STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-18-037
	)	
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) Michelle Owen 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 it implemented a layoff of lieutenants without first bargaining to impasse the effects of the layoff the lieutenants' exclusive representative, the Policemen's Benevolent Labor Committee (Labor Committee).

The ALJ provides a thorough finding of facts in her RDO and the following summarizes those facts for context:

The Labor Committee is the exclusive representative of lieutenants in the Sheriff's Court Services Department (CSD). Respondents and the Labor Committee are parties to a collective bargaining agreement (Lt.'s CBA) effective December 1, 2012, through November 30, 2017, which provides that with proper notice of a party's intent to modify, the CBA's terms will remain in effect after the expiration date until a successor agreement is reached. Proper notice was given

of the intent to modify the Lt.'s CBA, and at the time of hearing, the parties were in the midst of negotiations for a successor agreement.

On November 28, 2019, the Assistant General Counsel for the Sheriff, Thomas Nelligan, advised Thomas Pleines, an attorney for the Labor Committee, and Joseph Kaliga, a representative from the Fraternal Order of Police (FOP) representing the sergeants in the Sheriff's CSD, that 18 lieutenants would be subject to layoff and that a subsequent round of layoffs would be pursuant to the sergeants' collective bargaining agreement (Sgt.'s CBA). The next day, the County sent letters to 16 lieutenants notifying them of the layoff of their positions pursuant to Section 8.5 of the Lt.s' CBA. On November 30, 2017, Pleines advised Nelligan that all the lieutenants to be laid off would be exercising their bumping rights under the Lt.'s CBA and that one of the lieutenants was incorrectly designated to be laid off due to an error in seniority dates. The layoff was initially scheduled to be effective on December 13, 2017.

Upon the Labor Committee's demand to bargain, the parties met on December 8, 2017, at which the Labor Committee gave the Sheriff's representatives a written proposal. The Labor Committee proposed the Sheriff increase civil processing fees that could increase revenue by $2.6 million, obviating the need for layoffs. In addition to its civil processing fee proposal, the Labor Committee provided Sheriff's representatives with information on the impact of the layoffs and requested the effective date of the layoffs be extended. After discussion, Nelligan informed the Labor Committee that the effective date would be extended to January 5, 2019.

The parties next met on December 28, 2019, and further discussed the Labor Committee's additional revenue proposals and the Labor Committee asked about laid-off lieutenant's compensatory time and seniority after being bumped down to sergeant. The Sheriff also explained

what would happen to those lieutenants not being laid off, *i.e.*, where and how they would be assigned.

The parties met for a third and final time on January 9, 2018, to discuss the impact of the layoff. The parties discussed settling a grievance filed by the Labor Committee over the layoff and the Sheriff offered to extend recall rights for lieutenants who were laid off. The Labor Committee did not respond to the Sheriff's proposal or submit any proposals of their own. Sometime after the January 9 meeting, the Labor Committee rejected the Sheriff's proposal to extend recall rights of the laid-off lieutenants. The grievance was not advanced and at the time the RDO was issued, Respondents had not received a demand to arbitrate the grievance.

Although the ALJ found the Respondents were not obligated to bargain over the decision to lay off the lieutenants, she found the Respondents violated Section 10(a)(4) and 10(a)(1) for failing to bargain in good faith over the effects of the layoff before implementation. She observed the dispute in this case centered on whether the Respondents engaged in effects bargaining as she noted the parties did not "dispute that the layoffs impact the lieutenants' terms and conditions of employment and that the [Labor Committee] demanded effects bargaining." She concluded that regardless of whether the Respondents engaged in good faith bargaining at the December meetings, bargaining over the effects had not concluded before Respondents implemented the layoffs on January 5, 2018, noting that the final meeting occurred on January 9, 2018, four days after the effective date of the layoffs.

The ALJ found that the Labor Committee wished to negotiate over the following effects of the layoff: (1) the effective date of the layoff; (2) the lieutenants' compensatory time and seniority after the layoff; and (3) the assignment and reassignment of lieutenants who had not been laid off but Respondents had not adequately responded to the Labor Committee and thus failed to complete

bargaining over the effects before implementation. She concluded that Respondents' failure to bargain over the effects before implementing the layoffs in of itself evidenced bad faith. In so finding, the ALJ relied on several prior Board cases, Vill. of Glenwood, 32 PERI ¶ 159 (Il LRB-SP 2016), State of Ill., Dep't of Cent. Mgmt. Servs. & Corrs., 23 PERI ¶ 113 (Il LRB-SP 2007), Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997); and Cnty. of Cook (Cook Cnty. Hosp.), 2 PERI ¶ 3001 (IL LRB 1985).

The County and Sheriff filed separate exceptions[1] and the Labor Committee responded. After a review of the RDO, record, exceptions, and responses, we accept the ALJ's findings of fact but reject her analysis and conclusions that the Respondents violated the Act as discussed below.

Effects Bargaining

Respondents assert they were not required to complete effects bargaining before implementing the layoff and that the "effects" the ALJ found the Labor Committee wished to negotiate were already bargained as evidenced by parties' collective bargaining agreement. Moreover, Respondents contend the ALJ incorrectly relied on State of Ill., Dep't of Cent. Mgmt. Servs. (Corrs.), 23 PERI ¶ 113 (Il LRB-SP 2007), as the Illinois Appellate Court reversed the Board's decision in State of Ill., Dep't of Cent. Mgmt. Servs. (Corrs.) v. State of Ill., Ill. Labor Relations Bd., State Panel, *et al*., 384 Ill. App. 3d 342 (4th Dist. 2008.

Respondents' exceptions have merit. Although the ALJ rightly concluded the Respondents were not required to bargain the decision to layoff the lieutenants, Respondents were not obligated to bargain to agreement or impasse, the effects of the layoff in this case because the parties had already bargained, or the Labor Committee waived bargaining, the very "effects" of the layoff that

[1] The County's filed two brief exceptions adopting the Sheriff's brief in support of the Sheriff's exceptions as support for the its exceptions.

the ALJ found the Labor Committee wished to bargain. As discussed above, the ALJ found that the Labor Committee wanted to bargain over the following effects of the layoff: (1) the effective date of the layoff; (2) the lieutenants' compensatory time and seniority after the layoff; and (3) the assignment and reassignment of lieutenants who had not been laid off.

Respondents were not obligated to bargain the effective date of the layoff because the effective date, *i.e.*, the date the lieutenants would be laid off, is an inevitable consequence of the layoff decision itself. See Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114, citing City Colleges of Chicago, 13 PERI ¶ 1045 (IL ELRB 1997). Seniority and compensatory time are also addressed in the Lt.'s CBA. Article VIII of the Lt.'s CBA represents the parties' agreement on how seniority is to be addressed and Article XIII, Section 13.3 addresses the accrual of compensatory time. Any issues with the application of these provisions is appropriately addressed through the grievance procedure. Indeed, the Labor Committee filed a grievance over the layoff but the record indicates it failed to advance its grievance to arbitration.

Likewise, the assignment of lieutenants who were not subject to layoff is addressed in Article III, Section 3.1(C) of the Lt.'s CBA, wherein the Labor Committee waived bargaining over work assignments. A union's waiver of its right to bargain must be clear, unequivocal and unmistakable. Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 274 Ill. App. 3d 327, 334 (1st Dist. 1995); Cnty. of Cook v. Illinois Local Labor Rel. Bd., 214 Ill. App. 3d 979 (1st Dist. 1991); Chicago Park Dist., 18 PERI ¶ 3036 (IL LLRB 2002). Here, the language of this section clearly and unequivocally grants the Sheriff the right to ". . . make work assignments" and determine the "means and number of personnel needed to carry out the [Sheriff's] responsibilities and duties. . . ."

Moreover, even if Respondents were required to bargain over those effects the Labor Committee identified, there is no evidence in the record, or reasons given, as to why these matters could not be negotiated after the effective date of the layoff. The ALJ relied on State of Ill., Dep't of Cent. Mgmt. Servs. (Corrs.), 23 PERI ¶ 113 (Il LRB-SP 2007), in finding that effects bargaining should have concluded before the layoff was implemented. That reliance, however, is misplaced. That Board decision was reversed by the Illinois Appellate Court in State of Ill., Dep't of Cent. Mgmt. Servs. (Corrs.) v. State of Ill., Ill. Labor Relations Bd., State Panel, *et al*., 384 Ill. App. 3d 342 (4th Dist. 2008), wherein the court found that the effects the union wished to bargain in that case could have taken place after the layoffs were implemented. See id. at 348-49

For the above reasons, we accept the ALJ's findings of fact included in the RDO but reject her analysis and recommendations related to finding Respondents violated Sections 10(a)(4) and 10(a)(1) of the Act and dismiss the complaint for hearing in its entirety. Because we have found Respondents did not violate the Act, we decline to address Respondents' exceptions regarding the appropriate remedy.

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 September 10, 2019, written decision approved at the Local Panel's meeting in Chicago, Illinois on October 08, 2019, and issued on October 9, 2019.

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Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 4, 2018, the Policemen's Benevolent Labor Committee (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 Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charge alleged that the Respondents failed and refused to bargain in good faith with the Union when the Respondents unilaterally implemented a layoff of lieutenants without first bargaining the impact of the decision and reaching an agreement and when the Respondents refused to submit a grievance concerning the layoff to arbitration. The charge was investigated in accordance with Section 11 of the Act. On July 3, 2018, the Board's Executive Director issued a Complaint for Hearing.

A hearing was conducted on October 22, 2018, 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, and to argue orally.

The parties filed timely post-hearing briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. At all times material, the Sheriff has been an employer within the meaning of Section 3(o) of the Act.

2. At all times material, the County has been an employer within the meaning of Section 3(o) of the Act.
3. At all times material, the Respondents have been joint employers within the meaning of Section 3(o) of the Act.
4. At all times material, the Respondents have been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
5. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
6. At all times material, the Union has been the exclusive representative of a bargaining unit composed of lieutenants in the Respondents' Court Services Department as certified by the Board on February 19, 2001, in Case No. L-RC-99-028 (Unit).
7. At all times material, the Unit has been a "peace officer unit" within the meaning of Section 14 of the Act.

II. ISSUES AND CONTENTIONS

The Union narrowed the issues for hearing on brief by addressing only the following issue: whether the Respondents failed to bargain in good faith in violation of Sections 10(a)(4) and (1) when they implemented their decision to lay off sixteen lieutenants, without completing impact or effects bargaining.[1]

The Union argues that the Respondents did not engage in good faith bargaining, but rather engaged in surface bargaining over the effects of the Respondents' decision to lay off sixteen lieutenants. The Respondents assert that they bargained in good faith over the impact of the layoffs.

III. FINDINGS OF FACT

The Union is the exclusive representative of a bargaining unit composed of lieutenants in the Respondents' Court Services Department. The Respondents and the Union (collectively,

[1] All other issues raised by the Complaint are properly deemed waived on appeal. Vill. of Bensenville, 10 PERI 2009 (IL SLRB 1993), aff'd by unpub. order no. 2-94-0089 (2nd Dist. 1995) (respondent waived the argument that employee conduct was unprotected because the Respondent did not argue the issue before the ALJ); Vill. of Glenwood, 32 PERI ¶ 159 (IL LRB-SP 2016).

Parties) are parties to a collective bargaining agreement with an effective date of December 1, 2012, through November 30, 2017 (CBA). The CBA provides that if either party provides written notice at least ninety days prior to the expiration date that the party desires to modify the CBA, the CBA shall continue to remain in effect after the expiration date until a new agreement is reached.

The CBA further provides that in the event of a layoff, lieutenants may "bump" the employee with the least seniority in the bargaining unit of successive lower merit rank, which is sergeant, within the Court Services Department, if the bumping lieutenant has more court security seniority than the sergeant he or she will bump. The Fraternal Order of Police (FOP) represents the sergeants in the Respondents' Court Services Department.

On January 31, 2017, LaShon DeFell, deputy bureau chief of human resources/director of labor relations for the County, wrote to the Union, stating:

> We write to you in anticipation of negotiating the 2012-2017 successor collective bargaining agreement for your union. We look forward to working with you in the coming months to complete this contract. Please contact … by Wednesday, February 8, 2017, to provide your availability for a minimum of four initial bargaining sessions.

On August 28, 2017, Joseph Andruzzi, an attorney for the Union, notified the County of its desire to modify the CBA.

On November 15, 2017, John Ferro, an employee in the County's Department of Budget and Management Service (DBMS), emailed Jill McArdle, an employee in the Sheriff's Office, notifying her of potential layoffs in the Sheriff's Office. Ferro stated, in part:

> This has been a long and complicated budgetary process with constant changing and submitting files back and forth and tracking the most recent data, Jill and Tim can express the same thoughts, I believe.
>
> DBMS has attached the list of PIDs as potential layoffs. The process for choosing Union positions was a last in first out assumption, (lowest pay probably last in), using the thought process of bumping rights and CBAs. DBMS understands that final layoffs will follow the guidelines provided in CBAs.

Ferro attached a spreadsheet to the email which listed the titles of employees who would potentially be laid off. At hearing, Peter Kramer, the Sheriff's special counsel of labor affairs, testified that, in 2017, the County lacked revenue, and rather than raise revenue, the County chose to recommend layoffs.

On November 28, 2017, Thomas Nelligan, assistant general counsel for the Sheriff, emailed Thomas Pleines, an attorney for the Union, and Joseph Kaliga, a union representative for

the FOP, notifying them that the County budget was calling for the layoff of eighteen lieutenants and requesting to meet with Pleines and Kaliga. Nelligan stated, in part:

> Unfortunately [sic] the County budget is still calling for the layoff of 18 Court Services Lieutenants. Looking at the CBA language (for both CBA's), the Lt.'s CBA states a Lt. may bump into the next lower rank provided they have more court services seniority. The least senior of the 18 identified positions has more seniority than the least senior Sgt. Once they bump down, the next round of layoffs (which may result in approximately 23 Sgt.s to make up for the budgeted 18 Lt.'s positions) have to be done pursuant to the Sgt.'s CBA which is by date of promotion to Sgt.
>
> Obviously [sic] no one is happy about this and the language is less than clear, but I would like to make sure no one is laid off incorrectly. I'd like to meet you both as soon as possible, either together or separate. If you cannot meet, please advise if you have a different interpretation than the language above.

On November 29, 2017, the County sent out letters to sixteen lieutenants notifying them that their positions had been eliminated from the budget and advised them to contact the Union regarding their "bumping" rights under the CBA. The letter stated, in part:

> The Cook County Sheriff's Office received notification from the Cook County President's Office that layoffs are necessary to meet Cook County's budgetary reduction needs. We regret to inform you that the Cook County President's Office has eliminated 16 Court Service Lieutenant positions from the budget. You are being notified due to the potential impact on your current position based on the bumping rights of Court Service Lieutenants. This letter serves as notice pursuant to Section 8.5 of the Collective Bargaining Agreement. Your Union has been notified as well and can best advise you of any options you have under your Collective Bargaining Agreement.

On November 30, 2017, Pleines informed Nelligan that all the lieutenants facing layoff would be exercising their bumping rights under the CBA. Pleines also informed Nelligan that Lieutenant Ervin had less seniority than Lieutenant Diaz, and therefore, Ervin should be laid off prior to Diaz. Later that day, Nelligan informed Pleines that Nelligan would "look into" the Union's claim regarding Lieutenant Ervin's seniority.

That same day, Andruzzi contacted Nelligan demanding to bargain over the effects of the impending layoffs and requesting to schedule negotiations for a successor contract. Andruzzi stated, in part:

> The Cook County Court Lieutenants (Union), represented by the Policemen's Benevolent Labor Committee, demands bargaining over the impending layoffs. As you are aware, under Section 7 of the Illinois Public Labor Relations Act, unilateral changes cannot be implemented regarding mandatory subjects of bargaining until the completion of bargaining. The effects of the layoffs were never negotiated. The Union is prepared to commence bargaining over the effects of these layoffs

> immediately. Until bargaining is complete, any impending layoffs should be halted.
>
> Additionally, pursuant to Article XIX of the Collective Bargaining Agreement, the Union made proper timely notification of its desire to modify the current CBA, which expires today, November 30, 2017, on August 28, 2017. This was followed by a mediation request filed with the Illinois Labor Relations Board on November 1, 2017 (assigned contract number 2017-11-99-028).
>
> Please contact me to schedule negotiations.

At some point, Nelligan informed Pleines that the Respondents had set the effective date of the layoffs for December 13, 2017. Nelligan testified at hearing that the CBA requires the Respondents to provide two-weeks' notice prior to layoffs.

On December 1, 2017, Nelligan responded to Andruzzi's November 30, 2019, demand to bargain inquiring whether the Union would be available to meet on December 8, 2017. That same day, Nelligan also emailed a copy of the lieutenants' seniority lists to Pleines and Andruzzi requesting that the Union identify and forward any changes and/or corrections to the lists to the County.

The Parties agreed to meet on December 8, 2017. At the meeting, Nelligan, DeFell, and Nicholas Skouffas, general counsel for the Sheriff, attended on behalf of the Respondents; Pleines, Andruzzi, Donald Milazzo, lieutenant and vice-president of the Union, and Susan Joyce, president of the Union, attended on behalf of the Union. At the meeting, the Union tendered a written proposal to the Respondents. The Union proposed to increase civil processing fees in order to increase revenue and fund the eliminated lieutenant positions. The Union explained that neighboring counties had higher fees than Cook County, and the Union's proposal would bring in additional revenue of $2.6 million dollars. The Union noted in its proposal that "[r]eviewing the fee structure related to process could show additional alternative revenue that would more than make up for the decrease in budget allotment." According to the Union, the purpose of the proposal was to avoid the layoff of the lieutenants. Milazzo testified that after presenting the proposal to increase civil processing fees, the Respondents took a break and checked to see if the Union's information was correct. According to Milazzo, the Respondents then returned to the meeting and stated that the proposal "wouldn't work." Milazzo further testified that the Respondents stated that "even if they could get the money, the Sheriff didn't have to spend it on [the lieutenants]." Nelligan, however, testified that at the meeting he responded to the Union's proposal stating that he would "look into it." Nelligan also testified that he was uncertain whether

the fees were statutorily mandated and thus could not be unilaterally raised by the Sheriff. Milazzo testified that the Union believed that the Sheriff could unilaterally raise the fees because the fees were not statutorily mandated. Milazzo further testified that Lieutenant Dicaro had previously negotiated an increase in the fees when she was the chief.

At the December 8th meeting, the Union also informed the Respondents that four lieutenants were planning on retiring soon and that these retirements could help alleviate the need for layoffs. Nelligan responded that the retirements would only be helpful if they occurred before the end of the year.

At the December 8th meeting, the Union also provided the Respondents with a copy of a spreadsheet showing the impact of the layoff, and the Parties discussed how the layoff would affect the supervision of the Respondents' facilities. Milazzo testified that the Respondents then took another break, came back in, and said, "it still didn't matter."

Nelligan testified that, at the December 8th meeting, he inquired whether the Union would be willing to agree to salary reductions to offset the salaries of the lieutenants who were identified for layoff. Nelligan also testified that he did not offer a specific percentage or dollar amount. Nelligan further testified that the Union did not respond to the inquiry at the meeting. At hearing, Nelligan testified that had the Union been willing to agree to salary reductions, Nelligan would have presented the Union with specific numbers at a later time. In addition, Nelligan testified that even if the Union had agreed to the salary reductions, Nelligan did not have the authority to stop the layoffs at the time of the December 8th meeting. However, Milazzo testified at hearing that the Respondents never proposed salary reductions.

At the December 8th meeting, the Parties also discussed the effective date of the layoffs. Nelligan testified that, at the meeting, the Union asked whether the date could be extended. Nelligan testified that "after discussion, I believe we were okayed to extend it to January 5th." Milazzo testified that the Respondents extended the date at the Union's request. Milazzo further testified that the extension was granted so that the Parties could meet again to discuss the impact of the layoffs and to give the Union more time to "find other proposals to offer." The December 8th meeting lasted between approximately one hour and 1.5 hours.

On December 11, 2017, Nelligan emailed Pleines asking whether the Union had any other issues with the seniority list other than Lieutenant Ervin's seniority. That same day, Pleines responded to Nelligan stating that Lieutenants Rhodes, Mills, and Cervantes had been promoted

and should not be on the seniority list. Nelligan then removed Rhodes, Mills, and Cervantes from the seniority list.

On December 12, 2017, Nelligan informed Pleines that the Respondents were still considering the Union's proposal to increase civil processing fees and the issue of the four planned lieutenant retirements.

On December 14, 2017, Pleines emailed Nelligan informing him that the Union had demanded to bargain over the impact of the layoffs and would be filing a grievance over the Respondents' alleged failure to bargain. Pleines stated in part:

> The collective bargaining agreement applicable to the Court Services Lieutenants provides for bargaining over the impact or effects of the layoffs. We have previously demanded bargaining over the issue. We have been given one opportunity to meet with the Employer. That was on December 8, 2017. At that time, the Union presented two proposals to raise revenues in an amount sufficient to cure the reported budgetary shortfall. As you stated in our December 12, 2017 telephone call the Employer is still considering these proposals. There was some disagreement among the Employer's representatives whether these revenue proposals constituted bargaining over the effects of the layoffs. The Union does not consider this to have been a bargaining session. The Union also explained that Section 18.9 entitled "Maintenance of Benefits" applies to this current situation and gives the Union the right to arbitrate any dispute over changes in economic benefits. The Union will be filing a grievance and demanding arbitration within the immediate future. Because the Employer has not bargained with the Union over the impact of these layoffs and the parties will need to have sufficient time to arbitrate the grievance, we are against asking that the January 5, 2018 effective date be pushed back until the parties have had time to bargain and, if necessary arbitrate this dispute.

On December 15, 2017, the Union filed a grievance regarding the layoff and requested that the Respondents delay implementation of the layoffs until the Parties had time to bargain over the impact of the layoffs, and if necessary, arbitrate the dispute. The Respondents did not provide a written response to the grievance. The CBA provides that if the Respondents do not provide an answer at any step of the grievance process, the Union may advance the grievance to the next step.

On December 18, 2017, Nelligan responded to Pleines' December 14th email message, stating "[p]lease let me know what dates work for you so that we can meet again to discuss the impact." Pleines responded to Nelligan suggesting December 28, 2017, as a date to meet.

The Parties agreed to meet on December 28, 2017. At the meeting, Nelligan and Kelly Jackson, then-chief of Court Services, attended on behalf of the Respondents; Pleines, Andruzzi, Milazzo, and Joyce attended on behalf of the Union. At the meeting, Nelligan stated that he would

continue to look into the Union's proposal of increasing civil processing fees, but that he believed the proposal was "too complicated and not something we could do at that time."

At the meeting December 28th meeting, the Union orally proposed that lieutenants could conduct rapid response/active shooter training for outside agencies as a way of increasing revenue in order to prevent the layoffs. Milazzo testified that the Respondents responded to the proposal by stating that the layoffs "were going to go through no matter what." Milazzo further testified that the Respondents stated at the meeting that the proposal "had already been rejected." At hearing, Nelligan testified that either at the December 28th meeting or the later January 9th meeting, Nelligan rejected the proposal stating that it would not "really be feasible at this point." At hearing, Nelligan testified that "[i]t was kind of speculative how much [money the training] would bring in, and I think there were liability issues that were impacted in that as well."

At the December 28th meeting, the Union also asked the Respondents whether the lieutenants would be receiving compensatory time after they were bumped down and what effect the bumping down would have on the lieutenants' seniority. Nelligan responded that he would "look into it" and get back to the Union on those questions. Chief Jackson then explained what would happen to the lieutenants who were not being laid off, for example, how and where they would be assigned after the layoff. Nelligan testified that when Jackson discussed where individuals would be assigned after the layoff, there "didn't seem to be any objection or any conflict" from the Union. Milazzo testified that the Union did not play any role in the reassignments. Rather, Milazzo testified that the Respondents merely told the Union where the lieutenants would be assigned and reassigned.

Nelligan further testified that at the December 28th meeting, he again orally inquired whether the Union would be willing to agree to salary reductions in order to avoid the layoffs. Nelligan testified that "it didn't seem like I was going to get an answer." As noted previously, Milazzo testified that the Respondents never proposed salary reductions. The December 28th meeting lasted at least one hour.

On January 3, 2018, the Union advanced the grievance to step two of the Parties' grievance procedure. The CBA has four steps in its grievance procedure. The fourth step is arbitration. The CBA further provides that failure to advance the grievance within the required time limits concludes the grievance process.

Also, on January 3, 2018, Nelligan emailed Pleines asking him to identify the lieutenants who were planning on retiring in January. That same day, Pleines responded stating that four lieutenants would be retiring in January: Lieutenants Miles, Lopresti, Murund, and Smith. Later that day, Nelligan asked Pleines whether any of those individuals planned to retire by January 31, 2018. That same day, Pleines responded stating that he would confirm the effective date of the retirements. Later that day, Pleines emailed Nelligan informing him that Lieutenants Miles and Barrata had already retired. The next day, Nelligan informed Pleines that the Respondents did not have paperwork for Miles' retirement. Later that day, Nelligan told Pleines that Lieutenant Miles should contact the Respondents' human resources department to confirm Miles' retirement date. At some point, Miles did so.

In addition, on January 3, 2018, Nelligan emailed Pleines, Andruzzi, and Joyce stating, "I have talked to Kramer about your grievance. If you want he is able to schedule a 3rd Step Hearing with you regarding this. Or if you prefer we can hold off on your grievance hearing until after the Jan 9 meeting. Please let me know which you prefer." On January 5, 2018, Joyce responded stating, "[l]ets just handle this on the 9th."

On January 5, 2018, the Respondents implemented the layoff. Fourteen lieutenants were laid off and bumped down to sergeant. Two lieutenants had chosen to retire rather than be bumped down to sergeant.

On January 9, 2018, the Parties met for the third and final time to discuss the impact of the layoffs. Nelligan, Jackson, and Kramer attended on behalf of the Respondents; Andruzzi, Milazzo, and Joyce attended on behalf of the Union. At the meeting, Kramer orally proposed a settlement regarding the grievance as well as extending the recall rights for the laid-off lieutenants. The Union did not provide a response to the proposal. At hearing, Milazzo testified that the Union did not respond to the oral proposal because "verbal agreements in the County aren't really good for much." In addition, at hearing, Milazzo testified that according to the Union, the CBA does not define the limit of recalls. At hearing, Kramer and Nelligan testified that according to the Respondents, the CBA provides for recall rights for twelve months only. The Union did not submit any proposals at the January 9th meeting. The meetings lasted for approximately one hour. Sometime after the January 9th meeting, the Union rejected the proposal to extend the recall rights of the laid-off lieutenants.

To date, the Union has not advanced the grievance regarding the layoffs to step three or step four. To date, the Respondents have not received a demand to arbitrate the grievance from the Union.

IV. DISCUSSION AND ANALYSIS

The Respondents violated Sections 10(a)(4) and (1) of the Act when they implemented the lay off without bargaining to agreement or impasse with the Union over the effect of the layoffs.

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer to "refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(a)(4). Section 7 of the Act provides that employers are required "to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of the Act." 5 ILCS 315/7. Section 4 of Act provides that employers "shall not be required to bargain over matters of inherent managerial policy, which shall 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. Section 4 of the Act adds that employers "however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives." Id.; Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill., Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-LP 2014); Vill. of Glenwood, 32 PERI ¶ 159. If a decision of managerial prerogative impacts employees' terms and conditions of employment, an employer cannot, as a general matter, implement the decision without first bargaining the effects of the decision. Cnty. of Cook (Juvenile Temp. Det. Center), 14 PERI ¶ 3008 (IL LLRB 1998); State of Ill., Dep'ts of Cent. Mgmt. Servs. & Corrs., 5 PERI ¶ 2001 (IL SLRB 1988), aff'd Am. Fed. of State, Cnty. & Mun. Emps., AFL-CIO, 190 Ill. App. 3d 259 (1st Dist. 1989); Vill. of Glenwood, 32 PERI ¶ 159.

In this case, the Parties do not dispute that the layoffs impact the lieutenants' terms and conditions of employment and that the Union demanded effects bargaining. However, the Parties'

dispute whether the Respondents engaged in bargaining over the effects of the decision to lay off the lieutenants.

The Respondents assert that they bargained in good faith over the impact of the layoffs because they met with the Union on three occasions to discuss the impact of the layoffs. The Respondents also argue that they explained to the Union why the Union's proposals to raise civil processing fees and the impending retirements would not work. Additionally, the Respondents contend that they made proposals to reduce the lieutenants' salaries and to extend the recall rights of the laid-off lieutenants. In addition, the Respondents contend that they agreed to extend the effective date of the layoffs. Finally, the Respondents assert that they responded to the Union's concerns regarding the seniority list.

The Union, however, asserts that the Respondents engaged in surface bargaining at the three meetings. The Union notes that at the December 8th meeting, representatives of both the Sheriff and the County (Nelligan, DeFell, and Skouffas) attended on behalf of the Respondents, but at the December 28th meeting, representatives of only the Sheriff (Nelligan and Jackson) attended on behalf of the Respondents. The Union further notes that at the January 9th meeting, representatives of only the Sheriff (Nelligan, Jackson, and Kramer) attended on behalf of the Respondents.

Additionally, the Union asserts that at the December 8th meeting, the Respondents did not offer proposals or counter-proposals and only offered to "look into" the Union's proposals. The Union asserts that Nelligan's "offer" to implement salary reductions to avoid layoffs was not, in fact, a proposal. The Union notes that Nelligan testified that even if the Union had agreed to the alleged proposal, Nelligan also testified that the layoffs would have still gone forward as planned. In addition, the Union asserts that it did not respond to the Respondents' oral proposal on January 9, 2018, to extend the recall rights of laid-off lieutenants because the Respondents never formally tendered a written proposal. The Union asserts that oral offers from the County "aren't really good for much." In addition, the Union contends that the Respondents made no proposals or counter-proposals at the December 28th meeting. Instead, the Union asserts that the Respondents merely informed the Union where the lieutenants would be assigned and reassigned following the layoffs. Likewise, the Union asserts that the January 9th meeting "consisted of the Sheriff's Chief reading off to the Union where each of the unaffected lieutenants would be assigned/reassigned." Finally, the Union asserts that the extension of the layoff from December 13, 2017, to January 5, 2018,

was not the result of bargaining. Rather, the Union asserts that the Respondents "with no explanation, on [their] own accord informed the Union of [the Respondents'] intention to change the lay-off date."

Here, I find that regardless of whether the Respondents engaged in good faith bargaining at the two meetings on December 8th and 28th, the Parties had not concluded bargaining over the effects of the layoffs when the Respondents implemented the layoffs on January 5, 2018. The Parties met two times before the layoffs were implemented. The Parties last meeting occurred *after* the layoffs had already occurred. Notably, at the last meeting on January 9, 2018, the Respondents proposed to extend the recall rights for the laid-off lieutenants. Thus, the Parties had not concluded bargaining when the Respondents implemented the layoff on January 5, 2018.

In addition, the Parties had not reached impasse in bargaining the effects of the layoff as of the date of implementation of the layoffs. A finding of impasse is based on an examination of the facts of each case, considering the following factors: 1) bargaining history, 2) the good faith of the parties in negotiations, 3) the length of negotiations, 4) the importance of the issue, and 5) the contemporaneous understandings of the parties as to the state of negotiations. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992); Vill. of Glenwood, 32 PERI ¶ 159.

In this case, the impasse factors indicate that no impasse had been reached. The Parties met only two times to discuss the impact of the layoffs prior to the layoff being implemented, and those meetings lasted for a total of approximately two to two and one-half hours. In fact, as noted, the parties third meeting, on January 9, 2018, occurred *after* the layoffs had already taken place on January 5, 2018. Further, as noted, the Respondents offered to extend the recall rights of the lieutenants at the January 9th meeting. Thus, the Parties were not at impasse when the Respondents implemented the layoff on January 5, 2018. Based on the small number of meetings that took place before implementation of the layoff and the importance of the items being discussed, negotiations were not yet at a point where neither party had more to offer. See City of Chicago, 9 PERI ¶ 3001, citing Taft Broad. Co., 163 NLRB 475 (1967); State of Ill., Dep'ts of Cent. Mgmt. Servs. & Corrs., 5 PERI ¶ 2001; Bd. of Trs. of Univ. of Ill., 7 PERI ¶ 1061 (IL ELRB 1991); see also, Carpenter Sprinkler Corp. v. NLRB, 605 F.2d 60 (2d Cir. 1979). Accordingly, I conclude

that the Parties were not at impasse with regard to impact issues when the Respondents implemented the layoffs.

Additionally, although the Union's proposals to increase civil processing fees and conduct rapid response/active shooter training sought to bargain the layoff decision itself, the evidence suggests that from the outset the Union was interested in negotiating over a number of matters pertaining to the effect of the layoffs on the Union members' terms and conditions of employment, including the effective date of the layoffs, the lieutenants' compensatory time after the layoff, the lieutenants' seniority after the layoff, and the assignment and reassignment of lieutenants who had not been laid off.[2] Indeed, on December 14, 2017, the Union requested that the effective date of January 5, 2018, be "pushed back until the parties have had time to bargain." Likewise, on December 15, 2017, the Union filed a grievance again requesting that the implementation of the layoffs be delayed until the Parties had time to bargain over the impact of the layoffs. Additionally, it is unclear whether the Respondents had responded to the Union's concerns regarding compensatory time and seniority of bumped down lieutenants at the time the layoffs were implemented. At the final meeting prior to the layoff, Nelligan responded that he would "look into" those issues and get back to the Union. Finally, the Respondents admit that the purpose of the meeting on January 9, 2018, was to discuss the impact or effects of the layoff, and the Respondents offered to extend the recall rights of the lieutenants at that meeting.

Moreover, the Respondents implementation of the layoff without first bargaining over its effects is an unfair labor practice even absent other indicia of bad faith bargaining. Vill. of Glenwood, 32 PERI ¶ 159, citing State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Agric.), 13 PERI ¶ 2014 (IL SLRB 1997) (considering solely whether the Respondent implemented change without bargaining over effects); State of Ill., Dep'ts of Cent. Mgmt. Servs. & Corrs., 23 PERI ¶ 113 (IL LRB-SP 2007). The Board has long held that such negotiations over the effects of a

[2] Not every impact of a managerial prerogative decision requires bargaining. Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114, citing Decatur Bd. of Educ., Dist. No. 61 v. Illinois Educ. Labor Rel. 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"). Instead, the employer must bargain only where the effects are not an inevitable consequence of the decision itself. Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114, citing City Colleges of Chicago, 13 PERI ¶ 1045 (IL ELRB 1997) (adopting approach of the private sector with respect to impact bargaining). This rule preserves the employer's right to decline bargaining over permissive matters by ensuring that impact bargaining does not inevitably lead to questioning of the underlying decision. Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114, citing City Colleges of Chicago, 13 PERI ¶ 1045.

decision should take place at a meaningful time *before* the contemplated action is taken. Id.; Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997); Cnty. of Cook (Cook Cnty. Hosp.), 2 PERI ¶ 3001 (IL LLRB 1985).

Here, there was not a good faith effort to reach agreement before the Respondents implemented their decision. The record shows that the Respondents began planning the layoff sometime around November 2017. The Parties met on December 8 and 28, 2017, and on January 9, 2018, to discuss the impact or effects of the layoffs. The Respondents implemented the layoff on January 5, 2018. It was incumbent upon the Respondents if they planned to adhere to the January 5th deadline, to build in time for enough bargaining sessions after its layoff plan was ascertainable, but before it was implemented, to reach agreement or impasse as to the effects. See State of Ill., Dep'ts of Cent. Mgmt. Servs. & Corrs., 23 PERI ¶ 113 (respondent violated Sections 10(a)(4) and (1) of the Act when it implemented layoff without completing effects bargaining). Thus, the Respondents violated Sections 10(a)(4) and (1) of the Act when they laid off the sixteen lieutenants.

V. CONCLUSIONS OF LAW

The Respondents violated Sections 10(a)(4) and (1) of the Act when they laid off sixteen lieutenants without bargaining to agreement or impasse with the Union over the impact or effects of the layoffs.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondents, their officers, and agents, shall:

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Union, Policemen's Benevolent Labor Committee, as the exclusive representative of the bargaining unit composed of lieutenants in the Court Services Department, regarding the impact or effects of the Respondents' decision to layoff sixteen lieutenants.
    b. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:

a. On request, bargain collectively in good faith with the Union, Policemen's Benevolent Labor Committee, as the exclusive representative of the bargaining unit composed of lieutenants in the Court Services Department, regarding the impact or effects of the Respondents' decision to layoff sixteen lieutenants.
b. Restore the status quo by rescinding the layoffs of the sixteen lieutenants until the parties have completed impact or effects bargaining.
c. Make whole members of the bargaining unit for any losses incurred had the Respondents not laid off the lieutenants before completing impact or effects bargaining, plus seven-percent interest per annum.
d. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondents will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.
e. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondents have taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be 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 of 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 at Chicago, Illinois this 29th day of March, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ *Michelle N. Owen*

Michelle N. Owen
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-18-037

The Illinois Labor Relations Board, Local Panel, has found that the County of Cook and Sheriff of Cook County have violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Policemen's Benevolent Labor Committee, as the exclusive representative of the bargaining unit composed of lieutenants in the Court Services Department.

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Policemen's Benevolent Committee regarding the impact or effects of our decision to layoff sixteen lieutenants.

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

WE WILL bargain collectively in good faith with the Policemen's Benevolent Labor Committee regarding the impact or effects of our decision to layoff sixteen lieutenants.

WE WILL restore the status quo by rescinding the layoffs of the sixteen lieutenants until we have completed impact or effects bargaining with the Policemen's Benevolent Labor Committee.

WE WILL make whole members of the bargaining unit for any losses incurred had we not laid off the sixteen lieutenants before completing impact or effects bargaining, plus seven-percent interest per annum.

DATE _____

_____
County of Cook
(Employer)

_____
Sheriff of Cook County
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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