

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

Policemen’s Benevolent & Protective Association, Unit 156 A, B, & C)	
)	
Charging Party,)	
)	
and)	Case No. L-CA-21-026
)	
City of Chicago (Police Department),)	
)	
Respondent.)	

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

On July 24, 2023, Executive Director Kimberly Stevens dismissed a charge filed on March 1, 2023, by Charging Party Policemen’s Benevolent & Protective Association, Unit 156 A, B, & C (“Union”). The charge alleges that the Respondent City of Chicago (Police Department) (“City”) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (“the Act”), 5 ILCS 315/1 *et seq.*, when it submitted a proposal concerning a permissive subject of bargaining to the parties’ contractual impasse resolution procedures, *i.e.*, the Dispute Resolution Board (“DRB”), which was then included in the parties’ successor agreement through an arbitration award issued by the Neutral Chair of the DRB. The Union claims the City’s affidavit override proposal was a permissive subject of bargaining because it sought a waiver of unit members’ rights to have any complaint lodged against them supported by an affidavit under the Uniform Peace Officer’s Disciplinary Act, (“Disciplinary Act”), 50 ILCS 725/1 *et seq.*

Before dismissing the charge, on November 1, 2021, the Executive Director held the matter in abeyance pending the outcome of the Union's lawsuit seeking to vacate the arbitration award. The Executive Director determined abeyance was appropriate, reasoning that the court's ruling on the whether the arbitration award ran afoul of the Disciplinary Act would likely be dispositive of the instant charge. The arbitration award litigation ended with an unpublished ruling by the Illinois Appellate Court, First District affirming the circuit court's decision upholding the arbitration award. Policemen's Benevolent & Protective Assoc., Unit 156 A, B, & C, 2023 IL App (1st) 220762-U. Following the Appellate Court's ruling, the Executive Director dismissed the charge on the grounds the allegations failed to raise issues of fact or law warranting a hearing. She observed that the mere submission of a permissive subject does not violate the Act. She then determined that the court found that the Disciplinary Act does not grant rights to sworn affidavits as the Union alleges in its charge and thus the proposal at issue did not concern a permissive subject of bargaining.

Charging Party timely appealed the dismissal. The City did not file a response.

Upon consideration of the dismissal order, appeal, and the record, we affirm the dismissal for Charging Party's appeal fails to undermine the Executive Director's findings, analysis, and conclusions. Notably, Charging Party fails to address the Executive Director's determination that the Appellate Court's ruling resolved the issue at the heart of Charging Party's claim.

A party cannot insist on bargaining to impasse over a permissive subject of bargaining. Bd. of Trustees of the Univ. of Ill. v. Ill. Educ. Labor Relations Bd., 245 Ill. App. 3d 945, 949 (1993). Under the Act and Board rules, arbitrators may not rule on permissive subjects of bargaining absent agreement by the parties for the arbitrator to rule on a permissive subject. 5 ILCS 315/14(h); 80 Ill. Adm. Code §1230.90(k). A proposal that seeks the waiver of a statutory

right is a permissive subject of bargaining. Vill. of Midlothian, 29 PERI ¶ 125 (IL LRB-SP 2013); Vill. of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001).

We find no issues for hearing remain because the court’s ruling in the related arbitration litigation is dispositive of the key issue in the instant charge. The central issue in this case is whether the City’s affidavit override proposal concerns a permissive subject of bargaining. Charging Party claims that the proposal is permissive because it seeks a waiver of its statutory right under the Disciplinary Act to have complaints against unit members supported by affidavits signed by the complainant. Although it stated that the determination of whether the matter at issue concerns a permissive subject of bargaining should be made by the Board, the court resolved the underlying issue—whether the Disciplinary Act granted the rights the Union claims it was being forced to waive—which the Board would necessarily have to follow in determining whether the City’s proposal concerned a permissive subject of bargaining. Accordingly, the Executive Director correctly dismissed the charge on grounds the Charging Party failed to raise issues of fact or law warranting hearing. 5 ILCS 315/11(a).

For the above reasons, we affirm the Executive Director’s dismissal.

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

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Decision made at the Local Panel's public meeting in Chicago, Illinois, on September 14, 2023; written decision approved at the Local Panel's public meeting in Chicago, Illinois, on October 12, 2023, and issued on October 12, 2023.

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
STATE PANEL**

Policemen's Benevolent & Protective
Association, Unit 156A, B, & C,

Charging Party

and

City of Chicago (Police Department),

Respondent

Case No. L-CA-21-026

DISMISSAL

On December 22, 2020, Policemen's Benevolent & Protective Association (PBPA), Unit 156A, B, & C, (Charging Party) filed unfair labor practice charges with the Local Panel of the Illinois Labor Relations Board (Board), in the above captioned case, alleging that the City of Chicago (Police Department) (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. On February 16, 2022, after an investigation conducted in accordance with Section 11 of the Act, I held this matter in abeyance pending the Circuit Court's ruling on the matter. On May 4, 2023, the First District Appellate Court (Appellate Court) issued a ruling affirming the decision of the Circuit Court of Cook County's (Circuit Court) decision not to vacate the related arbitration award. On May 15, 2023, Charging Party requested that the Board hold a hearing over the allegations raised in the charge. After additional investigation conducted in accordance with Section 11 of the Act, I determined that the charge

fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

Charging Party is a labor organization within the meaning of Section 3(i) of the Act. Respondent is a public employer within the meaning of Section 3(o) of the Act. Charging Party represents the Sergeants employed by Respondent in Unit 156A, the Lieutenants employed by Respondent in Unit 156B, and the Captains employed by Respondent in Unit 156C. In the instant charge, Charging Party alleges that Respondent violated Sections 10(a)(4) and (1) of the Act when it submitted a proposal regarding a permissive subject of bargaining to the Dispute Resolution Board (DRB) and the Neutral Chair then included this proposal in the collective bargaining agreement (CBA).

The parties' previous CBAs expired on June 30, 2016. The parties engaged in successor negotiations for about three years before Charging Party declared impasse. One of the unresolved issues that came before the DRB is whether Respondent may investigate anonymous complaints without an accompanying affidavit. Charging Party proposed that the language in the CBAs remain status quo, as below:

Section 6.1, Conduct of Disciplinary Investigation

E. No anonymous complaint made against a Sergeant/Lieutenant/Captain shall be made the subject of a Complaint Register investigation, unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute.

F. No anonymous complaint regarding residency or medical roll abuse shall be made the subject of a Complaint Register investigation until verified. No ramifications will result regarding issues other than residency or medical roll abuse from information discovered during an investigation of an anonymous complaint regarding residency or medical roll abuse, unless of a criminal nature as defined in the preceding paragraph.

Section 6.1, Affidavits

When an allegation of misconduct against a Sergeant/Lieutenant/Captain is initiated by a non-Department member, and the allegation is not of a criminal nature within the meaning of Section 6.1 (E) or does not regard residency or medical roll abuse within the meaning of Section 6.1 (F), the Independent Police Review Authority or the Internal Affairs Division shall secure an affidavit from the complainant. If the complainant executes the affidavit, the investigation shall proceed as a Complaint Register investigation. If the complainant refuses to execute the affidavit, the Independent Police Review Authority or the Internal Affairs Division shall, subject to the provisions below, proceed in accordance with the provisions applicable to Complaint Register investigations.

If the Independent Police Review Authority or the Internal Affairs Division determines to conduct a Complaint Register investigation where the complainant does not execute an affidavit, the appropriate official shall execute an affidavit stating that he/she has reviewed the evidence compiled in a preliminary investigation, and based upon the sufficiency of the evidence, continued investigation of the allegation is necessary. For Independent Police Review Authority cases, the "appropriate official" shall be the Commanding Officer of the Internal Affairs Division. For Internal Affairs Division cases, the "appropriate official" shall be the Chief Administrator of the Independent Police Review Authority. If an affidavit is not executed by the Independent Police Review Authority or the Internal Affairs Division, the matter shall not be used by the Department with respect to any aspect of the Sergeant/Lieutenant/Captain's employment.

The below July 13, 2005, letter is attached to each of the CBAs:

Sean Smoot, Esq.
Policemen's Benevolent & Protective Association
435 West Washington Street
Springfield, Illinois 62702

Re: City of Chicago and PBPA, Unit 156 Negotiations - Sworn Affidavits

Dear Mr. Smoot:

This will confirm the representations made to the Union during negotiations for the 2003-2007 collective bargaining agreement, with respect to how the Department intends to operate under the proposed agreement dealing with sworn affidavits.

We have advised you that in those instances where an affidavit is necessary, the Department will make a good faith attempt to obtain an affidavit from the complainant within a reasonable time. When an affidavit cannot be obtained from a citizen complainant, the head of either IAD or OPS may sign an appropriate affidavit according to the following procedure. An "appropriate affidavit" in the case of the head of either OPS or IAD is an affidavit wherein the agency head states that he or she has reviewed objective verifiable evidence, specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes, and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive.

In the case of a sustained finding that is subject to the parties' grievance procedure, the arbitrator has the authority to review whether the Department made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of OPS or IAD was based upon objective evidence of the type specified above, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.

If this letter accurately reflects your understanding and agreement regarding this issue, please sign where indicated and return a copy to me.

Very truly yours,
James C. Franczek, Jr.

Acknowledged and Agreed to this 13th day of July 2005.
Sean M. Smoot, Esq.
Attorney, Policemen's Benevolent & Protective Association

Respondent submitted the following proposals regarding the requirement of accompanying affidavits to support a complaint the DRB:

Section 6.1, Conduct of Disciplinary Investigation

E. Allegation(s) against a Sergeant/Lieutenant/Captain which would constitute ~~No anonymous complaint made against a Sergeant/Lieutenant/Captain shall be made the subject of a Complaint Register investigation, unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute may be made the subject of a Complaint Register investigation.~~

F. Delete

Section 6.1, Affidavits

When an allegation of misconduct against a Sergeant/Lieutenant/Captain is initiated by a non-Department member, and the allegation is not of a criminal nature within the meaning of Section 6.1 (E) ~~or does not regard residency or medical roll abuse within the meaning of Section 6.1 (F)~~, the ~~Independent Police Review Authority or the Internal Affairs Division~~ investigative agency shall secure an affidavit from the complainant. If the complainant executes the affidavit, the investigation shall proceed as a Complaint Register investigation. If the complainant is anonymous or refuses to execute the affidavit, the ~~Independent Police Review Authority or the Internal Affairs Division~~ investigative agency shall, subject to the provisions below, proceed in accordance with the provisions applicable to Complaint Register investigations.

If the investigative agency ~~Independent Police Review Authority or the Internal Affairs Division~~ determines to conduct a Complaint Register investigation where the complainant is anonymous or does not execute an affidavit, the appropriate official shall execute an affidavit stating that he/she has reviewed the evidence compiled in a preliminary investigation, and based upon the sufficiency of the evidence, continued investigation of the allegation is necessary. For ~~Independent Police Review Authority~~ Civilian Office of

Police Accountability and Inspector General cases, the "appropriate official" shall be the Commanding Officer of the Bureau of Internal Affairs ~~Internal Affairs Division~~. For ~~Internal Affairs Division~~ Bureau of Internal Affairs cases, the "appropriate official" shall be the Chief Administrator of the ~~Independent Police Review Authority~~ Civilian Office of Police Accountability or the Bureau of Internal Affairs. If an affidavit is not executed by the ~~Independent Police Review Authority or the Internal Affairs Division~~ Civilian Office of Police Accountability or the Bureau of Internal Affairs, the matter shall not be used by the Department with respect to any aspect of the Sergeant/Lieutenant/Captain's employment.

Respondent also proposed the following changes to the July 13, 2005, letter attached to the CBAs:

~~Sean Smoot, Esq.~~ Thomas J. Pleines
~~Policemen's Benevolent & Protective Association~~
~~435 West Washington Street~~
~~Springfield, Illinois 62702~~

Re: City of Chicago and PBPA, Unit 156 Negotiations - Sworn Affidavits

Dear Mr. ~~Smoot~~ Pleines:

This will confirm the representations made to the Union during negotiations for the ~~2003-2007~~ 2016 - 2022 collective bargaining agreement, with respect to how the ~~Department~~ Employer intends to operate under the ~~proposed~~ agreement dealing with sworn affidavits.

We have advised you that in those instances where an affidavit is necessary, the ~~Department~~ investigative agency will continue make a good faith attempt to obtain an affidavit from the complainant within a reasonable time. When an affidavit cannot be obtained from a citizen complainant, the head of either ~~IAD BIA~~ or OPS COPA may sign an appropriate affidavit according to the following procedure. An "appropriate affidavit" in the case of the head of either OPS COPA or ~~IAD BIA~~ is an affidavit wherein the agency head states that he or she has reviewed objective verifiable evidence, specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes, and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive.

In the case of a sustained finding that is subject to the parties' grievance procedure, the arbitrator has the authority to review whether the ~~Department~~ investigative agency made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of OPS COPA or ~~IAD BIA~~ was based upon objective evidence of the type specified above, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.

If this letter accurately reflects your understanding and agreement regarding this issue, please sign where indicated and return a copy to me.

Very truly yours,

James C. Franczek, Jr.

In summary, Respondent proposed language providing that a complaint register investigation may be opened based on an anonymous complaint without an affidavit if there is an affidavit override by the investigative agency.

However, Charging Party argues that Respondent's proposal is a permissive subject of bargaining because sworn peace officers had a statutory right to have any complaint lodged against them supported by an affidavit. Prior to July 1, 2021, the Uniform Peace Officer's Disciplinary Act (50 ILCS 725) (Disciplinary Act) stated in relevant part:

(b) Anyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit. Any complaint, having been supported by a sworn affidavit, and having been found, in total or in part, to contain knowingly false material information, shall be presented to the appropriate State's Attorney for a determination of prosecution. (Source: P.A. 97-472, eff. 8-22-11.)

Charging Party made this argument to the DRB, but, on June 26, 2020, the Neutral Chair issued an award in favor of Respondent's proposal on the requirement of affidavits to support an anonymous complaint. The Neutral Chair adopted Respondent's final offer with the addition of Appendix O. Appendix O states:

If an allegation is sustained against a member as a result of an override affidavit where the complainant or complainants are anonymous, the member may grieve and challenge whether the override affidavit was executed in good faith, namely, whether there was a good faith effort to secure an affidavit from the complainant(s) and whether the affidavit of the head of COPA or BIA or OIG was based upon a review of objective verifiable evidence and that the agency head stated that he or she has reviewed objective verifiable evidence and specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must explain that he or she reviewed and relied on will depend upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive. Once the member is notified of the sustained allegations and recommended discipline, if any, the member through his or her Union can request a review of the evidence that the investigative agency head considered when exercising the override affidavit and can elect to have the arbitrator selected, in the event the member has challenged the sustained findings and recommended discipline, to first determine whether the investigative agency made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of COPA, BIA or OIG was based upon objective evidence of the type specified above. The arbitrator

shall make the determination of the sufficiency of the override affidavit before hearing the merits. If the arbitrator determines that the override affidavit was not issued in good faith or not based upon objective evidence of the type specified above, then the allegations and charges are to be dismissed with the notation "no affidavit". The losing party shall be responsible for the arbitrator's fees and expenses.

This procedure applies only to override affidavits involving anonymous complaints.

Charging Party contends that an unfair labor practice was committed when the Neutral Chair included language regarding a permissive subject of bargaining in the CBA. On July 22, 2020, Charging Party also filed an appeal of the DRB's award with the Circuit Court of Cook County in Case No. 2020CH5076. On May 2, 2022, the Circuit Court affirmed the DRB's award. On May 4, 2023, the First District Appellate Court issued a ruling affirming the decision of the Circuit Court of Cook County's decision not to vacate the related arbitration award. PBPA v. City of Chicago, 2023 IL App (1st) 220762-U.

II. DISCUSSION AND ANALYSIS

Mandatory subjects of bargaining, such as wages, hours, and conditions, are subjects that parties are required to negotiate. Village of Oak Lawn v. Illinois Labor Relations Board, 2011 IL App (1st) 103417. If parties cannot come to an agreement over a mandatory subject of bargaining, and, if arbitration is statutorily required or the parties' contract allows for arbitration, the matter must be decided by an arbitrator. Town of Cicero v. Illinois Association of Firefighters, IAFF Local 717 AFL-CIO, CLC, 338 Ill. App. 3d 364, 370 (2003). However, permissive subjects of bargaining are subjects which parties are not required to negotiate but may voluntarily negotiate. Lid Elec., Inc. v. International Brotherhood of Electrical Workers, Local 134, 362 F.3d 940, 943 (7th Cir. 2004). A party cannot insist to impasse on a permissive subject and negotiations over such matters may be cut off at any time without recourse. See Board of Trustees of University of Illinois v. Illinois Education Labor Relations Board, 244 Ill. App. 3d 945, 949 (1993). Permissive subjects of bargaining are not to be decided by an arbitrator. 5 ILCS 315/14(h) (West 2012); 80

Ill. Adm. Code 1230.90(k), amended at 27 Ill. Reg. 7456 (eff. May 1, 2003). as cited in Skokie Firefighters Union, Local 3033 v. ILRB, 33 PERI ¶ 65 (Ill. Ct. App. 2016). Permissive subjects of bargaining include those that waive a party's statutory rights. Village of Midlothian, 29 PERI ¶ 125 (ISLRB 2013).

Charging Party insists that Respondent's proposal regarding the affidavit requirement is a permissive subject of bargaining because it waives Unit members' statutory right, under the Disciplinary Act, to have a supporting affidavit from the complainant to file a complaint against an officer. However, neither Respondent's actions prior to, nor after the DRB's ruling, constitute an unfair labor practice. Respondent's submission of the proposal in question to the DRB in itself did not constitute a violation of the Act. The Board has held that the mere submission of a permissive subject of bargaining to interest arbitration is not an unfair labor practice, and, if a party opposes the submission of a topic it believes to be permissive to arbitration, it should not file an unfair labor practice with the Board but rather object to the arbitrator's consideration of that topic under Board Rule 1230.90(k). City of Wheaton, 31 PERI ¶ 131 (ILRB - SP 2015). Section 1230.90(k) of the Boards' Rules relating to conduct of interest arbitration hearings states, in relevant part, as follows:

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that that issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue. However, . . . the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.143(b), to be a subject over which the parties are required to bargain.

Further, whether Respondent insisted to impasse on the proposal in question is immaterial because Section 14 employees are prohibited from striking and in exchange have the right to request interest arbitration. Therefore, the Board has held that is not particularly relevant whether

the parties are truly at impasse because Section 14 employees hold a statutory right to have an arbitrator resolve the parties' dispute. Village of Skokie, 2016 IL App (1st) 152478. Parties may agree to submit a proposal containing a permissive subject of bargaining to an interest arbitrator, but, if the parties disagree to a proposal's submission, they have recourse under Section 1230.90(k) of the Board's rules as described herein. Wheaton Firefighters Union, Local 3706 v. ILRB, 2016 IL App (2d) 160105.

Either party could have prevented extensive litigation on this matter by utilizing by the Board's process for determining if a subject is mandatory or permissive before forcing an arbitrator consider the proposal by submitting a petition for a declaratory ruling pursuant to the Board's rules at Section 1200.143(b). Neither party did so in this case. Therefore, when Respondent submitted its proposal to the DRB, it did not engage in bad faith bargaining.

The Courts have held that a party acts in bad faith by insisting on a permissive subject of bargaining after the opposing party indicated that it did not intend to relinquish its right regarding that permissive subject, and the arbitrator grants the proposal, causing the other party to suffer prejudice. Skokie Firefighters Union, Local 3033 v. ILRB, 33 PERI 65 (1st Dist. Appellate Court). Further, the Courts and the Board have also declined to find a violation when the parties genuinely disagree whether a proposal contains a permissive subject of bargaining. Id.; State of Illinois, Department of CMS, 34 PERI 18 (ISLRB 2017). As described below, the parties genuinely disagreed upon whether Respondent's proposal contained a permissive subject of bargaining, and Charging Party suffered no prejudice from Respondent's actions and the arbitrator's decision to include the disputed proposal in the contract.

Charging Party requested that the Board reopen this charge because the Appellate Court declined to rule on whether Respondent's proposal was a permissive or mandatory subject of

bargaining. Indeed, the Appellate Court concluded that the Board's November 1, 2021, Abeyance Order in this case did not "somehow convey jurisdiction over the permissive/mandatory subject to the Court." PBPA v. City of Chicago, 2023 IL App (1st) 220762-U. However, the Abeyance Order stated the "court will determine whether the DRB Chairman's award exceeded his authority by issuing an award in violation of the Uniform Peace Officer's Disciplinary Act (50 ILCS 725)." The Appellate Court's decision that the DRB's award did not violate Disciplinary Act is dispositive on whether Respondent's proposal was a permissive or mandatory subject of bargaining.

As previously noted, permissive subjects of bargaining include those that waive a party's statutory rights. Village of Midlothian, 29 PERI ¶ 125 (ISLRB 2013). Here, Charging Party argues that Respondent's proposal waives its statutory right, under the Disciplinary Act, to have a complaint against an officer supported by an affidavit from the complainant. However, the court determined that the affidavit override procedure included in Respondent's proposal "satisfied any statutory requirement for a supporting affidavit." PBPA v. City of Chicago, 2023 IL App (1st) 220762-U. In its opinion, the Appellate Court ruled that:

The language contained in section 3.8(b) of the Disciplinary Act and section 15(a) of the Labor Act, upon which plaintiffs rely, is clear and unambiguous. The provisions do not require that the affidavit supporting a complaint against a sworn peace officer must be signed by the known complainant. Furthermore, this court will not read into these provisions a requirement that the sworn affidavits supporting an investigation into police misconduct need to be affidavits from the named complainant. Id.

The Appellate Court reasoned that the statutory provisions allowed for two types of affidavits, "those based on personal knowledge and those based on information and belief", and that section 3.8(b) of the Disciplinary Act did not limit the type of affidavit to either one. Sherwood v. City of Aurora, 388 Ill. App. 3d 754 (2009). Id. The Appellate Court continued that the term "complainant" could include the person responsible for supervising or managing the subordinate

to which the anonymous complaint was made, and, therefore, an affidavit from the supervisor/investigating official satisfies the Disciplinary Act's affidavit requirement.

The affidavit override process adopted by the Board in its award satisfies any alleged statutory affidavit requirement. Under the affidavit override process, an agency official steps into the shoes of a complaining witness—whether that witness is known and refusing to testify, or unknown, so that the defendant cannot make a request from the witness—and swears, based on the preliminary evidence available, that an investigation is necessary and should proceed. Neither the Disciplinary Act nor the Labor Act specifies *who* must execute the affidavit. As stated in *Sherwood*, 388 Ill. App. 3d at 761, an affidavit obtained under section 3.8(b) of the Disciplinary Act need not even be based on the complainant's personal knowledge; it is sufficient if the information is based on information and belief. Id.

Overall, the Appellate Court found that Respondent's proposals regarding disciplinary investigations and the affidavit override procedure, which the DRB adopted in its award, did not waive Unit members' rights under the Disciplinary Act to the accompaniment of an affidavit to a complaint. Therefore, because no statutory rights of Unit members were waived when the DRB issued its award adopting Respondent's proposal, the proposal was not a permissive subject of bargaining, but a mandatory one.

Respondent did not engage in bad faith bargaining or commit a violation of Section 10(a)(4) of the Act when it submitted a contested proposal to the interest arbitrator or when the interest arbitrator ruled on the proposal and placed the proposal in the contract. As previously discussed, the mere submission of a proposal in which the parties disagree upon whether the subject is mandatory or permissive is not an unfair labor practice. City of Wheaton, 31 PERI ¶ 131 (ILRB-SP 2015). More importantly, Charging Party did not suffer prejudice when the arbitrator included the contested proposal in the contract because the Court found that the proposal did not waive Unit members' statutory rights. Skokie Firefighters Union, Local 3033 v. ILRB, 33 PERI 65 (1st Dist. Appellate Court). As such, a hearing is not necessary to resolve the matter, and the charge is dismissed.

IV. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service of this dismissal. Such appeal must be in writing, contain the case caption and numbers, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. Please note that the Board's Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 24th day of July, 2023.

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



**Kimberly Stevens
Executive Director**