STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party,	)	
and	)	Case No. L-CA-15-042
County of Cook and Sheriff of Cook County,	)	
Respondents.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On March 7, 2019, Administrative Law Judge (ALJ) Sharon Purcell issued a Recommended Decision and Order (RDO) in the above-referenced case, finding Respondents County of Cook ("County") and the Sheriff of Cook County ("Sheriff") engaged in unfair labor practices in violation of Section 10(a)(4) and, derivatively, Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), as amended (Act), when repudiated the collective bargaining process by unilaterally changing the terms and conditions of employment of members of a bargaining unit represented by Charging Party International Brotherhood of Teamsters, Local 700 (Local 700). The Respondents timely filed exceptions to which Local 700 filed responses. Local 700 in turn filed cross-exceptions and Respondents timely responded.

After reviewing the RDO, record, exceptions, cross-exceptions, and responses thereto, we accept the ALJ's recommendations for the reasons stated in the RDO for the reasons discussed below:

Local 700 is and, at all relevant times, has been the exclusive representative of sworn personnel in Cook County Sheriff's Department of Corrections (DOC). At the time of the events

in this case, Local 700 also exclusively represented sworn personnel in the Sheriff's Court Services Department (CSD), until August 2014 when the Illinois Fraternal Order of Police (IFOP) was certified as the exclusive representative of the CSD bargaining unit. Local 700 continued as the exclusive representative of the DOC bargaining unit.

Central to this case is the inclusion of a Physical Agility Test (PAT) in the process for DOC unit members transferring to the CSD. In 2011, when it represented both DOC and CSD bargaining units, Local 700 agreed with Respondents to establish a process for sworn personnel in the Sheriff's Department of Corrections (DOC) to transfer into the Sheriff's Court Services Department.[1] After this agreement, William Logan, president of Local 700 at the time, and the Sheriff's Office agreed to the passage of a Physical Agility Test (PAT) as a requirement for DOC unit members transferring to CSD unit vacancies, and so the transfers of DOC unit members to the CSD in 2011 and 2012 included administration of the PAT to transferring DOC unit members.

Sometime in 2012, Local 700 filed a grievance over DOC unit members' pay for working during the lunch period. The grievance was advanced to arbitration before Arbitrator Brian Reynolds who mediated the parties' negotiated resolution to the grievance and issued a stipulated award on April 5, 2013 (Lunch Premium Award). In that award, each DOC unit member received 22 hours of compensatory time in addition to the establishment of a DOC to CSD transfer process. Arbitrator Reynolds found that the transfer process and other items not related to the lunch premium issue were "a quid pro quo for [Local 700's] acceptance of a far lesser pay amount that it had originally sought." This transfer process did not include passage of a PAT. After the Lunch

[1] Although immaterial to the outcome, we find the RDO inaccurately describes the 2011 letter of agreement as establishing the transfer process. This appears to be a drafting error for the 2011 letter of agreement reflected the parties' intent to establish a transfer process and did not include the passage quoted at the bottom of page 4 of the RDO. The quoted passage is included in the Lunch Premium Award.

Premium Award, the Sheriff conducted DOC to CSD transfers in 2013 without the administration of the PAT. The transfer process set forth in the Lunch Premium Award was later incorporated into the parties' collective bargaining agreement which covered the DOC bargaining unit.

After the 2013 transfer without the PAT requirement, two events appear to have precipitated the Respondent's alleged unlawful conduct: (1) IFOP and the Sheriff reached an agreement to include a PAT requirement for any deputy sheriff entering the CSD after September 2014; and (2) the Sheriff implemented a PAT for subsequent DOC to CSD transfers in 2014-2015 and 2016-2017.

Local 700 filed a grievance over the inclusion of the PAT requirement for the 2014-2015 transfers claiming the Respondent's inclusion of the PAT in the transfer process violated the parties' collective bargaining agreement covering the DOC bargaining unit. This grievance culminated in arbitration before Arbitrator Reynolds who, exercising jurisdiction under his Lunch Premium Award, issued an award on June 8, 2015, noting that the Sheriff and Teamsters agreed "not to use the PAT as a transfer requirement, presumably as a trade-off for" under the Lunch Premium Award. Arbitrator Reynolds also found the Sheriff, dissatisfied with the results of the 2013 transfers, failed to amend its agreement with Local 700 to implement the PAT for DOC to CSD transfers, and instead implemented the PAT after the transferees were on the CSD payroll as a way around the Lunch Premium Award.

After finding the Board has jurisdiction over the allegations in this case, the ALJ concluded the Respondents violated Sections 10(a)(4) and 10(a)(1) when it repudiated the collective bargaining process by its refusal to comply with the Lunch Premium Award and subsequent related awards, and the agreement establishing the DOC to CSD transfer process originally set forth in the Lunch Premium Award which was later incorporated into the parties' collective bargaining

agreement covering the DOC bargaining Unit. The ALJ also determined that the Respondents violated Sections 10(a)(4) and 10(a)(1) by modifying the parties' collective bargaining agreement without complying with the requirements of good faith bargaining set forth in Section 7 of the Act. The ALJ did not consider Local 700's allegations that Respondents conspired with IFOP to discriminate against bargaining unit members represented by Local 700 transferring into the CSD in violation of Section 10(a)(2), because Local 700 did not seek to amend the complaint for hearing and even without Respondent's discriminatory intent, the imposition of the PAT in the transfer process would still violate the Act.

In their exceptions, Respondents contend the ALJ erred in concluding their conduct violated the Act and take issue with a number of the remedies recommended by the RDO. In support of their exceptions, Respondents claim (1) the ALJ erred in finding the Board has jurisdiction over the allegations; (2) because Local 700 was decertified as the exclusive representative of the CSD bargaining unit, it lacks standing to challenge the terms of Respondents agreement with the current bargaining representative, IFOP; (3) the RDO is unlawful because it ignores that IFOP is the duly elected bargaining representative for the CSD bargaining unit; (4) implementation of the PAT with IFOP was not a unilateral change to the terms and conditions of Local 700's collective bargaining agreement with Respondents; (5) Arbitrator Reynolds had no jurisdiction to evaluate the agreement between Respondents and IFOP; (6) the ALJ erred in considering employees who were laid off and bumped into CSD positions; (7) Reynolds Supplemental Award permitted the PAT to be administered at the end of the transfer process; (8) the ALJ's recommendations regarding back pay is not sensible in light of DOC unit members' higher pay; and (9) the ALJ disregarded the Executive Director's partial dismissal order by finding a Section 10(a)(1) violation.

We find that Respondents' exceptions are without merit and fail to provide any compelling reason to reject the RDO. Furthermore, the exceptions and brief in support fail to identify any error or flaw in the ALJ's findings, analysis, or conclusions. The Respondents' first five contentions are unavailing because they focus on the representation of the CSD bargaining unit members rather than the representation of the DOC bargaining unit and thus misapprehend the ALJ's findings.

Moreover, the ALJ's findings as well as the complaint's allegations, were tailored to the allegations regarding the agreement covering the DOC bargaining unit which is represented by Local 700. The ALJ considered the terms of the agreement between Respondent and IFOP as evidence of the Respondent's repudiation of its agreement with Local 700 covering the DOC bargaining unit, not as the subject of Local 700's charge. The ALJ also found that because the IFOP agreement returned transferring DOC unit members who did not pass the PAT to their prior position in the DOC bargaining unit, the terms of Respondents' collective bargaining agreement with Local 700 still applied to those returning members.

Respondents' remaining contentions are likewise unavailing for they merely make bald assertions and are not supported by any factual or legal authority.

We also find Local 700's sole cross-exception concerning its claim that the Sheriff conspired with IFOP to discriminate against Local 700 in violation of Sections 10(a)(2) and 10(a)(1) to be without merit. Local 700 contends the record contained sufficient evidence to establish such a violation and so the ALJ should have amended the complaint to conform to the evidence presented, regardless of whether Local 700 sought such an amendment. The ALJ noted that Local 700 did not seek to amend the complaint, but she also noted that even if the Board were to find there was discriminatory intent, the Respondents conduct would still violate the Act. We

agree. In view of our acceptance of the ALJ's recommendations finding that Respondents' conduct violated the Act, we find no reason to amend the Complaint.

For the above reasons, we accept the ALJ's recommendations in the RDO and adopt them as a decision of the Board subject to the correction regarding the 2011 letter of agreement.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Angela C. Thomas
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting held in Chicago, Illinois, on July 9, 2019; written decision approved at Local Panel's public meeting held in Chicago, Illinois, on August 13, 2019, and issued on August 13, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party,	)	Case No. L-CA-15-042
and	)	
County of Cook and Sheriff of Cook County,	)	
Respondents.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On February 6, 2015, International Brotherhood of Teamsters, Local 700 ("Local 700" or "Charging Party") filed a charge in Case No. L-CA-15-042 with the Local Panel of the Illinois Labor Relations Board (the "Board") alleging that the County of Cook and Sheriff of Cook County (collectively, "Joint Employers" or "Respondents" and individually as "the County" and "the Sheriff" or "the Sheriff's Office") engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), as amended ("the Act"). On July 17, 2015, Charging Party filed an amended charge, and on November 18, 2015, Charging Party filed a second amended charge. On May 23, 2017, the Board's Executive Director issued a complaint for hearing on portions of the charge and a partial dismissal on the remainder of the charge. Charging Party appealed the partial dismissal. In a written decision and order approved by the Board on October 17, 2017, the Board reversed a portion of the partial dismissal and remanded the case for issuance of a complaint on the alleged Section 10(a)(4) and (1) violation. On November 22, 2017, the Executive Director issued a new complaint alleging that the Respondent violated Sections 10(a)(4) and 10(a)(1) of the Act.

The case was heard on February 21, 2018 by the undersigned. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by both parties. Accordingly, after full consideration of the parties' stipulations, evidence, arguments, and upon the entire record of this case, I recommend the following.

I. Preliminary Findings

The parties stipulate and I find:

A. Cook County Sheriff and County of Cook are joint public employers within the meaning of Section 3(o) of the Act.

B. Cook County Sheriff and County of Cook and Local 700 have at all times relevant been subject to the jurisdiction of the Local Panel of the Illinois Labor Relations Board.

C. Local 700 is an exclusive representative within the meaning of Section 3(f) of the Act.

D. Local 700 is a labor organization within the meaning of Section 3(i) of the Act.

E. Since August 2014, the Fraternal Order of Police Labor Council (the "FOP") has been the exclusive representative of a bargaining unit of Court Services Deputies in the Joint Employers' Court Service Department.

F. The Parties held an arbitration before Arbitrator Brian E. Reynolds concerning Grievance T-14-053 on or around March 11, 2015.

G. At all times herein, the Charging Party and Respondents have been parties to a collective bargaining agreement ("CBA") setting out terms and conditions of employment for the employees of the bargaining unit represented by Local 700.

II. Issues and Contentions

The Complaint for Hearing alleges that Respondents violated the Act by repudiating the CBA between Local 700 and the Joint Employers by unilaterally establishing a new qualification requirement or criterion for the transfer of Correctional Officers in the Department of Corrections (DOC) bargaining unit represented by Local 700 to vacant positions in the Court Services Deputies (CSD) bargaining unit represented by the FOP. The new criterion allegedly consisted of the administration of a Physical Agility Test (PAT) to officers transferring from the DOC bargaining unit to the CSD bargaining unit.

The Complaint alleges that the Reynolds Award had determined that Charging Party and Respondents had negotiated a provision in their CBA governing the transfer of DOC officers to the CSD bargaining unit and their reversion to the DOC unit, and that the Respondents had attempted to bargain but failed to achieve a PAT requirement as part of the transfer process. The Complaint further asserts that the Respondents, notwithstanding their unsuccessful attempt to bargain a PAT requirement in negotiations with the Charging Party, nevertheless entered into an agreement with the FOP whereby such a requirement would be imposed on transferring Correctional Officers upon entry into the CSD bargaining unit. This, the Complaint asserts, constituted a unilateral change in terms and conditions of employment as well as a repudiation of the collective bargaining process on the part of the Respondents. The Complaint alleged that, by its actions, Respondents failed and refused to bargain in good faith in violation of Sections 10(a)(4) and (1) of the Act.

Respondents deny that they repudiated the Local 700 CBA and assert that the PAT was a bargained-for condition of employment that applied to former DOC officers only after they became members of the bargaining unit represented by the FOP and that there is no evidence that the PAT

requirements apply during any period of time when an officer is performing services covered by the Local 700 CBA. Respondents therefore contend that Charging Party has no standing to challenge the terms of a collectively-bargained provision entered into between Respondents and the FOP. And, they contend that therefore the Board lacks jurisdiction over Local 700's unfair labor practice charge.

III. Findings of Fact

The Cook County Sheriff's Office has multiple departments, including the Department of Corrections and the Court Services Department. The DOC bargaining unit, represented for collective bargaining by Local 700, consists for the most part of Corrections Officers who serve primarily as guards at the Cook County Jail at 26th and California in Chicago. The CSD bargaining unit, now represented by the FOP but formerly represented by Local 700, consists of Sheriff's Deputies, the majority of whom provide court security for the Cook County court system. As of 2015, there were approximately 1,150 deputies in the CSD unit.

Letter of Agreement Between Local 700 and the Respondents Establishing Process for Transfer of DOC Employees into CSD Bargaining Unit

In 2011, when Local 700 represented the employees in both the DOC and CSD bargaining units, Local 700 and the Respondents entered into a letter of agreement establishing a process to allow DOC employees to transfer into the CSD bargaining unit. The agreement provided, *inter alia*:

> Subject to the state laws governing the Cook County Sheriff's Merit Board and the staffing provisions of the Agreed Order in the federal case *U.S. v. Cook County and the Cook County Sheriff's Office (10-cv-2946),* all Deputy Sheriff vacancies in the Court Services Department will first be filled by sworn employees from the Cook County Department of Corrections who meet all transfer requirements. If not enough sworn staff from the Cook County Department of Corrections meet the transfer requirements to fill all posted deputy sheriff vacancies for a particular transfer process, the Sheriff may hire or transfer applicants from elsewhere to fill those vacancies.

A number of transfer requirements and qualifications were then listed, none of which specifically included passage of the PAT.[1]

Also in 2011, pursuant to an agreement between the Sheriff's Office and William Logan, the President of Local 700 at the time, the qualification requirements for transfer were amended or clarified to include the requirement that a transferring DOC employee pass the PAT. Transfers of DOC employees to the CSD in 2011 and 2012 included the PAT requirement.

Local 700's 2012 Grievance over Lunch Premium Pay to DOC Employees and Arbitrator Reynold's Mediated Lunch Premium Award Issued April 5, 2013

In 2012, Local 700 filed a grievance alleging that the Respondents had failed to pay DOC employees properly for work performed during the lunch period. A hearing before Arbitrator Brian Reynolds was held on November 29, 2012. Thereafter, the parties negotiated a resolution of the grievance, mediated by Arbitrator Reynolds. On April 5, 2013, Arbitrator Reynolds issued the mediated LP Award whereby each DOC unit member received 22 hours of compensatory time off plus other items not directly associated with the lunch period compensation grievance. As Arbitrator Reynolds subsequently concluded, "[t]hese items were a quid pro quo for the Union's acceptance of a far lesser pay amount than it had originally sought."

Among these other items was the elimination of the PAT requirement for employees transferring from the DOC unit to the CSD unit. In 2013, following the issuance of the LP Award, another transfer occurred, this time without administration of the PAT to DOC employees transferring into the CSD.

[1] Under Merit Board rules, new hires into the DOC and CSD must pass a PAT. Once an employee has been hired, however, the PAT is required only for employees transferring into certain specialty units.

Following the 2013 transfers, Arbitrator Reynolds found, the Chief of the CSD Division, Kevin Connelly, was dissatisfied with the results of the transfers. "Several of the transferees were overweight, some retired immediately, and others went on disability." Accordingly, Arbitrator Reynolds determined, Chief Connelly approached the Local 700 representative at the time and proposed to implement a PAT for transfers. In addition, the Sheriff's attorney, Peter Kramer, approached the Union's Chief Steward for the DOC unit, Mark Robinson, on several occasions to request the reinstatement of the PAT provision. Local 700 did not agree.

Certification of FOP as Exclusive Representative of CSD Bargaining Unit in 2014 and PAT Agreement between FOP and the Respondents

In June 2014, the FOP filed a representation petition with the Board seeking to replace Local 700 as the bargaining representative for CSD employees. In his June 8, 2015 award, Arbitrator Reynolds found that one of the campaign promises made by the FOP during the campaign preceding the representation election that followed the filing of the petition was that, if elected, the FOP would ensure that "only DOC employees who passed the PAT could transfer into DOC." As Arbitrator Reynolds summarized the rationale: "Since it is the more senior DOC employees who cannot pass the PAT, this would limit the number of senior DOC employees able to transfer into the CSD Unit. Instead, only the younger physically fit DOC employees, who would not threaten the seniority of the original CSD employees would be able to transfer."

The FOP won the representation election, and, on August 29, 2014, the Board certified the FOP as the exclusive bargaining representative for the CSD unit, replacing Local 700. The Respondents and the FOP then began the bargaining process with respect to the wages, hours, and terms and conditions of employment of CSD employees.

On October 3, 2014, the Respondents and the FOP entered into an agreement regarding the CSD unit that provided:

> Any deputy who enters the bargaining unit after September 2014 will be subject to a physical agility test. The deputies may be given one retest. A deputy who fails the retest shall be returned to his/her prior unit.

On November 14, 2014, the Sheriff's Office announced that it would be conducting another DOC-to-CSD transfer. The December 1, 2014 posting for the transfer included among the requirements that a selected candidate must "successfully complete four week Deputy Sheriff training at Sheriff's Training Institute." The posting then stated:

> A Physical Agility Test (PAT) will be conducted the first day of the required training. All selected candidates will be required to pass the enhanced Physical Agility Test (PAT).

Local 700 PAT Grievance and Arbitrator Reynolds Award Issued June 8, 2015

Local 700 filed a grievance over the PAT requirement, alleging that the requirement violated the CBA between the Respondents and Local 700. On February 6, 2015, the Charging Party filed unfair labor practice charges with the Board, including, but not limited to, the charge that the Respondents violated Sections 10(a)(4) and 10(a)(1) of the Act by including the PAT requirement in its posting.

On February 19, 2015, the Sheriff's Office gave notice that the PAT would be administered on March 3, 2015, the first day of training, to those selected for transfer as a result of the December 1, 2014 posting. On February 21, 2015, Local 700 requested Arbitrator Reynolds to issue an injunctive order restraining the Sheriff's Office from conducting a transfer that included the PAT requirement. On February 25, 2015, Arbitrator Reynolds issued an Interim Compliance Order denying the request for injunctive relief but setting a hearing on the issue for March 11, 2015.

As a result of the December 1, 2014 posting, 550 Corrections Officers applied to transfer from DOC to CSD. Of the 60 most senior applicants, 38 to 40 were moved to CSD. On March 3,

2015, these employees started the training academy and were given a POWER[2] test. Nineteen employees passed the POWER test and another six employees passed the PAT when it was given as a retest two days later. At least four transferring employees – Deputies Jeffley, Ramirez, Trevino, and Washington -- failed the PAT and were returned to the DOC unit.

Following the hearing on the matter, Arbitrator Reynolds issued the Reynolds Award on June 8, 2015. The Arbitrator stated that he was "conducting this proceeding, not pursuant to the grievance process, but pursuant to my retained jurisdiction 'to ensure compliance' with the LP Award, which the parties agreed to."

In the Reynolds Award, the Arbitrator noted that "[i]n fact, the PAT test is not mentioned anywhere in the LP Award. There is no provision either allowing or prohibiting the Employer from using a PAT test in the transfer process." Accordingly, the Arbitrator determined that resolution of the dispute would require him to assess the intent of the provisions.

In the hearing leading to the Reynolds Award, Union Chief Steward Mark Robinson testified that "the main goal of the Union in negotiations for the LP Award was to provide for transfers without a PAT." Based on that evidence, and upon the evidence that the initial transfers following the LP Award did not include the PAT as a minimum qualification, Arbitrator Reynolds found that "the LP Award prohibits the use of a PAT as a requirement for a DOC to CSD transfer. The intent of the LP Award was to not have the PAT as part of the transfer process."

Arbitrator Reynolds then addressed the question as to whether it makes a difference to the analysis if the Sheriff's implementation of the PAT occurs before or after the DOC employees become members of the CSD bargaining unit. As to that question, Arbitrator Reynolds stated:

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[2] The Illinois Law Enforcement Training and Standards Board's "Peace Officer's Wellness Evaluation Report." It is a more rigorous test than the PAT. According to the Reynolds Award, it was administered as a result of a miscommunication; the PAT was administered for the retest.

> While the Employer may be correct that, on its payroll, the employee becomes a member of the CSD Unit on entry to the academy, I don't believe the transfer is complete at that time. While the training academy itself has not been bargained over and is not likely a mandatory subject for bargaining, shifting the passing of a PAT from prior to the academy to immediately on entrance to the academy means that a transferred employee must still pass a PAT prior to working in the CSD, even prior to actually starting the training. In my view, that makes the PAT a transfer criteria which the LP Award prohibits. The Employer has merely shifted the PAT from a transfer qualification to a transfer requirement.

Arbitrator Reynolds concluded that Respondents violated the LP Award by administering a PAT test at the training academy during the process of the transfer of DOC employees into the CSD unit. He determined, however, that because the CSD unit was then represented by the FOP, he would not order a remedy but instead would direct the parties to present arguments as to the appropriate remedy for violation of the LP Award.

> Arbitrator Reynolds Supplemental Order on Appropriate Remedy for Violation of the LP Mediated Award issued October 28, 2015

On October 28, 2015, Arbitrator Reynolds issued his Supplemental Order on the matter of the appropriate remedy for the contract violation he determined had occurred. The Arbitrator noted that "it is apparent that the Teamsters cannot accept a resolution that might show acquiescence in an eventual PAT test on the transferees from their Unit to the CSD unit. It is also apparent that the Employer is obligated to the FOP to impose a PAT on employees sometime after they enter the CSD Unit." As a result, the Arbitrator decided that he would not amend the original LP Award, which he viewed as being the product of the agreement of the parties. But he also decided, based on balancing the competing interests of the effective operations of the CSD with the impact on DOC employees, that he would not revoke the 2015 transfer results, even though the PAT was used as a transfer requirement.

Arbitrator Reynolds noted in his Supplemental Order that the parties had executed a new collective bargaining agreement (CBA), approved by the Board of Cook County Commissioners

on October 7, 2015 and effective from December 1, 2012 to November 30, 2017. The December 1, 2012 CBA incorporated verbatim the language of the Court Services Bid and Transfer Agreement first agreed to in connection with the LP Award. Since the Supplemental Order was issued, the parties have incorporated that same language into a successor CBA, approved by the Board of Cook County Commissioners on January 17, 2018 and effective from December 1, 2017 through November 30, 2020.

In his Supplemental Order, Arbitrator Reynolds directed that Respondents cease and desist from violating the LP Award by requiring passage of the PAT as a job requirement for those employees transferring from DOC to CSD. He also directed that any employee selected for the Spring 2015 transfer who failed the PAT test be included, if he or she chooses, in the next scheduled transfer group.

Transfers from DOC to CSD in 2016/2017

Following the issuance of the Supplemental Order, there has been at least one further transfer opportunity that took place in 2016 or 2017. Some of the employees who applied for transfer at that time were employees who were returned to the DOC as a result of the Spring 2015, transfer decisions. The record is not clear as to whether the employees applying for transfer in 2016/2017 included the four employees identified as having been returned to the DOC unit in the Spring of 2015 because they failed the PAT, nor is it clear as to whether the employees who were returned to the DOC unit and who applied for transfer in 2016/2017 were successful in transferring to the CSD unit.

The 2016/2017 transfers resulted in a class of approximately 40 employees, of whom approximately 12 employees successfully completed all transfer requirements. The record does not disclose who applied, who was ultimately selected, nor, if they were not selected, whether they

were not selected because they failed the PAT. One potentially significant difference between the Spring 2015 transfers and the 2016/2017 transfers, however, is that, in the former case, the PAT was administered within a week of transfer, while in 2016/2017, the test was not administered until the transferees had completed training at the academy.

IV. Discussion and Analysis

The Board Has Jurisdiction Over the Allegations that Respondents' Conduct Violated Sections 10(a)(4) and (a)(1) of the Act.

Respondents assert that the Board does not have jurisdiction over Local 700's unfair labor practice charge. Respondents contend that the PAT requirement applies only to deputies in the FOP bargaining unit and does not apply to any employee while in the Local 700 bargaining unit. Respondents assert that the FOP agreement "confirms the mutual intent of the Employer and the FOP relative to the issue of physical agility testing requirements that will apply to employees who are represented by the FOP and only during such periods as those employees perform services that are covered by the scope of the FOP bargaining unit."

Because the PAT agreement with the FOP applies only to the extent that transferred deputies are members of the CSD bargaining unit, Respondents contend, Local 700 has no standing to object to or resist the application of the PAT agreement. Moreover, Respondents claim, Arbitrator Reynolds had no jurisdiction under the Local 700 Agreement to issue an arbitration award affecting the terms and conditions of employees in the bargaining unit represented by the FOP. As a result, Respondents contend, the Supplemental Order is without effect. And, as noted above, the Respondents assert that the Board therefore lacks jurisdiction to decide this unfair labor practice charge.

Respondents' argument that the Board lacks jurisdiction over this unfair labor practice charge must be rejected. As the Board stated in its written decision reversing the Executive Director's dismissal of the alleged violation of Section 10(a)(4) in this case:

> A respondent repudiates its collective bargaining obligation when its conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working. *City of Loves Park v. Illinois Labor Relations Board State Panel*, 343 Ill.App.3d 389, 395 (2d Dist. 2003), *citing City of Collinsville*, 16 PERI ¶ 155[3] (IL SLRB 2000), *aff'd City of Collinsville v. Illinois State Labor Relations Board*, 329 Ill. App. 3d 409 (5th Dist. 2002). Where the breach is substantial and an employer's stance or argument is without rational justification, one can infer that the employer has repudiated its agreement. *City of Kewanee*, 23 PERI ¶ 110 (IL SLRB 1999); *Chi. Trans. Auth.*, 15 PERI ¶ 3018 (IL LLRB 1999).

Cook Cnty. and Sheriff of Cook Cnty., 34 PERI ¶ 72 (IL LRB- LP 2017). And as the Board duly noted, "the Board generally lacks jurisdiction to enforce negotiated agreements and, by extension, grievance settlements and arbitration awards." *Id.* But, it said, "'where a party's failure to abide by such an agreement is so egregious and lacking in good faith as to amount to a repudiation of the collective bargaining process, its conduct will be deemed a violation of the statutory obligation to bargain in good faith.'" *Id.* (*citing, inter alia, State of Ill., Dep't of Cent. Mgmt. Serv. (Envt'l Prot. Agency)*, 14 PERI ¶ 2005 (IL SLRB 1997)).

Although Respondents correctly note that the Board lacks the authority to directly review and enforce an arbitration award, "[i]n certain circumstances, such as failure to comply with an award where no judicial review has been sought, . . . a failure to comply with an arbitration award could constitute an unfair labor practice under the language of Section 10(a)(4) of the Act." *Ill. Dept's of Cent. Mgmt. Serv., Revenue, Corr. and Mental Health*, 3 PERI ¶ 2033 (IL SLRB 1987), *aff'd. sub nom. Am. Fed'n of State, Cnty. & Mun. Emps. v. State of Ill., Dep't of Corr.*, 192 Ill.

[3] This may be a citation error. The Board's decision in *City of Collinsville* is found at 16 PERI ¶ 2026 (IL SLRB 2000).

App. 3d 108 (1st Dist. 1989). The Board and the Illinois Appellate Court have long held that the Board possesses the authority to review and enforce such an award when it is alleged that a party's failure to abide by the award constitutes an unfair labor practice within the meaning of the Act because in failing to comply with the award it is also failing to comply with that process by which the award was reached. *See Dep't of Cent. Mgmt Serv. (Dep't of Corr.) v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 222 Ill. App. 3d 678, 685-86 (1st Dist. 1991); *Cnty. of Tazewell*, 19 PERI ¶ 39 (IL LRB-SP 2003); *City of Loves Park*, 18 PERI ¶ 2073 (IL LRB-SP 2002), *aff'd City of Loves Park v. Ill. Labor Relations Bd., Local Panel*, 343 Ill. App. 3d 389 (2d Dist. 2003).

In *Chi. Trans. Auth.*, 15 PERI ¶ 3018 (IL LLRB 1999), the employer unsuccessfully sought to eliminate guarantees to employee shift structure and overtime provisions in its CBA with the union representing the employees. During the term of the CBA, the employer nevertheless implemented changes to the shift schedules and overtime provisions. The Board stated,

> [t]he Respondent's actions not only violated the contractual provisions regarding work day length, overtime and past practice, they demonstrated the Employer's disregard for the collective bargaining process and seriously call into question the Employer's good faith with respect to the rest of the collective bargaining agreement. The Employer's actions thus constituted a contract breach substantial enough to indicate a repudiation of the terms of the collective bargaining agreement and of the collective bargaining process thereby violating Section 10(a)(4) of the Act.

Id. The Board explained that the issue there before it was whether the employer violated its duty to bargain by implementing changes to the employees' working conditions despite having unsuccessfully attempted to negotiate for those same changes, not the interpretation of a disputed contract term. *Id*. The Board held, "the Employer's lack of good faith toward the entire collective bargaining *process* is at issue here. This matter is therefore properly before us." *Id*. (emphasis in original).

Similarly, here the question is whether Respondents' actions in refusing to comply with, or evading the provisions of, the Lunch Premium Award that it negotiated with Charging Party constitute a repudiation of the collective bargaining process, and therefore an unfair labor practice under the Act. The General Assembly mandated the Board to determine such questions and, unquestionably, the Board has jurisdiction to decide charges of unfair labor practices. 5 ILCS 315/5, 10, 11 (2016); *Chi. Trans. Auth.*, 15 PERI ¶ 3018. Contrary to Respondents' contention, the Board has jurisdiction to decide whether Respondents' conduct at issue here constitutes an unfair labor practice.

Respondents' Conduct Violated Section 10(a)(4) and (a)(1) of the Act

Section 10(a)(4) of the Act provides that it is an unfair labor practice "for an employer or its agents . . . to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." 5 ILCS 315/10(a)(4) (2016). "[T]he breach of [a] settlement agreement or the bad faith negotiation of [a] settlement agreement . . . constitutes violations of sections 10(a)(1) and 10(a)(4) of the Act." *City of Burbank v. Ill. State Labor Relations Bd.*, 185 Ill. App. 3d 997, 1005 (1989). As the Appellate Court instructed in *City of Loves Park*, 343 Ill. App. 3d at 395:

> When an employer's conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct constitutes repudiation and violates Section 10(a)(4).

The Complaint in this case alleges that Respondents' conduct violated Section 10(a)(4) and 10(a)(1) of the Act. The Union, in its post-hearing brief, argues that Respondents' conduct constitutes an independent violation of Section 10(a)(1) of the Act. However, in its order remanding a portion of the Executive Director's dismissal of the charge for hearing, the Board

directed the Executive Director to issue a complaint alleging that Respondents' conduct violated Section 10(a)(4) and, derivatively, Section 10(a)(1) of the Act. Specifically, the Board directed "[t]he Complaint should also include a derivative alleged violation of Section 10(a)(1) of the Act, but the Charging Party has offered insufficient evidence that the Complaint should also include an independent Section 10(a)(1) allegation."[4] Charging Party did not request to amend the complaint to allege an independent Section 10(a)(1) violation prior to the hearing, at hearing, or in its post-hearing brief. Accordingly, I will analyze this matter as alleged in the complaint.

Charging Party contends that Respondents violated the Act by engaging in conduct that prevented the parties' grievance procedure from functioning and thereby preventing Arbitrator Reynolds from ordering an effective dispute resolution remedy. By entering into a secondary and subsequent agreement with the FOP to include the PAT in the transfer process, Charging Party asserts, Respondents engaged in conduct that not only had a reasonable tendency to interfere with rights of DOC employees under the Act but that actually did interfere with those rights. In addition, Charging Party contends, the inclusion of the PAT in the transfer process deterred some DOC employees from seeking to transfer and restrained others with medical issues that would not allow them to take the PAT. Finally, by entering into the agreement with the FOP that allowed the PAT to be conducted as part of the transfer process, the Charging Party asserts, the Respondents limited the ability of the Union to obtain, and the Arbitrator to order, an effective remedy.

[4] Section 10(a)(1) of the Act provides that it is an unfair labor practice for an employer to interfere in the exercise of protected rights guaranteed by the Act. 5 ILCS 315/10(a)(1) (2016). To establish a claim under section 10(a)(1), the employees must show that the employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of their rights under the Act. *Chi. Trans. Auth. v. Ill. Labor Relations Bd.*, 386 Ill. App. 3d 556, 572-73 (1st Dist. 2008).

Charging Party contends that exclusion of the PAT from the transfer process was a bargained-for benefit, in consideration for which the Union gave concessions in negotiating the terms of the LP Award. Respondents, Charging Party asserts, did not want to honor their agreement with Local 700 and so engaged in conduct that they intentionally designed to avoid compliance with that agreement and that they knew would nullify a bargained-for benefit.

According to Charging Party, the implementation of the PAT by means of the Respondents' agreement with the FOP was a unilateral change in terms and conditions of employment. Although Respondents contend that the PAT applies only to individuals in the FOP bargaining unit, Charging Party says that is a false characterization and, in fact, the only individuals affected by the FOP agreement are members of the Local 700 bargaining unit who seek to transfer to the CSD. That Respondents knew that Local 700 was the proper bargaining agent for negotiating any change in transfer requirements, Charging Party contends, is evidenced by the bargaining history. Thus, Respondents first bargained the PAT provision with William Logan, then-President of Local 700, then bargained for the exclusion of the PAT as part of the LP Award, and then approached Local 700 to modify the terms of the LP Award to allow the reintroduction of the PAT into the transfer process. Only when Respondents failed to secure Local 700's agreement to the reintroduction of the PAT did Respondents enter into an agreement with the FOP on the subject.

Charging Party contends that Respondents conspired with the FOP to discriminate against members of Local 700 by including language in the FOP agreement that provided that it is applicable only to transfers into the unit after September 2014. As a practical matter, Charging Party says, that language limits the applicability of the provision to members of the Local 700 bargaining unit. As an example of discrimination, Charging Party cites the agreement to transfer

Court Service Sergeants into the CSD bargaining unit without requiring them to take the PAT. This, Charging Party argues, gives FOP-represented transfers preference over Local 700 transfers, despite the language of the Court Service Transfer Agreement that gives first preference to Local 700 transfers.

As the appropriate remedy, Charging Party asserts that the Board should order Respondents to rescind their agreement with the FOP. Local 700 would suffer more harm, Charging Party says, by allowing the FOP agreement to stand than the FOP would suffer by rescission of the agreement. Moreover, Local 700 says, it has no recourse for enforcement of their agreement with Respondents other than the issuance of remedial orders by the Board.

In addition to ordering rescission of the FOP agreement regarding the PAT, Charging Party requests that any employee who was adversely affected by the PAT requirement should be allowed to transfer into the CSD unit if he still wishes to do so. Such relief should be allowed to the employee if he sought a transfer and met and continues to meet the criteria for transfer (other than the PAT) but was not transferred.

Here, it is undisputed that Charging Party and Respondents negotiated a provision, as part of their 2008-2012 CBA, to allow DOC employees to transfer into the CSD unit. It is likewise undisputed that, prior to the issuance of the Lunch Premium Award, the parties had agreed that a physical agility test would be required of employees desiring to transfer. As Arbitrator Reynolds determined,[5] however, the PAT requirement was removed from the transfer provisions in the

[5] Arbitrator Reynolds' interpretation of the provisions of the collective bargaining agreement between Local 700 and Respondents is an authoritative interpretation of the CBA. *Griggsville-Perry Cmty. Unit Sch. Dist. No. 4 v. Ill. Educ. Labor Relations Bd.*, 2013 IL 113721, ¶ 18; *Am. Fed'n of State, Cnty. & Mun. Emps. v. Dep't of Cent. Mgmt. Serv*s., 173 Ill. 2d 299, 329 (1996); *Cnty. of Lake*, 28 PERI ¶ 67 (IL LRB-SP 2011) (arbitral construction of contractual provision becomes binding part of parties' agreement); *Ill. Dep'ts of Cent. Mgmt. Servs., Revenue, & Mental Health*, 3 PERI ¶ 2033 (question of interpretation of CBA is question for arbitrator) (*quoting*

negotiated LP Award. Moreover, as Arbitrator Reynolds found, this removal was a working conditions benefit obtained by Local 700 as *quid pro quo* for concessions made by Local 700 in the negotiations between the parties that produced the LP Award. Therefore, according to Arbitrator Reynolds, the transfer provisions, excluding the PAT requirement, became part of the collective bargaining agreement between Local 700 and Respondents from and after the LP Award.

It is well settled that "a public employer violates the statutory duty to bargain in good faith when it repudiates a clear and undisputed grievance settlement agreement." *Cnty. of Cook (Office of Pub. Defender)*, 13 PERI ¶ 3005 (IL LLRB 1997) (*citing, inter alia, Cnty. of Cook*, 11 PERI ¶ 3021 (IL SLRB 1995); *Winnebago Cnty.*, 7 PERI ¶ 2041 (IL SLRB 1990); *State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corr.)*, 4 PERI ¶ 2043 (IL SLRB 1988). And a refusal to comply with an arbitration award, while failing to seek judicial review of the award for which the Act provides, constitutes a repudiation of the duty to bargain in good faith in violation of Section 10(a)(4). *City of Markham*, 11 PERI ¶ 2019 (IL SLRB 1995).

In this case, Respondents not only violated Arbitrator Reynolds' Supplemental Order directive to cease and desist from violating the LP Award by continuing to include passage of the PAT as a job requirement for the transfer of DOC deputies to the CSD unit, but they have continued to insist on their right to violate that directive despite having validated the contract language upon

United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 596 (1960) ("[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator"). As the United States Supreme Court has said, the grievance and arbitration procedure gives "meaning and content" to the collective bargaining agreement and is "part and parcel of the collective bargaining process itself." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578, 581 (1960).

which the directive is based by agreeing to include that same language, without modification, in the 2017-2020 Local 700 CBA.

As discussed above, Respondents' primary defense, that they have negotiated the PAT provision with the FOP, lacks merit and is unavailing. At the time that the PAT provision was negotiated with the FOP, Respondents had notice of the LP Award. While the FOP negotiations took place before the issuance of the Reynolds Award, it is noteworthy that Respondents make no claim that they did not understand the negotiated LP Award to have included the elimination of the PAT requirement. Indeed, the evidence is to the contrary: not only did the 2013 transfers take place without a PAT requirement, but Chief Connelly and attorney Peter Kramer thereafter approached Local 700 about reinstating the requirement. Even before the Reynolds Award was issued, therefore, Respondents were on notice that they had made a deal with Local 700 that they proceeded to try to countermand by making a conflicting agreement with the FOP.

Then, following Arbitrator Reynolds' authoritative interpretation of the LP Award, at least one other transfer involving administration of the PAT took place. While the Sheriff's Office decided to administer the PAT at the end of training, as opposed to the beginning of training, that change was a distinction without a difference, for in either case an employee failing the test is returned to the DOC unit.

The evidence is clear that Respondents not only violated, but repudiated, the arbitration awards issued by Arbitrator Reynolds concerning the PAT requirement. Had Respondents wished to challenge the awards in good faith, there is a statutory procedure for doing so. In *Illinois Departments of Central Management Services, Revenue, Corrections and Mental Health*, 3 PERI ¶ 2033, the Board held that it is not an unfair labor practice for a party to fail to comply with an arbitration award if that party seeks in good faith to request judicial review of the award in

accordance with the procedures set forth in the Act. As noted in *City of Markham*, 11 PERI ¶ 2019, "[t]he required procedures for seeking judicial review of an arbitration award under the Act is the procedure pursuant to the Illinois Uniform Arbitration Act, 710 ILCS 5/1 *et seq.* (1993)." As was the case in *City of Markham*, however, there is no evidence that Respondents ever sought to vacate any of the Reynolds awards in accordance with the Uniform Arbitration Act's procedures. Here, viewing the overall conduct of Respondents, it is clear they sought to escape the obligations placed upon them by the Reynolds awards by entering into an agreement with the FOP that conflicted with those obligations.

Moreover, Respondents' conduct manifests a contract modification without complying with the good faith bargaining requirements for such a modification that are contained in Section 7 of the Act. Section 7 of the Act provides in pertinent part:

> The duty "to bargain collectively" shall also mean that no party to a collective bargaining contract shall terminate or modify such contract, unless the party desiring such termination or modification:
>
> > (1) serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof, or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;
> > (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;
> > (3) notifies the Board within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time; and
> > (4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days after such notice is given to the other party or until the expiration date of such contract, whichever occurs later.

5 ILCS 315/7 (2016). Section 7 of the Act defines the parties' duty to bargain, and a public employer violates Section 10(a)(4) of the Act when it fails to honor the terms of the CBA. *City of*

Chi., (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997).[6] While Respondents correctly observe that they had a duty to bargain with the FOP, they had no duty to agree, and the presence of a conflicting provision in the Local 700 agreement meant that they were not free to agree until or unless they had fulfilled their duty to bargain with Local 700 over the proposed contract modification that the FOP agreement effectuates. But for Respondents' agreement with the FOP to include the PAT as part of the transfer process once a transferee is placed on the CSD payroll, there could be no doubt about the fact that Respondents repudiated the Local 700 CBA by refusing to honor their agreement with Local 700 concerning the PAT.

Here, there is no evidence that Respondents followed any of the steps required by the Act to modify the contract. At best, the evidence shows that the Sheriff asked the Charging Party to reinstate the PAT and that Local 700 refused. This does not fulfill Respondents' bargaining obligation under the Act. So, rather than go through the required steps, Respondents simply side-stepped the Local 700 contract and negotiated a PAT provision with the FOP.[7]

And as explained above, the record is clear that Respondents did not seek court review to set aside the LP Award, the Reynolds Award, or the Supplemental Order within the applicable 90-day period for filing such an action provided by the Uniform Arbitration Act, 710 ILCS 5/1, *et seq.*, (2016), which is the mechanism provided by the Act for vacating an arbitration award. 5

[6] Similarly, under the National Labor Relations Act (NLRA), the refusal to honor a contract provision is considered to be a "contract modification" in violation of Section 8(d) of that Act, which is the federal analog to Section 7. 29 U.S.C. § 158(d); s*ee St. Vincent Hosp.*, 320 NLRB 42 (1995) (employer modified collective bargaining agreement by terminating health insurance plan, despite fact that it was clear intent of parties that health insurance plan be included as contract benefit and "there [was] absolutely no indication of a contrary intent").

[7] In making this observation, I do not discount the mutual interests that led the FOP and the Respondents to come to their agreement on the administration of the PAT to transferees. I merely note that this condition of employment was not one that the Respondents were free to negotiate without regard to the previously negotiated agreement with Local 700.

ILCS 315/8 (2016). Respondents' argument relating to the jurisdiction of the Arbitrator, or, more properly, the arbitrability of the issue, therefore, is waived. *See Vill. of Posen v. Ill. Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329 ("[t]o preserve for judicial review the issue of whether a claim was subject to arbitration, a party must object in a timely manner. . . . Through the operation of waiver, a party may be bound by an award that otherwise would be open to attack."); *McKinney Restoration Co., Inc. v. Ill. Dist. Council No. 1*, 392 F.3d 867, 869 (7th Cir. 2004) ("[i]t is well-settled law in this circuit that 'the failure to challenge an arbitration award within the applicable limitations period renders the award final,'" *citing Int'l Union of Operating Eng'rs, Local 150, AFL-CIO v. Centor Contractors, Inc.*, 831 F.2d 1309, 1311 (7th Cir. 1987)).

Respondents also contend, without citation to authority, that "[j]ust as the FOP cannot bind the Teamsters' members to any terms and conditions of employment during periods when those employees are represented by the Teamsters, the Teamsters similarly are precluded from restricting the FOP from applying properly negotiated terms and conditions to the FOP members during periods in which the individuals are properly represented by the FOP." This might be a colorable argument if it were not for the fact that both the Local 700 agreement and the FOP agreement have reversionary rights provisions, whereby a DOC employee who transfers into the CSD unit and then fails the PAT, as well a "second chance" retest, is returned to the DOC unit. If a DOC employee exercises his contractual right to transfer to the CSD, but then fails the test that his union has agreed with his employer that he should not have to take, the consequence for that employee is that he is returned to the DOC unit. Because an employee's transfer to the CSD unit is necessarily conditional, the employee retains an interest in the terms and conditions afforded employees in the DOC unit until or unless his transfer becomes permanent.

Perhaps in an effort to weaken the transferred employees' nexus between the two units, the 2016/2017 transfer procedure changed the timing of the administration of the PAT from the first day of training to after completion of academy training. While this change increases the Sheriff's investment in the transferred employees and thus increases the incentive either to wash out undesirable transferees for other reasons during training or to hope that they pass the PAT, the change in timing of administration does not change the analysis. Whether the PAT is given on the first day of training or after the completion of training, there is still a nexus between the two units sufficient to retain Charging Party's contractual interest in the conditions applicable to the transfer process.

Respondents also advance two other contentions. The first is that the Local 700 agreement contains a provision entitling an employee whom the Sheriff's Office decides to return to the DOC unit to challenge the decision on the basis of lack of just cause, and that challenge opportunity provides an adequate remedy for the perceived violation. Charging Party resists this argument on several grounds, primarily because reliance on individual just cause determinations in lieu of refusal-to-bargain sanctions would endorse Respondents' repudiation of their agreement with Local 700.

But there are other reasons to deem such a resolution inadequate. In the first place, it is unclear what basis an arbitrator would have to overturn a decision to return an employee to the DOC unit solely because he failed the PAT. While it might be surmised that an employee could challenge the test on the ground that it was not administered fairly, this is not the same thing as challenging the legitimacy of giving the test at all. And in the second place, it does not address Charging Party's other concerns, including the allegation that some employees would be deterred

from requesting a transfer because of the PAT and the allegation that other employees would not receive medical clearance from their doctors to take the test.

The second of these other contentions is that, in the last negotiations between the parties, Respondents agreed to wage scales for DOC deputies that increased the wage differential favoring DOC employees in comparison with CSD employees. One of the objectives, the testimony suggested, was to encourage DOC employees to remain in the DOC unit rather than seek transfers. But while this may be a legitimate objective, it is by no means a *quid pro quo* for eliminating Local 700's opposition to the PAT, if for no other reason than the fact that Local 700 did not agree to any such tradeoff.

Having concluded that Respondents' repudiated the collective bargaining process though their unlawful refusal to comply with a duly issued and unchallenged arbitration award and unlawful repudiation of a collectively bargained contract provision, I do not reach Charging Party's contentions that Respondents conspired with the FOP to discriminate against Local 700 members seeking to transfer into the CSD in violation of Section 10(a)(2) of the Act. First, the complaint does not allege a Section 10(a)(2) violation and as noted above, Charging Party never sought to amend the complaint. Moreover, with respect to the issue of discrimination, it matters not, in light of the facts of this case, whether the FOP agreement discriminates against Local 700 members or not; even were I to find that there was no discriminatory intent or effect in agreeing to the PAT requirement, the imposition of that requirement on transferring Local 700 members still would violate the Act.

V. Conclusions of Law

A. Respondents violated Sections 10(a)(4) and 10(a)(1) of the Act when they repudiated the parties' CBA by (1) unilaterally instituting a transfer requirement affecting the

terms and conditions of employees in the bargaining unit represented by Charging Party that Respondents had tried and failed to obtain by agreement with Charging Party; (2) negotiating with another union to institute that transfer agreement, without the consent of Charging Party; and (3) refusing to comply with arbitration awards issued pursuant to the CBA, even though Respondents did not seek to set aside the awards under the provisions of the Uniform Arbitration Act.

B. The Respondents violated Sections 10(a)(4) and 10(a)(1) of the Act by means of an unlawful modification of the CBA between the Charging Party and the Respondents that took place without the Respondents having complied with the requirements of good faith bargaining set forth in Section 7 of the Act.

VI. Recommended Order

A. Respondents are hereby ordered to cease and desist from:

(1) Failing to bargain collectively and in good faith with Charging Party with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.

(2) Refusing to comply with the Lunch Premium Award, the Reynolds Award, and the Supplemental Order issued by Arbitrator Brian Reynolds pursuant to the grievance and arbitration provisions of the Collective Bargaining Agreement ("CBA") between Charging Party and Respondents.

(3) Requiring that employees seeking to transfer from the DOC bargaining unit represented by Local 700 to the CSD bargaining unit represented by the FOP take or pass a PAT at any time, however styled or named, to effectuate or complete such a transfer.

(4) Failing or refusing to honor, in any respect, the provisions of the CBA that govern the transfer of employees from the DOC unit to the CSD unit, including, but not

limited to, those provisions that exempt transferring DOC employees from the requirement that they take or pass a PAT.

(5) 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 action designed to effectuate the purposes of the Act:

(1) make whole any employee who was adversely affected by the violations of the Act found to have taken place in this case, including: (a) back pay in the form of lost wages and benefits, if any, incurred by having been denied transfer or prevented from transferring into the CSD unit because of the PAT requirement, with interest at seven percent per annum, in accordance with Section 11(c) of the Act; (b) preferential future opportunities to transfer from the DOC unit to the CSD unit, not in conflict with the provisions of the CBA; and (c) such other and further relief as may be warranted in individual circumstances in order to effectuate the purposes of the Act and the provisions of this remedial order.

(2) preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of back pay due under the terms of this decision;

(3) post, for 60 consecutive days, at all locations where such informational notices are posted, copies of the Notice attached to this document. Respondents will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

(4) Notify the Board in writing, within 20 days from the date of this decision, of what steps Respondents have taken to comply herewith.

VII. Exceptions

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the 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 March 7, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Sharon Purcell

Sharon Purcell
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-15-042

The Illinois Labor Relations Board, Local Panel, has found that the County of Cook and Sheriff of Cook County has violated the Illinois Public Labor Relations Act (Act) and has ordered us to post this Notice. We hereby notify you that the 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 failing to bargain collectively and in good faith with International Brotherhood of Teamsters, Local 700 with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.

WE WILL cease and desist from refusing to comply with the Lunch Premium Award, the Reynolds Award, and/or the Supplemental Order issued by Arbitrator Brian Reynolds pursuant to the grievance and arbitration provisions of the Collective Bargaining Agreement (CBA) between International Brotherhood of Teamsters, Local 700 and County of Cook and Sheriff of Cook County.

WE WILL cease and desist from requiring that employees seeking to transfer from the DOC unit to the CSD unit take or pass a PAT at any time, however styled or named, to effectuate or complete such a transfer.

WE WILL cease and desist from failing or refusing to honor, in any respect, the provisions of the CBA that govern the transfer of employees from the DOC unit to the CSD unit, including, but not limited to, those provisions that exempt transferring DOC employees from the requirement that they take or pass a PAT.

WE WILL cease and desist in any like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in the Act.

We will take the following affirmative action designed to effectuate the purposes of the Act:

WE WILL make whole any employee who was adversely affected by the violations of the Act found to have taken place in this case, including: (a) back pay in the form of lost wages and benefits, if any, incurred by having been denied transfer or prevented from transferring into the CSD unit because of the PAT requirement, with interest at seven percent per annum, in accordance with Section 11(c) of the Act; (b) preferential future opportunities to transfer from the DOC unit to the CSD unit, not in conflict with the provisions of the CBA; and (c) such other and further relief as may be warranted in individual circumstances in order to effectuate the purposes of the Act and the provisions of this remedial order.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of back pay due under the terms of this decision.

Date: _____ County of Cook and Sheriff of Cook County
(Employers)

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

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(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.