STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Troopers Lodge No. 41, Fraternal Order of Police,	)	
Charging Party,	)	
and	)	Case No. S-CA-22-008
State of Illinois, Department of Central Management Services (Illinois Department of State Police),	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On March 27, 2023, Administrative Law Judge ("ALJ") Donald Anderson issued a Recommended Decision and Order ("RDO") resolving an unfair labor practice charge filed by Charging Party Troopers Lodge #41, Fraternal Order of Police ("Lodge" or "Union"), with the Illinois Labor Relations Board's State Panel ("Board") alleging that Respondent State of Illinois, Department of Central Management Services (Illinois Department of State Police) ("Employer" or "ISP") engaged in unfair labor practices within the meaning of Sections 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315/1 et seq. Charging Party and Respondent each filed timely exceptions to the RDO, and each timely responded to the other's exceptions.

Upon consideration of the record, the RDO, the parties' exceptions, responses thereto, and supporting briefs, we accept the ALJ's findings and recommendations that the Respondent violated Sections 10(a)(4) and 10(a)(1) of the Act subject to modifications as discussed below.

I. DISCUSSION

Background and ALJ's Recommendations

The Illinois State Police is the primary protective service and law enforcement agency for the State of Illinois and employs approximately 1900 sworn officers. The Lodge is the exclusive representative of the 1500 sworn officers in the ranks of Trooper, Special Agent, and Sergeant. ISP's 200-300 officers in the rank of Master Sergeant are represented by the International Brotherhood of Teamsters, Local 700 ("Teamsters"). The remaining 100 officers in the ranks above Master Sergeant are represented by the Fraternal Order of Police, Command Council ("Command Council"). Pursuant to statute, the Director of the Illinois State Police ("Director") has the authority to impose discipline on an officer up to and including suspensions of 30 days or less. For suspensions exceeding 30 days and officer discharges, the Director refers such matters to the Illinois State Police Merit Board ("Merit Board").

Before July 2021, ISP's disciplinary process included consideration of proposed charges against an officer by the Disciplinary Review Board ("DRB") comprising the Deputy Directors of each of the divisions within ISP (collectively referred to as "the Colonels). Since at least the early 1990's, the DRB served as the body responsible for making recommendations to the Director as to whether an officer should be charged with violations of ISP rules and whether that officer should be subject to discipline. The charges, which are drafted by the Director's legal office based on the results of the investigation conducted by the Division of Internal Investigation ("DII), and a case summary are provided to members of the DRB who would review them before conducting a meeting to consider the charges. Such meetings were typically chaired by the Deputy Director, i.e., Colonel, in charge of DII. The officer who is the subject of the charges was then given an opportunity to appear before the DRB to "tell his side of the story." A union representative was

allowed to attend the meeting but could not sit next to the officer or speak on the officer's behalf. The officer's direct supervisor would also be given an opportunity to appear before the DRB to inform it of the officer's work history, job performance, and relevant disciplinary record.

In May of 2019, the Lodge and ISP began negotiations for a successor to the collective bargaining agreement that was set to expire on June 30, 2019. The ALJ found that during sidebar discussions, the parties agreed that matters relating to the DRB would be negotiated separately, in part so that the Lodge could obtain input from the Teamsters and the Command Council, representing the two other sworn officer bargaining units whose members were affected by the DRB process. After reaching agreement on the successor CBA in November 2020, the parties engaged in discussions regarding the DRB process and exchanged proposals. On July 13, 2021, ISP advised the Lodge that it would implement a new "Sworn Discipline Procedure" (Joint Ex. 8) that made several changes to the existing discipline recommendation process.

The dispute in this case centers on ISP's obligation to bargain over these changes. Specifically, the Lodge claimed the following changes to the discipline recommendation process required bargaining: (1) elimination of the pre-July 2021 DRB and its replacement with a different recommending body; (2) replacement of an officer's in-person appearance before the recommending body with submission of written rebuttal statements; (3) mandatory application of ISP's disciplinary matrix; and (4) compulsory officer participation in the new disciplinary process. The ALJ found that the Respondent violated Sections 10(a)(4) and 10(a)(1) by failing and refusing to bargain in good faith over the implementation of the first three changes and over the effects of changes to the composition of the DRB adopted as a part of the new Sworn Discipline Procedure.

Applying the three-part balancing test set forth in Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Relations Bd., et al., 174 Ill.2d 496 (1992) ("Central City"), the ALJ found that

the first three changes met the first part of the Central City test but observed that the new process did not compel officer participation because the submission of a written rebuttal statement is optional under the new procedure. Next, the ALJ determined that the decision to eliminate the DRB as it existed before July 2021 and to replace it with a smaller core of management officials was a matter of inherent managerial authority. Finally, he found the benefits of bargaining over these changes to the disciplinary recommendation process outweighed the burdens on ISP's managerial authority.

The ALJ then determined that ISP's changes to the composition of the DRB were tantamount to a reorganization of the DRB's structure. As such, the ALJ concluded the composition of the DRB was a managerial right and not a mandatory subject of bargaining, citing County of Perry and Sheriff of Perry County, 19 PERI ¶ 124 (ILRB-LP 2003). He then found, however, that ISP was obligated to bargain the effects of its decision to restructure the DRB.

Parties' Exceptions and Responses

Both parties filed exceptions, and supporting briefs, to the ALJ's findings and recommendations as well as responses to the other's exceptions.

Charging Party's Exceptions

Although Charging Party agrees with the ALJ's conclusion that Respondent engaged in unfair labor practices when it implemented unilateral changes to the discipline recommendation process, it takes exception to the ALJ's failure to make certain findings and to the ALJ's application of the Central City balancing test. It contends the ALJ (1) failed to find that the Respondent either agreed to bargaining or waived its rights to claim that it had no duty to bargain over the discipline recommendation process; (2) erred in his analysis, findings, and conclusions regarding the changes to the composition of the DRB; (3) failed to find that Respondent violated

Sections 10(a)(4) and (1) by reneging on its promise to maintain the status quo during the pendency of the parties' negotiations over the DRB; (4) erred in finding that officer participation in Respondent's new Sworn Discipline Procedure was not compulsory and thus did not meet the first part of the Central City test; (5) failing to find that the new Sworn Disciplinary Procedure mandates the application of ISP's disciplinary matrix such that it satisfied; and (6) erred in his analysis, findings, and conclusions that the discipline recommendation process concerned a matter of inherent managerial authority

Respondent's Exceptions

The Respondent submitted multiple exceptions which take issue with the ALJ's findings, analysis, and conclusions that it violated Sections 10(a)(4) and 10(a)(1) of the Act. The exceptions mostly focus on the ALJ's analysis of the first and third steps of the Central City balancing test and his conclusion that Respondent was obligated to bargain over the changes it made to the discipline recommendation process. Respondent asserts that the ALJ's conclusions were based on his erroneous finding that the "method by which the ISP investigates misconduct has been substantially altered and that the alteration affects employees' terms and conditions of employment." (RDO, p.25). The Respondent further contends that the changes at issue were minimal and were made in furtherance of ISP's governmental mission. Finally, Respondent asserts that the ALJ erred in concluding that the benefits of bargaining outweighed the burdens imposed on ISP's managerial authority.

Analysis

We first discuss the Lodge's exceptions to the ALJ's Central City analysis because the central issue in this case is whether the Respondent's unilateral changes to its disciplinary recommendation process concerns a mandatory subject of bargaining.

Pursuant to Section 7 of the Act, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment — the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed'n of State, Cnty. and Mun. Empls., Local 268, 122 Ill. 2d 353 (1988); Am. Fed'n of State, Cnty. and Mun. Empls. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (lst Dist. 1989); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000); City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). Moreover, Section 4 of the Act provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy." 5 ILCS 315/4 (2012).

To resolve the tension between Section 7 and Section 4, the Illinois Supreme Court in Central City established a three-step balancing test to determine a public employer's bargaining obligations. The first step in the analysis asks whether the matter is one of wages, hours, and terms and conditions of employment. If the answer is "no," there is no duty to bargain. If the answer is "yes," then the second step asks if the matter is also one of inherent managerial authority. If that answer is "no," there is a duty to bargain. If it is "yes," then one must proceed to the third step which is to "balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority." Central City, 149 Ill. 2d at 523.

We find that the Lodge's challenges to the ALJ's findings regarding the first and second steps of the Central City analysis have merit. The ALJ found the first step in the Central City test satisfied as to the changes to the DRB itself, the removal of an officer's opportunity to appear in-person as part of the discipline recommendation process, and changes to the way in which ISP's

disciplinary matrix was applied in the disciplinary recommendation process,[1] materially affected employee terms and conditions of employment, but determined that there was no change to the optional nature of an officer's participation in the process. The ALJ based this finding on the fact that under the new Sworn Discipline Procedure, the written rebuttal was optional. As the Lodge correctly points out, however, the ALJ failed to consider that under the new Sworn Discipline Procedure, the accused officer is required to attend the newly created pre-disciplinary meeting. (See Joint Ex. 8, ¶ 5, "A representative from the Legal Office, Labor, and the Union . . . will be present at the pre-disciplinary meeting along with the accused.…"). Moreover, Respondent's citations to the record do not support its contention that the officer's attendance at the pre-disciplinary meeting is optional. Thus, we modify the ALJ's analysis in this regard and find instead that the requirement to attend the pre-disciplinary meeting constitutes a material change in the terms and conditions of employment.

The Lodge's exceptions to the ALJ's findings regarding the second step of the Central City analysis are likewise persuasive. Relying on the Board's decision in City of Springfield (Office of Public Utilities), 9 PERI ¶ 2024 (IL SLRB 1993), the ALJ found that the "replacement of the DRB with a smaller core of management officials" was done to protect the Respondent's "core interests" and to ensure "the integrity of the Office of the Director." The ALJ also noted that the DRB was disbanded due to the Director's dissatisfaction with the DRB, particularly with the role of the Deputy Director of DII. The Lodge rightly contends, however, that the ALJ failed to identify the "core interest" and to link the objective of the Sworn Discipline Procedure as a whole to a core

[1] The Lodge takes exception to the ALJ's finding that "it was not entirely clear as to whether application of the ISP's disciplinary matrix is mandated by the new procedure," (Lodge Ex. Br., p. 41, quoting ALJ RDO, p. 26)), and provided citations to the record in support. These citations, however, do not clearly establish that the application of the disciplinary matrix was discretionary before implementation of the new Sworn Discipline Procedure. Accordingly, we accept the ALJ's findings regarding the application of the disciplinary matrix.

managerial interest. Accordingly, we reject the ALJ's findings in this regard and find instead that the composition of the DRB is not a matter of inherent managerial authority. Even if we were to find that the elimination and replacement of the DRB is a matter of inherent managerial authority, we agree with the ALJ's findings and recommendations that the benefits of bargaining over the changes to the DRB process outweighed any burdens on ISP's authority.

We find the Lodge's exceptions to the ALJ's separate analysis and resulting determination on pages 30-31 of the RDO, that the changes to the composition of the DRB did not concern a mandatory subject of bargaining, also have merit. As the Lodge suggests, the ALJ erred in failing to apply all three parts of the Central City balancing test. He determined that the changes to the composition of the DRB, which he found to be a reorganization or restructuring of the DRB, were made to eliminate the participation of some disfavored members of the Director's management team. The ALJ then concluded that this concerned a matter of inherent managerial authority and thus, was not a mandatory subject of bargaining. The ALJ, however, does not provide any findings regarding the first and third parts of the Central City test.

Moreover, the ALJ does not explain how the changes to the composition of the DRB which he characterizes as a "reorganization" or "restructuring" of the DRB, differs from the elimination and replacement of the DRB which he found to be a mandatory subject under the Central City test on pages 24-30 of his RDO. Indeed, the reasons for the "reorganization" that the ALJ cites—the elimination of members of the management team--are similar to reasons he points to in his preceding analysis. Even if a difference exists, the ALJ provides no reason as to why such changes to the composition of the DRB requires a separate analysis, and our review of the matter does not reveal any basis for a separate analysis.

We find merit to the Lodge's claim that the ALJ wrongly characterized the changes to the DRB as a legitimate reorganization. The ALJ relied on Board and court precedent finding that to establish that an employer's complained of action is a legitimate reorganization, the employer must demonstrate that "(1) its organizational structure has been fundamentally altered; (2) that the nature and essence of the services provided has been substantially changed; or (3) that the nature and essence of a position has been substantively altered such that the occupants of that position no longer have the same qualifications, perform the same functions, or have the same purpose or focus as had the previous employees." American Federation of State, County, and Municipal Employees, Council 31, 17 PERI ¶ 2046 (ISLRB 2001); Amalgamated Transit Union v. Ill. Labor Relations Bd., 2017 IL App (1st) 160999, ¶ 70 (quoting American Federation of State, County, and Municipal Employees, Council 31, 17 PERI ¶ 2046 (ISLRB 2001). As the Lodge correctly points out, none of these elements of a legitimate reorganization cited by the ALJ were established. Nothing in the record establishes that by altering who served on the DRB, ISP fundamentally altered its organizational structure, changed the nature or essence of the services provided, or changed the nature and essence of any of the positions within ISP. The sole purpose of the DRB's existence is to serve as a deliberative body as part of ISP's disciplinary process. Changing the individuals who served on the DRB neither fundamentally altered ISP's organizational structure nor did it change the essence or nature of the DRB's function. Accordingly, we reject the ALJ's analysis of the composition of the DRB on pages 30-31 of the RDO.

Finally, we decline to address the Lodge's exceptions regarding the Respondent's "acquiescence," "waiver," or reneging on its promise to maintain status quo on the DRB process. Although the ALJ did not find that these issues constituted separate violations of the Act, he did recognize that the parties' exchanged proposals and that "the record establishes that the Lodge was

relying on the ISP's promise to maintain the *status quo* until the parties could reach agreement on the disciplinary investigations procedure" in his analysis.[2] (RDO, p. 29).

The Respondent's exceptions to the ALJ's conclusion that the changes to the discipline recommendation process concern mandatory subjects of bargaining are unpersuasive. Nothing in the Respondent's exceptions or supporting brief undermines the ALJ's findings nor does it compel the conclusion that Respondent had no duty to bargain to impasse or agreement over the changes to the discipline recommendation process. The record establishes that ISP implemented the Sworn Discipline Procedure which made changes to the longstanding existing process by which recommendations of discipline are made to the Director. Before implementation of the Sworn Discipline Procedure, the DRB, which comprised the heads of ISP's operational divisions, was the deliberative body responsible for making recommendations of discipline to the Director and operated under an established procedure which included among other things, an opportunity for accused officers to appear before it in-person to plead their case. Under the new Sworn Discipline Procedure, the DRB was replaced by a smaller group which included the First Deputy Director and the Colonel in charge of the division employing the accused officer. This new procedure also included other changes materially affecting the terms and conditions of employment such as the elimination of the accused officer's opportunity to appear in-person before the deliberative body. These changes were not "*de minimis*" as contended by the Respondent.

For the above reasons, we adopt the ALJ's findings and recommendations that the Respondent violated Sections 10(a)(4) and 10(a)(1) of the Act subject to the modifications discussed in this Decision and Order.

[2] Both parties take exception to the ALJ's occasional reference to the discipline recommendation process as an "investigation" procedure. We find such use to be inadvertent, and as such does compel a different outcome in the instant case.

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

1) Cease and desist from:

   a. Failing and refusing to bargain collectively in good faith with the Union, Illinois Troopers Lodge No. 41, Fraternal Order of Police, by unilaterally implementing its Sworn Discipline Procedure, a mandatory subject of bargaining as found in this Decision and Order.

   b. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in the Act.

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

   a. Rescind the implementation of the Sworn Discipline Procedure and restore the *status quo ante*.

   b. At the request of the Lodge, bargain in good faith with the Lodge to agreement or impasse over the decision to implement the Sworn Discipline Procedure and its effects.

   c. Except as provided by the Stipulation of the Parties, rescind all discipline issued by the Director of the Illinois State Police or the State Police Merit Board pursuant to the Sworn Discipline Procedure from July 13, 2021 to the date of this Order. As provided by the Stipulation of the Parties, disciplinary cases that have been settled by the Parties and have been approved by the Merit Board, as well as other cases in which settlements are pending or waiting for the Board's approval as of March 3, 2023, are exempted from this rescission order.

   d. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being

duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will make reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.

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

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ Frances A. Hurley
Frances A. Hurley, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jeffrey W. Mears
Jeffrey W. Mears, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois, via videoconference on September 14, 2023, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois via videoconference 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).

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-22-008 (Illinois Troopers Lodge No. 41 and State of Illinois (Department of Central Management Services and Illinois Department of State Police))

The Illinois Labor Relations Board, State Panel, has found that the Illinois Department of State Police ("the ISP") 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 ("the Act") gives you, as an employee, these rights:

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with Illinois Troopers Lodge No. 41 ("the Lodge") by unilaterally implementing the Sworn Discipline Procedure, a mandatory subject of bargaining.

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

WE WILL take the following affirmative action to effectuate the policies of the Act:

- Rescind the implementation of the Sworn Discipline Procedure and restore the *status quo ante*.
- At the request of the Lodge, bargain in good faith with the Lodge to agreement or impasse over the decision to implement the Sworn Discipline Procedure and its effects.
- Except as provided by the Stipulation of the Parties, rescind all discipline issued by the Director of the Illinois State Police or the State Police Merit Board pursuant to the Sworn Discipline Procedure from July 13, 2021 to the date of the Order requiring this action. As provided by the Stipulation of the Parties, disciplinary cases that have been settled by the Parties and have been approved by the Merit Board, as well as other cases in which settlements were pending as of March 3, 2023, are exempted from the rescission Order.
- Post, at all places where notices to employees are normally posted, copies of this Notice, with such posting to be maintained for a period of 60 consecutive days, with notification to the Illinois Labor Relations Board of the steps we have taken to comply with its Order.

Illinois Department of State Police

Date: _____ (Employer)

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(217) 785-3155

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

ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Troopers Lodge #41, Fraternal Order of Police, Charging Party, and State of Illinois, Department of Central Management Services (Illinois Department of State Police), Respondent.	)	Case No. S-CA-22-008

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 26, 2021, Troopers Lodge #41, Fraternal Order of Police (the "Charging Party" the "Lodge", or the "Union") filed a charge of unfair labor practices with the State Panel of the Illinois Labor Relations Board (the "Board"), alleging that the State of Illinois, Department of Central Management Services, Illinois Department of State Police (the "Respondent", the "Department", the "ISP", or the "Employer") violated Section 10(a) of the Illinois Public Labor Relations Act, as amended (the "Act"), 5 ILCS 315/1, *et seq.* After an investigation, the Board's Executive Director determined that the Charge raised dispositive issues of law or fact and therefore, on December 1, 2021, issued a Complaint for Hearing (the "Complaint"). On December 21, 2021, the Respondent filed its Answer and Affirmative Defenses (the "Answer").

A hearing was held on July 21 and 22 and November 29, 2022 concerning the allegations in the Complaint and the Affirmative Defenses raised by the Respondent, and three volumes of the transcript of the proceedings were prepared. On March 3, 2023, the parties submitted a Joint Motion to Supplement the Record and Stipulation Concerning Remedy sought. That Motion was

granted. Then, by agreement of the parties and the undersigned, post-hearing briefs were submitted on March 6, 2023. This Recommended Decision and Order follows.

I. PRELIMINARY FINDINGS

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

B. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act.

C. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

D. At all times material, Charging Party has been the exclusive representative of a bargaining unit ("Unit") that represents al sworn officers of the Illinois Department of State Police in the ranks of Trooper, Special Agent, and Sergeant.

E. In or about May, 2019, Charging Party and Respondent commenced negotiations for a successor collective bargaining agreement to the then-current CBA governing the Unit with a stated expiration date of June 30, 2019.

F. During negotiations for a successor CBA, Charging Party made proposals regarding the DRB, its processes and its procedures, which were rejected by the Respondent.

G. The Charging Party and the Respondent have never entered into a formal, written agreement regarding the ISP's Disciplinary Review Board (the "DRB").

H. On November 19, 2020, the Charging Party and the Respondent agreed to a successor CBA governing the Unit effective from July 1, 2019 through June 30, 2023.

I. On or about July 13, 2021, Respondent met with the Charging Party remotely via Webex and explained modifications to the DRB process, informing the Charging Party that ISP intended to implement such modifications.

II. ISSUES AND CONTENTIONS

The Charging Party contends that the Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally implementing its "Sworn Discipline Procedure." In so doing, the Charging Party contends, the ISP "fundamentally changed the method and process for formulating recommendations for consideration by the Director regarding (a) the nature of the disciplinary charges to pursue against an accused officer, and (b) the attendant discipline that should be imposed by the Director or sought by the ISP before the State Police Merit Board." The Respondent, the Charging Party asserts, was obligated by law to engage in good faith bargaining with the Lodge over the Sworn Discipline Procedure" prior to its implementation, and the failure to do so constituted a violation of the Act.

The Respondent asserts that the Charging Party did not present sufficient evidence to show that the allegedly *de minimis* changes to the ISP's disciplinary recommendation procedures constituted a mandatory subject of bargaining. The Respondent further asserts that, even if those changes were a mandatory subject of bargaining, the ISP had no statutory obligation to bargain over those changes because they were not "material, substantial, and significant."

III. FINDINGS OF FACT

A. Introduction

The Respondent Illinois State Police ("ISP") is the public safety arm of the government of the State of Illinois. It is headed by the Director, who is responsible for the management and control of the ISP. 20 ILCS 2610/2; 20 ILCS 2605-25(b). Second in command of the ISP is the

First Deputy Director, who at all times relevant to this proceeding is and has been Matthew J. Davis. Pursuant to the Illinois State Police Law, the Illinois State Police is divided into the following divisions: the Division of Statewide 9-1-1, the Division of Patrol Operations, the Division of Criminal Investigation, the Division of Forensic Services, the Division of Justice Services, the Division of the Academy and Training, and the Division of Internal Investigation. 20 ILCS 2605-25(a). Each of these divisions is headed by a Deputy Director. Except for the Deputy Director of the Division of Forensic Services, who is a civilian, each of the Deputy Directors is a police officer holding the rank of Colonel.

The Illinois State Police Merit Board ("Merit Board"), consisting of seven members appointed by the Governor with the advice and consent of the Senate, certifies applicants for appointment and for promotion to the ranks of Sergeant, Master Sergeant, Lieutenant, and Captain. The Merit Board also has a role in the disciplinary process, with the authority to remove, demote, or suspend Illinois State police officers for cause, and with the authority to review suspensions imposed by the Director upon petition by the suspended officer. 120 ILCS 2610/8. Under 20 ILCS 2610/13, disciplinary measures prescribed by the Merit Board may be taken by the Director for punishment of infractions of the rules and regulations of the respective divisions. The Director has the statutory authority to impose discipline upon an officer, including the suspension of the officer for a reasonable period not to exceed thirty days. The length of any such suspension may not be increased by the Merit Board upon review. Discipline in excess of a thirty-day suspension cannot be imposed by the Director, but can be imposed only by the Merit Board following a hearing and determination by that body.

Prior to July of 2021, the investigative procedure utilized by the ISP to determine whether charges would be brought against an officer for having allegedly engaged in rules infractions

included an investigation conducted by the Division of Internal Investigation and consideration of proposed charges by the DRB, an internal deliberative body consisting of the heads of each of the ISP divisions (collectively and colloquially known as "the Colonels") or their designees.[1] Typically, meetings of the DRB would be chaired by the Colonel in charge of the Division of Internal Investigation. There were no written documents governing the DRB's procedures or deliberations.

The Lodge is the exclusive representative of a bargaining unit consisting of sworn ISP officers in the ranks of Trooper, Special Agent, and Sergeant. There are approximately 1,500 members of this Lodge-represented bargaining unit. Other ranks of ISP officers are represented by International Brotherhood of Teamsters Local 700 ('the Teamsters"), a bargaining unit of approximately 200-300 members that includes sworn officers in the rank of Master Sergeant, and the Fraternal Order of Police Command Council ("the Command Council"), which represents approximately 100 officers, not excluded by the Act, in ranks above Master Sergeant.

In or about May of 2019, the Lodge and the ISP began negotiations for a collective bargaining agreement ("CBA") to succeed the then-current CBA that was due to expire on June 30, 2019. During these negotiations, the Lodge made proposals regarding the DRB, which proposals were rejected by the ISP. Prior to these negotiations, the Lodge and the ISP had not entered into a formal, written agreement regarding the DRB, although the CBA does provide that officers participating in DRB proceedings are in pay status.

[1] Occasionally, a subordinate management-level officer, such as a Lieutenant Colonel, would sit in for the Colonel of a division.

In or about June of 2019, the Charging Party and the Respondent agreed in sidebar discussions held during the course of bargaining for a successor CBA that matters relating to the DRB would be negotiated separately, in part so that the Lodge could obtain input from the Teamsters and the Command Council, whose members were affected by the DRB but were not represented by the Lodge. At or about that time, according to the Lodge, the Respondent agreed with the Charging Party during these sidebar discussions that it would make no changes in the practices, policies, or procedures of the DRB until the Lodge and the ISP had reached agreement on issues relating to the DRB. The Lodge contends, and the record establishes, that during these sidebar discussions the ISP and the Lodge agreed that unresolved issues relating to the DRB would be submitted to interest arbitration.[2]

On November 19, 2020, the ISP and the Lodge agreed to a successor CBA to be effective from July 1, 2019 through June 30, 2023. Thereafter, the ISP and the Lodge engaged in discussions, as detailed below, regarding the practices and procedures of the DRB but did not reach full agreement. Similar discussions, without complete agreement, also were held with the Teamsters. Although the ISP's objective was to reach a consensus among all interested parties, including the unions, Respondent's witness Lt. Col. Christopher Campbell testified that the parties could have agreed upon more than one procedure, depending upon whether the accused officer was represented by the Teamsters or one of the other unions.

The ISP contends that the purpose of the discussions regarding the DRB was to seek "input' from the Lodge and the Teamsters, and that the Respondent had no duty to bargain with the Charging Party over the issues raised in the discussions. The record establishes, however, that a

[2] As a unit of security employees, the bargaining unit represented by the Lodge is covered by Section 14 of the Act, which provides for interest arbitration of collective bargaining disputes in lieu of the right to strike. 5 ILCS 315/14.

number of meetings were held and that proposals and counterproposals were exchanged. Moreover, the record establishes that the form and content of the exchanges of proposals mirrored type of exchanges that the parties traditionally used in collective bargaining, consisting of proposals, comments on proposals, line-out responses, and counterproposals. As Lodge President Joe Moon testified, "[i]f you look at every historical proposal back-and-forth negotiations that we have had with the Department, they look exactly the same."

In July of 2021 the Respondent advised the Charging Party that it would implement changes to the policies, processes, and procedures of the DRB. This implementation was unilateral, as was conceded by the Respondent at the hearing. On July 16, 2021, the Lodge demanded to bargain over the changes, to which the ISP responded that it did not believe that it had a duty to bargain over those changes. The filing of the Charging Party's unfair labor practice charge followed.

B. The Disciplinary Process and the Disciplinary Review Board

The ISP disciplinary process begins with the filing of a Complaint Against Department Member Form (CADMF) alleging that an office has committed a policy violation of a violation of state law. The complaint is then investigated by the Division of Internal Investigation (DII). During that investigation, witnesses are interviewed and evidence is collected. If there is sufficient evidence at this point to sustain the allegation, the DII will conduct an administrative interview of the officer charged in the complaint, during which the officer will be given notice of the allegations against him and supplied with a copy of the CADMF.

When an investigation determines that discipline of an ISP officer may be warranted, the Legal Office of the Director drafts the disciplinary charges. Prior to July 13, 2021, those charges and a case summary would then be distributed to the Colonels, who would review these documents

prior to holding a meeting on the charges. The officer who was the subject of the charges would be given notice of the allegations against him[3], together with a copy of the charges, and he would be given an opportunity to appear before the DRB to "tell his side of the story," which could involve, among other things, contesting the charges or expressing remorse for the conduct involved. The officer's union representative was allowed to be present during the meeting before the DRB, but was not allowed to sit next to the officer or to speak in the officer's behalf. If the officer came into the DRB with notes, the Colonels sometimes asked the officer to leave his notes behind for the consideration of the Colonels.

Following the presentation by the officer, if any, the officer's supervisor then would be given an opportunity to appear before the DRB to tell the DRB of the officer's work history and job performance, and any other relevant discipline the officer may have received.

The DRB would then go into closed session, where the Legal Office would explain the charges and go through the supporting evidence. Initially, the closed session excluded everyone but the Chief Legal Officer and the Colonels. At some time thereafter, additional participants were allowed in the closed session, including representatives from the Division of Internal Investigation. Following closed session discussions, the Colonels would undertake a preliminary vote on the level of discipline, if any, that they would be seeking.

At some time after the initial meeting of the DRB, another meeting is held. At this second meeting, the First Deputy Director and sometimes the Director would be present, along with the Deputy Director, or Colonel, in charge of the Division of Internal Investigation. The case would

[3] Throughout this Recommended Decision and Order, the use of the masculine pronoun shall be deemed to include the feminine.

be reviewed again, and the DRB then would vote on the level of discipline, if any, that the DRB was recommending be imposed.

The ISP has a disciplinary matrix that indicates the levels of discipline to be imposed for various rule violations. There are seven levels of discipline under the matrix, with Level 1 being the lowest and Level 7 the highest. Level 4 violations and above go to the DRB. In some cases, one or more of the Colonels would indicate in their deliberations that they felt bound by the matrix; others made their recommendations without regard to the matrix. In some cases, too, the discipline process would result in the DRB's recommending an increase in the proposed penalty. Lieutenant Colonel Campbell testified that, in his experience, this occurred when an officer who appeared before the DRB did not accept responsibility for his actions or spoke derogatorily about the process.

Until sometime in the mid-2000's, the DRB's recommendation of discipline consisted of a recommendation as to a specific number of days of suspension to be imposed. Thereafter, this was changed, and the DRB would recommend discipline falling within one of three levels – either 30 days or under, over 30 days, or termination. A recommendation of a suspension of 30 days or under would go to the Director, who has the statutory authority to impose that level of discipline. A recommendation of a suspension of over 30 days or termination would go to the Director, who would then recommend that level of discipline to the Merit Board.

The recommendations of the DRB were effective. Lodge President Moon testified that he was not aware of any case in which the Director did not follow the DRB's disciplinary recommendations, while Respondent's witness Lieutenant Colonel Christopher Campbell testified that the Director accepted the DRB's recommendations in the vast majority of cases.

Also relevant to the disciplinary process is the MASA – Misconduct Allegation Settlement Agreement – option. This, essentially, is a plea-bargaining option whereby the officer being charged is given the option to admit to the violation, in return for which he would be given a disciplinary penalty one level lower than called for by the matrix for the violation in question. Lower level offenses – graded 1 through 3 in the matrix – normally are handled by means of the MASA option.

C. Discussions Regarding the DRB

1. During Collective Bargaining Negotiations

During the 2019 collective bargaining negotiations for a successor CBA, the Lodge presented proposals to the ISP bargaining team regarding the DRB. The Lodge was represented in these negotiations by, among others, Lodge President Moon and Vice President and General Counsel Bruce Bialorucki. The chief negotiator for the ISP was Laurette Waters, then Bureau Chief of the ISP's Office of Labor Relations, and ISP First Deputy Director Matthew Davis was a member of the Respondent's bargaining team. According to Bialorucki, First Deputy Davis stated during the negotiations that he did not want to have provisions of the type proposed by the Lodge in the collective bargaining agreement but wanted to deal with the issues presented outside of formal negotiations. According to Davis, "it was the Department's position that the DRB or the proceedings that had been governed by the DRB were, basically, the Department's right, the management's right and procedures subject entirely to the director's discretion. We were not aware of any other …. contractual obligation pertaining to these proceedings that preexisted … these proposals." Accordingly, beginning around June 15 and continuing through about August 15, 2019, the parties dealt with DRB issues by means of sidebar discussions that were held away from the bargaining table.

At that time, according to testimony from both parties, there was dissatisfaction on both sides with the DRB's practices, including the role of the Colonel who was then head of the Division of Internal Investigation. Lodge President Moon testified that:

> In the sidebars …, we understood that the Department didn't really want to discuss … the complexity of [the issues involving the DRB] in front of the colonels because, obviously, as it's been stated before, there was some issues with the DII colonel at the time. So we understood the complexity of having that conversation in front of all their colonels, and we were willing to take it to sidebar, and during the sidebar agreements, we agreed that we would negotiate it outside of formal contract negotiations, that if we couldn't come to an agreement, we could arbitrate it and that it would be memorialized in a … side letter.

Moon testified further, without contradiction,[4] that ISP chief negotiator Laurette Waters acknowledged at the bargaining table that the ISP had a duty to bargain over issues relating to the DRB and MASA. According to Moon, Waters stated that, if the parties could not reach agreement, "we could arbitrate it." In this regard, Bialorucki testified that "there were some comments from Ms. Waters and from the Lodge that acknowledged that the DRB would be resolved in a forum other than there at the table. That the option for interest arbitration was available if the parties couldn't come to an agreement."

While the Respondent denies that it agreed at the bargaining table that it had a duty to bargain over DRB procedures, that denial was based on general statements and not specific contradictions of the testimony offered by Bialorucki and Moon. First Deputy Director Davis testified, for example, that "[w]e definitely wanted one written policy that was going to be administered by our Legal Office," but that "it was the Department's position that the DRB or the proceedings that had been governed by the DRB were, basically, the Department's right, the

[4] Laurette Waters did not testify at the hearing.

management's right and procedures subject entirely to the Director's discretion." Testifying further, Davis stated that: "I have no recollection to bargain over the Disciplinary Review Board." And Jeffrey Hoecker, who at the time of his testimony on July 21, 2022 had been the Bureau Chief of the Office of Labor Relations for "about a year and a half,"[5] testified that "[Based on] discussions with Lieutenant Colonel Campbell and the First Deputy, it was … clear to me that we did not have any kind of agreement during the 2019 negotiations to … bargain the DRB process to a resolution or impasse … with possible arbitration if we couldn't come to an agreement."

Negotiations relating to the 2019-2023 collective bargaining agreement were concluded in October of 2019, and the CBA was signed by the parties around Veterans' Day in November, 2019. No further discussions were held regarding the DRB until around September of 2020.[6]

2. Post-CBA Discussions

By October of 2020, Lieutenant Colonel Campbell had assumed responsibility for the ISP's Office of Labor Relations. Upon assuming this responsibility, Campbell was given five projects by the Director and First Deputy Director. One of these involved the DRB, with respect to which he was directed to solicit input from all unions and attempt to get a consensus among all of the unions, the Legal Office, and the Office of the Director. First Deputy Davis testified, however, that "I did not give him direction … to reach a signed agreement. I gave him direction to seek input and guidance and try to build a consensus." Asked if the words "consensus" or "building a consensus" meant "simply receiving input and taking it into consideration," Davis testified that "[t]hat would be accurate."

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[5] Prior to joining the ISP, Hoecker was employed by Caterpillar and so was not with the ISP during the negotiations leading to the 2019-2023 CBA.

[6] DRB discussions were delayed because of contract ratification matters and the onset of the COVID-19, which was declared to be a pandemic by the World Health Organization in March of 2020.

Davis testified, however, that "what we wanted to do with the DRB was reduce it to writing." Testifying further, Davis stated that "[t]he problem with the DRB historically is that it was never written down. It didn't exist in a written format." Accordingly, written proposals regarding the DRB were exchanged with the Lodge and the Teamsters during negotiations, or discussions, that took place between September of 2020 and January of 2021.

While the Lodge contends that the ISP agreed to maintain the status quo during the period of the discussions regarding the DRB, First Deputy Davis testified that there was one change during that time. In late December of 2019 or early January of 2020, Davis testified, the Colonel of the Division of Internal Investigation was replaced as moderator of the DRB proceedings with the ISP's General Counsel. Otherwise, the record shows, the structure and functioning of the DRB remained unchanged between the end of the negotiations for the 2019-2023 CBA and July of 2021.

On September 11, 2020, the ISP, through Sergeant Bradley Widmer of the ISP's Office of Labor Relations, sent the ISP's proposed new DRB process to the Lodge. On October 13, 2020, the ISP, then represented by Lt. Col. Campbell had a "sit-down meeting" with the Lodge regarding the DRB. In that meeting, the Lodge indicated that it wanted the officer whose case was being heard by the DRB to have the option of presenting an oral or written statement to the DRB. The next day, Col. Campbell, sent the Respondent's second proposal regarding the DRB procedure to the Lodge, via Bruce Bialorucki, as well as to the Teamsters and the Command Council. The Lodge responded with proposed DRB procedures on October 19, 2020 and November 4, 2020. The ISP's next proposed procedure was sent to the Lodge on November 10, 2020, to which the Lodge responded on January 25, 2021. The ISP then responded to the Lodge's January 25 proposal on January 28, 2021.

In the meantime, the ISP, through Lt. Col. Campbell, was in discussions with the Teamsters regarding the DRB procedure. While Bialorucki testified that he was authorized by the other unions to represent them in discussions regarding the DRB, this statement was contradicted by Campbell, whose testimony I credit, and the record shows that the Teamsters' discussions with the ISP were to a substantial extent independent of the discussions between the ISP and the Lodge. The record shows, however, that the Lodge effectively represented the interests of the Command Council in their discussions with the ISP. As Campbell testified, it was clear by November 4 that "the Command Council [was] deferring to the FOP to represent them, and … the Teamsters were kind of on their own."

On October 14, 2020, the same day that the ISP sent its first proposal to the Lodge, Lt. Col. Campbell sent the ISP's first proposals to the Teamsters and the Command Council. The record shows that discussions with the Teamsters regarding the DRB were held on October 14 and that Lt. Col. Campbell sent an updated DRB process proposal, based upon those discussions, that same day. The second proposal to the Teamsters was sent on December 22, 2020 along with a copy of the November 10 proposal to the Lodge, which, Lt. Col. Campbell noted in the transmission email to the Teamsters, included "a lot of" the Teamsters' recommendations. Teamsters' representative James Poortinga then responded to the ISP proposal on December 24, 2020.

With the receipt of the Teamsters proposal of December 24, it became clear that the Teamsters and the Lodge did not agree completely about the procedures that should be followed before the DRB. One of the areas of dispute involved the issuance of a *Giglio* letter[7] to an officer

[7] A *Giglio* letter is a letter issued to a law enforcement officer whose credibility is at issue in a legal or disciplinary proceeding. Named after the U. S. Supreme Court's decision in *Giglio v. United States*, 450 U.S. 150 (1972), the letter advises the officer that, if he becomes a witness in a subsequent proceeding, such as a criminal case, he is obligated to disclose the credibility issue and that the law enforcement agency will turn over information concerning

involved in the disciplinary process. As Lt. Col. Campbell testified, "[T]he Teamsters were like, yes, we definitely want you to serve that letter during that time period, put our officer on notice; and the FOP was adamant, no, we don't want the letter at all."

The other primary difference between the Lodge and the Teamsters had to do with the role of the union representative during a DRB proceeding. As noted above, the DRB traditionally did not allow the union representative to be an active participant in the proceeding. But, as Campbell testified, "the Teamsters, even up to their last proposal, … wanted an active role during the DRB. They wanted to be able to ask questions about the investigation to … elicit the evidence that would support their officer. They also wanted to introduce … prior discipline cases. They wanted to almost turn that DRB process into a hearing."

The ISP and the Lodge exchanged proposals again in January of 2021, with the Lodge presenting a proposal on January 25 and the ISP responding on January 28. This exchange produced no agreement. According to Campbell, he had a telephone conversation with a Lodge representative shortly thereafter, during which Campbell was informed that the Lodge no longer wished to deal with him but intended to go straight to the Director's office. Campbell testified that, as a result, "we didn't even push out this [latest ISP] proposal to the Teamsters at that point."

The record reveals that no further substantive conversations, except for small "where are we" conversations between Lt. Col. Campbell and the Teamsters, took place prior to July of 2021. On or about July 13, 2021, representatives of the ISP met with Lodge representatives via Webex and explained modifications that were to be implemented with respect to the DRB procedure. On July 16, 2021, Bruce Bialorucki sent an email message to Office of Labor Relations Bureau Chief

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that issue to the relevant authority, such as the prosecutor's office. That information then can be used by the defense in the cross-examination of the testifying officer.

Jeffrey Hoecker in which Bialorucki said that "I have been advised that the Department [has] unilaterally implemented changes to the Disciplinary Review Board. It appears that these unilateral changes are impacting bargaining unit members as early as next week. [T]he Lodge would stay any changes and request to continue to negotiate over the proposed changes prior to their unilateral implementation. I know you were not present, but this was the Lodge's agreement with the First Deputy Davis and Laurette Waters during side bar discussions and the negotiations of Article 4 in the 2019 contract negotiations."

On July 19, 2021, Hoecker responded by email to Bialorucki attaching a copy of the ISP's new "Sworn Discipline Procedure." In his message, Hoecker stated that "[m]y understanding is that the DRB process was unilaterally implemented by the Department several years ago. The Department does not believe there is a duty to bargain over the recent modifications." The message went on to state that the DRB meeting with Trooper Wesley Van Hook concerning possible disciplinary action against Van Hook would proceed under the new format on July 21, 2021, at 10:00 a.m.

D. <u>The New Sworn Discipline Procedure</u>

Although many of the procedures discussed with the unions were preserved, there were significant changes in those procedures. The most salient of the changes to the DRB procedure effected by the July, 2021 implementation were the elimination of the Disciplinary Review Board itself and the elimination of the opportunity for an officer charged with a disciplinary offense to appear in person before the DRB. The DRB was replaced by a recommending body consisting of the First Deputy and the Deputy Director of the Division to which the accused is assigned and the personal appearance opportunity was replaced by the provision of an opportunity for the accused to provide a written rebuttal statement "for the Director's consideration."

Following is a summary of the new procedure:

1. The Division of Internal Investigation ("DII") conducts an investigation upon the filing of a CADMF.

2. For a second charge at disciplinary matrix level 4 or above, including a case in which a MASA offer is declined by the officer, charges are submitted to the Legal Office ("Legal") for review.

3. Charges sustained in the investigation are delivered to the accused.

4. A pre-disciplinary meeting is held within 10 days after charges are served, unless mutually agreed otherwise.

5. Representatives of Legal, the Office of Labor Relations ("Labor"), and the union representing the accused ("the union") are to be present at the pre-disciplinary meeting, along with the accused. At this meeting, the accused is advised of the nature of the discipline, the facts and evidence supporting the charges (including a written summary), the *Giglio* implications, if applicable, and the disciplinary exposure as determined by the disciplinary matrix. It is at this meeting that the accused is advised of his opportunity to provide a written rebuttal statement to the charges against him. If the accused opts to provide such a rebuttal statement, the procedure provides that the statement will be considered only in determining the appropriate level of discipline for the offense in question and cannot be used as evidence in any future disciplinary proceeding, nor can it be used as the sole basis for a new investigation of the officer. A union representative or counsel may assist the officer in writing the rebuttal statement, which will be provided to the Director for his consideration.

6. A written rebuttal statement, if any, must be provided to the Legal Office no later than seven days following the pre-disciplinary meeting, with an extension of no more than five days available for good cause.

7. The accused's work unit commander is to provide a written performance history and any aggravation/mitigation factors based on performance or prior discipline to Legal within seven business days of the pre-disciplinary meeting.

8. When all documents are collected, they are disseminated to the Director, First Deputy Director, Deputy Director of the Division to which the accused is assigned (the "relevant Deputy"), the accused's union representative, the officer, Legal, Labor, and the Equal Employment Opportunity Office ("EEO"), if necessary.

9. Upon collection of all necessary documents, a meeting is scheduled with the Director, the First Deputy, the relevant Deputy, the Chief or Deputy Chief Legal Counsel, and a representative from Labor to discuss relevant materials.

10. Legal then outlines each charge, its elements, and the facts tending to demonstrate that the elements have been proven. Legal then identifies the level of each charge, the disciplinary parameters based on the matrix, and the factors that can be considered in aggravation or mitigation. If the accused has declined a MASA settlement, that is not a factor in determining the appropriate level of discipline.

11. The Director will then seek input from the First Deputy and the relevant Deputy, who will then provide recommendations as to whether the evidence supports the charges and as to the appropriate level of discipline. Discipline recommendations are limited to less than 30 days, 30 days or more, or termination. No recommendations for additional charges are made.

12. The Deputy Director of DII participates in the meeting if requested by the Director's Office but does not make any recommendations as to charges or levels of discipline.

13. A Deputy Director who has a conflict of interest is to abstain from making a recommendation as to charges or level of discipline but still is to be present at the meeting to answer any questions. Criteria for determining a conflict of interest are listed, including, but not limited to, "[a]ny circumstance where a Deputy Director's impartiality may be reasonably questioned due to the appearance of a conflict of interest." The Chief or Deputy Chief of the Legal Office is to provide guidance as to whether recusal is warranted when questions arise regarding the necessity for recusal.

14. After the meeting is completed, the Director may confer with Legal to finalize charges and appropriate discipline. Legal and/or Labor also may attempt to reach agreement to include reduction of charges, dismissal of charges, or specific suspension terms (such as an agreement relating to the accused's obtaining mental health, substance abuse, or other services as part of a mutually agreed-upon settlement).

15. Matters that are referred to the Merit Board (discipline based on a second Level 4 charge or higher) are to be referred in accordance with established procedure.

16. Following the conclusion of the disciplinary process in a particular case, all Deputy Directors and the charged officer are to be notified of the final disciplinary determination issued by the Director.

The record is clear that the elimination of the DRB and the elimination of the person appearance opportunity were never proposed to or discussed with the Lodge prior to the unilateral implementation of the new procedure. Other provisions of the new procedure, such as the issuance of a *Giglio* letter where appropriate, and the role of the union in assisting in the defense of the

accused officer, were discussed with both the Lodge and the Teamsters, although without agreement.

E. Joint Motion To Supplement The Record And Stipulation Concerning Remedy Sought

In their Joint Motion to Supplement the Record and Stipulation Concerning Remedy Sought, the Parties state, in pertinent part, that:

- Since implementation of the Sworn Discipline Procedure on or about July 13, 2021, as set forth in hearing in Respondent's Exhibit 6, six members of the Unit have gone through the disciplinary procedure and their cases have been referred to the Merit Board for a determination of discipline.
- Since implementation of the Sworn Discipline Procedure, the Parties have, by agreement, resolved by settlement agreement four of the six disciplinary cases referenced in Respondent's Exhibit 6. All four of those cases involved suspensions in excess of 30 days that have been approved by the Merit Board. One of the cases that was not resolved by agreement of the Parties and that did not result in termination remains pending before the Merit Board.
- If it is determined that the Respondent has violated Sections 10(a)(4) and (1) of the Act, as alleged in the Complaint, and a remedy of returning to the *status quo ante* is ordered, "[t]he Parties agree that a vacatur of settlements that have been approved by the Merit Board or are waiting for approval would be antithetical to the purposes of the Act and the mutual desires of the Parties."
- The Charging Party, therefore, has agreed to withdraw its request for a return to the *status quo ante* with respect to the disciplinary cases referenced in Respondent's Exhibit 6, as well as any other case that has been processed pursuant to the Sworn

Discipline Procedure and decided by the Merit Board from July 13, 2021 to March 3, 2023. This withdrawal includes cases that have been settled by the Parties and approved by the Merit Board, as well as other cases with respect to which settlements are pending or are waiting as of March 3, 2i023, for the Board's approval.

- The Charging Party's withdrawal does not include cases that have been processed under the Sworn Discipline Procedure and that, as of March 3, 2023, are (a) awaiting a decision by the Director for issuance of either a suspension of 30 days or less or disciplinary charges that are to be pursued by the ISP before the Merit Board or are (b) pending before the Merit Board and have not been decided (other than matters in which a settlement is pending and waiting for the Merit Board's approval). With regard to these cases, the Charging Party "expressly reserves the right to request a return to the *status quo* that existed prior to July 13, 2021, and a stay on further processing of such cases until the Parties have had an opportunity to bargain in good faith over a new disciplinary process."
- The Parties are in agreement that the Charging Party's withdrawal of its request for a return to the *status quo ante* with respect to the cases and subject to the limitations set forth above, is not to be "construed as an admission by either Party for any purpose, shall not be used against either Party for any purpose, and will be without prejudice to either Party's position with respect to the ILRB's authority to enter an order requiring the rescission of discipline issued by the Merit Board as a result of disciplinary recommendations made pursuant to the … Sworn Discipline Procedure."

IV. DISCUSSION AND ANALYSIS

The Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally implemented modifications to the disciplinary recommendations process without bargaining over the mandatory elements of those modifications to impasse or agreement. The Respondent also violated Sections 10(a)(4) and (1) when it failed to bargain over the effects of that part of the unilaterally implemented disciplinary recommendations process that involved the elimination of the Disciplinary Review Board itself. The remedy for these violations will be in accordance with the parties' Joint Motion to Supplement the Record and Stipulation Concerning Remedy Sought.

A. Legal Standards

Section 7 of the Act requires that a public employer and the exclusive representative of an appropriate unit of public employees have the duty to bargain collectively over mandatory subjects of bargaining, generally described by the term "wages, hours, and terms and conditions of employment." *City of Decatur v. American Federation of State, County and Municipal Employees, Local 268*, 122 Ill.2d 353, 362 (1988). A public employer violates that duty, and therefore Sections 10(a)(4) and (1) of the Act, if it makes a unilateral change to a mandatory subject of bargaining without giving prior notice to and an opportunity to bargain with the exclusive representative. *Amalgamated Transit Union v. Illinois Labor Relations Board*, 2017 IL App (1st) 160999, ¶ 35; *County of Cook v. Licensed Practical Nurses Association of Illinois*, 284 Ill.App.3d 145, 155 (1st Dist. 1996) (*"County of Cook"*); *Chicago Transit Authority*, 14 PERI ¶ 3002 (IL LRB 1997).

In order to determine whether an employer's action or decision constitutes a mandatory subject of bargaining or whether it falls within the inherent managerial authority of the employer, the Illinois Supreme Court has established a three-part test. *Central City Education Association v. Illinois Educational Labor Relations Board,* 149 Ill.2d 496 (1992) ("*Central City*"); adopted by

the Supreme Court for cases arising under the Illinois Public Labor Relations Act in *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191 (1998) (*"City of Belvidere"*).

The first part of the *Central City* test asks whether the matter concerns wages, hours, or terms and conditions of employment. *Central City*, at 523. If the answer to that is in the negative, the inquiry ends and the employer has no duty to bargain over the subject. If the answer is in the affirmative, the second part of the test asks whether the matter also is one of inherent managerial authority. *Id.* If the answer to this second question is in the negative, then the inquiry ends, and the matter is a mandatory subject of bargaining. *Id.* If the answer to the second question is in the affirmative, then the Board must weigh the benefits that bargaining would have on the decision-making process against the burdens that bargaining would impose on the employer's management authority. *Id.* If the benefits of bargaining outweigh its burdens, then the matter is a mandatory subject of bargaining; otherwise, the matter is not a mandatory subject of bargaining. *Id.; City of Belvidere, 181 Ill.2d at 206.*

Even if a matter is determined not to be a mandatory subject of bargaining, however, the employer still may be required by the Act to bargain over the impact or effects of the employer's decisions or actions concerning that matter. Section 4 of the Act provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees," although employers "shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives." *County of Cook; Chief Judge of the Circuit Court of Cook County*, 31 PERI ¶ 114 (IL LRB-LP 2014). Ordinarily, when an

employer's decision has a direct impact on employees' terms and conditions of employment, the employer is not free to implement its decision without bargaining its effects. *State of Illinois, Department of Central Management Services,* 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd sub nom. American Federation of State, County and Municipal Employees v. State Labor Relations Board,* 190 Ill. App. 3d 259 (1st Dist. 1989); *Village of Glenwood,* 32 PERI ¶ 159 (IL LRB-SP 2016).

B. Application Of The Law To The Facts

1. The Change in the Disciplinary Investigation Process Involves "Wages, Hours, and Terms and Conditions of Employment."

A matter involves "wages, hours, and terms and conditions of employment" if it (a) involves a departure from previously established operating practices; (b) effects a change in the conditions of employment, or (c) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for members of the bargaining unit. *County of Cook v. Illinois Labor Relations Board,* 2017 IL App (1st) 153015 ¶ 46 (citing *Chicago Park District v. Illinois Labor Relations Board, Local Panel,* 354 Ill. App. 3d 595 (1st Dist. 2004)); *International Brotherhood of Teamsters, Local 700 v. Illinois Labor Relations Board, Local Panel and County of Cook,* 2017 IL App (1st) 152993 ¶ 33. While a change in working conditions does not violate the Act unless the change is material, substantial, and significant, *Village of Westchester,* 16 PERI ¶ 2034 (IL LRB-SP 2000); *City of Peoria,* 11 PERI ¶ 2007 (IL SLRB 1994), the Board has observed that "as an axiomatic precept of labor relations law, the negotiability of discipline and discharge standards and procedures is well established." *County of Williamson,* 15 PERI ¶ 2003 (IL SLRB 1999).

With more specific relevance to this case, the Board has ruled that an employer changes the *status quo* of employees' terms and conditions of employment when it substantially alters the method by which it investigates misconduct and the character of proof upon which it relies to

impose discipline. *City of Chicago (Department of Police),* 34 PERI ¶ 20 (IL LRB-LP 2021); *Chicago Transit Authority,* 33 PERI ¶ 61 (IL LRB-LP 2016). Here there can be no question but what the method by which the ISP investigates misconduct has been substantially altered and that that alteration affects employees' terms and conditions of employment.

The ISP argues that the changes effected by the new Sworn Discipline Procedure are *de minimis.* The Lodge contends, however, that there were four "material, substantial, and significant" changes to the pre-existing disciplinary procedures. First, the Lodge asserts, "accused officers no longer have the benefit of a 5-member panel of disinterested colonels." Second, according to the Lodge, "accused officers are deprived of the benefits associated with appearing in-person before the DRB." Third, the Lodge contends, the new procedure "mandates application of the ISP's disciplinary matrix." Fourth, according to the Lodge, "participation in the 'Sworn Disciplinary Procedure' is, on its face, compulsory." These departures from past practice, the Lodge asserts, "alter both the scope of the discipline and the method for determining the level of the discipline to be applied."

While it is clear from the record that the Sworn Discipline Procedure adopts many of the procedural features that the parties agreed upon in post-CBA discussions, there are significant departures. The most significant of these is the replacement of the DRB with a smaller core of management officials who are responsible for making disciplinary recommendations to the Director. The Lodge comments that the result of the change is that "[t]he accused officer will no longer get the benefit of a vast array of experience represented by the colonels from each of the Department's divisions." As a result, the Lodge comments, "the ISP has effectuated a change that is akin to replacing a jury with a judge."

The Lodge contends that the elimination of the DRB "constitutes a material and substantial change in the terms and conditions of employment, particularly in view of the fact that historically, the Director has almost always accepted the recommendations of the DRB." While, as noted below, the ISP's decision to replace the DRB with a smaller management group is a matter falling within the category of the Employer's organizational structure, and therefore is not a mandatory subject of bargaining, *Administrative Office of Illinois Courts v. State and Municipal Teamsters, Chauffeurs and Helpers Union,* 167 Ill.2d 180, 193 (1995); *County of Perry and Sheriff of Perry County,* 19 PERI ¶ 124 (IL LRB, 2003) (*"County of Perry"*), it nevertheless is a significant change that substantially affects employees' terms and conditions of employment and that triggers the Employer's duty to bargain over the effects of its decision, if not over the decision itself.

Second, the change from allowing an accused officer to appear before the management group responsible for making disciplinary recommendations to the Director is both a significant change and a change in a matter falling within the scope of mandatory subjects of bargaining. While it can be argued that a written presentation is superior in some respects to an oral presentation, in that a written presentation is wholly within the control of the presenter and avoids the risk of surprise questions from the members of the DRB, it is also true that a personal appearance allows the accused to give an in-person demonstration of remorse and contrition and thereby make an arguably more compelling case for excusing the alleged offense or mitigating the contemplated discipline. Moreover, even if it were true that the change is beneficial to an accused officer, that fact does not negate the fact of the change or make it any less material or substantial. *Village of North Riverside,* 36 PERI ¶ 56 (IL ILRB-SP 2019).

As to the third major change identified by the Lodge, it is not entirely clear whether application of the ISP's disciplinary matrix is mandated by the new procedure. But the record is

clear that the DRB did, at times, deviate from that matrix in the imposition of discipline, and Lt. Col. Campbell's testimony suggested that such deviation occurred, when it did occur, as a result of the impression made by the officer during his appearance before the Colonels. Therefore, whether or not the element of discretion has been removed from the application of the disciplinary matrix, the change that occurred was a material change in working conditions.

The Lodge's fourth contention is not supported by the record, in that the Sworn Disciplinary Procedure clearly states that the accused officer "will … be advised in writing of *the opportunity* to present a written rebuttal statement to the charges," and then clearly refers to the accused officer's *option* to provide such a statement. Nevertheless, the Lodge's first three contentions amply support the proposition that the changes in the disciplinary investigation procedure effected by the adoption of the Sworn Discipline Procedure affect employees' terms and conditions of employment. The first part of the *Central City/City of Belvidere* test is therefore met.

2. The Discplinary Investigation Process Also Involves The Employer's Inherent Managerial Authority

Rules of conduct and disciplinary procedures concern a matter of inherent managerial authority if the employer shows that those rules and procedures are necessary for the employer to direct its employees, protect the core interests of the employer's enterprise, or ensure the integrity of government. *City of Springfield (Office of Public Utilities)*, 9 PERI ¶ 2024 (1993). In this case, the ISP observes, the Director has authority under the Illinois State Police Act to issue discipline or to refer disciplinary cases to the Merit Board. In order to assist him in carrying out his statutory authority, the Director historically has utilized a unilaterally established board of management officials in the form of the DRB to provide him with disciplinary recommendations. Until it was disbanded, therefore, the DRB existed as an adjunct to the Director's statutory mission.

The record establishes that the DRB was disbanded because of the Director's dissatisfaction with the performance of its management responsibilities, particularly as they related to the role of the Deputy Director of the DII, a dissatisfaction that evidently was shared, at least to some extent, by the Lodge. Accordingly, the replacement of the DRB with a smaller core of management officials was an action that was deemed necessary for the protection of the core interests and to ensure the integrity of the Office of the Director. This action, therefore, concerned a matter of inherent managerial authority, thereby moving the analysis to the third part of the *Central City/Belvidere* test.

3. As to Mandatory Subjects of Bargaining, the Benefits of Bargaining Outweigh the Burdens

With respect to the third part of the *Central City/Belvidere* test, the ISP contends that the burdens of bargaining outweigh the benefits. "[T]he DRB process," the ISP asserts, "is a process for the Director – not the employee – to understand alleged misconduct and issue or recommend discipline." Because of this, the ISP contends, "[a]llowing the Union to infringe on the Director's authority and process for determining discipline will fundamentally change the manner in which the Director conducts the policing of his own employees."

While the record does reflect that several of the changes were implemented to provide the Director with better information[8] in making disciplinary decisions, the record also demonstrates that many of the revisions of the disciplinary process ultimately adopted by the ISP were adopted after and as a result of the discussions between the ISP and the Lodge and the Teamsters between September of 2020 and January of 2021. And while the ISP contends that the discussions were

[8] First Deputy Davis testified, for example, that the DRB procedure sometimes produced a disciplinary recommendation on a single sheet of paper.

not bargaining and that, indeed, the ISP had no duty to bargain over the disciplinary recommendations procedure, the record clearly shows, as Lodge President Moon testified, that the exchange of proposals and counter-proposals that took place during the September – January period constituted "bargaining" as that term is commonly understood. The record also establishes that the fact that the ISP was negotiating with both the Lodge and the Teamsters was not an insurmountable obstacle in reaching agreement with the Lodge on a disciplinary recommendations procedure applicable to Lodge-represented officers.

While the evidence establishes that it was the Lodge that communicated to the ISP in January of 2021 that it believed that the discussions with Lt. Col. Campbell had achieved all that could be achieved at that level and that it wished now to move the discussions to the next level, there is insufficient evidence from which to conclude that the parties were at impasse or that the Lodge had waived its reliance on the promise of Laurette Waters that, in the absence of agreement, the matter could be taken to interest arbitration. Rather, the record establishes that the Lodge was relying on the ISP's promise to maintain the *status quo* until the parties could reach agreement on the disciplinary investigations procedure. So, according to Lodge President Moon, "I was really under no time crunch to get it done…."

There is no evidence that the ISP was "under a time crunch," either. Rather, the evidence suggests that the ISP had concluded that it received all the "input" it was going to get and was under no obligation to bargain further. In any event, the ISP's unilateral implementation of the Sworn Discipline Procedure ended the bargaining at a time when there were still bargainable issues on the table, including the personal appearance/written rebuttal issue and the *Giglio* letter issue.

Given the fact that the Lodge and the ISP engaged in bargaining over the disciplinary recommendations procedure for approximately four months, and given the fact that there was no

urgency on the part of either party to conclude the bargaining, there is no evidence that further bargaining would have been a substantial or insurmountable burden. On the other hand, the likelihood that the remaining issues falling within the scope of mandatory bargaining would be resolved, either by means of further bargaining or through interest arbitration, is substantial. Accordingly, the benefits of bargaining outweigh the burdens, and the application of the third part of the *Central City/Belvidere* test results in a determination that the ISP violated the Act by unilaterally implementing the Sworn Discipline Procedure in July of 2021.

4. The Composition of the Disciplinary Review Board is not a Mandatory Subject of Bargaining

As noted above, the Disciplinary Review Board was a unilaterally established body of management officials, holding the rank of Colonel and/or the title of Deputy Director, that had the function of conducting such procedures as it or the Director deemed necessary in order to formulate recommendations to the Director concerning officer discipline. As part of the process of adopting a new disciplinary recommendations procedure, the Office of the Director reorganized the body charged with making those recommendations, eliminating the board of Colonels and replacing that board with a smaller advisory group. The evidence in this case establishes that this was a legitimate reorganization and thus a matter of inherent managerial authority under the Act.

The Board and the courts have ruled that:

"In order to establish that an employer's action was a legitimate reorganization and, as such, a matter of inherent managerial authority, the employer must show:

> (1) that its organizational structure has been fundamentally altered; (2) that the nature or essence of the services provided has been substantially changed; or (3) that the nature and essence of a position has been substantively altered such that the occupants of that position no longer have the same qualifications, perform the same functions, or have the same purpose or focus as had the previous employees." *American Federation of State, County and Municipal Employees, Council 31,* 17 PERI ¶ 2046 (ISLRB 2001).

Amalgamated Transit Union v. Illinois Labor Relations Board, 2017 IL App (1st) 160999.

In this case, the evidence establishes that the organizational structure of the Director's disciplinary advisory board was substantially and fundamentally altered, eliminating the participation of the Colonels and replacing that group with an advisory body consisting of the First Deputy Director and the Deputy Director in charge of the unit to which the charged officer is assigned. The unwritten rules and procedures were replaced with a written protocol within the Office of the General Counsel. Asked to explain the value of the new protocol, First Deputy Davis testified that the new procedure removes an "antagonistic vibe" from the proceedings before the advisory body by eliminating opportunities for colonels from other divisions to engage in "antagonistic behavior" by way of "advocating for their specific perspectives."

The evidence thus shows that the change in the composition of the Director's disciplinary recommendations advisory body involved the restructuring of that body so as to eliminate the participation of some members of the Director's management team whose behavior in the past was deemed antithetical to the Director's management objectives. This restructuring decision clearly involves the Employer's right to determine its organizational structure and, hence, is not a mandatory subject of bargaining. *County of Perry.*

5. The Employer Nevertheless had a Duty to Bargain Over the Effects of Its Restructuring Decision

The Act is very clear. It provides in Section 4 that "[e]mployers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees." But it goes on to provide that "[e]mployers, however, shall be required to bargain collectively with

regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives."

In this case, the organizational change involving the disbanding of the DRB, while it does not constitute a mandatory subject of bargaining, is nonetheless a policy matter "directly affecting wages, hours and terms and conditions of employment." And the evidence establishes that the Lodge made a request to bargain over the Sworn Discipline Procedure, a request that necessarily encompassed the issue of the composition of the disciplinary recommendations grouping. The evidence further shows that the ISP rejected the request with the statement that "[t]he Department does not believe there is a duty to bargain over the recent modifications." At no time, however, did the ISP engage in bargaining over the impact, or effects, of the decision to implement the new procedure. Accordingly, in addition to having violated the Act by unilaterally implementing, and thus failing to bargain in good faith over the mandatory subjects of bargaining encompassed by the Sworn Discipline Procedure, the ISP also violated the Act by refusing to bargain over the effects of the elimination of the DRB and its replacement with a smaller advisory group.

The Act mandates that effects bargaining, like decisional bargaining, must take place within a meaningful time before the employer's implementation of the employer's decision on the subjects in question. *City of Chicago (Department of Police),* 38 PERI ¶ 20 (IL LRB-LP, 2021); *County of Cook (Juvenile Detention Center),* 14 PERI ¶ 3008 (IL LRB 1998); *Chicago Transit Authority,* 14 PERI ¶ 3002 (IL LLRB, 1997). That did not happen here. Rather, the Sworn Discipline Procedure was implemented before impasse or agreement was reached on the mandatory elements of the procedure, and the Lodge was given no opportunity to bargain about the effects of that implementation. These actions were clear violations of the Act.

V. CONCLUSIONS OF LAW

The Respondent violated Sections 10(a)(4) and (1) of the Act by failing and refusing to bargain in good faith over the implementation of the mandatory elements of the Sworn Discipline Procedure and over the effects of the change in organizational structure that was adopted as part of that Procedure.

VI. REMEDY

Ordinarily, the remedy for the Respondent's violations would be a return to the *status quo ante*, which, in this case, would include an order vacating all disciplinary decisions made by the Director and the Merit Board during the pendency of these proceedings before the Illinois Labor Relations Board, including Merit Board decisions approving negotiated settlements of disciplinary cases. Recognizing that such a remedy would have adverse consequences for both parties, the Parties submitted their Joint Motion to Supplement the Record and Stipulation Concerning Remedy Sought, set forth in Section III. E. of this Recommended Decision and Order. I agree with the Parties that an order vacating disciplinary actions that were the product of negotiated settlements would be contrary to the purposes of the Act and that the modification of the remedy that otherwise would be imposed in this case is in order. Accordingly, the Recommended Order, set forth below, incorporates the Parties' stipulations concerning the remedy to be imposed.

VII. RECOMMENDED ORDER

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

1) Cease and desist from:

    a. Failing and refusing to bargain collectively in good faith with the Union, Illinois Troopers Lodge No. 41, Fraternal Order of Police, by unilaterally implementing

those provisions of its Sworn Discipline Procedure that constitute mandatory subjects of bargaining.

b. Failing and refusing to bargain collectively in good faith with the Union, as mandated by Section 4 of the Act, over the effects of those elements of its Sworn Discipline Procedure that constitute a change in the organizational structure of the Employer.

c. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.

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

a. At the request of the Lodge, rescind the implementation of the Sworn Discipline Procedure.

b. Bargain in good faith with the Lodge, to agreement or impasse, over the mandatory elements of the Sworn Discipline Procedure.

c. In the event of a failure to agree with the Lodge concerning the mandatory elements of the Sworn Disciplinary Procedure, proceed upon request of the Lodge to interest arbitration with respect to those mandatory elements.

d. Bargain in good faith with the Lodge, to agreement or impasse, over the effects of the change in organizational structure that resulted in the elimination of the Disciplinary Review Board and its replacement with a smaller advisory body.

e. Except as provided by the Stipulation of the Parties, rescind all discipline issued by the Director of the Illinois State Police or the State Police Merit Board pursuant to the Sworn Discipline Procedure from July 13, 2021 to the date of this Order. As provided by the Stipulation of the Parties, disciplinary cases that have been settled

by the Parties and have been approved by the Merit Board, as well as other cases in which settlements are pending or waiting for the Board's approval as of March 3, 2023, are exempted from this rescission order.

f. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will make reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

g. Notify the Board in writing, within 30 days from the date of this Decision, of the steps the Respondent has taken to comply with this Order.

VIII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 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 Recommended Decision and Order. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 N. LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and to the Board's designated e-mail address for electronic filings, at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the

Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. All filings 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 listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on March 27, 2023

Donald W Anderson

_____

Donald W. Anderson
Administrative Law Judge

Illinois Labor Relations Board
160 N. LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. and name: S-CA-22-008 (Illinois Troopers Lodge No. 41 and State of Illinois (Department of Central Management Services and Illinois Department of State Police)

The Illinois Labor Relations Board, State Panel, has found that the Illinois Department of State Police ("the ISP") 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 ("the Act") gives you, as an employee, these rights:

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with Illinois Troopers Lodge No. 41 ("the Lodge") by failing and refusing to bargain over mandatory elements of the ISP's Sworn Discipline Procedure and by failing and refusing to bargain over the effects of the implementation of those elements of the Sworn Discipline Procedure that entail matters of inherent managerial authority.

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

WE WILL take the following affirmative action to effectuate the policies of the Act:

- At the request of the Lodge, rescind the implementation of the Sworn Discipline Procedure.
- Bargain in good faith with the Lodge, to agreement or impasse, over the mandatory elements of the Sworn Discipline Procedure.
- In the event of a failure to agree with the Lodge concerning the mandatory elements of the Sworn Disciplinary Procedure, proceed upon request of the Lodge to interest arbitration with respect to those mandatory elements.
- Bargain in good faith with the Lodge, to agreement or impasse, over the effects of the change in organizational structure that resulted in the elimination of the Disciplinary Review Board and its replacement with a smaller advisory body.
- Except as provided by the Stipulation of the Parties, rescind all discipline issued by the Director of the Illinois State Police or the State Police Merit Board pursuant to the Sworn Discipline Procedure from July 13, 2021 to the date of the Order requiring this action. As provided by the Stipulation of the Parties, disciplinary cases that have been settled by the Parties and have been approved by the Merit Board, as well as other cases in which settlements were pending as of March 3, 2023, are exempted from the rescission Order.
- Post, at all places where notices to employees are normally posted, copies of this Notice, with such posting to be maintained for a period of 60 consecutive days, with notification to the Illinois Labor Relations Board of the steps we have taken to comply with its Order.

Illinois Department of State Police

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(Employer)

Dated:

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
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