

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

Metropolitan Alliance of Police,)	
Chapter 117,)	
)	
Charging Party)	
)	Case No. S-CA-14-197
and)	
)	
Village of Steger,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On April 9, 2014, the Metropolitan Alliance of Police, Chapter 117 (Charging Party or Union) filed a charge in Case No. S-CA-14-197 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Steger (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Board’s Executive Director issued a Complaint for Hearing on June 17, 2014 alleging the Respondent violated Section 10(a)(4) and (1) of the Act.

The case was heard on September 9, 2014 by Administrative Law Judge (ALJ) Martin Kehoe. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. After ALJ Kehoe gave notice that he was leaving the Board for another opportunity, the Board reassigned this case to the undersigned. Written briefs were timely filed on behalf of both parties. After full consideration of the parties’ stipulations, evidence, arguments, and upon the entire record of this 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 State Panel of the Board, pursuant to Section 5(a-5) of the Act.
3. At all times material, the Respondent has been subject to the Act pursuant to Section 20(b).
4. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit comprised of the Respondent's full-time and part-time Telecommunicators (dispatchers).
6. At all times material, the Charging Party and Respondent were parties to a collective bargaining agreement in effect from May 1, 2011 through April 30, 2014.

II. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Village violated Section 10(a)(4) and (1) of the Act by outsourcing the Village's dispatchers without providing the Union adequate notice or a meaningful opportunity to bargain. The Village denies these allegations and contends it bargained with the Union.

III. FINDINGS OF FACT

Until April 2014, the Village operated a 911 Telecommunications Center (Center) within the Steger Police Department. Approximately ten dispatchers worked in the Center sending out police officers and fire fighters to the Village and surrounding communities. Both the police officers and

dispatchers are represented by the Union. The Union and the Village were parties to a collective bargaining agreement in effect from May 1, 2011 until April 30, 2014.

The Village Meets with the Dispatchers to Discuss Potential Outsourcing.

After taking office in May 2013, Village Mayor Kenneth Peterson learned the Village was facing a budget deficit of approximately \$1,000,000. Peterson testified that he and the Village considered multiple ways to reduce the deficit. One option was to close the Center and outsource the dispatchers. The Village believed it could save approximately \$300,000 by outsourcing the dispatchers. The Village contacted EastCom, a consolidated dispatch center, to discuss the possibility of using its services in place of the Center.

On November 21, 2013, the dispatchers' supervisor, Director Mary Jo Seehausen, posted a notice in the dispatchers' radio room that there would be a meeting on November 25th to discuss the outsourcing of the Center. On November 25th, Peterson met with a group of the dispatchers, including then Union President Rachel Teneyuca. He informed them the Village was facing a difficult financial situation and considering closing the Center. Peterson said that by outsourcing the dispatchers, the Village would save approximately \$300,000 and was targeting March 1, 2014 as a potential closing date. Finally, Peterson stated that the Village was looking at alternatives and open to the dispatchers' ideas and suggestions.

On November 25th, following the meeting, the Union's attorney sent a variety of communications to the Village's attorney. In a letter, the Union's attorney asked the Village to confirm its plans to outsource the Center. The Union's attorney stated that if the Village was planning on closing the Center, the Union would file an unfair labor practice charge against the Village for making a unilateral change to a mandatory subject of bargaining without granting the Union notice or an opportunity to bargain. In an email, the Union's attorney simply asked if the Village was "considering the 'outsourcing' of its telecommunications center. If so, when will this

'vote' take place?" The Village's attorney responded to the Union's email stating "[y]es. It is my understanding that it would not happen until March 1st at the earliest. I am not certain at which Board meeting it will be discussed. Will find out and let you know."

At some point following the meeting, Teneyuca attempted to speak with the Village about the outsourcing. The Village apparently told Teneyuca that it would prefer to communicate through the parties' respective attorneys. Teneyuca testified that "with the threat of an unfair labor practice lawsuit hanging over their heads, they, the Village, didn't want to speak to us at all." Teneyuca asked the Union's attorney to draft a letter to the Village to request an "open dialogue." She asked the Union's attorney "to allow the [dispatchers] to communicate with the Village, if the opportunity arose, so that if there was a way to save our jobs, that that could be explored."¹ As Teneyuca requested, the Union's attorney sent an email to the Village's attorney informing her that Teneyuca was interested in speaking directly with the Village. He also said the Village was "free to meet and/or discuss the issue of outsourcing with the Chapter and its representatives in absence of my presence."

Teneyuca also asked the other dispatchers for their suggestions on how to avoid the outsourcing. Teneyuca's testimony seems to conflict regarding the dispatchers' level of success. In one instance, she testified that the dispatchers had "lots of ideas." However, she also testified they "couldn't figure it out" and were unable to come up with ideas to save the Village \$300,000.

The Parties Meet and Discuss the Outsourcing in December.

On December 12, 2013, the parties met and discussed the outsourcing of the Center. The parties had previously scheduled a meeting on December 12th to discuss a grievance. Prior to the meeting, Seehausen informed Teneyuca that the parties would be discussing the outsourcing issue following the grievance meeting. Teneyuca was the only person in attendance at the outsourcing

¹ According to Teneyuca, the Union never bargained without its attorney. It also appears that, at least recently, the parties have been bargaining through their respective attorneys.

meeting on behalf of the Union; Union Vice President Peter Fajman and the Union's attorney did not attend.² Fajman was unable to attend the grievance meeting because he had been involved in the investigation of the grievant. He testified that he had never been told that the parties would be discussing outsourcing after the grievance meeting. As for the Union's attorney, Teneyuca told him that he did not need to stay for the outsourcing portion of the discussion. According to Teneyuca, "[w]e had never been advised by the Village that they had anything to offer in respect to the issues, the financial issues that revolved around the outsourcing or the saving of our jobs[.]" therefore it was unnecessary for the Union's attorney to attend.

During the parties' discussion, Teneyuca said the dispatchers were very interested in trying to save their jobs but that they "[didn't] know how to do it." She told the Village "[w]e don't know how to come up with this. We are interested in saving our jobs, if the Village has any ideas in saving it, we are more than willing to listen." The Village said that closing the Center was not its first option but felt it was the best way to overcome the budget deficit. The Village did not say the outsourcing was definite. Teneyuca testified that "we had been told that this was a probably thing that the Village was doing from the November 25th meeting. We had not been told anything definite, we had not been given dates, we had only been given targets and goals."

Although Teneyuca testified that the dispatchers had several ideas on how to avoid closing the Center, she did not share those ideas with the Village. When asked why, Teneyuca stated "[w]e did not have the figures. We never had – December 12, to our knowledge, was an informal discussion, not a meeting to be negotiated, which is why our attorney did not stay for that meeting." Teneyuca stated that she would have expected the Village to submit a written proposal and the Union would have needed its attorney present if the Village had intended the meeting to be a formal

² Fajman became Union President at some point prior to the outsourcing of the dispatchers.

negotiation session. Teneyuca did state, however, that the parties have not always negotiated through written proposals.

The Village Finalizes its Plans to Outsource the Dispatchers.

In the months following the parties' December 12th meeting, the Union repeatedly asked the Village about its plans to close the Center. Teneyuca testified that she frequently asked the Village whether or not it was going to close the Center. Fajman testified that he repeatedly asked the Village when the Center would close. In both cases, the Village said it did not have any information for them or a set date.

On February 18, 2014, the Village Board passed an ordinance entering into an intergovernmental agreement with EastCom, effective April 30, 2014, which outsourced the dispatchers. While the Village publicly posted an agenda listing the ordinance as a topic of discussion, it did not directly inform the Union of the vote. On February 20, 2014, the Union's attorney emailed the Village. "Again, the union needs to know what the village intends to do with its telecommunication center. Is there the possibility of bargaining for the [dispatchers] for this next contract?"

Peterson testified regarding why the Village was consistently unable to provide the Union with a specific closing date. He stated that transferring the Center's dispatching services to EastCom was a complicated process. According to Peterson, because of the number of moving pieces involved in the transfer, the Village was uncertain when exactly it would close the Center, even after it had passed the ordinance.

On March 22, 2014, the Village notified the Union that the Center would officially close on April 1st. Several dispatchers asked Fajman if the Village was going to provide severance packages. Fajman testified that he spoke with the Union's attorney about possible severance packages for the dispatchers. "Basically, there was no discussion after that regarding any severance packages or

anything.” He also testified that “[w]hen I had asked about severance packages, the only thing I was told was we would discuss maybe insurance.” On March 24th, the Union’s attorney emailed the Village’s attorney stating “[s]ince, we have not had an opportunity to meet and discuss this decision (if indeed true), I am asking the Village to consider a severance package for its affected [dispatchers].” The parties eventually came to an agreement regarding insurance for the dispatchers.

Fajman stated that he never formally requested bargaining with Peterson. He said that when he had asked Peterson to bargain about another, unrelated matter around December 2013, Peterson told him “that everything would go through lawyers.” Based on Peterson’s response, Fajman decided not to formally request bargaining regarding the outsourcing of the dispatchers.

The Center officially closed on April 1, 2014.

IV. DISCUSSION AND ANALYSIS

The Complaint for Hearing alleges that the Village violated Section 10(a)(4) and (1) of the Act by unilaterally outsourcing the dispatchers without providing the Union with adequate notice and a meaningful opportunity to bargain. Unions and employers share the duty to bargain collectively regarding wages, hours, and terms and conditions of employment. 5 ILCS 315/7. “[T]he duty to collectively bargain in good faith fundamentally requires both parties to engage in negotiations with ‘an open mind and a sincere desire to reach an ultimate agreement.’” Lake Cnty. Circuit Clerk, 29 PERI ¶ 179 (IL LRB-SP 2013) (citing Serv. Employees Int’l Local Union No. 316 v. Ill. Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 751 (4th Dist. 1987)). “The employer’s intention must be determined by an examination of all of the relevant facts in the record. A finding of bad faith bargaining, therefore, must be based upon the ‘totality of the conduct.’” City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988). While the Act requires both parties to bargain in good

faith, “such obligation does not compel either party to agree to a proposal or require the making of a concession.” 5 ILCS 315/7.

It is well established that an employer violates its duty to bargain by making a unilateral change to a mandatory subject of bargaining without giving the union adequate notice and a meaningful opportunity to bargain. Cnty. of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011). To give adequate notice and an opportunity to bargain, the employer must first give actual notice of the contemplated change to a union official with authority to act. City of Berwyn, 8 PERI ¶ 2038 (IL SLRB 1992). Second, the employer must provide the union with sufficient details so the union can understand the scope of the contemplated change. Cnty. of Cook and Sheriff of Cook Cnty., 30 PERI ¶ 14 (IL LRB-LP 2013). See Pinkston-Hollar Const. Servs. Inc., 312 NLRB 1004 (1993). Third, the employer must give notice far enough in advance of the contemplated change to allow for bargaining. City of Chi., 9 PERI ¶ 3001 (IL LLRB 1992). Finally, the employer must be open to bargaining and cannot present the union with a *fait accompli*. Cnty. of Lake, 28 PERI ¶ 67; Chi. Hous. Auth., 7 PERI ¶ 3036 (IL LLRB 1991).

“In the subcontracting context, the requirements for good-faith bargaining on the decision to subcontract are notice of the consideration of a subcontract, before it is finalized, meeting with the union to provide an opportunity to discuss and explain the decision, providing information to the union, and giving consideration to any counterproposals the union makes.” Serv. Employees Int’l Local Union No. 316, 153 Ill. App. 3d at 753. An employer can avoid an adverse finding by demonstrating that the union either waived its right to bargain or that the parties bargained to impasse. Cnty. of Lake, 28 PERI ¶ 67; Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1993).

In this case, the Village concedes that subcontracting the dispatchers was a mandatory subject of bargaining. As such, this case turns on whether the Union had notice and an opportunity to bargain.

A. The Union Had Adequate Notice the Village was Considering Outsourcing the Dispatchers.

As an initial matter, I find the Union had adequate notice that the Village was contemplating outsourcing the dispatchers. The Village gave Teneyuca actual notice it was contemplating outsourcing on November 25, 2013, more than two months before the Village made its final decision on February 18th. Additionally, I find the content of the notice was substantively adequate. In the November 25th meeting, Peterson said the Village was considering closing the Center and outsourcing the dispatchers, stated the decision was based on financial reasons and how much the Village was looking to save, and gave the targeted deadline for implementation.

The Union argues it did not receive adequate notice for a variety of reasons. It appears that the Union is arguing it did not receive adequate notice because it did not know the exact date the Center would close, or even if the Center would close, until March 22nd. The Union also states it “was not advised by the Village of any ‘potential offers,’ orally or in writing, in respect to the financial issues that revolved around the outsourcing or the saving of the [dispatchers’] jobs.”

In order to provide adequate notice as required by the Act, the Village needed to notify the Union prior to its decision being final. Cnty. of Lake, 28 PERI ¶ 67. If the Village had either waited until it had made its final decision or made it clear in the November 25th meeting that the decision was final, it would have presented the Union with a *fait accompli* and been in violation of the Act. I also cannot find that the lack of precise closing date rendered the November 25th notice substantively inadequate. Although this information would be relevant in impact bargaining, I cannot see how the absence of a specific closing date significantly affected the Union’s ability to understand the scope of the issue or bargain the decision. See Georgetown-Ridge Farm Comm. Unit Sch. Dist. 4, 7 PERI ¶ 1045 (IL ELRB 1991) *aff’d* 239 Ill. App. 3d 428 (4th Dist. 1992) (holding notice insufficient where the union knew of budget issues but unaware what actions the employer

would take to reduce the budget). Further, I find the Union's contention that it was not aware of any potential offers regarding the financial issues surrounding the outsourcing without merit. Teneyuca testified that the Village stated it was having financial issues and that it would save approximately \$300,000 by closing the Center and outsourcing the dispatchers. In this situation, this was all the information the Act required the Village to provide. Therefore, I find that the Union had adequate notice.

B. The Union Had a Meaningful Opportunity to Bargain Over the Outsourcing of the Dispatchers and Failed to Pursue Bargaining.

Additionally, I find the Union had a meaningful opportunity to bargain. Whether the parties had a meaningful opportunity to bargain is a question of time and intent. Cnty. of Cook and Sheriff of Cook Cnty., 30 PERI ¶ 14. To give a union a meaningful opportunity to bargain, an employer (1) must alert the union to a possible change sufficiently in advance of the change so that bargaining could have taken place and (2) must be open to bargaining and cannot present the union with a *fait accompli*. Id. The Board looks at the “totality of the circumstances” to determine if a party has bargained in good faith, i.e. with an open mind and desire to reach an agreement. City of Burbank, 4 PERI ¶ 2048.

The Union appears to rely on several facts in support of its contention that the Village was unwilling to bargain. However, based on the totality of the Village's conduct, I cannot agree with the Union's argument. First, I do not find that Peterson's statements that “everything would go through the lawyers” indicate he and the Village were unwilling to bargain. Each party has the right to select its own representative for the bargaining table. East Side Health Dist., 18 PERI ¶ 2025 (IL LRB-SP 2002). Although this statement indicates the parties have had a less than genial bargaining relationship, it appears from the record that in recent history the respective attorneys bargained on

the parties' behalf. Furthermore, when Teneyuca asked to be able to speak directly with the Village, the Village apparently complied with her request, as evidenced by the December 12th meeting.

Similarly, I cannot find that the Village's lack of substantive response to the Union's frequent requests to confirm if or when the Center would close demonstrates the Village's unwillingness to bargain. I find Peterson's explanation of why the Village could not give the Union a specific closing date convincing. Further, the Village had already provided the Union with an estimated timeline for closing the Center. I do note that the Village failed to specifically inform the Union that the Village Board was voting to finalize the outsourcing of the dispatchers. While questionable, the Village had already notified the Union it was considering outsourcing the Center two months prior to the Village Board's vote. As such, the Village's failure to specifically inform the Union of the vote did not deprive the Union of notice or an opportunity to bargain the decision. It certainly would have been more courteous to inform the Union it was planning on finalizing its decision on February 18th. But, I do not find that this evidence is sufficient to conclude the Village was unwilling to bargain the decision to subcontract.

As noted above, the parties had more than two months to bargain the decision. When it gave the Union notice on November 25th, the Village indicated it was open to alternatives to outsourcing the Center. Further, it met and discussed the outsourcing of the dispatchers on December 12th. Here, the evidence establishes the Village was willing to bargain and did not present the Union with a *fait accompli*.

Because the Village did not present the Union with a *fait accompli*, the Union was required to demand to bargain. Cnty. of Lake, 28 PERI ¶ 67. Although Fajman testified that he never formally demanded to bargain, I find that the Union demanded to bargain directly after the Village gave notice it was contemplating outsourcing, more than two months before the decision was final. The Union objected to the Village's decision and asked the Village to discuss the issue. Id. (stating

“a union's clear objection to employer action is also sufficient to demonstrate the union's desire to bargain an employer's change.”). However, even with the Union's demand to bargain, the Village could have still unilaterally outsourced the dispatchers if the parties had bargained to impasse.³ Cnty. of Jackson, 9 PERI ¶ 2040. In determining whether parties are at impasse, the Board looks at a variety of factors including the length of the negotiations, the understanding of the parties, and the importance of the issue. Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1993). The National Labor Relations Board has also referred to impasse as where “one party is ‘warranted in assuming . . . that the [other party] had abandoned any desire for continued negotiations, or that further good-faith negotiations would have been futile.’” Id. (citing Alsey Refractories Co., 215 NLRB 785 (1974)).

Generally, the Board will not conclude that parties are at impasse after one meeting. But, when one party makes little effort to bargain, it is difficult to conclude otherwise. Here, the Union did little to advance bargaining after making its initial demand to bargain. The Act states that the duty to bargain collectively in good faith is a shared responsibility. 5 ILCS 315/7. A union's obligation to take part in the bargaining process is not satisfied by simply demanding to bargain. For example, while the Act requires parties to meet and confer at reasonable times, it does not place the burden of scheduling bargaining sessions on a particular party. Exch. Parts Co., 139 NLRB 710, 714 (1962). “Passively waiting for the other party to make all requests for bargaining meetings” actually impedes the bargaining process. Id. In this case, it does not appear from the record that the Union ever requested particular bargaining dates. Moreover, the parties did meet and discuss the outsourcing on December 12th.

I am also unconvinced by the Union's argument that the December 12th meeting was not a bargaining session because its attorney was not present and the Village did not submit a written proposal. While the Union's attorney was usually present during the parties' negotiations, Teneyuca

³ I note that the Complaint for Hearing does not allege that the Union demanded to bargain and that the Village subsequently refused.

requested and the attorney agreed that she could bargain directly with the Village over this matter. As to the issue of a written proposal, the record does not establish that the parties only bargained through written proposals, rendering a verbal proposal somehow deficient. From the tenor of Teneyuca's testimony, it appears that she was not expecting a written version of the Village's proposal from November 25th, but a different, perhaps more palatable, proposal from the Village. However, the Act does not require a party to bargain against itself. 5 ILCS 315/7.

Also, the Union did not provide the Village with a counterproposal to outsourcing. In fact, Teneyuca told Peterson that the Union did not have any ideas on how to avoid outsourcing the dispatchers. It appears that the Union contends it did not have sufficient information in order to draft a proposal. I am cognizant of the fact that while the December 12th meeting was sufficient to satisfy the adequate notice requirement of the Act, it may not have contained all of the information the Union needed to draft a counterproposal. However, if the Union needed additional information, such as financial data, in order to draft a proposal, it could have requested the information from the Village. Cnty. of Champaign, 19 PERI ¶ 73 (IL LRB-SP 2003). The record does not establish that the Union ever requested information beyond asking the Village to confirm if or when the Center would close.

In the end, while the Union would have preferred the Village to have made more of an effort, the Village met its duty to bargain in good faith by giving the Union adequate notice of the contemplated change, demonstrating that it was open to alternatives to outsourcing, meeting with the Union to discuss outsourcing, and waiting for more than two months before finalizing its decision. Moreover, even though the Union demanded to bargain, it does not appear that it provided the Village with bargaining dates, a counterproposal, or a request for information in order to draft a proposal. Based on this evidence, I find that the Village was "warranted in assuming . . . that the [other party] had abandoned any desire for continued negotiations, or that further good-faith

negotiations would have been futile.” Cnty. of Jackson, 9 PERI ¶ 2040 (citing Alsey Refractories Co., 215 NLRB 785 (1974)). As such, I find that the Union has not established that the Village violated Section 10(a)(4) and (1) of the Act.

V. CONCLUSIONS OF LAW

I find that the Union has not proven by a preponderance of the evidence that the Village violated Section 10(a)(4) and (1) of the Act because the Union had adequate notice and opportunity to bargain with the Village regarding the outsourcing of the Center but failed to pursue bargaining.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing be dismissed in its entirety.

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 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 in Chicago, Illinois on January 16, 2015

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

/s/ Kelly Coyle _____
Kelly Coyle
Administrative Law Judge