

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Fraternal Order of Police, Lodge #7,	)	
	)	
Charging Party,	)	
	)	
and	)	Case Nos. L-CA-21-025
	)	L-CA-21-030
City of Chicago (Police Department),	)	
	)	
Respondent.	)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On July 17, 2023, Administrative Law Judge (“ALJ”) Anna Hamburg-Gal resolved unfair labor charges filed by Charging Party Fraternal Order of Police, Lodge #7 (“Union”), alleging that Respondent City of Chicago (“City”) engaged in unfair labor practices within the meaning of Section 10(a)(1) and (a)(2) of the Illinois Public Labor Relations Act (“Act”), 5 ILCS 315/1 *et seq.*, by suspending and initiating charges against its president, John Catanzara, in retaliation for his protected, concerted activity, by its City Council issuing a resolution calling for Catanzara’s resignation as Union president, and by asking the City’s Police Department’s Bureau of Internal Affairs (“BIA”) to open an investigation into Catanzara’s statements related to the January 6 insurrection if Catanzara did not resign. Charging Party timely filed exceptions, and Respondent timely responded.

Upon review of the record, RDO, exceptions, responses, and respective supporting briefs, we reject the Charging Party's exceptions and accept the ALJ's findings, recommendations on the retaliation and constructive discharge allegations as discussed below.¹

I. DISCUSSION

A. Summary of the ALJ's Recommendations

The ALJ addressed two broad issues: (1) whether the Respondent retaliated against Catanzara for serving as union president and engaging in protected concerted activity when Respondent suspended him and initiated charges seeking Catanzara's termination from employment before the City's Police Board in violation of Section 10(a)(1) and (a)(2) of the Act; and (2) whether Respondent violated Section 10(a)(1) of the Act when its City Council introduced a resolution calling for Catanzara to resign as Union president, urging the Union to seek his resignation if Catanzara did not resign, and asking the BIA to conduct an investigation into Catanzara's statements related to the January 6 insurrection if Catanzara did not resign.

Regarding the retaliation issue, the ALJ found that Charging Party established a prima facie case for retaliation under Section 10(a)(2) and (a)(1) of the Act but determined that the matter involved dual motives, concluding that Respondent would have taken the same action against Catanzara in the absence of his participation in protected, concerted activities. The ALJ found that Catanzara engaged in union and protected, concerted activity by serving as president of the Union beginning in May 2020. As president, Catanzara authorized the filing of grievances and unfair labor practice charges and served as the Union's chief negotiator.

¹ Neither party filed exceptions to the ALJ's findings and recommendations that Respondent violated Section 10(a)(1) of the Act when its City Council issued the resolution calling for Catanzara's resignation. Accordingly, we allow that portion of the RDO to stand as a final non-precedential order, binding only upon the parties.

She also found that Catanzara's statements to the press and other public statements about his concerns over unit member working conditions constituted protected, concerted activity.

Next, the ALJ determined that the relevant decisionmakers, which included the Civilian Office of Police Accountability ("COPA") investigator Greg Masters, COPA Deputy Chief Administrator Kersten, COPA Chief Administrator Sidney Roberts, Police Board member Andrea Zopp, and Superintendent David Brown, had knowledge of Catanzara's protected activities. She then found that Respondent took adverse action against Catanzara by suspending him and by initiating charges against him with the Police Board and took these actions in part due to Respondent's hostility towards Catanzara's protected activities. She determined that the mayor's June 19, 2020 statements coupled with evidence of suspicious timing and irregularities surrounding Respondent's actions in the BIA case against Catanzara provided sufficient circumstantial evidence of unlawful motive. The ALJ noted that the evidence demonstrated that Respondent sought to "pile on" charges to strengthen its case for Catanzara's discharge.

After finding that the Charging Party established a prima facie case for retaliation, the ALJ determined that the case involved dual motives because the Respondent had both unlawful and legitimate business reasons—Catanzara's social media related misconduct at issue in the COPA case—for its actions against Catanzara. She then reasoned that the egregiousness of the content and nature of Catanzara's social media statements, the timeline of the COPA decision-making process, and the absence of disparate treatment supported the conclusion that Respondent would have suspended Catanzara and initiated discharge proceedings against him notwithstanding Catanzara's union and protected, concerted activities. The ALJ also concluded that the Respondent did not constructively discharge

Catanzara. She found that Charging Party failed to establish that Respondent's conduct imposed a burden upon Catanzara that caused a change in his working conditions so difficult as to force him to resign, and that such unpleasant conditions were imposed because of his protected activity.

Turning to the resolution, the ALJ first observed that the City Council is part of the City of Chicago and as such, is a public employer under the Act. She then found that by issuing the resolution, Respondent interfered with employee's rights to select a representative free of employer influence. She found that by calling for his resignation, Respondent questioned Catanzara's union leadership ability and implicitly threatened to diminish his effectiveness as president if Charging Party did not pressure him to resign.

B. Charging Party's Exceptions

Charging Party filed multiple exceptions to the ALJ's recommendations related to the retaliation and constructive discharge allegations. The Charging Party submitted six exceptions to the ALJ's findings of fact and twenty-one exceptions to the ALJ's analysis and conclusions. We find the exceptions, however, unpersuasive.

First, the citations to the record that Charging Party provides in support of its exceptions to the ALJ's factual findings do not warrant their rejection. For example, the citations to the hearing transcript that Charging Party points to in support of its challenge to the ALJ's finding that William Dougherty, an employee used as a comparable, "did not challenge [his] discipline," (RDO, 27-28), does not support Charging Party's contentions that the ALJ's finding was unsupported by the evidence. Charging Party asserts that the ALJ erred in crediting the testimony of Kevin O'Bryan because O'Bryan could not recall specific details regarding the discipline imposed on Dougherty. Although the cited pages of O'Bryan's testimony, (Tr. pp. 653-687), do

show that O'Bryan could not recall whether the discipline was a one-day suspension or a reprimand, O'Bryan did specifically recall that the allegation was sustained. (Tr. p. 653). Thus, we find the ALJ's crediting of O'Bryan's testimony to be reasonable and supported by the evidence.

In another example, Charging Party's takes exception to the ALJ's findings related to the discipline of another employee comparable, Thomas McDonagh, contending that the ALJ improperly credited O'Bryan's testimony over Bella's testimony based on witness demeanor. While the citations are accurate, they fall short of demonstrating that the ALJ's credibility determinations were clearly incorrect. The Board has long held that credibility determinations are within the province of the Administrative Law Judge who had the opportunity to observe the witnesses' testimony and demeanor and will not overrule an ALJ's credibility determinations unless they are clearly and demonstrably incorrect. See County of Cook and Sheriff of Cook County (Rotonda Malone-Cole), 39 PERI ¶ 3 (ILRB-LP 2022); Chicago Transit Authority, 16 PERI ¶ 3021 (IL LLRB 2000); City of Chicago (Fire Department), 12 PERI ¶ 3022 (IL LLRB 1996); Chicago Housing Authority (Department of Streets and Sanitation), 6 PERI ¶ 3012 (IL LLRB 1990). A review of the record does not indicate that the ALJ's credibility determinations were clearly and demonstrably incorrect, especially in this instance where the ALJ expressly stated that her crediting of O'Bryan's testimony over Bella's was based on her view of Bella's demeanor when testifying on that issue.

The Charging Party's challenges to the ALJ's analysis of the retaliation allegations and resulting conclusion that Respondent did not violate Section 10(a)(2) and (a)(1) of the Act are likewise unpersuasive. Many of the exceptions take issue with the ALJ's analysis of Charging Party's prima facie case and focus on the aspects of that analysis where it claims the ALJ failed to

find the evidence supported unlawful motive. The Charging Party's arguments in support of these exceptions, however, fail to undermine the ALJ's determinations which were well-reasoned and supported by the evidence. Moreover, the foregoing exceptions fail to support rejection of the ALJ's dual motive analysis which led to the ALJ's conclusion that City's actions did not violate Section 10(a)(2) and (a)(1) of the Act.

The two exceptions that directly challenge the ALJ's dual motive analysis also fail to undermine the ALJ's determinations. In support of those exceptions, Charging Party contends the ALJ improperly shifted the burden to it when she noted that Charging Party did not point to a single instance of social media related misconduct comparable to Catanzara's that warranted lesser discipline and found that there was no evidence of disparate treatment. These exceptions are unavailing. Contrary to Charging Party's contentions, the ALJ's dual motive analysis relied on evidence presented by Respondent and did not shift Respondent's burden on to the Charging Party. Although the ALJ noted that Charging Party's post-hearing brief did not identify instances where Respondent sought lesser discipline for similar social media related misconduct as Charging Party contends, the ALJ also relied on evidence presented by Respondent that it applied the same rules at issue in Catanzara's case to initiate discharge proceedings in other cases of severe social media misconduct. She then carefully analyzed those other cases in reaching her conclusion that Respondent did not engage in unlawful activity in suspending Catanzara and initiating charges seeking his dismissal.

Charging Party's exceptions also fail to undermine the ALJ's findings regarding the constructive discharge allegations. Charging Party contends that the ALJ should have applied the "Hobson's Choice" standard rather than the "intolerable working conditions" standard, asserting that the City placed Catanzara in the position of choosing between his duties as Union president

or his defense of the Respondent's charges leveled against him. The ALJ did not apply the Hobson's Choice standard because she found it did not apply, noting in footnote 43 on page 61 of the RDO, that the NLRB's Hobson's Choice theory of constructive discharge applies where an employer conditions continued employment on an employee's abandonment of statutory rights and the employee resigns rather than accepting the employer's conditions. See, e.g., M.P.C. Plating, Inc. v. N.L.R.B., 912 F. 2d 883, 887 (6th Cir. 1990). In support of its contention, Charging Party points to the ALJ's finding that the City's resolution calling for Catanzara's resignation would likely shift his focus away from his union duties and to Catanzara's testimony regarding the negative impact on the Union should the City fire a "sitting union president on paper." Neither point, however, demonstrates that the City conditioned Catanzara's employment on relinquishing his rights under the Act. Other than bald assertions that the City placed Catanzara in a position where he was forced to choose between performing his union duties or defending against the Respondent's charges, Charging Party does not point to evidence that the City was forcing Catanzara to abandon his rights under the Act.

In sum, we accept the ALJ's recommendations and conclusions that the City did not violate Section 10(a)(2) and (1) of the Act when it suspended Catanzara and initiated charges seeking his separation from employment. Charging Party's exceptions fail to sufficiently undermine the ALJ's well-reasoned and thorough analysis and determinations.

For the above reasons, we accept the ALJ's findings, recommendations, and conclusions that the City did not violate Section 10(a)(2) and (a)(1) of the Act.

[THIS SPACE INTENTIONALLY LEFT BLANK]

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered

Lynne O. Sered, Chairman

/s/ Charles E. Anderson

Charles E. Anderson, Member

/s/ Angela C. Thomas

Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on January 11, 2024; written decision approved at the Local Panel's public meeting in Chicago, Illinois, on February 8, 2024, and issued on February 8, 2024.

This Decision and Order is a final order of the Illinois Labor Relations Board. Aggrieved parties may seek judicial review of this Decision and Order in accordance with the provisions of Section 11(e) of the Act and the Administrative Review Law. Petitions for review of this Decision and Order must be filed within 35 days from the date the Decision and Order is served upon the party affected by the decision. 5 ILCS 315/11(e).

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Fraternal Order of Police, Lodge No. 7,	)	
	)	
Charging Party,	)	
	)	Case Nos. L-CA-21-025
and	)	L-CA-21-030
	)	
City of Chicago (Department of Police),	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 28, 2020 and January 12, 2021, the Fraternal Order of Police, Lodge No. 7 (Charging Party or FOP) filed charges with the Illinois Labor Relations Board’s Local Panel (Board) alleging that the City of Chicago (Department of Police) (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(2) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2016), as amended. The charges were investigated in accordance with Section 11 of the Act. On February 28, 2022, the Board’s Executive Director issued a Complaint for Hearing.

A hearing was conducted on December 8 & 9, 2022 and February 2, 2023, via WebEx video conferencing, at which time the Charging Party presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.

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

I. PRELIMINARY FINDINGS¹

The parties stipulate, and I find that:

1. The Charging Party, Fraternal Order of Police, Lodge No. 7, (Charging Party or Union) is a labor organization as defined in Section 3(i) of the Illinois Public Labor Relations Act.

¹ The parties’ remaining stipulations are incorporated in the findings of fact.

2. The Respondent, the City of Chicago, Department of Police (Respondent or City) is an employer as defined in Section 3(o) of the Illinois Public Labor Relations Act.
3. The Charging Party is the exclusive bargaining representative for all sworn police officers below the rank of sergeant excluding probationary officers employed by the Respondent in its Department of Police, provided said probationary period shall not extend beyond an eighteen (18) month period.

II. ISSUES AND CONTENTIONS

The first issue is whether the Respondent violated Sections 10(a)(1) and/or 10(a)(2) of the Act when the Respondent allegedly retaliated against John Catanzara for serving as union president and engaging in protected concerted activity by suspending him and initiating charges before the Police Board seeking his separation. The second issue is whether the Respondent violated Section 10(a)(1) of the Act when it introduced a resolution calling for Catanzara's resignation as union president, calling upon the Charging Party to secure Catanzara's resignation as union president if he did not resign, and asking the Department's Bureau of Internal Investigations to investigate the matter if Catanzara did not resign.

The Charging Party argues that the Respondent violated Sections 10(a)(1) and (2) of the Act by seeking Catanzara's separation because of his activities as union president and his strong advocacy on behalf of union members. It asserts that the Respondent demonstrated extreme animus towards the union and Catanzara through the mayor's statements, City Council's actions, and the Respondent's history of unfair labor practices. Furthermore, it argues that the Respondent's pursuit of Catanzara's termination arose under suspicious circumstances. The Charging Party contends that the Respondent revived two dormant complaint register investigations against him after he engaged in protected activity. It further asserts that the Respondent's decision to initiate separation proceedings based on the Bureau of Internal Affairs (BIA) investigation was additionally inconsistent with department policy and severely delayed, demonstrating a lack of concern for the allegations. The Charging Party also asserts that the Respondent's pursuit of discipline against Catanzara demonstrates less favorable treatment, as compared to its treatment of other officers on union leave under Section 17.2 of the parties' contract. It contends that the credible evidence demonstrates that the Respondent never sought to impose discipline against other union representatives while they were on leave. In the alternative,

the Charging Party asserts that the Respondent failed to demonstrate that it would have pursued the same discipline against Catanzara notwithstanding his protected activities where it could have taken action against him sooner but waited until after he engaged in protected activity to do so. The Charging Party next contends that the Respondent constructively discharged Catanzara. It argues that the mayor made working conditions intolerable for Catanzara by attempting to publicly humiliate him. The Charging Party also asserts that the Respondent's decision to revive dormant complaint register investigations against him, and the irregularities of Catanzara's hearing before the Police Board, likewise support a finding of constructive discharge.

Finally, the Charging Party argues that the Respondent violated Section 10(a)(1) of the Act by introducing a resolution seeking to coerce the Charging Party's board of directors to remove Catanzara as president because of statements he made in his capacity as union president. The Charging Party contends that the Respondent effectively threatened to diminish Catanzara's effectiveness as negotiator by stating that it would call for an investigation into him if he did not resign, and that it also threatened members of the Charging Party's board of directors with unspecified reprisals.

The Respondent argues that the charge in Case No. L-CA-21-025 alleging retaliation against Catanzara for his union and protected concerted activities is untimely filed. In the alternative, the Respondent argues that the complaint is deficient on its face because it does not allege that Catanzara engaged in union or protected concerted activity.

On the merits the Respondent denies that it retaliated against Catanzara for his activities as union president when it continued processing an investigation into his misconduct initiated by the Civilian Office of Police Accountability (COPA). The Respondent argues that the Charging Party cannot satisfy its prima facie burden because its agents were unaware of Catanzara's protected activities at the time they made operative decisions related to the pending COPA case. The Respondent further contends that it did not take adverse action against Catanzara by initiating disciplinary proceedings against him and making recommendations seeking his separation. It further denies any causal connection between Catanzara's protected activities and its decision to recommend his separation. It contends that any alleged statements by the mayor regarding Catanzara are not indicative of animus toward Catanzara's protected activity and also have no bearing on the issue of causation absent evidence that the mayor was involved in the investigatory or disciplinary processes. Next, it contends that the timing of the investigation's completion was

part of a mandatory process initiated well before Catanzara's protected activity and denies any suspicious timing. It claims that there is no evidence of disparate treatment, inconsistent explanations, targeting of union supporters, or pretext.

The Respondent further contends that it would have recommended Catanzara's separation from the department even in the absence of his protected activity. It notes that the charges recommending separation were based on sustained findings arising from both COPA's and BIA's investigations, which arose from Catanzara's admitted misconduct. The Respondent rejects any claim that Section 17.2 of the parties' contract immunizes Catanzara from discipline or separation, either under its plain language or as interpreted by arbitrators. It further notes that it has both initiated investigations into, and disciplined union officers, while they were on union leave.

The Respondent also denies that it constructively discharged Catanzara. It denies that it forced him to resign by imposing burdensome working conditions and contends that the disciplinary process it applied to Catanzara was no different than the one it applied to other bargaining unit members and to Catanzara himself in prior police board cases. The Respondent reiterates its claim that its actions were unrelated to Catanzara's protected activity and that all operative events relevant to Catanzara's police board hearing occurred before he became union president.

Finally, the Respondent denies that it violated Section 10(a)(1) of the Act when its City Council introduced a resolution calling for Catanzara's resignation as union president. It contends that the aldermen of the City Council are not subject to the Act because they are not public employers. In the alternative, it asserts that the resolution was not an unlawful threat because it was simply an opinion of the aldermen rather than a law and was related to statements by Catanzara about the insurrection that he made in his personal capacity.

III. FINDINGS OF FACT

1. The Parties' Bargaining Relationship and Relevant Contract Terms

The Charging Party is the exclusive bargaining representative for all sworn police officers below the rank of sergeant excluding probationary officers employed by the Respondent in its Department of Police. The Charging Party and the Respondent are parties to an agreement with effective dates of June 1, 2012 through June 30, 2017. The agreement remains in effect after its

expiration until the parties negotiate a new agreement. Since the agreement's expiration, the parties have agreed to modify certain terms, including economics and discipline and accountability, but they remain in negotiations on other matters.

The Charging Party is governed by its constitution and by-laws, which establish its organization. The Board of Directors is its governing body and is composed of the Lodge President, the Immediate Past presidents, the 1st Lodge President, the Immediate Past President, the 1st, 2nd and 3rd Vice-Presidents, Recording Secretary, Financial Secretary, Treasurer, three (3) Sergeant-at-Arms, and seventeen (17) Trustees. Each position has a three-year term. Pursuant to the constitution and by-laws, the president is responsible for handling labor disputes and is authorized to exercise judgement to take action in furtherance of the Charging Party's interest. Individuals are eligible for union office if they are active members of the Charging Party in good standing below the rank of sergeant and attend a requisite number of union meetings. There is no requirement they be sworn officers of the Respondent.

Section 17.2 of the parties' collective bargaining agreement allows the union president and six officers to take leave from the department to perform full time duties for the Charging Party. It provides the following:

In addition to the Lodge President, six (6) Officers covered by this Agreement shall, upon written request, be granted leave from their duties for the Employer for the purpose of performing full time duties for the Lodge. During such a leave, the Employer will continue to pay said Officers all salary and maintain all benefits, including pension contributions and seniority accruals, as if the Officers were on full duty with the Employer, provided that, effective July 1, 2001, the Lodge reimburses the Employer an amount equal to the salary and benefits and provided that the Employer shall remain responsible for its portion of the pension contribution. The duration of such a leave shall not exceed three (3) years, but shall be renewable in the same duration. Such leaves may be revoked only by written notice to the Employer from the President of the Lodge. Up to two (2) additional Officers covered by this Agreement who shall be elected to a State Lodge and/or the National Office of the Fraternal Order of Police shall, upon written request, be granted leave from duties for the Employer under the same terms and conditions previously set out in this Section.

The Respondent does not have discretion to determine which officers the Charging Party selects to perform full time union duties, and the Respondent has no authority to end the leave of the officer. Only the Charging Party's president has authority to revoke a union officer's leave.

During the leave period, the Respondent continues to pay the wages and benefits for those on leave, but the Charging Party reimburses the Respondent every quarter. The purpose of the reimbursement provision is to ensure that officers are able to conduct their business for the Charging Party unencumbered by the Respondent's directives. Union officers who request time off for medical procedures make their request through the Charging Party not the Respondent. Retired police officer and former Union President Mark Donahue testified that if an officer is on union leave, orders given to him by a superior officer have no effect.

2. Police Discipline Investigatory Process

a. Civilian Office of Police Accountability Investigative Process

The Civilian Office of Police Accountability (COPA) is an agency separate from the Respondent's police department. It is tasked with investigating specific allegations of police misconduct within its jurisdiction, established by the municipal code.

COPA has an Intake Unit that registers a complaint, assigns an investigation number, and determines whether the complaint falls within COPA's jurisdiction. If the case falls within COPA's jurisdiction, the intake unit interviews the complainant and collects any relevant Chicago Police Department reports.

The intake unit then assigns cases to supervising investigators, who distribute the cases to investigators or major case specialists, depending on their caseloads and areas of expertise. The assigned investigator performs a conflict check to determine whether he has any personal, familial, or financial interest in the matter, or any relationship with the parties. If there is a conflict, the case is reassigned. If there is no conflict, the investigator signs a certification to that effect and proceeds with the investigation by conducting interviews of the accused and any witnesses.

When the investigator completes his investigation, he drafts a summary report of the investigation (SRI), which includes proposed findings. The report includes a summary of the facts, an analysis of the facts in light of police department rules or relevant laws, and a conclusion. For a sustained finding, COPA applies a preponderance of the evidence standard. For a finding of unfounded or exonerated, COPA applies a clear and convincing evidence standard. The investigator's report includes a disciplinary recommendation; however, sometimes the discipline decision is a group decision among those on the investigatory chain.

In cases where there is a sustained finding, the disciplinary recommendation can range from a violation noted to termination. In determining the recommended penalty, COPA considers the nature of the conduct, mitigating or aggravating factors, the penalties issued in similar cases, and an officer's complimentary and disciplinary history. An officer's acceptance of accountability is a mitigating factor. In a case that concerns rules prohibiting disparagement of the department, COPA considers the extent to which the officer's conduct caused damage and eroded public trust.

The supervisor reviews the SRI and, if he agrees with the findings, forwards the SRI to the deputy chief administrator. The deputy chief administrator reviews the investigation and the SRI and prepares the case for closure, reviewing all investigative findings and disciplinary recommendations. If the SRI recommends a penalty of separation or a significant suspension, the chief administrator also reviews the SRI.

After COPA closes the case, it sends its findings and recommendations to the Office of Legal Affairs, which presents the case for review to the superintendent of the Chicago Police Department, who is appointed by the mayor and serves at her pleasure.² The superintendent has 60 days within which to review the recommendation, which can be extended to 90 days. During that time frame, the superintendent writes to the COPA chief administrator or his designee indicating whether he agrees or disagrees with COPA's recommendation. If the superintendent agrees with COPA's recommendation, the recommendation is implemented.

If the superintendent does not concur with COPA's recommendation of discipline or any of its findings, he must provide a written response with an explanation. Then, within ten business days, the COPA chief administrator and superintendent must confer to try and resolve their differences. If they cannot reach agreement, then one member from the Chicago Police Board is randomly selected to determine whether COPA's recommendation or the superintendent's recommendation should stand. The member decides whether the superintendent met his burden to overcome the chief administrator's recommendation and drafts a written decision on this issue. The member's decision is announced at the Chicago Police Board's monthly meeting. It is read out at the meeting and then posted publicly on the Chicago Police Board's website. If the one-member review panel determines that the superintendent has met his burden, then the superintendent's recommendations are implemented. If the one-member review panel determines that the superintendent has not met his burden, then COPA's recommendations are implemented.

² Chicago Municipal Code, 2-84-040.

Where the final recommendation is separation of a police officer, the matter is forwarded to the department of law, which prepares charges for filing at the Police Board. The Police Board adjudicates all cases involving police misconduct where the penalty is separation or a suspension of a year or more.

b. Bureau of Internal Affairs Investigative Process

The Bureau of Internal Affairs (BIA) handles internal investigations for the Respondent's police department. A BIA investigation begins with submission of a complaint or referral of a case by COPA. The intake unit sends the case to the appropriate section for investigation, and an administrative sergeant within the assigned section assigns the case to a sergeant. The investigator checks to ensure that there is no conflict of interest that would prevent him from conducting the investigation. If there is no conflict, the investigator makes a conflict certification attesting that he is able to conduct the investigation with integrity and impartiality. The investigator gathers documentation from the police department or other sources and then calls witnesses for interviews. The last interviewee is the accused member, but the investigator may reinterview witnesses after interviewing the accused. The accused has a right to be represented during the interview.

At the close of the investigation, the investigator writes a report that sets forth his findings, includes all the evidence that was collected, and also includes relevant general orders and directives. There are four potential findings in any case: (1) exonerated, meaning that the action occurred, but it was justified and there was no violation of department rules and regulations; (2) unfounded, meaning that the allegation is false and never occurred; (3) not sustained, meaning that there is no way to prove or disprove the allegations; and (4) sustained, meaning that there was sufficient evidence to corroborate the allegations. The standard of proof is by a preponderance of the evidence. If the investigator makes a sustained finding, he also makes a disciplinary recommendation. To reach that recommendation, he reviews the officer's complimentary and disciplinary histories. The disciplinary penalty can range from a written reprimand to separation.

The investigator sends his recommendation up his chain of command to the lieutenant, the director or commander, the deputy chief, and the chief of police. Where the recommendation is separation, the Police Department's Advocate Section reviews the file to ensure it is complete and sends the matter to the Office of Legal Affairs, which reviews the case for legal sufficiency.

The superintendent makes the final determination of whether to pursue a recommendation for separation before the Police Board.

3. John Catanzara's Employment History and Activities Prior to Becoming Union President

John Catanzara served as a police officer with the Respondent from January 1995 until his resignation on November 16, 2021.

Catanzara began speaking up at police board meetings around 2002; his comments became more frequent around 2005 and 2006, when he raised issues about disciplinary matters and disparate treatment.

In 2006, the Respondent filed charges against Catanzara seeking his termination. The matter proceeded before the Police Board. Catanzara prevailed in his case and was reinstated.

In 2009, Catanzara filed allegations against then-Superintendent Jody Weis. Catanzara learned from the news media that a judge had twice found Jody Weis in contempt of court for failing to turn over the names of officers who had multiple excessive force complaints against them. He tried unsuccessfully to initiate a formal complaint against Weis and then spoke at a police board hearing in 2011 to complain about his difficulties in filing a formal complaint.

In 2014, the Respondent again filed charges against Catanzara seeking his termination. The case arose from two separate complaint register investigations that were consolidated for hearing. The matter proceeded before the Police Board and Catanzara again prevailed. He received a 20-day suspension in lieu of termination.

In 2018 through May 2020, Catanzara served as a unit representative for the 8th District.

None of Catanzara's activities prior to May 2020 are alleged to be the basis for the conduct complained of in the charges at issue in this case.

4. September 2017, COPA Investigates Catanzara, CR No. 1086910

In September 2017, Commander Ronald Pontecore initiated a complaint register with COPA against Catanzara. The complaint concerned social media posts, which Pontecore identified as potentially anti-Muslim, sexist, and biased against beneficiaries of social programs. The complaint also concerned alleged email-related misconduct in which Catanzara allegedly attempted to influence Chicago Public School Administrators about a non-police matter by

referencing his official position as a police officer. COPA notified Catanzara of the charges in August and September 2018.

The allegations under consideration included the following:

1. November 22, 2016 - Catanzara allegedly made a statement on Facebook that used offensive language and advocated killing criminals, by stating, "Wtf its seriously time to kill these motherfuckers"
2. November 25, 2016 - Catanzara allegedly made a statement on Facebook that encouraged other department members to stop chasing offenders.
3. December 1, 2016 - Catanzara allegedly shared a picture on Facebook that was disrespectful to public benefit recipients. The photo was overlaid with language linking riots and looting in American cities to "blue" areas "full of unemployed social parasites who get free housing, food and healthcare."
4. January 22, 2017 - Catanzara allegedly made an obscene statement on Facebook directed to a member of the public, by stating, "Is it too late to abort thekla (sic)...the stupidity of some humans like her only prove the saying...the best part dripped down her moms [sic] leg."
5. January 30, 2017 - Catanzara allegedly made a statement on Facebook that was biased against Muslims, by stating, "Savages they all deserve a bullet."
6. January 30, 2017, at approximately 10:55 a.m. - Catanzara allegedly attempted to influence others' actions about a nonpolice matter by referencing his official position as a Chicago Police Officer
7. October 21, 2017, Officer Catanzara allegedly posted an obscene photograph on Facebook.
8. November 16, 2017 - Catanzara allegedly made an obscene statement on Facebook directed to a male member of the public by stating, "Blow me. You know you want to."
9. November 16, 2017 - Catanzara allegedly directed a threat to a member of the public on Facebook by stating, "Ok loser now that you attack people on my page you will be blocked. Keep listening for that knock on the door."
10. October 15, 2017 - Catanzara allegedly posted a statement on Facebook that was disrespectful to CPD management by calling superior officers "spineless."
11. October 15, 2017, Catanzara allegedly made an obscene statement on Facebook directed to a member of the public by stating, "Steve would you like to make a bet that you and your pathetic friends attempts to get any results will be as useless as the little bit of skin you have in your pants? I'll even give you odds!"
12. October 15, 2017 - Catanzara allegedly made an obscene statement on Facebook directed to a member of the public by stating, "You're making me get pretty thick to [sic] Steve I love you so much."
13. October 18, 2017 - Catanzara allegedly made an obscene statement on Facebook directed to a member of the public by stating, "Lmao... Yeah join it so you can all group spank it together..."
14. December 15, 2017 - Catanzara allegedly posted a photograph on Facebook that depicted him in CPD uniform and making a political statement. The text box underneath the photo stated, "Rahm Free City 2019 Make Chicago Great Again DRIAN THE CITY HALL SWAMP."

15. February 1, 2018 - Catanzara allegedly posted a statement on Facebook that was disrespectful to CPD management. He referred to a superior officer as “pathetic.”
16. February 3, 2018, at approximately 12:04 a.m. - Catanzara allegedly posted a statement on Facebook that was disrespectful to CPD management. Catanzara stated that there is “almost ZERO accountability in the Department.”
17. February 3, 2018, at approximately 5:00 p.m. - Catanzara allegedly posted a statement on Facebook that was disrespectful to CPD management. Catanzara stated superior officers were “refusing to do their job” and “DOING NOTHING.”

In September 2018, then-investigator Jessica Ciacco and her then-supervisor Shannon Hayes were handling the case. They interviewed Catanzara, who admitted to posting all the comments on social media that served as the basis for the complaint, and he likewise admitted to authoring the email at issue in the complaint.

5. August 2018- September/October 2019, BIA Investigates Catanzara, CR No. 1090359

While the COPA investigation was in progress, BIA initiated an investigation into Catanzara.³ In August 2018, a sergeant filed a report against Catanzara with BIA alleging that, on July 23, 2018, Catanzara had improperly reported that then-Superintendent Eddie Johnson participated in a political and unsanctioned march on the Dan Ryan Expressway.

During the investigation, BIA discovered that there were several other related reports generated by Catanzara and others that required investigation including the following: Catanzara had submitted an original case report against Superintendent Johnson, which in most relevant part alleged criminal trespass to state supported land. Catanzara filed this report because he became aware from news reports that a march had occurred on the Dan Ryan Expressway and that Johnson had been present while wearing his uniform, and that he marched together with Father Pfleger and Reverend Jessie Jackson. Catanzara believed that Johnson was acting improperly because the State police had earlier made it clear in the media that the march would not be allowed on the expressway and that anyone marching on the expressway would be arrested for trespassing.

Catanzara also submitted a second case report alleging that Commander Pontecore had obstructed justice by expunging Catanzara’s earlier report against Johnson from the system. Finally, a sergeant submitted a report against Catanzara, which cancelled Catanzara’s case report

³ Because the timelines of two investigations overlap, the facts are organized in chronological order within each section that discusses each separate investigation.

against Pontecore and alleging that Catanzara failed to follow department directives. BIA consolidated these matters for investigation.

BIA assigned Catanzara's case to investigator Majed Assaf. Assaf did not have any conflicts that would have precluded him from investigating the case. In July 2019, Assaf interviewed Catanzara, who was represented by Attorney Tim Grace during the interview. Catanzara admitted to making the reports against Johnson and Pontecore. Assaf also interviewed numerous witnesses who had been involved in the consolidated case.

On September 13, 2019, Assaf completed a report memorializing his findings and disciplinary recommendations. Assaf determined that Catanzara violated a number of rules, most significant of which was Rule 14, when he generated case reports which included false information and brought discredit upon the department. Rule 14 prohibits an employee from making a willfully false statement of material fact in connection to an investigation. Assaf determined that Catanzara violated Rule 14 in the following respects: (1) Catanzara identified the State as the victim in his report against Johnson, but no representative of the State requested him to file the report and the Department never assigned Catanzara to perform a preliminary investigation into the matter; (2) Catanzara listed Superintendent Johnson as an offender for Criminal Trespass to State Supported Land, when he (Catanzara) was off duty and had conducted no official investigation into the matter; (3) Catanzara falsely listed himself as "Beat 801," which is a designation reserved for the District Station Supervisor, in an original case incident report involving Johnson; and (4) Catanzara falsely listed himself as "Beat 801" which is a designation reserved for the District Station Supervisor, in an original case incident report involving Commander Pontecore.

Assaf further determined that Catanzara violated the following rules: Rule 2, which prohibits bringing discredit to the department; Rule 6, which prohibits violation of a direct order; Rule 10, which prohibits inattention to duty, and Rule 31, which prohibits the public criticism of the actions of another member of the department.

Assaf submitted his report through the chain of command to his superiors, who each approved it. The Department Advocate Section then reviewed the file to ensure it was complete. On or about October 2, 2019, BIA sent the closed investigation to the Office of Legal Affairs for review.

Sometime thereafter, the Respondent served Catanzara with a notice of duty restrictions. Catanzara could not recall when he received such notice, but the documentary evidence indicates that BIA relieved Catanzara of his police duties on or around October 22, 2019.⁴

Since 2008, any sustained finding of a Rule 14 violation has resulted in a recommendation for separation from BIA because once an officer has been deemed to have filed a false report it is difficult to use that individual as a witness in subsequent trials. The recommended penalty for the violation of other rules is dependent on the egregiousness of the violation and is case specific.

As of 2018, the department was encouraging officers to report misconduct by other officers if they observed it. Officers can be subject to discipline up to termination for failure to report another officer's misconduct, including misconduct committed by superior officers.

Catanzara and two other officers previously raised complaints against superiors but were not disciplined for such activity. The Respondent did not discipline Catanzara for seeking to file a complaint against then-Superintendent Weis in 2009. The Respondent did not discipline Catanzara for filing a charge with the Equal Employment Opportunity Commission related to his removal from his position as a school officer at Hubbard High School, though it triggered a complaint register investigation against then-Superintendent Johnson. The Respondent did not discipline Union Representative Bella and field representative Tim Fallon for raising a complaint against then-head of the Internal Affairs Department, Deb Kirby, in 2006 alleging that she had lied in the course of her duties.

Another officer filed a BIA complaint in connection with Superintendent Johnson's attendance at the July 2018 March for Peace on the Dan Ryan Expressway, but BIA found no misconduct arising from its submission because the complainant stated that he was not sure whether Johnson's conduct was political activity.

6. September 2019 - April 2020, COPA Changes Investigators and Summary Investigative Report is Drafted

In September 2019, COPA assigned then-investigator Greg Masters⁵ to Catanzara's case after Ciacco received a promotion. Masters certified that he had no conflicts that would preclude

⁴ The investigatory case log of the COPA investigation in CR 1090359 states that COPA received notice from BIA on October 22, 2019 that Catanzara had been relieved of his police duties.

⁵ Masters was promoted to major case specialist in March 2020 and subsequently became a supervising investigator. For brevity, he is referred to herein as an investigator, throughout.

his investigation of the case. When Masters received the investigatory file, the investigation seemed complete, but the summary report had not been completed. The summary report of investigation that Masters received from Ciacco included the relevant headings, information about the accused, and a summary of the allegations. The investigator's log noted that Ciacco had worked on the SRI on three dates in April 2019. It also included a notation from June 12, 2019 by Ciacco that stated, "file review/SRI pending."

After Masters received the file, he checked to confirm that Catanzara was still an active member of the CPD and learned that Catanzara was on a leave of absence while applying for a disability pension. Masters then waited to see whether Catanzara would obtain the pension because no discipline would be imposed if he were to leave the department. Masters testified that, a month or two later, he was informed that Catanzara had returned to active status. In October 2019, Masters learned that Catanzara had been relieved of his police authority pursuant to a BIA investigation 1090359, the case discussed above.

Masters testified that he began drafting the summary report by March 2020 with the assistance of his supervisor, when the COPA investigators were directed to work from home due to the COVID-19 pandemic; he noted that he had an easier time completing the work at home, where he could work uninterrupted. Masters summarized the social media posts and Catanzara's interview, and started the analysis section, which laid out the relevant laws and department policies. His supervisor, Supervising Investigator Murphy-Aguilu,⁶ completed the written analysis of the 17 allegations.

At that time, Masters was aware that Catanzara was a candidate for union president, but he testified that this did not factor into his investigation. The investigator's case log contains no record of Masters having drafted or edited the summary report of investigation in March or April 2020. However, the log shows that he requested recent disciplinary history for Catanzara on April 23, 2020.

Masters and Murphy-Aguilu sustained allegations 1-6 and 8-17 but found that allegation 7 was not sustained. The evidence supporting the sustained allegations included the social media posts Catanzara made, the email he sent, and his interview statements. Masters testified that he completed the first draft of the SRI in April 2020 in collaboration with his supervisor James Murphy-Aguilu, who likewise filed a conflict certification.

⁶ Murphy-Aguilu is no longer employed at COPA and did not testify in this case.

The SRI identified violations of numerous department rules, which prohibit the following conduct: Rule 2, “any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department”; Rule 3, “failure to promote the Department’s efforts to implement its policy or accomplish its goals”; Rule 4, “any conduct or action taken to use the official position for personal gain or influence”; Rule 6, “disobedience of an order or directive, whether written or oral”; Rule 8, “disrespect to or maltreatment of any person, while on or off duty”; Rule 32, “engaging in any public statements, interviews, activity, deliberation or discussion pertaining to the Police Department which reasonably can be foreseen to impair the discipline, efficiency, public service, or public confidence in the Department or its personnel by: (a) false statements, or reckless, unsupported accusations [or] (b) the use of defamatory language, abusive language, invective or epithets; Rule 42, “participating in any partisan political campaign or activity”; and Rule 53, “participating in, encouraging the participation of others in, or otherwise supporting any strike, demonstration, slowdown, or other such concerted action against the Department.” The report also identified violations of the Respondent’s social media policy and the policy governing off-duty political activity by department members.

The report concluded that Catanzara’s Facebook profile was public and that he posted comments that were political, violent, commented negatively on religion, and publicly criticized the department. The report stated that Catanzara’s social media posts were not protected by the First Amendment because they “specifically impeded the Department’s ability to maintain internal order and promote impartial policing to the public.” It noted that, in the alternative, even if his statements were deemed protected under the First Amendment, they violated the Department’s social media policy and Catanzara’s First Amendment interests were outweighed by the Department’s interests in maintaining an efficient workplace. COPA’s rationale for each sustained finding is set forth below in truncated form.

Allegation 1, “Wtf its seriously time to kill these motherfuckers” – COPA reasoned that Catanzara’s statement, which referenced the shooting of criminals, undermined public trust and undermined a duty to uphold the law. It violated Rules 2, 3, and 6.

Allegation 2, statement encouraging department members to stop chasing offenders unless the incident involved other police or their own family – COPA reasoned that the comment contradicted department directives regarding policy disputes, encouraged inequitable police

services, and advocated for an improper work stoppage or slowdown, thereby frustrating the department's interest in workplace efficiency. It violated Rules 2, 3, 6, and 53.

Allegation 3, Catanzara shared a picture disparaging public benefits recipients, calling them parasites – COPA reasoned that this post brought discredit upon the department and expressed Catanzara's inability to provide police services objectively and without bias. It violated Rules 2, 3, and 6.

Allegation 4, "Is it too late to abort thekla (sic)...the stupidity of some humans like her only prove the saying...the best part dripped down her moms [sic] leg," – COPA reasoned that this comment was obscene, disparaging toward its target, a private citizen, and violated the department's social media policy. It violated Rules 2, 3, 6, and 8.

Allegation 5, Catanzara's statement about Muslims, "Savages they all deserve a bullet" – COPA reasoned that Catanzara's public expression of support for violence against Muslims calls into question his ability to provide equitable and unbiased police service and was an egregious violation of department rules. It violated Rules 2, 3, and 6.

Allegation 6, Catanzara's communication with school officials via email about improper recruiting practices while identifying himself as a police officer – COPA reasoned that Catanzara's call to action to school officials on a recruiting issue while identifying himself as a police officer created an appearance of impropriety, at minimum, and at worst, it purported to carry the authority of the entire police department. It violated Rule 4.

Allegation 8, "Blow me. You know you want to" – COPA reasoned that Catanzara's post was obscene, brought discredit to the department, and disparaged its target in violation of the Department's social media policy. It also implied a negative and biased sentiment towards his ability to police impartially. It violated Rules 2, 3, 6, and 8.

Allegation 9, "Ok loser now that you attack people on my page you will be blocked. Keep listening for that knock on the door" – COPA reasoned that this statement carried a strong implication that Catanzara had the power and ability to carry out a threat against a member of the public. It violated Rules 2, 3, 6, and 8.

Allegation 10, Catanzara called superior officers "spineless" in a statement posted on Facebook – COPA reasoned that such public defamatory language, abusive language, invectives or epithets about the department tended to impair discipline and undermine public confidence in the Department or its personnel. It violated Rules 32, 2, 3, and 6.

Allegation 11, “Steve would you like to make a bet that you and your pathetic friends attempts to get any results will be as useless as the little bit of skin you have in your pants? I’ll even give you odds!” – COPA reasoned that this statement was obscene and brought discredit to the Department and was also disparaging toward its target in violation of the Department’s social media policy. It violated Rules 2, 3, 6, and 8.

Allegation 12, Catanzara made an obscene statement on Facebook directed to a member of the public, by stating, “You’re making me get pretty thick to [sic] Steve I love you so much” – COPA reasoned that this was a reference to sexual arousal and brought discredit to the Department and was also disparaging toward its target in violation of the Department’s social media policy. It violated Rules 2, 3, 6, and 8.

Allegation 13, “Lmao...Yeah join it so you can all group spank it together...” – COPA reasoned that this statement was obscene as it referred to a sexual act, brought discredit to the Department, and was also disparaging toward its target in violation of the Department’s social media policy. It violated Rules 2, 3, 6, and 8.

Allegation 14, Catanzara posted a photograph on Facebook that depicted him in CPD uniform and making a political statement about then mayoral candidate Rahm Emanuel. COPA reasoned that Catanzara’s post showed him in uniform, by a marked CPD vehicle, promoting a political message. The post violated Rules 42 and 6.

Allegation 15, Catanzara referred to a superior officer as “pathetic.” COPA reasoned that Catanzara violated Department policy by publicly undermining superior officers and publicly naming them rather than going through the proper channels. It violated Rules 32, 2, 3, and 6.

Allegation 16, Catanzara’s Facebook statement that there is “almost ZERO accountability in the Department.” – COPA reasoned that Catanzara publicly undermined superior officers and publicly named them rather than going through the proper channels and was improperly engaging in invective rather than providing a factual account of his experiences. The post violated Rules 32, 2, 3, and 6.

Allegation 17, COPA reasoned that Catanzara publicly undermined superior officers and publicly named them rather than going through the proper channels and was improperly engaging in invective rather than providing a factual account of his experiences. The post violated Rules 32, 2, 3, and 6.

Masters and Murphy-Aguilu recommended separation as the penalty for allegations 1-5 and 8-17 but recommended a reprimand for allegation 6. Masters testified that the basis for the disciplinary recommendation of separation was the repeated nature and scale of the misconduct. Masters testified that he considered cases involving similar misconduct including the case of Brian Hansen. The COPA summary report does not name Hansen, but there is also no evidence that COPA maintains a practice of naming alleged comparables in its summary reports.

Regarding allegations 1 through 5, the report referenced the 2017 United States Department of Justice Investigation into the Chicago Police Department, which indicated that the Respondent must take a more effective stance against unnecessarily demeaning and divisive officer conduct if it seeks to convince residents in marginalized communities that it cares. The report further reasoned that Catanzara's derogatory statements against certain minorities had the potential to create problems in maintaining discipline and harmony within the department where the Department included members who belong to those groups.

Regarding allegations 8-17, the report reasoned that Catanzara publicly criticized the department by implying that it fails to discipline command officers for misconduct and ignores complaints and also violated the department's social media policy, which prohibits speech that discredits or reflects poorly on the department. The report concluded that, based on Catanzara's statements, he could not be trusted to support the department's mission.

Masters testified that he and Murphy-Aguilu also considered aggravating circumstances including the fact that Catanzara was a veteran officer who should have known better than to make these posts and that the instances of misconduct occurred repeatedly over a long period of time. They did not consider past discipline as an aggravating factor because Catanzara had no sustained disciplinary charges fully adjudicated within the preceding five years, the look-back period specified in the applicable collective bargaining agreement.

At hearing in this case, Catanzara offered context for some of his statements, which reiterated the justifications he provided to COPA, which COPA ultimately rejected.

7. Catanzara's Election to Position of Union President and Service in that Role

In May 2020, the bargaining unit elected Catanzara to the position of union president, to serve for a three-year term. The Charging Party announced his presidency on May 8, 2020. As

president, Catanzara was responsible for participating in contract negotiations, and authorizing grievances arbitrations, court filings, and unfair labor practice charge filings.

On Friday, May 29, 2020, Catanzara met with Mayor Lori Lightfoot at her office in City Hall. The meeting was facilitated by former police officer and Union representative Greg Bella,⁷ who had had a working relationship with Lightfoot since 2003 or 2004, when she was head of the Office of Professional Standards, now COPA. Present at the meeting were Catanzara, Bella, the mayor's chief of staff, and the mayor's labor attorney. Catanzara and the mayor discussed the contract and the need to resolve the financial aspects. They also agreed that the successor contract would need to be of a longer term and that it needed to be resolved as soon as possible. They discussed police officer credibility issues. The mayor stated that if things were said off the record, she did not want to see them in the media, and Catanzara agreed. They discussed George Floyd's murder in Minneapolis. They also discussed their mutual concern that civil unrest would come to Chicago. Catanzara stated that he viewed such civil unrest as bad for both civilians and law enforcement, who could be physically or mentally harmed while trying to keep the peace. Catanzara expressed his belief that the rioting would come to Chicago sooner or later. The mayor expressed in strong terms that riots would not happen in Chicago.

The Saturday after the meeting, May 30, 2020, there was civil unrest in the city. Catanzara reached out to Police Superintendent David Brown and told him that the Charging Party's members could not be expected to endure the hostility and violence to which they were subjected, and he asked Brown whether the Department had a plan for the following day. Brown directed Catanzara to speak with Chief Waller. Chief Waller informed Catanzara that there was no plan.

After these calls and throughout the summer, during which time the civil unrest continued, Catanzara spoke to reporters to publicly express his displeasure at the Respondent's lack of planning and consideration for the officers. He also stated his belief that the mayor had put the Charging Party's members in jeopardy. His statements were reported in the Sun-Times and Tribune. They were also reported on CBS, NBC, ABC, Chicago Fox, CNN, and National Fox.

On or about June 5, 2020, a week after Catanzara's meeting with the mayor, the mayor called Greg Bella. She was irate about Catanzara's public statements related to the Respondent's handling of the civil unrest. She was angry that Catanzara had shared allegedly off the record

⁷ Bella served as a field representative from 2002 to 2011. After his retirement as an officer in 2012, he resumed employment with the Charging Party in April 2014 on a part-time hourly basis until March 2022.

discussions with the press and stated, “I’ll never talk to him again... He’s a fucking asshole.” The mayor also said, “I’m going to cut his balls off at the State of Illinois building.” Bella tried to explain that Catanzara was defending the membership and that his discussions with her about the civil unrest were not off the record.

A week later, the mayor called Bella again on his cell phone. She mistakenly believed that Catanzara had organized speakers for a protest related to looting in the City. She again expressed her anger at Catanzara stating, “I’ve completely had it with Catanzara. He’s an asshole. This time I am going to cut his balls off at the State of Illinois building.” After their conversation, Bella confirmed that Catanzara was not involved in the protest and informed the mayor. She responded that she had learned the same thing from another source but added, “he’s still an asshole and I’m still going to get him.”

8. COPA Completes Its Investigation Into Catanzara

In June 2020, COPA was in the process of completing the legal analysis for the Summary Investigative Report conducted for all social media cases, which have First Amendment implications. The legal department does not typically weigh in on disciplinary recommendations and Kersten could not recall them being part of conversations regarding discipline.

After completion of the legal analysis, then-Deputy Chief Administrator Kersten reviewed and approved the findings in the summary report; she did not have involvement in the case until after the SRI had been drafted. At that time, Kersten was aware that Catanzara was either running for union president or that he had just won the election, though she was unaware of when exactly he had become union president.

Kersten noted that one of the strongest aggravating factors was Catanzara’s lack of accountability, lack of remorse, and attempts to defend his statements. She further noted that the recommendation for separation was based on the number of statements at issue and their content. In reviewing and approving the report, Kersten relied on the discipline and investigation conducted in Officer Brian Hansen’s case, which likewise resulted in a recommendation for separation. Hansen incurred multiple sustained findings for making a significant number (~60) of distasteful and problematic social media posts that also violated various department rules and the department’s social media policy and eroded the department’s overall mission. Hanson advocated

for civil war, talked about racial profiling in police activity, and advocated for violence against various ethnic, racial, or minority groups.⁸

Kersten brought the summary report from the Hansen investigation to the attention of then-Chief Administrator Sidney Roberts to ensure that Roberts could likewise consider Catanzara's conduct in light of the conclusion made in the Hansen case. Chief Administrator Sidney Roberts reviewed and approved the SRI in Catanzara's case. When the final report issued on June 30, 2020, it included the same findings contained in Masters' original recommendation, which he completed in April 2020.

There have been COPA cases involving officers' social media use where the penalty was not separation. Kersten recalled instances in which accused officers made two or three posts, took responsibility, and received less severe discipline. Attorney Grace testified that in his experience the use of profanity usually receives a written reprimand or a one- to two-day suspension, which is on the lower end of the discipline scale.

COPA's investigation into Catanzara lasted over two years. COPA's investigations manual from September 2017 states that if a case was major or complex, COPA would aim to complete it in no more than 12 months. However, in practice, the average length of the COPA investigation varies from 18 months to two years. Kersten testified that the length of COPA's investigation into Catanzara was within the "realm of typicality." Cases that require significant legal analysis, such as First Amendment and social media cases can take longer than average. She noted that Catanzara's case took longer because the investigator assigned to Catanzara's case was also assigned to handling several different high-profile cases during that period. The pandemic and COPA's work-from-home directives gave the investigator the opportunity to review his files to identify the cases that did not need further investigative steps and could be closed out. Assistant Director of Labor Relations Kevin O'Bryan similarly stated that the investigation of a complaint register varies widely depending on the allegations at issue and the complexity of the case, but that 18 months is not an uncommon length of time for an investigation.

Under the municipal ordinance that created COPA, if an investigation is not completed within six months, COPA must notify the mayor, city council, and the superintendent that the case

⁸ Attorney Grace testified that Hansen's misconduct included calling in bomb threat at his wife's place of business through social media, which the department viewed as bona fide. However, COPA's summary investigative report on Hansen does not reflect this claim.

is still pending. Thereafter, COPA must provide an update to the notice every six months until the investigation is complete. City of Chicago, Municipal Code 2-78-135. However, the six-month bench-mark in the ordinance does not contemplate that all investigations must be concluded within six months.

9. Catanzara Continues Public Statements and Advocacy

Riots broke out in Grant Park in the summer of 2020. Catanzara learned of the Grant Park riots while he was on vacation and texted the mayor about them. She responded with text messages calling him a cartoon character, a fraud, and a clown. Catanzara later discovered that 51 union members had been injured defending the Columbus statue. Catanzara responded by speaking to the media and “blast[ed] the mayor for not having a plan.” He also released to the press the disparaging text messages she had sent him, and they were published in the press in July 2020 .

Catanzara continued to publicly criticize the mayor from summer through November and December about the handling of the riots.

During 2020, Catanzara also authorized grievances and other litigation. Catanzara’s leadership style as union president was different from that of his predecessors. He was aggressive in litigating on behalf of his members in arbitrations and civil suits whereas his predecessors were either incompetent or more interested in getting along with the Respondent.

10. Superintendent’s Response and Filing of Separation Charges

On September 29, 2020, Superintendent Brown issued a letter of non-concurrence to the COPA Chief Administrator in which he disagreed with some of COPA’s findings and the stated penalty. He stated that he did not concur that COPA had proven two of the seventeen findings by the preponderance of the evidence. Specifically, he disagreed with COPA’s conclusion that Catanzara issued a threat to a member of the public when he called him a “loser” and told him to “keep listening for that knock on the door.” The superintendent reasoned that, in the context of Catanzara’s conversation with the individual, COPA should have credited Catanzara’s explanation that the knock on the door referred to the specter of a process server delivering notice of a potential

lawsuit by Catanzara against the individual for slander. He also disagreed with COPA's conclusion regarding the allegation related to Catanzara's email to CPS officials about athletic recruiting violations. He reasoned that Catanzara had not attempted to influence others' actions about a non-police matter and had merely attempted to bring information of alleged wrongdoing to an authority able to address it.

However, the superintendent agreed that COPA had sustained the remaining allegations by a preponderance of the evidence. He stated that Catanzara's actions were a "clear and egregious violation of the rules and do not reflect the goals of the Department and certainly are not in line with the numerous changes the Department has implemented and continue[s] to implement under the Consent Decree." Nevertheless, the superintendent disagreed that separation was the appropriate penalty and instead stated that a suspension of one year was appropriate. The department advocate forwarded this letter of non-concurrence to COPA.

Thereafter, COPA's chief administrator and the superintendent conferred on the matter but were not able to reach a consensus.

On November 16, 2020, COPA requested review of the chief administrator's disciplinary recommendation by one member of the police board. Police Board member Andrea Zopp determined that the superintendent had not overcome the presumption in favor of the chief administrator's recommendation and that the chief administrator's recommendation was thereby deemed accepted by the superintendent.

On December 18, 2020, Superintendent Brown directed the department of law to file separation charges with the Police Board based on the COPA investigation. And on December 22, 2020, COPA provided the department of law with Catanzara's investigative file to aid in the drafting of charges.

11. End of 2020 - Catanzara makes Statements To Press About Negotiations

In 2020, Catanzara participated in contract negotiations, and near the end of 2020, he spoke to the media about the Respondent's bargaining conduct. The Charging Party and the Respondent had initially agreed to negotiate monetary benefits separately from all other matters. However, at the end of 2020, when the parties were getting closer to agreement on the numbers, the Respondent insisted on addressing police officer accountability issues alongside the financial matters. Catanzara spoke to many media outlets asserting that the mayor had lied about negotiating

financial terms separately and that the Respondent was attempting to negotiate additional matters concerning police officer accountability along with any financial package.

12. Catanzara Makes Statements About January 6th Insurrection

On January 6, 2021, domestic terrorists in support of Donald Trump occupied the United States Capitol in an attempt to prevent the transfer of leadership to then-President Elect Joe Biden. Individuals who participated in the insurrection were charged with obstruction of an official proceeding and assault. Some were charged with the assault of a police officer, and some were sent to prison. Catanzara made public statements in support of the activities of those involved in the capitol attack during an interview with WBEZ, which took place while Catanzara was watching a broadcast of the event. Catanzara said, “they get to do what they want...they’re entitled to voice their frustration.” He also stated “there’s no obvious violence in this crowd. They pushed past security and made their way to the Senate chamber.” He added that, “if the worst crime here is trespassing, so be it...but to call these people treasonous is beyond ridiculous and ignorant.”

13. The Superintendent Suspends Catanzara and Files Charges Seeking His Separation Before the Police Board.

On January 26 2021,⁹ the superintendent issued Catanzara a 30-day suspension. The parties’ collective bargaining agreement states that it is the current and past practice for the superintendent to issue officers a 30-day suspension when initiating separation proceedings against the officer. Section 8.8 of the contract states the following: “In cases where the Superintendent seeks an Officer's separation from the Department, the Superintendent's current and past practice of suspending Officers for thirty (30) days and filing charges with the Police Board seeking the Officer's separation will not change.” The suspension notice stated the following: “the date IAD served the suspension notification is the department member’s last day on the payroll.”

On January 26, 2021, the Respondent also filed charges against Catanzara before the Police Board seeking his separation. The charges included the allegations from both the COPA and BIA cases, consolidating them for purposes of the Police Board proceeding. The hearing was scheduled for November 15, 2021.

⁹ Although the suspension notice does not include a specific date, it appears together with other documents dated January 26, 2021.

14. City Council Introduces Resolution Seeking Catanzara's Resignation as Union President

On January 27, 2021, 40th Ward Alderman Andre Vasquez introduced a resolution calling for Catanzara's resignation as union president. The resolution was signed by 35 alders and the city clerk. The stated impetus for the resolution was Catanzara's statements made in "defense of fascists who executed a domestic terrorist attack against the U.S. Capital building on January 6th with the intent to undermine a Presidential election and American Democracy." The resolution quoted Catanzara's comments about the insurrection. It contained the following three demands: (1) that Catanzara resign from his position as union president; (2) that the Charging Party's Board of Directors call for Catanzara's resignation as union president, if he did not resign on his own; and (3) that the Bureau of Internal Affairs investigate Catanzara's actions for bringing discredit to the City and the police department if Catanzara did not resign.¹⁰

The resolution noted that the National Fraternal Order of Police rebuked Catanzara's characterization of the attackers at the capitol as mere trespassers and stated that they were a "violent mob...visiting fear and destruction on one of [the] nation's most sacred spaces..." The resolution asserted that the Charging Party's constitution and by-laws bar from membership, "any person who is a member of, or subscribes to, or supports the principles of any organization having as its purpose the overthrow of the government of the United States by force or violence." The resolution further asserted the sworn officers of Chicago "deserve union representation by leadership who reflect their highest ideals and strictest fealty to the Constitution and the laws of the nation, state, and city."

Catanzara testified that sometime in January or February 2021, the mayor referenced Catanzara's statements regarding the January 6 insurrection and stated that he would never be a police officer again. Catanzara asserted that he learned about the statement through local news media, but the Charging Party did not offer the news source from which Catanzara learned of this statement though Catanzara asserted the statement was easily verifiable and the Charging Party offered several other news articles into evidence for purposes of administrative notice.

¹⁰ There is currently no BIA investigation into Catanzara related to his statements about the January 6, 2021 event at the capitol.

15. Police Board Hearing

The Police Board has nine members who are appointed by the mayor. It has exclusive jurisdiction over the separation of sworn police officers of the Chicago Police Department and makes the ultimate decision on the question of a police officer's separation.¹¹ A Police Board hearing is comprised of two parts; the first assesses whether the officer committed the alleged misconduct, the second part assesses the penalty.

During the Police Board proceedings, Catanzara was represented by attorney Tim Grace from the law firm Gottreich, Grace & Thompson. Grace's partner, Jim Thompson, also provided assistance. Attorneys James Lydon and his associate Ester Choi from the law firm Hinshaw & Culbertson represented the Respondent's superintendent.

Prior to the hearing, attorney Grace made a motion to dismiss or stay the proceedings on the grounds that the ILRB had exclusive jurisdiction over the termination issue. He also filed a motion to litigate the matter before an arbitrator instead of the Police Board because Catanzara previously had heated exchanges with Police Board members and Grace believed that a hearing before an arbitrator would avoid the appearance of impropriety. The hearing officer denied both motions. Grace also made ten discovery requests before the hearing officer, nine of which were denied. At hearing in this case, Grace testified that his motion practice before the Police Board was different from the motion practices he had experienced in prior cases before the Police Board.

Before the first day of hearing, the Police Board hearing officer made a pre-hearing ruling that comparable disciplinary evidence would be introduced at hearing. This ruling required the superintendent to turn over records of discipline that were comparable in nature to that of Catanzara's. On October 21, 2021, Lydon emailed Thompson spreadsheets containing the results of BIA's search of complaint registers over the last 10 years using social media related search terms. The list included the case of Brian Hansen.

Attorneys for Catanzara and the superintendent sought to reach a stipulation on comparables for presentation to the hearing officer, relevant to the penalty phase of the hearing. Catanzara's attorneys provided the Respondent's attorneys a proposed stipulation that omitted

¹¹ The Police Board also has jurisdiction over suspensions of 365 days or more. In addition, an officer may ask the Police Board to review suspensions under of greater than 31 days, but in practice police officers do not exercise this option.

Hansen as a comparable.¹² The Respondent's attorneys did not agree to that stipulation. On November 12, 2022, following phone calls between the attorneys, attorney Choi wrote an email to Catanzara's attorneys stating that she would edit the proposed stipulation to add facts deemed necessary and would include Hansen's case with a "note clearly stating that [Catanzara] objects as to its relevance." As of November 15, 2021, the parties had not reached agreement on the proposed stipulation.

The hearing began on November 15, 2021. At the end of the first day of hearing, Catanzara asked to address the police board himself. He then announced his intent to resign his employment the following morning. He stated that he believed the Police Board process was a "farce" and that the "cake was already baked." Catanzara's attorney notified the hearing officer that the hearing should be suspended pending his resignation. The parties never executed a stipulation regarding comparables because the parties never reached the penalty phase of the hearing due to Catanzara's resignation.

Following Catanzara's announcement to resign, the mayor made public comments to the news media. She stated that Catanzara had "ruined his own career with bombastic and offensive rhetoric," that he had disgraced the department, and that she believed the case against him was strong. At hearing in this case, Catanzara testified that in his 27-year experience as a police officer, the mayor had never weighed in on a pending Police Board case.

On November 16, 2021, Catanzara resigned from the police department. As a result of his resignation, the Respondent withdrew the charges against him. The Police Board did not issue any decision that addressed whether Catanzara was guilty of the charges at issue or whether he should be terminated.

16. History of the Respondent's Discipline of Unit Members While on Union Leave and Relevant Arbitration Awards

In 2006, the Respondent initiated a complaint register investigation into Police Officer William Dougherty on a number of allegations including loss of a firearm. Dougherty was on union leave when the Respondent initiated the investigation, and he remained on union leave until

¹² Hansen's case is referred to by its complaint register log number, 1075637.

2014. In late 2007, BIA sustained the allegation arising from the loss of the firearm and recommended a reprimand. Dougherty did not challenge the discipline.

In May 2009, Arbitrator Edwin Benn issued an award on a grievance arising from the Respondent's decision to initiate removal of police powers from union representatives on leave under Section 17.2 of the contract, who had failed to annually range qualify with their weapons.¹³ The Charging Party framed the case as a just cause dispute whereas the Respondent argued that it was primarily an issue of contract interpretation. On the merits, the Charging Party argued that the removal of the representatives' police powers would interfere with their ability to reach their membership and that imposition of qualification requirements would infringe on their independence from the Respondent, set forth under Section 17.2. The Respondent argued that its management rights gave it the authority to set standards for those individuals granted police powers where the Respondent could be held liable for their improper conduct. The arbitrator concluded that the matter was one of contract interpretation rather than of just cause. He found that clear contract language supported both parties' positions and that the conflict therefore could not be resolved with a determination that the Charging Party had shown Section 17.2 of the contract had been violated.

In most relevant part he stated, "to find that the department in no case could strip [union] officials of their police powers would be in direct conflict with the [Respondent's] clear managerial rights under Article 4 to regulate those individuals clothed with police powers." He then stated that officers on union leave would have an option to retain police powers, but if they chose to do so, they would be required to range qualify on an annual basis. If they opted not to range qualify, their stars and identifications would be held by the department until they did range qualify. In addition, the department would be required to give the lodge officials separate official identifications, which would give them the right to full access to police officers for purposes of representation, to the same extent as they did while in possession of their stars and identifications. He also required the Respondent to expunge record of disciplinary actions taken against the grievants. Finally, the arbitrator set forth dicta to aid the parties in avoiding future similar disputes.

¹³ The Charging Party's grievance in this case arose in the context of a series of events in which the Respondent attempted to control the actions of the Charging Parties' officials while they were on leave under Section 17.2 of the parties' contract. This included the Respondent's requests that the Charging Party submit time and attendance records of its officials to the Respondent and undergo random drug testing. The arbitrator noted that these matters were not technically before him, but he provided dicta to guide the parties.

He stated that there should be a bona fide discernable and substantial managerial interest before the union officials' freedom from interference in the performance of union duties under Section 17.2 could be breached.¹⁴

On July 21, 2009, Arbitrator Benn issued an award arising from a grievance over a three-day suspension issued to Sidney Davis for losing his secondary weapon while on union leave. On July 26, 2010, Arbitrator Peter Meyers issued an award on a grievance arising from the same facts. Both arbitrators sustained the grievance using similar reasoning. Benn reasoned that the City had shown no "... bona fide, discernable and substantial managerial interest' in whether a Lodge official on Section 17.2 leave of absence lost his weapon while serving as a Lodge official on leave of absence." Meyers noted that in resolving the grievance, "it was important to look at the rules which the City claims were violated." He concluded that since Davis was on leave at the time of the incident and had lost only his secondary weapon, there was no basis on which to find Davis had brought discredit on the department or impeded the Department from achieving its goals, as the Respondent had claimed.

In April 2014, the Respondent opened a complaint register investigation into Officer Thomas McDonagh, after he went on union leave, alleging that he had accessed documents and police reports without any valid police purpose. The dates of his alleged improper access of documents fell both before and after the date on which he began his leave.

In 2014, while the investigation was pending, then-Union President Angelo, union representative Bella, and then-Superintendent McCarthy had conference calls about McDonagh during which McCarthy expressed his wish to fire McDonagh. Then-President Angelo stated McCarthy could not touch McDonagh while he was on union leave.¹⁵ McCarthy stated that he would check with his people, and then later informed Bella and Angelo that he would have to wait to discipline McDonagh.

O'Bryan testified based on his review of the Respondent's records that BIA took McDonagh's statement while he was on union leave and that it sustained the allegations in early

¹⁴ The witness testimony interpreting this award is given no weight because the document is a legal decision that speaks for itself, and its interpretation is an issue of law.

¹⁵ Bella's testimony concerning Angelo's statement is offered for the fact that it was said and to provide context for McCarthy's admissible statements; it is not offered for the truth of the matter asserted. While Assistant Director of Labor Relations O'Bryan testified that the Charging Party never asserted that Article 17 insulated McDonagh from the disciplinary process while he was on Article 17 leave, he was not a party to the conversations described above.

2016, recommending a 30-day suspension, while McDonagh remained on leave. Although Bella testified that BIA did not interview McDonagh while he was on union leave, I credit O'Bryan's testimony based on demeanor and because Bella exhibited a marked and suspicious shift in certainty regarding his claim.¹⁶

McDonagh grieved the matter in 2017, shortly after he returned from union leave that year. The record does not reflect when Superintendent McCarthy issued McDonagh notice of the recommended discipline. However, based on the superintendent's statements in 2014 and the large gap between BIA's recommendation and McDonagh's grievance, it is likely that the superintendent did not give McDonagh notice of the disciplinary recommendation until after he returned from leave.¹⁷

Retired officer and former union president Donahue testified that when he was on union leave, the Respondent notified him that he had three outstanding parking tickets but did not seek to discipline him.

In April 2017, Kevin Graham went on union leave as union president. A month earlier, in March 2017, newspapers reported that Graham was not abiding by the Respondent's residency requirement and was living in Lincolnshire, rather than in Chicago. A police officer's violation of the residency requirement results in termination. The Charging Party was never made aware that the Respondent would take any actions against Graham based on the allegations that he was violating the residency requirement.

In November 2017, the Charging Party received communication from the Respondent asserting that officers on union leave were in non-compliance with use-of-force training requirements. The Charging Party disputed the officers' obligation to undergo such training while they were on union leave. Ultimately, the union officials did not complete use-of-force training while on leave, and the Respondent did not discipline them for failing to undergo such training.

¹⁶ Bella initially stated that he did "not believe" that BIA brought McDonagh in for a statement during his union leave, but Bella later asserted that McDonagh's interview with BIA "just didn't happen." Tr. P. 273.

¹⁷ Pursuant to the parties' contract, officers grieve the "recommendation for discipline." Jt. Exh 1, Section 9.6.

IV. DISCUSSION AND ANALYSIS

1. Sufficiency of the Complaint

The complaint provided sufficient notice to the Respondent of the allegations that the Respondent retaliated and/or discriminated against Catanzara in violation of Sections 10(a)(1) and 10(a)(2) of the Act.

In Illinois judicial proceedings, “a pleader is not required to set forth his evidence. To the contrary, a pleading is only required to allege ultimate facts and not the evidentiary facts tending to prove such ultimate facts.” Board of Education v. Kankakee Federation of Teachers, 46 Ill. 2d 439, 446-7 (1970); Metz v. Illinois State Labor Relations Board, 231 Ill. App. 3d 1079, 1100 (5th Dist. 1992); Zeitz v. Glenview, 227 Ill. App. 3d 891, 894 (5th Dist. 1992), appeal denied, 146 Ill. 2d 654, (1992); Borgsmiller v. Burroughs, 187 Ill. App. 3d 1, 7 (5th Dist. 1989). An even more lenient standard exists in administrative proceedings. Complaints or charges in administrative hearings need not be as technically precise or drafted with the refinements and subtleties of pleadings in court actions. Metz, 231 Ill. App. 3d at 1100; Dharmavaram v. Dept. of Professional Regulation, 216 Ill. App. 3d 514, 530 (1st. Dist. 1991); Baker v. Illinois Racing Board, 101 Ill. App. 3d 580, 584 (5th Dist. 1981). Rather, they need only be sufficiently clear and specific to allow preparation of a defense. Kelly v. Police Board of Chicago, 25 Ill. App. 3d 559, 564 (1st Dist. 1975).

Here, the complaint for hearing meets this standard because it addresses each element of the Charging Party’s prima facie case. To establish a prima facie case that a respondent violated Sections 10(a)(2) and 10(a)(1) of the Act, a charging party must show that an employee engaged in union and/or protected, concerted activity, the respondent had knowledge of such activity, and the respondent took an adverse action against the employee for discriminatory reasons, *i.e.*, animus toward his participation in such activities. City of Burbank v. Ill. State Labor Relations Bd., 128 Ill.2d 335, 345 (1989); Pace Suburban Bus Div. of Reg’l Transp. Auth. v. Illinois Lab. Rels. Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010). In this case, paragraphs 12, 16, and 18 of the complaint establish these essential elements.

There is insufficient support for the Respondent’s claim that the complaint fails to sufficiently describe the protected activity at issue. Paragraph 18 of the complaint expressly states that Catanzara served as union president, and it further specifies that his work in that role was the motivation for the Respondent’s allegedly unlawful conduct. While the complaint does not flesh

out the additional and more generalized statement that Catanzara engaged in protected concerted activity, the complaint remains sufficient without such detail. The complaint's reference to Catanzara's service as union president adequately supports both allegations at issue, and it also provides relevant context for the assertion that Catanzara engaged in protected concerted activity by suggesting that such activity related to his role as union president. The Board was not obligated to describe every instance of Catanzara's protected concerted activity to sufficiently apprise the Respondent of the alleged violations.¹⁸ Metz, 231 Ill. App. 3d at 1103 (Section 10(a)(3) claim was sufficient despite absence of specific allegation that the "named employees had signed or filed an affidavit, petition or charge against respondent and had been discriminated against").

In sum, the complaint sufficiently alleges violations of Sections 10(a)(2) and 10(a)(1) of the Act.

2. Amending the Complaint

The complaint is amended to add the allegation that the Respondent constructively discharged Catanzara in violation of Sections 10(a)(2) and (1) of the Act, as contemplated at hearing. However, the complaint is not amended to include the allegation, newly advanced by the Charging Party on brief, that the Respondent constructively discharged Catanzara in violation of Section 10(a)(3) of the Act.

The Act gives the administrative law judge discretion to amend the complaint. Section 11(a) of the Act provides, in relevant part: "Any such complaint may be amended by the member or hearing officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon." 5 ILCS 315/11(a) (2018). Section 1220.50(f) of the Board's Rules likewise provides that "[t]he Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform it to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended

¹⁸ To the extent that there is any ambiguity on this point, it is resolved by amending the complaint to conform to evidence presented at hearing, under the standard set forth in the next section. The parties fully and fairly litigated the allegations that the Respondent retaliated and/or discriminated against Catanzara, in violation of Sections 10(a)(1) and 10(a)(2) of the Act, because he served as union president and engaged in protected concerted activities in that role. At hearing, the Charging Party consistently specified that the protected concerted activities at issue were those undertaken by Catanzara in his role as union president (Tr. pp. 10, 89-90), and the record on the whole outlined those instances of protected conduct, giving the Respondent an opportunity to present an adequate defense.

decision and order.” 80 Ill. Adm. Code § 1220.50(f). In interpreting these provisions, the Board has held that it is appropriate to amend a complaint in the following circumstances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. Forest Preserve Dist. of Cook Cnty. v. Ill. Labor Relations Bd., 369 Ill. App. 3d 733, 746-7 (1st Dist. 2006); Chi. Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); City of Chi. (Police Dep’t), 14 PERI ¶ 3010 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Forest Preserve Dist. of Cook Cnty., 5 PERI ¶ 3002 (IL LLRB 1988). The Board may properly decide allegations which have been litigated by the parties, even if those allegations were never specifically pleaded, as long as the respondent has had notice and an adequate opportunity to prepare and present a defense. County of Cook and Sheriff of Cook County, 37 PERI ¶ 43 (IL LRB-LP 2020) aff’d by unpub. ord. 2022 IL App (1st) 201190-U; Forest Preserve Dist. of Cook Cnty., 5 PERI ¶ 3002.

Here, the allegation that the Respondent constructively discharged Catanzara, in violation of Sections 10(a)(2) and (1) of the Act, arose during the pendency of the case and grew out of the same subject matter as the underlying charge. The underlying charge concerned the Respondent’s decision to suspend Catanzara and initiate charges seeking his separation, allegedly because of his advocacy as union president on behalf of the union’s members. The Charging Party now alleges that the Respondent subsequently coerced Catanzara’s resignation by continuing to express animus towards him and subjecting him to unfair separation proceedings because of his union advocacy. Accordingly, the new constructive discharge allegation grew directly from the allegedly unlawful suspension and initiation of separation proceedings against Catanzara, at issue in the original charge.

Furthermore, the Respondent had an adequate opportunity to prepare a defense, such that no prejudice would result from adding the allegation that the Respondent constructively discharged Catanzara in violation of Sections 10(a)(2) and (1) of the Act. The Charging Party moved to amend the complaint on the first day of hearing to add a constructive discharge allegation, even before opening statements had commenced. Furthermore, I informed the Respondent that evidence of constructive discharge would be considered in the case. The Respondent therefore had the opportunity to examine witnesses and raise relevant arguments in its brief on this issue.

Indeed, it presented a defense against the constructive discharge allegation with respect to Section 10(a)(2) and (1) of the Act. County of Cook and Sheriff of Cook County, 37 PERI ¶ 43 aff'd by unpub. ord. 2022 IL App (1st) 201190-U; Chicago Park Dist., 15 PERI ¶ 3017.

However, it would be inappropriate to amend the complaint to state that the alleged constructive discharge also violated Section 10(a)(3) of the Act, as suggested by the Charging Party on brief. This matter was not fully and fairly litigated at hearing because neither the Charging Party's motion to amend the complaint nor the evidence presented at hearing put the Respondent on notice that Section 10(a)(3) of the Act would be at issue. Rather, the Charging Party's opening statement shows that the Charging Party's proposed constructive discharge amendment arises under Sections 10(a)(2) and (1) of the Act, the allegation classes already contained in the complaint.¹⁹ Furthermore, the Charging Party's generalized evidence concerning Catanzara's charge-filing undermines any argument that the Charging Party intended to use it as independent support for a Section 10(a)(3) claim, as opposed to evidence of Catanzara's activities as union president. The record does not reference specific charges, does not describe when Catanzara filed them, and does not link the filing of particular charges to the Respondent's treatment of Catanzara. In fact, the Charging Party also fails to draw the requisite connection through its legal arguments on brief. The Charging Party's omissions are not cured by its broad request to amend the complaint to conform to the evidence presented at hearing. Consequently, amending the complaint to add a Section 10(a)(3) allegation would prejudice the Respondent because the Respondent did not present evidence specifically related to the Section 10(a)(3) claim, did not argue that claim on brief, and was not put on notice by evidence or argument that it had reason to do so. Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (rejecting certain amendments where they were not fully and fairly litigated).

Thus, motion to amend the complaint is granted to add the allegation that the Respondent constructively discharged Catanzara in violation of Sections 10(a)(2) and 10(a)(1) of the Act. However, the motion is denied to the extent that it seeks the addition of a Section 10(a)(3) claim.

¹⁹ The Charging Party's attorney stated the following: "Finally, the evidence will show that, due to the unlawful actions of the respondent as alleged in both cases [L-CA-21-025 & L-21-030], Catanzara retired from his position as a police officer on November 16, 2021." Tr. P. 21.

3. Timeliness

The Charging Party mooted the question of timeliness as to one of the allegations, and the remaining retaliation allegations are timely filed.

It is unnecessary to determine whether the charge is untimely as to the allegation that the Respondent retaliated against Catanzara by initiating Complaint Register No. 1086910 against him in 2017 because the Charging Party has effectively withdrawn this allegation.²⁰ See Complaint ¶ 7. The Charging Party expressly stated that it is “not claiming that the initiation of the CR file[] in 2017...was unlawful.” Charging Party brief, n. 26. Accordingly, no determination will be made on this issue regarding its timeliness or its merits.

The remaining allegations in the complaint are timely filed. Section 11 of the Act provides that, whenever an unfair labor practice is charged, “the Board...shall conduct an investigation of the charge provided that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board.” 5 ILCS 315/11(a). The six-month filing period begins to run “when the charging party learns or has notice of the actions which constitute the alleged unfair labor practice.” Chicago Joint Board, Local 200 v. Illinois Labor Relations Board, 2011 IL App (1st) 101497, ¶ 22; Michels v. Illinois Labor Relations Bd., 2012 IL App (4th) 110612, ¶ 38; Moore v. Illinois State Labor Relations Bd., 206 Ill. App. 3d 327, 335 (4th Dist. 1990). The Respondent has the burden of proving by a preponderance of the evidence that the charge was untimely, i.e., filed more than six months after the Charging Party knew or reasonably should have known of the alleged unlawful conduct. State of Illinois, Department of Central Management Services (Department of Transportation), 29 PERI ¶ 124 (IL LRB-SP 2013); Forest Preserve Dist. of Cook County, 4 PERI ¶ 3012 (IL LLRB 1988) aff’d by Forest Preserve Dist. of Cook County v. Illinois Local Labor Relations Bd., 190 Ill. App. 3d 283 (1st Dist. 1989).

Here, the Charging Party filed its charge well within six months of having obtained knowledge of the Respondent’s allegedly unlawful conduct. The alleged unlawful conduct consists of the Respondent’s decision on December 17, 2020 to uphold COPA’s recommendation seeking Catanzara’s separation, and its decision on January 26, 2021 to suspend Catanzara and initiate separation proceedings against him. The Charging Party filed its charge in Case No. L-

²⁰ The Respondent initiated two separate complaint register investigations into Catanzara but only one is referenced in the complaint.

CA-21-025 on December 28, 2020, within two weeks of the first complained-of action, and it appears to have timely raised the second issue during the subsequent investigation of that timely filed charge.

The Respondent's claim, that "all of the operative disciplinary steps" occurred outside the limitations period, is inaccurate and improperly conflates the timeliness question with the merits analysis. The Respondent suggests that the complained-of actions were the conclusion of processes set in motion outside the limitations period, which preceded the Charging Party's protected activity. But this observation, even if true, fails to address the fact that the Respondent took separate actions within the limitations period, most notably, to suspend Catanzara and initiate separation proceedings against him. The impact of the Respondent's earlier investigative determinations on its subsequent actions is properly reserved for the merits analysis, and reliance on those earlier actions may be used to shed light on the true character of matters occurring within the limitations period. Pace Suburban Bus Div. of Reg'l Transp. Auth., 406 Ill. App. 3d at 502.

In sum, the allegation that the Respondent retaliated against Catanzara by initiating Complaint Register No. 1086910 against him in 2017 is no longer at issue in this case, and the allegations that remain at issue are timely filed.

4. Section 10(a)(2) and 10(a)(1) allegations

The Respondent did not violate Section 10(a)(2) or 10(a)(1) of the Act when it suspended Catanzara and filed charges before the Police Board seeking his separation.

Section 10(a)(1) of the Act, in relevant part, makes it an unfair labor practice for an employer or its agents "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act..." 5 ILCS 315/10(a)(1).

Section 10(a)(2) of the Act prohibits public employers and their agents from discriminating "in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization." 5 ILCS 315/10(a)(2).

To establish a prima facie case that the respondent violated Section 10(a)(2) and 10(a)(1) of the Act, the charging party must prove by a preponderance of the evidence that: (1) an employee engaged in union and/or protected, concerted activity; (2) the respondent had knowledge of such activity; (3) the respondent took an adverse action against the employee; and (4) the employee's

protected, concerted activity and/or union activity was a substantial or motivating factor in the adverse action. City of Burbank, 128 Ill.2d at 345. The critical question specific to the last element under Section 10(a)(2) of the Act is whether the respondent was motivated by union animus. Compare Vill. of University Park (Police Department), 35 PERI ¶ 52 (IL LRB-SP 2018) (dismissing 10(a)(2) claim absent evidence of union animus) aff'd by unpub. ord. 2020 IL App (3d) 180736-U; Cnty. of Cook, 21 PERI ¶ 53 (IL LRB-LP 2005)(same); Clerk of the Circuit Court of Champaign County, 8 PERI ¶ 2025 (IL SLRB 1992)(same); and Vill. of Bensenville, 10 PERI ¶ 2009 (IL SLRB 1993) (same) with Pace Suburban Bus Div. of Reg'l Transp. Auth., 406 Ill. App. 3d at 494-6 (noting distinctions between 10(a)(2) and 10(a)(1) claims, finding that no showing of union animus is required under Section 10(a)(1)).

Unlawful motive may reasonably be inferred from a variety of factors, such as an employer's expressed hostility towards protected concerted or union activity, together with knowledge of the employee's activities, proximity in time between the employees' union activities and the adverse employment action, disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action, inconsistencies between the proffered reason for discharge and other actions of the employer, and shifting explanations. City of Burbank, 128 Ill. 2d 335 at 346; Pace Suburban Bus Div. of Reg'l Transp. Auth., 406 Ill. App. 3d at 497.

If the charging party establishes a prima facie case, the respondent can avoid a finding that it violated the Act by demonstrating that it would have taken the adverse action for legitimate business reasons. City of Burbank, 128 Ill.2d at 346. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. Id. If the proffered reason is merely a litigation figment or was not in fact relied upon, then the employer's reason is pretextual and the inquiry ends. Id. However, when legitimate reasons for the adverse employment action are advanced and are found to be relied upon at least in part, then the case may be characterized as a “dual motive” case and the respondent must then establish, by a preponderance of the evidence, that it would have taken the action notwithstanding the employee's union activity. Id.

a. Catanzara's Union and Protected Concerted Activities

Catanzara engaged in union activity and also protected, concerted activity by serving as union president beginning in May 2020. In that capacity, he authorized the filing of grievances and unfair labor practice charges, and also served as the Charging Party's negotiator during bargaining for a successor agreement. See County of Cook and Sheriff of Cook County, 39 PERI ¶ 3 (IL LRB-LP 2022) (serving as union president and filing grievances was both protected concerted and union activity); Vill. of University Park (Police Department), 35 PERI ¶ 52 (serving as union steward is union activity) aff'd by unpub. ord. 2020 IL App (3d) 180736-U; Cnty. of Cook, 27 PERI ¶ 57 (IL LRB-SP 2013) (steward who filed grievances for himself and others engaged in union activity and/or protected, concerted activity) rev'd on other grounds, Cnty. of Cook v. Illinois Lab. Rels. Bd., 2012 IL App (1st) 111514; Vill. of Calumet Pk., 22 PERI ¶23 (IL LRB-SP 2006)(employee who filed grievances on behalf of others engaged in union activity); see also County of DuPage (DuPage Care Center), 36 PERI ¶ 114 (IL LRB-SP 2020) (all union activity is concerted activity, but not all protected concerted activity is union activity).

In addition, Catanzara engaged in protected concerted and union activity by speaking to the press in his capacity as union president about his concerns over employee's working conditions and the Respondent's alleged bargaining misconduct. Throughout the summer of 2020, Catanzara criticized the mayor's handling of the civil unrest that occurred in Chicago during that time and expressed concern that the mayor's actions placed bargaining unit members in jeopardy. He continued his public advocacy through the end of 2020, when he complained to many media outlets that the mayor had lied about negotiating financial terms separately from other matters and was attempting to include proposals over police officer accountability in the parties' wage negotiations. County of Dekalb & State's Attorney of Dekalb County, 6 PERI ¶ 2053 (IL SLRB 1990) (union president was engaged in union activity where she was the most active and visible supporter for the union and spokesperson for the union, filed grievances, and was quoted in newspapers about long and difficult negotiations); see also Case Farms of N. Carolina, Inc. & W. N. Carolina Workers Ctr., 353 NLRB 257, 260 & n. 12 (2008) (employees were engaged in protected concerted activity when they served as employee spokespersons in complaining about working conditions to the local newspaper).

However, Catanzara was not engaged in union activity or protected concerted activity when he made statements to the press on January 6, 2021 about the insurrection at the capitol, claiming

that the insurrectionists were peaceful and largely law-abiding. An individual's actions do not automatically constitute union activity simply because the employee also happens to be a union official. Media Gen. Operations, Inc., 346 NLRB 369, 370 (2006); see also Village of Bensenville, 10 PERI ¶ 2009 (discipline of union president because of his protected concerted activity violated Section 10(a)(1) of the Act but not 10(a)(2) where union failed to show that discipline was imposed due to his union activities or union animus). Here, Catanzara's statements to the press in defense of the insurrectionists were not on their face related to his role of representing the bargaining unit, were not related to employees' working conditions, and had no bearing on the employment relationship between union members and the Respondent. Indeed, it is clear from the record that Catanzara was not representing the membership's views because he formulated his statements off-the-cuff while watching the insurrection unfold in the media.

For similar reasons, Catanzara's statements to the press about the insurrectionists likewise fail to qualify as protected, concerted activity. The actions of an individual employee are "concerted activity" when they are undertaken "with or on the other authority of" other employees and in furtherance of a group concern. Oak Brook Park District, 31 PERI ¶ 193 (IL LRB-SP 2015); City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997); Vill. of Bensenville, 10 PERI ¶ 2009; see also Schaumburg Sch. Dist. v. Ill. Educ. Labor Relations Bd., 247 Ill. App. 3d 439, 456-8 (1st Dist. 1993). Concerted activity is protected if it is engaged in for the purpose of collective bargaining, for other mutual aid or protection, or if it is aimed at improving wages and terms and conditions of employment. Office of the Chief Judge of the Circuit Court of Cook County, 37 PERI ¶ 34 (IL LRB-SP 2020); Village of New Athens, 29 PERI ¶ 27 (IL LRB-SP 2012); County of Cook (Management Information Services), 11 PERI ¶ 3012 (IL LLRB 1995). There is insufficient evidence that Catanzara made his statements about the insurrectionists with or on the authority of employees because the statements were unrelated to employees' working conditions, a labor dispute, or the relationship between union members and the Respondent. Similarly, there is no evidence that Catanzara's statements in support of the insurrectionists were protected where they had no relationship to bargaining, working conditions, or mutual aid and protection.

b. Respondent's Knowledge

Furthermore, the relevant decisionmakers knew of Catanzara's union and protected, concerted activity. Knowledge of an employee's protected activity must be specifically imputed

to an appropriate agent of the employer who is in some manner responsible for the alleged adverse employment action. Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018 (IL SLRB 1988). A manager's or a supervisor's knowledge of an employee's union activities will ordinarily be imputed to the employer, but a fact-finder may not do so in light of affirmative contrary evidence. Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018. An employer can be found to have knowledge of an employee's protected activity through direct or circumstantial evidence. Rockford Twp. Hwy. Dep't v. State Labor Rel. Bd., 153 Ill. App. 3d 863, 881 (2d Dist. 1987); Village of Glenwood, 3 PERI ¶ 2056 (ILRB 1987).

The relevant decision-makers include COPA investigator Masters, COPA Deputy Chief Kersten, COPA Chief Administrator Sidney Roberts, Police Board member Andrea Zopp, and Superintendent Brown. Investigator Masters participated in the initial recommendation for discipline. Kersten and Roberts reviewed and approved it. Police Board member Zopp determined that COPA's recommendation for discipline would be implemented rather than the superintendent's recommendation. The superintendent, in turn, suspended Catanzara and directed that the department file charges against him before the Police Board seeking his separation.

The direct and circumstantial evidence in this case supports a finding that all relevant decision-makers were aware of Catanzara's protected activities. A decision-maker is presumed to know of an employee's very public protected activities where one of the respondent's high-ranking officials was aware of them. County of Cook, 31 PERI ¶ 108 (IL LRB-LP 2014). Here, the mayor was clearly aware of Catanzara's status as union president because she met with him when he assumed office, and she was likewise aware of his well-publicized claim that she had placed bargaining unit members in jeopardy by failing to plan for the June 2020 riots; indeed, she complained about it. The mayor's demonstrated attention to the press coverage of her actions in June 2020 makes it highly likely that she remained apprised of Catanzara's subsequent and repeated union advocacy in the press throughout that year, where his union advocacy included criticisms of her conduct. It stands to reason that the Respondent's lower-level actors would likewise be aware of Catanzara's status as union president and his advocacy in support of union members where it was publicized in many news outlets and known by the very highest levels of the administration. County of Cook, 31 PERI ¶ 108 (absent affirmative evidence to the contrary, Board assumed decision-makers would know of "so public an action" as providing testimony before the Board, where one of respondent's higher-ranking officials was present.) Notably, none of the individuals

listed above who were involved in the alleged adverse action denied knowing about Catanzara's position or activities as union president,²¹ and some did not testify at all, including Zopp, Brown, and Roberts.²²

Furthermore, the superintendent was specifically aware of Catanzara's grievance and charge-filing activities as union president because his office oversees Management and Labor Affairs, which handles all such matters.

The Respondent does not expressly deny that Catanzara's protected concerted activities were open and known, but simply asserts that its agents made all relevant decisions before they obtained such knowledge. This argument is more appropriately a question of causation, specifically as it relates to issues of allegedly suspicious timing.

c. Adverse Action

Furthermore, the Respondent took adverse action against Catanzara when the Respondent suspended him on January 26, 2021 and filed charges against him with the Police Board seeking his separation. While an action does not need to have an adverse tangible result or adverse financial consequence to constitute an adverse employment action under the Act, there must be some qualitative change in or actual harm to an employee's terms or conditions of employment. City of Chicago v. Ill. Local Labor Relations Bd., 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988); County of Cook/Hektoen Institute, 30 PERI ¶ 252 (IL LRB-LP 2014). Examples of adverse employment actions include, but are not limited to, "discharge, discipline, assignment to more onerous duties or working conditions, layoff, reduction in pay, hours or benefits, imposition of new working conditions or denial of advancement." Ill. Dep't of Central Mgmt. Servs. (Dep't of Emp't Sec.), 11 PERI ¶ 2022 n. 3 (IL SLRB 1995). Here, the Respondent issued Catanzara a 30-day suspension, which is clearly an adverse employment action. Indeed, the suspension notice specifies that "the date IAD served the suspension notification is the department member's last day on the payroll." Furthermore, the Board has previously held that the filing of charges against an employee before a deliberative body seeking the employee's termination qualifies as an adverse

²¹ Although Kersten testified that she was unaware of exactly when Catanzara assumed the position of union president, she conceded that she was generally aware that Catanzara was running for president or had just won the presidency at the time she considered the case against him.

²² At the time of hearing, Roberts no longer worked for the Respondent. It is not clear from the record whether Zopp remained employed by the Respondent at the time of hearing.

employment action. Village of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (finding that employer took adverse action against employee “when it placed him on leave and stripped him of his police powers, when it filed charges with Commissioners seeking termination, and when it terminated his employment.”) *aff’d* by unpub. ord. 2012 IL App (1st) 110284-U; Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 (IL SRLB 1998) (“The Administrative Law Judge properly found that FOP made a *prima facie* showing that Respondents' discipline of Huff and institution of Merit Commission accusations against him were motivated by hostility toward his grievance activity.”) *aff’d* Grchan v. Ill. State Labor Rel. Bd., 315 Ill. App. 3d 459 (3rd Dist. 2000).

Accordingly, the actions taken against Catanzara in this case were not mere threats of discipline, as the Respondent suggests on brief. *Cf.* City of Chicago, 31 PERI ¶129 (IL LRB-LP 2015) (notice of pre-disciplinary meeting that could result in discipline was not adverse); *Cf.* City of Chicago, 39 PERI ¶ 42 (IL LRB-LP 2022) (statements by city representatives during arbitration about grievant were not threats of discipline and also did not constitute adverse employment action).

d. Causation/Union Animus

The Charging Party demonstrated that the Respondent suspended Catanzara and initiated separation proceedings against him in part because of animus towards his protected, concerted and union activities.

The mayor demonstrated animus towards Catanzara’s protected, concerted and union activities through her statements to Union Representative Bella on or about June 19, 2020. In the preceding weeks, Catanzara made public statements to the press in his capacity as union president announcing that the mayor had placed union members in jeopardy by failing to adequately prepare for the riots; as discussed above, such complaints are protected. The mayor responded by contacting union agent Bella by phone and expressing her anger that Catanzara had spoken to the press and had referenced allegedly off-the-record discussions. Bella provided uncontradicted testimony that the mayor called Catanzara an “asshole,” said she would “cut his balls off,” and stated that she was “going to get him.” Although the mayor never expressly referenced Catanzara’s advocacy on behalf of the membership when voicing her anger, it is difficult to separate her anger about Catanzara’s disclosure of allegedly off-the-record statements to the press and anger about

Catanzara's advocacy for union members on the public stage. In a conversation with Bella, a week later about another matter, the mayor reiterated that she remained angry with Catanzara and that she was "still going to get" him.²³

Furthermore, the mayor's statements combined with additional evidence of suspicious timing and irregularities surrounding the Respondent's actions on Catanzara's BIA case provide circumstantial evidence of unlawful motive sufficient to satisfy the Charging Party's prima facie burden. A charging party must establish "union animus" on part of someone who effectively produced the adverse employment action. Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018 citing County of Menard, 3 PERI ¶ 2058 (IL SLRB 1987). In turn, a superior's animus may be attributable to the employer if the superior effectively recommends or influences the decision resulting in the adverse action. North Maine Fire Protection Dist., 16 PERI ¶ 2037 (IL LRB-SP 2000); Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018; City of Harvey, 9 PERI ¶ 2041 (IL SLRB 1993). Consistent with this principle, where there is direct evidence of union animus with respect to the decision-maker, it is not necessary for the Charging Party to provide indirect evidence to prove a prima facie case. Town of Decatur, 4 PERI ¶ 2003 (IL SLRB 1987). However, it is equally clear that an unfair labor practice need not be proven by direct evidence, and it stands to reason that a superior's influence can likewise be inferred from circumstantial evidence. Village of Glenwood, 3 PERI ¶ 2056 (finding a violation "despite the lack of direct evidence of Respondent's knowledge of [employee's] union activity or animus towards such activity").

²³ The mayor's later assertions that Catanzara was a clown, a cartoon character and a total fraud, do not demonstrate union animus because they are mere expressions of personal opinion, devoid of threats or promise of benefit, and are therefore protected speech under Section 10(c) of the Act. 5 ILCS 315/10(c).

Catanzara's assertion that the mayor, in January or February 2021, allegedly said he would never be a police officer again, is not given great weight absent additional foundation regarding when the statement was made or the news outlet from which Catanzara allegedly learned of it. In the alternative, the mayor's alleged statement is not evidence of union animus because it was made in response to Catanzara's support of the January 6th insurrectionists, and not in response to any protected, concerted or union activities.

The mayor's comments following Catanzara's announcement to resign were likewise an expression of opinion and do not evidence animus towards his protected activity. When viewed in context, her statements, that Catanzara had ruined his own career with offensive rhetoric and that the case against him was strong, related solely to the offensive social media posts at issue in the Police Board hearing, posts which predated and were unrelated to Catanzara's protected concerted activities.

Here, the suspicious circumstances arising from the Respondent's addition of the BIA allegations to the separation charges is strongly suggestive of mayoral influence, absent any other explanation in the record. When viewed on the whole, this evidence also shows that the Respondent sought to pile charges on Catanzara to strengthen its separation case against him. For example, the superintendent initially directed the department to file separation charges against Catanzara based solely on the COPA allegations, but when the charges issued on January 26, 2021, five weeks later, they also inexplicably included the BIA allegations. The record does not include any written directive from the superintendent requesting the addition of those allegations, and there is no explanation in the record as to how they became included. The Respondent's addition of the BIA allegations to the separation charges is also suspicious because the superintendent's office had refrained from initiating separation proceedings based on that matter in the 15 months that preceded BIA's 2019 recommendation for separation. Finally, the addition of the BIA allegations is suspiciously timed because it coincided with a period of contentious negotiations (end of 2020) culminating in Catanzara's comments to the press about the mayor's bargaining conduct; he accused her of reneging on her promise to negotiate financial matters separately from accountability issues. While the mayor's threats to Catanzara occurred months earlier, it is significant that the Respondent added the BIA allegations to the separation charges on the heels of similar public statements by Catanzara related to union advocacy intertwined with criticism of the mayor. Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 aff'd Grchan v. Ill. State Labor Rel. Bd., 315 Ill. App. 3d 459 (3rd Dist. 2000) (lengthy and unexplained delay of two months between employee's alleged misconduct and suspension supported finding of unlawful motive and pretext).

Moreover, the Respondent's failure to call Superintendent Brown to explain his rationale for adding the BIA allegations to the separation charges when he did, warrants an adverse inference under the missing witness rule. The missing rule applies if the following four conditions are satisfied. (1) the missing witness was under the control of the party to be charged and could have been produced by reasonable diligence, (2) the witness was not equally available to the party requesting that the inference be made, (3) a reasonably prudent person would have produced the witness if the party believed that the testimony would be favorable, and (4) no reasonable excuse for the failure to produce the witness is shown. Simmons v. Univ. of Chi. Hosp. & Clinics, 162 Ill. 2d 1, 7 (1994). An adverse inference is drawn only when a witness, under the control and direction of

one party, fails to appear and testify. Village of Winnetka, (Public Works Department), 38 PERI ¶ 26 (IL LRB-SP 2021) (citing Bd. of Regents of Regency Universities v. Ill. Educ. Labor Relations Bd., 208 Ill. App. 3d 220, 233 (4th Dist. 1991)). Here, Superintendent Brown was employed by, and under the control of, the Respondent at the time of hearing.²⁴ And as an employee of the Respondent, he was not equally available to the Charging Party. Simmons, 162 Ill. 2d at 8. Furthermore, a reasonably prudent person would have called the superintendent to explain his decision-making process and the reason for any delays in the disciplinary process that occurred during his tenure because these matters are unclear on the record and appear suspicious absent explanation.

Under these circumstances, it is appropriate to rely on the mayor's status and authority over the superintendent to lend weight to the inference that the mayor influenced the decision to expand the scope of charges initially contemplated by the superintendent. The superintendent serves at the mayor's pleasure. City of Chicago Municipal Code, 2-84-040. It is therefore reasonable to infer that the mayor exercised her power to add these charges where the superintendent initially sought separation based on the COPA allegations, standing alone, and where the circumstances surrounding the Respondent's addition of the BIA allegations are unclear.

The Respondent may note that it took some action on the BIA case by removing Catanzara's police powers around October 2019. However, this does not nullify the inference of unlawful motive described above where the Respondent's delay in initiating charges against Catanzara remains unexplained and is not justified by any evidence of custom and practice on the record. Although the record includes one instance in which the Respondent previously consolidated two complaint register cases involving Catanzara for hearing before the police board, there are no details regarding that consolidation to suggest that the Respondent's 15-month delay in this case is standard. Any claims by the Respondent of administrative efficiency must be rejected where it was hardly efficient for the Respondent to maintain Catanzara on the payroll for many months,²⁵ when, according to the Respondent, it had a strong case for his removal.

²⁴ I take administrative notice of this fact from information available on the Respondent's website. https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2023/march/StatementFromMayorLoriLightfoot.html

²⁵ Although the Charging Party began reimbursing the Respondent for Catanzara's pay beginning in May 2020, the Respondent continued to make pension contributions on his behalf during that time.

While the evidence described above is sufficient to satisfy the Charging Party's prima facie burden, the Respondent's prior unfair labor practices cited by the Charging Party on brief²⁶ are not relied upon as additional evidence of union animus. Those unfair labor practices are dissimilar to the unfair labor practices alleged here. One case concerned the Respondent's refusal to timely provide the Charging Party with requested information, and the remaining three concerned violations of the duty to bargain over the effects of policy changes. None of them concerned allegations of animus towards employees' protected activities or retaliation against union supporters. In addition, with respect to some of the cases, the relevant actors are likewise different. Three of the cases preceded Catanzara's tenure as union president, and one preceded the mayor's inauguration on May 20, 2019.²⁷ Cf. Village of North Riverside, 36 PERI ¶ 56 (relying on prior unfair labor practice as evidence of continuing animus where misconduct was strikingly similar); cf. County of Williamson, 14 PERI ¶ 2016 (IL SRLB 1988) (prior statutory violations constituted compelling evidence of unlawful motive where they included four previous incidents of retaliatory discharge of Union activists and strong Union supporters); cf. New York Paving, Inc., 371 NLRB No. 139 (2022) (considering prior unfair labor practices as circumstantial evidence of unlawful motive where they involved identical actors and similar allegations, evidencing a pattern of respondent's attempts to weakening bargaining unit).

Likewise, the City Council's resolution seeking Catanzara's resignation from his position as union president is not evidence of the Respondent's unlawful motive to initiate separation proceedings against him. While the resolution had a reasonable tendency to interfere with employees' right to select a representative and is therefore indicative of animus towards employees' protected activities,²⁸ there is insufficient evidence to connect the resolution's sentiments to the adverse actions at issue here. The City Council's resolution issued only after the Respondent filed separation charges against Catanzara and over a month after the superintendent

²⁶ City of Chicago (Department of Police), 39 PERI ¶ 63 (IL LRB-LP 2022) (finding violation of duty to timely provide information); City of Chicago (Department of Police), 38 PERI ¶ 56 (IL LRB-LP 2021) (finding violation of duty to bargain effects of policy changes regarding timekeeping process); City of Chicago (Department of Police), 38 PERI ¶ 20 (IL LRB-LP 2021) (two separate ULPs finding violation of duty to bargain effects of policy changes regarding body worn cameras).

²⁷ In reaching this determination I rely on the date the charges were filed, not the date on which the Board or its ALJs issued the decisions.

²⁸ See County of Williamson, 14 PERI ¶ 2016 (IL SRLB 1988) (employer's attempt to expel employee from bargaining team interfered with unit employees' protected right to select bargaining representative and was evidence of evidence of animus supporting prima facie case)

directed the law department to draft them. Although statements of an employer made after an adverse action may be relevant to the issue of the Respondent's motive, there is no evidence that the City Council had any input into the Respondent's decision to seek Catanzara's separation. Brink's, Inc. & Fed'n of Armored Car Workers, 360 NLRB 1206, 1220 (2014) (anti-union statement by manager, after decision to take adverse action was made, did not show that decision was based on union animus absent evidence that manager had any role in the decision); cf. K.W. Electric, Inc., 342 NLRB 1231 fn. 5. (2004) (anti-union statements made by owner after layoff were relevant to issue of animus where they revealed a strong and generalized antiunion sentiment that predated the adverse action).

Similarly, no adverse inference is drawn from the proximity between Catanzara's protected comments to the press about working conditions, the mayor's related threats against Catanzara, and the issuance of COPA's recommendation for separation less than two weeks later. "The use of timing as evidence of unlawful motivation is circumstantial and may be merely coincidental if the employer offers a reasonable explanation"; the Respondent has done so here. Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018. The preponderance of the evidence demonstrates that COPA investigator Masters and his supervisor completed a draft summary report of investigation (SRI) and a recommendation for separation in April 2020, before Catanzara became union president. Consistent with this timeline, Masters requested Catanzara's disciplinary file on April 23, 2020, demonstrating that the investigators were then in the process of formulating a disciplinary recommendation which necessitated access to Catanzara's disciplinary history. The delay between the formulation of the draft report and its issuance is attributable to the time taken by COPA's legal section to conduct the required First Amendment analysis of the case and to permit supervisory review. Most importantly, investigator Masters testified that COPA's final findings and recommendations were the same as those drafted by him and his supervisor in April 2020, before Catanzara became union president.

The Charging Party argues that the mayor must have had input in the COPA recommendation because she had motive to do so and also had appointment authority over the COPA chief administrator. However, the timeline discussed above undermines that suggestion, as does testimony from then-deputy Chief Administrator Kersten, which shows that the file she received for review already included a recommendation for separation. In the alternative, the chief administrator's independence from the mayor likewise weighs against any finding of interference.

Unlike the superintendent, discussed above, the chief administrator does not serve at the mayor's pleasure. Instead, she may be removed only for cause, with an opportunity for a hearing on the proposed removal decision, and upon an affirmative vote of a majority of the members of the City Council. 2-78-115 (Chief Administrator).

Furthermore, there is insufficient support for the Charging Party's assertion that the Respondent's decision to suspend Catanzara and initiate separation proceedings against him was wholly pretextual. A "finding of pretext necessarily means that the reasons advanced by the employer either did not exist or [were] not in fact relied upon." Union County State's Attorney, 25 PERI ¶ 1 (IL LRB-SP 2009) (internal quotes omitted; considering false reasons as evidence of animus to support prima facie burden). Here, while the Respondent's addition of the BIA allegations to the separation charges was unexplained and suspicious in a number of respects, as discussed above, there are no similar issues with the Respondent's initial decision to initiate separation proceedings based on the COPA allegations, standing alone. Catanzara admitted that he made the offensive social media posts and email at issue in the COPA investigation, and the Respondent showed a consistent interest in pursuing this matter.

The Respondent did not revive the COPA complaint register against Catanzara after he became union president, as the Charging Party contends. Rather, COPA was actively working on completing its investigation into Catanzara's social media related misconduct in the months prior to Catanzara's election as union president. Investigator Masters testified that he and his supervisor began drafting the summary report of investigation (SRI) in March 2020, and that they completed a draft in April 2020, including a recommendation for termination, before Catanzara was elected as union president in May 2020.

The Charging Party aims to undermine Masters' credibility, arguing that the investigator's case log lacks indication that Masters undertook any drafting work on the SRI, particularly within the asserted timeframe. However, a broader view of the investigator's log supports Masters' claim that he and his supervisor completed a draft SRI by the end of April 2020. This is evidenced by Masters' documented request for Catanzara's disciplinary file on April 23, 2020. Masters' request buttresses Masters' testimony that he worked on the file in April 2020, thereby undermining the Charging Party's assertion that the investigation was inactive until Catanzara assumed the union presidency in May 2020. It also supports Masters' account of the timeline for completing the SRI, demonstrating that the investigators were then in the process of formulating a disciplinary

recommendation that necessitated access to Catanzara's disciplinary history, as discussed above. Given these facts, Masters' omission of any documentation of his drafting work on the SRI in March and April 2020 — a period marked by the disruptive onset of the COVID-19 lockdown — is best construed as an oversight rather than as an attempt by the Respondent to conceal the true authorship timeline of the report.

There is also insufficient support for the Charging Party's claim that the SRI was complete in 2019 and that the Respondent was uninterested in pursuing discipline against a violation that it now contends is a terminable offense. The investigator log notes from 2019, made by former investigator Ciacco, are consistent with Masters' testimony that the SRI he received from Ciacco included only minimal drafting. Ciacco's notes show that she worked on the SRI for just three days, conducted a file review in June 2019, and stated that the SRI was then still "pending." While the Charging Party argues that the term "pending" means complete, this is contrary to its plain meaning. Furthermore, the Charging Party's assertion that the SRI was complete after three days of work is inconsistent with the length of time needed to complete the SRI, which was over 20 pages in length when it issued.

The earlier delays in COPA's investigative process are not relevant to the question of motive or the Charging Party's claim of pretext where COPA resumed work on the matter months before Catanzara became union president in May 2020. Moreover, the delays fail to suggest that COPA was unconcerned with the alleged misconduct, as the Charging Party contends. Investigator Masters credibly explained that he held the case in abeyance after he determined that Catanzara was on leave pending an application for a disability pension; he made a contemporaneous notation of Catanzara's leave in the investigatory log. Masters resumed work on the case at the onset of the pandemic when he had the opportunity to work from home on the matter uninterrupted. The Charging Party now denies that Catanzara was ever on leave pending application for a disability pension and erroneously claims that Masters' assertion was based on a subjective belief; in fact, Masters testified that he checked the computer system.²⁹ Notably, the Charging Party failed to rebut Masters' assertion about Catanzara's leave status with Catanzara's testimony, though it could have easily done so.

²⁹ Tr. P. 499.

Next, there is no indication that COPA's continued investigation into Catanzara during the period of his union leave is inconsistent with the Respondent's prior practices.³⁰ A respondent's departure from its past practices or established procedures can demonstrate unlawful motive. Circuit Court of Winnebago County, 17 PERI ¶ 2038 (IL LRB-SP 2001). Here, however, the Respondent treated Catanzara similarly to other union officials when COPA continued its investigation into him during his union leave. Indeed, on at least two prior occasions, the Respondent pursued and completed investigations against police officers while they were on union leave. In the first case, the alleged misconduct occurred during the officer's union leave (Dougherty, 2006). BIA sustained the allegations, and the Respondent issued the officer a reprimand. In another case, the alleged misconduct occurred both before and after the officer commenced his union leave (McDonagh, 2014). BIA sustained the allegations during the officer's union leave and recommended a 30-day suspension.

Furthermore, COPA's continued pursuit of its investigation into Catanzara during his union leave is likewise consistent with investigator Masters' decision to hold the investigation in abeyance in 2019 while Catanzara was on disability leave and applying for a disability pension. Employees who obtain a disability pension go into retirement, and Masters testified that it would have been pointless to conclude the investigation when Catanzara's departure could be imminent. By contrast, employees on union leave remain employed by the Respondent at all times, and their resignations/retirements are not imminent. Accordingly, it was logical for the Respondent to hold investigation in abeyance pending Catanzara's potential retirement but to continue the investigation during his union leave when no such departure was anticipated.

Next, there is insufficient support for the Charging Party's assertion that the parties' contract precluded the Respondent from suspending Catanzara and initiating separation proceedings against him during his union leave for misconduct that preceded his leave. The plain language of Section 17.2 of the parties' contract does not immunize union officials from discipline

³⁰ Although the Charging Party asserts that it does not dispute the Respondent's authority to investigate an officer while he is on union leave, the Respondent's investigatory practices are discussed here to adequately address the Charging Party's arguments. The Charging Party repeatedly denies that the Respondent "pursue[s] discipline" or "sought discipline" against officers while on union leave, but since an investigation into misconduct and the completion of that investigation may be reasonably construed as pursuit of discipline, the Respondent's investigatory practices remain relevant. Discussion of these practices also provides context for analysis of the Charging Party's arguments arising from investigator Masters' comments about Catanzara's disability leave, discussed below.

while they are on union leave, and none of the arbitration awards interpreting Section 17.2 reach that conclusion. Rather, the awards demonstrate that the Respondent's exercise of control over union officials pursuant to its management rights must be balanced against the Charging Party's rights under Section 17.2 of the contract to have independent representatives. Furthermore, none of the awards consider the Respondent's authority to discipline union officials for misconduct that occurred entirely before the leave began.

Specifically, the Benn award does not bar the Respondent from taking disciplinary action against officers who are on union leave and does not stand for the broad proposition that imposition of disciplinary action against officers on union leave inevitably hinders them from performing their union duties. The language of the award quoted by the Charging Party in support of this claim is incomplete and does not reflect the crux of the analysis, which concerns the Respondent's decision to remove police powers from union field representatives who failed to annually qualify with their weapons. The Respondent justified its action based on its management right to set standards for individuals granted police powers, while the Charging Party claimed that the penalty infringed on the officers' ability to perform their representative function. Arbitrator Benn found that the grievance concerned contract interpretation, not just cause, and that both parties' claims were supported by clear contract language. He reasoned that the Respondent's removal of officers' police powers could interfere with the union representatives' ability to access union members when union members needed them the most, and that such restrictions on access violated Section 17.2 of the contract. However, he also reasoned that the Respondent had the right to determine the qualifications of those clothed with police powers. Benn therefore concluded that resolution of the issue rested in the formulation of the remedy. While he ordered rescission of the discipline imposed and allowed union officers the option of maintaining weapons qualifications, he also permitted the Respondent to hold the union officers stars and identifications if they declined to maintain their qualifications.³¹ To aid the parties in the future, Benn stated that the Respondent must have a "bona fide discernable and substantial managerial interest" before infringing on union officials' freedom from interference in their duties under Section 17.2 of the parties' contract. In sum, the award demonstrates that there is no prohibition against the Respondent's exercise of authority over officers on union leave. Rather, the Respondent's control over officers on union

³¹ The Respondent would then be obligated provide them with separate official identification so that they could still have access to their members at critical times.

leave depends on the extent of the Respondent's managerial interest and the impact of the Respondent's actions on the officers' representative duties.

The subsequent Meyers award, involving the loss of an officer's secondary weapon while on union leave, applied the same approach. Far from providing officers with immunity from discipline while on union leave, it shows that arbitrators will consider whether the officer on union leave is bound by, and has violated, the rules that serve as the basis for the discipline. Arbitrator Meyers generally acknowledged that some rules and regulations did not apply to the officer because he was on union leave. However, he also analyzed each rule to determine whether the officer had violated it. He concluded that the officer's loss of his secondary weapon, while on union leave, did not impede the Respondent's efforts to achieve its goals, bring discredit to the department, or qualify as failure to promote the department's efforts to implement its policies.

Viewed in the context of these arbitration awards, any variances in the Respondent's treatment of Catanzara and another union representative, McDonagh, fail to demonstrate unlawful motive because the officers' disciplinary cases are procedurally different. As the Charging Party notes, the Respondent investigated McDonagh during his union leave but did not issue the suspension until he returned, whereas the Respondent suspended Catanzara and initiated separation proceedings against him during his leave. However, Catanzara's alleged misconduct occurred years prior to his union leave, whereas McDonagh's misconduct occurred just days before his leave and continued during it. Accordingly, Catanzara's misconduct colorably fell outside the scope of the analysis set forth in the arbitration awards, which had thus far applied only to misconduct that occurred during an officer's union leave, whereas the timing of McDonagh's misconduct presented a closer question. Moreover, the municipal code restricted the superintendent's discretion to withhold discipline in Catanzara's case, whereas no such restriction applied in McDonagh's BIA case. City of Chicago Municipal Code, 2-78-130 (if the "Superintendent does not meet his burden of overcoming the Chief Administrator's recommendation, the recommendation shall be deemed accepted by the superintendent").

Moreover, the superintendent's imposition of a suspension in tandem with initiation of separation proceedings is consistent with the parties' past practices and the express terms of the parties' collective bargaining agreement which provides the following: "In cases where the Superintendent seeks an Officer's separation from the Department, the Superintendent's current

and past practice of suspending Officers for thirty (30) days and filing charges with the Police Board seeking the Officer's separation will not change.”

While the Respondent has not pursued an investigation against every potential rule violation by an officer on union leave, this too fails to render suspicious the Respondent’s actions against Catanzara absent evidence that the investigative bodies knew of the alleged violations and/or that alleged infractions are comparable. For example, the Charging Party asserts that the Respondent failed to investigate whether former President Graham was in violation of the department’s residency requirement, though news outlets had reported that he might be living in Lincolnshire. However, there is no indication that anyone reported this suspected violation to COPA or initiated a complaint register, as they did in Catanzara’s cases.³² Krystal Enterprises Inc., 345 NLRB 227, 229 (2005) (no disparate treatment where respondent investigated sexual harassment when an employee complained but did not investigate other incidents when there was no complaint). Similarly, the Respondent’s failure to investigate or issue discipline against former FOP President Donahue for outstanding parking tickets while he was on union leave is easily explained where his infraction was relatively minor.

Next, there is no evidence of disparate treatment in the Respondent’s recommendation of separation arising from COPA investigation. The charging party bears the burden of demonstrating that employees who engaged in protected activity received disparate treatment. Am. Fed. of State, Cnty. and Mun. Empl., Council 31, 175 Ill. App. 3d 191, 198-200 (1st Dist. 1988); Vill. of Oak Park, 28 PERI ¶ 111 (IL LRB-SP 2012); City of Decatur, 14 PERI ¶ 2004. To meet that burden, a charging party must show that other employees, who did not engage in union or protected concerted activity, committed similar offenses as the charging party but were not similarly treated. Am. Fed. of State, Cnty. and Mun. Empl., Council 31, 175 Ill. App. 3d at 198-200; Vill. of Oak Park, 28 PERI ¶ 111; City of Decatur, 14 PERI ¶ 2004. In other words, an inference of animus based upon disparate treatment can be made if the only difference between two differently treated employees is the illegitimate criterion at issue (i.e., union activity). Village of Oak Park, 28 PERI ¶ 111.

Here, the Charging Party has pointed to no similarly situated bargaining unit members whom the Respondent treated more favorably than the Charging Party. The record contains a

³² When the Respondent previously investigated similar claims against Graham in 2015, arising from ownership of the same Lincolnshire property, it did so upon the filing of a complaint.

document listing individuals against whom the Respondent initiated complaint registers for social media related misconduct, covering the period between January 1, 2011 through July 29, 2021, many of whom did not receive recommended or imposed separation. However, there is no evidence concerning these individuals' union activity or lack thereof to suggest that the basis for the difference in treatment was Catanzara's union activity. Even apart from this omission, none of the individuals who received a recommended or imposed penalty of less than separation engaged in conduct comparable to Catanzara's, as measured by both frequency and severity of the alleged violations. Catanzara made 15 separate social media posts, each of which violated the Respondent's rules. Four of the social media posts expressed statements disrespectful to CPD management. Five of the social media posts were obscene and directed towards members of the public. Four posts were violent,³³ xenophobic,³⁴ and/or threatening.³⁵ Another social media post encouraged officers to stop chasing suspects, and yet, another social media post depicted Catanzara in uniform with a political message. None of the individuals who received lesser discipline than separation for social media-related infractions made nearly as many postings as Catanzara. Nor did they make such a wide variety of posts that advocated violence or killing, were derogatory toward minorities, and were disparaging towards individuals the department was charged with serving. Notably, the Charging Party failed to explicitly identify any specific individual it deemed comparable to Catanzara for purposes of a disparate treatment analysis. Accordingly, there is insufficient support for the Charging Party's claim that the Respondent's suspension of him and initiation of separation proceedings against him was suspiciously excessive. Illinois Departments of Central Management Services and Employment Security, 4 PERI ¶ 2010 (IL SLRB 1988)(claim of more severe discipline rejected absent evidence of disparate treatment).

Finally, there is no evidence of any irregularities or disparate treatment surrounding the review of COPA's recommendation by the one-member panel of the Police Board. The Charging Party suggests that the panel's failure to overrule COPA's recommendation in favor of the superintendent's more lenient recommendation is suspicious because the police board members are appointed by the mayor. However, there is no evidence that the mayor interfered with the review process or that her animus towards Catanzara's protected activity tainted that review. For

³³ "Wtf it's seriously time to kill these motherfuckers," in reference to criminals.

³⁴ Calling social benefits recipients "social parasites" and stating that Muslims are "savages, they all deserve a bullet."

³⁵ "[K]eep listening for that knock on the door."

example, there is no indication that the panel member treated Catanzara's case any differently from other cases she reviewed, and the Charging Party does not challenge the sufficiency of her analysis. The mere fact that the police board member disagreed with the superintendent's more lenient disciplinary recommendation does not indicate unlawful motive. City of Springfield & Director of Public Safety, 6 PERI ¶ 2004 (IL SLRB 1989) (mayor's decision to reject chief's recommendation for 30-day suspension and to recommend discharge instead, did not demonstrate unlawful motive absent evidence of disparate treatment or departure from normal routine).

In sum, the Charging Party satisfied its prima facie burden under both Sections 10(a)(1) and (2) of the Act to show that the Respondent suspended Catanzara and initiated separation proceedings against him in part because of his protected, concerted and union activities.

e. Respondent's Burden - Dual Motive

The Respondent offered a legitimate reason for suspending Catanzara and initiating separation proceedings against him. Furthermore, it satisfied its burden to demonstrate that it would have taken the same action against Catanzara notwithstanding Catanzara's protected activities.

As a preliminary matter, this case is one of dual motive because the Respondent provided both legitimate and pretextual reasons for suspending Catanzara and initiating separation proceedings against him. City of Burbank, 128 Ill. 2d at 347-8 (1989); Moehring v. Illinois Lab. Rels. Bd., 2013 IL App (2d) 120342, ¶ 10; County of Bureau and Bureau County Sheriff, 29 PERI ¶ 163 (IL LRB-SP 2013) (applying dual motive analysis where one charge against employee was facially legitimate, but others were arbitrary and pretextual) aff'd by Cnty. of Bureau v. Illinois Lab. Rels. Bd., 2014 IL App (3d) 130271-U.

As discussed above, the Respondent's decision to add the BIA allegations to the separation charges is evidence of pretext with respect to those allegations. The Respondent did not seek to initiate separation proceedings against Catanzara based on such conduct in the 15 months that preceded the investigatory body's initial recommendation for separation. The Respondent failed to explain the delay, and the original request for the initiation of separation proceedings omitted any reference to the BIA allegations, indicating that the BIA allegations were an afterthought and not truly relied upon as the reason to initiate separation proceedings. See discussion supra.

Nevertheless, the social media-related misconduct at issue in the COPA case remains a legitimate reason for the Respondent's decision to suspend Catanzara and initiate separation proceedings against him. Catanzara admitted to making all the offensive social media posts at issue in the COPA investigation, and the Respondent demonstrated a consistent and legitimate concern over this misconduct. While the COPA investigation may have been lengthy and held in abeyance at times, the Respondent resumed work on the case and formulated a draft recommendation for separation before Catanzara became union president. Moreover, nothing in the parties' contract, arbitration awards, or past practices precluded the Respondent from initiating separation proceedings against Catanzara while he was on union leave. There is also no evidence of disparate treatment.

Furthermore, the timeline of the COPA decision-making process, the egregiousness of Catanzara's social media posts, and the absence of disparate treatment, show that the Respondent would have suspended Catanzara and initiated separation proceedings against him based on those allegations standing alone.

Initially, the fact that COPA formulated its draft recommendation for separation before Catanzara's union presidency is strong evidence that the Respondent would have pursued separation against Catanzara irrespective of his protected activities. It shows the Respondent's genuine concern over the frequency and severity of Catanzara's social media posts and demonstrates that its assessment of the misconduct's severity predated Catanzara's protected activity. State of Illinois, Secretary of State, 31 PERI ¶ 7 (IL LRB-SP 2014) (evidence demonstrating respondent's "genuine concern" over deficient work habits satisfied respondent's dual motive burden); see also Forest Preserve District of Cook County, 32 PERI ¶ 152 (IL LRB-SP 2016) (respondent satisfied its burden under dual motive analysis where many of the employee's deficiencies pre-dated awareness of organizing activities and demonstrations of animus);

The egregiousness of Catanzara's social media posts and the absence of disparate treatment further support the conclusion that the Respondent would have suspended Catanzara and initiated separation proceedings against him notwithstanding his protected activities. Catanzara's social media posts were extensive and deplorable. They reasonably demonstrate that Catanzara lacked the ability to apply the law objectively towards all citizens because they expressed personal biases against individuals he was bound to serve and conveyed violent sentiments. For example,

Catanzara disparaged Muslims by calling them “savages” who “deserve a bullet,” raising serious questions about his ability to provide equitable and unbiased police service. He called public benefits recipients “social parasites,” which similarly indicated his inability to provide police services objectively and without bias. He also made a statement advocating for the shooting of criminals, stating “Wtf its seriously time to kill these motherfuckers,” thereby undermining public trust in his ability to uphold the law.

His posts also reasonably impeded the Department’s ability to maintain internal order and undermined confidence in the Department. They included repeated abusive and defamatory statements about superior officers and referenced them by name. They encouraged officers to stop chasing offenders, in violation of the Respondent’s rules, and improperly promoted a political message by posting an image of himself in uniform with the caption “Rahm Free City 2019.”

In addition, the Respondent reasonably viewed Catanzara’s posts as bringing discredit on the department because they included multiple obscene and disparaging statements directed towards members of the public and demonstrated threatening behavior on one occasion. Catanzara repeatedly referenced sex acts,³⁶ sexual arousal,³⁷ genitalia,³⁸ and miscellaneous obscenity.³⁹ In one instance, Catanzara implied he had the power to carry out a threat against a member of the public stating, “keep looking for that knock on the door.”

While the superintendent may have disagreed with COPA’s failure to credit Catanzara’s explanation of his statement regarding the “knock on the door,” this disagreement does not suggest that the Respondent would have taken more lenient action but for Catanzara’s protected activity. Absent evidence that the Respondent’s determination was arbitrary, implausible or unreasonable, evidencing pretext or union animus, it is not the function of the Board or its administrative law judges to substitute this agency’s judgment for that of the employer. See infra. Here, COPA’s analysis should not be second guessed where it was unrelated to Catanzara’s union activity and occurred before Catanzara became union president. State of Ill., Secretary of State, 31 PERI ¶ 7; cf. Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 aff’d Grchan v. Ill. State Labor Rel. Bd., 315 Ill. App. 3d 459 (3rd Dist. 2000).

³⁶ “Blow me. You know you want to” and “you can all group spank it together.”

³⁷ “You’re making me thick Steve.”

³⁸ “Useless as the little bit of skin you have in your pants.”

³⁹ “The best part dripped down her mom’s leg.”

Furthermore, there is no evidence in the record that the Respondent has declined to initiate separation proceedings against an employee who engaged in social media-related misconduct of this magnitude and prevalence. Indeed, the Respondent has on two occasions, initiated separation proceedings against employees for severe social-media-related misconduct. “In the absence of countervailing evidence, such as that of disparate treatment based on protected activity, the Respondent [can meet its burden on the affirmative defense] by demonstrating that it has a rule and that the rule has been applied to employees in the past.” Village of North Riverside, 36 PERI ¶ 56 (IL LRB-SP 2019) quoting, Publix Super Markets, Inc., 347 NLRB 1434, 1439 (2006). However, an employer fails to meet its burden where the evidence affirmatively shows a lack of consistency in the employer’s application of its rules, and where the case for unlawful motive is substantial. Id. citing Publix Super Markets, Inc., 347 NLRB at 1439.

Here, the Respondent maintains a social media policy that prohibits department members from posting communications that reflect poorly on the department or disparage a person or group based on race, religion, sexual orientation, or any other protected class. The Respondent similarly maintains rules that prohibit conduct that impedes the department’s effort to achieve its goals or brings discredit upon the department (Rule 2), prohibits public statements that could foreseeably impair public confidence in the department (Rule 32), prohibits failure to promote the department’s efforts to implement policy or accomplish its goals (Rule 3); and prohibits disrespect to or maltreatment of any person while on or off duty (Rule 8).

Furthermore, record evidence shows that the Respondent has on two occasions, initiated separation proceedings against employees for severe social-media-related misconduct. In 2017, the Respondent recommended the separation of Officer Hansen based on numerous Facebook posts deemed to be racially insensitive, xenophobic, Islamophobic and discriminatory. And in 2021, the Respondent recommended the separation of Lieutenant Cannon for 16 sustained allegations arising from social media posts that included a combination of racist, sexist, homophobic, and xenophobic posts, and a post that disrespected the department.⁴⁰ The recommendation for

⁴⁰ Although the Respondent sought Cannon’s separation only after it initiated separation proceedings against Catanzara, this timing does not preclude use of Cannon as a comparable. There may be some cases where an employer disciplines an employee to mask its unlawful discipline of a union supporter, and reliance on discipline imposed to serve as a “smokescreen” will not be permitted as viable evidence of comparable treatment. R.E. End Bus Lines, Inc., 366 NLRB No. 180 (2018). However, there is no evidence in this case that the Respondent’s decision to recommend separation for Lieutenant Cannon was at all related to Catanzara’s case or an attempt to manufacture a comparable. Indeed, COPA’s investigation of

Catanzara's separation was similarly based on a multitude of sustained findings arising from social media posts that included xenophobic and Islamophobic statements, posts that constituted mistreatment of members of the public, and posts that were disrespectful to members of the department, among others.

The Charging Party correctly notes that there is no perfect match between Catanzara and employees Hansen and Cannon because Hansen was a more prolific poster and Cannon was a lieutenant not an officer; however, a perfect match is not required in this case. Absent proof of disparities based on protected activity, an employer meets its burden by showing that it had an existing work rule governing the conduct and "that the rule has been applied to employees in the past." Cf. Village of North Riverside, 36 PERI ¶ 56 Merillat Industries, 307 NLRB 1301, 1303 (1992). Indeed, the NLRB has recognized that it may be "rare" to find cases of prior discipline that are identical to the events involved in an alleged adverse action. Merillat Industries, 307 NLRB at 1303. Here, there is no evidence of disparate treatment; the Charging Party on brief has not pointed to a single instance of social media related misconduct, comparable to Catanzara's, that warranted a lesser recommended penalty than separation. Furthermore, the Respondent presented evidence that it has applied the rules, likewise at issue in Catanzara's case, to justify initiation of separation proceedings in other cases of severe social media-related misconduct, at least one of which included a similar number of improper social media posts and an identical total number of sustained allegations.⁴¹

Furthermore, while Hansen may have had a greater number of offensive posts, his posts and Catanzara's share disturbing features including disparagement of minorities or disadvantaged classes, and repeated statements calling for violence. The Charging Party claims that Hansen's misconduct was more violent than Catanzara's, but this is not supported by the record. For example, the Charging Party contends that Hansen's misconduct included a bomb threat against his wife's place of business, but COPA's investigative report on Hansen does not reflect this claim. And although Hansen called for another civil war, Catanzara's posts also included violent speech: "Wtf its seriously time to kill these motherfuckers," in reference to criminals, and "savages they

Cannon concluded over a year after Catanzara's, and there is nothing to link the two except the nature of their misconduct.

⁴¹ Catanzara's sustained misconduct included 15 improper social media posts and one instance of email misconduct, where he used his official post to influence action taken by CPS which contributed to the disciplinary recommendation of separation but was considered less severe on its own.

all deserve a bullet,” in reference to Muslims. Furthermore, the Respondent’s pursuit of separation in Catanzara’s case, which involved fewer violent and disparaging posts,⁴² can be reasonably explained as a response to the findings by the U.S. Department of Justice in 2017, that the Respondent must take a more effective stance against such divisive officer misconduct. Furthermore, Catanzara’s lack of remorse for such statements together with his other numerous and improper posts, for which he likewise showed no remorse, reasonably justified a more stringent approach.

There is also no merit to the Charging Party’s suggestion that the Respondent identified Hansen as a comparable only after it recommended separation in Catanzara’s case. To the contrary, investigator Masters considered Hansen’s case when determining the recommended penalty of separation in April 2020. Similarly, then-Deputy Chief Kersten brought the Hansen case to the chief administrator’s attention when reviewing Masters’ draft summary report of investigation. The Charging Party notes that there is no reference to Hansen as a comparable in COPA’s summary report, but this fails to undermine the credibility of the witnesses. The preponderance of the evidence demonstrates that while COPA considers comparables in identifying a recommended penalty, a matter not disputed on this record, it is not COPA’s practice to name them in its summary reports. Indeed, the Charging Party has pointed to no COPA summary investigative reports in the record that name comparables.⁴³

Finally, the suspicious circumstances surrounding the Respondent’s addition of the BIA allegations to the separation charges do not demonstrate that the Respondent would have sought lesser discipline, but for Catanzara’s protected activity. The COPA allegations were a separate and independent basis for the suspension and initiation of separation proceedings because the superintendent initially sought separation charges based on the COPA allegations standing alone. Indeed, the municipal code required him to do so after his recommendation for lesser discipline was rejected; the Respondent only latter added on the BIA allegations. Accordingly, the

⁴² Catanzara’s misconduct was not limited to violent and xenophobic statements and included a wide variety of inappropriate posts, as discussed above.

⁴³ Notably, the Respondent also wavered in its reliance on Hansen as a comparable. The Respondent identified Hansen as a comparable when negotiating a planned stipulation for presentation to the police board during Catanzara’s hearing in November 2021 and rejected attempts by Catanzara to exclude Hansen as a comparable.

Respondent would have initiated separation proceedings even without reliance on the BIA allegations.

In sum, the Respondent demonstrated that it would have suspended Catanzara and initiated separation proceedings against him notwithstanding his protected, concerted and union activities.

5. Constructive Discharge

The Respondent did not constructively discharge Catanzara in violation of Sections 10(a)(2) and (1) of the Act.

To establish a constructive discharge, a charging party must prove the following: (1) that the burden imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign and (2) that the employer imposed the conditions because of the employee's union activity or other protected concerted activity. Village of Glenwood, 3 PERI ¶ 2056 (citing Crystal Princeton Ref. Co., 222 NLRB 1068, 1069 (1976)); Mercy Hosp., 366 NLRB No. 165 (2018) (noting that Crystal Princeton Refining test covers burdens imposed because of union activity and “other protected concerted” activities); see also Illinois Departments of Central Management Services and Corrections, 3 PERI ¶ 2034 (IL SLRB 1987). The test as to whether working conditions were so difficult or unpleasant so as to force an employee to resign is an objective one. Algreco Sportswear Co., 271 NLRB 499, 500 (1984).⁴⁴

Addressing the first element, the mayor’s insulting statements about Catanzara, some of which were published in the press, did not impose a burden on Catanzara so difficult or unpleasant as to force him to resign. At the outset, the mayor did not publicly humiliate Catanzara, as the Charging Party alleges. Rather, the mayor made the insulting statements in private conversations, mostly to Catanzara directly, and Catanzara released her statements to the press himself.⁴⁵ Furthermore, the timing of the mayor’s insulting statements, made in June and July 2020, weighs

⁴⁴ Although not at issue here, the NLRB has also recognized the Hobson’s Choice theory of constructive discharge where when an employer conditions an employee's continued employment on the employee's abandonment of his or her protected statutory rights and the employee quits rather than comply with the conditions. M.P.C. Plating, Inc. v. N.L.R.B. 912 F. 2d 883, 887 (6th Cir. 1990); Titus Elec. Contracting, Inc., 355 NLRB 1357, 1358 (2010); Intercon I (Zercom), 333 NLRB 223, 223 fn. 4 (2001) (citing Hoerner Waldorf Corp., 227 NLRB 612, 613 (1976)); Remodeling by Oltmanns , Inc., 263 NLRB 1152, 1162 (1982), enfd. 719 F. 2d 1420 (8th Cir. 1983).

⁴⁵ The mayor’s most graphic statement, that she would “cut [Catanzara’s] balls off” and “get him,” does not appear to have been published.

against any claim that they were the impetus for Catanzara's resignation where he remained employed for over a year thereafter. Finally, Catanzara never claimed that the mayor's insults spurred his resignation and instead asserted that he resigned because he believed the Police Board hearing was a sham. Woonsocket Health Ctr., 245 NLRB 652, 659-60 (1979) (rejecting claim of constructive discharge where employee's letter of resignation never claimed that she resigned because of criticisms or changes in working conditions and instead offered other reasons for resignation); Burns, William J., Int'l Detective Agency, Inc., 137 NLRB 1689, 1694 (1962) (lapse of two months between initial discriminatory incident and proffered resignation precluded finding that employer's conduct compelled resignation).

Similarly, neither the Respondent's decision to initiate separation proceedings against Catanzara nor the Respondent's aggregation of charges against him, imposed a burden on Catanzara so difficult or unpleasant as to force him to resign.⁴⁶ To the contrary, Catanzara remained employed for 10 months after the Respondent initiated separation proceedings against him and after he became aware of the Respondent's decision to add the BIA charges to his separation case. See e.g., Burns, William J., Int'l Detective Agency, Inc., 137 NLRB at 1694.

Likewise, the character of the Police Board hearing fails to demonstrate that the Respondent imposed a burden so difficult or unpleasant as to force Catanzara to resign. As a threshold matter, the Charging Party has not demonstrated that the Police Board hearing was irregular. The evidence in support of that claim was limited to bald assertions. The Charging Party notes that the Police Board denied Catanzara a stay pending resolution of this unfair labor practice case, denied his request to proceed before a neutral arbitrator instead of before the Police Board, and denied some of his discovery requests. However, the Charging Party presented no objective evidence that these rulings were anomalous or evidence of an undue burden. The Charging Party has not shown that the Police Board customarily stays proceedings or that its denial of the stay after an already lengthy delay in proceedings, following service of the charges, was improper. The Police Board's denial of a neutral arbitrator finds strong support in the parties' collective bargaining agreement which expressly excludes police officer separation cases from an arbitrator's consideration. In addition, the Police Board's grant of some but not all of Catanzara's discovery request appears on its face consistent with the practice of law. Finally, the Respondent

⁴⁶ The Charging Party does not contend that the 30-day suspension contributed to Catanzara's decision to resign.

did not otherwise pressure Catanzara to resign. Cf. Fed. Screw Works, 310 NLRB 1131, 1139 (1993) (employees were told that they would be terminated in 30 days if they did not resign and conveyed that it would be futile for them to try and improve their performance during that time).

The indicia of retaliatory motive, discussed earlier in this decision, are insufficient to transform Catanzara's quit into a constructive discharge. Even if the Board were to determine that the Respondent's initiation of separation proceedings against Catanzara was unlawful on the whole, the mere existence of discrimination is insufficient to warrant consideration of abandonment of employment as a constructive discharge. Algreco Sportswear Co., 271 NLRB 499, 500; Intercon I (Zercom), 333 NLRB 223, 240 (2001). If that were the case, then any discrimination violative of the Act followed by a quit by the discriminatee could be termed a constructive discharge. Algreco Sportswear Co., 271 NLRB at 500.

Under these circumstances, it is unnecessary to determine whether the complained-of actions, discussed above and not previously addressed in the prior section, were imposed because of Catanzara's protected concerted and union activities.

Thus, the Respondent did not constructively discharge Catanzara.

6. Section 10(a)(1) – City Council Resolution

The Respondent violated Section 10(a)(1) of the Act when its City Council issued a resolution that called for Catanzara's resignation as union president, called for the Charging Party's board of directors to seek his resignation if he did not resign voluntarily, and stated that it would call upon BIA to investigate Catanzara if he did not resign.

Section 10(a)(1) of the Act states, in relevant part, that it shall be an unfair labor practice for an employer or its agents "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it[.]"

An employer violates Section 10(a)(1) of the Act when it engages in conduct which reasonably tends to interfere with, restrain, or coerce employees in the exercise of rights protected by the Act. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991). Such a violation does not depend on the employer's motive. City of Mattoon, 11 PERI ¶ 2016. Instead, the test is whether the employer's conduct, viewed objectively from the standpoint of a

reasonable employee, had a tendency to interfere with, restrain or coerce the employee in the exercise of a right guaranteed by the Act. Clerk of the Circuit Court, 7 PERI ¶ 2019. There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Calumet Park, 23 PERI ¶ 108 (IL LRB-SP 2007); Clerk of the Circuit Court, 7 PERI ¶ 2019. Employer statements to employees which contain threats of reprisal have been found to violate Section 10(a)(1) of the Act. Vill. of Calumet Park, 23 PERI ¶ 108; Vill. of Calumet Park, 22 PERI ¶ 23 (IL SLRB 2005) (addressing implied threat); City of Highland Park, 18 PERI ¶ 2012 (IL SLRB 2002); City of Chi. (Chi. Police Dep't), 3 PERI ¶ 3028 (IL LLRB 1987).

The Respondent's conduct violated the first clause of Section 10(a)(1) of the Act because it had a reasonable tendency to interfere with, restrain, or coerce employees in the selection of their representative. The NLRB has held that an employer unlawfully interferes with employees' protected rights when it calls upon employees to oust a union representative. Cooper-Jarrett, Inc., 260 NLRB 1123, 1123-4 (1982) (finding violation of Section 8(a)(1) of NLRA). An ALJ at the Illinois Educational Labor Relations Board held the same, in a non-precedential decision, which the Illinois Labor Relations Board subsequently cited with approval when addressing an employer's unlawful assistance to a union agent.⁴⁷ Chicago Board of Education, 13 PERI ¶ 1037 (IL ELRB ALJ 1997) (finding violation of Section 14(a)(1) of IELRA) cited by Department of Cent. Mgmt. Servs. (Dept of Rehabilitation Serv), 14 PERI ¶ 2025 (IL LRB-SP 1998).

Here, the Respondent told employees that they deserved a better union president than Catanzara and implicitly threatened to diminish Catanzara's effectiveness as union president if the Charging Party's board of directors did not obtain his resignation. Specifically, the Respondent stated that officers "deserve[d] union representation by leadership who reflected their highest ideals" and "strictest fealty" to the law. It then called upon employees on the Charging Party's executive board to seek Catanzara's resignation if he did not resign voluntarily, on the grounds that Catanzara was not the leader they deserved and that he was also in violation of the Charging

⁴⁷ An employer's conduct in undermining the right of employees to choose their own bargaining representative can also violate the second clause of Section 10(a)(1) of the Act where the employer breaches the neutrality principal and provides a union with improper assistance. Department of Cent. Mgmt. Servs. (Dept of Rehabilitation Serv), 14 PERI ¶ 2025. That clause, which mirrors Section 8(a)(2) of the NLRA, is not at issue here.

Party's constitution and by-laws. The Respondent followed these statements with a threat that if the Charging Party did not obtain Catanzara's resignation as union president, the City Council would call upon BIA to investigate him. Employees would reasonably view the threat of investigation into Catanzara as a threat to make him less effective in his role as contract negotiator because an investigation would likely shift his focus away from his representational duties. This threat carried greater significance where the parties were then in the midst of contentious contract negotiations. The Respondent's statements thereby interfered with employees' right to select a representative, free of employer influence, because they conveyed the message that employees would have more success at the bargaining table with a different president. Cooper-Jarrett, Inc., 260 NLRB at 1123-4 (employer who told employees that union steward was no good and that they needed a new leader "plainly interfer[red] with rights protected by the [NLRA]"); Chicago Board of Education, 13 PERI ¶ 1037 (employer's public comments to union members that they deserved better representation than they were receiving from their current union delegate violated Section 14(a)(1) of the Illinois Educational Labor Relations Act).

There is no merit to the Respondent's suggestion that the Board lacks jurisdiction over the City Council, the entity responsible for issuance of the resolution discussed above. The City Council is part of the Respondent, the City of Chicago, and is a public employer pursuant to Section 3(o) of the Act, within the jurisdiction of the Board's Local Panel.⁴⁸ In relevant part, Section 3(o) of the Act defines the term "public employer" to mean "any political subdivision of the State, unit of local government or school district; authorities including departments, divisions, bureaus, boards, commissions, or other agencies of the foregoing entities; and any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees." 5 ILCS 315/3(o). Here, the City Council and its members act on behalf of the Respondent's police department in dealing with employees, as a public employer, because the City Council ratifies the collective bargaining agreements between the Charging Party and the Respondent.

The Respondent's City Council also does not fall within any of the exclusions from the definition of "public employer" set forth in Section 3(o) of the Act. Section 3(o) of the Act

⁴⁸ The Local Panel has "jurisdiction over collective bargaining agreement matters between employee organizations and units of local government with a population in excess of 2 million persons, but excluding the Regional Transportation Authority." 5 ILCS 315/5(b).

excludes from the definition of public employer the following entities: the General Assembly of the State of Illinois, the Executive Ethics Commission, the Offices of the Executive Inspectors General, the Legislative Ethics Commission, the Office of the Legislative Inspector General, the Office of the Auditor General's Inspector General, the Office of the Governor, the Governor's Office of Management and Budget, the Illinois Finance Authority, the Office of the Lieutenant Governor, the State Board of Elections, and educational employers.⁴⁹ 5 ILCS 315/3(o). The Respondent's City Council does not appear on this list of exclusions, and its absence is notable where the legislature expressly excluded the State's governing body from the definition of public employer. Costello v. Governing Bd. of Lee Cnty. Special Educ. Ass'n, 252 Ill. App. 3d 547, 561 (2nd Dist. 1993) (historic maxim of construction provides that the inclusion of one is the exclusion of the other).

Consistent with this statutory interpretation, the Board has considered statements made by individual aldermen as evidence of unfair labor practices. City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988) (alderman's statement demonstrated lack of good faith in bargaining); see also City of Springfield, 5 PERI ¶ 2029 (IL SLRB 1989) (finding issues for hearing on surface bargaining charge; investigatory evidence supporting remand included alderman's statement about negotiations).

Notably, it is precisely the City Council's status as public employer that renders its threats coercive and also distinguishable from statements of disapproval issued against Catanzara by entities who lack the City Council's authority, including the National FOP and trade organizations.

The Respondent cites the doctrine of separation of powers for the proposition that the Board lacks jurisdiction to determine whether the resolution violated Section 10(a)(1) of the Act. However, any separation of powers that exists *within* City government does not bear on the authority of the State of Illinois to adjudicate a case involving the City or any of its decision-makers, and the Respondent has cited no authority to support a contrary position.

Furthermore, the non-binding nature of the resolution in this case does not render the Respondent's conduct lawful. In essence, the Respondent suggests that threatening or coercive action is lawful provided that the Respondent undertakes no follow through; however, an

⁴⁹ There is an exception for "a state university in its employment of firefighters and peace officers and except with respect to a school district in the employment of peace officers in its own police department in existence on July 23, 2010." 5 ILCS 315/3(o).

employer's threatening or coercive statements remain unlawful even if it does not act on them. City of Chi. (Chi. Police Dep't), 3 PERI ¶ 3028 (employer's threat that it would change employee's work schedule if he filed a grievance violated the Act even though Respondent did not carry out threatened conduct).

Finally, the stated impetus for the City Council's resolution, Catanzara's public statements in defense of the January 6th insurrectionists, does not insulate the Respondent from a finding of unlawful conduct in this case. The violation here arises from the resolution's likely coercive impact on the employees' right to select the union president of their choice, free of employer interference. It does not arise from any alleged coercive impact on Catanzara, personally, based on the City Council's disapproval of his statements regarding the insurrection, which were neither protected union nor concerted activity. See discussion supra.

In sum, the Respondent violated Section 10(a)(1) of the Act when it issued a resolution seeking Catanzara's resignation as union president and threatening to call for an investigation into him if the Union's executive board did not secure his resignation.

V. CONCLUSIONS OF LAW

1. The Respondent did not violate Sections 10(a)(2) or 10(a)(1) of the Act when it suspended Catanzara and filed charges before the Police Board seeking his separation.
2. The Respondent violated Section 10(a)(1) of the Act when it issued a resolution seeking Catanzara's resignation as union president and threatening to call for an investigation into him if the Charging Party's Board of Directors did not secure his resignation.

VI. RECOMMENDED ORDER

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

1. Cease and desist from:
 - a. Interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
 - b. Cease and desist from interfering with employees' right to select a representative

of their choosing.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- a. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondents will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
- a. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondents have taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 17th day of July, 2023

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

/S/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case Nos. L-CA-21-025 & L-CA-21-030

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

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

Accordingly, we assure you that:

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

WE WILL cease and desist from interfering with employees' right to select a representative of their choosing.

DATE _____

City of Chicago
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
