting." The Union states that the invoice will resolve a dispute over the occurrence of the phone call and that it will support "other inferences" that favor the Union's position. The Union argues that the invoice should be admitted now because it was "arguably covered" by the Union's earlier subpoena *duces tecum*, but was not provided by the Employer prior to hearing. The Employer opposes the Union's motion on the grounds that the document was not covered by the Union's subpoena and could therefore have been obtained earlier using reasonable diligence. More importantly, the Employer observes that the invoice does not impact the outcome of the case, which turns on the substance of the parties' proposals and not the occurrence of the phone call. The Union's motion is denied because the document does not impact my analysis. See Vill. of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990) (requiring a "compelling reason" to reopen the record); City of Chicago, 20 PERI ¶ 17 n. 1 (IL LRB-LP 2003) (ALJ denied motion to reopen the record where the document at issue did not

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

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act.
2. The Employer is a unit of local government subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.
3. The Union is a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The parties each claim that they reached a final agreement on their contract and that the other party unlawfully refused to reduce it to writing and/or refused to sign it. The Union additionally claims that the Employer violated the Act when it implemented changes to employees' terms and conditions of employment that were contrary to the parties' agreement. More specifically, the issues in this case are the following: (1) Whether the Union violated Sections 10(b)(8), (4), and (1) of the Act when it allegedly refused to sign an agreement that reflects the terms to which the parties agreed; (2) whether the Employer violated Sections 10(a)(7), (4), and (1) of the Act when it allegedly refused to draft and sign an agreement that reflects the terms to which the parties agreed; (3) whether the Employer violated Sections 10(a)(4) and (1) of the Act when it allegedly implemented changes to the health insurance premiums and health insurance caps that were not in accordance with the language negotiated by the parties.[2]

The Employer argues that there was a meeting of the minds according to the Employer's terms, but not according to the Union's. The Employer observes that Union attorney Deanna Distacio documented the Union's agreement to the Employer's terms when she wrote that the Employer's draft agreement "look[ed] good." By contrast, the Employer asserts that there is no

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impact her analysis; Board reversed the ALJ's conclusion on the merits of the charge, but did not disturb her ruling on the procedural matter).

[2] The Complaint against the Employer also alleges that the Employer unlawfully failed to implement the parties' negotiated wage increase. This issue is not addressed below because the Union stipulates that the Employer did in fact implement the wage increases.

signed tentative agreement that documents the Employer's agreement to the Union's terms and notes that even Distacio conceded that there had been no meeting of the minds on those terms. In turn, the Employer concludes that the Union unlawfully refused to sign the parties' agreement and further asserts any changes the Employer made to employees' health insurance caps was in accordance with the parties' agreement and therefore lawful.[3]

Conversely, the Union argues that there was a meeting of the minds according to the Union's terms, but not according to the Employer's. The Union points to the Employer's provision of the Public Works facility for a ratification vote as evidence that the parties reached an agreement prior to the date of the last bargaining session. It offers Distacio's unredacted bargaining notes from that earlier session and the testimony of witnesses in support of its terms. The Union denies that Distacio's later comment on the Employer's draft agreement evidenced a meeting of the minds on the Employer's terms, arguing that the document did not in fact reflect the Employer's offer.[4] The Union concludes that the Employer violated the Act by refusing to reduce the parties' agreement to writing, by refusing to sign it, and by implementing changes to health insurance caps that were contrary to the parties' agreement.[5]

III. MATERIAL FACTS

The Union and the Employer were parties to a contract that was effective from May 1, 2007 to April 30, 2011. They negotiated a one year extension that expired on April 30, 2012. The parties' expired contract provides that employees will pay 10% of the health insurance premiums charged and that the Employer will pay the remaining 90%.[6] It further provides that employees' monthly premium contributions will not exceed the monthly dollar caps set forth in

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[3] The Employer makes additional arguments in the alternative, claiming that it did not repudiate the parties' purported agreement.

[4] In the alternative, the Union argues that it did not unlawfully refuse to sign an agreement because the Employer never offered the Union an agreement to sign.

[5] Both parties argue that credibility determinations should be made in their favor. The Employer asserts that its witnesses testified more consistently. The Union argues that the Employer provided suspiciously redacted bargaining notes, declined to call material rebuttal witnesses, and engaged in misleading behavior after the parties reached agreement.

[6] The contract provides as follows: "An employee shall pay 10% of the premium for employee or family coverage (employee and dependents), and the City shall pay 90% of the premium. Notwithstanding the foregoing, the monthly premium contributions for single or family coverage under the applicable plan shall not exceed the monthly dollar caps set forth below in the corresponding years of the Agreement."

the contract. The monthly dollar caps shield employees from unanticipated future increases to the premiums.

In May 2012, the parties began negotiations for a successor agreement. Attorney Bob Smith was the Employer's lead negotiator. The Employer's bargaining team also included Public Works Director Wayne Zingsheim, Human Resources Director Mike Suppan, and Assistant City Manager Cathy Doczekalski. Sometime during negotiations, Interim City Manager Shawn Hamilton replaced Doczekalski at the bargaining table. Attorney Deanna Distacio was the Union's lead negotiator and was the only Union agent who spoke on the Union's behalf during negotiations. The Union's bargaining team also included bargaining unit member David Yost and Union President John Dacquisto.

Mayor Dave Schmidt directed the Employer's negotiating team to reach a cost-neutral contract so that any wage increase would be offset by other savings. More specifically, the Employer's bargaining goal was to eliminate the caps on health insurance premiums because the caps artificially held down employees' actual share of the contributions, irrespective of percentage share the contract stated they would pay. Between 2010 and 2013, the Employer removed caps on employee contribution to health insurance premiums for other employee groups and required them to pay a true 13% of the premium. The Employer sought to extend these changes to Union members in the parties' new contract. By contrast, the Union sought to maintain caps on employee's health insurance contributions.

On May 15, 2012, the parties met for their first bargaining session. The Union presented its initial set of proposals for the successor contract. In relevant part, the Union proposed to maintain the status quo on insurance. The Employer rejected the Union's proposal because the Employer wished to eliminate caps entirely so that employees would pay a true percentage of the premiums.

On June 18, 2012, the parties met for their second bargaining session. The Employer presented a counterproposal. In relevant part, the Employer proposed that bargaining unit employees would pay the same amount for health insurance as non-represented City employees, who did not enjoy the benefit of health insurance caps.[7]

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[7] At this meeting, Smith also informed Distacio that the Employer had expanded its program to include two additional insurance tiers. Prior to May 1, 2012, the Employer had only single and family insurance plans. After May 1, 2012, the Employer switched to a four tier system that added two new tiers,

On July 12, 2012, the parties met for their third bargaining session. The Union presented the Employer with its first package counterproposal. It addressed several topics and was intended to be accepted or rejected as a whole. In relevant part, the Union proposed that employees would pay 11.5% of the premium and that the caps on those contributions would remain as they had existed in the former contract throughout the life of the successor agreement. The Employer rejected the Union's package proposal because it wished to raise employees' contributions to 13% and eliminate caps so that employees would pay a true percentage of the premium.

On September 24, 2012, the parties met for their fourth bargaining session. The Union presented its second package proposal, which included terms addressing wages and insurance. The Union proposed the following wage increases over the three years of the contract: 1%, 2%, and 2.5%. The Union further proposed that employees would pay 11.5% of the premium for the term of the contract, applicable upon ratification. The Union's proposal included hard dollar caps for the first year and specified that those caps would increase by 7.5% in 2014. Notably, the caps applicable to the first year of the contract were equal to 11.5% of the premium charged to employees in the 2012-13 fiscal year. Thus, under the Union's proposal, employees would pay a true 11.5% of the premium upon ratification and until 2014.[8] The Employer rejected the Union's package proposal because it wished to raise employees' contributions to 13% and eliminate caps entirely so that employees would pay a true percentage of the premium throughout the term of the contract.

On November 28, 2012, the parties met for their fifth bargaining session. The Employer and the Union disagree as to what occurred at the meeting. Each party's account is described in turn below.

1. The Employer's Account of the November 28, 2012 Meeting

According to Smith, the Employer made a package proposal reflecting a four-year agreement, which addressed wages and insurance in relevant part. The Employer offered the following wage increases over the first three years of the contract: 0%, 1.5%, and 2.5%. It

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"employee plus children" and "employee plus spouse." As of April 6, 2012, no caps applied to the single plus spouse or the single plus child tiers because those tiers did not yet exist.

[8] In effect, this proposal eliminated caps for the first year of the contract.

offered a wage reopener for the fourth year. The Employer proposed no change to insurance in the first year, but proposed that employees would pay a true 13% of the premium for the remainder of the contract.

The Union caucused, rejected the proposal, and offered a counterproposal. The Union proposed a three-year agreement, which addressed wages and insurance in relevant part. The Union proposed the following wage increases over the three years of the contract: 1%, 2%, and 2.5%. It proposed no change to insurance in the first year of the contract. For the second year, the Union proposed that caps would be set at 13% of the premium, so that employees would pay a true 13% of the premium. For the third year, the Union proposed that the caps would increase by 10% over the prior year's caps.

The Employer caucused and informed the Union that it might be "willing to live" with the Union's proposal, but proposed a wage reopener in the third year in lieu of the Union's 2.5% wage increase.

The Union rejected that proposal, stating it was not interested in a reopener. It made a counterproposal for the following wage increases over the three years of the contract: 1%, 2.5% and 2%. Employer rejected that offer because the wage proposal was too generous.

According to Smith and Suppan, the parties reached no tentative agreements by the end of this bargaining session. Rather, Distacio informed the Employer's bargaining team that she would talk to union members about the proposals on the table.

2. The Union's Account of the November 28, 2012 Meeting

The Union agrees that the Employer initially proposed a four-year contract and that the Union rejected that proposal. The Union further agrees that it made a package counterproposal for a three-year contract that included (1) wage increases of 1%, 2%, and 2.5% over the term of the contract, (2) no change to employees' insurance for the first year of the contract, and (3) an increase in employees' contributions to 13% for the second and third years of the contract.

However, the Union's description of its counterproposal differs from the Employer's with respect to the proposed caps on employees' health insurance contributions applied to the second and third years of the contract. The Union disagrees that it proposed to set caps at 13% of the premium for the second year of the contract; it likewise disagrees that it proposed to raise those caps by 10% in the third year. Rather, the Union claims that it proposed that the caps for the

second year would increase by 10% over those applied under the prior contract and that the caps for the third year would again increase by 10% over those applied in the second year. Distacio's bargaining notes describe the Union's proposal in the same terms: Employees would pay 13% of the premium in the second year of the contract "w[ith] caps adding 10% to current caps" on May 1, 2013 and "again [on] 5/1/14."

According to Distacio's testimony and bargaining notes, Smith "carefully reviewed" the Union's proposal and stated that only the 2.5% wage increase posed a problem. Smith then made a settlement offer that retained the Union's proposal on health insurance, but offered three alternate wage options. Under the first wage option, the Employer proposed 1% and 2% wage increases in the first two years of the contract and a reopener for wages in the third year. Under the second wage option, the Employer proposed a wage increase of 1%, 1.75%, and 1.75% for each respective year of the contract. Under the third wage option, the Employer proposed only a two year agreement with a wage increase of 1% and 2% for each respective year of the contract.

Smith told the Union to take the proposals back to the membership so they could pick one of the packages. He explained that the Employer would not take an offer to the City Council unless the Union approved it first.

During the bargaining session, Distacio memorialized the three package proposals in a document entitled "Options Presented Today as Settlement Offers." In that document, she described the health insurance portion of the package proposals as follows:

5/1/12 – no change w/ current CBA caps

5/1/13 – 13% + caps increasing 10%

5/1/14 – 13% + caps increasing 10%

Distacio testified that she asked Smith to make a copy of the document at the end of their bargaining session and that he returned with copies. The parties never signed a document stating that they tentatively agreed on any proposal.[9]

[9] Smith does not deny that the Employer offered the Union three options at the November 28, 2012 meeting, but states that the Employer did not reach a tentative agreement with the Union on November 28, 2012. Further, Smith does not remember telling the Union that it needed to ratify an agreement before Smith brought it to the City Council. He does not remember making a copy for Distasio of a document outlining the Employer's three alleged proposals.

3. Events following the November 28, 2012 meeting

Following the November 28, 2012 meeting, Dacquisto posted Distacio's document on the bulletin board in the lunchroom of the Public Works facility. Dacquisto then asked Zingsheim for permission to use the Public Works facility for a ratification vote and Zingsheim granted that permission.

The following Tuesday, the Union ratified the second package option from the document Distacio drafted. The bargaining unit also asked Distacio to negotiate the addition of a no-layoff clause and likewise ratified the second package option with the inclusion of a no-layoff clause. The day after the ratification vote, Zingsheim called Dacquisto to inquire about the outcome of the vote.[10]

On December 5, 2012, Distacio spoke to Smith on the phone regarding the outcome of the ratification vote. Distacio informed Smith that the Union had selected the second option presented by the Employer, but stated that the Union also wanted the addition of a no-layoff clause.

4. Credibility Determinations Pertaining to the November 28, 2012 Meeting and the Subsequent Conversation Between Distacio and Smith

I credit Distacio's assertion that the Employer gave the Union a final settlement offer on November 28, 2012 that contained three package proposals. Smith never denied that the Employer offered the Union three package proposals on that date and in fact conceded that there were proposals—plural—on the table. Smith's testimony supports the finding that these proposals were ones offered by the Employer because he recounts that the Union concluded the bargaining session by stating that it would speak to its members about them. Had the meeting ended with the Employer rejection of the Union's last offer, as the Employer asserts, the Union would have had no proposals to present to its members.

The parties' complementary actions following the November 28, 2012 meeting further support the conclusion that the Employer made a settlement offer on that date. Dacquisto posted a document outlining the three options on the bulletin board in the Public Works facility lunchroom and asked City Manager Zingsheim for permission to use the facility for a ratification vote. Zingsheim approved the request and called Dacquisto after the vote to inquire about the

[10] Dacquisto did not testify as to whether he conveyed the specifics of the proposal the Union ratified.

results. Had the City not made a final offer, the Union would not have sought to ratify the proposal, the City would not have provided a venue for the ratification vote, and Zingsheim would not have asked Dacquisto about the results.[11]

Further, I credit Distacio's assertion that she called Smith on the phone sometime after the ratification vote to inform him of the result and to negotiate the addition of a no layoff clause. Smith did not categorically deny the existence of this conversation and Distacio remembered it with clarity.

5. The Parties' Final Bargaining Session and Subsequent Events

On January 21, 2013, the Union and the Employer met for their sixth bargaining session, which lasted for about 45 minutes. At this session, Distacio presented the Employer with the Union's final economic proposal. According to Distacio, it incorporated the second package proposal offered by the Employer on November 28, 2012 and added a no layoff clause. Distacio testifies that she articulated the Union's proposal as follows: With respect to wages, employees would receive increases of 1%, 1.75%, and 1.75% over the three years of the contract. With respect to health insurance, there would be no change from the prior contract for the first year. For the remaining two years, employees would pay 13% of the premium, but their contributions would be limited by caps. The caps applicable to the second year would represent a 10% increase over the caps applied in the first year (drawn from the parties' expired contract). The caps applicable to the third year would again increase by 10% over the caps applied in second year.

Smith and Suppan agree with Disatcio's characterization of this final proposal except for her description of the caps applicable to the second and third years of the contract. According to Smith and Suppan, Distacio proposed that caps for the second year would be set at 13% of the premium and that caps for the second year would increase by 10% over the prior year's caps. In this respect, Smith and Suppan state that Distacio's proposal on health insurance was the same as the one she offered on November 28, 2012.

After Distacio presented the Union's proposal, the Employer's bargaining team informed the Union that the City Council would not ratify a contract that contained a no-layoff provision. However, the Employer's bargaining team stated that it could accept the Union's proposal

[11] Dacquisto's testimony on these matters was unrebutted.

without the no-layoff provision. Distacio's bargaining notes reflect the Employer's response to the Union's addition of the no-layoff clause: "[the Union] changed the deal." Suppan's bargaining notes likewise provide that Distacio's articulation of terms was "different than [the] last deal."[12]

The Union caucused for approximately 40 minutes and then informed the Employer that it would accept the "last deal" without the no-layoff provision. Further, the Union stated that it had already ratified those terms.

Smith told Distacio that he would prepare a draft agreement for her review and that he would work with the Employer to obtain the new wage and insurance numbers to insert into the contract. The parties also discussed the dates of the upcoming City Council meetings.

6. Events following the January 21, 2013 Meeting

On February 15, 2013, Smith sent Distacio an email that included the promised draft contract. The draft contract stated that the "employees shall pay 10% of the insurance premiums until May 1, 2013" and that "effective May 1, 2013, the employee shall pay 13% of the applicable premium." The draft contract further provided that the "monthly contributions...shall not exceed the monthly dollar caps set forth below in the corresponding years of the Agreement." The numbers in the chart representing the caps for the second and third years of the contract were calculated using Employer's best estimate of the premiums' costs for the upcoming year. The Employer calculated 13% of the estimated premiums' costs and set it as the cap for the second year. The Employer increased that figure by 10% and set it as the cap for the third year.[13]

Smith did not tell Distacio that the numbers in the draft contract were estimates or placeholders. Smith testified the Employer did not intend to hold the Union to the estimated figures.

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[12] Suppan's notes were not moved into evidence by the Employer; the Employer simply used them to refresh Suppan's recollection of the January 21, 2013 bargaining session. Following Suppan's questioning, the Union requested that Suppan's notes remain in the Board's possession. The Employer did not object. I now admit these notes into evidence because they are relevant, the record contains the foundation for their admission, and the parties had the opportunity to examine the witness who authenticated them. Sunland Construction Co., Inc., 311 NLRB 685 n. 8 (1993)(ALJ allowed the reopening of the record where it was in promotion of the policies of the Act and in the public interest; noting that the respondent had an opportunity to cross examine the witness who authenticated the relevant documents at the reopened hearing); see also Electrical Workers IBEW Local 648 (Foothill Electrical Corp.), 182 NLRB 66, 69 (1970), enfd. 440 F.2d 1184 (6th Cir. 1971).

[13] The Employer performed the same calculations for all insurance tiers.

On February 20, 2013, Distasio replied to Smith's email stating, "[l]ooks good...[w]hen will the city council ratify?" Distacio did not ensure that the dollar amounts set forth in the insurance cap chart reflected the Union's understanding of the agreement. Rather, she trusted that the numbers were correct.

Smith replied the same day, stating the contract was scheduled to go before the Committee of the Whole (COW) on March 11, 2013 and that it would go before the full City Council on March 18, 2013.

Prior to the March 11, 2013 committee meeting, Suppan circulated an agenda cover memo to the Committee members that recommended they approve the agreement. Suppan attached a draft collective bargaining agreement to the memo. The draft was a modified version of the collective bargaining agreement that Smith provided to Distacio on February 15, 2013. Suppan erroneously changed the caps applicable to the first year of the contract so that they represented 11.5% of the premium, rather than 10%, as the parties had agreed.[14] Further, Suppan removed the hard dollar caps applicable to the second year of the contract and replaced them with the words "insert 13% numbers." Finally, he removed the hard dollar caps applicable to the third year of the contract and replaced them with the words "increase caps by 10%." Suppan testified that he replaced the numbers with the above-referenced phrases because the Employer did not yet know the exact costs of the premiums that would be charged beginning May 1, 2013.

On March 11, 2013, the Committee of the Whole deferred consideration of the contract for two weeks. On March 25, 2013, the Committee of the Whole voted to place the draft collective bargaining agreement on the April 1, 2013 agenda for approval by the City Council. The draft agreement considered by the Committee was the same one that Suppan attached to the March 11, 2013 cover memo addressed to the Committee of the Whole.

On March 15, 2013, Distacio contacted Smith regarding uniform reimbursement, but did not mention that there was a problem with the contract's health insurance caps.

On April 1, 2013, the City Council voted to approve the draft contract. The draft contract ratified by the City Council was the same one attached by Suppan to the March 11, 2013 cover memo and approved by the Committee of the Whole on March 25, 2013.

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[14] The parties stipulate that those numbers did not reflect either party's understanding of their apparent agreement.

On April 3, 2013, Suppan sent a memo to Union employees regarding Benefits Open Enrollment. The memo set forth employee contributions to premium payments, effective May 1, 2013. The employees' total contribution is specified as a true 13% of the premium.

On April 5, 2013, Distacio sent Smith an email stating that it had been brought to her attention that there was a typo in the insurance caps set forth in the draft contract she received on February 15, 2013. According to Distacio, the caps for the second and third years should simply have been increased by 10% each year from the first year's caps. Instead, the caps were much higher.

On April 10, 2013, Distacio sent Smith another email asking him if he had had a chance to review the issue regarding the caps. Distacio articulated her understanding of the parties' negotiations, described above, and stated that the Employer was seeking to deduct an amount for employees' insurance contributions that was not in accordance with the parties' agreement.

The following Monday, Smith responded to Distacio's email and informed her that he would review the matter shortly. Smith had not replied earlier because he was participating in around-the-clock negotiations with another client and soon thereafter underwent emergency hospitalization and surgery.

On April 15, 2013, the Mayor vetoed the contract approved by the City Council on April 1, 2013 because it was not cost neutral.

On April 29, 2013, Smith informed Distacio that he would adjust the caps in the draft contract to reflect the true costs to employees based on the actual premium charges, which had not been available earlier. Smith then calculated 13% of the actual premium charges that would take effect on May 1, 2013 and inserted them as caps for the second year of the contract. He increased those figures by 10% and inserted them as caps for the third year of the contract. This version of the contract never came before the City Council for ratification.

On May 1, 2013, Distasio wrote an email to Smith that again recounted her understanding of the parties' bargaining history and their apparent agreement, described above. She further stated that, "after reviewing your numbers, my notes and also conferring with my team, the parties are not in agreement on what was decided at the table."

Both Smith and Distacio testified that they were clear in the manner in which they presented their clients' proposals and that they each believed the other understood the terms of

the proposals they offered and accepted. The Union's witnesses corroborate Distacio's account of the negotiations and the Employer's witnesses corroborate Smith's account.

By May 1, 2013, the City had already begun deducting 13% of the insurance premium from employees' pay checks. Two employees' April paychecks show deductions for insurance that equal a 13% contribution to insurance premiums.[15]

On May 6, 2013, the City Council overrode the Mayor's veto and ratified the contract first presented to the City Council on April 1, 2013.

On May 14, 2013, Smith, Distacio, and Suppan held a conference call to discuss the insurance cap issue. Smith and Suppan indicated that the numbers in the contract were in fact accurate and that they had adjusted the numbers to reflect caps based on the actual insurance premiums that would took on May 1, 2013. Distasio reiterated that the numbers in the contract did not reflect her understanding of the parties' agreement and that the parties therefore had not reached a meeting of the minds.

In May and June, Distacio and Smith unsuccessfully attempted to schedule another conference call.

On July 16, 2013, Smith sent an email to Distasio with a formal letter attached. The letter informed the Union that the Employer had begun implementing the contract ratified by the City Council and asked the Union when it would be available to sign it. As of the date of hearing, the Union had not signed any version of the contract provided by the Employer.

Around July, the Employer granted employees' retroactive wage increases pursuant to Employer's understanding of the parties' agreement. The Employer has also implemented a 1.75% percent wage increase for the 2013-2014 fiscal year, likewise pursuant to its understanding of the parties' agreement.

IV. DISCUSSION AND ANALYSIS

1. The Union's Alleged Refusal to Sign the Agreement [10(b)(8), (4) & (1)] and the Employer's alleged Refusal to Reduce the Agreement to Writing and Refusal Sign it [10(a)(7), (4) & (1)]

Neither party violated the Act when it refused to sign a collective bargaining agreement

[15] Ann Erickson, payroll specialist for the Employer, testified that the health care deductions taken from a pay check are applied to the health insurance of the month in which the money was deducted.

because the parties did not have a meeting of the minds on its essential terms and therefore had no agreement. For the same reason, the Employer did not violate the Act by refusing to reduce an agreement to writing.

Under Section 10(b)(8) of the Act it is an unfair labor practice for a labor organization or its agents "to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement." 5 ILCS 315/10(b)(8). Section 10(a)(7) of the Act makes identical conduct by an employer an unfair labor practice. 5 ILCS 315/10(a)(7).

Either party's refusal to sign a collective bargaining agreement or reduce it to writing likewise constitutes an unlawful refusal to bargain in good faith under Sections 10(a)(4) and (b)(4) of the Act. Vill. of Frankfurt, 28 PERI ¶ 144 (IL LRB-SP 2012); City of Harvey, 18 PERI ¶ 2032 (IL LRB-SP 2002); Chicago Transit Auth., 16 PERI ¶ 3021 (IL LRB-LP 2000); Cnty. of Cook (Cermak Health Servs.), 10 PERI ¶ 3009 (IL LLRB 1994); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 6 PERI ¶ 2038 (IL SLRB 1990); Ill. Dep'ts of Corrections and Cent. Mgmt. Serv., 4 PERI ¶ 2043 (IL SLRB 1988).

As a threshold matter, to prove that a party violated the Act by refusing to sign or reduce an agreement to writing, the charging party must first demonstrate that parties had an agreement. An agreement requires offer, acceptance, and a meeting of the minds—parties must truly assent to the same things in the same sense on all of the agreement's essential terms and conditions. Tri-State Fire Protection Dist., 31 PERI ¶ 78 (IL LRB-SP 2014); Chicago Transit Auth., 29 PERI ¶ 156 (IL LRB-LP 2013); Recorder of Deeds, 28 PERI ¶ 14 (IL LRB-LP 2011). Whether the parties had a meeting of the minds is determined by their objective conduct rather than their subjective beliefs. Paxton-Buckley-Loda Educ. Ass'n v. Ill. Educ. Labor Rel. Bd., 304 Ill. App. 3d 343 (4th Dist. 1999); Tri-State Fire Protection Dist., 31 PERI ¶ 78; Ill. Fraternal Order of Police Labor Council, 19 PERI ¶ 39 (IL LRB-SP 2003); City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998).

The parties had no meeting of the minds in this case because there is insufficient evidence that they agreed to the same terms at any point in time. Here, the Union asserts that the parties reached agreement on November 28, 2012 and on January 21, 2013. The Employer asserts that the parties reached agreement only on January 21, 2013 and claims that their agreement is reflected in the email sent by Distacio to Smith after she reviewed the drafted contract ("looks good"). Each party offers its own understanding of the terms of the purported

agreement. For the reasons set forth below, the parties had no meeting of the minds, and therefore no contract, on any of these stated dates.

First, the parties had no contract on November 28, 2012 because the terms of their purported agreement were indefinite as of that date. It is well settled that "[a]lthough the parties may have had and manifested the intent to make a contract, if the content of their agreement is unduly uncertain and indefinite no contract is formed." Academy Chicago Publishers v. Cheever, 144 Ill. 2d 24, 29 (1991) (citing 1 Williston, Contracts §§ 38–48 (3d ed.1957) and 1 Corbin, Contracts §§ 95–100 (1963)). As of November 28, 2012, the Union had not chosen one of the three combined wage/health care options offered by the Employer and the Union's agreement to choose one of the three allegedly offered proposals in the future does not create a binding contract. Scott v. Assurance Co. of America, 253 Ill. App. 3d 813, 821 (4th Dist. 1993) ("An agreement to agree in the future is not an agreement"); Ethan Enterprises, Inc., 342 NLRB 129 (2004)("In determining whether underlying oral agreement has been reached, the Board is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to the bargaining context").

Contrary to the Union's contention, the Employer's provision of the Public Works Department for a Union ratification vote does not indicate that the parties had reached a meeting of the minds on November 28, 2012 because it does not change the undisputed fact that the parties had not yet agreed to definite terms as of that date.

Further, the parties had no contract when the Union ratified the second option offered by the Employer because Distacio's telephone communication to Smith following that ratification constituted a counteroffer rather than an acceptance.[16] Distacio added a material term to the Employer's proposal when she sought to negotiate the addition of the no-layoff provision, at the Union's direction. Finnin v. Bob Lindsay, Inc., 366 Ill. App. 3d 546, 549 (3rd Dist. 2006) (in order to constitute a contract by offer and acceptance, the acceptance must conform exactly to the offer) (citing Whitelaw v. Brady, 3 Ill. 2d 583 (1954)). Although Distacio recounts her statement to Smith as an acceptance coupled with a request for a better offer, Distacio's

[16] Contrary to the Union's anticipated contention, Dacquisto's statements to Zingsheim likewise did not constitute an acceptance because Dacquisto admitted at hearing that he was not an authorized speaking agent. Tr. P. 432. ("We only talk if we ask Dianna if we can talk."). Even assuming Dacquisto was authorized to accept the Employer's offer, it is unclear from the testimony whether he communicated definite terms or whether he simply informed Zingsheim that the Union had ratified one of the three options.

bargaining notes from the following session show that she conveyed a demand. But see Hubble v. O'Connor, 291 Ill. App. 3d 974, 980 (1st Dist. 1997) ("Mere inquiry regarding possibility of different terms, request for better offer, or comment upon terms of offer, is ordinarily not a 'counter-offer'"). At that session on January 21, 2013, Distacio reiterated the statements she made earlier to Smith on the phone. Yet, she documents the Employer's response as, "[the Union] changed the deal." Suppan's notes similarly provide that the Union presented a last economic offer that was "different" from the offer on the table before. Thus, it is difficult to find that Distacio's earlier proposal was stated as a request when her reiteration of those terms at the table was expressed as a demand in accordance with her client's instructions.

In addition, the parties had no contract on January 21, 2013 when the Union returned from the final caucus and accepted the "last deal" on the table. Parties' contemporaneous documentation of their positions in bargaining notes is the type of objective conduct on which the Board relies to determine whether the parties had reached a meeting of the minds. See Tri-State Fire Protection Dist., 31 PERI ¶ 78 (email written by fire chief was objective conduct used to show she believed the parties had reached agreement).

As a preliminary matter, the notes from both the November and the January bargaining session are relevant to a determination of the parties' understanding at the last session. Indeed, both Suppan and Smith admit that the Union's January offer with respect to health insurance mirrored the offer made by the Union in November, documented in Distacio's notes.

Here, the parties' conflicting bargaining notes from their last two bargaining sessions demonstrate that their understanding of the final offer under consideration was different as it pertained to the calculation of health insurance caps. Distacio presented an offer under which the caps would be calculated based on the prior contract's caps. Her notes from November 28, 2012 state that employees' contributions for the second year would be capped at a figure that was 10% greater than the "current caps." By contrast, Suppan's notes from January 21, 2013, purporting to describe the same terms, indicate his understanding that the caps would be calculated based off of the future rate charged for insurance, "13% eff. 5-1-13 w/ caps at 10% of the 5-1-13 rate." It is true that Suppan's notes are not the model of clarity and do not even precisely match his testimony. Nevertheless, the divergent methods by which each party understood the calculation of the caps, as documented in their contemporaneous bargaining notes, provides a sufficient basis on which to find that there was no meeting of the minds. City of Chicago Police Dep't, 14

PERI ¶ 3010 n. 3 (finding no meeting of the minds where parties' testimony and their documents pertaining to their purported agreement were inconsistent and conflicting).

Contrary to the Employer's suggestion, Distacio's later comment that the draft contract "look[ed] good" does not demonstrate that the parties had a meeting of the minds because the draft did not reflect either party's understanding of the agreement. Smith asserted that the numbers set forth in that document were mere placeholders to which the Employer never intended to bind the Union. More importantly, the Employer's understanding of the parties' agreement was not decipherable from those placeholders. Smith did not tell Distacio how he calculated the numbers; indeed, he did not even tell her that they would be replaced with different figures later. Thus, Distacio could not have agreed to the Employer's subjective understanding of the parties' agreement by expressing her assent, even if she had given the draft more careful attention.

Similarly, Distacio's assent likewise does not illustrate that the parties formed an agreement on February 20, 2013 based on the draft contract's terms because the parties both believed they had reached a binding agreement earlier. Smith did not make a new offer to the Union on the Employer's behalf when he sent Distacio the draft agreement; he merely assumed the task of memorializing an oral agreement the parties believed they had already reached on January 21, 2013. City of Collinsville, 16 PERI ¶ 2026 (IL LRB-SP 2000) (employer did not present new offer when it forwarded the union an agreement it drafted and the union's subsequent statements did not reject that purported offer where the parties had already reached an oral agreement) aff'd by City of Collinsville v. Ill. State Labor Rel. Bd., 329 Ill. App. 3d 409 (5th Dist. 2002). Contrary to the Employer's suggestion, the absence of a written document from the January session does not indicate that the parties reached their purported agreement only later. City of Collinsville, 329 Ill. App. 3d at 417 ("The existence of a collective bargaining agreement does not depend on its reduction in writing; it can be shown by conduct manifesting an intention to abide by agreed-upon terms") (internal quotes omitted).

Thus, the parties did not violate the Act by refusing to sign a collective bargaining agreement or by refusing to reduce it to writing because the parties never reached a meeting of the minds and therefore had no agreement.

2. The Employer's Alleged Unilateral Changes to Insurance Premiums – 10(a)(4) and (1)[17]

The Employer violated Section 10(a)(4) of the Act when it unilaterally changed employees' contributions to health insurance premiums.

An employer violates its duty to bargain in good faith under Section 10(a)(4) of the Act when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding that change. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2007); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1998); Cnty. of Cook (Dep't of Cent. Servs.), 15 PERI ¶ 3008 (IL LLRB 1999). To make a prima facie case, the Charging Party must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007.

There is no dispute that the Employer changed employees' health insurance benefits around May 1, 2013 by increasing their contributions to a true 13% of the premium and by eliminating the caps on that obligation. Likewise, there is no dispute that questions regarding employees' health insurance benefits are a mandatory subject of bargaining. City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991); Village of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988) (no need to apply balancing test where the duty to bargain over the subject at issue is so clearly established). Accordingly, the only remaining issue is whether the parties had reached agreement or impasse in their bargaining such that the Employer was entitled to implement that change. As discussed below, they had not.

First, the parties reached no agreement on the subject of employees' contribution to health insurance premiums because they never had a meeting of the minds on the manner in which to calculate caps on contributions. Indeed, since health insurance was an integral term of the successor contract, the parties reached no binding agreement at all. See discussion supra; Tri-

[17] The Employer accurately observes that the Complaint does not allege a repudiation. However, it does fairly allege a unilateral change in employees' terms and conditions of employment, discussed below. This construction conforms to the evidence presented at hearing.

State Fire Protection Dist, 31 PERI ¶ 78 (there can be no agreement absent a meeting of the minds where the parties assent to the "same things in the same sense on all of [the agreement's] essential terms and contentions").

Further, there is insufficient evidence that the parties reached impasse in their negotiations, such that the Employer was entitled to implement its final offer. Parties reach impasse when they have negotiated to the point where further bargaining over the subject would be futile. Ill. Dep'ts of Cent. Mgmt. and Corrections, 5 PERI ¶ 2001 (IL SLRB 1988) aff'd Am. Fed. Of State, Cnty. And Mun. Empl., Council 31 v. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989). The Board considers the following factors in determining whether parties have reached impasse: the bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, and the contemporaneous understanding of the parties as to the state of negotiations. State of Ill., Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001.

Here, the parties' conduct at the table shows there was hope for agreement because it evidences compromise and cooperation. The parties met consistently over a period of nine months, exchanged numerous proposals over health insurance, wages, and other conditions of employment, and demonstrated movement in their negotiating positions over time. The Union offered concessions on employees' percentage contribution to health insurance premiums and the Employer offered concessions on wages. In fact, the Employer offered three alternate package proposals covering the central topics of wages and insurance to facilitate an agreement. In that spirit, in the Union relinquished its proposal of a no lay-off clause at the last bargaining session so that the parties could conclude their negotiations. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (finding no impasse where negotiations were not yet at a point where party had more to offer). The parties' later insistence on their respective positions after they discovered their misunderstanding does not retroactively create an impasse where bargaining was otherwise fruitful. Microdot, Inc., 288 NLRB 1015, 1015 (1988) (no impasse where employer insisted that parties' had agreed on employer's final proposal knowing that the union had misunderstood its contents).

The parties' impressions of their final bargaining session lend weight to a finding that they did not reach impasse because they believed that their months of negotiation had paid off with a successful and binding agreement. The witnesses uniformly testified that they understood

they had reached a meeting of the minds at the conclusion of their final meeting. Smith even offered to draft a document memorializing its terms. Although the parties may have been mistaken in their understandings, their "belief that they had negotiated an agreement" is "inconsistent with a finding of impasse." Sahara Nissan, Inc., 300 NLRB 467 n. 1 (1990) (finding that Respondent did not insist to "impasse" on an agreement containing an "overly broad management rights clause" where the parties mistakenly believed they had reached agreement).

Finally, the Employer's change was unlawful even though it may have had a good faith belief that the parties had reached an agreement, or alternatively, had reached impasse. An employer's unilateral change to employee's terms and conditions of employment constitutes a per se violation of the duty to bargain, regardless of the employer's purported good faith. Vill. of Westchester, 5 PERI ¶ 2016 (IL SLRB 1989). This outcome is justified here because unilateral changes undermine collective bargaining and "unfairly shift community and political pressure to employees and their representatives" while "reduc[ing] the employer's accountability to the public." Vill. of Westchester, 5 PERI ¶ 2016 (finding an unlawful unilateral change even where employer showed good faith by bargaining post implementation).

Thus, the Employer violated Sections 10(a)(4) and (1) of the Act when it unilaterally changed employees' contributions to health care premiums without first reaching agreement on the parties' contract or bargaining to impasse.

V. CONCLUSIONS OF LAW

1. The Employer violated Sections 10(a)(4) and (1) of the Act when it implemented changes to health insurance premiums and caps that were not in accordance with the language negotiated by the parties.
2. The Union did not violate Sections 10(b)(8), (4), and (1) of the Act when it allegedly refused to sign a collective bargaining agreement.
3. The Employer did not violate Sections 10(a)(7), (4), and (1) of the Act when it allegedly refused to draft and to sign an agreement that reflects the terms to which the parties' agreed.

VI. RECOMMENDED ORDER

The Complaint against the Union is dismissed.

The Complaint against the Employer is dismissed as to the allegation that the Employer unlawfully refused to reduce to writing and sign a collective bargaining agreement in violation of Sections 10(a)(7) and (1) of the Act.

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

1) Cease and desist from:
    a. Refusing to bargain in good faith with the International Union of Operating Engineers, Local 150;
    b. In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act; and
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Bargain collectively in good faith with the International Union of Operating Engineers, Local 150, as the exclusive collective-bargaining representative of full-time City of Park Ridge employees in the Public Works Department in the following classifications: Maintenance Worker II, Building Maintenance Person, Maintenance Worker III, Mechanic I, and Mechanic II.
    b. At the request of the International Union of Operating Engineers, Local 150, cancel any departures from the terms and conditions of employment of the employees in the above described unit that existed immediately before the Employer imposed its own understanding of the terms of the parties' purported agreement, around May 1, 2013, retroactively restoring any preexisting terms and conditions of employment that the Union requests be restored, and make employees whole for any losses they incurred as a result of any unilateral changes that the Union requests be rescinded.[18]

[18] See Kerry, Inc., 358 NLRB No. 113, 2 (2012)(where portions of a unilateral change may have benefited union members, the Board orders a return to the status quo ante at the request of the union, leaving to compliance the determination of the full impact of the employer's unlawful conduct); See also McClatchy Newspapers, Inc., 339 NLRB 1214 (2003); and The Concrete Co., 336 NLRB 1311, 1311-12 (2001)(where employer unilaterally implemented its package proposal a majority of the National Labor Relations Board affirmed the ALJ's ruling that the union could choose which unilateral changes to cancel, one member of the Board dissented on the grounds that the remedy was punitive); Bryant & Stratton

c. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

d. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Business Institute, 327 NLRB 1135, 1137 & 1154 (1999)(where record was not clear as to whether respondent's changes were beneficial or detrimental to employees, the Board adhered to its policy of "order[ing] a return to the status quo with regard to the unfavorable changes, but not to penalize employees by ordering revocation of the favorable changes")(citing NLRB v. Keystone Steel & Wire, 653 F.2d 304, 308 (7th Cir. 1981)).

Issued at Chicago, Illinois this 27th day of February, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ Anna Hamburg-Gal

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

S-CA-13-197

The Illinois Labor Relations Board, State Panel, has found that the City of Park Ridge 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 refusing to bargain in good faith with the International Union of Operating Engineers, Local 150.

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 International Union of Operating Engineers, Local 150, as the exclusive collective-bargaining representative of full-time City of Park Ridge employees in the Public Works Department in the following classifications: Maintenance Worker II, Building Maintenance Person, Maintenance Worker III, Mechanic I, and Mechanic II.

WE WILL at the request of the International Union of Operating Engineers, Local 150, cancel any departures from the terms and conditions of employment of the employees in the above described unit that existed immediately before the Employer imposed its own understanding of the terms of the parties' purported agreement, around May 1, 2013, retroactively restoring any preexisting terms and conditions of employment that the Union requests be restored, and make employees whole for any losses they incurred as a result of any unilateral changes that the Union requests be rescinded.

WE WILL preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of back pay as set forth in the Decision.

DATE _____

_____
City of Park Ridge
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.