STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party	)	
and	)	Case No. L-CA-16-065
County of Cook and Sheriff of Cook County,	)	
Respondent	)	

ORDER

On August 15, 2019, Administrative Law Judge Michelle N. Owen, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its February 6, 2020 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 6th day of February 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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/s/Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 15, 2016, International Brotherhood of Teamsters, Local 700 (Local 700 or Union) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the County of Cook (County) and Sheriff of Cook County (Sheriff) (collectively, Respondents) 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 (Act). The charge was investigated in accordance with Section 11 of the Act. On May 18, 2016, the Board's Executive Director issued a complaint for hearing.

A hearing was conducted on March 9 and 10, 2017, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs.[1] After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find:

1. The Respondents are joint public employers within the meaning of Section 3(o) of the Act.

[1] Administrative Law Judge Deena Sanceda, who conducted the hearing in this case, left the employ of the Board. Subsequently, the case was administratively transferred to the undersigned to render a decision. Both parties consented to the undersigned issuing a recommended decision and order based on the record created before Administrative Law Judge Sanceda.

2. Local 700 is a labor organization within the meaning of Section 3(i) of the Act and an exclusive representative within the meaning of Section 3(f) of the Act.
3. The Local Panel of the Board has jurisdiction to hear and decide this matter and issue a decision on the merits.
4. On March 22, 2016, and thereafter, the Respondents published Cook County Merit Board (Merit Board) decisions on the Sheriff's website.
5. On or about April 15, 2016, and thereafter, the Respondents published video footage on the Sheriff's website in connection with related Merit Board decisions.
6. The Respondents have continued to post and update Merit Board decisions and video footage on the Sheriff's website since the filing of the charge and complaint in this case.
7. The following individuals are now or were formerly members of the Union: James R. Anderson, John Bailey, Darrell Bolton, Robert J. Cosimini, Steven Cruz, Jeffrey Farrell, Juan Licea, Jr., Catherine McClendon, Robert McClendon, Jaime Mireles, Joel Mireles, Branden Norise, Lawrence O'Rourke, Rico Palomino, Matthew Robinson, Christopher Rosenhagen, Roy Salas, Christian Vasquez, Jose Vargas, and Luis Zuniga.

II. ISSUES AND CONTENTIONS

There are three issues in this case. The first issue is whether the Respondents violated Sections 10(a)(4) and (1) of the Act by posting on the Sheriff's website Merit Board decisions and videos relating to those decisions without giving the Union notice and an opportunity to bargain over the decision or its effects.

The second issue is whether the Respondents violated Sections 10(a)(3), (2), and (1) of the Act by posting on the Sheriff's website the Merit Board decision and video relating to Correctional Officer Luis Zuniga's Merit Board proceeding in retaliation for his involvement in prior Board proceedings.

The third issue is whether the Respondents violated Sections 10(a)(2) and (1) of the Act by posting on the Sheriff's website Merit Board decisions and videos relating to those decisions in order to discourage membership in Local 700 and otherwise discriminate against Local 700.

The Union asserts that the Respondents unlawfully implemented unilateral changes to a mandatory subject of bargaining and presented the Union with a *fait accompli* in violation of Sections 10(a)(4) and (1) of the Act when they posted Merit Board decisions and related videos on

the Sheriff's website without providing the Union notice or an opportunity to bargain. The Union argues that the posting of Merit Board decisions and related videos constitute changes to the scope of discipline, and changes to the scope of discipline are material changes to the working conditions of employees. The Union further asserts that the postings raise privacy and safety concerns for employees and therefore impact wages, hours, and terms and conditions of employment. The Union contends that it demanded to bargain over the Respondents' decisions to post Merit Board decisions and related videos on the Sheriff's website and the effects of those decisions. The Union acknowledges that the Sheriff has an obligation to comply with the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq.,("FOIA"), but the Union argues that the decision to post Merit Board decisions and related videos is unrelated to the Sheriff's obligations under FOIA. Further, the Union contends that there is no indication in the record that bargaining was not possible or that it would have been burdensome to the Sheriff.

Next, the Union argues that the Respondents violated Sections 10(a)(3), (2), and (1) of the Act by posting on the Sheriff's website the Merit Board decision and related video of Zuniga's Merit Board proceeding in retaliation for Zuniga providing testimony and information in two prior Board proceedings. The Union asserts that the Respondents had knowledge of Zuniga's protected activity, took an adverse action against Zuniga by posting the Merit Board decision and related video, and posted the Merit Board decision and related video in retaliation for Zuniga providing testimony and information in two prior Board proceedings.

Additionally, the Union asserts that the Respondents violated Sections 10(a)(2) and (1) of the Act by posting on the Sheriff's website Merit Board decisions and videos relating to those decisions in order to discourage membership in Local 700 and otherwise discriminate against Local 700. The Union asserts that three-fourths of the individuals involved in the decisions posted on the Sheriff's website were Local 700 members and that all of the videos posted were of Local 700 members. The Union asserts that despite the Respondents being on notice as to the adverse effects on Local 700 members, the Respondents disproportionately targeted Local 700 members.

The Respondents admit that they did not bargain with the Union prior to posting the Merit Board decisions and related videos. However, the Respondents contend that they had no obligation to bargain over the postings because the postings are not mandatory subjects of bargaining. The Respondents assert that the postings do not affect wages, hours, and terms and conditions of employment. Further, the Respondents assert that the posting of Merit Board decisions and related

videos does not involve a departure from previously established operating practices, effect a change in the conditions of employment, or result in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities. The Respondents assert that there has been no material change to the existing practice or procedure because the Merit Board decisions and videos are public records under FOIA and have always been available to the public.

Alternatively, the Respondents contend that the posting of Merit Board decisions and related videos is a matter of inherent managerial authority because it affects the Sheriff's functions and standards of service and concerns policy decisions which are intimately connected with the Sheriff's governmental mission. Moreover, the Respondents assert that the benefits of bargaining are outweighed by the burdens that bargaining imposes on the Sheriff because the posting of Merit Board decisions and related videos are intimately connected with the Sheriff's mission to serve as custodian of the courthouse and jail, protect the peace, and act as supervisor of safety for the county.

Additionally, the Respondents do not dispute that Correctional Officer Zuniga engaged in protected activity. However, the Respondents assert that the Union failed to establish that the Respondents had knowledge of Zuniga's protected activity. Additionally, the Respondents contend that the posting of Zuniga's Merit Board decision and related video is not an adverse action. Moreover, the Respondents assert that the decision to post the Merit Board decision and related video of Zuniga's Merit Board proceeding was not motivated by Zuniga's protected activity but rather by the Respondents' desire to increase transparency and restore public confidence in law enforcement.

Likewise, the Respondents assert that Local 700 and its members were not targeted by the Sheriff in the posting of Merit Board decisions and related videos, the posting of Merit Board decisions and related videos is not an adverse action, and the Respondents were not motivated by anti-union animus. The Respondents contend that they post decisions of all employees, not just members of Local 700.

III. FINDINGS OF FACT

Introduction

The Respondents employ approximately 3,500 correctional officers who are members of Local 700. The principal function of the correctional officers is to provide security at the Cook

County Jail. The Respondents and the Union are parties to a collective bargaining agreement with an effective date of December 1, 2012, through November 30, 2017.

The Sheriff's primary duty is to act as conservator of the peace of Cook County. In addition, the Sheriff is responsible for the custody and care of the courthouse and jail. The Sheriff is also required to prevent crime and maintain the safety of Cook County citizens. Further, the Sheriff may be held liable for his or her subordinates' neglect or omission of duties.

There are some 2,400 stationary video cameras, plus hand-held cameras and body cameras in use at the Cook County Jail. As such, employees are subject to being videotaped while on duty. As Chief Policy Officer for the Sheriff Cara Smith testified, "the majority of our compound is under video surveillance." Video evidence can be used in disciplinary actions against employees, but it can also be used to exonerate employees in the event of a person detained at the jail committing an alleged assault of an employee.

During all relevant times, the Sheriff has been subject to an agreed order with the United States Department of Justice which set forth 77 provisions with which the Sheriff was required to comply, including use of force, disciplinary processes, and sanitation at the Cook County Jail. By virtue of the Agreed Order, the Sheriff was under a legal duty to maintain records that, in accordance with Illinois law, are public records.

Under Illinois law (55 ILCS 5/3-7002, et seq.), the Sheriff is without authority to impose, on his own, discipline consisting of termination or a suspension of more than 30 days. Instead, if the conduct in question is such that discipline of this magnitude is warranted, the Sheriff must file a complaint with the Merit Board for adjudication. A hearing is then held before the Merit Board. If the Merit Board determines that the conduct in question occurred and that discipline is warranted, the Merit Board has the statutory authority to impose the appropriate discipline.

The Merit Board's members are appointed by the Sheriff and confirmed by the County Board of Commissioners. At hearings before the Merit Board, the Sheriff is represented by the Cook County State's Attorney's Office, and the employee may be represented by counsel. Merit Board hearings are open to the public. Upon completion of the hearing, the Merit Board is charged with issuing a written decision concerning the alleged misconduct and the appropriate discipline, if any. The Merit Board's decision is subject to administrative review, filed by either party, by the Circuit Court of Cook County.

"Transparency Initiative"

Sometime prior to March 29, 2016, the Sheriff received a FOIA request from the Better Government Association (BGA) requesting records related to all excessive force cases from 2008 to the present.

On March 22, 2016, the Sheriff began to post Merit Board decisions on the Sheriff's website. Some of the Merit Board decisions that were posted concerned alleged use of force by correctional officers. On or about April 15, 2016, the Sheriff began to post video footage related to the Merit Board decisions on the Sheriff's website. Not all of the Merit Board decisions that are posted have related video footage. Prior to the posting of Merit Board decisions in March 2016, the Sheriff had never posted disciplinary decisions on the Sheriff's website.

According to Chief Policy Officer Smith, there was and continued to be "unprecedented" focus on law enforcement activities in the months leading to and following the release of the video showing the shooting of Laquan McDonald by an employee of the Chicago Police Department in November 2015. Smith testified that the Sheriff had been evaluating the extent to which it was transparent about its disciplinary process, wanted to ensure that the public had faith in the Sheriff and its staff, and wanted to create transparency. Smith testified,

> I was anticipating that the sheriff's office was going to begin receiving and be under the same scrutiny that the Chicago Police Department and other police departments have been under since the end of 2015. So I was spending an enormous amount of time thinking about how to protect our staff and our office and ensure that our policies and procedures and systems were strong and could be defended. So I -- the posting of the videos and the transparency initiative was in the works for at least since the beginning of 2016, if not December '15 going forward.

Smith recommended to the Sheriff, who ultimately approved her recommendation, to post on the Sheriff's website Merit Board decisions and video footage of incidents related to Merit Board decisions. The recommendation was termed the "transparency initiative." Smith further testified that the Sheriff had received a FOIA request from an outside entity "that I was certain was going to be very difficult and have a very difficult impact on our staff, and we wanted to – you know, we accelerated the timeline that we were using and pushed forward and got this initiative off the ground in April – I think we went forward April 15th of 2016." Smith also worked closely with the federal monitors and the United States Department of Justice to establish a use of force review unit and video monitoring unit and to install approximately 2,400 cameras at the jail.

FOIA & Redactions To Merit Board Decisions And Related Videos

The Sheriff is a "public body" under FOIA. Under Section 1.2 of FOIA, a statutory presumption exists that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2. Information that is exempt from disclosure under FOIA is listed under Sections 7 and 7.5. 5 ILCS 140/7 and 7.5.

On December 3, 2014, FOIA was amended, in part, to offer this option to public bodies:

Sec. 8.5. Records maintained online.

> (a) Notwithstanding any provision of this Act to the contrary, a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.

5 ILCS 140/8.5(a).

According to Chief Policy Officer Smith:

> We get numerous and voluminous Freedom of Information Act requests for every single aspect of our disciplinary process. We are engaged in disputes with requesters who want more detailed information about the disciplinary histories of our staff. We object vehemently to disclosing anything other than what we have to under the law with respect to disciplining our staff. So we – it's tough to be a public employee. It's tough to have everything about you subject to review by anyone who wants to look at it. So we try to be as transparent as we can while protecting our staff as much as we can.

The Respondents contend that it would be a "substantial burden" for the Sheriff to engage in compiling, reviewing, and copying duplicative records in order to respond to individual FOIA requests, including the BGA request, and that the Sheriff, therefore, has elected to take advantage of the option offered by Section 8.5(a) of FOIA.

With respect to Merit Board decisions and the videos, Chief Policy Officer Smith testified that:

> They're inherently public documents…. As to the document and video itself, again, there are some redactions we can make or we can assert as to within the documents, but the documents themselves are public.

When asked about the types of information that can be redacted from Merit Board decisions and related video, Smith testified:

> Generally, I think victim information is redacted. We blur victim faces in video, whether our officers are the victims or the detainee victim. And I'd have to look at each case, but there could be private information or information that would be an invasion of personal privacy that we might redact. But, generally, victim information is redacted.

Smith testified that the Respondents also redact witness names, complainant names, and other information exempt from disclosure under Illinois privacy laws. However, some of the Merit Board decisions posted on the Sheriff's website contain names of family members, names of witnesses, and family details, which have not been redacted.[2] Conversely, some decisions posted on the Sheriff's website have this type of information, as well as phone numbers and names of minors, redacted. Kramer testified that the "executive staff" makes the decision on which information will be redacted. The Respondents' legal representatives then implement the actual redactions.

The related videos of Merit Board decisions that are posted on the Sheriff's website do not always accurately identify the officer at issue. In a video labeled "Joel Mireles (OPR 2013-0081)," the video shown is not of Correctional Officer Mireles, but rather Correctional Officer Darrell Bolton.

Correctional Officer Zuniga

In January 2012, Correctional Officer and Local 700 member Zuniga was involved in an incident in which Zuniga was alleged to have used excessive force against an individual detained at the jail. On November 14, 2014, Zuniga testified, at Local 700's request, in Case No. L-CA-14-063 (Martinez ULP) before this Board.[3] On November 18, 2014, the Respondents placed Zuniga on unpaid administrative leave for the alleged use of excessive force.[4] That same day, the Respondents issued a complaint against Zuniga, seeking his termination. On March 4, 2015, Local 700 filed a charge in Case No. L-CA-15-047 alleging that the Respondents violated Sections 10(a)(3), (2), and (1) of the Act by placing Zuniga on unpaid administrative leave and then pursuing discharge proceedings against him for his involvement in Case No. L-CA-14-063.

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[2] The Merit Board decisions of Correctional Officer William Burruss and Sonjia Dennis-Brown that were posted on the Sheriff's website included names of witnesses which were not redacted. The Merit Board decision of Correctional Officer Sandra Hatten that was posted on the Sheriff's website included family details, names of family members, and names of witnesses which were not redacted.

[3] Cnty. of Cook & Sheriff of Cook Cnty., Case No. L-CA-14-063, 31 PERI ¶ 199 (IL LRB-LP G.C. 2015) (Respondents violated Section 10(a)(1) of the Act when they denied Correctional Officer Martinez his Weingarten rights at an investigatory interview).

[4] Cnty. of Cook & Sheriff of Cook Cnty., Case No. L-CA-15-047, 34 PERI ¶ 101 (IL LRB-LP 2017).

Zuniga's Merit Board hearing was held on October 20, 2015, November 24, 2015, and January 5, 2016.

On February 22, 2016, the Merit Board issued a decision finding that the evidence presented, including video evidence, showed that Zuniga violated the rules and regulations of the Sheriff by using excessive force and failing to report the use of force and granting the Sheriff's complaint for termination.

On May 9, 2016, Zuniga testified in Case No. L-CA-15-047 before this Board. Chief Policy Officer Smith, who at that time was the Executive Director of the Cook County Department of Corrections, also testified on behalf of the Respondents in Case No. L-CA-15-047. Smith had issued a recommendation in which she agreed with the assistant executive director that Zuniga be placed on unpaid administrative leave pending the Merit Board action.

On June 20, 2017, Administrative Law Judge Sanceda issued her decision in Case No. L-CA-15-047 recommending the dismissal of the unfair labor practice charge. On December 13, 2017, this Board issued its decision in Case No. L-CA-15-047 upholding, with modification, the administrative law judge's determination that the Respondents did not violate Sections 10(a)(3), (2), or (1) when they placed Zuniga on unpaid administrative leave and sought his termination from the Merit Board. Cnty. of Cook & Sheriff of Cook Cnty., 34 PERI ¶ 101.

At hearing in this case, Chief Policy Officer Smith testified that she had no knowledge of Zuniga's involvement or testimony in prior Board proceedings when recommending the transparency initiative.

Posting of Merit Board Decisions & Videos

On March 22, 2016, the Respondents began posting Merit Board decisions, dating back to January 2015, on the Sheriff's website. The Merit Board decisions that were posted included the decision granting the Sheriff's complaint for termination of Zuniga. Except for decisions issued prior to March 22, 2016, Merit Board decisions are posted at the time they are issued by the Merit Board.

In late March 2016, Local 700 member and Chief Union Steward Mark Robinson received an email from Local 700 president Becky Strzechowski notifying Robinson that Merit Board decisions were being posted on the Sheriff's website.

On March 23, 2016, the Union filed a class-action grievance and issued a demand to bargain over the release of the Merit Board decisions. The grievance asserted that the

Respondents' conduct constituted a change in the terms and conditions of employment that had not been negotiated with the Union. The grievance further asserted that the Respondents' conduct violated, among other provisions, Section 15.1(f) of the Parties' collective bargaining agreement, which provides: "[s]hould it be necessary to reprimand an Employee, management will attempt to administer such reprimand so as to not unduly cause embarrassment to the Employee (example: never on roll call or in the presence of an inmate or visitor."

On March 29, 2016, representatives of the Union received an e-mail message from Peter Kramer, the Special Counsel for Labor Affairs for the Sheriff, in which he stated that the Sheriff had received a FOIA request from the BGA requesting records relating to all excessive use of force cases from 2008 to the present. Kramer further stated in his e-mail message that the Sheriff "will begin producing the paper files (on a rolling basis) late Wednesday or early Thursday" and "begin producing the videos related to these sustained files by the end of the week". Kramer went on to state:

> Although we are still researching the issue, we do not believe there is a basis to redact or blur faces on the videos so in all likelihood the videos will be produced to the BGA without blurring faces. These files, including the videos will also be posted on our website. As a courtesy, the employees involved in the sustained incidents will be sent an email later today advising that we have received the BGA FOIA and we will be providing responsive documents to the BGA.
>
> Also, in an effort to increase transparency, going forward, we will begin posting on our website videos of incidents as close to real time as possible.

Later that same day, Cass Casper, then attorney for the Union, sent a responsive e-mail message to Kramer objecting to the "distribution of confidential employee matters on the Sheriff's website." Casper went on to demand that the Sheriff cease and desist from posting the Merit Board decisions on the Sheriff's website and bargain over the decision and its effects. Notwithstanding the Union's objection, the Sheriff continued posting Merit Board decisions on its website.

On April 12, 2016, representatives of the Union met with Special Counsel for Labor Affairs Kramer in a meeting that lasted approximately 15 to 20 minutes. Kramer asked the Union representatives to state their concerns, which they did. Chief Union Steward Mark Robinson testified that the Union concerns related to:

> [H]ow it could impact witness testimony or individuals coming forward to act as witnesses, discipline, if there was a need to actually put it out in the first place, what was their reason behind it, redacting – we had – we understood if they

> had to do some things, that was fine, but we wanted to ensure that we were protecting the identity of witnesses as soon as possible.
>
> We asked that they redact the faces on the video of other officers that were responding to include the individuals who was alleged to have done something wrong. You know, the reports that they were putting out, we wanted names and names of family members in some cases redacted, especially while the entire process was going on. … We wanted to protect their identity as much as possible.

At the meeting, the Union representatives suggested that the Respondents redact officers' names, witnesses' names, family member names, and any other personally-identifying information. The Union also suggested that the Respondents blur faces. Kramer told the Union representatives that he would get back to them. The Union representatives did not consider the meeting to be a bargaining session.

On April 14, 2016, the Chicago Sun-Times newspaper published an article announcing that the Sheriff would be releasing excessive force videos on the Sheriff's website.

On or about April 15, 2016, the Sheriff began posting on the Sheriff's website video footage of incidents related to Merit Board decisions, including the related video of Correctional Officer Zuniga's Merit Board proceeding. That same day, the Union filed the charge in this case.

Sometime during the month of April 2016, according to Special Counsel for Labor Affairs Kramer, the Sheriff held a meeting with "three of the biggest unions"[5] to discuss possible changes to the Sheriff's approach to the release of Merit Board decisions and videos. "[A]s a result of that [meeting] and some other stuff", Kramer testified, "there were a number of suggested changes to us to make that we then implemented." Kramer further testified that "I think there were some redactions initially, but the unions were requesting additional ones, which we considered and I think we agreed to." The Sheriff, however, retained the ultimate authority as to the redactions that would be made. Kramer testified at hearing that the Sheriff did not attempt to bargain the issues of posting Merit Board decisions and related videos with the Union prior to posting the decisions and videos.

On or about May 24, 2016, the Sheriff began posting video footage of individuals detained at the jail committing alleged assaults and/or batteries of correctional officers. According to Chief

[5] The record is not clear as to whether Local 700 was present at this meeting, although the record is clear that the correctional officers represented by Local 700 account for more than half of the Sheriff's sworn staff. The record is also not clear as to whether the April meeting testified to by Special Counsel Kramer is the same meeting as the meeting described by Chief Union Steward Robinson.

Policy Officer Smith, the Sheriff was able to reach a "consensus" with the Union as to these postings, including giving prior notice to the correctional officer involved, obtaining his or her approval, and blurring the image of the officer's face on the video. In contrast to Merit Board decisions and related videos, which are posted upon issuance of the Merit Board decision, videos of individuals detained at the jail committing alleged assaults and batteries of employees are released when criminal charges are filed against the individuals detained.

IV. DISCUSSION AND ANALYSIS

A. Sections 10(a)(4) And (1) Violations

The Respondents did not violate Sections 10(a)(4) and (1) of the Act when the Sheriff posted Merit Board decisions and related videos on the Sheriff's website because the postings are not a mandatory subject of bargaining.[6]

Under Section 7 of the Act, parties are required to bargain collectively over employees' wages, hours, and other terms and conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed'n of State Cnty. & Mun. Emps., Local 268, 122 Ill. 2d 353, 362 (1988); Am. Fed. of State, Cnty. & Mun. Emps. v. State Labor Relations Bd., 190 Ill. App. 3d 259, 265 (1st Dist. 1989). An employer violates its duty to bargain in good faith, and therefore Sections 10(a)(4) and (1) of the Act, when it makes a unilateral change to a mandatory

[6] In a factually similar case, on May 29, 2018, an administrative law judge of the Board issued a Recommended Decision and Order in Case No. L-CA-16-079 finding that the City of Chicago, Department of Police did not violate Sections 10(a)(4) and (1) of the Act, when it began posting on the Independent Police Review Authority's website video footage regarding investigations into police officer misconduct as part of the City of Chicago's "transparency policy." Fraternal Order of Police, Lodge #7 & City of Chicago (Dep't of Police), 35 PERI ¶ 148 (IL LRB-LP 2019). The administrative law judge determined that the transparency policy did not concern a mandatory subject of bargaining. Id. She found that the policy involved the terms and conditions of employment of bargaining unit members because it was a departure from previously established practices. Id. She also found that the policy implicated the City's inherent managerial authority because the policy was integral to the City's mission to maintain the public's confidence in its police officers and the integrity of investigations into allegations of officer misconduct. Id. Additionally, she found that the burdens imposed on the City's inherent managerial authority outweighed the benefits of bargaining because the policy only affected the terms and conditions in the narcotics division, whereas the objectives of the policy furthered the City's mission to provide effective police services by helping to maintain trust and openness between the police department and the public it serves. Id. Finally, she rejected the charging party's contention that the policy was a mandatory subject because the parties had already bargained over a body worn camera pilot program because evidence that parties bargained over one topic alone does not necessarily mean that a related topic is mandatory. Id. On March 12, 2019, after hearing oral arguments on the case, the Board issued a decision holding the case in abeyance pending the outcome of the parties' negotiations for a successor agreement. Id.

subject of bargaining without granting prior notice to and an opportunity to bargain with the exclusive representative. Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill., 284 Ill. App. 3d 145, 155 (1st Dist. 1996).

In Cent. City Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496 (1992) ("Central City"), the Court set forth a three-part test for determining whether an employer's decision or action constitutes a mandatory subject of bargaining under the Act. The first part of the test asks whether the matter concerns wages, hours, and terms and conditions of employment. Id. at 523. If the answer is no, the inquiry ends, and the employer is under no duty to bargain. Id. If the answer is yes, the second part of the test asks whether the matter is also one of inherent managerial authority. Id. If the answer is no, the inquiry ends, and the matter is a mandatory subject of bargaining. Id. If the answer is yes, the Board must weigh the benefits that bargaining will have on the decision-making process against the burdens that bargaining will impose on the employer's authority. Id. If the benefits of bargaining outweigh its burdens, then the subject is a mandatory subject of bargaining; otherwise, the topic is not a mandatory subject of bargaining. Id.

Here, the decision to post Merit Board decisions and related videos on the Sheriff's website is not a mandatory subject of bargaining because it does not concern employees' terms and conditions of employment. However, even assuming that the postings do concern employees' terms and conditions of employment, the benefits that bargaining will have on the decision-making process do not outweigh the burdens that bargaining imposes on the Respondents' managerial authority.

1. Wages, Hours, and Terms and Conditions of Employment

The Sheriff's decision to post Merit Board decisions and related videos on the Sheriff's website does not concern unit employees' wages, hours, and terms and conditions of employment because the Sheriff's decision does not involve a departure from previously established operating practices; effect a change in conditions of employment; or result in significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for employees.

A management action concerns wages, hours, and terms and conditions of employment if it (1) involves a departure from previously established operating practices, (2) effects a change in conditions of employment, or (3) results 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 191, 208 (1998); Int'l Bhd. of Teamsters, Local 700 v. Ill. Labor Relations

Bd., 2017 IL App (1st) 152993, ¶ 33 (sheriff's order that employees may not associate with individuals who were gang members subjected employees to potential discipline and therefore involved a change to the terms and conditions of employment); Cnty. of Cook v. Ill. Labor Relations Bd., 2017 IL App (1st) 153015, ¶ 46 (sheriff's order modifying secondary employee policy departed from previously established practices, implemented a material change to the existing policy which impaired an employee's ability to maintain a second job, and subjected employees to discipline).

Here, the posting of Merit Board decisions and videos on the Sheriff's website does not involve a departure from previously established operating practices. See City of Belvidere, 181 Ill. 2d at 208-09 (fire department employer did not depart from previously established practices when it contracted out paramedic service because private ambulance companies had historically provided emergency medical services in cooperation with fire department employees, and contract with private ambulance company did not change the quantity or kind of work performed by fire department employees); Cnty. of Cook, 2017 IL App (1st) 153015, at ¶ 54 (employer departed from previously established practices and implemented a material change to the existing policy when the employer changed the criteria for obtaining approval to work a second job and imposed a new annual disclosure requirement). Here, it is undisputed that prior to March 2016, the Sheriff did not post Merit Board decisions and related videos on the Sheriff's website. However, the posting of these decisions and videos does not constitute a departure from the Respondents' previously established operating practice because Merit Board decisions and videos were previously available to the public through FOIA requests. It is undisputed that Merit Board decisions and related videos are public documents. It is likewise undisputed that the Sheriff has the legal obligation to produce them in response to a FOIA request. It is also undisputed that Section 8.5(a) of FOIA gives a public body, including the Sheriff, the option, although not the obligation, to post public documents on its website in lieu of individualized productions in response to FOIA requests. 5 ILCS 140/8.5(a). The fact that these Merit Board decisions and videos may be more readily available to the public because they are now available on the Sheriff's website does not constitute a departure from previously established operating practices. Moreover, the Respondents' operating practices in regard to discipline have not been affected by the postings. The disciplinary process remains the same. As such, the Union has failed to establish that the postings involve a departure from previously established operating practices.

Additionally, the posting of the decisions and videos does not effect a change in the employees' conditions of employment. See City of Belvidere, 181 Ill. 2d at 209-10 (employer's decision to contract out paramedic service did not effect a change in firefighters' conditions of employment when firefighters continued to provide emergency medical services and respond to emergency calls and when decision did not result in elimination of firefighter positions, reduction in hours or wages, loss of potential work, or loss of promotional opportunities). Here, the employees' duties, wages, and hours have not changed as a result of the posting of Merit Board decisions and videos. Also, the postings have not caused a loss of potential work or promotional opportunities for employees. See Id. at 209. However, the Union contends that the postings involve changes to the scope of discipline, which "have historically been identified as material changes to the working conditions of employees," citing Vill. of Westchester, 16 PERI ¶ 2034 (IL SLRB 2000). Here, however, the posting of Merit Board decisions and videos does not involve changes to the scope of discipline; rather, the postings involve the dissemination of information relating to prior discipline but falling within the existing scope of discipline. See Vill. of Summit, 28 PERI ¶ 154 (IL LRB-SP 2012) (employer's use of surveillance camera footage as a basis for disciplining employees did not constitute a material change where cameras were in plain view, the union and the employees were aware of both function and presence of cameras, and employer did not impose any new disciplinary rules and procedures); Cnty. of Cook v. Ill. Labor Relations Bd., Local Panel, 347 Ill. App. 3d 538, 551-52 (1st Dist. 2004) (new residency requirement which subjected employees to potential discipline affected employees' terms and conditions of employment). Additionally, as noted above, the disciplinary process remains unchanged by the postings.

Further, here, the record did not show that the posting of Merit Board decisions and videos has any effect on the employees' job tenure, employment security, or reasonably anticipated work opportunities. See City of Belvidere, 181 Ill. 2d at 210-11. The Merit Board decisions and videos are released after the Merit Board issues its decision. The Union, however, contends that the postings affect employees' privacy and safety. Yet, as noted above, Merit Board decisions and videos were previously accessible to the public through FOIA requests. Thus, any concerns related to privacy and safety are without merit.

Thus, the first prong of the Central City test is not satisfied.

2. Inherent Managerial Authority

The decision to post Merit Board decisions and related videos is a matter of inherent managerial authority.

Section 4 of the Act provides that matters of inherent managerial authority include "such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees." 5 ILCS 315/4. Illinois courts have noted that this "statutory list is not exhaustive, but it establishes the characteristics of managerial rights that are not subject to mandatory bargaining." Fraternal Order of Police, Chicago Lodge No. 7 v. Ill. Labor Relations Bd., Local Panel, 2011 IL App (1st) 103215, ¶ 23 (citing Bd. of Trs. of the Univ. of Ill. v. Ill. Educ. Labor Relations Bd., 224 Ill. 2d 88, 104 (2007)). The second prong of the Central City test requires the employer to "link the objective of the challenged policy with a core managerial right." Cnty. of Cook, 2017 IL App (1st) 153015, ¶ 56.

In this case, the Respondents have sufficiently linked the objective of posting Merit Board decisions and videos—increasing transparency around employee discipline and use of force and ensuring that the public has faith in the Sheriff—with the Sheriff's mission to serve as the custodian of the courthouse and jail, protect the peace, and act as the supervisor of safety for the county. Here, the Sheriff was subject to an Agreed Order issued by a federal court whereby conditions of confinement, including the use of force by correctional officers, was monitored. By virtue of the Agreed Order, the Sheriff was under a legal duty to maintain records that, in accordance with Illinois law, are public records. These records included the decisions of the Merit Board and related videos taken by the many cameras available for producing such recordings. The performance of this legal duty is within the Sheriff's inherent managerial authority.

Further, the Sheriff was subject to numerous and voluminous requests under FOIA for the release of its public records. By virtue of an amendment to FOIA that went into effect in December of 2014, the Sheriff was given the option to post public records, including the Merit Board decisions and related videos, on its website, rather than undergo the process of locating, compiling, and producing records on a case-by-case basis. The right to select this option, which decreases the burden on office staff and thus increases the efficiency of the Sheriff, is within the Sheriff's inherent managerial authority.

Notably, the time constraints for complying with a FOIA request are stringent. Section 3(d) of FOIA requires compliance with a document request within five business days, with the opportunity to extend the deadline by another five days if certain conditions are met and special provisions for voluminous requests. 5 ILCS 40/3 and 3.6. Failure to adhere to the time deadlines can lead to fines and other sanctions. See Cunniff v. Cook Cnty. Sheriff's Office, Cook County Circuit Court Case No. 2014 CH 18780, 2017 WL 1424484 (March 17, 2017). Taking appropriate steps to avoid fines and penalties for failure to comply with statutory obligations is a management right.

Moreover, Section 4 of the Act provides that matters of inherent managerial authority include standards of services. Here, the services provided by the Sheriff include the custodial services rendered on behalf of the public to house people detained at the Cook County Jail. In conjunction with the rendering of custodial services, the Sheriff is obligated by law to produce public documents relating to the discharge of its legal responsibilities in this area. Under Section 4 of the Act, the Sheriff has the discretion and authority to make decisions relating to this public duty, including the exercise of legal options pertaining to the disclosure of documents under FOIA. Thus, the decision to post Merit Board decisions and related videos is a matter of inherent managerial authority.

3. The Balancing

The benefits of bargaining the decision to post Merit Board decisions and related videos do not outweigh the burdens bargaining would impose on the authority of the Sheriff.

The third prong of the Central City balancing test requires weighing the benefits that bargaining would have on the decision-making process against the burdens that bargaining would impose on the Respondents' authority. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009). "As a general matter, the balance favors bargaining where the issues are amenable to resolution through the negotiating process, i.e., where the union is capable of offering proposals that are an adequate response to the employer's concerns." Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-SP 2014). On the other hand, "the balance favors unilateral decision-making where the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide." Id., citing Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992) ("the scope of bargaining in the public sector must be determined with regard to the

employer's statutory mission and the nature of the public service it provides") and State of Ill. (Dep'ts. of Cent. Mgmt. Servs. & Corrs.), 5 PERI ¶ 2001 (IL SLRB 1988), aff'd by Am. Fed. of State, Cnty. & Mun. Emps., 190 Ill. App. 3d 259. Thus, "the benefits of bargaining are minimal when the employer's decision effects a fundamental change in the manner in which the employer conducts its business." Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114.

Here, as evidence that the posting of Merit Board decisions and videos was amenable to bargaining, the Union points to the fact that it was able to bargain with the Respondents over the posting of videos showing individuals detained at the jail committing alleged assaults and batteries of correctional officers. However, the fact that the Respondents agreed to bargain over the posting of videos showing individuals detained committing alleged assaults and batteries does not compel a conclusion that the posting of Merit Board decisions and videos is a mandatory subject of bargaining. The Act requires bargaining over mandatory subjects of bargaining but does not prohibit parties from bargaining over permissive subjects of bargaining. See Troopers Lodge #42, Fraternal Order of Police, 33 PERI ¶ 30 (IL LRB-SP 2016) ("parties can *choose* to bargain over permissive subjects of bargaining") (emphasis in original). Moreover, the issue of whether the posting of videos showing individuals detained at the jail committing alleged assaults and batteries of correctional officers is a mandatory subject of bargaining is not before me.

In further support of its position, the Union points to several issues that it contends were amenable to the bargaining process, among them Merit Board decisions "containing information regarding personal romantic relationships, parental statuses, making it public knowledge that the employee's children were born of a parent with a criminal background." The Union also points to errors in identification (for example, one correctional officer was misidentified in connection with a video relating to another correctional officer's misconduct), failure to update decisions on the website, and cases in which redactions were not properly made, resulting in the naming of witnesses and family members. Thus, the Union asserts, "there is no indication in the record before this Board that there was any problem or issue so urgent that bargaining was not a possibility."

However, the record establishes that the publication of Merit Board decisions and related videos are intimately connected to the governmental mission of the Sheriff and that collective bargaining over these postings would diminish the ability of the Sheriff to accomplish its mission. See Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114. First, the Merit Board decisions and related videos were posted on the website as part of the "transparency initiative" of

the Sheriff, the product of an internal evaluation of the use of force and employee accountability. As the Respondents state, "[t]he Sheriff's Office had internally evaluated its own disciplinary processes and outcomes … and sought to increase transparency and ensure that the public had faith in the Sheriff's Office." Such internal evaluation was in aid of the effective administration of the Sheriff, which falls within the Sheriff's inherent managerial authority.

Also, while the Union could (and did) offer suggestions to the Sheriff regarding such issues as the redaction of documents[7] and blurring of videos, the law is clear that an employer and exclusive representative cannot, by collective bargaining, limit the scope of documents subject to disclosure under FOIA. See Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago, 2016 IL App (1st) 143884. In Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago, a section of the parties' collective bargaining agreement required the destruction of records of police misconduct after four years. The court held that this provision could not be used to prevent the disclosure under FOIA of records older than four years, noting that the Illinois General Assembly has declared it to be the public policy of the State of Illinois "that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records *as expediently and efficiently as possible* in compliance with this Act." Id. at ¶ 34 (emphasis added), citing 5 ILCS 140/1. The Court added that "[a]s with any contract, a court may not enforce a collective-bargaining agreement in a manner that is contrary to public policy." Fraternal Order of Police, Chicago Lodge No. 7, 2016 IL App (1st) 143884, ¶ 35, quoting Am. Fed'n of State, Cnty. & Mun. Emps. v. Dep't of Cent. Mgmt. Servs., 173 Ill. 2d 299, 318 (1996).

Here, the Union contends, nevertheless, that the correctional officers who are the subjects of the Merit Board decisions and related videos have a privacy interest that the Union could help to protect through prior bargaining. However, in Fraternal Order of Police, Chicago Lodge No. 7, 2016 IL App (1st) 143884, at ¶ 29, the Court dealt with a similar argument in relation to complaint registry files maintained by the Chicago Police Department. The Court stated in that case:

> Plaintiff suggests that the privacy rights of Chicago police officers should be balanced against the public's interest in disclosure under the FOIA. However, our General Assembly has already engaged in the necessary balancing of the privacy rights of individuals against the public's right to access government

[7] The parties concede that the Sheriff's Merit Board is an adjudicative body that is independent of the Sheriff. However, the record is not clear as to the extent to which the Sheriff has authority, whether as a product of collective bargaining or otherwise, to edit the decisions produced by the Merit Board.

> information by providing certain exemptions to disclosure under the FOIA. Moreover, with respect to public employees, section 7(1)(c) of the FOIA expressly states that "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2012).

Id. Under FOIA, the obligation to produce documents lies with the public body, and the responsibility in the first instance for making decisions relating to exemptions likewise falls upon the public body. As such, the Union's contention is without merit.

Since the burdens on the Respondents of mandating bargaining over the postings outweigh the benefits of bargaining, and because the Sheriff is under a legal duty to provide records of Merit Board decisions and related videos "as expediently and efficiently as possible", I find that the postings are not a mandatory subject of bargaining and that the Sheriff was not obligated by the Act to bargain over them with the Union.

Having determined that the Respondents had no duty to bargain over the decision to post Merit Board decisions and related videos on the Sheriff's website, I now address the issue of whether the Respondents had a duty to bargain over the effects of the decision. I find that there was no such duty.

"Where a decision of managerial prerogative impacts employees' terms and conditions of employment, an employer cannot, as a general matter, implement the decision with first bargaining its effects." Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114, citing Cnty. of Cook (Juvenile Temp. Det. Ctr.), 14 PERI ¶ 3008 (IL LLRB 1998), State of Ill., Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2001, aff'd by Am. Fed'n of State, Cnty. & Mun. Emps., 190 Ill. App. 3d 259. However, not every impact of the exercise of a managerial prerogative requires bargaining. Decatur Bd. of Educ., Dist. No. 61 v. Ill. Educ. Labor Relations Bd., 180 Ill.App.3d 770, 781 (4th Dist. 1989) ("nothing contained in this opinion should be taken to indicate that all cases, where impact is present, are subject to bargaining"). Rather, effects bargaining is required only where the effects are distinguishable from and not the inevitable consequences of the decision itself. Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114.

In this case, the "effects" identified by the Union – consisting of the redacting of identifying information and blurring of faces – are indistinguishable from the decision itself, leading to the conclusion that the Union's real objective was to bargain over the decision itself. See Id. ("the Union identified no bargainable effects because each proposal presented by the Union challenges

the underlying decision and the Respondent's undisputed managerial authority to transfer employees.")

Moreover, the inevitable consequence of posting Merit Board decisions and related videos on the Sheriff's website is that these records, although they are public records that are available to anyone who requests them, necessarily become more easily accessed by even casual visitors to the website. Given the public policy issues involved and the constraints on bargaining imposed by FOIA, bargaining would not change the inevitable consequence of the postings.

Finally, there is a consideration here that also played a significant role in the Board's decision in Vill. of Summit, 28 PERI ¶ 154. In that case, the Board found no duty to bargain over the use of video surveillance footage in disciplinary cases, stating that "we do not see how the Respondent's merely evidentiary use of the video footage, from surveillance cameras whose presence was already well known to both the employees and the Charging Party, constitutes a material change in the employees' terms and conditions of employment which would trigger a duty to bargain." Id. In addressing the duty to bargain over the effects, the Board in Vill. of Summit distinguished the New York Public Employment Relations Board's decision in Niagara Frontier Transit Metro Sys., 36 PERB ¶ 3036 (NY PERB 2003), where the board found that the employer had a duty to bargain over the effects of a decision to use video footage from a camera installed on a bus as a basis for disciplining the driver. Vill. of Summit, 28 PERI ¶ 154. The Board, in Village of Summit, pointed out that the board in Niagara Frontier Transit Metro Sys. did not require the employer to rescind the discipline. Id. In Village of Summit, the Board noted that in contrast, "[u]nder Illinois law, the finding of a duty to bargain over either the decision to use video footage in support of discipline, or the impact of that decision, would necessitate rescission of the discipline issued, and require employers in similar circumstances to forestall the imposition of discipline pending completion of negotiations." Id., citing Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997).

Similarly, here, a finding of a duty to bargain over the impact of the decision to post Merit Board decisions and related videos on the Sheriff's Department website would require removal of the postings from the website pending the completion of effects bargaining. This would run counter to the Sheriff's legal duty to comply with its public records production obligations "as expediently and efficiently as possible." I, therefore, find no duty on the part of the Respondents to bargain over the effects of the posting decisions. Thus, the Respondents did not violate Sections

10(a)(4) and (1) of the Act when they posted Merit Board decisions and related videos on the Sheriff's website without notice to or bargaining with the Union.

B. Alleged Retaliation

The Respondents did not violate Sections 10(a)(3), (2), or (1) of the Act when they posted on the Sheriff's website the Merit Board decision and video relating to Zuniga's Merit Board or when they posted on the Sheriff's website Merit Board decisions and videos of Local 700 members generally.

Section 10(a)(3) of the Act prohibits an employer from discharging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, petition or charge, or provided information or testimony under the Act. Section 10(a)(2) of the Act prohibits an employer from discriminating against an employee in order to encourage or discourage membership in or other support for any labor organization. Section 10(a)(1) of the Act prohibits an employer from interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act. Where, as in this case, the alleged violations of Sections 10(a)(1) are based on the same conduct as the 10(a)(3) and 10(a) (2) violations, the Section 10(a)(1) violations are considered to be derivative, that is, deriving from and not independent of the Section 10(a)(3) and 10(a)(2) violations. City of Chicago, 31 PERI ¶ 129 (IL LRB-LP 2015); State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Aid), 10 PERI ¶ 2006 (IL SLRB 1993). Thus, in this case, a 10(a)(1) violation can be found only if the Respondents are found to have violated Section 10(a)(3) and/or 10(a)(2). Vill. of Univ. Park (Police Dep't), 35 PERI ¶ 52 (IL LRB-SP 2018). Under Sarah D. Culbertson Mem'l Hosp., 25 PERI ¶ 11 (IL LRB-SP 2009), an employer's adverse action against an employee because of the employee's testimony under the Act also violates Section 10(a)(2) if the employer's intention was to discourage union activity, membership, or support.

To establish a violation of Section 10(a)(3), the Union must prove that 1) the employee signed or filed an affidavit, petition or charge or provided any information or testimony under the Act, 2) the employer was aware of the employee's conduct, 3) the employer took adverse action against the employee, and 4) the employer took that action because of the employee's involvement in protected, concerted activities. City of Burbank v. Ill. State Labor Relations Bd., 128 Ill. 2d 335, 346 (1989); Cnty. of Cook v. Ill. Labor Relations Bd., 2012 IL App (1st) 111514, ¶ 25; Vill. of Univ. Park, 35 PERI ¶ 52. The same four-part analysis applies to a Sections 10(a)(2) allegation, except that the charging party must demonstrate that the employee engaged in union or protected,

concerted activity. Vill. of Ford Heights, 26 PERI ¶ 145, citing City of Burbank, 128 Ill. 2d at 345.

The fourth element requires a finding that the adverse action was "based in whole or in part on antiunion animus—or … that the employee's protected conduct was a substantial or motivating factor in the adverse action." Id., quoting NLRB v. Transp. Mgmt. Corp., 462 U.S. 393, 401 (1983); Cnty. of Cook, 2012 IL App (1st) 111514, ¶ 25. Motive is a question of fact, and, therefore, the Board may infer discriminatory motive from either direct or circumstantial evidence. City of Burbank, 128 Ill. 2d at 345. Unlawful motive may be inferred from a variety of factors including expressions of hostility toward union or protected, concerted activity; the timing of the adverse action in relation to the occurrence of the protected, concerted activity; any pattern of the employer's conduct directed at those engaging in protected, concerted activity; shifting explanations for the employer's actions; inconsistency in the reasons given for its action against the employee as compared to other actions by the employer; and the employer's expressed hostility toward protected, concerted activity in conjunction with knowledge of the employee's protected concerted activities. Id. at 346; Pace Suburban Bus Div. of the Reg'l Transp. Auth. v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 484, 497 (1st Dist. 2010).

1. Zuniga

Here, the Union asserts that the Respondents violated Sections 10(a)(3), (2), and (1) when they posted the Merit Board decision and video relating to Zuniga's Merit Board proceeding in retaliation for Zuniga providing testimony and information to the Union in the Martinez ULP and in Case No. L-CA-15-047.

At the outset, to the extent that the Union relies on Zuniga's testimony in the Martinez ULP in support of its argument, that issue was decided by the Board in Cnty. of Cook & Sheriff of Cook Cnty., 34 PERI ¶ 101 (Respondents did not violate Sections 10(a)(3) and (1) when they placed Zuniga on unpaid administrative leave and terminated him allegedly in retaliation for his providing testimony in the Martinez ULP), and for that reason is no longer before me. Accordingly, the 10(a)(3), (2), and (1) violations are based, for purposes of this case, solely on the allegation of discriminatory retaliation against Zuniga because of his involvement in Case No. L-CA-15-047.

Here, Local 700 filed the charge in Case No. L-CA-15-047 in March 2015. The Sheriff posted Zuniga's Merit Board decision approximately one year later in March 2016. The Sheriff then posted the video related to Zuniga's Merit Board proceeding in April 2016. Zuniga testified

in Case No. L-CA-15-047 in May 2016. The timing of events makes clear that the posting of Zuniga's Merit Board decision and related video could not have been based on Zuniga's testimony in Case No. L-CA-15-047 because the Merit Board decision and video were posted prior to his testimony. Thus, the only remaining issue related to Zuniga is whether the posting of the decision and video were based on Zuniga providing information to the Union in Case No. L-CA-15-047.

In this case, the first element of the prima facie case is established because it is undisputed that Zuniga engaged in protected activity when he provided information to the Union in Case No. L-CA-15-047. The parties, however, dispute whether the three remaining elements are satisfied. The Respondents assert that Chief Policy Officer Smith had no knowledge of Zuniga's protected activity when she made the transparency initiative recommendation to the Sheriff in early 2016. The Union, however, asserts that the Respondents were aware of Zuniga's protected activity because Zuniga was personally named in the L-CA-15-047 charge which was filed in early 2015. The Parties also dispute whether the posting of Zuniga's Merit Board decision and related video constitutes an "adverse action." Regardless, I find that even assuming the Respondents had knowledge had of Zuniga's protected activity and the posting Zuniga's Merit Board decision and related video was an adverse action, the evidence fails to establish that the Respondents' decision to post Zuniga's Merit Board decision and related video was motivated by Zuniga's protected activity.

Here, the evidence did not establish direct or circumstantial evidence of unlawful motivation. The Union did not submit direct evidence of unlawful motive. Additionally, there is insufficient circumstantial evidence that the Respondents' posting of Zuniga's Merit Board decision and the related video was motivated by Zuniga's protected activity. As for timing, the Respondents posted the Merit Board decision and related approximately one year after Zuniga's protected activity. Further, the evidence fails to show that there was a pattern of the Respondents' treatment toward employees engaged in protected, concerted activity. Moreover, the Respondents' purported motivation for posting the Merit Board decisions and related videos has not shifted. The Respondents have been consistent in asserting that their motivation for posting Merit Board decisions and related videos was to increase transparency and restore public confidence in law enforcement. Further, there is no evidence of any inconsistency in the Respondents' reasons for posting Merit Board decisions and related videos as compared to other actions by the Respondents. The Respondents received a FOIA request from the BGA requesting records related to all

excessive force cases from 2008 to the present sometime prior to March 2016. During this time, the Respondents were also subject to an Agreed Order whereby use of force and employee discipline, among other things, were monitored by a federal court. The Respondents then instituted the transparency initiative in approximately March 2016. Finally, the evidence fails to show that the Respondents have expressed hostility toward employees engaged in protected, concerted activity. As such, the Union has failed to establish that the Respondents violated Sections 10(a)(3), (2), and (1) of the Act when they posted the Merit Board decision and related video of Zuniga's Merit Board proceeding.

2. Local 700

Here, the Union asserts that the Respondents violated Sections 10(a)(2) and (1) of the Act when they posted on the Sheriff's website Merit Board decisions and videos of Local 700 members generally. The Union contends that the postings discriminate against Local 700 members because a disproportionate number of the decisions that were posted concern Local 700 members. The Union asserts that nearly three-quarters of the Merit Board decisions posted involved members of Local 700, and that "Teamsters Local 700 members were at the forefront of *every* single video posted on the website." The Respondents contend, however, that posted Merit Board decisions relate to employees of various ranks and represented by various unions, including but not limited to Local 700. With respect to the videos, the Respondents assert that "[i]t may be correct that there are more videos on the Sheriff's Office website related to correctional officers than other staff, but this reality is tempered by the fact that correctional officers account for more than half of the Sheriff's sworn staff, and they have the most day-to-day interaction with detainees in custody."

Here, I find that Local 700 members are continuously engaged in union and protected, concerted activity through the filing of grievances and unfair labor practice charges, among other activities. Furthermore, the Respondents were unquestionably aware of Local 700 members' union and protected, concerted activity since it is continuous, and the Respondents have been named in some of those grievances and unfair labor practice charges. However, as noted above, the parties dispute whether the posting of Merit Board decisions and related videos is an adverse action. Regardless, again, I find it unnecessary to determine whether the posting of Merit Board decisions and video is an adverse action because the Union has failed to establish that the Respondents were motivated by unlawful animus. As with the allegation involving Zuniga, the Union did not submit direct evidence of unlawful motivation. Further, the evidence does not

establish sufficient circumstantial evidence of unlawful motivation. Although timing supports the Union's claims since Local 700 members are continuously engaged in union and protected, concerted activity, timing alone is not sufficient evidence to establish unlawful motive. Pace Suburban Bus Division, 406 Ill. App. 3d at 498; Cnty. of DuPage & DuPage Cnty. Sheriff, 31 PERI ¶ 112 (IL LRB-SP 2014). Further, the Union fails to set forth sufficient evidence that the Respondents have engaged in a pattern of treatment toward those engaged in union and protected, concerted activity. Additionally, as noted above, the Respondents have been consistent in their reasons for posting Merit Board decisions and related videos. Also, as noted above, there is no evidence of any inconsistency in the Respondents' reasons for posting Merit Board decisions and related videos as compared to other actions by the Respondents. Moreover, as noted above, the evidence fails to show that the Respondents have expressed hostility toward employees engaged in protected, concerted activity.

However, with respect to the videos, the Union points out instances in which members of other unions have been charged with excessive force in Merit Board proceedings, yet no related videos have been posted by the Respondents. As an example, the Union cites the case of a deputy sheriff from the Respondents' Court Services Department, represented by the Fraternal Order of Police Labor Council, who was charged with the use of excessive force. Although no video was posted, the Union neglects to mention the fact that, unlike the correctional facilities, there are no cameras in the courtrooms.

As another example, the Union cites the case of a correctional sergeant, not a member of Local 700, who was charged with the use of excessive force in a Merit Board proceeding that refers to a video, even though the video itself was not posted on the Sheriff's website. Although the Respondents do not explain this discrepancy, a single instance that may have been the product of oversight does not establish the proposition that the videos were posted with the objective of targeting members of Local 700. In sum, the Union has failed to establish that the Respondents violated Sections 10(a)(2) and (1) of the Act when they posted Merit Board decisions and related videos.

V. CONCLUSIONS OF LAW

1. The Respondents did not violate Sections 10(a)(4) and (1) of the Act by posting on the Sheriff's website Merit Board decisions and related videos without giving the Union notice and an opportunity to bargain over the postings' decisions or the effects of those decisions.
2. The Respondents did not violate Sections 10(a)(3), (2), and (1) of the Act by posting on the Sheriff's website the decision and related video of Zuniga's Merit Board proceeding allegedly in retaliation for involvement in prior Board proceedings.
3. The Respondents did not violate Sections 10(a)(2) and (1) of the Act by posting on the Sheriff's website Merit Board decisions and related videos allegedly for the purpose of discouraging membership in Local 700 or otherwise discriminating against that labor organization.

VI. RECOMMENDED ORDER

The charge is dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement 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 this 15th day of August, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Michelle N. Owen

Michelle N. Owen
Administrative Law Judge