STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party	)	
and	)	Case No. S-CA-19-039
Metropolitan Airport Authority of Rock Island,	)	
Respondent	)	

ORDER

On October 25, 2019, Administrative Law Judge Anna Hamburg-Gal, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 October 12, 2018, the American Federation of State, County and Municipal Employees, Council 31, (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the Metropolitan Airport Authority of Rock Island (Respondent) 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 was investigated in accordance with Section 11 of the Act.

On April 18, 2019, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on July 11 and 12, 2019 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. 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]

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

[1] The parties agreed to most of the facts in this case. The remaining stipulations are incorporated into the facts section, below, to avoid repetition.

2. At all times material, the Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, the Union has been the exclusive representative of a bargaining unit (Unit) composed of certain of Respondent's employees as certified by the Board on May 1, 1991, in Case No. S-RC-91-100.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly refused to bargain in good faith over the impact of the Supreme Court's decision in Janus[2] by allegedly preconditioning negotiations on advance receipt of the Union's written proposals.

The Union argues that the Respondent had an obligation to bargain over the impact of the Janus decision because that decision adversely impacted the Union's ability to represent its members. The Union further argues that its proposals concerned mandatory subjects of bargaining designed to address those impacts. The Union next argues that the Respondent unlawfully refused to bargain in good faith over the impact of the Janus decision by conditioning further negotiations on advance receipt of the Union's modified proposals. It asserts that the Respondent exhibited other indicia of bad faith by delaying meetings with the Union, refusing to make commitments apart from those already contained in the parties' contract, and refusing to reduce to writing those points on which the parties had agreed.

The Respondent denies that it refused to bargain in good faith over the impact of the Janus decision. It asserts that Janus did not create a bargaining obligation because it did not change employees' terms and conditions of employment. The Respondent also notes that it made no changes to employees' terms and conditions of employment in response to Janus. The Respondent further asserts that any issues that the Union seeks to bargain are excluded from the duty to bargain as "specifically provided for" in another law. In the alternative, the Respondent asserts that the Union contractually waived the right to bargain over the effects of Janus when it entered into its

[2] Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31 ("Janus"), 138 S. Ct. 2448 (2018).

collective bargaining agreement with the Respondent and agreed to a zipper clause. The Respondent further asserts that it bargained with the Union in good faith. It denies that it exhibited any indicia of bad faith bargaining and notes that it was not obligated to sign an agreement where the parties had not reached a meeting of the minds on all terms.

III. FINDINGS OF FACT

The Union represents a unit of approximately 40 employees of the Respondent, including airfield technicians, building maintenance staff, custodial staff, public safety officers, and telecommunicators. The Union and the Respondent are parties to a contract that is effective from July 24, 2017, through June 30, 2021.

The parties' CBA includes the following language regarding fair share payments, in relevant part:

> **ARTICLE FOUR – UNION SECURITY**
> **Section 1.** Employees covered by this agreement who are not members of the Union paying dues by voluntary payroll deduction shall be required to pay in lieu of dues, their proportionate fair share of the cost of the collective bargaining process, contract administration and the pursuance of matters affecting wages, hours and conditions of employment in accordance with the applicable Labor Relations Act. The fair share payment, as certified by the Union, shall be deducted by the Employer from the earnings of the non-member employees. The aggregate deductions of the employees and a list of their names and addresses shall be remitted bi-weekly to the Union at the address designated in writing to the Employer by the Union. The Union shall advise the Employer of any increase in fair share fees in writing at least fifteen (15) days prior to its effective date. The amount constituting each non-member employee's share shall not exceed dues uniformly required to union members.
>
> …
> **Section 4.** The Union shall indemnify, defend, and hold the Employer harmless against any claim, demand, suit or liability arising from any action taken by the Employer in complying with this Article.

The parties' CBA includes the following language regarding dues deduction/check-off, in relevant part:

> **ARTICLE FIVE – CHECKOFF**

> **Section 1.** The Employer agrees to deduct from the pay of those employees who individually request it any or all of the following: A. Union membership dues, assessments, or fees.
>
> Upon receipt of an appropriate written authorization from an employee, such authorized deductions shall be made in accordance with the law. The aggregate Union related deductions of all employees and a list of their names and addresses shall be remitted bi-weekly to the Union at the address designated in writing to the Employer by the Union. The Union shall advise the Employer of any increase in dues or other approved deductions in writing at least 15 days (15) days prior to its effective date. All employees covered by this Agreement who have signed Union dues check off cards for AFSCME prior to the effective date of this Agreement or who signed cards after such date shall not be allowed to cancel such dues deduction within the term of this Agreement.
>
> **Section 2.** The Union shall indemnify, defend, and hold the Employer harmless against any claim, demand, suit or liability arising from any action taken by the Employer in complying with this Article.

The parties' CBA includes the following provision regarding Union activity:

> **ARTICLE 6 – UNION ACTIVITY**
> **Section 1.** The Employer agrees that Union representatives assigned to represent bargaining unit employees shall have reasonable access to the premises of the Employer for the purpose of scheduled Employer/ employee meetings involving the collective bargaining agreement. No Union activity or Union business of any kind shall be carried on during the working hours of the employee representatives or the working hours of the employees who are meeting with the Union representative. No Union meeting shall be held on Airport property provided that [the Union] obtains prior approval and space is available.

The parties' CBA contains a provision addressing non-discrimination, which provides the following, in relevant part:

> **ARTICLE SEVEN – NON DISCRIMINATION**
> ….
> It is understood and agreed that each employee or prospective employee has the right to decide for himself whether or not he wishes to become a member of the Union and to make such decision freely and voluntarily without any pressure, coercion, or threat from any person, either Union or Employer representative, including other employees acting on behalf of either parties thereto[.] The Employer and the Union agree that no employee shall be

discriminated against for exercising rights guaranteed to employees under the Illinois Public Labor Relations Act.

….

The parties' CBA includes the following clause addressing meetings and training programs:

> **ARTICLE TWENTY-THREE – MEETINGS, LECTURES AND TRAINING PROGRAMS**
>
> Three types of training are necessary for employees:
>
> 1. Pre-entry training in the knowledge and skills required for the various positions for which they are employed.
> 2. Training on the job to inform them of their duties and related activities.
> 3. Special training in order to keep them conversant with new developments and techniques.
>
> The Employer will compensate employees for meetings, lectures and training programs when they are job related and when they occur during regular work hours.
>
> …

The parties' CBA includes the following savings clause:

> **ARTICLE TWENTY-SIX – SAVINGS CLAUSE**
>
> Should any article, section, or portion thereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specified article, section, or portion thereof directly specified in the decision. Upon the issuance of such decision, the article or section held invalid shall be modified as required by law or the tribunal of competent jurisdiction.

The parties' CBA includes the following zipper clause:

> **ARTICLE TWENTY-SEVEN – ENTIRE AGREEMENT**
>
> The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement, therefore, the Employer and the Union for the life of this agreement each voluntarily and unqualifiedly waives the right

> and agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered by this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this agreement.

On May 4, 2018, the Union's Supervising Counsel, Thomas Edstrom, sent the Respondent a letter regarding the then-pending Janus decision. Edstrom sent the same letter to many different employers of the Union's members. Edstrom stated, "after the decision is issued, AFSCME and other unions representing your employees will be contacting you to meet to address the impact of the decision." He also asked the employers for an up-to-date list of employees for whom the employer was deducting fair share fees.

The Respondent's Director of Human Resources and Risk Management, Jo Johnson, responded on May 29, 2018, acknowledging receipt of Edstrom's correspondence. The letter stated: "please contact us if and when AFSCME would like to meet to discuss the impact of the Janus decision. The [Respondent] looks forward to continuing to work with AFSCME in the future." Johnson further advised Edstrom that, as of the date of her letter, the Respondent had no employees in the Union's bargaining unit who were making fair share payments. Union representative Joshua Schipp understood the letter as an expression of the Respondent's willingness to meet and discuss the Janus decision.

On June 26, 2018, Schipp sent an email to Johnson regarding the court's anticipated decision in Janus. The email contained text that the Union had sent to other employers. It stated that if the ruling prohibited the collection of mandatory fair share fees, employers would be required to immediately cease deducting any fair share fees from the paychecks of employees who were fair share fee payers. It further specified that such a ruling would not impact the collection of union dues from union members and that employers would be required to continue deducting union dues from union members. Finally, it asked the Respondent to refrain from communicating with employees about any Supreme Court ruling in the Janus case.

On June 27, 2018, the Supreme Court issued its decision in Janus and held that a public employer violated the First Amendment by requiring non-members to pay fair share fees without the non-members' affirmative consent.

On June 28, 2018, the Union contacted the Respondent's Executive Director, Ben Leischner, and requested to bargain the impact of the Janus decision.

On July 10, 2018, Johnson responded to the Union's request to bargain and affirmed that, moving forward, the Respondent would not deduct any fair share fees unless and until non-members executed a newly signed consent form. Johnson also stated, "with respect to your demand to bargain[,] please advise as to what specifically AFSCME would like to address." Johnson affirmed that the Respondent would "abide by its bargaining obligations." She concluded that the Respondent was open to discussing "what communications should be made to bargaining unit members concerning fair share," "working with [the Union] in implementing new fair share fee consent forms[,] and communicating withholding requirements to non-members."

On July 11, 2018, in response to Johnson's letter of July 10, 2018, Union representative Schipp provided Johnson with two documents. The first was a draft memorandum of understanding that contained a list of fourteen proposals. The second was another draft memorandum of understanding that included one of the fourteen proposals as a separate agreement. Schipp asserted that, "if there are any items that are not agreeable, we can strike from [sic] and produce a revised document." Schipp sent the Respondent two follow-up emails before he received a response.

Later in July 2018, the Respondent and the Union agreed to incorporate a discussion of the Janus decision into the previously-established labor-management meeting on July 31, 2018. Present on behalf of the Union were Union representative Shipp, former Union President Dave Decap, and current Union President Brent Antolik. Present on behalf of the Respondent were Executive Director Leischner, attorney Joseph Perkoski, and HR Director Johnson. Schipp was the Union's chief spokesperson. Perkoski was the Respondent's chief spokesperson.

At the labor-management meeting, the Union presented a draft memorandum of understanding (MOU) containing the fourteen (14) contract proposals. The Union described the list of proposals as a template that employers could work with to "create something that would fit each individual workplace." Schipp acknowledged that some of the proposals in the draft MOU were either the Respondent's status quo or did not apply to the Respondent. The parties discussed each proposal and Schipp explained each proposal's purpose. Although the Respondent's agents voiced opinions on the Union's proposals, they did not make any counterproposals. The proposals are grouped by topic below.

The first proposal stated that the employer would halt all fair share fee deductions. During the meeting, Schipp recognized that the Respondent had no fair share payers and that this proposal

did not apply to the Respondent. He asserted that the parties did not need to reduce this proposal to writing because the Janus decision controlled this issue.

Proposals two, three, and five addressed the Respondent's communications with employees about the Janus decision and union membership. Proposal two required the Respondent to "direct any and all employee inquiries about the Janus case or its implications on the Agreement, if any, to the Union." Proposal three required the Respondent to "refrain from communicating – orally or in writing – to bargaining unit members about the Janus case or its implications, if any, on the agreement, except as explicitly provided [by the terms of the MOU]." It further required the Respondent to instruct its officers, supervisors, managers, and/or agents of this prohibition. Proposal five prohibited the Respondent and its agents from discouraging any bargaining unit employee from being a Union member or otherwise participating in Union activities. It also required the Respondent to refer all inquiries about union membership to the Union. The purpose of these proposals was to ensure that the Union would be the entity communicating with employees about the Janus decision and to prevent the Respondent's agents from making statements that could impinge on an employee's decision to become a union member.

The Respondent responded to these proposals by asserting that they represented the status quo, and that it was already acting in conformity with them. The Union agreed. In addition, the Respondent agreed that its administrators would not have conversations with employees about Janus or its implications, and that it would not discourage employees from being union members. Perkoski noted that the collective bargaining agreement already contained a nondiscrimination clause that addressed such issues.[3] The Respondent generally agreed that it would direct inquiries about union membership to the Union. However, it believed that the Union's proposal to that effect was too restrictive on the Respondent because it covered "all inquiries."

Proposals four, six, seven, and eight addressed the Union's access to and communication with employees. Each proposal is discussed in turn below. Proposal four stated that the Respondent would "facilitate the Union's ability to communicate with all bargaining unit employees through utilization of the Employer's email system." The Respondent responded to this proposal by stating that the Union already had the right to use the email system and that the

[3] The parties' contract has no provision requiring the Respondent to direct inquiries about union membership to the Union.

parties therefore did not need to memorialize that proposal in an MOU. The Respondent agreed that it would continue its current practice of allowing the Union to use its email system.

Proposal six stated that the Respondent would notify the Union in writing on a monthly basis regarding certain personnel transactions (e.g., new hires, promotions, demotions, reclassifications, discharges, among others). It further provided that the Respondent would "notify both Council 31 and the Local Union via electronic mail of all new personnel hired into bargaining unit positions on or before the new employee(s) date of employment." The Union advanced proposal six because it wanted a "complete snapshot" of the bargaining unit in an "uploadable" format. Johnson responded to this proposal by stating that the parties' collective bargaining agreement requires the Respondent to provide a statement to the Union every two weeks describing the dues it has deducted and noted that the Respondent provides the Union with a PDF report. Schipp responded that the Union wanted an excel file on a monthly basis. The preponderance of the evidence demonstrates that the parties did not resolve the issues set forth in this proposal. Although Perkoski testified that the parties determined that proposal six was not a necessary provision because the unit was relatively small, this testimony is inconsistent with Schipp's testimony and Schipp's later actions. Schipp credibly testified that the parties did not resolve the issues presented in this proposal. In addition, Schipp demonstrated the Union's continued interest in this matter when he contacted the Respondent in October 2018 to reiterate the request for a monthly electronic report, as initially proposed in the draft MOU.

Proposal seven stated that the Union would be "entitled to conduct a one[-] hour informational session for all bargaining unit employees within fourteen (14) days of the [parties'] Agreement, and on an annual basis thereafter." It further proposed that the employees would be compensated for the worktime spent in such training. Although the Union initially proposed a one-hour informational session, Schipp informed the Respondent that the Union would be willing to accept 30 minutes. The Respondent questioned how this proposal pertained to the Janus decision. The parties did not reach a resolution on this issue.

Proposal eight stated that the Union would conduct union orientation for each new bargaining unit employee during the employee's first or second day of employment in the bargaining unit. The Union further proposed that such orientation would take place during employees' regular working hours with no loss of pay to the employees involved. Although the Union initially proposed a one-hour orientation session, Schipp informed the Respondent that the

Union would be willing to accept 30 minutes. Perkoski responded that this provision did not really apply to the Respondent. However, Schipp testified that the Respondent did not voice opposition or hostility towards his proposal. The parties did not have much discussion about this proposal.

Proposals nine and ten pertained to employee privacy in the wake of Janus. Proposal nine stated that the Respondent would not supply information in response to third party Freedom of Information Act (FOIA) requests, or similar requests, "that is 'private information' exempt from required disclosure under FOIA, including, but not limited to, home and personal phone numbers, home addresses, personal email addresses, union membership/dues authorization deduction cards, authorizations to deduct political contributions, and lists of members, non-members, and those who have entered into voluntary deduction authorization agreements." Proposal ten stated that the Respondent would notify the Union of such third-party requests for information within 24 hours so that the parties could discuss and review requests that might be used to confuse, harass, or invade the privacy of Union-represented employees. It also stated that the Respondent would "prohibit the use of its email system by outside entities for the purpose of discouraging membership in the Union."

In response to proposal nine, the Respondent asserted that it would comply with FOIA and that it would exercise appropriate exemptions whenever a third party was seeking information that was not disclosable under FOIA. Perkoski testified that the Respondent would generally apply the exemptions. Schipp testified that the parties had an agreement in principle on proposal ten but that the Respondent stated it was reluctant to agree to any provision that would require it to violate the Freedom of Information Act. However, Schipp further testified that the parties would have benefited from a subsequent meeting to discuss this proposal and to determine what information is exempt from FOIA. The parties did not reach a resolution on this proposal.

In response to proposal ten, the Respondent asserted that it was difficult to police emails sent by outside third parties. In addition, the Respondent stated that it did not wish to be subject to grievances if it did not promptly inform the Union of certain third-party requests for employee information. Schipp testified that he believed, at that time, that the Union would likely drop proposal ten from subsequent package proposals.

Proposal eleven pertained to dues deduction. It stated that the Respondent would honor employees' individually authorized deductions and stated that such dues would be "irrevocable

except in accordance with the terms under which employee voluntarily authorized said deductions."

The parties spent most of their time at the meeting discussing proposal eleven. Schipp asserted that proposal eleven was the crux of the Union's proposal. The parties' existing collective bargaining agreement ties dues payment to the duration of the agreement. The Union believed that decisions concerning union dues authorization were better left to the individual. The Union obtained new signed membership cards from its members, which created membership status for a year and rendered that status irrevocable except within a 15-day drop-out window period. Schipp informed the Respondent that the Union's authorization card authorized dues deduction for a year, subject to revocation within a window period. The Union further believed that the Respondent should honor that choice.

Perkoski asserted that the Respondent was not interested in proposal 11 because he believed that it would require the Respondent to violate the law, as outlined in the Janus decision. He informed the Union that he believed an irrevocable dues authorization card was the same as a mandatory fair share arrangement, which the Janus majority held to be unconstitutional. The Union indicated that this proposal was designed to replace the contract's existing dues deduction provision, Article 5. Perkoski noted that he believed the Respondent could not enforce the part of that provision that stated employees who signed union dues checkoff could not cancel such dues deduction within the term of the agreement. The Respondent did not make a counter proposal to Union's proposal number eleven. The parties did not reach agreement on this proposal.

Proposals twelve and thirteen pertained to changes in dues deduction and the administration of such changes. Proposal twelve stated that the Union would maintain accurate records of voluntarily authorized deductions for represented employees and would give the Respondent timely notice of such changes. In turn, the Respondent would promptly execute any changes in dues deduction and would "not cease voluntary deductions from a member of the bargaining unit unless directed to do so by the Union." Proposal thirteen stated that if a bargaining unit member requested a change in membership/dues status, the Respondent would direct that individual to the Union.

Regarding proposal twelve, Perkoski testified that most of this proposal was not controversial because the parties' contract contained a similar provision and the Respondent's current practices already conformed to the proposal. However, he had reservations about the

requirement that the Respondent could only cease voluntary deductions at the direction of the Union. He anticipated a situation in which an employee approached the Respondent directly about ceasing deduction of dues. Regarding proposal thirteen, the Respondent stated that it would redirect employees to the Union if they came to the Respondent to discuss their membership. However, the Respondent had questions about the approach it would take if an employee insisted that the Respondent stop deducting dues.

Proposal fourteen reaffirmed that the terms of the parties' collective bargaining agreement remained in force, with the exception of the fair share provision. The Respondent asserted that this proposal was unnecessary because of the existing contract's savings clause.

After the parties discussed the proposals, they caucused for approximately 20 minutes. When the parties returned from the caucus, Perkoski stated, "at this time we don't feel that we need to agree to any of these proposals." Schipp responded, "how am I not to understand this as bad faith bargaining." Perkowski explained that some proposals did not apply to the Respondent and that it was already acting in conformity with the other proposals. Schipp informed Perkowski that this response was not a good faith resolution to the parties' meeting.

Following this exchange, the Respondent caucused again for approximately 10 minutes. The Respondent communicated to the Union that there was no need for the Respondent to sign the memorandum of agreement in whole or in part because both parties were bound by the Janus decision irrespective of whether they executed a memorandum of understanding. However, Perkoski stated that he would be willing to provide the Union with a letter affirming the points on which the parties agreed. Specifically, he stated that the letter would affirm the Respondent's adherence to the current contract and the Janus decision. It would also affirm that the Respondent's agents would not speak directly to employees about Janus or about their union membership and would not discourage employees' membership in the union. Perkoski stated that he believed that the Respondent was already acting in conformity with some of the proposals.

Schipp responded that the Union wanted a memorandum of agreement, but that it would review Perkoski's letter. Schipp further stated that he would provide the Respondent a revised version of an MOU that would exclude provisions that were inapplicable to the Respondent or to which the parties could not agree. Schipp never promised to send revised proposals in exchange for the Respondent's letter. Furthermore, Schipp made clear that the Union wished to have a written agreement even on matters that represented the status quo because management at the

Airport could change at any time. He informed the Respondent that the Union did not intend to remove proposals from consideration simply because they reflected the status quo.

The parties' discussion on Janus-related matters lasted at least two hours. At no time during the meeting did Perkoski use the word impasse or deadlock. No one on management's bargaining team stated that further discussions would be fruitless. Executive Director Leischner testified that he viewed the July 31, 2018 meeting as a "starting point" and that he expected future meetings on the subjects the parties had discussed.

On August 15, 2018, Schipp sent Johnson an email requesting a follow-up and a response to the Union's proposal. He sent the Respondent a second email on August 28, 2018, to follow up on his earlier email.

On August 30, 2018, Johnson sent a letter to Schipp stating that the Respondent position remained the same as it had been in the July 31, 2018 negotiations. Johnson reasserted the Respondent's intent to comply with its obligations under Janus. Johnson further asserted that she did not believe it was necessary to amend the current collective bargaining agreement because it provides for compliance with contract terms consistent with existing law. She further stated that irrevocable union dues withholding authorization language was inconsistent with Janus. She concluded by stating, "we believe that we have addressed the Union's concerns with respect to the impact of Janus…[and] we remain open to discussing any additional concerns."

On September 5, 2018, Schipp responded to Johnson via email. He requested a second meeting to discuss the Union's impact bargaining proposals and suggested four potential dates.

On September 7, 2018, Johnson responded to Schipp via email and asked him to clarify the purpose of a second meeting. She noted that the Respondent had provided written affirmation of its position, as presented at the July 31, 2018 bargaining session, and its intent to comply with its obligations under Janus. Johnson further noted that the Respondent remained open to discussing any additional concerns. She asked the Union whether it planned to "bring forth additional concerns regarding" the Janus-related issues. She asked Schipp to send her that information so that the Respondent could "consider [the Union's] request for another meeting." Johnson testified that the Respondent wanted to review the Union's additional proposals before setting a date for another meeting. Johnson further testified that her email conveyed that a second meeting was contingent on the Respondent's review of the Union's proposals.

On September 10, 2018, Schipp responded to Johnson's email explaining the purpose of a second meeting. He stated that the Union intended to present a set of modified proposals that would take into account the discussions from the July 31, 2018 impact bargaining session. He further noted that the Union did not agree with the Respondent's assertion it would contravene the holding in Janus by honoring voluntarily signed members cards, as the Union proposed. He asserted that Janus did not address questions concerning member dues authorization and instead focused on fair share fees paid by non-members. He attached to his email a legal opinion letter by attorney Stephen Yokich which asserted in most relevant part that employers must honor authorization cards that require employees to pay dues. The opinion letter further noted that employees who sign such cards may be bound to pay dues even if they resign their union membership, provided that the card gives employees an annual window period within which they can revoke their dues deduction authorization.

On September 24, 2018, Schipp sent an email to Johnson stating that he had not received a response to his September 10, 2018 email. He asked whether he was to understand this silence as a refusal to meet. He concluded by offering three potential dates for a second meeting.

On September 26, 2019, the Respondent's attorney, Perkoski, responded to the Union's request for a second meeting and reiterated the Respondent's position. Perkoski asserted that he did not believe that the Respondent was required to execute a memorandum of understanding to comply with the legal requirements set forth in Janus. Perkoski stated that the Respondent disagreed with attorney Yokich's August 22, 2018 legal opinion, which suggested that the Respondent was required to honor an irrevocable period in union dues agreements. He acknowledged that Janus did not directly address whether bargaining unit members could waive their First Amendment rights during irrevocability periods, or whether an employer would violate an employee's First Amendment rights by withholding union dues during an irrevocability period. Accordingly, he asserted that the Respondent could not agree to contract language that required it to honor irrevocability periods in union membership agreements.

In the penultimate paragraph of the letter, the Respondent stated: "The [Respondent] has addressed the [Union's] concerns to date with respect to the impact of Janus. The [Respondent] intends to comply with its legal obligations set forth in Janus, as well as its collective bargaining commitments. In your September 10, 2018 correspondence, you indicated that you intend to present modified proposals based upon the discussions at the July 31, 2018 meeting. Please provide

these proposals to Ms. Johnson and the [Respondent] will consider your request for another meeting."

Based on the language in Perkoski's letter, Schipp understood that the Respondent would not agree to meet with the Union until its agents reviewed the Union's modified proposals. At hearing, Johnson confirmed that the Respondent had not accepted any of the Union's proposed dates because it did not wish to meet until its agents reviewed the Union's modified proposals. She further testified that she understood Perkoski's letter as requesting the Union's modified proposals so that the Respondent could determine whether a second meeting would be worthwhile.

The Union did not send the Respondent any modified proposals related to the Janus decision. It filed the unfair labor practice charge in this case on October 12, 2018.

On November 1, 2018, Schipp contacted the chairman of the Airport Authority Board, John Melvik, by phone and left a voicemail. He also followed up with an email indicating that the Union wanted to return to the table to negotiate over the impacts of Janus, so that the parties could avoid litigation on the unfair labor practice charge. Chairman Melvik responded via email, cc-ing Executive Director Leischner, Johnson, and attorney Perkoski. He asserted that he was not authorized to communicate with Schipp on this matter and that the Union should direct communication to Executive Director Leischner.

Schipp then called Leischner, who stated that the Airport Authority Board was aware of the status of negotiations and supported the position held by the Respondent's bargaining agents. None of the Respondent's agents contacted Schipp after his conversation with Leischner to schedule a meeting. The parties never met for a second bargaining session.

IV. DISCUSSION AND ANALYSIS

1. The Impact of Janus and the Respondent's Duty to Bargain under Section 7 of the Act

The Janus decision impacts employees' terms and conditions of employment. Moreover, the effects of Janus, over which the Union sought to bargain, are not matters excluded from the scope of bargaining. They are not matters "specifically provided for" in another law or specifically contrary to another law. They are also mandatory subjects of bargaining under the Central City test.

Section 7 of the Illinois Public Labor Relations Act (the Act) sets forth the duty to bargain. It states the following in relevant part: "The duty 'to bargain collectively' shall…include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty 'to bargain collectively' and to enter into collective bargaining agreements containing clauses which either supplement, implement, ***or relate to the effect of such provisions in other laws***." 5 ILCS 315/7 (emphasis added).

The Janus decision impacts employees' terms and conditions of employment because it affects their union representation. Union representation is a condition of employment. Oaktree Capital Mgmt., LLC, 355 NLRB 1272, 1272 (2010) (addressing a union's access to employees). An exclusive representative is statutorily obligated to represent all employees in the bargaining unit. 5 ILCS 315/6(d) (an exclusive representative is "responsible for representing the interests of all public employees in the unit."). Accordingly, changes that impinge on an exclusive representative's ability to serve as an effective representative impact all employees' terms and conditions of employment. Oaktree Capital Mgmt., LLC, 355 NLRB at 1272 (employer's limitation on union's access to employer's premises impacts employees' terms and conditions of employment by impairing the union's ability to represent employees effectively); Ill. Dep't of Cent. Mgmt. Servs, 17 PERI ¶ 2046 (IL LRB-SP 2001) (transfer of work out of the bargaining unit impacts employees' terms and conditions of employment by weakening the unit's collective strength).

A change that impairs the stability of a union's funding source can adversely affect a union's ability to effectively represent its members. It is undeniable that bargaining and contract administration cost the union time and money, just as they do for the employer. If a union cannot consistently pay for lawyers, trained negotiators, and researchers, it cannot match the employer's bargaining power and strike a good deal for unit employees.

The legislature acknowledged these financial realities by giving the union's funding source special protections. The Act facilitates a union's ability to obtain dues from employees by allowing the union and the employer to negotiate a collective bargaining agreement that provides for the payroll deduction of labor organization dues. 5 ILCS 315/6(f). It also requires the employer to

adhere to such a dues deduction agreement even after the term of underlying contract has expired.[4] Id. Finally, the Act gives unions the means to enforce the dues deduction provisions before the Board by making it an unfair labor practice for an employer to refuse to honor the dues deduction provision. 5 ILCS 315/6(f)(ii). The Act thereby designates an employer's refusal to adhere to a dues deduction agreement as a repudiation of its collective bargaining obligation and not merely a breach of contract, which the Board would have no power to remedy. Compare Village of Creve Coeur, 3 PERI ¶ 2063 (IL SLRB 1987) (Board does not police collective bargaining agreements or remedy alleged breaches of its terms) and City of Loves Park v. Illinois Labor Relations Bd. State Panel, 343 Ill. App. 3d 389, 396 (2d Dist. 2003) (employer's attempt to retroactively nullify the entire bargained-for grievance provision constituted repudiation).

The Janus decision has the potential to impair the stability of the Union's funding source and to thereby impact the quality of the representation that the Union can provide to its members. As discussed below, it eliminates the requirement that nonmembers of a union pay their fair share of contract administration and collective bargaining costs. Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31 ("Janus"), 138 S. Ct. 2448, 2486 (2018). It further creates a "free rider" problem, which is an economic incentive for employees to resign their membership in the union (or to allow it to lapse), upon recognizing that they can receive the benefits of union representation without the cost. See discussion infra.

In Janus, the majority overruled the Supreme Court's decision in Abood, which held that an agency shop (i.e. fair share) provision in a collective bargaining agreement covering governmental employees was constitutionally valid. Abood v. Detroit Bd. of Ed., 431 U.S. 209, 225-6 (1977) overruled by Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31, 138 S. Ct. 2448 (2018). Under such fair share provisions, employees within the bargaining unit who are not members of the union must nevertheless pay their proportionate share of the costs of collective bargaining and contract administration. 5 ILCS 315/3(g) (defining the term "fair share agreement"). The Abood court noted that such an arrangement not only distributes the costs of representation among those who benefit. Abood, 431 U.S. at 221-2. It also "counteracts the incentive that employees might otherwise have to become 'free riders' to refuse to contribute to

[4] "Where a collective bargaining agreement is terminated, or continues in effect beyond its scheduled expiration date pending the negotiation of a successor agreement or the resolution of an impasse under Section 14, the employer shall continue to honor and abide by any dues deduction…clause contained therein until a new agreement is reached including dues deduction…." 5 ILCS 315/6(f).

the union while obtaining benefits of union representation that necessarily accrue to all employees." Id.[5]

In overruling Abood, the Janus majority reasoned that the risk of free riders, relied upon in Abood, was insufficient to overcome the First Amendment objections to the imposition of fair share fees. Janus, 138 S.Ct. at 2467 & 2469. Nevertheless, it recognized that "the loss of payments from nonmembers may cause unions to experience unpleasant transition costs," and it implicitly acknowledged that such losses were not limited to the elimination of compelled fees paid by nonmembers. Indeed, the majority noted that its holding might "require unions to make adjustments in order to ***attract and retain members***." Id. at 2485-86. This reasoning recognizes the prospect that employees who were union members before the Janus decision might allow their membership to expire upon realizing that they can obtain the benefits of membership without the cost, and that new employees similarly might not sign up to support the union financially.

There is no merit to the Respondent's contention that the Union in this case is unaffected by the Janus decision where all employees in the unit are dues paying members. As discussed above, the impact of Janus on the stability of the union's funding source is not limited to the immediate loss of fair share dues. Rather, it includes the potential loss of financial support from union members who allow their membership to lapse while still enjoying the benefits of union representation, which a union is statutorily obligated to provide irrespective of payment. 5 ILCS 315/6(d). It is this latter consequence that the Union here seeks to address through bargaining.

Next, the matters that the Union has sought to bargain are appropriate subjects of bargaining under Section 7 of the Act. They are not matters specifically addressed by the Janus decision nor are they contrary to it. The Janus decision resolved a narrow issue: the constitutionality of compelled fair share fee arrangements, under which an employer, pursuant to an agreement with a union, deducts fees from nonmembers' paychecks without their consent to cover their fair share of costs related to bargaining and contract administration. Janus, 138 S.Ct. at 2486. The Janus majority found that such arrangements violated the First Amendment and were unconstitutional. Id.

[5] Justice Kagan's dissent in Janus crystalizes the Abood decision. It emphasizes that employers may be unable to reap the benefits of exclusive representation arrangements if the exclusive representative does not have a stable funding source, and that compelled fair share arrangements are sometimes necessary to ensure such stability. See Janus, 138 S. Ct. at 2489 (Kagan, J., dissenting, citing Abood, 431 U.S. at 220-2).

All of the Union's proposals, except the one mandating the cessation of fair share dues deductions, address matters that the Janus court did not resolve. Janus did not address the propriety of dues deduction/checkoff for union members who sign authorization cards and agree to pay dues (proposal 11). Contrary to the Respondent's contention, Janus did not address the propriety of proposals that limit consenting dues-paying members from revoking their dues authorization except during an annual window period. Janus did not address the manner in which parties would administer changes to dues deduction preferences expressed by employees post-Janus (proposals 12 & 13). Janus did not resolve the manner in which parties would inform employees about the Janus decision or its impacts (proposals 2, 3, 4 5). The Janus court did not rule on how a union should "attract and retain members" or shield employees' privacy from the influence of third parties that seek to diminish union membership (proposals 7, 8, 9, 10). Nor did Janus address the type of information that the Union would need to timely identify new employees for recruitment or to effectively administer a new dues-deduction framework (proposals 6). Finally, Janus did not resolve how parties with contractual fair share provisions would treat the remainder of their contracts where the Janus decision rendered the fair share provisions unconstitutional (proposal 14).[6]

The court's decision in Village of Oak Lawn does not support the Respondent's position that the Union here has sought to bargain matters that are "specifically provided for" by the Janus decision. In Village of Oak Lawn, there was identity between the matter specifically provided for in another law and the subject of bargaining, whereas in this case there is not. Oak Lawn Prof'l Firefighters Ass'n v. Vill. of Oak Lawn, 2018 IL App (1st) 172079, ¶ 22. There, the municipal code provided that an employer could not impose residency restrictions that were more restrictive than those in effect at the time the employee began service with the municipality. Vill. of Oak Lawn, 2018 IL App (1st) 172079, ¶ 22. The employer nevertheless proposed a residency requirement where none had existed before, and an interest arbitrator awarded the employer's proposal. Id. at 22. The union challenged the arbitrator's award, and the Court agreed that the arbitrator acted outside his authority because the subject of residency restrictions was excluded from bargaining under Section 7 of the Act as a matter "specifically provided for" in the municipal

[6] Arguably, it did provide some guidance to the State of Illinois and AFSCME, but only in articulating why the parties' reliance on Abood was insufficient to warrant adherence to that precedent. Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31, 138 S. Ct. 2448, 2485 (2018).

code. Id. Here, by contrast, the Union has not sought to bargain over the subject addressed by another law, i.e., fair share fees, and has instead advanced proposals to attract and retain members in an effort to mitigate the impact of Janus on the stability of its funding source.

Contrary to the Respondent's suggestion, Village of Oak Lawn does not stand for the proposition that parties need not bargain over the effects of a matter "specifically provided for in another law." The Court in that case did not consider the parties' obligation to bargain over the effects of the employer's residency restriction, at issue there. Rather, it considered questions of decisional bargaining and determined that the disputed subject was not mandatorily negotiable. Vill. of Oak Lawn, 2018 IL App (1st) 172079, ¶ 22.

Moreover, the Respondent's interpretation of the Village of Oak Lawn decision is at odds with the express language of the Act. The Act specifies that other laws that pertain, in part, to a matter affecting employees' conditions of employment "shall not be construed as limiting the duty to bargain." 5 ILCS 315/7. To that end, it affirmatively imposes a bargaining obligation over matters that "relate to the effect of" such other laws, and as discussed below, virtually all the Union's proposals fall within that category. Id.

Next, the Union's proposals are also not specifically in violation of the provisions of any law. Nothing in the Union's proposals to date expressly contravenes the Janus holding. The Union's proposal that the Respondent honor employees' dues authorization cards, which limit dues revocation to an annual window period, is not contrary to Janus because the Janus court did not consider the constitutionality of such window periods. The Respondent has not separately argued that such a proposal is an illegal subject of bargaining under the Act, and any such arguments are deemed waived. Illinois Dep't of Military Affairs, 16 PERI ¶ 2014 n. 10 (IL SLRB 2000).

Finally, the subjects that the Union seeks to bargain are mandatory subjects of bargaining under the Central City test. To resolve the tension between an employer's duty to bargain in good faith under Section 7 of the Act and its inherent managerial authority set forth in Section 4 of the Act, the Illinois Supreme Court established a test for determining whether any given topic is a mandatory subject of bargaining. Under the Central City test, a topic is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: 1) is either not a matter of inherent managerial authority; or 2) is a matter of inherent managerial authority, but the Board determines that the benefits of bargaining outweigh the burdens bargaining imposes

on the employer's authority. Cent. City Educ. Ass'n, IEA/NEA v. Illinois Educ. Labor Relations Bd. ("Central City"), 149 Ill. 2d 496, 523 (1992).

The Respondent has not argued that any of the Union's proposals concern matters of inherent managerial authority. Accordingly, the sole question presented under the Central City test is whether the Union's proposals concern employees' wages, hours, and terms and conditions of employment. Clearly, they do.

As discussed above, the Janus decision concerns employees' terms and conditions of employment because it has the potential to impact the quality of their union representation. In addition, virtually all of the Union's proposals address the effects of the Janus decision. They attempt to mitigate the "unpleasant transition costs" that the Janus majority anticipated would result from its ruling, by helping the Union "attract and retain members" to promote the stability of the Union's funding source in the interests of effective employee representation. Janus, 138 S.Ct at 2485-6.

Proposals 11, 12, and 13 concern the financial aspects of membership and help preserve the Union economic vitality. Proposal 11 ensures continuity of dues payment for a year at a time by incorporating the terms of the Union's authorization card into the parties' agreement and ensuring that the Respondent honors its terms. Proposals 13 similarly ensures continuity of dues payment by preempting potential communications from the Respondent to employees regarding union membership, which could reasonably influence an employee's choice on this issue, and instead directing such communication to the Union. Proposal 12 likewise ensures continuity of dues payments by giving the Union oversight of the Respondent's compliance with proposal 11 and designating the Union as the exclusive conduit to the Respondent of employee requests to cease dues deduction.

Proposals 7, 8, 6, and 4 encourage voluntary membership through education and Union access to employees. Proposals 7 and 8 give the Union the opportunity to convey to employees the benefits of the union by proposing union training for current employees, and union orientation for new employees. Proposals 4 and 6 similarly facilitate the Union's contact with employees—potential union members—by giving the Union notice of changes to personnel in the bargaining unit (#4) and permitting the Union's use of the Employer's email system to contact employees (#6). These proposals help the Union secure and expand its membership base in the face of Janus, which has the reasonable tendency to erode it.

Proposals 9 and 10 help the Union retain members by shielding employees' private information from third parties who wish to erode the Union's support for ideological or political reasons. To that end, it limits the Respondent's release of employee information under FOIA that is exempt from required disclosure but which the Respondent could otherwise choose to release. It limits the Respondent from allowing third parties to use its email system to discourage union membership, and it requires the Respondent to apprise the Union of FOIA requests for employee information, thereby giving the Union the opportunity to counter anti-union influence campaigns.

Proposals 2, 3, and 5, similarly help the Union retain members by protecting employees from communications regarding Janus that have the intended or inadvertent effect of discouraging union membership. Proposals 2 and 3 focus on ensuring that employees receive accurate and consistent information about their rights and the impact of the Janus decision on their terms and conditions of employment. To that end, they designate the Union as the sole appropriate source of information for employees regarding Janus/union membership, prohibit the Respondent from communicating to unit members on such subjects, and instead require the Respondent to direct such inquiries to the Union. Proposal 5 prohibits communications by the Respondent that affirmatively discourage union membership.

There is no merit to the Respondent's assertion that the Central City test requires the Union to show that the Respondent changed employees' terms and conditions of employment. The Central City test examines the character of the subject matter in dispute, not the respondent's conduct. Central City, 149 Ill. 2d at 523. The existence of a change is relevant in cases where the union alleges a unilateral change, but not in cases such as this one, where the union has alleged that the Respondent refused to negotiate over otherwise mandatory subjects that the parties have not fully bargained. Compare County of Cook and Sheriff of Cook County, 32 PERI ¶ 70 (IL LRB-LP 2015) (employer made unilateral change to secondary employment policy) aff'd by County of Cook v. Illinois Labor Relations Bd., 2017 IL App (1st) 153015, ¶ 71 with Illinois Dep't of Military Affairs, 16 PERI ¶ 2014 (employer unlawfully refused to bargain over mandatory subject midterm) and Village of Libertyville, 21 PERI ¶ 211 (IL LRB-SP 2005) (employer unlawfully refused to bargain over mandatory subject during negotiations for a successor contract where change in law imposed a bargaining obligation over that subject).

Finally, the Respondent's fears about the potential outcome of the bargaining process are given no weight in determining the Respondent's bargaining obligation. The Respondent

anticipates that effects bargaining would "invite…proposals…contrary to" Janus, but the Respondent has an obligation to bargain irrespective of such fears unless the Union has waived the right to bargain over some or all of these issues. County of Cook, 4 PERI ¶ 3029 n. 8 (IL SLRB 1988) rev'd sub nom. County of Cook v. Illinois Local Labor Relations Bd., 204 Ill. App. 3d 370, 378 (1st Dist. 1990), rev'd sub nom. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO v. County of Cook, 145 Ill. 2d 475, 584 (1991). Notably, the duty to bargain collectively does not require a party to reach a particular agreement or make a particular concession; the parties may pursue their views to impasse. City of Decatur v. Am. Fed'n of State, County, & Mun. Employees, Local 268, 122 Ill. 2d 353, 367 (1988).

In sum, absent any contractual defense, the Respondent has a duty to bargain over the effects of the Janus decision.

2. Waiver

The Union waived the right to bargain over some, but not all, of its proposals related to the effects of the Janus decision.

Evidence that a party intended to waive a statutory right must be clear and unmistakable. Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). It is the Respondent's burden to prove the existence of clear, unequivocal, and unmistakable waiver. Forest Preserve District of Cook County, 21 PERI ¶ 43 (IL LRB-LP 2005), aff'd, Forest Preserve District of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733 (1st Dist. 2006); Illinois Department of Central Management Services (Department of Public Aid), 10 PERI ¶ 2006 (IL SLRB 1993), aff'd, American Federation of State, County and Municipal Employees v. Illinois State Labor Relations Board, 274 Ill. App. 3d 327 (1st Dist. 1995).

A collective bargaining agreement is deemed to be a waiver of both parties' right to bargain over matters fully negotiated and covered by the agreement because parties are not required to reopen bargaining over items to which they have already agreed. Illinois Secretary of State, 24 PERI ¶ 22 (IL LRB-SP 2008); City of Chicago, 18 PERI 3025 (IL LRB-LP 2002); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014; City of Decatur, 5 PERI ¶ 2008 (IL SLRB 1989); Pembroke Comm. Consolidated School Dist. No, 259, 8 PERI ¶ 1055 (IELRB 1992). However, waivers by express agreement are construed as applicable only to the specific item mentioned. Illinois

Secretary of State, 24 PERI ¶ 22. Where a contract is silent on the subject matter in dispute, a finding of waiver by contract is absolutely precluded. Id.

The duty to bargain midterm nevertheless remains as to those subjects that are neither fully bargained nor a subject of a clause in a collective bargaining agreement;[7] however, parties may waive the right to midterm bargaining by agreeing to a zipper clause. City of Chicago, 18 PERI 3025. A zipper clause must meet the standard of any other form of alleged waiver: i.e., there must be a clear and unequivocal relinquishment of the right to bargain. Village of Bensenville, 19 PERI ¶ 119 (IL LRB-SP 2003). The question of whether rights have been clearly and unmistakably waived depends upon context and the specific circumstances of each case. Illinois Dep't of Military Affairs, 16 PERI ¶ 2014. Express contractual language, the parties' bargaining history, and the circumstances under which contracts are negotiated are all critical in determining whether a waiver was clear and unmistakable. Id. Contract language may be determinative in the absence of evidence regarding the parties' bargaining history. Id. However, the Board will not find a valid waiver where the circumstances surrounding the contract's negotiation do not support the finding of an intentional waiver. Id.

The Union contractually waived the right to bargain over matters settled by the contract including proposals pertaining to dues deduction, non-discrimination, and the impact of Janus on the validity of the contract as a whole. As discussed below, the contract contains provisions that squarely address these matters, and the Respondent is not required to negotiate over proposals that contradict or simply reaffirm the contract's existing terms.

The Union's proposal eleven seeks to modify the contract's existing dues check-off provision. That provision states in relevant part that the Respondent must deduct dues upon receipt of an appropriate written authorization from an employee and that employees who signed cards shall not be allowed to cancel such dues deduction within the term of the Agreement. The Union seeks to replace the provision that states dues are irrevocable during the contract's term. It wishes to substitute a new provision under which the Respondent will honor dues deduction authorization cards which, by their terms, render dues authorization irrevocable for a year, except during a window period. Notably, the Union conceded that it designed this proposal to replace the contract's existing dues deduction provision and it likewise acknowledges that the provision it sought to replace was not affected by the Janus decision. See U. Brief, p. 17 n. 6. Thus, the

[7] See City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015); Illinois Secretary of State, 24 PERI ¶ 22.

Union's proposal eleven seeks to renegotiate a settled matter, and the Respondent therefore has no obligation to negotiate over it. City of Chicago, 18 PERI 3025 (contract showed that parties bargained over employer's right to institute mandatory retirement and employer fulfilled its obligation to bargain that issue).

Next, the Union's proposal five sought to reiterate parts of the contract's non-discrimination clause. The non-discrimination clause states, in relevant part, that the Respondent shall not coerce, pressure, or threaten employees with regard to their decision of whether to become members of the Union, and asserts that the Respondent shall not discriminate against employees for exercising their rights under the Act. The Union's proposal five, in part, restates these agreed-upon terms by proposing that the Respondent and its agents "shall not discourage any bargaining unit employee from being a union member or otherwise participating in union activity." The Respondent likewise has no obligation to negotiate over this settled matter.

Similarly, the Union's proposal fourteen asks the Respondent to reaffirm the terms of the contract's savings clause, which is likewise a settled issue. The contract's savings clause provides in relevant part that if part of the agreement is "held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specified article, section or portion thereof directly specified in the decision." The Union's proposal fourteen echoes this provision with reference to the Janus decision and states that the contract remains in force except for the provision mandating the payment of fair share fees, which the Janus decision rendered unlawful. Thus, the contract already contains the terms the Union proposed, and Respondent has fulfilled its obligation to bargain over the union's proposal.

In addition, the zipper clause, when viewed in combination with other contract provisions, demonstrates that the Union waived the right to bargain over the remaining dues deduction-related proposals and the proposals that pertain to employee orientation and training. The zipper clause provides that the parties "waive…the right…to bargain collectively with respect to any subject or matter referred to, or covered by this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed [the] agreement." As discussed below, the parties' contract refers to and covers the subjects of dues deduction, orientation, and training.

First, the Union waived the right to bargain over the mechanisms of dues deduction, the subject of proposals twelve and thirteen, because the contract refers to and covers dues deduction.

The contact contains a complete framework for the processing of dues deduction and sets forth the Respondent's obligation to maintain such deductions during the terms of the contract. The Union seeks to supplement this framework by advancing terms that work in tandem with its proposed modification to the check-off provision, discussed above. Most significantly, the Union proposes that the Respondent not cease deductions unless the Union directs it to do so, and that the Respondent direct employees to the Union if they seek changes to their dues status. These proposals expand upon the parties' complete agreement regarding dues deduction, and the zipper clause therefore forecloses additional bargaining over them.

Next, the Union waived the right to bargain over union training and orientation, which are the subjects of proposals seven and eight, because the contract similarly refers to and covers these subjects. The contract narrowly specifies the circumstances under which employees and the Union may engage in union activity on the Employer's premises. It allows union representatives to have reasonable access to the premises for scheduled Employer/employee meetings, and further specifies that "no union activity…shall be carried on during the working hours of the employees who are meeting with the Union representative." The Union wishes to expand this provision by negotiating additional, in-person access to employees, beyond that specified in the contract. It proposes Union-run orientation training for new employees during employees' regular work hours, with no loss of pay. It similarly proposes annual Union-run training for current employees in conjunction with the Department's scheduled training, and implicitly proposes that such training occur during employees' regular working hours by stating that the training shall be "without loss of pay."

Even if the Union's proposal is viewed as pertaining to training, as opposed to simply union activity, the contract likewise refers to and covers this subject. The parties negotiated a provision addressing the circumstances under which employees receive training. Moreover, that provision addresses both types of training proposed by the Union—on the job training for current employees and pre-entry training (i.e., "orientation"). It also addresses the circumstances under which the Respondent will compensate employees for such training, specifying that the training must be job-related and that it must occur during worktime. Accordingly, the Union's attempt to negotiate for additional paid training to inform employees about the Union and its role is barred by the zipper clause and other contract terms.

Contrary to the Union's anticipated contention, it is immaterial that the Union could not have foreseen the Janus decision at the time it negotiated its contract with the Respondent. A union's unhappiness with contract terms in light of subsequent events does not invalidate a clear and unmistakable waiver of bargaining rights. Rock Falls Elementary School. Dist. No. 13, 2 PERI ¶ 1150 (IL ELRB 1986) (giving effect to a broad zipper clause). This is true even if the subsequent event is a change in the law that the parties may not have anticipated. Maine Township High School Dist. No. 207, 2 PERI ¶ 1068 (IL ELRB 1986).[8] Here, the zipper clause expressly waives the Union's right to bargain over matters "referred to or covered" by the agreement, even if those matters were not "within [the Union's] knowledge or contemplation when [it] signed [the] agreement." And there is no bargaining history in this case to suggest that the contract's zipper clause does not mean what it says. East Richland Unit. School Dist. No. 1, 3 PERI ¶ 1055 (IL ELRB 1987) aff'd by East Richland Education Association v. IELRB, 173 Ill. App. 3d 878 (4th Dist. 1988) (applying broad zipper clause and finding it waived both decisional and effects bargaining over revision to the school calendar); Maine Township High School Dist. No. 207, 2 PERI ¶ 1068; cf. Illinois Dep't of Military Affairs, 16 PERI ¶ 2014 (bargaining history weighed against finding of waiver).

Notably, as to the proposals discussed above, the Respondent has appropriately used the zipper clause as a shield against midterm bargaining and not as a sword to accomplish unilateral changes in terms and conditions of employment. Cf. Village of Bensenville, 19 PERI ¶ 119. The Respondent has made no unilateral changes and the zipper clause in this case stands together with other contract language to support a finding of clear and unmistakable waiver. City of Chicago, 18 PERI 3025; cf. Village of Bensenville, 19 PERI ¶ 119.

However, the Union did not waive the right to bargain over proposals related to its use of the Respondent's email system (proposal 4), the Respondent's obligation to refrain from communicating with employees regarding the Janus decision (proposal 3), and its obligation to direct inquiries regarding Janus and union membership to the Union (proposal 2 and last sentence of proposal 5). The Union also did not waive the right to bargain over its proposals related to employee privacy (proposals 9 and 10) and its proposal concerning the Respondent's obligation to

[8] The Illinois Labor Relations Board has cited the Maine Township decision with approval on a similar issue. City of Chicago, 4 PERI ¶ 3025 aff'd by Water Pipe Extension, Bureau of Engineering, Laborers Local 1092 v. City of Chicago, 195 Ill. App. 3d 50, 55 (1st Dist. 1990).

provide the Union with information concerning personnel transactions involving unit employees on a monthly basis (proposal 6). As discussed below, these are not matters "referred to or covered by the agreement," and the zipper clause therefore does not foreclose bargaining over them.

First, the contract does not reference the Union's use of the Respondent's information technology, at issue in proposal 4. The Respondent admitted as much by noting that the Union's use of its email system was simply a matter of past practice. It also points to no provision in the contract that could arguably cover this matter.

Similarly, the contract does not "refer to or cover" the communications by the Respondent regarding Janus, referenced by the Union in proposal 3. Although the contract's non-discrimination clause prohibits the Respondent from threatening, pressuring, or coercing employees in their decision to become union members, it does not address communications made without any ill-will toward the Union. Here, the Union's proposal addresses the latter category by barring the Respondent from communicating with employees about the Janus decision and its implications, even where the communications may reasonably be viewed as benign, and it directs the Respondent to instruct its agents about that prohibition. Unlike the contract's non-discrimination clause, the proposal does not intend to shield employees' choice about union membership from pressure, threats, or coercion. It simply ensures that employees receive clear, consistent, and accurate information about the Janus decision.

Likewise, the contract does not "refer to or cover" the subjects of proposals 2 and 5, which require the Respondent to direct to the Union all inquiries regarding union membership, the Janus case, and its implications. Nothing in the contract designates either party as the exclusive conduit of information to employees on any subject, let alone the Janus decision, which issued after the parties' executed their contract. Contrary to the Respondent's contention, the subject referenced in this proposal is not union membership, to which the contract arguably refers. It more squarely concerns the types of information that the Respondent and the Union are responsible for providing to employees, and the contract neither refers to nor covers such matters.

Next, the contract does not "refer to or cover" the subjects of proposals 9 and 10, which concern employee privacy. It does not mention the Respondent's obligations under FOIA to third parties. It does not refer to or cover employees' privacy rights or the Respondent's treatment of employees' personal information. It also does not refer to or cover the Respondent's obligations

to notify the Union in the event of a third-party request for employee information or its obligation to limit the use of its email system by outside entities.

Finally, the contract does not "refer to or cover" the Union's right to receive information concerning personnel transactions involving unit employees on a monthly basis, and the Union therefore did not waive the right to bargain a proposal to that effect. A union can contractually waive the right to receive information from the employer on a regular and recurring basis. City of Chicago, 4 PERI ¶ 3025 (IL LLRB 1998) aff'd by Water Pipe Extension, Bureau of Engineering, laborers Local 1092 v. City of Chicago, 195 Ill. App. 3d 50, 55 (1st Dist. 1990). For example, in City of Chicago, the Board found such a waiver based on the parties' broad zipper clause and other contract language specifying the types of information to which the unions were regularly entitled. City of Chicago, 4 PERI ¶ 3025. The Board reasoned that the additional documents sought by the unions through their subsequent information request were of the same class as the documents the employer was required to provide under the parties' contract, and it emphasized that the unions sought the new documents for the same purpose. Id. The Board accordingly affirmed the ALJ's determination that the contract reflected the extent of the parties' negotiated agreement regarding the personnel transactions records that the employer was routinely required to share with the unions. Id. It characterized the unions' position as an attempt to obtain a broader swath of information than that which they had bargained to receive, and it therefore rejected the unions' claim that the employer violated the Act by refusing to provide the requested information.[9] Id.

Here, by contrast, the parties' contract does not demonstrate that the parties negotiated over the Union's receipt of information concerning the class of documents at issue in the Union's proposal. The class of documents sought by the Union is records of personnel transactions within the bargaining unit (e.g., new hires, promotions, demotions, reclassification, layoffs, retirements). The contract contains no agreement by the parties that the Respondent would provide the Union with any type of information regarding personnel transactions of any kind. Accordingly, the Union's attempt to bargain over the regular receipt of such documents cannot be viewed as an attempt to obtain additional types of information within an already-bargained category. Cf. City of Chicago, 4 PERI ¶ 3025. Although the Union did reach an agreement to obtain some

[9] The Board noted that although the unions had not sought to bargain an expansion to the contract, their request that the employer provide them with other information on a recurring basis would have the same effect.

information from the Respondent on a recurring basis, it does not fall within the class of personnel transactions. Instead, it is simply an accounting of union dues that the Respondent has deducted from employees' paychecks, along with the employees' names and addresses.

Even if the Board determines that the information sought by the Union falls within the same class as the dues-related information it is already contractually entitled to receive, there is still insufficient evidence of waiver. Unlike the unions in City of Chicago, the Union in this case seeks the new information for a different purpose than the purpose for which it sought the information it already bargained to receive. When viewed in the context of the Union's other proposals including those pertaining to employee training and orientation, it is evident that the Union seeks the personnel transactions data to facilitate recruitment. Consistent with that aim, the Union also proposed that the Respondent inform the union of new hires before their start date. By contrast, the when the Union negotiated the right to obtain regular recurring information regarding dues deduction, it did so to police the dues check-off provision. Although the deduction information may have allowed the Union to obtain an accurate picture of employees in the bargaining unit, such a list would not have served a recruitment-focused purpose. Indeed, all existing employees were union members and, prior to Janus, any new employees would pay fair share fees by default.[10]

In sum, the Union waived the right to bargain over some, but not all, of its effects bargaining proposals.

3. Refusal to Bargain in Good Faith

The Respondent refused to bargain in good faith over the Union's proposals pertaining to the effects of Janus. The Respondent's duty to bargain remained as to a number of the Union's proposals, but the Respondent precluded meaningful bargaining over those matters by conditioning all bargaining on advance receipt of the Union's modified written proposals.

The duty to bargain requires parties to "meet at reasonable times" and 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.

[10] The religious objectors would also have been required to pay an amount equal to their fair share, but their dues would have gone to a nonreligious charitable organization. 5 ILCS 315/6(g).

As a preliminary matter, it is clear that the Respondent had an active duty to bargain at all times material to this case because the parties had not reached overall agreement or impasse on those aspects of the MOU that addressed mandatory subjects of bargaining. An agreement requires offer, acceptance, and a meeting of the minds—parties must truly assent to the same things in the same sense on all of the agreement's essential terms and conditions. Chicago Transit Auth., 29 PERI ¶ 156 (IL LRB-LP 2013); Cook County Recorder of Deeds, 28 PERI ¶ 14 (IL LRB-LP 2011); Ill. Fraternal Order of Police Labor Council, 19 PERI ¶ 39 (IL LRB-SP 2003). Whether the parties had a meeting of the minds is determined by their objective conduct rather than their subjective beliefs. Paxton-Buckley-Loda Educ. Ass'n v. Ill. Educ. Labor Rel. Bd., 304 Ill. App. 3d 343, 350 (4th Dist. 1999); Ill. Fraternal Order of Police Labor Council, 19 PERI ¶ 39; City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998).

Here, the Respondent had a continuing duty to bargain with the Union over at least six of the fourteen proposals advanced by the Union. These included proposals addressing the following matters: (i) the Respondent's obligation to protect employee privacy from third party intrusions, as set forth in proposals 9 and 10; (ii) the Union's use of the Respondent's email system, as set forth in proposal 4; (iii) the Respondent's obligation to provide the Union with information concerning personnel transactions involving unit employees on a monthly basis, as set forth in proposal 6; (iv) the Respondent's obligation to direct inquiries regarding Janus and union membership to the Union, as set forth in proposals 2 and 5; and (v) the Respondent's obligation to refrain from communicating with employees regarding the Janus decision, as set forth in proposal 3.

However, the Respondent did not reach agreement with the Union on all those issues. The Respondent objected to the Union's proposals pertaining to employee privacy in the wake of Janus as either unnecessary in view of existing statutory requirements or too burdensome. The Respondent objected to the Union's proposal that it should maintain access to the Respondent's email system by asserting that it was not required to place its agreement to such a proposal in writing where it reflected the status quo.[11] The Respondent objected to the Union's proposal that it direct all communications regarding Janus to the Union, noting that the Union's language was overly restrictive. The Respondent objected to the Union's proposal that it provide the Union with

[11] This is not an adequate defense, absent a finding of contractual waiver. Illinois Dep't of Military Affairs, 16 PERI ¶ 2014.

information concerning personnel transactions on the grounds that the Union already received other reports from the Respondent on a recurring basis. Indeed, the sole proposal to which the Respondent unqualifiedly agreed was the proposal that the Respondent refrain from communicating with employees regarding the Janus decision.

The parties also had not reached impasse. The Respondent has not argued that the parties reached impasse, and this claim is therefore waived. Moreover, the facts do not support a finding of impasse. In determining whether parties have reached a legitimate impasse, the Board considers the totality of the circumstances. City of East Moline, 33 PERI ¶ 15 (IL LRB-SP 2016). It specifically looks at the parties' bargaining history, the good faith of the parties during negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, and the contemporaneous understanding of the parties regarding the state of the negotiations. Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1993) aff'd. by unpub. order, No. 5-93-0685 (1994); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994); Ill. Dep't of Cent. Mgmt. Servs. (Corrections), 5 PERI ¶ 2001 (IL SLRB 1988), aff'd by Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259 (1st Dist. 1989).

Here, the parties met only once, for approximately two hours. The lack of good faith by the Respondent, specifically its refusal to enter into any binding agreement, likewise weighs against a finding of impasse. See discussion infra. Although the parties disagreed on some key issues, including the extent of the Respondent's bargaining obligation, the contemporaneous understanding of the parties at the close of the first meeting unequivocally demonstrates that the parties were not at impasse. No representative from either party used the term impasse or deadlock. No member of management stated that further bargaining would be fruitless. Indeed, Executive Director Leischner stated that he viewed the parties' July 2018 meeting as a "starting point." The Union correctly notes that the Respondent's assertions, one month later, that it would not move from the positions it expressed at the July meeting, do not create an impasse. Dep't of Cent. Mgmt. Services v. Illinois Labor Relations Bd., 2018 IL App (4th) 160827, ¶ 30, appeal dismissed, 124256, 2019 WL 4709901 (Ill. Sept. 25, 2019).

Turning to the Respondent's conduct, it is clear that the Respondent refused to bargain in good faith because it placed unilateral preconditions on bargaining. In interpreting the duty to bargain in good faith, the Board has held that neither party to a bargaining relationship may unilaterally establish a condition precedent to bargaining because such conduct thwarts the

purposes and policy of the Act. County of Kane and Kane County Sheriff, 4 PERI ¶ 2031 (IL SLRB 1988) (addressing employer's conduct to this effect); Village of Bellwood, 25 PERI ¶ 95 (IL LRB-SP 2009) (addressing union's conduct to this effect). For example, the Board held that an employer violated the Act when it refused to bargain unless the union agreed to the presence of a stenographer at bargaining sessions. County of Kane and Kane County Sheriff, 4 PERI ¶ 2031. Likewise, the Board found that an employer violated the Act when it refused to bargain unless the union agreed that the employer could challenge the Board's jurisdiction at any time. City of Highwood, 17 PERI ¶ 2021 (IL LRB-SP 2001). Similarly, the Board held that an employer violated its duty to bargain in good faith when it conditioned bargaining on the union's waiver of its statutory rights. State of Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (employer conditioned negotiation over mandatory subject on reopening the contract's wage provision); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).[12]

The National Labor Relations Board has similarly found it unlawful for an employer to place such preconditions on bargaining. To that end, it has held that an employer who insists on negotiating by mail or demanding that a union submit its proposals in writing has unlawfully refused to bargain in good faith. Beverly Farm Found., Inc., 323 NLRB 787, 793 (1997); Nat'l Labor Rel. Bd. v. United States Cold Stor. Corp., 203 F.2d 924, 928 (5th Cir. 1953) (the duty to bargain in good faith and to meet at reasonable times "is not satisfied by merely inviting the union to submit any proposition they have to make in writing where either party seeks a personal conference.").

Here, the Respondent imposed an unlawful condition precedent on continued bargaining because its agents repeatedly stated that the Respondent would not consider another meeting with the Union unless the Union presented the Respondent with modified proposals in writing. Johnson issued that ultimatum in her September 7, 2018 email where she asked the Union to provide her with any "additional concerns" it had regarding the effects of Janus, so that the Respondent could "consider [the Union's] request for another meeting." At hearing, Johnson explained her email, stating that a second meeting was contingent on the Respondent's review of the Union's proposals. Similarly, on September 26, 2019, Respondent's attorney Perkoski directed

[12] Similarly, the Board found that a union violated its duty to bargain in good faith when it refused to bargain over a mandatory subject unless it received a response to an information request pertaining to permissive subjects of bargaining. Village of Bellwood, 25 PERI ¶ 95.

the Union to provide its modified proposals to Johnson. He indicated that the Respondent would consider the Union's request for another meeting once the Union had complied with the Respondent's directive. At hearing, Johnson explained Perkowski's letter, stating that Perkowski sought the Union's modified proposals to determine whether a second meeting would be worthwhile. She further explained that the Respondent did not wish to meet with the Union again until it received the Union's modified proposals. The Respondent thereby violated its duty to meet at reasonable times by conditioning further negotiations on advance receipt of the Union's written proposals.

The Respondent's placement of preconditions on bargaining are just as violative of the duty to bargain in good faith as an express or outright refusal to negotiate. County of Kane and Kane County Sheriff, 4 PERI ¶ 2031; City of Highwood, 17 PERI ¶ 2021; City of Peoria, 3 PERI ¶ 2025; Beverly Farm Found., Inc., 323 NLRB at 793. Indeed, the Board has emphasized that a respondent's refusal to bargain in good faith need not be express and may be inferred from the respondent's conduct. County of Cook v. Licensed Practical Nurses Ass'n of Illinois, 284 Ill. App. 3d 145, 157 (1st Dist. 1996) (unexplained delay in signing collective bargaining agreement constituted refusal to bargain in good faith in violation of Section 10(a)(4) of the Act). The Respondent's conduct in this case demonstrates a refusal to bargain in good faith because the Respondent unilaterally placed preconditions on bargaining and adhered to them. The Respondent informed the Union that it would not consider a second meeting unless the Union provided modified proposals in writing. The Union did not provide modified written proposals, and the Respondent did not resume bargaining, despite repeated requests from the Union. Indeed, the Union informed the Respondent on at least three occasions, prior to filing its charge, that it wished to meet again, and it repeated its interest twice after it filed its charge, but the Respondent never agreed to meet again.

There is no merit to the Respondent's claim that the Union is to blame for the Respondent's refusal to bargain. The Respondent asserts that the Union offered to provide the Respondent with modified proposals and that the Respondent merely followed up on that offer. However, the Respondent did not simply request modified proposals, it conditioned further bargaining on the advance receipt of them. It is the Respondent's conditional approach to bargaining and not its mere request for modified proposals that violates the Act.

Moreover, the Respondent did not cure this violation by expressing its willingness to give the Union a letter documenting the points on which the parties agreed. To the contrary, this offer further highlights the Respondent's refusal to bargain in good faith. Good faith bargaining "is what [e]nsures that agreements made between employers and employees will have the integrity of enforceable agreements that are beneficial to all involved." Bd. of Educ., Granite City Cmty. Unit Sch. Dist. No. 9 v. Sered, 366 Ill. App. 3d 330, 335 (1st Dist. 2006). For that reason, an employer violates its duty to bargain in good faith when it asserts that it has no statutory obligation to abide by agreements it reaches with a union because such an approach reduces negotiations to an exercise in futility. City of Highwood, 17 PERI ¶ 2021. The Respondent's offer of a letter, in lieu of a binding contract, subverts the purpose of good faith bargaining because it expresses the position that the Respondent will not be bound by any agreement reached by the parties. City of Highwood, 17 PERI ¶ 2021 (reservation of right to challenge Board's jurisdiction at any time constituted a breach of the duty to bargain in good faith).

Similarly, the Respondent's initial agreement to engage in bargaining with the Union over the effects of Janus does not absolve the Respondent of its subsequent refusal to bargain, described above. County of Woodford, (IL SLRB 1998) (discontinuation of bargaining continued refusal to bargain in good faith, even though parties had bargained earlier).

Finally, the ambiguities surrounding the scope of the Respondent's bargaining obligation do not warrant dismissal of the complaint in this case and, indeed, weigh in favor of issuing a bargaining order. There are aspects of the Union's proposals over which the Respondent had no duty to bargain, but as discussed above, the Respondent's duty to bargain remained as to other subjects. Moreover, the Respondent's refusal to bargain and the parties' failure to reach an agreement was due in large part to their "very strong and polarized" viewpoints of their bargaining obligations. State of Ill., Departments of Cent. Mgmt. Servs. And Corrections, 5 PERI ¶ 2001 (IL LLRB 1988) (quoted text) aff'd Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259 (1st Dist. 1989). The guidance provided by this decision will allow the parties to "proceed with negotiations without the burdensome cloak of rhetoric and speculation." Id.

In sum, the Respondent refused to bargain in good faith when it conditioned further bargaining on the advance receipt of the Union's modified, written proposals.

I. CONCLUSIONS OF LAW

1. The Janus decision impacts employees' terms and conditions of employment.
2. The effects of the Janus decision are not matters excluded from the scope of bargaining under Section 7 of the Act.
3. The proposals advanced by the Union are mandatory subjects of bargaining under the Central City test. They concern wages, hours, and terms and conditions of employment and are not matters of inherent managerial authority.
4. The Union contractually waived the right to bargain over some, but not all, of its proposals.
5. The Respondent had a duty to bargain over some of the Union's proposals.
6. The Respondent refused to bargain in good faith, in violation of Sections 10(a)(4) and (1) of the Act, because it conditioned further bargaining on the advance receipt of the Union's modified, written proposals.

II. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, its officers and agents, shall:

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Union, the American Federation of State, County and Municipal Employees, Council 31, over the effects of the Janus decision.
    b. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in 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, the American Federation of State, County and Municipal Employees, Council 31, regarding the effects of the Janus. The negotiations shall be limited to those subjects over which the Union has not waived the right to bargain, as described in this decision. These include the subjects referenced in Union proposals 2, 3, 4, 6, 9, and 10, and also the subject referenced in the last sentence of proposal 5.
    b. 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 Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

c. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

III. 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 25th day of October, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge