STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Fraternal Order of Police, Lodge #7,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-17-037
	)	L-CA-20-024
City of Chicago (Department of Police),	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

The above-referenced cases involve two Recommended Decisions and Orders (RDO) issued by Administrative Law Judge (ALJ) Anna Hamburg-Gal resolving unfair labor practice charges filed by Charging Party Fraternal Order of Police, Lodge #7 (Union) against Respondent City of Chicago (Department of Police) (City) related to body worn cameras (BWC) for bargaining unit members. In Case No. L-CA-17-037, ALJ Hamburg-Gal issued her January 2, 2018 RDO (RDO I) finding the City failed to bargain the effects of the 2017 expansion of its BWC Pilot Program. Three years later, ALJ Hamburg-Gal issued an RDO on January 5, 2021 (RDO), resolving the charge filed in Case No. L-CA-20-024 by finding that the City violated Sections 10(a)(4) and 10(a)(1) when it unilaterally implemented its Last, Best, Final Offer on the effects of the BWCs as well as when it unilaterally increased buffering times on the BWCs without first bargaining over the effects. For both cases, the ALJ recommended limited remedies. The cases were consolidated for the filing of exceptions at the parties' joint request. The City timely filed exceptions and the Charging Party timely responded.

Upon review of the RDO, the record, the City's exceptions, and the Union's responses to those exceptions, we accept the ALJ's findings and recommendations that the City violated Sections

10(a)(4) and 10(a)(1) of the Act in both Case Nos. L-CA-17-037 and L-CA-20-024, and adopt the entirety of RDO I and RDO II as decisions of the Board for the reasons discussed below.

I. DISCUSSION

A. Background

The ALJ includes comprehensive and detailed findings of fact for both cases in her RDOs. As such, the following summarizes those factual findings for context and background.

Case No. L-CA-17-037—RDO I

In January 2015, the City and the Union negotiated and entered into a Letter of Understanding (LOU) memorializing their rights and obligations regarding the BWC Pilot Program and any expansion of that program. On January 20, 2015, the City implemented the first phase of the BWC Pilot Program in the 14th District and issued a department notice in on December 31, 2015, that it would be continuing the BWC Pilot Program. In 2015, the General Assembly passed Senate Bill 1304, which included the Law Enforcement Officer-Worn Body Camera Act (WBC Act). The WBC Act became effective in January 2016. It describes when officers must activate and deactivate cameras, specifies the retention periods for BWC recordings, and limits the use of recordings in disciplining officers to incidents involving misconduct, use of force, encounters that could lead to investigations under the Uniform Peace Officers' Disciplinary Act, or as corroborating evidence of other misconduct.

In Spring of 2016, the City expanded the BWC Pilot Program to six additional districts. After technical issues with the cameras were resolved, in December 2016, the City announced its "Expedited Expansion of Body Camera Program" advising that district technology upgrades and physical expansion would begin in January 2017 with a full rollout across all districts to be completed by the end of 2017. On December 28, 2016, an attorney for the Union sent an email to the City's representatives stating that the Union recently learned of the City's "unilateral decision to expedite

the expansion of the [BWC program] across all patrol districts, without any prior notice to the [Union] or the ability to engage in any meaningful opportunity to bargain." After that email, the parties engaged in further correspondence, meetings, and other communications from January to April 2017 regarding BWCs. On January 25, 2017, the Union filed the charge in this case. The Executive Director issued a partial dismissal, a partial deferral, and a complaint for hearing on the remaining allegations.

Case No. L-CA-20-024—RDO II

As described above, by December 2017, officers in all patrol districts were outfitted with BWCs. Officers assigned BWCs must turn on the system when they start work at which time the device enters buffering mode. When the system enters buffering mode, the device captures video footage without audio, but does not store the captured footage. The officer must activate the system at the beginning of a law-enforcement-related encounter to store footage and to capture both audio and video. Once the officer activates the system, the device additionally stores a recording of the 30 seconds of the video footage captured prior to the user's activation of the camera. It does not capture audio during this 30-second period. After the officer completes his assignment, he presses a button to return the device to buffering mode.

In October 2017, the parties met to discuss impending negotiations over a successor agreement at which time the parties divided the subjects of negotiations among committees including the disciplinary subcommittee, which was to address issues related to discipline. On November 22, 2017, the parties requested a mediation panel from the Board. Then a few months later, on January 2, 2018, ALJ Hamburg-Gal issued RDO I finding that The City violated the Act when it failed and refused to bargain over the effects of the 2017 expansion of the BWC Pilot Program and ordering the City to bargain with the Union over the effects of the 2017 expansion of the program as it related to officer safety and/or discipline.

Shortly after RDO I issued, Arbitrator Dan Nielson issued an arbitration award related to the deferred allegation in Case No. L-CA-17-037. The issue he considered was "whether [the City] violated the collective bargaining agreement and/or the parties' letter of understanding [LOU] when it imposed discipline on bargaining unit members in relation to BWCs." Arbitrator Nielson focused his award on the City's imposition of discipline for the loss of cameras because that was the infraction for which the City had actually imposed discipline and concluded that The City violated neither the parties' collective bargaining agreement nor the LOU by imposing such discipline. He noted that "officers have long been subject to at least minor discipline for equipment related offenses, including loss of equipment" and concluded that there was no evidence the parties intended BWCs to be treated differently from other equipment.

On February 6, 2018, the City's counsel sent correspondence to the Union's counsel outlining a proposed agreement to waive the filing of exceptions to RDO I and to engage in effects bargaining as contemplated by that RDO. He expressed his belief that the Union desired effects bargaining over the 2017 BWC expansion to take place during negotiations for a successor collective bargaining agreement and asserted the City's wishes to reach an agreement on the effects of the BWC program expansion before reaching agreement on a successor contract. The Union's counsel responded, disputing his understanding of the Union's intent and asserted that although the Union would prefer to negotiate over the effects of the BWCs as part of negotiations over the entire contract, the Union would be willing to enter into a tentative agreement apart from any formal agreement on a successor agreement, and that it would allow the City to implement it before reaching agreement of the entire contract. The City's counsel replied, emphasizing that the Union's participation in effects bargaining now would not be deemed a waiver of its right to present proposals regarding BWCs in successor agreement negotiations and proposing that the parties begin effects bargaining immediately.

On April 26, 2018, the parties met for their first bargaining session, with both parties presenting proposals to modify provisions of the expired contract. The Union's proposals addressed BWCs and disciplinary matters, but the City's proposals did not. After the April 26, 2018 initial bargaining session, the City issued Special Order S03-14 on April 30, 2018, which addressed how the Department would assign BWCs, explained details about their operation, and described who was authorized to view BWC recordings. Relevant to this case, Special Order S03-14 contained this specific term: "the Department does not intend to utilize the BWC to discipline members for isolated minor Department rule infractions consistent with the Illinois Officer-Worn Body Camera Act. . .and the Department directive titled Complaint and Disciplinary Procedures." It further specified that (1) BWC would not be activated or turned-on during court appearances; audio recordings of a private conversation are prohibited by law; provided for officers to review BWC recordings of an incident before writing any related incident report; and that BWC recordings must be retained for 90 days unless a recorded incident has been flagged.

The parties participated in additional bargaining sessions on June 25, July 9, and July 23, 2018. At the July 23, 2018, bargaining session, the City informed the Union of its desire to negotiate the effects of the BWCs separately from the overall contract negotiations and tendered a document entitled "Draft MOU with FOP Re: BWC." The Draft MOU proposed that the Department would amend its policies and/or procedures with respect to the use of BWCs and recordings in a number of respects to safeguard officer privacy. Between August and October 2018, the parties bargained over the BWCs effects and exchanged proposed modifications to the City's Draft MOU. On October 31, 2018, the Union responded to the City's October 26, 2018 modified Draft MOU by highlighting the parts to which it disagreed. The Union did not provide the City with a modified Draft MOU at any time between October 26, 2018, and January 14, 2019, and there were no bargaining sessions held between November 19, 2018, and January 14, 2019.

On January 14, 2019, the parties again met to bargain. At this bargaining session, the City tendered the Union a document entitled "Last, Best, Final Offer to Union for MOU Re: Body Worn Cameras/Effects Bargaining" (LBFO). The City's LBFO stated that the Department would amend its policies and procedures related to the use and recordings of BWCs, within 90 days, establish a Labor/Management Committee to review the functioning of the BWC program, and included as an exhibit a list of disciplinary actions taken against unit members for their loss and misuse of BWCs and an offer to expunge such discipline subject to stated terms and make those officers whole for monetary losses incurred as a direct result of suspensions.

At the January 14, 2019 bargaining session, the City expressed its belief that the time had come for the parties to complete effects bargaining, but the Union asserted its belief that there remained outstanding issues regarding BWCs such as the meaning of the term "misuse" as applied to BWCs. Moreover, the negotiations over the contract as a whole had not yet been concluded. The parties then continued to bargain over the terms of their successor agreement.

On May 17, 2019, the City published an Administrative Message announcing its intent to increase the buffering time for the BWC from 30 seconds to two minutes. That same day, the Union's attorney sent the City a demand to bargain over the increase in buffering time. Later, on May 29, 2019, the parties met to speak about the increase. The City disagreed with the Union's position that the City was obligated to bargain the decision to increase buffering times but explained that it did so because the existing 30 second buffering time did not give an office the necessary time to activate the BWC to capture an important incident and pointed to recent incidents in which a longer buffering period would have corroborated an officer's description of the incident. The Union expressed its concerns over the increase in buffering times and at the conclusion of the meeting requested the City hold off on implementing the increase buffering time so that he could discuss the change with unit members.

Two days later, on May 31, 2019, the Chief Administrator of the Civilian Office of Police Accountability (COPA), issued an advisory letter to the Department's Superintendent stating COPA's "growing concern that Department members [were] routinely failing to activate their Body Worn Cameras (BWCs) as expressly required by the Department Policy and Illinois Statute" and recommending the Department increase the administrative sanction for failure to activate or delay activation of the BWC so that it serves as a meaningful deterrent to violating the Department's directive requiring the use of BWCs.

On or about June 9, 2019, the City implemented the increase in buffering time, maintaining that it had no obligation to bargain over that decision. On July 30, 2019, the parties met for another bargaining session. The City stated that it would implement the BWC MOU immediately and informed the Union that it would begin to discipline officers for the loss and misuse of BWCs. After the July 30, 2019 meeting, the parties continued to bargain over the terms of a successor collective bargaining agreement but did not have any formal discussion over the BWCs.

B. ALJ's Findings

Case No. L-CA-17-037—RDO I

ALJ Hamburg Gal determined the charge presented two broad issues: (1) whether the City refused to bargain over the impact of the BWC Pilot Program's 2017 expansion; and (2) whether the City repudiated the parties LOU on the BWC Pilot Program.

Refusal to Bargain Effects of 2017 BWC Program Expansion

The ALJ concluded as a threshold matter that the City's implementation of the BWC Pilot Program had bargainable effects. She found the City made a material change to employees' terms and conditions of employment when implemented the program because of the impact on employee discipline, safety, and privacy. She observed such impact is significantly different from the existing In-Car camera program because the BWCs create greater opportunities for employee discipline,

have features that present new safety-related concerns, and raise concerns over employee privacy. Moreover, the ALJ rejected the City's contentions that the WBC Act preempts effects bargaining, citing Section 7 of the Act and found the Union is entitled to bargain greater protections for its members than those conferred by the WBC Act. The ALJ also found that Section 14(i) does not limit the Union's right to bargain over the effects of the BWX because the Union is not seeking to bargain over the type of equipment used.

Concluding the implementation of the BWC Pilot Program had bargainable effects, the ALJ then determined that although the City provided timely notice of its decision to expand the BWC Pilot Program in 2017, it failed to provide the Union sufficient opportunity to bargain the effects of that decision, citing Board and NLRB cases holding that an employer cannot satisfy its statutory duty to bargain by discussing a bargainable subject while maintaining that it had no duty to do so. See City of Chicago, 30 PERI ¶ 126 (IL LRB-LP 2013); City of Highwood, 17 PERI ¶ 2021 (IL LRB-SP 2001); see also San Diego Cabinets, 183 NLRB 1014, 1020 (1970); Mi Pueblo Foods, 360 NLRB No. 116, slip op. at 10, 17 (2014). The ALJ rejected the City's claims that the Union placed unlawful conditions on effects bargaining by stating it would bargain effects only during negotiations for a successor contract and determined that the City impeded good faith bargaining by failing to timely respond to the Union's information requests.

The ALJ next concluded the Union did not waive the right to demand effects bargaining over the 2017 expansion. Specifically, the ALJ found the Union's acquiescence to the 2016 expansion did not constitute a waiver of its right to bargain over the effects of the subsequent 2017 expansion, reasoning the second expansion was more extensive than the first one in 2016 and that the parties' LOU demonstrated the Union's attempts to protect itself against any claims of waiver. The ALJ also found the Union did not contractually waive the right to bargain the effects of the BWC Pilot Program.

Thus, the ALJ found the City violated the Act when it failed and refused to bargain over the effects of its decision to expand the BWC Pilot Program in 2017.

Alleged Repudiation of the LOU and Remedy

Although the ALJ found the City breached the parties' LOU, she found that the breaches were not substantial enough to constitute a repudiation of the parties' collective bargaining agreement or the parties' LOU. Thus, she found the City did not violate the Act on these allegations.

The ALJ next recommended a limited remedy requiring the City to bargain the safety and disciplinary effects of the BWCs distributed in 2017, to rescind the discipline it issued arising from their misuse or loss, and to cease issuing such discipline until the parties completed effects bargaining. She noted that the limited remedy differed from the standard remedy in that the limited remedy did not require the City to recall all the BWCs distributed in the 2017 expansion, rescind the discipline issued based on BWC footage, make employees whole, or bar the City from redistributing the BWCs until the parties reached agreement of the effects or resolved their impasse through interest arbitration.

Case No. L-CA-20-024—RDO II

ALJ Hamburg Gal determined the issue in this case is whether the City violated the Act when it allegedly failed to maintain the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings by unilaterally changing tis policy regarding BWCs. She then concluded the City did so in two ways.

First, the ALJ found the City violated the Act when it unilaterally implemented its last, best, final offer on the effects of the BWCs. She found the City was not privileged to impose its offer because the Union represents employees who lack the right to strike, citing State, Dept. of Cent. Mgmt. Servs. (Dept. of Corr.) v. Ill. Labor Relations Bd., 373 Ill. App. 3d 242, 253 (4th Dist. 2007) and Village of North Riverside v. Ill. Labor Relations Bd., 2017 IL App (1st) 162251 ¶ 23 & ¶ 27.

ALJ Hamburg-Gal rejected the City's contentions in its post-hearing brief, finding the existence of impasse on effects bargaining and the Union's alleged bad faith in negotiations were not entitle the City to impose its final offer. She further found no merit to the City's argument that it had in fact maintained the status quo, observing that the City would have had little reason to announce it was implementing its offer had the offer proposed no changes to employees' terms and conditions. She further noted that the City admitted in its post-hearing brief that it changed the status quo by conceding its final offer changed applicable disciplinary standards. Lastly, the ALJ found the final offer made further changes to the status quo that affects employee privacy and discipline.

Second, the ALJ concluded the City violated the Act when it unilaterally increased the buffering time from 30 seconds to two minutes because it implemented its decision without first bargaining the effects of that decision. After having determined there was no dispute that the City unilaterally implemented the increase in buffering time during the pendency of interest arbitration proceedings without the Union's consent, the ALJ applied the three-part Central City balancing test and concluded the increase in buffering time was a permissive subject of bargaining. She found that the first part satisfied in that increase in buffering times significantly affects employees' privacy and employee discipline. Regarding employee discipline, the ALJ observed that the increase in buffering times substantially changed both the City's method of investigation into employee misconduct and the character of proof on which it could rely for disciplinary purposes. The ALJ then determined the increase in buffering times was a matter of inherent managerial policy and concluded the balance favored unilateral decision-making under the circumstances.

ALJ Hamburg-Gal next concluded that the City is obligated to bargain over the effects of its decision to increase buffering times and its failure to do so violates the Act. She observed that in this case, the disciplinary and privacy-related effects of the increase in BWC buffering times are appropriate subjects for bargaining and are severable from the City's underlying decision.

As a remedy for implementing its last, best, final offer, the ALJ recommended a remedy requiring the City to rescind implementation of its final offer to restore the status quo ante, follow impasse resolution procedures applicable to peace officers, and make employees whole by at the Union's request, rescinding any discipline issued to officers for the loss or misuse under the standards set forth in the final offer and reconsidering such discipline under the standards previously in existence. For the unilateral implementation of the increased buffering time, the ALJ limited the remedy to a bargaining order, finding a limited remedy warranted under these circumstances.

C. CITY'S EXCEPTIONS

The City filed exceptions and a supporting brief. Under the heading "Exceptions," the City outlines its challenges to RDO I and RDO II. First, the City takes exception to the ALJ's determination in RDO I that implementation of BWCs resulted in bargainable effects with respect to the safety and discipline issues associated with the expansion of BWCs. Second, the City advances what appears to be contingent exceptions to RDO I. The City contends that in the event the Board accepts the ALJ's finding of "a bargaining violation as set forth in RDO I" then the Board must find that RDO II supersedes RDO I with respect to "any arguably appropriate remedy arising from RDO I." Third, the City advances what appears to be contingent exceptions to RDO II. Should the Board not find RDO II supersedes RDO I, and an independent remedy obligation on the part of the City remains, then the City takes exception to the ALJ's findings in RDO II that (1) the City is obligated to proceed to mid-term interest arbitration over BWC effects due to the alleged inequity between Section 14 and non-Section 14 employees; and (2) the failure to find that the City bargained in good faith to impasse during the effects bargaining. The City asserts that it does not take exception to RDO II's treatment of the increase in buffering time issue (inclusive of the bargaining order recommended by the ALJ).

The Union filed a response, contending the Board should disregard the City's exceptions because they do not comply with Section 1200.135(b)(2) of the Board's rules. Regarding the substance of the City's exceptions, the Union contends the City failure to take exception to any of the ALJ's findings in RDO I that form the basis for the conclusion that the BWC Pilot Program gave rise to bargainable effects, citing State of Illinois, Department of Central Management Services, 26 PERI ¶ 39 (IL LRB-SP 2010) (failure to take exception to the underlying elements of a rule or finding constitutes a waiver of the exception to that rule or finding). The Union responds that the City's reliance on arbitration cases involving safety disputes between the parties and the Nielsen award is misplaced. Regarding the Nielson award, the Union contends that the award does not excuse the City's bargaining obligations, pointing out Arbitrator Nielson noted in his first footnote that he did not consider whether the parties were obligated to engage in effects bargaining. Responding to the City's contingent exceptions regarding RDO II, the Union contends the City's reliance on NLRB cases fails to undermine existing State law regarding mid-term impasse resolution for Section 14 employees.

We find that the City's exceptions lack merit. First, the City's exceptions fail to comport with Section 1200.135(b)(2) of the Board's rules. 80 Ill. Adm. Code §1200.135(b)(2). Section 1200.135(b)(2) requires parties to "identify that part of the administrative law judge's recommended decision and order to which the objection is made," and shall state the grounds for each exception it submits along with citations to authorities and the record unless they are included in a supporting brief. Id. As the Union correctly points out, the City's stated and contingent exceptions to RDO I and RDO II fail to identify or specify the part of either RDO I or RDO II to which it takes exception and why it is doing so. In addition, the City does not provide any basis for its contentions that RDO II should supersede RDO I or how to "harmonize" the two RDOs or why they should be harmonized, much less citations to supporting legal authority or the record. The City appears to suggest that

RDO I is somehow moot because the City has fulfilled its bargaining obligations consistent with the remedy contained in RDO I but does not provide any authority supporting the proposition that compliance with an RDO provides a basis for the Board to reject the recommendation to find the underlying violation. Such alleged compliance to an RDO's recommended remedy would only be evidence of compliance to the remedy. See County of Cook and Sheriff of Cook County, 34 PERI ¶ 101 (IL LRB-LP 2017).

We also find the exceptions as described above fail to provide viable reasons to reject or modify the ALJ's recommendations. Notably, the City has failed to contest or take exception to the ALJ's findings, analysis, and determinations forming the basis for her conclusions that the City violated the Act in each case. For example, as the Union correctly point out in its response, the City does not take exception to the ALJ's finding in RDO I that the City made a material change to the terms and conditions of unit members' employment when it instituted the BWC Pilot Program. And this is just one example, as the ALJ made multiple material findings for her conclusions in both RDOs to which the City has not taken exception. Because the City has failed to take exception to the ALJ's findings which formed the basis for her conclusions that the City violated the Act in both Case Nos. L-CA-17-037 and L-CA-20-024, we deem them waived under Section 1200.135(b)(2) of the Board's rules which provide that any exception not specifically urged shall be deemed waived. 80 Ill. Adm. Code §1200.135(b)(2). This waiver of exceptions "provides a sufficient, independent basis for affirming the ALJ's ultimate conclusion" in both RDO I and RDO II. See State of Illinois, Department of Central Management Services, 26 PERI ¶ 39 (IL LRB-SP 2010) (failure to take exception to the underlying elements of a rule or finding constitutes a waiver of the exception to that rule or finding).

Moreover, the City's contentions regarding its contingent exceptions to RDO II are unpersuasive. The City's dispute in this regard appears to be with current Illinois caselaw rather

than any error committed by the ALJ. Indeed, the City concedes the ALJ followed Board precedent; the City just disagrees with the precedent that was followed. But the Board precedent followed by the ALJ was affirmed by the Illinois Appellate Court in published opinions, and we cannot change that precedent even if we were to agree with the City's arguments. Finally, the exceptions regarding the failure to find the City bargained in good faith to impasse on the effects of the BWCs fail to excuse its failure to submit the subject to interest arbitration once the parties reached impasse. The ALJ considered and rejected this defense in finding the City unlawfully implemented its final offer (RDO II, p. 17).

For the above reasons, we accept the ALJ's findings and recommendations that the City violated Sections 10(a)(4) and 10(a)(1) of the Act in Case Nos. L-CA-17-037 and L-CA-20-024 and adopt the entirety of RDO I and RDO II as decisions of the Board.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Angela C. Thomas
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, and via WebEx videoconference, on June 10, 2021, written decision approved at the Local Panel's public meeting in Chicago, Illinois, and via WebEx videoconference, on July 15, 2021, and issued on July 22, 2021.

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) (2018).

STATE OF ILLINOIS
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Fraternal Order of Police, Lodge #7,	)	
	)	
Charging Party,	)	
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	)	
City of Chicago (Department of Police),	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 25, 2017, the Fraternal Order of Police, Lodge #7 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the City of Chicago, Department of Police, (Respondent or City) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. Specifically, the Union's charge alleged that the Respondent violated Sections 10(a)(4) and (1) of the Act when it breached the parties' Letter of Understanding (LOU) by (i) failing to provide proper notice and engage in discussions with the Union before announcing the Respondent's 2017 expansion of the Body Worn Camera (BWC) Pilot Program; (ii) failing to provide the Union with certain information during the term of the BWC Pilot Program, (iii) disciplining officers for losing or not properly caring for their BWCs; and (iv) failing to bargain disciplinary measures related to employees' participation in the BWC program. The Union also alleged that the Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally implemented an expansion of the BWC Pilot Program and also failed to bargain over the effects of that expansion on officer safety and discipline.

The charge was investigated in accordance with Section 11 of the Act. On April 17, 2017, the Executive Director issued a Partial Dismissal, a Partial Deferral to Arbitration, and a Complaint for Hearing.[1]

The Executive Director deferred to arbitration the allegation that the Respondent violated

[1] This case was initially consolidated with Case No. L-CA-17-037 by the Executive Director. I bifurcated the cases at the conclusion of the hearing, in consideration of the Respondent's earlier request to bifurcate and both parties' successful efforts to keep separate the issues presented in each case.

Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU by failing to bargain disciplinary measures related to employees' participation in the BWC program and disciplining officers for losing or not properly caring for the BWCs. The Executive Director applied the Dubo[2] standard for deferral, noting that the Union had initiated a grievance concerning these particular issues and that there was a reasonable chance that the grievance arbitration process would resolve the dispute.

The Executive Director dismissed the allegations that the Respondent violated Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU by failing to provide proper notice and engage in discussions with the Union before announcing the Respondent's expansion of the BWC program and failing to provide the Union with certain information during the term of the BWC Pilot Program. The Executive Director determined that these alleged breaches could not support a violation of the Act where the Respondent's conduct did not, as a threshold matter, qualify as a breach. She reasoned that the Respondent provided sufficient time for discussion between its announcement to the union of the BWC program's expansion and its implementation of the expansion. She further reasoned that the Respondent did not refuse to provide information, as required under the LOU, because the Union never made a request for the information.

In the partial dismissal, the Executive Director commented that she would issue a Complaint for Hearing "regarding the [Union's] allegation that the [Respondent] refused to bargain over the impact of implementing BWCs department-wide" and also "regarding the allegations that the [Respondent] did not create a district level committee in accordance with the LOU."

A hearing was conducted on July 27 & 29, 2017, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The City of Chicago is a municipal corporation organized under the laws of the State of Illinois.

[2] Dubo Manufacturing Corp., 142 NLRB 431 (1963).

2. The City of Chicago is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act ("Act"). The City of Chicago operates the Chicago Police Department (CPD).
3. The City of Chicago is a unit of local government under the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.
4. CPD is an executive department of the municipal government of the City. Its duties and responsibilities are established by ordinance at Chapter 2-84 of the Municipal Code of the City of Chicago ("MCC"), Chapter 2-84.
5. Fraternal Order of Police (FOP), Lodge No. 7 ("Charging Party") is the bargaining representative of a bargaining unit (Unit) consisting of all police officers employed by the City of Chicago Police Department below the rank of sergeant.
6. The FOP is and has been a labor organization within the meaning of Section 3(i) of the Act.
7. The City of Chicago and the Charging Party are parties to a collective bargaining agreement covering the unit effective by its terms, dated July 1, 2012, through June 30, 2017.
8. Dean Angelo Sr. was the President of FOP Lodge 7 from March of 2014 through April of 2017.

II. ISSUES AND CONTENTIONS

There are two issues in this case. The first issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly refused to bargain over the impact of the Body Worn Camera (BWC) Pilot Program's 2017 expansion.[3] The second issue is whether the Respondent repudiated the parties' letter of understanding (LOU) on the BWC Pilot Program.

The Union contends that the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to bargain over the disciplinary effects of the Body Worn Camera program. The Union contends that the disciplinary impact of BWCs is a mandatory subject of bargaining. It denies that the parties' meetings were good faith bargaining sessions. The Union further denies that it

[3] Although the Complaint may be read to allege that the Respondent violated the Act by refusing to bargain over the underlying decision to expand the BWC Pilot Program, the Union's brief and the commentary contained in the Executive Director's partial dismissal demonstrate that the initial issue in this case concerns the Respondent's alleged refusal to bargain over the BWC Pilot Program's effects.

contractually waived its right to bargain, that it waived its right to bargain by inaction, or that it waived its right to bargain by acquiescing to the Respondent's earlier expansion of the BWC Pilot Program.

Next, the Union contends that the Respondent violated the Act when it breached the parties' LOU. The LOU required the Respondent to bargain over the disciplinary and safety impacts of the BWC Pilot Program and to establish a district level committee that would provide input on the program to management. The Union asserts that the Respondent failed to do either.

The Respondent argues that it has no obligation to bargain over the effects of its decision to expand the BWC Pilot Program, apart from the obligation set forth in the parties' LOU. It asserts the BWC Pilot Program did not effect a material change from the existing in-car camera program and suggests that there are no effects to bargain. It contends that the parties already negotiated contract provisions addressing safety issues associated with equipment. It further observes that Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706, preempts the field of effects bargaining. Finally, the Respondent asserts that Section 14(i) limits the Respondent's obligation to bargain over the effects of the BWCs.

Next, the Respondent argues that it did not breach the parties' LOU. It contends that it had no obligation to bargain because the Union never made a timely request. In the alternative, the Respondent asserts that it satisfied its bargaining obligation. The Respondent contends that even if it did not, it cannot be found liable for refusing to engage in effects bargaining where the Union placed illegal conditions on such negotiations. The Respondent further argues that it did not violate the parties' LOU by failing to create the required district level committees because it created an informal committee, and the committee served its intended purpose.

III. FINDINGS OF FACT

The City of Chicago and the Union are parties to a collective bargaining agreement covering the unit, with a term of July 1, 2012 through June 30, 2017. Dean Angelo Sr. was the President of the Union from March of 2014 through April of 2017. The parties concluded negotiations for the 2012-2017 agreement in 2014, and they executed the agreement on November 18, 2014.

The parties' agreement included a zipper clause, which provided the following:

ARTICLE 32 – COMPLETE AGREEMENT

The parties acknowledge that during the negotiations which preceded this

> Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Except as may be stated in this Agreement, each party voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this agreement.

The parties' agreement also contains a provision set forth in Article 15 by which the parties could resolve questions regarding the safety of equipment. Article 15.2 states that the parties will establish a safety committee which will "discuss and investigate health issues related to Officers and to recommend reasonable safety and health criteria relating to equipment and facilities." The committee may make formal recommendations to the superintendent, which are not binding on the Employer or the Union. However, if the superintendent disagrees with the recommendation of the Committee or the Union, the Union "may request arbitration of any such dispute if such dispute raises a good faith issue regarding the use of equipment or materials which are alleged to present a serious risk to the health or safety of an Officer beyond that which is inherent in the normal performance of police duties."

In September 2014, Superintendent Gary McCarthy announced the Respondent's intent to investigate the use of Body Worn Camera (BWCs) for police officers. Jonathan Lewin, the Deputy Chief with the Technology and Records Group, became the technical manager of the Respondent's BWC program.

In November 2014, the Union's official newsletter informed the membership that the Respondent was working on a pilot program for BWCs.

The Department wished to implement the body worn cameras because it sought to gather more information about officer-citizen interactions on the street, to increase transparency. The Department sought to improve officer safety, reduce false allegations of misconduct against officers, improve both police and public accountability, and reduce the need for officers to use force. Lewin testified that the Department viewed body worn cameras as an alternative platform to in-car camera systems, which the Department had used since 2003.

1. Announcement of the BWC Pilot Program to the Union and to Officers

In late 2014, Angelo spoke with Superintendent McCarthy, then-Human Resources Director Donald O'Neill, and Union Vice President Ray Casiano. They agreed to meet together on the third watch in the 14th District to present officers with information on BWCs.

In early January 2015, the Respondent conducted an informational session in District 14 on the BWCs without Angelo.

At around this time, the Respondent tendered the Union a draft Department Notice document entitled "Body Worn Camera Pilot Program." It stated that the BWC Pilot Program would be operational for select members in District 14 and that it would take effect January 19, 2015.

On January 9, 2015, Angelo wrote a letter to then-Director of Management and Labor Affairs O'Neill on the Union's behalf. He demanded that the Respondent bargain with the Union "over any expansion of the use of body cameras beyond parameters set forth in the pilot program." He explained that "the method and manner in which the images recorded by the body cameras are maintained and utilized by the Department, including but not limited to, disciplinary action taken, are mandatory subjects of bargaining. In this letter, Angelo also asked the Respondent to present the Union with information that related to any issues, concerns, successes or failures that the Department observed during the pilot program. He expressed concern that the Respondent had conducted an informational session at the 14th District, which announced the pilot program to officers and sought volunteers, "without any meaningful input from the Lodge."

On January 15, 2015, the Respondent sent Angelo a revised copy of draft Department Notice entitled "Body Worn Camera Pilot Program – Phase 1," which stated that the BWC Pilot Program would be effective January 20, 2015.

2. Negotiation for a Letter of Understanding on the BWC Pilot Program

Between January 9 and January 22, 2015, O'Neill, Angelo, and the Union's lawyers negotiated a letter of understanding (LOU) that memorialized the parties' rights and obligations regarding the BWC Pilot Program and any expansion of that program.

Angelo provided the Respondent with a first draft entitled "Body Camera MOU." O'Neill prepared a modified, detailed, and more structured draft LOU. Angelo countered with a revised

draft, based on O'Neill's document. O'Neill then proposed modifications to Angelo's draft, and Angelo accepted O'Neill's modifications. The parties' proposed modifications focused on three subject areas: (1) the Respondent's use of BWC footage in disciplinary investigations, (2) the extent of the Respondent's obligation to bargain over the program's expansion, and (3) the creation of a pilot program committee.

Regarding the first issue, Angelo's draft stated that the "pilot program, will be administered subject to the parties[']collective bargaining Agreement, Department Notice 15-01, as well as the following additional terms," which the parties would negotiate at a future meeting. In response, O'Neill proposed the following language: "The Department will comply with the collective bargaining agreement concerning use of video in disciplinary investigations." Angelo proposed the following modification: "The Department will comply with the collective bargaining agreement concerning use of video in disciplinary investigations, including but not limited to Article 6 – Bill of Rights, Section 6.1 – Conduct of Disciplinary Investigation." O'Neill accepted Angelo's proposed modification and it became part of the agreement.

Regarding the second issue, O'Neill proposed the following language: "The Department will provide notice and meet and discuss with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1." Angelo rejected this change and offered the following two paragraphs instead: (1) "The Department will provide notice and bargain where appropriate with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1" and (2) "The Department will continue to be obligated to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline." O'Neill responded by rejecting and replacing the first paragraph, referenced above, but accepting the second paragraph and adding a third, as follows: (1) "The Department will provide notice and meet and discuss with the Lodge prior to any expansion of the use of the BWC's beyond the parameters set forth in the Body Worn Camera Pilot Program – Phase 1[,]" (2) "The Department will continue to be obligated to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline[,]" and (3) "This Memorandum does not limit or alter in any way the Department's discretion or authority as set forth in Article 4 of the parties' collective bargaining agreement." Angelo accepted O'Neill's latest modification and it became part of the agreement.

Regarding the third issue, Angelo proposed the following language: "Going forward[,] the Department and a…BWC Pilot Program Committee consisting of individual Officers participating in pilot, their immediate field supervisors and others as determined by the Department; to meet on a quarterly basis to discuss and offer evaluative input as to the successes, problems[,] and future use of BWC's." O'Neill countered with the following modification: "The Department will establish a District level committee consisting of appropriate supervisors and officers using the BWC to provide input and advice concerning the BWC Pilot Program." Angelo accepted this language and it became part of the agreement.

The parties executed their LOU on January 22, 2015. O'Neill signed the letter on behalf of the Respondent, and Angelo signed on behalf of the Union. The parties' LOU states the following in its entirety:

LETTER OF UNDERSTANDING

BODY WORN CAMERA (BWC) PILOT PROGRAM

> The Department is committed to protecting the safety and welfare of both, the public and the Department's members, as well as providing equipment and establishing methods of operation to enhance and further its mission and objectives. The Use of body worn cameras will provide Department members with an invaluable instrument to enhance criminal prosecution, protect Department members from false accusations, and enhance Department members' interaction with the community. Accordingly, representatives of the Department and the Fraternal Order of Police, Lodge No. 7 (the Lodge) have met to discuss implementation of a BWC Pilot Program. The Program entails the following:

1. It is anticipated that the duration of Phase 1 of the BWC Pilot Program shall be ninety (90) days from the effective date of Phase 1. The duration of Phase 1 may be extended, at the discretion of the Department, provided that the Department notifies the Lodge at least seven (7) days prior to the effective date of any extension as well as provides the Lodge with the number of days for which the program will be extended.
2. Phase 1 of the BWC Pilot Program shall be limited to Officers currently assigned to the Third Watch within the Fourteenth (14th) District who volunteer or are selected to participate in the BWC Pilot Program. Initially volunteers will be sought by the Department. If an insufficient number of volunteers elect to participate, officers may be selected and designated to participate in the program. The Department affirmatively states that no Officer will be disciplined or subject to a penalty for failing to volunteer to participate in the BWC Pilot Program.
3. All Officers are required to comply with the provisions of Department Order D15-01; however, where it is not feasible to comply with an/or fail[ure] to comply was through inadvertence or operational error by the Officer, such situations will be treated by the Department as a training opportunity and [will] not subject the

Officer to discipline.

4. The Department will comply with the parties' Collective Bargaining Agreement concerning use and review of video in disciplinary investigations, including by not limited to Article 6 – Bill of Rights, Section 6.1 Conduct of Disciplinary investigation.
5. With respect to any incident involving a police shooting, the Department will follow the same protocol for the BWC recorded data and the Officer(s) involved in such police shooting incident as currently being applied with respect to the In-Car Video Systems.
6. The Department will establish a District level committee consisting of appropriate supervisors and Officers using the BWC to provide input and advice concerning the BWC Pilot Program.
7. The Department will provide notice and will meet and engage in discussions with the Lodge prior to any expansion of the use of BWC's beyond the parameters set forth in the BWC Pilot Program – Phase 1.
8. The Department will continue to bargain with the Lodge over any impact or effect of the BWC Pilot Program as it relates to a Police Officer's safety and/or discipline.
9. This Memorandum does not limit or alter in any way the Department's discretion or authority as set forth in Article 4 of the parties' collective bargaining agreement, except as otherwise modified herein.

1. Implementation of BWC Pilot Program – Phase 1

On or about January 20, 2015, during negotiations for the LOU discussed above, the Respondent implemented the first phase of the BWC Pilot Program in the 14th District. The Respondent held a meeting in the community room of the district office, 14th District. Angelo and another union representative were present on behalf of the Union. Acting Commander Mark Buslik, other district supervisors, and Lewin were present on behalf of the Respondent. Dennis Rosenbaum, a professor from the University of Illinois at Chicago was also present because he was conducting a study on the officers' experiences with the BWCs.

The Respondent explained how the devices worked, explained how the Respondent would distribute and collect the BWCs, and described the conditions of the pilot program. The Respondent provided officers with a PowerPoint presentation, handouts, and hands-on training. The manufacturer's representatives were also present to answer questions.[4]

The Respondent trialed two different types of cameras as part of this program, the body worn camera and the flex camera. The body worn camera is a wireless device, mounted on an

[4] There were no formal training sessions for officers on the use of the camera, prior to their distribution by the Respondent.

officer's chest, that captures video at a 143-degree field of vision. If the officer turns only his head, the camera does not turn with him and captures the video only in front of him. In addition, the officer can block the camera by drawing his weapon and holding his arms in front of his chest, where the camera is located. The user turns on the device by pressing a button at the top of the camera. The device then enters buffering mode. The user activates the camera to start recording by pressing the event button at the center of the camera. Once the user presses the event button, the audio and video begin to record. In addition, the device stores a recording of the 30 seconds of video footage captured prior to the user's activation of the camera. After the officer completes his assignment, he presses the event button again to return the device to buffering mode. The officer returns to his unit of assignment after his tour of duty and places the device into a docking station, which is a receiving station that holds up to six body-worn cameras. It recharges the power supply for the device, it uploads any video recorded to evidence.com, a cloud based service provided by the manufacturer, and it uploads firmware updates sent by the manufacturer.

The flex camera captures a more realistic perspective of what the officer views. If is mounted on the officer's eyeglasses, records what the officer himself sees. It captures video at a 120-degree field of vision. Unlike the body worn camera, it is a wired device that requires a battery pack. In addition, the officer must secure the wire through his body armor and equipment. If the camera is mounted on the officer's sunglasses, and the officer places the glasses on his forehead when entering the building, the device will not capture any useful video of an incident.[5]

2. April 28, 2015 meeting between the Respondent, the Union, and Union members

On April 28, 2015, the Respondent held an informal meeting in the community policing room in the 14th District office on the third watch. General Counsel to the Superintendent, Ralph Price, then-Deputy Chief of the Technology and Records Group, Jonathan Lewin, Commander Buslik[6] from District 14, and O'Neill attended on behalf of the Respondent. Professor Dennis Rosenbaum from the University of Illinois at Chicago was also present because he was conducting a survey of the officers' reactions to body worn cameras. Angelo appeared on behalf of the Union. The Respondent invited to the meeting all of the officers from District 14 who had trialed the

[5] The department piloted the flex camera for only 90 days. The department ceased using the flex cameras during the pilot program because the officers preferred the body worn cameras.
[6] Buslik holds the rank of Captain.

BWCs. Three or four offices were present at the meeting. None of the officers' sergeants or lieutenants were present.

The officers provided feedback on the cameras. Officers stated that they did not like the flex camera. In addition, some officers mentioned that the cameras were falling off, coming undone, or getting in the way. Members of management mentioned that there were different kind of clips available and that the next generation of clips would be more user friendly. Another officer expressed his concern that the cameras would change the officers' behavior by removing the discretion they otherwise might have exercised in the course of their duties. The officers were worried that the cameras might record them in the bathroom. The officers expressed confusion about when to turn the cameras on and off. The officers were also worried that the cameras would make them second-guess their proper police conduct. However, one officer noted that the cameras set the tone of an interaction in a positive way. The officers asked how long they would be required to wear the cameras. A member of management mentioned that the 15th District would get the cameras next because officers were asking for them. O'Neill mentioned that if the Respondent moved the cameras to another district, then the parties would enter another memorandum of understanding regarding their use in that new district. The meeting lasted approximately an hour or 45 minutes.[7]

O'Neill testified that all the officers who participated in the pilot program in District 14 constituted the District Level Committee. However, he testified that the April 28, 2015 meeting was not a District Level Committee Meeting and he further stated that he was not aware of any District Level Committee meetings. Angelo similarly testified that the meeting was not a District Committee Meeting. Although the Respondent issued a Department Notice (#D-15-01) on December 31, 2015 that established a BWC Pilot Program Evaluation Committee, the committee did not include officers.

Two days after the meeting, O'Neill called Angelo on the phone and discussed the expansion of the pilot program. Angelo wanted cameras removed from District 14 and moved into another district instead. O'Neill testified that the Respondent wished to further expand the program within District 14 and then into other districts. However, it is unclear whether he communicated this intent to Angelo at the time.

In October 2015, Wynter Jackson replaced O'Neill as the Director of Labor Management

[7] Angelo testified that the meeting lasted approximately two hours.

Affairs for the Chicago Police Department.

On December 31, 2015, the Respondent issued a department notice that continued the body worn camera pilot program.

3. The Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706

In 2015, the legislature enacted the Law Enforcement Officer-Worn Body Camera Act ("WBC Act"), which was part of a larger piece of legislation Senate Bill 1304. The Union directed its lobbying efforts at shaping Senate Bill 1304. The Union published an article about the Bill in its September 2015 issue of its official magazine. One of its lobbyists wrote the article and commented, "[t]ogether we were able to limit management's ability to troll camera footage for discipline purposes."

The body worn camera statute became effective on January 2016. Section 10-20 of the WBC Act defines when officers must activate and deactivate the cameras, it specifies retention periods for the recordings captured by the BWCs, it explains when a recording must be retained for a longer period of time, and it limits the disciplinary use of the recordings.

Regarding discipline, it provides that "[r]ecordings shall not be used to discipline law enforcement officers unless: (A) a formal or informal complaint of misconduct has been made; (B) a use of force incident has occurred; (C) the encounter on the recording could result in a formal investigation under the Uniform Peace Officers' Disciplinary Act; or (D) as corroboration of other evidence of misconduct." 50 ILCS 706/10-20.

4. Subsequent Expansions of the BWC Pilot Program and the Union's Intervening BWC Grievance

In Spring 2016, the Respondent expanded the BWC Pilot Program to six additional districts. The Respondent waited until 2016 to expand the program because of financial constraints and because the Respondent wanted to wait until the manufacturer released its second-generation body worn cameras.

Most of the districts to which the Respondent expanded its BWC program in Spring 2016 had unit representatives. Angelo testified that unit representatives are the "eyes and ears" of the Union and that they would have been aware of the Respondent's expansion of the BWC program.

Angelo testified that Union members informed the Union of the Respondent's expansion of the body worn camera pilot program to other districts.[8]

On June 3, 2016, the Union filed a grievance because the stealth mode of the BWCs was malfunctioning and exposing officers to danger. Stealth mode allows an officer to operate the camera without activating the red light that, in non-stealth mode, would turn on to indicate that the camera was operational. The red light remained lit in stealth mode, thereby exposing officers to danger in situations that required covert action. The Union did not invoke the January 22, 2015 letter of understanding regarding the body worn camera pilot program when it raised the issue about the stealth mode.

Around this time, Angelo called Jackson and informed her that the BWCs were not functioning properly in stealth mode. Jackson informed Angelo that officers could turn the camera off for a limited time if they felt their safety was at risk. However, they would be required to justify their actions in writing.

Jackson then immediately informed Deputy Chief Lewin about the problem and Lewin, in turn, contacted the manufacturer. The manufacturer determined it was a software issue and fixed the issue by June 10, 2016.

On August 24, 2016, formally Jackson denied the grievance, noting that the Department had resolved the issue and she also asked the Union to withdraw the grievance. The Union withdrew its grievance less than three weeks later, noting that it "concur[red] that the matter was addressed by the Department, and appreciate[d] the steps that were taken to resolve the issue."

On December 27, 2016, the Respondent sent an email to all members of a department, which included a press release announcing the "Expedited Expansion of Body Camera Program." The email stated that "tomorrow, the Mayor's Office and CPD will be announcing an expedited expansion of the department's body worn camera program across all patrol districts – one full year earlier than originally planned. The district technology upgrades and physical expansion is slated to begin next month and all police districts will be outfitted by the end of 2017." Angelo learned of the expedited expansion when he received the December 27, 2016 email from unit members. By the end of 2017, the rollout will be complete and the Respondent will be using 6800 body worn camera devices.

[8] Angelo testified that each watch should also have a watch representative, elected by his fellow watch members, who is the liaison with the FOP.

On December 28, 2016, Union attorney Pat Fioretto sent an email to Jackson. He stated that the Union recently learned of the Respondent's "unilateral decision to expedite the expansion of the Police Department's body worn camera program across all patrol districts, without any prior notice to the Lodge or the ability to engage in any meaningful opportunity to bargain." Fioretto then referenced the parties' January 22, 2015 letter of understanding, which he also attached to the email. Specifically, he quoted paragraphs 7 and 8, and asked the Department to comply with those provisions. Fioretto informed Jackson that the Union would seek legal recourse before the Board and through the contract's grievance procedure if the Respondent did not comply.

In response to the letter, Jackson called Angelo[9] over the telephone to explain the press release and to schedule a meeting between the Respondent and the Union. She testified that she started "to discuss…meetings that [the Union and the Respondent] would have to inform [the Union of] how the Respondent intended to move forward and to get [the Union's] input."[10] The parties settled on a meeting date.

On January 24, 2017, Angelo wrote an email to Jackson confirming that he would attend the planned meeting with one of the Union's labor attorneys. However, he stated that the Union did not consider the meeting a bargaining session. He "renewed [the Union's] request that the Department immediately comply with its obligation set forth in the Letter of Understanding, prior to expanding the [BWC Pilot] Program City-wide."

In that email, Angelo also requested information in advance of the meeting. He asked whether the Respondent had established a district level committee to assess the Pilot Program, who was part of the committee, what the committee discussed, how often they met, and whether they had an agenda. He asked the Respondent to share whatever information that the Respondent had gathered during the pilot program. In addition, he asked Jackson to provide information on the problems that the Respondent experienced with the Pilot Program overall. He asked about what happened with the data collected, the manner in which the Respondent stored it, and the individuals who had access to it. He also asked if, how, and for what purpose, the Respondent monitored the data collected. He asked about the kind of feedback that the Respondent had received from officers who piloted the cameras. He asked whether the Respondent was in compliance with the Law

[9] Although Jackson could not recall whether she spoke to Angelo or Fioretto, Angelo's subsequent email to Jackson confirming his attendance at the meeting with one of the Union's attorneys demonstrates that Jackson scheduled the meeting with Angelo.
[10] See Tr. P. 196.

Enforcement Officer-Worn Body Camera Act and whether the Illinois Law Enforcement Training Standards Board (ILETSB) implemented any guidelines that the Respondent was required to follow. Finally, he asked whether the Respondent had filed its mandatory annual report to the ILETSB and whether the Respondent had had any discussions with the ILETSB.

Jackson responded by email on January 25, 2017. She attached the following information to her email: (1) The draft BWC order, then under review; (2) the Law Enforcement Officer-Body Worn Camera Act, 50 ILCS 706; (3) a list of Complaint Register [CR] numbers the Respondent had opened to investigate alleged misconduct related to BWCs; (4) a list of Summary Punishment Action Reports [SPARs] the Respondent issued related to officers' use of BWCs; (5) a list of CR numbers that the Respondent opened, which addressed In-Car Cameras; and (6) a list of SPARs that the Respondent issued addressing In-Car Cameras.[11]

The Respondent issues summary punishment for minor infractions. The Respondent opens Complaint Register investigations into allegations of more severe misconduct and in response to complaints by citizens against officers. Summary punishment is not grievable. However, discipline issued pursuant to the Complaint Register process is generally grievable.[12]

The Respondent had issued SPARs to five officers between October 11, 2016 and December 13, 2016. Two resulted in no disciplinary action. In two cases, the accused officers received reprimands. In one case, the officer received a one-day suspension. The Respondent issued all SPARs because the officers had lost their BWCs.

Jackson's email did not inform the Union as to whether the Respondent had established a district level committee to assess the pilot program. Jackson testified that she could not recall whether the Respondent had ever answered that question.

That same day, January 25, 2017, the Union filed its charge in the instant case.

On January 27, 2017, Chief Labor Relations Negotiator Joseph Martinico sent an email to Union attorney Fioretto commenting on the email that Fioretto sent Jackson a month earlier, on December 28, 2016. In relevant part, he stated the following:

[T]he Lodge quotes language from the BWC Pilot Program Letter of Understanding

[11] Jackson provided the information on In-Car Cameras because she believed that the body worn cameras were an extension of that technology and she believed that the discipline imposed by the Respondent related to the use of In-Car Cameras would provide the Union with a frame of reference for discipline that issued related to the use of body worn cameras.

[12] The parties' contract provides that an officer may appeal his discharge only to the Police Review Board and that it does not proceed to arbitration.

> related to continued effects or impact bargaining over the BWC Pilot Program as it concerns Officer safety and/or discipline. We understand that the parties may have differing positions with regard to the existence and/or extent of any bargaining obligation on this issue. Nevertheless, we believe it is in our mutual interest to meet and discuss the BWC program, and for the parties to have the benefit of openly discussing each other's concerns and objectives regarding this important initiative, without waiving our respective claims and/or defenses regarding any bargaining dispute.

On February 2, 2017, parties met at the Respondent's headquarters on 3510 South Michigan Avenue. Fioretto, Angelo, and Brian Lavin appeared on behalf of the Union. Assistant Chief Labor Negotiator Cicely Porter Adams, Jackson, Bob Klimas from Internal Affairs, Deputy Director Tina Skahill, Deputy Chief Lewin, attorney David Johnson, and Captain Sean Joyce appeared on behalf of the Respondent. The meeting lasted approximately two to three hours. At the start of the meeting, the Union explained that it did not consider the meeting to be a bargaining session and that it simply wished to gather information and ask questions. The Union stated that it was only willing to bargain once the parties' contract expired.

During the meeting, Lewin answered the Union's questions about training related to the BWCs and the BWCs' technology. He explained how the officers in the pilot districts received training and gave the Union a copy of the PowerPoint training module.

Lewin also gave the Union a list of the districts in which the Respondent had already expanded the body worn camera program and the districts to which the Respondent intended to expand the program in the future. Lewin explained that the Respondent had established a priority level for districts that established the order in which they would receive cameras. The priority level was based on protest activity within the district and the officers' use of force.

The parties also discussed a study conducted by the University of Illinois at Chicago, related to the police officers' responses to body-worn cameras, and Lewin provided Angelo with the results of that study.

Further, Angelo asked the Respondent about an officer's ability to flag a video recording of an incident, in cases where the officer believed the individual involved in the incident might make a false allegation of misconduct.

Finally, the Respondent and the Union also undertook a detailed review of the draft BWC order. The Order identifies the circumstances under which officers must initiate, conclude and justify their recordings. It also identifies the circumstances in which an officer may use discretion

to activate the BWC for non-law enforcement related activities. The Order does not specify the discipline that officers may receive for failing to follow the order's directives. However, it provides that "the Department does not intend to use the BWC to discipline members for isolated minor Department rule infractions…." Angelo asked that the parties define the phrase "isolated minor Department rule infractions."

At the conclusion of the February 2, 2017 meeting, the Union's representatives stated that they did not wish to have another meeting, but that they would contact the Respondent if they had questions after reviewing the information that the Respondent had so far provided.

Between February 17 and February 28, 2017, the parties corresponded via email and successfully scheduled a second meeting, despite the Union's earlier assertion that it did not wish to meet again.

On March 7, 2017, the Respondent expanded the BWC Pilot Program to District 018.[13]

On March 15, 2017, Jackson provided the Union with information that the Union had requested at the February 2, 2017 meeting. Jackson provided the Union with a revised draft order addressing BWCs. She noted that the Respondent had made changes to the Order in consideration of the parties' discussion on February 2, 2017. She attached Summary Punishment Action Report (SPAR) documents regarding the body worn cameras. She noted that all but one of the Complaint Registers had been converted to SPARs.

On March 20, 2017, the parties met again at the Respondent's headquarters. The meeting included all those who had attended the February 2, 2017. It also included Chief Labor Negotiator Joe Martinico and William Bazarek from the Respondent's Office of Legal Affairs. The meeting lasted no more than two hours. During the meeting, the Respondent answered the Union's questions and explained the changes it made to the draft order regarding body worn cameras.

In addition, the Union made requests and suggestions related to discipline. Angelo suggested that officers should have a certain defined number of "free passes," where their failure to turn on their cameras would not result in discipline. He similarly suggested that the Respondent should change the way it logged complaints that alleged the impossible. Angelo drew attention to an incident in which a non-department member accused an officer of altering his own camera footage, which is not something an officer is able to do, and suggested that such claims should use a separate classification for such allegations. Angelo also stated that the Respondent needed to

[13] This fact is drawn from the Respondent's Answer to the Complaint.

exercise some flexibility in the department's approach to discipline arising from the use of body worn cameras because each officer's experiences were different. In turn, their reactions to circumstances that arose in the field would vary and would disparately impact their respective abilities to turn on their cameras.

Angelo asked whether officers would receive discipline for failing to turn on their cameras. The Respondent's agents stated that the department's general orders addressing the body worn camera pilot program would protected officers if they did not turn on their cameras in times of danger or high stress. Angelo commented that the parties' letter of understanding also provided officers with some protection.

Angelo raised the Union's concern that certain supervisors might take advantage of the body worn cameras to harass or bully a rank and file officer. The Department responded that any review of an officer's footage by a supervisory would leave a record of that review. Angelo proposed that the Respondent place a limit on the number of times that a supervisor could view the videos of a particular officer.

Angelo also complained to Lewin that the Respondent did not maintain enough computer terminals at which officers could upload video from their cameras at the end of their tours of duty.

On April 10, 2017, Respondent's attorney Johnson wrote union attorney Fioretto a letter concerning the "status of the parties' discussions regarding the Body Worn Camera Program." Johnson stated that he used the term "discussions" out of deference to the Union's "protestations that the meetings did not constitute 'bargaining' sessions." However, he added that the Respondent "participated in the meetings with an open mind and the goal of reaching agreement with the [Union] regarding any potential impact of BWCs on officer safety or discipline." Johnson's letter summarized the discussions that took place at the parties' February and March 2017 meetings.

On April 11, 2017, Fioretto responded. He noted that he did not view the letter as completely accurate. He particularly emphasized that neither party had considered the February and March 2017 meetings to be bargaining sessions. Finally, he stated that the Union had "additional proposals, which will be made at the appropriate time during upcoming bargaining sessions" for a successor contract.

IV. DISCUSSION AND ANALYSIS

1. Alleged Refusal to Bargain Over Effects of the Body Worn Cameras

The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed to bargain over the impact of the 2017 BWC Pilot Program's expansion on employees' terms and conditions of employment. The BWC Pilot Program had bargainable effects and the Respondent did not bargain in good faith prior to 2017 BWC Pilot Program's expansion. However, the circumstances of the case justify a limited remedy.

i. The BWC Pilot Program has Bargainable Effects

As a threshold matter, the Respondent's institution of the BWC Pilot Program gives rise to bargainable effects.

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer to "refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(a)(4). Section 7 of the Act provides that public employers are obligated to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of the Act. 5 ILCS 315/7

Section 4 states that employers "shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees." 5 ILCS 315/4. Section 4 adds that public employers "however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives." Id.; Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill., Division 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-LP 2014).

Here, the Respondent made a material change to employees' terms and conditions of employment when it instituted the BWC Pilot Program because the BWCs impact employee discipline, safety, and privacy.[14] Moreover, that impact is significantly different from the impact

[14] Whether the Union waived the right to bargain over these effects is addressed separately.

of the existing In-Car Camera Program and is not simply a *de minimis* change, as the Respondent contends. First, the BWCs create greater opportunities for employee discipline than the In-Car Cameras. The BWCs have the potential to record more of an employee's work time, and the review of BWC footage could subject employees to discipline for conduct that was not subject to capture by the In-Car Cameras. In addition, officers have broader custodial responsibilities for the BWCs than for the In-Car Cameras because they must wear the BWCs at all times and can be disciplined for losing them. Likewise, the BWCs impose new and different camera activation requirements, which may likewise present opportunities for discipline if an officer fails to comply with them. Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 268 (1st Dist. 1989) (requiring employer to bargain over disciplinary impact of new investigatory tool, drug testing); Chicago Transit Authority, 33 PERI ¶ 61 (IL LRB-LP 2016) (addressing decisional bargaining, use of rail cameras for discipline changed status quo where employer had never before used those cameras for discipline and where the cameras allowed the employer to view more of the employees' conduct than prior methods of employee surveillance).

Second, the BWCs have features that present new safety-related concerns which are different from the concerns presented by the In-Car Cameras. For example, the BWCs placed officers in danger when their stealth mode feature failed and the indicator light remained active when officers sought to engage in covert operations. The Respondent identified no comparable safety risk arising from the use of In-Car Cameras.

Third, the BWCs raise concerns over employee privacy because they have the potential to record employees in the restroom, whereas the In-Car Cameras do not. If an officer must unexpectedly activate the BWC within 30 seconds of restroom activity, the BWC will capture audio of that activity even though the officer could not have anticipated that the restroom activity would be recorded. Colgate-Palmolive Co., 323 NLRB 515, 515 (1997) (hidden surveillance cameras in restrooms raised privacy concerns that had a potential impact on employees).

Contrary to the Respondent's contention, the Law Enforcement Officer-Worn Body Camera Act ("WBC Act") does not preempt the field of effects bargaining. 50 ILCS 706. The Illinois Public Labor Relations Act specifies that other laws that pertain, in part, to matters that impact terms and conditions of employment "shall not be construed as limiting the duty to bargain collectively." 5 ILCS 315/7. It further provides that parties may enter into agreements that "that

supplement, implement, or relate to the effect of such provisions in other laws." Id. Here, the Union is entitled to bargain greater protections for its members than those conferred by the WBC Act. For example, the WBC Act limits the circumstances under which an employer may use the recordings from the BWCs to discipline law enforcement officers, but the Union may bargain additional limitations on the Respondent's disciplinary use of the recordings. 50 ILCS 706/10-20. In addition, the Union may bargain over those disciplinary impacts that the WBC Act does not address, including the discipline that the Respondent may impose for an officer's loss of a camera, damage to a BWC, misuse of a BWC, or failure to upload its footage.

Finally, Section 14(i) of the Act does not limit the Union's right to bargain over the effects of the BWCs because the Union in this case does not seek to bargain over the type of equipment the Respondent uses. Section 14(i) "is determinative as to whether a topic is a mandatory bargaining subject where it specifically excludes that topic from arbitration." Vill. of Oak Lawn v. Illinois Labor Relations Bd., State Panel, 2011 IL App (1st) 103417, ¶ 23. Relevant to this case, Section 14(i) provides that an interest arbitrator's award shall not include "the type of equipment, other than uniforms, issued or used," and therefore renders this subject a permissive subject of bargaining. However, nothing in Section 14(i) prohibits an arbitrator from issuing an interest arbitration award that addresses the effects of equipment already selected and used by the employer, at issue in this case.

The Respondent's argument to the contrary focuses on the exception to the rule, which provides that "nothing herein shall preclude an arbitration decision regarding equipment if such decision is based on a finding that the equipment used involve[s] a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties." 5 ILCS 315/14(i). However, this exception is irrelevant because the underlying rule does not apply where bargaining over the BWCs' disciplinary and safety effects does not bear on the Respondent's selection of equipment.

Thus, the BWC Pilot Program has bargainable effects.

ii. Notice and Opportunity to Bargain

The Respondent provided the Union with timely notice of its decision to expand the BWC Pilot Program in 2017, but failed to provide a sufficient opportunity to bargain effects.

The duty to bargain arises upon request of the union when it receives timely notice that the

employer intends to change a condition of employment. County of Cook and Sheriff of Cook County, 30 PERI ¶ 14 (IL LRB-LP 2013); Chicago Hous. Auth., 7 PERI ¶ 3036 (LLRB 1991); Cnty. of Cook (Cook Cnty. Forest Preserve Dist), 4 PERI ¶3012 (IL LLRB 1988); Vermilion Cnty., 3 PERI ¶2004 (IL SLRB 1986). The employer must give actual notice of the intended change to a union official with authority to act, the employer's notice to the union of its planned change must be substantively adequate, and the employer must allow the union a reasonable opportunity to bargain. Georgetown-Ridge Farm Comm. Unit School Dist. 4., 7 PERI ¶ 1045 (IELRB 1991) aff'd 239 Ill. App. 3d 428 (4th Dist. 1992); City of Berwyn, 8 PERI ¶ 2038 (IL SLRB 1992)[15]; Chicago Transit Authority, 30 PERI ¶ 9 (IL LRB-LP 2013). These principles apply to effects bargaining because effects bargaining, like bargaining over the decision itself, should take place at a meaningful time, before the action is taken. Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997); Vill. of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); Cook County Hospital, 2 PERI ¶ 3001 (IL LLRB 1985) (stating principle, but finding no violation where case involved controversy over pre-Act events).

There is no question that the Respondent gave appropriate union agents actual, substantively adequate, and timely notice of its 2017 plan to expand the BWC Pilot Program. The Respondent distributed the announcement via email to all members of the unit, including designated union representatives. Chicago Hous. Auth., 7 PERI ¶3036 (LLRB 1991) (no formal notice required). The Respondent described the planned change in sufficient detail to allow the Union an opportunity to make a meaningful response. Finally, the Respondent gave the Union notice of its planned expansion on December 27, 2016, over three months before it implemented the expansion on March 7, 2017. City of Chicago, 9 PERI ¶ 3001 (IL LLRB 1992) (notice is timely if given sufficiently in advance of implementation).

It is also clear that the Union made a timely demand to bargain over the effects of BWC Pilot Program's 2017 expansion because it demanded bargaining on December 28, 2016, just a day after it received notice of the expansion and over three months prior to its implementation. Cnty. of Cook, 15 PERI ¶3001 (IL LLRB 1998) (demand timely if made prior to implementation); Cnty. of Cook and Cook Cnty. Sheriff, 12 PERI ¶3021 (IL LLRB 1996).

However, the Respondent did not give the Union an adequate opportunity to bargain over

[15] No particular form of notice is required. Chicago Hous. Auth., 7 PERI ¶3036; Forest Preserve Dist. of Cook Cnty., 4 PERI ¶3012.

the 2017 expansion's effects. The Respondent's agents made clear in advance of the parties' first meeting that it was not a bargaining session and that the Respondent had no obligation to bargain effects. An employer cannot satisfy its statutory duty to bargain by expressing a willingness to discuss a bargainable subject while maintaining that it has no duty to bargain. City of Highwood, 17 PERI ¶ 2021 (IL LRB-SP 2001); San Diego Cabinets, 183 NLRB 1014, 1020 (1970); Mi Pueblo Foods, 360 NLRB No. 116, slip op. at 10, 17 (2014).

Yet, when Jackson scheduled the first meeting with Angelo, she stated that its purpose was to "inform" the Union of how the Respondent "intended to move forward" and to get the Union's "input." Chief Labor Negotiator Martinico later echoed that sentiment on January 27, 2017, in his written response to the Union's bargaining demand. He acknowledged the Union's position on the Respondent's obligation to bargain effects, but stated that the parties "may have differing positions" on "the existence and/or extent of any bargaining obligation on this issue." He further emphasized that the Respondent planned to attend the February 2, 2017 meeting so that the parties could "discuss" their "concerns and objectives…without waiving [their] respective claims or defenses regarding any bargaining dispute." Thus, the Respondent did not attend the meeting with an open mind and a sincere desire to reach agreement. Rather, it sought "discuss" the expansion's effects while reserving its right to claim it had no duty to bargain at all. City of Chicago, 30 PERI ¶ 126 (IL LRB-LP 2013) (bargaining under reservation of rights is not good faith bargaining; union should have filed charge within six months of its awareness of such conduct); City of Highwood, 17 PERI ¶ 2021 (employer did not bargain in good faith where it reserved the right to renege on any agreement reached); Chicago Park Dist. v. Illinois Labor Relations Bd., Local Panel, 354 Ill. App. 3d 595, 609 (1st Dist. 2004) (union reasonably interpreted employer's statement as refusal to bargain when agent stated he did not believe subject was mandatory subject of bargaining).

The Respondent points to the Union's statements in support of its claim that, in fact, the Union refused to bargain with the otherwise willing Respondent, but the Respondent takes those statements out of context. President Angelo's statement, that the Union did not consider the parties' first meeting to be a bargaining session, is a response to Jackson's earlier characterization of the meeting as an opportunity for the Respondent to present an already-settled course of action on effects. Jackson planned to convey "how the Respondent intended to move forward." Although she also stated that the Union could provide "input," the parties' LOU demonstrates that they

understood the opportunity for input as lesser than, and distinct from, the opportunity to bargain.[16] Angelo's response simply disputed Jackson's characterization in writing and indicated that the Respondent had a greater obligation—an obligation to bargain effects. He referenced the parties' LOU, which describes the Respondent's continuing obligation to bargain effects, and he "renew[ed] the [Union's] request that the Department immediately comply" with the LOU's obligations. He even emphasized that the Respondent was "in the (bad) habit of making unilateral changes." The Union's subsequent claims, that the meetings were not bargaining sessions, must similarly be viewed in the context of the Respondent's assertions that the meetings were merely discussions, and that the Respondent reserved the right to dispute its bargaining obligation.

The Respondent also contends that the Union placed unlawful conditions on effects bargaining by stating it would bargain effects only during negotiations for a successor contract, but this too is an inaccurate description of the Union's bargaining posture. The Union's initial bargaining demand placed no such condition on bargaining. It was only after the Respondent reserved the right to dispute its bargaining obligation that the Union stated it would present its proposals on effects during successor contract negotiations. By that point, the Respondent had already deprived the Union of an opportunity to bargain in good faith by indicating that it had no obligation to consider the Union's proposals. Thus, the Union's refusal to present them during the 2017 meetings has no bearing on this case. Chicago Transit Auth. v. Ill. Local Labor Rel. Bd., 299 Ill. App. 3d 934, 944 (1st Dist. 1998) (employer violated the Act despite union's failure to show interest in bargaining where employer had already deprived union of opportunity to bargain by presenting it with a *fait accompli*); Northern Illinois Univ., 34 PERI ¶ 61 n. 3 (IELRB 2017) (union's refusal to bargain was irrelevant where it occurred after the employer had already refused to bargain in good faith by implementing the unilateral change); cf. Vill. of Bellwood, 25 PERI ¶ 95 (IL LRB-SP 2009) (union's insistence to impasse that the employer respond to information requests regarding permissive subject of subcontracting privileged the Respondent's ***subsequent*** implementation of its decision to subcontract unit work).

The Respondent's claim, that it engaged in good faith effects bargaining in February and March 2017, is further belied by the fact that it implemented the 2017 expansion on March 7, 2017, before the parties met a second time. Vill. of Glenwood, 32 PERI ¶ 159 (IL LRB-SP 2016)

[16] The LOU notes that the Union would have the opportunity to provide "input" at meetings with management, but separately articulates the Respondent's obligation to bargain effects.

(employer violates the Act when it implements a decision before completely bargaining over its effects).

Moreover, the Respondent also impeded good faith bargaining by failing to timely respond to Union's information requests. An employer's failure to provide a union with information relevant and necessary to bargaining may preclude a finding that the employer gave the Union an adequate opportunity to engage in meaningful bargaining. Chicago Park District, 20 PERI ¶ 110 (IL LRB-LP 2003). Here, the Respondent waited to provide the Union with certain requested, relevant, and necessary information until after it implemented the 2017 BWC Pilot Program's expansion, including specifics concerning discipline it had imposed against officers arising from their use of the BWCs. Although the Respondent had provided the Union an excel spreadsheet that offered some information concerning these Summary Punishment Action Reports (SPAR), the information contained in the spreadsheet was incomplete and did not contain a full narrative of the remarks included in the SPARs. The Union could have used this information to obtain a more complete understanding of the types of officer conduct that could trigger disciplinary action and/or the circumstances which may have warranted the Respondent's conclusion, in some cases, that no discipline would issue. Chicago Park District, 20 PERI ¶ 110 (employer violated the Act when it failed to provide requested information about its decision to reduce hours, and the union was therefore unable to bargain over that decision prior to its implementation).

In sum, the Respondent failed to provide the Union with an opportunity to bargain the effects of the 2017 expansion of the BWC Pilot Program.

iii. Waiver

The Union did not waive the right to demand effects bargaining over the 2017 expansion of the BWC Pilot Program.

A Union's waiver of its right to bargain must be clear, unequivocal and unmistakable. Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 274 Ill. App. 3d 327, 334 (1st Dist. 1995); Cnty. of Cook v. Illinois Local Labor Rel. Bd., 214 Ill. App. 3d 979 (1st Dist. 1991); Chicago Park Dist., 18 PERI ¶ 3036 (IL LLRB 2002). A union failure to protest, or demand bargaining over, earlier unilateral action does not act as a waiver of its right to bargain similar changes in the future. Chicago Board of Education and Chicago School Finance Authority, 10 PERI ¶ 1107 (IL ELRB 1994) (acknowledging this principal) (citing N.L.R.B. v. Miller Brewing

Co., 408 F.2d 12, 15 (9th Cir. 1969)); Owens-Brockway Plastic Products, 311 NLRB 519, 526 (1993) ("[a] union's acquiescence in previous unilateral changes does not operate as a waiver of its right to bargain over such changes for all time"); Colgate-Palmolive Co., 323 NLRB at 515.

The clear and unmistakable waiver standard similarly applies to effects bargaining. Chicago Transit Auth. v. Ill. Local Labor Rel. Bd., 299 Ill. App. 3d 934, 944-4 (1st Dist. 1998) (reviewing contract language to determine whether the charging party waived its right to bargain the effects of a reclassification; applying clear and unmistakable waiver standard but finding no waiver).

1. Alleged Waiver by Inaction

Here, the Union's acquiescence to the earlier 2016 expansion of the BWC Pilot Program does not constitute a waiver of its right to bargain over the effects of the subsequent 2017 expansion. The second expansion was more extensive than the first. It covered 14 districts, whereas the initial expansion covered just six. In addition, it impacts an entirely new set of employees who may have different concerns arising from the unique challenges that arise in their respective districts. Colgate-Palmolive Co., 323 NLRB at 515 (addressing decisional bargaining, Union did not waive the right to bargain over future installation of hidden surveillance cameras even though it declined to demand bargaining over earlier installation of other cameras); Owens-Brockway Plastic Products, 311 NLRB at 526 (union's failure to object to some transfer of work to a different location did not constitute waiver of the union's right to bargain over relocation of all unit work and plant closure).

Moreover, the parties' LOU undermines any claim that the Union's acquiescence to the 2016 expansion of the program waives the Union's right to bargain over the effects of the program's 2017 expansion. It illustrates that the Union anticipated expansions of the Pilot Program and did not intend for any earlier inaction on its part to be viewed as a waiver of the right to bargain effects of subsequent expansions. The LOU provides that the Respondent was required to provide the Union with notice "prior to ***any*** expansion" of the BWC Pilot Program. (emphasis added). It further emphasized that the Respondent will "continue to bargain…over any…effect of the BWC Pilot Program" on officer "safety and/or discipline." In short, viewing the Union's earlier inaction as a waiver would require the Board to ignore the Union's prescient attempt to protected itself against the very argument presented by the Respondent here.

2. Alleged Contractual Waiver

The Union also did not contractually waive the right to bargain the effects of the BWC Pilot Program. Indeed, the LOU itself specifically provides that the Respondent will continue to bargain the effects of the BWC pilot program on employee safety and discipline.

The Respondent's claim of contractual waiver[17] is untenable because it erroneously focuses on the parties' underlying contract, to the exclusion of the parties' LOU. Even assuming, *arguendo*, that the parties' underlying contract includes a clear and unmistakable waiver of the Union's right to bargain the effects of new equipment, the parties voluntarily modified that broad waiver when they entered into the LOU. Although the LOU did not reinstate all the Respondent's effects bargaining obligations, it rescinded any waiver of the Union's right to bargain the disciplinary and safety effects of the BWC Pilot Program by explicitly stating that the Respondent had an obligation to bargain those matters. Chicago Transit Authority, 14 PERI ¶ 3002 (parties are not required to bargain anew concerning matters settled by the contract, but they may do so voluntarily).

The Respondent's reliance on prior arbitration awards as evidence of alleged contract waiver is likewise misplaced. Those awards have no bearing on the Union's rights in this case because the Respondent negotiated a special agreement (the LOU), which imposed new obligations that the arbitrators in the cited cases never considered. Any alleged "integrated set of [contractual] understandings" outlined in those awards, which allegedly allowed the Respondent to introduce equipment without bargaining its effects, was modified by the LOU.

In sum, the Respondent violated the Act when it failed and refused to bargain the effects of its decision to expand the BWC Pilot Program in 2017.

2. Alleged Repudiation of the Parties' Letter of Understanding on the BWC Pilot Program

[17] The Respondent argues that the contract allows it to add new equipment and that it also addresses the manner in which the parties will address emergent equipment safety issues. The Respondent suggests that the inclusion of such safety language represents the Union's clear and unmistakable waiver of the right to bargain all of the BWC Pilot Program's effects.

The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU.

It is not the Board's function, in an unfair labor practice context, "to assume the role of policing collective bargaining agreements, or to allow parties to use the Board's processes to remedy alleged contractual breaches or to obtain specific enforcement of contract terms." Creve Coeur, 3 PERI ¶ 2063 (IL LRB-SP 1987). For a breach to constitute an unfair labor practice, it must be "substantial enough to indicate 'repudiation' or 'renunciation' of the collective bargaining agreement or bargaining obligation." Creve Coeur, 3 PERI ¶ 2063. Accordingly, to prove repudiation, the Union must demonstrate that the breach is both (1) substantial and (2) made without rational justification or reasonable interpretation such that it demonstrates bad faith. City of Loves Park v. Ill. Labor Rel. Bd. State Panel, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003); Byron Fire Protection District, 31 PERI ¶ 134 (IL LRB-SP 2015); City of Chicago, 30 PERI ¶ 194 (IL LRB-LP 2014) (setting forth two-step repudiation analysis); City of Elgin, 30 PERI ¶ 8 (IL LRB-SP 2013); City of Kewanee, 23 PERI ¶ 110 (IL SLRB 2007).

The Respondent breached the parties' LOU as alleged in the Complaint. As discussed above, the Respondent did not bargain the effects of the 2017 expansion of the BWC Pilot Program on employee discipline and safety. In addition, the Respondent failed to "establish a district level committee" comprised of "appropriate supervisors and officers" that would provide "input and advice" on the BWC Pilot Program. A committee is "a group of people officially delegated to perform a function." AMERICAN HERITAGE DICTIONARY, Second College Edition, p. 298. The Respondent did not officially delegate a group of officers to provide input and advice concerning the pilot program and it did not notify any bargaining unit members that they were members of a committee with defined responsibilities. The Respondent simply held one meeting on April 28, 2015, to which it invited all officers, so that they could share their experiences with the BWCs. While the officers' feedback may have been valuable, there is no merit to the Respondent's claim that their attendance is proof of a district level committee. Indeed, all witnesses agreed that the April 28, 2015 was not a district level committee meeting, and O'Neill testified that he was not aware of any district level committee meetings at all.

The Respondent contends that the LOU did not mandate that the district level committee take any particular form, but the term "committee" has a plain meaning and the Respondent established nothing at the district level that fits the description. The Respondent also blames the

Union, noting that it could have voiced its concerns over the "operation or composition of the committee," but the Union had no basis to complain about these particulars when the Respondent never established a committee to begin with. Finally, the Respondent asserts that its informal solicitations of feedback on the BWCs from unit members accomplished the same end as a formal committee, but this argument is flawed in two respects. First, the Respondent cannot compare results of its informal method of data collection with the result obtained using a committee where it never established a committee from which it could obtain any results. Second, the LOU plainly requires the Respondent to establish such a committee, and the Respondent's disregard of that obligation in favor of a less formal method of data collection is a breach of the LOU, regardless of how well that alternative method may have worked.

Nevertheless, as a threshold matter, the Respondent's breaches of the LOU are not substantial enough to rise to a repudiation the parties' collective bargaining agreement or even the LOU. First, the LOU included nine paragraphs and the Complaint in this case alleges a breach of just two of them: (1) the obligation to establish district level committee consisting of appropriate supervisors and officers using the BWCs that would provide input and advice concerning the BWC Pilot Program and (2) a continuing obligation to bargain with the Union over the effect of the BWC Pilot Program on Police Officer safety and/or discipline. Moreover, the Executive Director, in partially dismissing the Union's charge, found that the Respondent did not breach other paragraphs of the LOU and she found questions of contract interpretation at the heart of the other alleged breaches.

Moreover, the first breach, viewed on its own, does not have the type of impact on employees' terms and conditions of employment that the Board has previously found to constitute a substantial breach. Indeed, the Respondent's alleged failure to establish a district level committee that could provide input and advice on the BWC Pilot program has no immediate or tangible impact on employees' terms and conditions of employment. Cf. Chicago Transit Authority, 15 PERI ¶ 3018 (IL LLRB 1999) (employer violated the contract by implementing multiple new shift schedules and eliminating daily overtime); cf. City of Kewanee, 23 PERI ¶ 110 (employer changed insurance coverages and performed a layoff in violation of the contract); cf. Chicago Transit Auth., 16 PERI ¶ 3021 (employer changed the manner of overtime calculation).

The second alleged breach is simply a violation of a provision that incorporates some aspects of the statutory obligation to bargain in good faith over the effects of the Respondent's

change. The Union cites to no case that would indicate that an isolated breach of a contract provision, even one that in part incorporates a statutory obligation, rises to the level of repudiation of the agreement as a whole. Nor has the Union shown that the Respondent's breach of such a contract provision constitutes a violation of the Act separate and apart from the violation of the underlying statutory provision that the agreement incorporates.

Thus, the Respondent did not violate Sections 10(a)(4) and (1) when it breached the parties' LOU.

3. Remedy

The facts of this case justify a limited remedy. That limited remedy requires the Respondent to bargain the safety and disciplinary effects of the BWCs distributed in 2017, to rescind the discipline it issued arising from their misuse/loss, and to cease issuing such discipline until the parties complete effects bargaining. It does not require the Respondent to recall the BWCs it distributed in the 2017 expansion or to rescind the discipline it issued based on BWC footage.

The standard remedy for an employer's unlawful failure to engage in effects bargaining is to order the parties to return to the status quo ante and to make whole any affected employees. Chicago Transit Auth., 14 PERI ¶ 3002. As applied in this case, that remedy would require the Respondent to recall the cameras distributed in the 2017 expansion, to rescind any discipline imposed as a result of their use, and to make employees whole. It would also bar the Respondent from redistributing those BWCs until the parties reached agreement on effects or resolved their impasse through interest arbitration. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.) v. State, Labor Relations Bd., State Panel, 373 Ill. App. 3d at 254.

However, the Board has sometimes limited its standard remedy, and such a limitation is warranted in this case. Vill. of Glenwood, 32 PERI ¶ 159. For the reasons set forth below, the Respondent is not required to rescind the 2017 expansion or to rescind the discipline it issued based on BWC footage.

First, the parties in this case acknowledge that the obligation to bargain effects is limited. The parties' LOU specifies that the Department will bargain over the impact of effect of the BWC Pilot Program, but specifies that the obligation extends simply to effects "relate[d] to a Police Officer's safety and/or discipline." Requiring the Respondent to rescind the entire expansion would prevent the Respondent from collecting valuable footage, even though the parties agreed

that the Respondent had no obligation to bargain the methods of collection.

Second, the Law Enforcement Officer-Worn Body Camera Act ("WBC Act") already provides the Union with significant protections against the disciplinary use of footage from the BWCs. It specifies that BWC recordings can be used to discipline law enforcement officers only if "a formal or informal complaint of misconduct has been made, a use of force incident has occurred, the encounter on the recording could result in a formal investigation under the Uniform Peace Officers' Disciplinary Act" or if there is already some evidence of misconduct and the recording is used to corroborate that evidence. 50 ILCS 706/10-20. The parties' interests are therefore adequately balanced by requiring the Respondent rescind only the discipline arising from the BWCs' misuse/loss but permitting the Respondent to continue the limited disciplinary use of footage while the parties' complete effects bargaining.

Thus, the remedy is limited in this case and does not require the Respondent to recall the BWCs distributed in the 2017 expansion, to cease collecting footage from those BWCs, to abandon the disciplinary use of BWC footage, or to rescind discipline it issued based on BWC footage.

V. CONCLUSIONS OF LAW

1. The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed and refused to bargain over the effects of the BWC Pilot Program's 2017 expansion.
2. The Respondent did not violate Sections 10(a)(4) and (1) of the Act when it breached the parties' LOU.

VI. 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 Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.
    b. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a. On request, bargain collectively in good faith with the Charging Party, Fraternal

Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

b. Rescind any disciplinary action that the Respondent imposed on Police Officers arising from the misuse/loss of the BWCs that it distributed as part of the 2017 expansion of the BWC Pilot Program.

c. Make unit members whole for any losses they may have suffered as a result of the discipline they received arising from the misuse/loss the BWCs that the Respondent distributed as part of the 2017 expansion of the Pilot Program.[18]

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 take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

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

VII. EXCEPTIONS

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

[18] West Northfield School Dist. No. 31, 10 PERI ¶ 1056 (IL ELRB 1994) (reversing ALJ's decision not to award a make whole remedy for a unilateral change, finding that whether any employee suffered actual loss was a matter for the compliance hearing).

will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 2nd day of January, 2018

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-17-037

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

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

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

WE WILL rescind any disciplinary action that we have imposed on Police Officers arising from the misuse/loss of the BWCs that we distributed as part of the 2017 expansion of the BWC Pilot Program.

WE WILL on request, bargain collectively in good faith with the Charging Party, Fraternal Order of Police, Lodge #7, over any impact or effect of the BWC Pilot Program's 2017 expansion as it relates to a Police Officer's safety and/or discipline.

WE WILL make unit members whole for any losses they may have suffered as a result of the discipline they received arising from the misuse/loss the BWCs that we distributed as part of the 2017 expansion of the Pilot Program

DATE _____

_____
City of Chicago (Department of Police)
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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

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

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Fraternal Order of Police, Lodge #7,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-20-024
	)	
City of Chicago, Department of Police,	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 18, 2019, the Fraternal Order of Police, Lodge #7, (Charging Party or Union) filed charges with the Illinois Labor Relations Board's Local Panel (Board) alleging that the City of Chicago, Department of Police, (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charge was investigated in accordance with Section 11 of the Act.

On February 21, 2020, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on July 13 & 14, 2020, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS[1]

The parties stipulate, and I find that:

1. The City of Chicago is a municipal corporation organized under the laws of the State of Illinois.
2. The City of Chicago is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act (Act). The City of Chicago operates the Chicago Police Department (CPD).

[1] Some of the parties' stipulations are incorporated into the statement of fact.

3. The City of Chicago is a unit of local government under the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.
4. CPD is an executive department of the municipal government of the City. Its duties and responsibilities are established by ordinance at Chapter 2-84 of the Municipal Code of the City of Chicago (MCC), Chapter 2-84.
5. Fraternal Order of Police (FOP), Lodge #7 (Charging Party) is the bargaining representative of a bargaining unit (Unit) consisting of all non-probationary police officers employed by the City of Chicago Police Department below the rank of sergeant.
6. The FOP is and has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly failed to maintain the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings by unilaterally changing its policy regarding body worn cameras.

The Union argues that the Respondent violated the Act by implementing its last, best final offer on the effects of the body worn cameras (BWCs). The Union contends that the Respondent was required to maintain the status quo of employees' terms and conditions of employment because implementation is not an option for an employer of protective service employees during the pendency of interest arbitration. The Union argues, in the alternative, that the Respondent was not entitled to implement its last, best, and final offer because it bargained in bad faith. The Union further argues that the Respondent violated the Act by unilaterally implementing an extension in BWC buffering time.

The Respondent denies that it made any changes to mandatory subjects of bargaining by implementing the terms of its last, best, final offer, as set forth in its draft memorandum of understanding (MOU). It contends that the Union sought to change the status quo, whereas the Respondent's MOU simply preserved and reflected, or alternatively diminished, the Respondent's existing authority and therefore constituted no change. The Respondent further contends that it was entitled to implement its last, best, final offer because the parties reached a bona fide impasse and the Union bargained in bad faith. The Respondent likewise denies that it violated the Act by

unilaterally increasing the buffering time on the BWCs. It asserts that its decision to increase buffering time is not a mandatory subject of bargaining under the Central City test, and that the increase in buffering time has no bargainable effects that are severable from the underlying decision.

III. FINDINGS OF FACT

1. Background

The Union represents all non-probationary police officers employed in the Respondent's Police Department below the rank of sergeant. In June 2020, there were approximately 10,000 employees in the bargaining unit.

The Union and the Respondent were parties to a collective bargaining agreement covering the unit, which was effective from July 1, 2012, through June 30, 2017. By its terms, it continued in force and effect past its expiration date. The parties' collective bargaining agreement contains a just cause provision that states, "no Officer covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any matter without just cause."

In January 2015, the Respondent instituted the first phase of its Body Worn Camera (BWC) Pilot Program in the 14th District. In spring of 2016, the Respondent expanded the BWC Pilot Program to six additional districts. In December 2016, the Respondent announced its intention to expand the BWC program across all districts by the end of 2017. By December 2017, officers in all patrol districts had BWCs.[2]

Officers assigned BWCs must turn the system on when they start work. When the user turns on the device it enters buffering mode, which means that the device is capturing video footage without audio, but not storing it. The officer must activate the system at the beginning of a law-enforcement-related encounter to store footage and to capture both audio and video. Once the officer activates the system, the device additionally stores a recording of the 30 seconds of video footage captured prior to the user's activation of the camera. It does not capture audio during this 30-second period. After the officer completes his assignment, he presses a button to return the device to buffering mode.

[2] Officers within Bureau of Narcotics, the Bureau of Counterterrorism, the SWAT team, Gang team, and the Saturation Team do not wear BWCs.

On January 25, 2017, the Union filed a charge in Case No. L-CA-17-037, alleging that the Respondent failed to bargain the effects of its decision to implement BWCs, repudiated the parties' Letter of Understanding (LOU) on BWCs, and breached the LOU by disciplining officers for losing or damaging their BWCs. The Board's Executive Director issued a complaint on the first two allegations, but deferred the third allegation to the grievance process, where a grievance was pending.

In October 2017, the parties held a meet-and-greet to discuss impending negotiations over a successor agreement. The parties divided the subjects of negotiations among committees, including the disciplinary subcommittee, which addressed issues related to discipline.

On November 22, 2017, the parties filed their request for mediation panel with the Board.

On January 2, 2018, an ALJ issued a Recommended Decision and Order in Case No. L-CA-17-037 ("BWC RDO I"). In most relevant part, she found that the Respondent violated the Act when it failed and refused to bargain over the effects of the BWC Pilot Program's 2017 expansion. She ordered the Respondent to bargain over the effect of the BWC Pilot Program's 2017 expansion, as it related to police officer safety and/or discipline.

On January 19, 2018, Arbitrator Dan Nielson issued an award on the grievance related to the deferred allegation in Case No. L-CA-17-037. The issue he considered was "whether the Respondent violated the collective bargaining agreement and/or the parties' letter of understanding [LOU] when it imposed discipline on bargaining unit members in relation to BWCs." The focus of his award was the Respondent's issuance of discipline for the loss of cameras because that was the infraction for which the Respondent had actually imposed discipline. The arbitrator concluded that the Respondent did not violate either the collective bargaining agreement or the parties' LOU by disciplining employees for the loss of BWCs. In addressing the Respondent's conduct under the collective bargaining agreement, he noted that "officers have long been subject to at least minor discipline for equipment related offenses, included loss of equipment." He concluded that there was no evidence that the parties intended BWCs to be treated differently from other pieces of equipment.

On February 6, 2018, Respondent's attorney David A. Johnson sent correspondence to the Union's attorney, Laura M. Finnegan, outlining a proposed agreement to waive the filing of exceptions to BWC RDO I, Case No. L-CA-17-037, and to engage in effects bargaining as contemplated by that RDO. He stated his belief that the Union was insisting that effects bargaining

take place within the context of negotiations for a successor collective bargaining agreement. He asserted that the Respondent wished to reach an agreement on the effects of the BWCs prior to reaching agreement on a successor contract.

On February 9, 2018, Finnegan responded to Johnson's letter, disagreeing with his stated understanding of the Union's intent. Finnegan asserted that the Union would prefer to negotiate over the effects of the BWCs as part of negotiations on the contract as a whole. However, she clarified that the Union would be willing to enter into an early tentative agreement apart from any formal agreement on the whole, and that it would allow the Respondent to implement it before reaching an agreement on the entire contract.

On February 20, 2018, Johnson replied to Finnegan. He emphasized that the Union's participation in effects bargaining would not be deemed a waiver of its right to present proposals regarding BWCs in contract negotiations. He also proposed that the parties commence effects bargaining immediately.

On February 23, 2018, Finnegan informed Johnson by phone that the Union was ready to negotiate over the effects of BWCs, and that it would also like to initiate overall contract negotiations on the same date. The parties agreed that, at their first bargaining session, they would present proposals on both the effects of BWCs and also on one to two other subjects relevant to successor contract negotiations.

2. Negotiations

At all times material, Johnson was the Respondent's lead spokesperson in negotiations. Cicely Porter-Adams was the Respondent's Chief Labor Negotiator and served as the Respondent's representative during negotiations. Director of the Management and Labor Affairs Section Wynter Jackson, Deputy Chief George Devereux, Deputy Chief Eric Washington of the Bureau of Internal Affairs, and Deputy Chief Dana Alexander were also representatives of the Respondent during bargaining. Chief of Technology Jonathan Lewin and Tina Skahill were part of the bargaining team later in the bargaining process. Members of the City's Litigation Department were likewise present for bargaining as was Luke Connolly, the Department Advocate in Internal Affairs. Commander Richard Wiser was present for some meetings.

At all times material, attorney Finnegan was counsel for the Union in negotiations. Attorney Joel D'Alba provided legal services to the Union's bargaining team, analyzed draft

contract provisions and sometimes spoke on behalf of the Union in negotiations. Kevin Graham was the Union President from April 2017 through April 2020 and served as the Union's lead spokesperson in negotiations. Richard Aguilar was a Union field representative from May 2017 to April 2020 and attended all bargaining sessions.

The parties met for their first bargaining session on April 26, 2018, at the Union's Lodge Hall. At the meeting, both parties presented proposals to modify provisions of the expired contract. The Union's proposals addressed BWCs and disciplinary matters, but the Respondent's proposals did not. The Union proposed that the Respondent blur officers' faces that appeared in BWC footage. It proposed to allow an officer to review BWC video and audio evidence related to a matter under investigation against that officer. It proposed to protect employees' privacy by prohibiting the Respondent from remotely activating cameras without employees' knowledge, prohibiting cameras from recording privileged communications, prohibiting the use of cameras in places or at times when the employee has a reasonable expectation of privacy, and prohibiting the intentional activation of BWCs to record conversations of other employees during non-enforcement related activities. It proposed that the Respondent would not discipline employees for the loss, damage, or misuse of a camera, or for failure to upload its footage. It proposed that discipline would issue only after the sixth occurrence of a failure to activate BWCs in each month. It proposed that officers would not receive disciplinary action based on recordings obtained from a BWC unless the encounter was flagged, as that term is defined in the Law Enforcement Officer Body Worn Camera Act,[3] and an individual filed a complaint against the officer with a signed affidavit stating first-hand knowledge of the event. Finally, the Union proposed a prohibition on "trolling" by a supervisor, which occurs when a supervisor subjects an employee to unwarranted, heightened scrutiny of their BWC footage for purposes of disciplinary action.

On April 30, 2018, the Respondent issued Special Order S03-14, which addressed how the Department would assign BWCs, explained details about their operation, and described who was authorized to review recordings made by the cameras. It contained the following specific terms relevant to this case: It stated that, "the Department does not intend to utilize the BWC to discipline members for isolated minor Departmental rule infractions consistent with the Illinois Officer-Worn Body Camera Act…and the Department directive titled Complaint and Disciplinary

[3] A flag is an electronic marker that preserves the video. Any individual who reviews the video, or is involved in the recorded incident, can flag it.

Procedures." It specified that BWCs will not be activated to record appearances at court or hearings, and it noted that members were required to turn off their BWC during such appearances so that it is not in buffering mode. It noted that the audio recording of a private conversation is prohibited by law when obtained or made by stealth or deception or executed through secrecy or concealment. It stated the following, "Department members may review their BWC recording of an incident prior to writing any report related to the incident. The member will document this fact in the narrative portion of the report. This includes but is not limited to case reports, arrest reports, and investigatory stop reports." Finally, the special order stated that "recordings made on BWCs must be retained for a period of 90 days unless any incident captured on the recording has been flagged."

On June 25, 2018, the parties met for another bargaining session. The Respondent tendered the Union its response to the Union's proposals of April 26, 2018. The response consisted of a number of questions, but no counterproposals. The parties discussed each question during negotiations. The parties met again the following day for bargaining. The Respondent asked for an interim agreement on BWCs. The Union did not agree to interim agreement proposals for BWCs.

On July 9, 2018, the parties met for another bargaining session. D'Alba and Graham were present on behalf of the Union. Chief Lewin and attorney Johnson were present on behalf of the Respondent. The Union submitted proposed modifications of its initial proposal of April 26, 2018, which in most relevant part addressed the dissemination of photos, including BWC video, (Section 6.4) and the imposition of discipline based on BWC evidence (Section 8.9) or on the loss/use of BWCs (Section 7.2). The Union again proposed that images of officers on BWCs should be blurred. The parties discussed the applicability or non-applicability of the specific exemptions in the FOIA statute to the blurring of officer faces on BWC footage. Also at this meeting, Graham stated that inadvertent operation of the BWC should not result in discipline and that random viewing by supervisors should be prohibited.

On July 23, 2018, the parties met for their next bargaining session. The Respondent informed the Union that it wished to negotiate the effects of the BWCs separately from overall contract negotiations. The Respondent provided the Union with a document entitled Draft MOU with FOP Re: BWC. The Draft MOU proposed that the Department would amend its policies and/or procedures with respect to the use of BWCs and recordings in a number of respects to

safeguard employee privacy. Specifically, the Respondent proposed that the BWCs would not be intentionally activated to record conversations with other employees during non-law enforcement activities; that BWCs would not be used in places where, or at times when, an officer has a reasonable expectation of privacy; and that recordings captured by inadvertent camera activation would be identified and protected to determine the proper course of action. However, it reserved the right to respond to any misconduct captured on such recordings. It also proposed that the BWCs should not be used to record an officer's privileged communications. It stated that current technology did not permit remote activation, but if technology evolved to permit such remote activation, the Respondent would do so when it was necessary for the purpose of officer safety.[4] The Respondent further proposed to implement a mechanism, within 90 days of the MOU's execution, that would ensure that the review of BWC footage was performed on a random basis. It proposed that it would blur the faces of officers on BWC footage when it used such footage for training purposes. It proposed that the unintentional loss of BWCs would not be considered an act of insubordination, and that the Department would consider whether the officer's loss or misuse of the BWC was intentional or negligent, when determining whether to impose discipline. It also proposed to consider previous instances of loss or misuse and any other aggravating or mitigating circumstances.

The Respondent's draft MOU additionally proposed to establish a Labor-Management Committee to review the functioning of the BWC program. It proposed to expunge disciplinary actions taken against bargaining unit members in response to their loss or misuse of BWCs up until the date of the MOU and make them whole. It further proposed to resume disciplinary action against officers for the loss and/or misuse of the BWC, consistent with the MOU's guidelines and to continue disciplinary action for officer misconduct in connection with the BWC or revealed on BWC footage, upon execution of the MOU. It proposed that the parties would notify the Board's General Counsel that the parties had resolved the issues raised in Case No. L-CA-17-037 and inform her that the Board did not need to take further action on the case. Finally, it noted that the MOU would be effective upon its execution and would remain in effect during bargaining for a successor contract, but that it would not preclude either party from presenting proposals in addition to those contained in the MOU, for inclusion in the parties' successor agreement.

[4] Graham testified that Chief Lewin informed him that the Respondent was working on a system that would automatically activate the cameras when officers receive a call. However, that system is not in operation.

Between August and October 2018, the parties bargained over the BWCs' effects and exchanged proposed modifications to the Respondent's draft MOU. The Union proposed changes on August 15, 2018. The Respondent presented a modified MOU on August 23, 2018. Later that day, the Union proposed additional changes that mirrored some of its first proposals. On October 26, 2018, the Respondent presented the Union with another modified MOU. On October 31, 2018, the Union responded to the Respondent's draft MOU by highlighting the parts with which it disagreed.

The Union did not provide the Respondent with a modified draft MOU at any time between October 26, 2018 and January 14, 2019. There were no bargaining sessions between November 19, 2018, and January 2019.

On January 14, 2019, the parties met again to bargain. The Respondent provided the Union with a document entitled "Last, Best and Final Offer to Union for MOU Re: Body Worn Cameras/Effects Bargaining." The final offer stated the following in relevant part:

> 1) The Department shall amend its current policies and/or procedures with respect to the use of body worn cameras "BWC") and recordings in the following respects:
>
> a. BWCs shall not be intentionally activated to record conversations with other employees with or without their knowledge during routine, non-law enforcement activities, including but not limited to surreptitious recordings of conversations with other members;
>
> b. BWCs shall not be used in places where, or at times when, a member has a reasonable expectation of privacy, such as locker rooms and restrooms, and post-incident conversations with any Department members or supervisors;
>
> c. BWCs shall not be used to record a member's privileged communications as recognized under law. Any recording of such privileged communication may not be the subject of a disciplinary investigation or discipline except where such use of the recording is permissible under 735 ILCS 5/8-803.5.
>
> i. The City takes the position that it regards privileged communications as exempt from disclosure under FOIA and agrees to continue its practice of using best efforts to withhold privileged communications unless compelled to do so by a court or other competent body.
>
> d. Recordings captured by inadvertent camera activation that are prohibited by the foregoing shall be identified, protected and reviewed by the appropriate authority to determine proper action (including but not limited to deletion upon determination that the recording is not a public record and therefore not required to be maintained)[.] No disciplinary action in response to any conduct captured on the recording

may be taken unless it is in conformance with the Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/10-1 et seq) and the collective bargaining agreement.

e. The Department acknowledges that current technology does not permit BWCs to be remotely or automatically activated. In the event technology evolves to the point where BWC can be automatically activated (e.g., as is the case with in-car cameras, which are automatically activated when the emergency lights are activated), it shall not implement the technology without prior notice to and, upon request, negotiating the impact with the Lodge. The Department acknowledges that it has no intention of implementing a system whereby the BWC can be activated remotely and without the officer's knowledge, unless such activation is necessary for purpose of officer safety.
    i. The Department agrees to provide the Lodge with thirty (30) days notice prior to expanding the BWC program beyond its current parameters. Unless the parties otherwise mutually agree, the provision of this MOU shall apply and govern in the event the BWC program is expanded beyond its current parameters. Should the Lodge believe that any such expansion presents unique issues with respect to officer safety and discipline, it shall bring this to the attention of the Department and the parties will discuss how to proceed.
f. Within ninety (90) days of the date of execution of this MOU, the Department will implement a mechanism to ensure that the review by the Watch Operations Lieutenant of BWC recordings, as provided for in Section V.D.3 of Special Order S03-14, is effectuated on a random basis. The Department will discuss the mechanism with the Lodge prior to implementation. Videos viewed by the Watch Operations Lieutenant pursuant to this section shall be limited to videos generated in the seven (7) calendar days preceding the viewing.
    i. The City will continue its practice of providing advance notice to Officers when videos will be uploaded on COPA's portal.
g. It is agreed that there are circumstances where BWC footage can be helpful for training purposes (e.g., training recruits in the Academy, etc.). Where BWC footage is used for such purposes, the Department will notify the officer(s) involved and will blur the face(s) of the officer(s) appearing in the footage. This proviso shall not apply in the case of re-enactments created for training purposes.
h. The Department agrees that the unintentional loss of a BWC shall not be considered to be an act of insubordination by the officer. In determining whether to impose discipline on officers for the loss (for example, when an officer is chasing a suspect and the camera falls off) or misuse of the BWC or the isolated, inadvertent failure to activate/deactivate video footage, the Department shall take into consideration whether the officer's actions were intentional or

negligent, whether the officer has previous instances of loss or misuse of the BWC, and any other aggravating or mitigating circumstances. If exigent circumstances exist which prevent the BWC from being turned on, the BWC must be turned on as soon as practicable.

i. In the event the Department seeks to use a BWC recording to discipline an Officer covered by the collective bargaining agreement, such use shall conform to the requirements of Section 20(a)(9) of the Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706/10-20(a)(9) and the provisions of the collective bargaining agreement.

j. Department members may review their BWC recording of an incident prior to writing any report related to the incident. The member will document this fact in the narrative portion of the report. This includes but is not limited to case reports, arrest reports, TRRs, and investigatory stop reports.

k. An Officer required to wear BWC has the option to turn off the BWC during time in which the officer is not actively engaging the public (e.g., while on break, inside a police facility or attending court).

l. The City will continue its practice of blurring the faces of undercover officers on BWC footage before releasing them to the public.

2) Within ninety (90) days of the date of execution of the MOU, the Lodge and the Department shall establish a Labor-Management Committee to review the functioning of the BWC program. The Committee shall meet quarterly and shall be composed of a reasonable number of members selected by the Lodge and Department, respectively. The Department shall provide the Committee with information, to the extent legally and reasonably available, regarding the costs, including but not limited to equipment purchase, maintenance, repairs, data storage of the BWC program and its effectiveness in protecting the safety and welfare of the public as well as Department members. The Committee shall discuss the operation of the BWC Program and may submit recommendations to the Superintendent with respect to ways in which the BWC Program may be improved.

3) Attached as Exhibit A is a compilation of disciplinary actions taken against bargaining unit members in response to their loss or misuse of the BWC up until the date of this MOU. Solely for purposes of this MOU, and without conceding that any of the disciplinary actions contained in Exhibit A were in any way inappropriate, the Department agrees to expunge all such disciplinary actions and, with respect to suspensions contained in Exhibit A, to make those officers whole for any monies lost as a direct result of the suspension(s).

Johnson stated that the time had come to wrap up effects bargaining on the BWCs, but that the conclusion of effects bargaining was without prejudice to the Union's talks with Chief Lewin, with whom Graham was meeting one-on-one. Graham responded that the parties were not done with effects bargaining. D'Alba noted that there were outstanding issues on the contract as a whole. Aguilar testified that the parties had not yet defined the meaning of the term "misuse" as

it applied to BWCs. He also testified that the parties discovered new issues to bargain at each meeting where they discussed the BWCs' effects.

As of January 14, 2019, the parties had not concluded negotiations for their successor contract. The parties continued bargaining over the terms of their successor contract and, to that end, met 18 more times.

In February 2019 Commander Wiser, who was then head of the Investigative Response Team, returned from Los Angeles, a jurisdiction which employs a two-minute buffering time on its BWCs. He recommended that the Respondent likewise increase its buffering time to two minutes because it would enhance the Respondent's ability to undertake a more comprehensive review of a recorded incident.

The Respondent's Investigative Response Team (IRT) uses footage from BWCs to investigate officer-involved shootings and officer-involved death incidents. In addition, the Respondent's Force Review Division ("division") reviews BWC footage to assess certain cases in which an officer has used force in the course of his law enforcement duties.[5] The purpose of the review is to provide feedback to officers on how to hone their craft, increase their safety, and reduce exposure to civil liability. The division is non-disciplinary and issues only directives for training which may include a directive for formal training, known as an advisement, or a directive for informal training, known as a recommendation. If the division observes misconduct in the course of its review of BWC footage, it will generate a complaint log number, but it has done so rarely.[6] In reviewing uses of force, the division does not limit itself to viewing BWC footage. It also reviews the associated paperwork and footage from other cameras owned by the department including in-car cameras and pod cameras, which are placed in hotspots throughout the City. However, Commander of the Force Review Division, Eve Gushes, testified that BWC footage is the key piece of evidence that the Division reviews to provide officers with the correct feedback on their performance to help them improve. In cases where the officer has failed to activate the BWC or has activated it late, the division cannot see the actions of the officer or the actions of the public that led the officer to engage in a reportable use of force. As a result, the division cannot

[5] It reviews those events for which an officer must complete a Tactical Response Report.

[6] To date, the division has completed approximately 3000 reviews but has generated only nine complaint logs.

provide officers with a thorough and comprehensive review to help improve their tactics and reduce their civil liability.

On May 17, 2019, the Respondent accepted Wiser's recommendation and published an Administrative Message that announced its intent to increase the buffering time for the BWC from 30 seconds to two minutes. The message stated that all BWCs would be updated to the new buffering time period once the camera was docked.

That day, Union attorney Finnegan sent a letter to MLAS Director Wynter Jackson with a demand to bargain the increase in the buffering time. Finnegan noted that the Respondent's change in the BWCs' operation could affect employees' privacy, discipline and/or safety. She observed that the parties were already in continued negotiations over the effects of the BWCs, and that the Respondent had not raised "the capability of the cameras to buffer beyond 30 seconds or the [Respondent's] desire to increase the buffering mode to two minutes." She also made a request for information regarding the Respondent's decision-making process, the timing of the Respondent's decision, and the nature of the change.

On May 29, 2019, the Union and the Respondent met at the Department's headquarters on 35th and Michigan Avenue to speak about the increased buffering time. Present on behalf of the Respondent were Chief of Staff Robert Boik, Chief Lewin, Chief Staples, General Counsel Dana O'Malley, Director Jackson, Commander Wise, Assistant Director Allyson Clark-Henson, Sergeant Daniel Kranz, and Chief Labor Negotiator Cicely Porter-Adams. Present on behalf of the Union were Union President Graham, three field representatives, and attorney Finnegan.

At the meeting, the Respondent disagreed with the Union's position that the Respondent had the obligation to bargain the increase in buffering time. However, the Respondent explained the basis for its decision to increase the buffering period. It stated that the existing 30 second buffering time did not give an officer the necessary time to activate the BWC to capture an important incident. The Respondent noted that there had been approximately 46 police-involved shootings since the beginning of 2019 in which the BWC was activated after the incident began. Had the buffering time been two minutes, it would have captured the beginning of eight of those incidents. Porter-Adams testified that there had been a shooting that immediately preceded the announced increase in buffering time. The Respondent's agents referenced that shooting and stated that if the officer's BWC had had a longer buffering time, his description of the event would have been corroborated by video footage.

Union President Graham expressed concern that the Respondent would increase the buffering time even further in the future and that it would enable remote activation of the BWCs. The Union stated that it did not want the BWCs to record the officers' lunch period because the officers were not paid during that time. The Union was also concerned that the increased buffering time would include interactions that did not involve the public such as private bathroom functions and adjustment of uniforms. Graham testified that he could not recall negotiations on these particular concerns. At the conclusion of the meeting, Graham asked the Respondent to hold off on implementing the two-minute buffering time so that he could discuss the change with the Union's members. The Respondent did so.

On May 31, 2019, the Chief Administrator of the Civilian Office of Police Accountability (COPA), Sydney Roberts, issued an advisory letter to the Department's Superintendent, Eddie T. Johnson. Roberts stated that COPA had a "growing concern that Department members [were] routinely failing to activate their Body Worn Cameras (BWCs) as expressly required by the Department Policy and Illinois Statute." Roberts conveyed COPA's recommendation that the Department act to ensure that all members who are issued BWCs comply with State law and the Department's unambiguous orders. It recommended that the Department increase the administrative sanction for failure to activate or delay activation of the BWC so that it serves as a meaningful deterrent to violating the Special Order. Roberts concluded that "strict enforcement of Illinois law and Department policies in instances not involving isolated minor Department rule infractions is necessary in order to give effect to the legislature's clear directive and to convey the importance of Members' compliance with the [BWC] Act and the Department's directive requiring the use of BWCs."

On June 6, 2019, Director Jackson responded to Finnegan's letter of May 17, 2019. She granted the Union's information request in part and denied it in part. Jackson informed the Union that the two-minute buffer captures video footage only, and no audio. She also summarized the information that the Respondent provided during the meeting of May 29, 2019, to explain the Respondent's rationale for extending the buffering time. In relevant part, she emphasized that the Respondent had no obligation to provide further information regarding the extension to the buffering time because it concerned a non-bargainable matter.

On or about June 9, 2019, the Respondent implemented the increase in buffering time. The Respondent maintained its position that it did not have the obligation to bargain that increase.

On July 17, 2019, the parties met again for a bargaining session. They discussed the activation state of BWCs on officers' lunch breaks. The Union noted that the new two-minute buffer could record officers' activities while they were home having lunch.

On July 30, 2019, the parties met for another bargaining session. Johnson stated that the City would implement the BWC MOU immediately. The Respondent informed the Union, that as of that date, the Respondent would begin to discipline employees for the loss and misuse of BWCs. Finnegan asked the Respondent why it was implementing the BWC MOU now. The Respondent's agent replied that COPA made a determination that there were delays in their investigations and that police officers were not activating their cameras. The Union responded that the parties had not completed bargaining on a number of issues concerning BWCs including matters related to officer safety, discipline, and whether the term "misuse" covered both intentional and/or inadvertent conduct.

After July 30, 2019, the parties continued to bargain over the terms of their successor contract. However, the preponderance of the evidence demonstrates that the parties had no further formal discussions over the BWCs.[7] President Graham met with Chief Lewin after work on at least one occasion in August 2019 to discuss the blurring of faces on BWC footage, but Chief Lewin was not authorized to make a binding agreement and informed Graham that he lacked such authority.

IV. DISCUSSION AND ANALYSIS

1. Unilateral Implementation of Last, Best, Final Offer on Effects Bargaining

The Respondent violated the Act when it unilaterally implemented its last, best, and final offer on the effects of the BWCs.

Section 2 of the Act states that, "it is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes." 5 ILCS 315/2. To that end, "all collective bargaining disputes involving persons designated by the Board as performing

[7] D'Alba testified that the parties discussed BWC at the August 23, 2019 meeting and notes that the Union proposed changes to Section 6.2(a) of the contract, which uses the term "buffer period." However, that phrase refer to the length of time during which a shooting officer can decline to give an administrative statement to COPA. The term buffer in that context does not relate to BWCs.

essential services and those persons defined herein as security employees…shall be submitted to impartial arbitrators." 5 ILCS 315/2. Section 14 of the Act likewise states that employees who are prohibited from striking have the right to interest arbitration, and it outlines the applicable impasse resolution procedures. 5 ILCS 315/14.

The right to interest arbitration applies to both midterm disputes and disputes over initial/successor contracts. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.) v. State, Labor Relations Bd., State Panel, 373 Ill. App. 3d 242, 253-4 ("the statutory dispute-resolution procedures of section 14…must cover midterm disputes as well as initial-successor disputes"). In either type of dispute, when an employer reaches impasse with a union representing employees who lack the right to strike, the employer cannot implement its final offer. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.), 373 Ill. App. 3d at 253 (applying analysis to security employees); Village of North Riverside, 2017 IL App (1st) 162251 ¶ 23 & ¶ 27 (applying rationale to bar employer's unilateral termination of firefighter contract). Allowing unilateral implementation in such cases would grant strike-ineligible employees fewer rights than strike-eligible employees. State of Illinois, Department of Central Management Services, 22 PERI ¶ 10 (IL LRB-SP 2005) aff'd by State, Dept. of Cent. Mgmt. Services (Dep't of Corr.), 373 Ill. App. 3d at 253. It would also "impermissibly shift the balance of power in favor of the employer." Id.

Accordingly, an employer of strike ineligible employees violates Sections 10(a)(4) and (1) of the Act when it unilaterally implements its last, best, final offer in midterm negotiations and fails to proceed through statutory impasse resolution proceedings. State of Illinois, Department of Central Management Services, 22 PERI ¶ 10 (IL LRB-SP 2005) aff'd by State, Dept. of Cent. Mgmt. Services (Dep't of Corr.), 373 Ill. App. 3d at 253. Similarly, an employer of strike in-eligible employees violates Sections 10(a)(4) and (1) of the Act when it unilaterally changes employees' terms and conditions of employment during the pendency of interest arbitration proceedings for an initial or successor contract. Vill. of N. Riverside v. Illinois Labor Relations Bd., State Panel, 2017 IL App (1st) 162251, ¶ 37; East St. Louis Fire Department, 30 PERI ¶ 67 (IL LRB-SP 2013); 5 ILCS 315/14(j). Indeed, once a party has initiated interest arbitration proceedings by requesting mediation,[8] an employer cannot change the status quo of employees' terms and conditions of employment without the union's consent. 5 ILCS 315/14(l).

[8] 5 ILCS 315/14(j).

Here, the Respondent violated the Act when it implemented its last, best, final offer on the BWCs effects because its bargaining partner, the FOP, represents employees who lack the right to strike, and the Respondent was therefore not entitled to implement its final offer. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.), 373 Ill. App. 3d at 253; Village of North Riverside, 2017 IL App (1st) 162251 ¶ 23 & ¶ 27. As both the Board and the Court have noted, when an employer negotiates with unions representing protective service employees, "'[g]ood faith bargaining, within the meaning of the Act, does not end at impasse; it continues through interest arbitration and the ultimate issuance of an award.'" Village of North Riverside, 2017 IL App (1st) 162251 ¶ 23 (quoting State of Illinois, Department of Central Management Services, 22 PERI ¶ 10 (IL LRB-SP 2005)). Thus, the appropriate avenue for resolving the parties' impasse on the BWCSs' effects was impasse resolution proceedings, not unilateral implementation. State, Dept. of Cent. Mgmt. Services (Dep't of Corr.), 373 Ill. App. 3d at 253.

The defenses raised by the Respondent on brief do not excuse the implementation of its last, best final offer on the BWCs' effects. First, the Respondent—an employer of union-represented peace officers—cannot implement its last best final offer upon reaching impasse in negotiations, and the existence of an impasse on effects bargaining is no defense to unilateral action in this case. See discussion supra.

Second, the Union's alleged bad faith in negotiations likewise cannot justify implementation. The cases cited by the Respondent in support of that position do not concern employees who have a statutory right to interest arbitration in lieu of a right to strike, as do the peace officers in this case. Cf. Village of Bellwood and AFSCME, 25 PERI ¶95 (ILRB-SP 2009) (white collar employees in the department of buildings and finance).[9] Accordingly, the Respondent was obligated to continue bargaining in good faith through interest arbitration proceedings and to use the Board's unfair labor practice procedures to obtain a remedy against the Union's alleged bad faith bargaining. See e.g., Tri-State Fire Protection District, 31 PERI ¶ 78 (IL

[9]The Respondent also cited the following cases, which are similarly inapplicable. Cf. Southwestern Portland Cement Co., 289 NLRB 1264, 1265 (1988) (private sector production and maintenance employees); cf. M&M Building and Electrical Contractors, Inc., 262 NLRB 1472, 1472 (1982) (private sector construction industry employees); cf. Serramonte Oldsmobile, Inc., 318 NLRB 80, 82 (1995) (private sector service technicians); cf. Jefferson Smurfit Corporation, 311 NLRB 41, 55 (1993) (private sector paper workers)

SRB-SP 2014) (ordering respondent-union to bargain, at employer's request, even after interest arbitration award had issued, where union obtained award through bad faith bargaining).[10]

Finally, there is no merit to the Respondent's argument that it in fact maintained the status quo when it implemented its last, best, and final offer ("final offer"). From a practical standpoint, the Respondent would have had little reason to announce its implementation of the final offer had that offer proposed no changes to employees' terms and conditions of employment, as the Respondent contends.

Furthermore, the Respondent on brief admitted that it changed the status quo when it implemented its final offer because it concedes that its final offer modified the applicable disciplinary standard. An employer's change to disciplinary standards qualifies as a material and substantial change to the status quo. Vill. of Westchester, 16 PERI ¶ 2034 (IL LRB-SP 2000). "The fact that a unilateral change is beneficial to employees does not excuse the violation or negate the existence of the change." Vill. of North Riverside, 36 PERI ¶ 56 (IL LRB-SP 2019); (quoting Viejas Band of Kumeyaay Indians, 366 NLRB No. 113 (2018). Here, the Respondent admits that its final offer included a new disciplinary standard for the loss or misuse of BWCs (paragraph h) that was "more forgiving to the officer, and more demanding of the employer" than the existing just cause standard. This is clearly a material change, standing alone. Vill. of Westchester, 16 PERI ¶ 2034 (employer's change to disciplinary standard for excessive use of sick leave was material and substantial).

A review of the final offer reveals further changes to the status quo that implicate employee privacy and discipline. The final offer newly permitted officers the option of turning off the BWC during times when the officer is not actively engaging with the public, including while on a break or inside a police facility (paragraph k). Next, it established a new process for the review and potential deletion of privileged recordings captured by inadvertent camera activation, and also purports to place some limitation on the disciplinary use of such footage (paragraph d). It newly specified that Department members could review their BWC recordings of an incident prior to writing any report related to the incident including Tactical Response Reports (TRRs), which are not expressly referenced in the Respondent's April 2018 special order (paragraph j). Taken

[10] The Respondent has failed to claim, on brief, that an emergency necessitated its unilateral action, and any such argument is deemed waived.

together, these findings support the conclusion that the Respondent violated the Act by unilaterally changing employees' terms and conditions of employment. County of Cook and Sheriff of Cook County, 6 PERI ¶ 3019 (IL LLRB 1990) (citing Illinois Department of Central Management Services and Corrections, 5 PERI ¶ 2001 (IL SLRB 1988) aff'd. sub nom AFSCME v. ISLRB, 190 Ill. App. 3d 259 (1st Dist. 1988) (disciplinary procedures are a mandatory subject of bargaining).

The Respondent correctly notes that certain other aspects of the final offer did not change the status quo.[11] However, the changes outlined above sufficiently establish that the Respondent violated the Act when it implemented the terms of its final offer.

2. Remedy for Unilateral Implementation of Final Offer

The Respondent must rescind implementation of its final offer to restore the status quo ante, follow impasse resolution procedures applicable to peace officers, and make employees whole.

The Board's policy in unfair labor practice cases is to order a make-whole remedy and restore the status quo ante, that is, place the parties in the same position they would have been in had the unfair labor practice not been committed. Wood Dale Fire Protection District, 25 PERI ¶ 136 (IL LRB-SP 2008); City of Aurora, 24 PERI ¶ 25 (IL LRB-SP 2008); City of Crest Hill, 4 PERI ¶ 2030 (ISLRB 1988). The traditional remedy in cases involving an unlawful unilateral change in employees' wages, hours, and other terms and conditions of employment is an order that the employer rescind the policy change for the unit employees, bargain over the policy decision and its effects on the employees' terms and conditions of employment and restore adversely affected employees to the status they occupied before the unilateral action occurred. Village of Bensenville, 18 PERI ¶ 2076 (IL LRB-SP 2003); City of Peoria, 3 PERI ¶ 2025.

[11] These include provisions that codified the Respondent's existing practices of giving advance notice to officers before uploading footage to COPA's portal, blurring the faces of undercover officers before releasing footage, and using its best efforts to withhold privileged communication. They also include provisions that the Respondent never implemented—those that were to take effect upon execution of the MOU, which never occurred, and affirmations about the Respondent's future conduct regarding the BWCs' capabilities and expansion of the BWC program.

Here, the Respondent must rescind implementation of its final offer because the Respondent was not entitled to unilaterally implement it. County of Cook (Juvenile Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998).

In addition, the Respondent must resolve the parties' alleged impasse over the BWCs' effects through established impasse resolution procedures. The parties' dispute in this case is best characterized as a midterm dispute because it arose during the term of the parties' now expired contract which, by its terms, continues in force and effect until the parties reach a new contract. Accordingly, the parties are entitled to proceed through impasse resolution procedures on the discrete issue of the BWCs' effects, separate and apart from their negotiations over their successor contract. It is not clear whether the parties' contractually negotiated impasse resolution procedure applies to midterm disputes,[12] but if it does, the parties should follow that procedure to resolve this dispute. If that procedure does not apply to midterm disputes, the parties should design a process for resolution of such matters, with any disagreements subject to the Board's compliance process.[13] American Federation of State, County & Municipal Employees, 22 PERI ¶ 10 n. 9 (ordering such a remedy).

Next, at the Union's request, the Respondent must rescind any discipline it issued to officers for the loss of BWCs under the newly-established disciplinary standards set forth in its final offer and reconsider such discipline under the standards previously in existence. The Respondent correctly notes that under the terms of the now expired contract, it was permitted to discipline employees for the loss of BWCs. Arbitrator Nielsen made that clear in his 2018 award on BWCs, and his construction of the contract became a binding part of the agreement.[14] Elkouri and Elkouri, *How Arbitration Works* p. 425 (4th ed. 1985); AFSCME v. Department of Central Management Servs., 173 Ill. 2d 299, 305 (1996) ("it is the arbitrator's view of the meaning of the contract that the parties have agreed to accept"); County of Lake, 28 PERI 67 (IL LRB-SP 2011). Nevertheless, the Union must have the opportunity to request rescission and reconsideration of the

[12] Neither party has offered arguments on this issue.

[13] The Respondent has not claimed that the Union waived the right to midterm interest arbitration, and such an argument is itself deemed waived.

[14] Contrary to the Union's contention, the arbitrator did not merely consider the Respondent's authority under the parties' Letter of Understanding regarding the BWC pilot program. Rather, the arbitrator also considered the language of the parties' collective bargaining agreement and the parties' past practices. ER Exh. 1., pp 25-27.

disciplinary decisions imposed pursuant to the Respondent's final offer because those decisions applied a different, albeit less stringent, disciplinary standard than the one previously in effect.

Similarly, at the Union's request, the Respondent must also rescind the discipline it issued officers for other types of BWC misuse, apart from their loss, but it may likewise reconsider that discipline under pre-existing standards. Contrary to the Union's suggestion, there is support for the proposition that the Respondent's existing rules cover at least some such alleged misconduct. First, Arbitrator Nielsen noted that officers had "long been subject to at least minor discipline for equipment related offenses." And although Nielson's award focused on discipline issued for the loss of cameras, his analysis suggests that discipline for a broader array of equipment-related offenses is also contemplated under existing rules. Additionally, it is clear that an officer's repeated and outright refusal to activate his BWCs falls squarely under the existing disciplinary framework addressing insubordination and/or inattention to duty and does not turn on nuanced interpretations of the BWC special order.

Finally, while there may be some types of BWC misuse that are not covered by existing Department provisions, the just cause standard "will provide sufficient protections for the unit employees while the parties bargain over more specific disciplinary provisions." State of Illinois, Dept. of Cent. Mgmt., 5 PERI ¶2001 (SLRB 1988).

3. Unilateral Increase in Buffering Time

The Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally increased the buffering time on body worn cameras from thirty seconds to two minutes because it implemented its decision without first bargaining over its effects.

An employer violates Sections 10(a)(4) and (1) of the Act if it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, the exclusive bargaining representative of its employees. Amalgamated Transit Union v. Illinois Labor Relations Bd., 2017 IL App (1st) 160999, ¶ 35; Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997); City of Peoria, 3 PERI ¶ 2025. Furthermore, during the pendency of interest arbitration, an employer cannot change the status quo of employees' terms and conditions of employment without the union's consent. 5 ILCS 315/14(l).

As a preliminary matter, there is little dispute that the Respondent unilaterally implemented the increase in buffering time during the pendency of interest arbitration proceedings without

obtaining the Union's consent. The Respondent has not claimed otherwise on brief, and the facts support this conclusion. Here, the interest arbitration process began with the parties' request for mediation on November 22, 2017,[15] and the Union clearly denied its consent to the Respondent's subsequent increase in buffering time when it demanded to bargain over that decision. Accordingly, the remaining questions are whether the Respondent's decision to increase the buffering time on BWCs is a mandatory subject of bargaining, and if not, whether the Respondent has any obligation to bargain over the effects of its decision.

As discussed below, the Respondent's decision to increase the BWC buffering time is a permissive subject of bargaining. However, the Respondent is nevertheless required to bargain the effects of that decision. In Central City, the court set forth a three-part test to determine whether a matter is a mandatory subject of bargaining. The first question is whether the matter is one of wages, hours and terms and conditions of employment. Cent. City Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd. ("Central City"), 149 Ill. 2d 496, 523 (1992). If the answer to that question is no, the inquiry ends, and the employer is under no duty to bargain. Central City, 149 Ill. 2d at 523. If the answer is yes, then the second question under the Central City test is whether the matter is also one of inherent managerial authority. Id. If the answer is no, then the analysis stops, and the matter is a mandatory subject of bargaining. Id. If the answer is yes, the Board will balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the employer's authority. Id.

A matter concerns wages, hours, and terms and conditions of employment if it (1) involves a departure from previously established operating practices, (2) effects a change in the conditions of employment, or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the union. Int'l Bhd. of Teamsters, Local 700 v. Illinois Labor Relations Bd., Local Panel, County of Cook, 2017 IL App (1st) 152993, ¶ 33; Chicago Park Dist. v. Illinois Labor Relations Bd., Local Panel, 354 Ill. App. 3d 595, 602 (1st Dist. 2004) (citing City of Belvidere v. Illinois State Labor Relations Bd., 181 Ill. 2d 191, 208 (1998)).

Here, the Respondent's increase in buffering time concerns wages, hours, and terms and conditions of employment. Matters that significantly affect employees' privacy interests concern employees' terms and conditions of employment. City of Chicago, 9 PERI 3001 (IL LLRB 1992)

[15] See 5 ILCS 315/14(j).

(drug testing); County of Cook, 15 PERI ¶ 3001 (IL LLRB 1988) (same). Here, the increase in buffering time significantly impacts employees' privacy because it has the potential to expand the scope of video surveillance into employees' personal time, e.g., when on break, in the bathroom, or at lunch. If an officer activates his BWC within two minutes of a personal, off-duty activity, the BWC will record the officer's private non-law-enforcement related activities. Furthermore, the length of the potential privacy intrusion is four times greater than it was prior to the change. Contrary to the Respondent's suggestion, the Union was not required to identify a case where the longer buffering time adversely impacted employee's privacy because the Board traditionally focuses on potential impacts where, as here, the existence of a change is apparent. County of Cook v. Illinois Labor Relations Bd. Local Panel, 347 Ill. App. 3d 538, 551 (1st Dist. 2004) (residency requirement, enforced with discipline, impacted employees' terms and conditions of employment even though all employees were then in compliance); Cnty. of Cook (Cook Cnty. Forest Preserve Dist), 4 PERI ¶3012 (IL LLRB 1988) (union did not need to show that any employee had failed the new qualification exam to demonstrate that the new exam changed employees' terms and conditions of employment); see also Kendall College, 228 NLRB 1083, 1086-1087 (1977), enfd. 570 F.2d 216 (7th Cir. 1978), (noting that "class schedules had the potential, if not an actual, effect on the consecutive time or hours worked by the faculty members, their days off, and their ability to pursue other employment and personal interests").

The Respondent's increase in the buffering time also impacts employee discipline. An employer changes the status quo of employees' terms and conditions of employment when it substantially alters the method by which it investigates employee misconduct and the character of proof upon which it relies to impose discipline. Chicago Transit Authority, 33 PERI ¶ 61 (IL LRB-LP 2016) (citing Vill. of Summit, 28 PERI ¶154 (IL LRB-SP 2012)). For example, in Chicago Transit Authority, the respondent changed employees' terms and conditions of employment when, for the first time, it used rail platform footage in support of its disciplinary decisions. Chicago Transit Authority, 33 PERI ¶ 61. The Board reasoned that the Respondent's use of such footage was new, and employees were not aware that the cameras could capture their actions while they were off the platform. Id. By contrast, an employer does not change the status quo of employees' terms and conditions of employment when it uses recorded footage from pre-existing cameras to support the imposition of discipline, provided that employees are aware of both the cameras' presence and functionality. Vill. of Summit, 28 PERI ¶154 (IL LRB-SP 2012). For example, in

Village of Summit, the respondent's first-time disciplinary use of video footage was lawful where the cameras had existed for years, nothing about them had changed, and the employees were aware of their existence and how they worked. Vill. of Summit, 28 PERI ¶154.

Here, the Respondent's increase in the buffering time on BWCs substantially changed both its method of investigation into employee misconduct and the character of proof on which it could rely for disciplinary purposes. Indeed, that was the Respondent's goal. The Respondent added 1.5 minutes to the buffering time so that it could better investigate employee performance and obtain a more complete picture of the law enforcement event that precipitated the BWC's activation. Although the Respondent emphasizes its goal of using the new footage to improve training, there is little dispute that employee misconduct captured on the 1.5 additional minutes of recorded footage could likewise support the imposition of discipline. Moreover, the Respondent's access to an additional 1.5 minutes of footage considerably expands, and thereby changes, the character of proof upon which Respondent relies in disciplinary cases. Chicago Transit Authority, 33 PERI ¶ 61; see also Bloom Township High School, Dist. 206, 20 PERI ¶35 (IELRB 2004) (installation and use of surveillance cameras affected employees' terms and conditions of employment because their use had the potential to affect the job security of monitored employees).

Under these circumstances, it is immaterial that the Respondent has not changed its disciplinary policies because the Respondent's ability to assess compliance with those policies using enhanced technology to capture new footage qualifies as a change to employees' terms and conditions of employment. Such heightened scrutiny of officer work using technological advancements distinguishes this case from City of Sparta, cited by the Respondent, where no such change occurred. Cf. City of Sparta, 35 PERI ¶72 (ILRB-SP 2018) (requirement to complete park patrols did not change status quo where officers always had that responsibility and where employer had not altered discipline).

However, the Respondent's decision to increase the buffering time to two minutes is also a matter of inherent managerial authority. Decisions concerning the functions of the employer, its standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques, and direction of employees are matters of inherent managerial authority. 5 ILCS 315/4 (2012); Cnty. of Perry and Sheriff of Perry Cnty., 19 PERI ¶ 124 (IL LRB-SP 2003). This statutory list is not exhaustive, but it establishes the characteristics of managerial

rights that are not subject to mandatory bargaining. Fraternal Order of Police, Chicago Lodge No. 7 v. Illinois Labor Relations Bd., Local Panel, 2011 IL App (1st) 103215, ¶ 23.

The Respondent's decision to increase the buffering time is a matter of inherent managerial authority because it is designed to improve the quality of training and therefore concerns the Respondent's standards of service. The Respondent uses BWC footage to review officer conduct in use-of-force incidents and to determine the nature and extent of additional training that the officer may require. Indeed, BWC footage is the key piece of evidence that the Department uses to help officers improve their performance, hone their craft, and decrease exposure to civil liability. The shorter buffering time, in use before, did not provide the Respondent with adequate information to achieve these goals. The Respondent identified eight officer-involved shootings where the 30 second buffer did not reach back far enough to capture the entire incident, due to delayed activation of the BWC. A two-minute buffering time would have captured the entire incident in all eight cases. Thus, the Respondent's decision to increase the buffering time concerns a matter of inherent managerial authority because it allows the Respondent to provide more comprehensive feedback to officers in a greater number of cases and thereby improve its standards of service. Fraternal Order of Police, Chicago Lodge No. 7, 2011 IL App (1st) 103215 ¶24 (decision to consolidate field training districts to improve training concerned standards of service).

Turning to the balancing test, the balance favors unilateral decision-making in this case. The balance favors bargaining where the issues are amenable to resolution through the negotiating process, i.e., where the union is capable of offering proposals that are an adequate response to the employer's concerns. Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011), aff'd by unpub. ord., 2012 IL App (5th) 110317-U (union need not present evidence of its actual proposals). For example, there are significant benefits to bargaining where the employer's decision is economically motivated because the union can provide helpful suggestions to reduce labor costs. Vill. of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010); Vill. of Bensenville, 19 PERI ¶119 (considering economics); City of Peoria, 3 PERI ¶2025. By contrast, the balance favors unilateral decision-making where the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992) ("the scope of bargaining in the public sector must be determined with regard to the employer's statutory mission and the nature of the public service it provides"); State of Ill.

Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, aff'd, 190 Ill. App. 3d 259 (1st Dist. 1989). Consequently, the benefits of bargaining are minimal when the employer's decision effects a fundamental change in the manner in which the employer conducts its business. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013); State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, aff'd, 190 Ill. App. 3d 259 (1st Dist. 1989).

Here, bargaining would significantly burden the Respondent's inherent managerial authority to maintain its standards of service and direct its workforce. The Respondent's decision to increase the BWC buffering time concerns its core right to collect information to improve the quality of its training and increase its standards of service. Requiring the Respondent to bargain over the extent of footage it may review from a BWC would necessarily limit its ability to ensure that an officer's use of force is appropriate. It would likewise restrict the Respondent's ability to provide an officer with comprehensive and appropriate feedback on his performance. Thus, bargaining would diminish the Respondent's capability to deliver the quality policing service that it is obligated to provide and thereby would impermissibly burden the Respondent's inherent managerial authority. Fraternal Order of Police, Chicago Lodge No. 7, 2011 IL App (1st) 103215 ¶ 24; Village of Orland Park, 21 PERI ¶ 42 (applying similar analysis to negotiations over substantive aspects of evaluations).

Furthermore, the Union has failed to identify any overriding benefits that bargaining would confer on the decision-making process. Although employee interests are a factor in the balancing test, the employee interests at issue here, involving discipline and privacy, are more accurately deemed effects of the underlying managerial decision. County of Cook, 2017 IL App (1st) 153015, ¶ 60 (addressing employee interests); Int'l Bhd. of Teamsters, Local 700, 2017 IL App (1st) 152993, ¶ 39 (same). They are analogous to an employer's drug testing processes and its use of drug test results, both of which are appropriate subjects for effects bargaining. See Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 268-9 (1st Dist. 1989) (addressing disciplinary effect of drug testing); State of Illinois, Dep't of Cent. Mgmt. Servs. & Corrections, 5 PERI 2001 (IL SLRB 1988) (ALJ noted that bargainable effects included collection procedures; Board found it unnecessary to consider this issue). As such, the discipline and privacy-related issues arising from the extended buffering time may be bargained separately, without impeding the Respondent's primary goals of obtaining more BWC footage to assess employee performance, provide additional training, and limit civil liability.

Thus, the Respondent's decision to increase the BWC buffering time is a permissive subject of bargaining over which it is not required to bargain.

Nevertheless, as indicated above, the Respondent is obligated to bargain over the effects of its decision to increase the BWC buffering time, and its failure to do so in this case violates Section 10(a)(4) and (1) of the Act. Even where an employer's decision to implement a management policy is not subject to negotiations, the Act requires good-faith collective bargaining over the effects of that policy decision on the terms and conditions of employment of bargaining unit employees. 5 ILCS 315/4; Am. Fed'n of State, County & Mun. Employees, AFL-CIO, 190 Ill. App. 3d at 268; County of Cook (Juvenile Detention Center), 14 PERI ¶ 3008. And as a general matter, impact bargaining, just like bargaining over a negotiable management policy decision itself, must take place at a meaningful time *before* the contemplated action is taken. County of Cook (Juvenile Detention Center), 14 PERI ¶ 3008; Chicago Transit Authority, 14 PERI ¶3002 (IL LLRB 1997).

Here, the disciplinary and privacy-related effects of the increase in BWC buffering time are appropriate subjects for effects bargaining. It is true that effects bargaining is not required where the purported effects are an inevitable consequence of the decision itself. Chief Judge of the Circuit Court of Cook County, 31 PERI ¶114 (IL LRB-SP 2014). Here, however, the privacy and disciplinary effects of the increased buffering time are severable from the Respondent's underlying decision, and the Respondent's citation to Chief Judge of the Circuit Court of Cook County ("Chief Judge"), does not support a contrary conclusion. In Chief Judge, the Board determined that the union had identified no bargainable effects of the employer's decision to transfer an employee to another position. Chief Judge of the Circuit Court of Cook County, 31 PERI ¶114. It observed that none of the union's proposals addressed effects because they each sought to undermine the Respondent's underlying transfer decision. Id.

Here, by contrast, the Union's proposals over the BWC's initial effects demonstrate that the Union is capable of offering proposals that do not undermine the Respondent's primary goals of improving training and decreasing civil liability. These proposals addressed the process by which a supervisor reviews footage, disclosure of footage to officers prior to interrogation regarding alleged misconduct, and proposed limits on disciplinary action arising from review of footage that was not flagged. Even the ***Respondent's*** proposal to allow officers to turn off their

cameras when off duty, shows that the privacy effects are amenable to bargaining separate from any decision to increase the buffering time.

Admittedly, the scope of effects bargaining over the increased buffering time may be narrower than the scope of bargaining over the effects of the BWC program as a whole. However, once a management decision is deemed to have effects, "it is not the Board's function to 'weigh the extent of each effect." State of Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Agriculture), 13 PERI ¶ 2014. Rather, the "extent and burdensomeness of the impact upon employees is for the parties to explore through the bargaining process." Id.

Thus, the Respondent violated Sections 10(a)(4) and (1) of the Act when it increased the buffering time on BWCs without first bargaining over the effects of that decision.

1. Remedy for Unilateral Implementation of Longer Buffering Time.

The remedy for the Respondent's unilateral increase in BWC buffering time is limited to a bargaining order. The standard remedy for a respondent's refusal to bargain over effects is to rescind the underlying decision, make employees whole, and negotiate in good faith over the decision's effects. Chicago Transit Authority, 14 PERI ¶3002. However, in some cases, the Board has granted a more limited remedy in effects bargaining cases, requiring the employer to bargain but allowing it to maintain the underlying managerial decision during negotiations. Vill. of Glenwood, 32 PERI 159 (IL LRB-SP 2016); Department of Central Management Services, 22 PERI ¶ 10 (ordering effects bargaining over facility closure, but declining to expressly order rescission of closure); State of Illinois, Dept. of Cent. Mgmt., 5 PERI ¶2001 aff'd Am. Fed'n of State, Cty. & Mun. Employees. AFL-CIO v. Ill. State Labor Relations Bd., 190 Ill. App. 3d 259 (1st Dist. 1989); see also State, Dept. of Cent. Mgmt. Services v. State, Illinois Labor Relations Bd., 384 Ill. App. 3d 342, 349 (4th Dist. 2008) (finding no unfair labor practice but noting that if union had wanted to bargain effects it could have done so after implementation); County of Cook and Sheriff of Cook County, 36 PERI ¶ 54 (IL LRB-LP 2019) (noting, in the alternative, that effects bargaining could have taken place after implementation). An exception to status quo ante relief has also been recognized where such relief would constitute an undue burden. State of Ill.,

Dep' t of Cent. Mgmt. Servs. (Dep't of Agriculture), 13 PERI ¶ 2014 n. 7 (but declining to apply exception).

Here, a modified remedy is warranted. Employees already have significant protections against discipline arising from the use of BWCs. The Law Enforcement Officer-Worn Body Camera Act (WBC Act) limits the circumstances under which the Employer can use BWC footage to discipline employees. 50 ILCS 706/10-20. See City of Chicago ("BWC I"), Case No. L-CA-17-037 (IL LRB-LP ALJ 2018). In addition, the contractual "just cause" provision and the parties' grievance process provide "sufficient protections for employees while the parties bargain over more specific disciplinary provisions." State of Illinois, Dept. of Cent. Mgmt., 5 PERI ¶2001 (implementation of drug testing permitted while parties bargained over disciplinary impacts). Indeed, the Union exercised such procedural protections in this case when it filed a grievance over the Respondent's decision to discipline employees for the loss of BWCs. The process worked as intended when Arbitrator Nielsen interpreted the parties' contract to generally permit discipline for certain BWC infractions.[16]

Finally, the Respondent's obligation to proceed to interest arbitration regarding the broader effects issues arising from the BWC program's expansion, set forth in part 2 of this decision, likewise mitigates any adverse effects from maintaining the Respondent's extended buffering period. While the effects of the initial BWC program and the Respondent's subsequent expansion of the buffering period are not identical, there is considerable overlap. And an expeditious interest arbitration proceeding to resolve the BWCs' overall effects could be tailored to consider matters implicated by the increase in buffering time.

V. CONCLUSIONS OF LAW

1. The Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally implemented its last, best, and final offer on the effects of the BWCs.
2. The Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally increased the buffering time on body worn cameras from thirty seconds to two minutes because it implemented its decision without first bargaining over its effects.

[16] Arbitrator Nielsen's award issued after the RDO in Case No. L-CA-17-037, and his analysis regrettably could not inform the outcome of that case.

VI. RECOMMENDED ORDER

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

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Union, the Fraternal Order of Police, Lodge 7, by unilaterally implementing its last, best, final offer on the effects of the BWCs.
    b. Failing and refusing to bargain collectively in good faith with the Union over the effects of its decision to increase the BWC buffering time.
    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 necessary to effectuate the policies of the Act:
    a. At the request of the Union, rescind its last, best, final offer on the BWCs' effects.
    b. At the request of the Union, rescind any discipline issued for the loss or misuse of BWCs that the Respondent imposed pursuant to its unilaterally-modified disciplinary standard, and reconsider such discipline under the standard previously in existence.
    c. Upon request, proceed to interest arbitration over the unresolved issues arising from negotiations with the Union that concern the effects of the BWC program's expansion.
    d. Bargain in good faith over the effects of its decision to increase the BWC buffering time.
    e. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
    f. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

VII. EXCEPTIONS

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

Issued at Chicago, Illinois this 5th day of January, 2021

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. L-CA-20-024

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

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Union, Fraternal Order of Police, Lodge 7, by unilaterally implementing our last, best, final offer on the effects of the BWCs.

WE WILL cease and desist from refusing to bargain collectively in good faith with the Union over the effects of our decision to increase the BWC buffering time.

WE WILL, upon request by the Union, proceed to interest arbitration over the unresolved issues arising from negotiations with the Union that concern the effects of the BWC program's expansion.

WE WILL, at the request of the Union, rescind any discipline issued for the loss or misuse of BWCs that we imposed pursuant to our unilaterally-modified disciplinary standard, and reconsider such discipline under the standard previously in existence

WE WILL bargain in good faith over the effects of our decision to increase the BWC buffering time.

DATE _____ _____

City of Chicago, Department of Police
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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

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

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