STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party,	)	
and	)	Case No. S-CA-15-116
City of East Moline,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On March 2, 2015, Charging Party, American Federation of State, County and Municipal Employees, Council 31 (Union or AFSCME), filed a charge alleging that the Respondent, City of East Moline (City or Respondent) violated Section 10(a)(4) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014) *as amended*, when it decided to subcontract solid waste collection without first bargaining to agreement or impasse with the Union, the exclusive representative for bargaining unit employees responsible for collecting solid waste. The charge was investigated in accordance with Section 11 of the Act, and, on April 17, 2015, the Executive Director issued a Complaint on that claim.

The Parties proceeded to hearing on July 14, 2015. At hearing, each side was given full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both Parties timely filed post-hearing briefs. After full consideration of the stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. STIPULATED FINDINGS OF FACT

The Parties stipulate and I find as follows:

1. At all times material to this case, the City of East Moline has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material to this case, the Employer 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 to this case, the Employer has been subject to the Act, pursuant to Section 20(b) of the Act.

4. At all times material to this case, the American Federation of State, County and Municipal Employees, Council 31, has been a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material to this case, AFSCME has represented a bargaining unit (Unit) of the City's employees, including employees involved in the collection of solid waste.

6. Work involving the collection of solid waste in the City of East Moline has been performed by four bargaining unit employees in the job position of Labor Grade 4 Refuse Collector in the City's Maintenance Services Department.

7. AFSCME and the City are parties to a collective bargaining agreement (CBA) with effective dates of May 1, 2014 through December 31, 2017. Joint Exhibit 1 is a true and accurate copy of such CBA.

8. At all times material to this case, Cole O'Donnell has been Respondent's City Administrator and acted as chief spokesperson for Respondent and an agent for Respondent in negotiations with AFSCME over solid waste collection issues.

9. On or about May 19, 2014, the Respondent's Committee of the Whole met.[1] At such meeting, the Committee of the Whole voted to direct the City Administrator to issue a Request for Proposals (RFP) for the subcontracting of the City's solid waste collection. Joint Exhibit 2 is a true and accurate copy of the Minutes prepared by the City Clerk of the May 19, 2014 Committee of the Whole meeting.

10. On July 2, 2014, AFSCME notified the City that, prior to the City's making a decision to subcontract solid waste collection, it was demanding to bargain over such decision. Such bargaining demand was contained in an email from AFSCME Staff Representative Miguel Morga to City Administrator Cole O'Donnell. Charging Party Exhibit 1 is a true and accurate copy of such bargaining demand.

11. On July 23, 2014, the City and AFSCME met for the purpose of discussing

[1] Agenda items that are passed by the Committee of the Whole are considered by the full City Council at the next meeting. If an agenda item fails to pass the Committee, it is not considered further.

the subcontracting of the City's solid waste collection services.

12. On August 18, 2014, the City's Committee of the Whole met. At such meeting, the Committee of the Whole voted to concur with a recommendation of City staff to enter into an agreement with private subcontractor Republic Services (Republic) for the subcontracting of the City's solid waste collection services and to continue to bargain with AFSCME. Joint Exhibit 3 is a true and accurate copy of the Minutes prepared by the City Clerk of the August 18, 2014 Committee of the Whole meeting.

13. On September 4, 2014, AFSCME and the City met to discuss the subcontracting of solid waste collection. At that meeting, Miguel Morga on behalf of AFSCME presented the City with a Union proposal. Charging Party Exhibit 2 is a true and accurate copy of such proposal.

14. On September 11, 2014, AFSCME and the City met for the purpose of bargaining over the City's decision to subcontract the collection of solid waste. At that meeting, Miguel Morga on behalf of AFSCME presented the City with a revised proposal. Charging Party Exhibit 3 is a true and accurate copy of such proposal.

15. On or about October 6, 2014, Respondent's City Council (Council) met. At such meeting, the City Council rejected the proposed contract with Republic for the collection of solid waste.

16. On October 13, 2014, Cole O'Donnell sent an email to Miguel Morga and an attached City proposal in connection with bargaining over the City's decision to subcontract the collection of solid waste. Charging Party Exhibit 4 is a true and accurate copy of such email and proposal.

17. On October 21, 2014, AFSCME and the City met for the purpose of bargaining over the City's decision to subcontract the collection of solid waste. At that meeting, Miguel Morga presented the City with a counter-offer to the City's October 13, 2014 proposal. Charging Party Exhibit 5 is a true and accurate copy of such counter-proposal.

18. At the October 21, 2014 bargaining meeting, after receiving the Union's counter-proposal, the City bargaining representatives caucused and Cole

O'Donnell then informed AFSCME that the City would not be giving the Union a counter-proposal and that the City considered bargaining to be concluded.

19. The City's Committee of the Whole met on February 17, 2015. At such meeting, the proposed contract with Republic for the collection of solid waste was discussed. In connection with such discussion, the following exchange took place between City Alderman Jeffrey Stulir and Cole O'Donnell:

Stulir: Have you reached an impasse with the union yet?

O'Donnell: No, there's no impasse on the union, but we presented an option on the previous item and that item was rejected, the side letter.

Stulir: So you haven't reached an impasse with the bargaining unit?

O'Donnell: Well, no, but I can tell you right now that I think we have probably put forth both our best and final offers. I don't think there's any further negotiations on the issues that can be resolved.

Stulir: So you want to put a vote before this City Council that in turn can cost the citizens more money by not having an impasse?

O'Donnell: I'm not putting this before the City Council. What it is is I was instructed to place this on the agenda. I'm placing it on the agenda.

20. At the City's February 17, 2015 Committee of the Whole meeting, the City's Committee of the Whole voted to instruct the City Attorney to prepare the appropriate document for subcontracting solid waste collection services for presentation to the City Council for consideration.

21. Respondent's City Council met on March 2, 2015. At such meeting, the proposed contract with Republic for the collection of solid waste was discussed. At such meeting, the City Clerk was asked to amend the minutes of the February 17, 2015 Committee of the Whole meeting to reflect the discussion of waste collection services, including the statements related to impasse, that had occurred at such meeting.

22. Charging Party Exhibit 4 is a true and accurate copy of the amended Minutes prepared by the City Clerk of the February 17, 2015 Committee of the Whole meeting.

23. On March 2, 2015, Respondent's City Council voted to authorize entering into a contract with Republic for the collection of solid waste.

24. The City Clerk's audio recording of Respondent's March 2, 2015 City Council meeting was inadvertently erased, and at this time there are no official minutes of such meeting.

25. Charging Party Exhibit 6 is a true and accurate copy of the contract for solid waste collection signed by the City and by Republic.

26. The subcontracting of bargaining unit work affects terms and conditions of employment for Unit employees and is a mandatory subject of bargaining.

II. ISSUES AND CONTENTIONS

The Union contends that the subcontracting decision is a mandatory subject of bargaining, and by subcontracting without bargaining to agreement or impasse, the City made an unlawful unilateral change. The Union seeks a return to the status quo and an order directing the parties to bargain in good faith.

The City argues that it was not required to bargain to impasse over the decision to subcontract solid waste collection functions as it is not a mandatory subject of bargaining. However, even if it were required to do so, the unfair labor practice charge should be dismissed as the parties reached impasse prior to the City's decision to subcontract on March 2, 2015. Further, the City argues that it bargained in good faith in that it gave the Union notice and an opportunity to bargain before the decision was finalized and bargained over the effects of the decision. Therefore, the City asks that the charge be dismissed.

III. OTHER FINDINGS OF FACT[2]

The Union represents a historical, pre-Act bargaining unit of employees employed by the City of approximately 60 employees. Four of those employees' job is to collect the City's solid waste. The parties CBA contains no provision regarding subcontracting or allowing the City to subcontract bargaining unit work and no waiver of the Union's right to bargain over the subcontracting of bargaining unit work.

On May 19, 2014, the Committee of the Whole of the East Moline City Council voted to authorize the City Administrator, Cole O'Donnell, to develop a Request for Proposals for the

[2] The parties stipulated to a number of facts set out in Section I. above. However, for ease of reading and clarity of the timeline set out in this section, some of the stipulated facts are restated here.

subcontracting of the City's solid waste collection. O'Donnell informed the Union, through its staff representative Miguel Morga of this development on June 4, 2015.

On July 2, 2015, the Union made a demand to bargain over the issue of solid waste subcontracting. At the first bargaining session on July 23, 2015, the parties discussed an overview of the City's financial state and the city's concern regarding the stagnant Equalized Assessed Value (EAV) in the City. The EAV is a primary source of tax revenue for the City, and the city contended that a lack of an increase in the EAV meant that the City could not support planned-for expenditures, including labor costs and material costs. No proposals were made at this meeting. The City did not give the Union a bottom line number that it would have to meet in order to avoid privatization, as it had not yet received bid responses. However, the City communicated that it was interested in long-term savings and that the purpose of bargaining with the Union was to come close or meet the savings the City could achieve by privatization. At another point in the negotiations, the City told the Union it would need to find $40,000 in savings.

On August 18, 2014, the Committee of the Whole considered the RFP responses and authorized O'Donnell to negotiate an agreement with Republic Services for consideration by the Council.

On September 4, 2014, the parties met for a second bargaining session on the issue of subcontracting. At that meeting, the Union proposed a side letter to the CBA which would establish minimum staffing of 64 AFSCME positions and extend the wage scale. The proposed extended wage scale would add three "steps" to the bottom end of the scale and three "steps" to the top of the scale and would take bargaining unit members 10 years to reach the top of the scale which now occurred in as little as five years. The Union referred to the top three steps as "longevity" steps. O'Donnell did not agree to present this proposal to the Counsel, and indicated his belief that the Council would not accept the proposal with longevity steps added to the wage scale.

As a result of the parties' discussions on September 4, 2014, the Union submitted a revised proposal at a bargaining session on September 11, 2014. This proposal set minimum manning at 63 positions with an escape clause for the City if it were unable to find a qualified candidate to fill a vacancy and included modifications to the extended wage scale. The Union proposed starting new employees at lower wage levels and still proposed longevity steps.

O'Donnell indicated to the Union negotiators that he believed the Council would still have reservations with the September 11, 2014, proposal, but that he would present the Union's proposal to the Council without a recommendation for or against. The Council rejected the Union's proposal. At the same meeting, the Council voted to continue negotiating with the Union and also to move forward to negotiate a contract with private company, Republic Services, for solid waste collection.

At the October 6, 2014, Committee of the Whole meeting the Council rejected the proposed contract with Republic Services. Morga understood after the October 6, 2014, meeting, that the Council had decided not to subcontract the solid waste collection functions. However, he also understood that the City could reconsider that decision at some point in the future. Accordingly, the Union did not withdraw its proposal at that point. Morga testified that the Union was still agreeable to working with the City to address economic issues even if subcontracting was not an imminent concern.

The following week, on October 13, 2014, the City submitted a proposal to the Union which included agreements that it would not subcontract solid waste collection during the effective date of the agreement, would not reduce unit positions through privatization once four existing vacancies were filled, and would implement expanded wage scales, including one longevity boost instead of three longevity steps. O'Donnell informed the Union that a strict staffing level would not likely be approved by the Council. The City also explained that its counterproposal did not include when the longevity boost would "kick in. That is to be determined by [the Union]." While the City calculated the savings generated by its October 13, 2014, proposal, at hearing O'Donnell did not recall what that amount was. Moreover, he did not recall whether he ever shared the amount of savings with the Union.

At the meeting of the full Council on October 20, 2014, the Council again voted against entering a contract with Republic Services. At some point around the time of the October 20, 2014, meeting, O'Donnell learned from Republic Services that it would be willing to renew the then-expired Landfill Host Agreement for the length of the proposed subcontract. Under that agreement the City would receive approximately $140,000 per year in so-called "tipping fees" generated by use of the landfill owned by Republic Services. Though the prior Landfill Host Agreement had expired, but Republic Services was continuing to pay the City its portion of the tipping fees. With respect to whether Republic Services would be willing to renew or otherwise

be willing to continue paying the City a portion of tipping fees if the City did not subcontract its solid waste collection functions, O'Donnell testified, "[i]t was strongly indicated to me that they would more than likely not continue."

The parties met on October 21, 2014, for another bargaining session. The Union presented its counter proposal to the City's October 13, 2014, proposal, which included an agreement that the City would not subcontract solid waste collection during the effective date of the agreement, would maintain minimum staffing of 63 (but would not be in breach of the provision so long as the City made reasonable efforts to locate qualified applicants), and would implement a modified, expanded wage scale. The Union informed the City at the meeting that it was flexible with respect to the staffing language and had room to move on that point. The Union contends that the modified expanded wage scale offered on October 21, 2014, would generate more savings than prior proposed scales.

O'Donnell testified that as of the October 21, 2014, bargaining session, when assessing the Union's proposal, he was also considering potential loss of tipping fees. O'Donnell testified that he did not recall whether he informed the Union about the potential loss of tipping fee revenues at or around the time of the October 21, 2014, bargaining session or otherwise informed the Union of a change in the targeted savings. O'Donnell assessed savings that could result from the Union's September 11th and October 21st proposals. While O'Donnell did not recall at hearing whether there was an appreciable difference in savings between the two proposals, he testified that the savings did not equal the loss of the tipping fees. Based on this information, when O'Donnell caucused with other City officials regarding the Union's proposal, they determined that the Union's proposed savings would not match the loss in revenue from the tipping fees. Therefore, the City declined to respond to the Union's proposal and indicated that it considered bargaining to be concluded.

As of the bargaining session on October 21, 2014, neither the City nor the Union had indicated that their proposal was their last, best, and final offer. Morga testified that when the City ended the October 21, 2014, meeting without making a counter proposal, he assumed the City was "done pursuing subcontracting."

In December 2014, the City's fiscal year 2015 budget was implemented. As a result of the new budget, the City had less flexibility to shift tax levies in order to create additional

savings. Moreover, the City's fiscal year 2014 budget appropriated funds for filling the four vacant bargaining unit positions. The fiscal year 2015 budget did not.

The parties did not exchange proposals or otherwise meet to bargain specifically over subcontracting between October 21, 2014, and February 17, 2015.

In late January and February 2015, the parties met and discussed resolution of a temporary assignment grievance. During the course of these discussions, the parties once again turned to the topic of subcontracting and implementing an expanded wage scale. The parties reached a tentative agreement on the grievance resolution and the issue of subcontracting. O'Donnell informed the Union that the tentative agreement would need Council approval. At the request of Council members, the parties' tentative agreement, except for the provisions specifically dealing with the temporary assignment grievance, was packaged as a side letter and presented to the Council for review. The side letter contained the following provisions: (1) the City agrees not to subcontract solid waste collection functions; (2) once four vacant bargaining unit positions are filled, the City will not reduce the number of bargaining unit employees through privatization; (3) the parties will implement an expanded wage scale that was more favorable to the City than that included in the City's October 13, 2014, proposal or otherwise discussed in the fall of 2014; and (4) the City will modify three longevity steps. The tentative agreement did not include a set staffing level, and instead, gave the City flexibility of when and whether to fill current vacancies and any vacancies created by retirements. This side letter was presented to the Council at the February 17, 2015, Committee of the Whole meeting.

The testimony at hearing reflects that the parties agree that implementing the expanded wage scale for employees hired to replace retirees would nearly offset the loss of tipping fees. Despite the flexibility in the tentative agreement, if the City chose to fill the four vacancies within the first year, the added cost would be approximately $122,000. Despite this flexibility, on February 17, 2015, O'Donnell reported to the Committee of the Whole that the cost of the tentative agreement would be $122,759 per year. Based on the negotiations, Morga believed that the parties' tentative agreement was at least cost neutral. The expanded wage scale would continue to bring savings, and the City had no obligation under the tentative agreement to fill the four then-unbudgeted vacancies. Further, Morga explained that the City had always discussed having the four employees who perform solid waste collection transferring into other City jobs rather than being subject to layoff. If the City chose not to layoff the affected employees, the

City would face an additional cost of approximately $200,000 per year (approximately $50,000 for each of four employees plus benefits) from the general revenue fund (not then in the budget) as a result of its subcontract. There is no record that the Council considered the potential cost of retaining the four employees in other City positions.

O'Donnell presented the tentative agreement to the Council. He did not recommend adoption of the agreement; instead, he recommended the Council consider the tentative agreement in "context of other budget and personnel issues." The Committee rejected the tentative agreement. After rejecting the tentative agreement, one City Council member, who voted to reject the agreement and who was not a member of the bargaining committee, indicated his dissatisfaction that the proposal was only temporary and not permanent. The City never proposed making any of the agreement's provisions permanent before or after the City Council member voiced his concern.

At its March 2, 2105, meeting, the Council voted to enter a contract with Republic Services for solid waste collection. The City has not yet implemented the contract.

At no time during bargaining or discussions resulting from the temporary assignment grievance did the City or the Union indicate that the tentative agreement contained its last, best, and final offer regarding subcontracting. Throughout the negotiations, Morga, the Union's chief negotiator, consistently indicated that proposals were not the Union's last, best and final offer. Moreover, Morga told the City on at least one occasion that he did not believe in making last, best, final offers, because if there was a problem with a proposal, he wanted to work with the employer to resolve it.

IV. DISCUSSION AND ANALYSIS

Under Section 7 of the Act, Parties are required to bargain collectively over employees' wages, hours and other conditions of employment— the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 362 (1988). The Board has long held that an employer violates its duty to bargain 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). Here, the Union argues that the City has violated its duty by agreeing to subcontract solid waste collection functions currently performed by bargaining unit members to a private entity.

A. Subcontracting is a mandatory subject of bargaining.

In its Answer, the City admitted the allegation in paragraph 19 of the Complaint, which reads, "[t]he subcontracting of bargaining unit work affects terms and conditions of employment for Unit employees and is a mandatory subject of bargaining." In their pre-hearing memorandum, the parties stipulated to the same statement. Despite these admissions, in its post-hearing brief, both parties address the question of whether the City's decision to subcontract solid waste collection functions is a mandatory subject of bargaining. The City argues that it was not required to bargain over the decision whether to subcontract solid waste collection functions, but was required to bargain over the effects that decision may have on bargaining unit.

The City applies the test first set out in Central City Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496 (1992), and argues that because the burden on the City's budget outweighs any benefit to bargaining, such that the decision whether to subcontract is not a mandatory subject of bargaining. *See also* City of Belvidere v. Ill. State Labor Relations Bd., 181 Ill. 2d 191, 206 (1998) (applying the Central City test to the Act). Under the Central City test, a topic is a mandatory subject of bargaining if it satisfies three inquiries. First, the Board must determine if the topic involves wages, hours, or other terms and conditions of employment. Id. If it does, the Board turns to the second prong to determine if the topic is also a matter of inherent managerial authority. Id. Where the at-issue topic involves both terms and conditions of employment and the employer's inherent managerial authority, the Board will move to the third prong and "balance the benefits that bargaining will have on the decisionmaking process with the burdens that bargaining imposes on the employer's authority." Central City, 149 Ill. 2d at 523.

As the Union correctly points out, analysis under the first Central City prong is altered with respect to subcontracting cases like the one here. A decision to subcontract satisfies the first prong if the decision "(1) involved a departure from previously established operating practices, (2) effected a change in the conditions of employment, or (3) resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit." City of Belvidere, 181 Ill. 2d at 208. Only one of these three

circumstances need to exist in order for the Board to find that a subject concerns wages, hours, and terms and conditions of employee. City of Chicago (Dep't of Police), 21 PERI ¶ 83 (IL LRB-LP 2005).

I find that the subcontracting issue in this case easily satisfies this modified Central City first prong. The established operating practices were for bargaining unit employees to perform solid waste collection. Having a private company perform those functions effects a change in the conditions of employment, either by subjecting bargaining unit members to layoff or a complete change in duties if they were reassigned in lieu of layoff. Finally, eliminating the bargaining unit positions that perform this function impairs employment security for not only the four employees who currently perform this work but also other bargaining unit members that may be subject to layoff pursuant to the contracts bumping procedure. Future work opportunities are impaired as well. Bargaining unit members could no longer seek to transfer to those positions because they would no longer exist.

Next, the parties do not dispute and I find that a decision to subcontract solid waste collection services involves the City's inherent managerial authority. Similarly, Illinois appellate courts have held that a decision to subcontract involves a "policy and inherent management function." Serv. Employees Int'l Union, Local 316 v. Ill. Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 751 (4th Dist. 1987). Thus, I find that the second prong is satisfied.

I turn now to the third prong and seek to balance the benefits of bargaining against the burdens bargaining imposes on the employer's authority. The record in this case is replete with evidence that the motivating factor in the City's decision to subcontract this work is financial. The City argues that its budget is "under significant pressure" resulting from the static equalized assessed value of land in the City. Therefore, it argues the burdens of bargaining over the subcontracting decision are great. The City argues that, comparatively, the benefits of bargaining are much lower, and points to the $122,000 gap it believes exists between the parties' positions as of the February 17, 2015, meeting. Moreover, the longer negotiations progressed, the more savings needed to be realized to avoid subcontracting.

Certainly, there is always a burden to bargaining in that it lengthens the decision-making process for an employer and these delays can have real world economic impacts. However, I find the City's assessment of where the balance tips to be misplaced.

The Union aptly points out that the Board and Illinois courts have long held that the economic issues are particularly amendable to bargaining. *See* AFSCME Council 31 v. State of Illinois, Dep't of Cent. Mgmt. Servs., 274 Ill. App. 3d 327, 333 (1st Dist 1995); Vill. of Ford Heights, 26 PERI ¶ 145 *aff'd* Vill. of Ford Heights v. Ill. Labor Relations Bd., 2012 IL App (1st) 110284-U. I agree with this Board precedent that the underlying economic issues giving rise to the subcontracting decision are amenable to bargaining and that the benefit of this bargaining outweighs any burden of delay on the employer while it meets this obligation. Accordingly, I find that the City's subcontracting decision is a mandatory subject of bargaining. As such, the City was required to bargain to agreement or impasse before implementing its decision. I turn now to that inquiry.

B. The parties had not reached a legitimate impasse as of the City's March 2, 2015, decision to subcontract.

The Board has long considered numerous factors when determining whether parties have reached a legitimate impasse. Though the Board ultimately looks at the totality of the circumstances before it, it specifically looks at the parties' bargaining history, the good faith of the parties during 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 regarding the state of the negotiations. *See* Ill. Dep't of Cent. Mgmt. Servs. (Corrections), 5 PERI ¶ 2001 (IL SLRB 1988), aff'd 190 Ill. App. 3d 259, 6 PERI ¶ 4004 (1989); Cnty. of Jackson, 9 PERI ¶ 2 2040 (IL SLRB 1993) affd. by unpub. order, No. 5-93-0685 (1994); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994).

First, it is undisputed that the parties have a lengthy and otherwise unremarkable bargaining history. They have been able to reach a number of agreements, and, in fact, reached a tentative agreement in this case. This is not an instance where the parties are bargaining for the first time or are bargaining in a particularly contentious environment. That said, I find that this factor neither weighs in favor or against a finding that the parties were at a legitimate impasse. Further, I agree with the parties that the subcontracting issue was greatly important to both parties. The City expressed a strong desire to provide the services its citizens expect while keeping its costs within available revenues. Certainly, retaining bargaining unit work and protecting bargaining unit members from potential layoff are among topics closest to the heart of any labor union; AFSCME is no exception.

While the Employer argues that all five of the traditional factors weigh in favor of a finding of impasse, the Union argues that two factors weigh against a finding of an impasse and that the totality of circumstances call for a finding that the parties were not at a legitimate impasse as of March 2, 2015. The Union's arguments focus primarily on the parties' contemporaneous understanding of the state of negotiations and the good faith of the parties during negotiations. I turn now to these factors.

1. Length of Negotiations

The City argues that the length of negotiations supports a finding that the parties were at a legitimate impasse. On the subcontracting issue, over the summer and fall of 2014, the parties met four times for formal bargaining sessions and exchanged proposals on at least one other occasion. O'Donnell forwarded the September 11, 2014, proposal to the Council. When that was not approved, the parties continued to bargain before the City informed the Union that it did not intend to offer a counter proposal to the Union's proposal presented on October 21, 2014.

Again in January and February 2015, the parties met discussed subcontracting issues and reached a tentative agreement. Despite the importance of the issue being bargained, generally I find that this would be a reasonable length of time to attempt to reach an agreement on the single issue. See e.g. City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994) (four short bargaining sessions sufficient where negotiating limited issues); but see Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections), 5 PERI ¶ 2001 (1988)(four session over the development and implementation of a drug testing policy not sufficient). The Board has held that the duty to bargain "does not require a party 'to engage in fruitless marathon discussions' ... as in instances where there are irreconcilable differences in the parties' positions after good-faith negotiations have exhausted the prospects of concluding an agreement." City of Peoria, 11 PERI ¶ 2007 (internal citations omitted). However, under the facts of this case, I do not find that the length of negotiations particularly weighs in favor of finding a legitimate impasse. I reach this conclusion primarily because the landscape changed so thoroughly when the City began to consider the potential loss of tipping fees. This change necessitated additional bargaining. The parties certainly bargained enough to reach a tentative agreement, but the facts of this case do not suggest that the negotiations had been so lengthy as to conclude that the parties had exhausted their ability to craft a resolution.

2. Good faith during negotiations

The Employer argues that the parties negotiated with an open mind and good intentions to try to resolve the matter and that there is no evidence of anti-union animus or other improper motivation. However, the Board has held that the obligation to bargain in good faith entails more than this, and parties can fail in their obligation to bargain in good faith in a number of ways. Here, the Union argues that the City failed to bargain in good faith in that (1) it failed to give negotiators requisite authority to reach a deal and (2) the City's chief negotiator failed to recommend that the City Council adopt the tentative agreement reached through negotiations.

"[G]ood faith bargaining requires that an individual negotiating on behalf of a principal be vested with authority to participate in 'effective collective bargaining.'" Tri-State Prof'l Firefighters Union, Local 3165, 31 PERI ¶ 78 (IL LRB-SP 2014) aff'd by unpub. order 2015 IL App (1st) 143418, 32 PERI ¶ 99; Village of Maywood, 10 PERI ¶ 2018 (IL SLRB 1994); County of Woodford and the Woodford County Sheriff, 8 PERI ¶ 2019 (IL SLRB 1992); State of Illinois, Department of Central Management Services (Department of Corrections), 6 PERI ¶ 2038 (IL SLRB 1990); City of Burbank, 4 PERI ¶ 2048. "[A] party's commitment to live up to its agreements is the cornerstone of good faith bargaining and effective labor relations." Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections), 4 PERI ¶ 2043 (IL SLRB 1988). Further, the negotiators sent to bargaining sessions must generally be able to speak for that party if meaningful bargaining is to take place. See Village of Maywood, 10 PERI ¶ 2018. In labor negotiations, there is an inference that negotiators have the ability to bind their principal. Ill. Dep't. of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 216 Ill. App. 3d 570, 576 (4th Dist. 1991); Tri-State Prof'l Firefighters Union, Local 3165, 31 PERI ¶ 78 (IL LRB-SP 2014). However, the Board has previously noted that "contract ratification votes are a nearly universal component of the bargaining process," Harvey Park Dist., 23 PERI ¶132 (IL LRB-SP 2007) aff'd sub. nom Harvey Park Dist. v. Am. Fed'n of Prof'ls, 386 Ill. App. 3d at 779, and were certainly part of the parties' bargaining history in this case.

The Union argues that the City engaged in bad faith bargaining in that (1) O'Donnell did not have sufficient authority to effectively reach an agreement and (2) that when he presented the tentative agreement to the City Council, O'Donnell did not recommend approval.

I do not find that O'Donnell's authority was so limited as to be indicative of bad faith. In Tri-State Prof'l Firefighters Union, the Board held that a party failed to bargain in good faith

when it did not authorize its negotiators to enter tentative agreements, even agreements on their own proposals. 31 PERI ¶ 78. Here, the record reflects that O'Donnell[3] negotiated with the Union to reach agreements that he, in turn, presented to the Council for approval. In fact, he presented proposals to the City Council on two occasions – September 2014 and February 2015. In the context of a grievance settlement discussion, O'Donnell again negotiated over the issue of subcontracting, this time reaching a tentative agreement containing a further extended wage scale more advantageous to the City than past proposals, deleting any reference to a strict staffing level, and giving the City more flexibility regarding filling positions than in any prior iteration. While it is true that the City Council did not ratify either the September 2014 or February 2015 agreement, I do not find that O'Donnell so lacked authority that bargaining between the parties was ineffective.

In Illinois, a party commits an unfair labor practice if each negotiator fails to notify the other party in advance that such negotiator will not affirmatively support a tentative agreement for ratification. Cnty. of Fulton and Fulton Cnty. Sheriff, 7 PERI ¶ 2020 (IL SLRB 1991). The Board long ago followed the New York Public Employer Relations Board's reasoning and rationale in establishing that the only exception to a negotiator's duty to support the agreement is "when that negotiator has advised the other party in advance that he or she would not give such support." Id. Here, the parties do not contest that O'Donnell informed the Union that while the Side Letter was agreeable to him, he would present the tentative agreement to the City Council without making a recommendation for or against. While it is puzzling that O'Donnell would be amenable to an agreement that he contended cost $122,000 in the first year, he fulfilled his duty under the Act by informing the Union that he would not be supporting passage, and in fact gave only the recommendation that the City Council "consider the agreement in in context with other budget and personnel issues."

Accordingly, I find that the record does not support a finding that the parties failed to bargain in good faith, which would undermine a finding that parties had reached a legitimate impasse.

[3] The record reveals that the City utilized a bargaining committee, but the record reveals almost nothing about the other members' role or any position they may have taken in the negotiations. The Union's argument is narrowly tailored to address only O'Donnell's conduct as chief negotiator.

3. *Contemporaneous understanding of the parties*

Throughout the parties' discussions, the City was looking for long-term savings at least meeting that which it could obtain through privatization as well as maintaining flexibility. As the negotiations went on, due to budgetary reasons and external factors, the amount the Union was trying to meet changed. As negotiations continued, the Union tailored its proposal to the concerns raised by the City in order to reach an agreement.

After the Union submitted a counter proposal to the City's October 13th proposal at the October 21, 2014, negotiation session, the City caucused and informed the Union it would not be making a counter proposal. The City did not tell the Union why it was not continuing to negotiate and did not identify any specific problems with the Union's proposal that could be addressed. The discontinuing of negotiations coupled with the City Council's rejection of a contract with Republic Services the day prior led the Union to believe that the City was done pursuing subcontracting at that point.

The Union learned mid-January 2015 that the City was reconsidering subcontracting, and they parties again began negotiating. As of the end of the last bargaining session, the Union believed that they had reached a cost neutral agreement that provided long-term economic relief through an extended wage scale lower than that even proposed by the City, avoided subcontracting for the life of collective bargaining agreement, and provided the City with flexibility over filling existing and upcoming vacancies. This understanding was supported by O'Donnell's willingness to bring the tentative agreement to the Council for consideration; past proposals that O'Donnell did not support were not brought to the Council.

Unbeknownst to the Union, at least in the fall 2014 negotiations, the City was looking to fill an additional $140,000 in revenue potentially lost from tipping fees. Though it is unclear from the record exactly when the Union learned about the potential loss of the tipping fees, at the time the tentative agreement was presented to the City Council in 2015, the Union thought the parties had reached a cost neutral resolution.

Though O'Donnell understood that the City retained flexibility over whether and when to fill vacancies, when presenting the Side Letter to the Council, O'Donnell indicated that the agreement would cost them $122,000 per year. The parties agree that this is the approximate cost of filling four vacancies in the first year of the contract when they were not otherwise

budgeted, but they also agree this was a cost the City was not required by the agreement to bear in the first year.

O'Donnell was asked specifically whether the City had bargained to impasse with the Union, to which he responded, "[n]o[.] [T]here's no impasse on the union, but we presented an option on the previous item and that item was rejected, the side letter." Asked a second time, O'Donnell responded, "[w]ell, no, but I can tell you right now that I think we have probably put forth both our last best and final offers. I don't think there's any further negotiations on the issues that can be resolved."

While I agree with the Employer that one person's characterization of the state of bargaining is not dispositive of the question before me, O'Donnell's comments are certainly relevant to that inquiry. It is clear to me from the record as a whole that O'Donnell knew the parties were not at impasse. O'Donnell stated belief that the parties had put forward their last, best and final offers such that it was unlikely that further negotiations could resolve issues is not reasonable in light of the fact that neither party has indicated explicitly or otherwise that there was not room for further movement. In fact, in the tentative agreement, the Union agreed to much of the City's proposed language from its October 13, 2014, proposal. The Union also withdrew the staffing level provisions identified as a problematic.

Moreover, immediately following the February 19, 2015, meeting, a City Council member who voted against adoption of the side letter indicated his concern that the proposal was only temporary. Despite this, the City did not seek to negotiate with the Union to address this Council member's concern.

4. Totality of circumstances

Again, no single factor is dispositive of the question of whether the parties are at a legitimate impasse. Instead, the Board looks to the totality of the circumstances. Here, I find that the totality of circumstances reflects that the while the parties face some real challenges to reaching an agreement, the parties were not at a legitimate impasse such that the City was empowered to unilaterally implement its subcontracting decision.

Very late in the course of the parties' negotiations, the Union learned of the potential loss of tipping fees. At the point that the City learned of the potential loss of tipping fees, O'Donnell testified that the City more clearly understood the target savings required from the negotiations. However, the record does not reflect that the City shared that target with the Union prior to the

City Council's vote to reject the tentative agreement. I do not find fault with the City's targets moving over time, as that was necessary given the change in circumstances over time. However, the record suggests that the parties were, at a minimum, talking past one another to some extent.

The record reveals that the parties did not have the same expectation as to the implementation of the agreement. Despite the flexibility available in the agreement, the City considered not just the cost of filling four vacant bargaining unit positions in the future, but the cost of filling all four positions in the first year. Moreover, the City did not appear to consider the cost of retaining the higher-paid, current bargaining unit members by way of a transfer to garbage positions to other City positions should the City subcontract. During negotiations, the City had maintained its desire not to lay off the four bargaining unit members responsible for solid waste collection. If that position changed, and altered the calculation of needed savings, the Union was not aware of it. These inconsistencies could be resolved quickly and easily by continued bargaining.

If the parties had really bargained to the point where there was no hope for reaching an agreement with future negotiations, one would expect them to have a more consistent understanding of the cost of the agreement. Here, one chief negotiator believed that the agreement was cost neutral, while the other believed the cost was more than $122,000. As such, I cannot find that the parties were so far apart that they would be unable to bridge the gap through bargaining.

Finally, once the City Council rejected the agreement, at least one member who voted against adoption voiced his concern. The record does not reflect that that the issue of whether to make wage scales permanent had been subject of exhaustive negotiation. In fact, the language providing that the wage scales would be temporary absent agreement to extend the Side Letter was included in the City's own proposal from October 13, 2014. Since the City Council vote was 4-3 against approving the agreement, addressing this one Council member's concerns could have changed the outcome.

Based on this record, I cannot find that additional negotiations would be futile such that the parties were at a legitimate impasse warranting the City's unilateral decision to subcontract. See City of Peoria, 11 PERI ¶ 2007 citing Cnty. of Jackson, 9 PERI ¶ 2040. The parties certainly worked hard toward an agreement, but these outstanding inconsistencies required additional

bargaining before deciding to subcontract. Therefore, the City's decision to subcontract solid waste collection functions without reaching impasse or agreement runs afoul of the Act.

C. Status quo ante remedy is appropriate.

There is no question that where a party has failed to sufficiently bargain, the Board can and should direct the parties to return to the table. Ill. Dep't of Cent. Mgmt. Servs. (Corrections); 5 PERI ¶ 2001; Cnty. of Jackson, 9 PERI ¶ 2040; Tri-State Prof'l Firefighters Union, 31 PERI ¶ 78. Such a remedy is more than appropriate here.

A make whole remedy also general requires a party to rescind any unlawfully unilaterally implemented change and return to bargaining. Here, the City has entered into a contract but has yet to implement it. The issue in this case is whether the City made the decision to subcontract without first bargaining to impasse or agreement, not whether they failed to negotiate over the impact of implementation of that decision. Therefore, I find that the appropriate remedy includes an order directing the City to rescind its decision and subsequent subcontract agreement. Without rescinding the contract, there is little hope for the continued negotiations.

V. CONCLUSIONS OF LAW

The Respondent failed to bargain in good faith with the Charging Party when it decided to subcontract solid waste collection work and entered into an agreement with a private company to perform that work without first bargaining to agreement or impasse.

VI. RECOMMENDED ORDER

It is hereby ordered that the Respondent, City of East Moline, its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees (Union), by failing and/or refusing to bargain over the decision to subcontract solid waste collection functions until the parties reached agreement or a legitimate impasse;
2. Failing to bargain collectively in good faith with the Union by entering into a private contract without bargaining to agreement or impasse;
3. Moving forward with implementation of a private contract that subcontracts the bargaining unit solid waste collection work; and

4. Failing and refusing to bargain collectively in good faith with the Union, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. Upon request, bargain collectively in good faith with the Union over the decision to subcontract bargaining unit work until the parties reach agreement or reach a legitimate impasse;
2. Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours or terms and conditions of employment of employees represented by the Union including any decision to subcontract bargaining unit work;
3. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced, or covered by any other material; and
4. Notify the Board in writing, within 20 days from the date of this decision, of the steps the Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 30 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 15 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. 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. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 2nd day of March, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

s/ ***Sarah R. Kerley***

Sarah R. Kerley
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-15-116

It is hereby ordered that the City of East Moline, its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees (Union), by failing and/or refusing to bargain over the decision to subcontract solid waste collection functions until the parties reached agreement or a legitimate impasse;

2. Failing to bargain collectively in good faith with the Union by entering into a private contract without bargaining to agreement or impasse;

3. Moving forward with implementation of a private contract that subcontracts the bargaining unit solid waste collection work; and

4. Failing and refusing to bargain collectively in good faith with the Union, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. Upon request, bargain collectively in good faith with the Union over the decision to subcontract bargaining unit work until the parties reach agreement or reach a legitimate impasse;

2. Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours or terms and conditions of employment of employees represented by the Union including any decision to subcontract bargaining unit work;

3. Notify the Board in writing, within 20 days from the date of this decision, of the steps the City of East Moline has taken to comply herewith.

Date: _____ City of East Moline
(Employer)

This notice shall remain posted for 60 consecutive days at all places where notices to our bargaining unit members are regularly posted.

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.