STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Service Employees International Union, Local 73,	)	
Charging Party,	)	Case No. S-CA-14-063
and	)	
Village of Dixmoor,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 25, 2013, the Service Employees International Union, Local 73 (Charging Party or Union) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Dixmoor (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act). The Board's Executive Director investigated the charge in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules). On April 29, 2014, the Executive Director issued a Complaint for Hearing alleging the Respondent violated Section 10(a)(4) and (1) of the Act.

The case was heard on October 28 and 29, 2014 by Administrative Law Judge (ALJ) Martin Kehoe.[1] Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed on behalf of both parties. After full consideration of the parties' stipulations, evidence, arguments, and upon the entire record of this case, I recommend the following.

[1] The case was reassigned to the undersigned ALJ after Martin Kehoe left the Board.

I. PRELIMINARY FINDINGS

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

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

C. At all times material, the Village has been subject to the Act, and Section 20(b) is inapplicable.

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

E. At all times material, the Union has been the exclusive representative of a bargaining unit comprised of the Village's firefighters, paramedics, captains, and lieutenants.

F. At all times material, the Union and the Village were parties to a collective bargaining agreement (CBA) in effect from November 1, 2009 through October 31, 2012.

II. ISSUES AND CONTENTIONS

The Union argues that the Village violated Section 10(a)(4) and (1) of the Act in several ways. It contends that the Village unilaterally changed the Fire Department's staffing levels, unilaterally laid off six employees, and unilaterally dissolved the Fire Department in violation of 10(a)(4). The Union also argues that the Village violated 10(a)(4) by failing to adequately respond to a valid information request and generally bargaining in bad faith.

The Village raises several arguments in its defense. As to the alleged unilateral changes, the Village contends that it did not reduce staffing levels or lay off employees in violation of 10(a)(4) because the contract granted it the authority to do so. The Village also argues that its dissolution of the Fire Department did not violate the Act because the dissolution was not a

mandatory subject of bargaining. However, even if it was a mandatory subject, the Village contends that it bargained with the Union to impasse. Finally, the Village argues that it adequately responded to the Union's information request and otherwise bargained in good faith.

III. FINDINGS OF FACT

Until December 2013, the Village operated its own fire department and employed a bargaining unit of firefighters, paramedics, captains, and lieutenants.[2] The Charging Party is the certified bargaining representative of this unit. Additionally, the Village and the Union were parties to a collective bargaining agreement (CBA or contract) in effect from November 1, 2009 through October 31, 2012.

A. The Parties' First Round of Successor Bargaining

Approximately 30 days before the parties' contract was set to expire, the Union reached out to the Village in order to begin bargaining for a successor agreement. Union Steward Jeff Coffou and Union Agent Gene Washington made the initial overtures to the Village but they did not receive a response. Eventually, in January 2013, Coffou was able to make contact with Village Mayor Grimmett.[3] Coffou handed Mayor Grimmett a copy of the Union's proposal which consisted of the parties' then-expired contract with various redline strike-outs. The Union's proposal also added new language to several provisions with the most substantive proposed changes being in the contract's Articles entitled Staffing Standard; Wages, Hours, and Other Benefits; and Uniforms. After receiving the Union's proposal, Mayor Grimmett said he would look into setting up bargaining dates with the Union. However, Mayor Grimmett never contacted the Union with potential bargaining dates.

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[2] The parties' contract also lists the employees' job titles or rank/certification as firefighter/EMT, EMT only, FFII/EMT, paramedic, and paramedic/FFII.

[3] Mayor Grimmett's first name does not appear in the record. However, the Union identifies him as Keevan Grimmett in its post-hearing brief.

When the Union did not hear back from Mayor Grimmett, Union Agent Washington moved forward with setting up mediation with the Village. The parties' were assigned a mediator and had their first session on March 4, 2013. In attendance were Coffou, Washington, Mayor Grimmett, then-Fire Chief Tom Wendt, and then-Village Attorney Betty Lewis. The parties generally discussed the Union's proposal as well as the back pay award from a prior unfair labor practice (ULP award) the Village had yet to payout. The Union's proposal contained at least one reference to the ULP award including the following: "All wages will be submitted for renegotiations after the village and union have come to an understanding on the outstanding ULP for wages. This is still part of the contract negotiations, and the contract will not be considered completed until this section has been agreed upon." According to Coffou, the meeting went "nowhere." The Village asked for time to review the Union's proposal and suggested the parties meet for a second session on March 12th.

On March 12, 2013, the parties met for their second mediation session. This time the Union handed the Village a bullet-point version of its proposal. With the same individuals in attendance, the parties were unable to come to an agreement on any issues. Coffou testified that "[w]hen we sat down at the table, we were basically immediately told that they were not prepared to make any offer to us whatsoever, and that we were going to discuss the back pay ULP money that they owed us and they were unprepared to give us anything on that at that time either." Coffou went on to discuss the ULP award in greater detail. He stated that the Union had won a ULP regarding a me-too clause in the contract, but the Village had not distributed any back-pay due under the award. Coffou also testified the Village did not offer any counterproposals to the Union's initial offer. According to Coffou, the mediator said the Village was ill-prepared and mediation would be of little value at this point.

B. The Parties' Second Round of Successor Bargaining.

After the March 12th session, the parties' leadership underwent several changes. On May 8, 2013, the Village appointed a new mayor, Dorothy Armstrong. Correspondingly, the Village hired a new attorney, Dalal Jarad, and appointed a new fire chief, Vernell Johnson. As for the Union, Union Agent Washington left the Union's employment, and Union Vice President Tim McDonald took over Washington's duties related to the bargaining unit.

On May 17, 2013, Attorney Jarad called McDonald and informed him she was the new counsel for the Village. She asked McDonald for copies of any Union proposals as well as the parties' most recent contract. McDonald forwarded a copy of the Union's bullet-point proposal to Jarad.

Shortly thereafter, on May 24, 2013, Jarad emailed McDonald with a letter attachment. In the letter, Jarad stated "that consistent with the Village's management rights . . . the Board [was] contemplating dissolution of all or part of its Fire Department, with a projected effective date of approximately July 31, 2013." She also said the Board would be conducting a special meeting on May 29, 2013, to discuss "the costs and expenses relates to the Village's Fire Department services and continuation of those services." Lastly, Jarad invited the Union to contact her to discuss the issue. The Board held the special meeting on May 29th, and McDonald attended on behalf of the Union. The Board discussed the Village's finances, its needs for a fire department, and the dissolution of the Fire Department.

In addition to attending the May 29th Board meeting, the parties via the federal mediator scheduled a mediation session for June 20, 2013. In addition to the mediator, at the meeting for the Union were McDonald, Coffou, and Union Steward Peter Pecchia. Jarad, Mayor Armstrong,

and new Village Treasurer Louis Williams attended the session for the Village.[4] During the meeting, the Village presented information regarding its demographics and financial state. It said that with approximately 3,700 residents, the Village's annual tax levy did not exceed $550,000 but it had been paying more than the annual tax levy to run the Fire Department. Essentially, the Village contended its finances and population size could not sustain, or did not warrant sustaining, a full-time fire department. Coffou testified that "they made it clear that they – it was their opinion that they were broke." Coffou also said that "they stated to us that they felt it was their management rights through the contract to downgrade service and, in turn, cut two people, and as well it was their management rights to cut – to completely dissolve the department in the future." The Village asked the Union to suggest potential economic solutions. At hearing, McDonald couched this as a request for "revenue-generating" ideas, while Jarad stated the Village "invited them to propose some kind of restructuring of wages or benefits, or both, and to try and reduce the cost for a full-time fire department that the village just didn't need." The parties did not reach agreement on any Fire Department issues but did agree to meet again. Jarad testified that "about the only thing that we did agree to at the suggestion of the federal mediator was to schedule a meeting separate to discuss the issue of dissolution for the fire department."

On June 21, 2013, Jarad reached out to the Union to schedule a subsequent session and suggested several potential dates. After some scheduling difficulty, the parties eventually agreed to meet to discuss the Fire Department's economic issues on July 8, 2013, as well as the Union's ideas on how to mitigate those issues.

Before the parties met on July 8th, the Village held a Fire Department personnel meeting on June 28, 2013, to discuss the level of emergency medical services (EMS) provided by the

[4] In addition to discussing the Fire Department Unit, the parties also discussed the contracts for two other Union-represented bargaining units.

Village.[5] Essentially, the Village informed the employees in attendance it was contemplating reducing service from ALS to BLS. On July 1, 2013, Coffou emailed Jarad regarding the meeting. Coffou wrote that the Village told employees it would be laying of six full-time employees and possibly three paid-on-call (POC) employees following the change in service and that it would operate with only two employees per day.

On July 2nd, Jarad responded to Coffou's email stating the Village in order "to take proactive measures to reduce fire department costs and expenses, on 7/1/13, the Village, as part of its managerial rights under the collective bargaining agreement, shall be considering to no longer offer or provide ALS service, and reduce or eliminate paramedic staffing standards to reflect BLS staffing needs." Jarad further stated that the Village did not need to bargain with the Union before making the decision "since it is an issue that has already been negotiated in the collective bargaining agreement." Specifically, Jarad referenced Section XIV of the parties' contract which provides:

> The Department shall have two (2) firefighters and two (2) paramedics on duty at all times, which may include the Deputy Fire and Division Chiefs in said calculations . . . In the event that the Village no longer offers or provides ALS service, paramedic staffing standards can be reduced or eliminated to reflect BLS staffing standards.[6]

Finally, Jarad stated that the Village Board had scheduled a special meeting for July 3, 2013, "relating to the downgrading of ALS services to BLS services."

Earlier on July 2nd, Jarad emailed Coffou, McDonald, and several other individuals confirming their meeting for July 8th. She also stated that the purpose of the meeting was to

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[5]Municipalities can provide citizens with different levels of EMS. Basic Life Support (BLS) requires an ambulance be staffed with two EMTs who can perform some basic medical care. Advanced Life Support (ALS) is a higher level of service requiring an ambulance be staffed with paramedics who receive more training than EMTs and can provide more sophisticated medical treatment.

[6] The parties' contract also contains a provision entitled Article XVIII Layoffs. In short, Article XVIII details the parties' recall procedures but does not mention or discuss the *decision* to institute a layoff.

discuss the costs associated with running the Fire Department, as well as to discuss "revenue-generating plans or ideas to reduce fire department costs/expenses, and/or to increase its revenues, and dissolution of all or part of the fire department services; outsourcing of fire department services and costs/expenses related to dissolution and/or outsourcing."

At the Board meeting on July 3rd, both Fire Chief Johnson and Treasurer Williams made presentations to the Board. First, Fire Chief Johnson described the difference between BLS service and ALS service. According to Coffou, Johnson "grossly understated" the differences in service levels. Next, Treasurer Williams presented information regarding the cost of running the Fire Department stating, in short, the Village could no longer afford to run the Fire Department. After Johnson and Williams gave their presentations, Board Trustee Yolanda Davis moved to table the issue stating the Board needed additional information before it could make a decision. Mayor Armstrong had a brief conversation with Jarad before ruling Davis' motion out of order. During their conversation, another Board Trustee entered the meeting, apparently having missed the previous presentations. Mayor Armstrong called for a vote on downgrading from ALS to BLS service. Although the vote resulted in a three to three tie, Mayor Armstrong cast the tiebreaking vote in favor of downgrading service.

Following the Board's decision, the parties met again on July 8, 2013. Coffou presented the Union's financial and venue generating proposals to the Village. The Union suggested various ideas including reducing/eliminating overtime, hiring POC firefighters to help reduce overtime, and creating additional fees for residents and businesses. The Union's witnesses gave conflicting testimony regarding the success of the meeting. Coffou testified the Village was inattentive during his presentation, while McDonald said the Village was very interested and that it was a very upbeat meeting. In addition to the Union's proposals, during the meeting, Jarad told

the Union that the Village had to pass its appropriations ordinance and file it with the County Clerk by July 31st. She also said the Board would be holding a public hearing regarding the ordinance on July 24th.

On July 11, 2013, Jarad emailed McDonald and Coffou reminding them of the appropriations ordinance and the public hearing on July 24th, as well as confirming their meeting on July 16th. Jarad attached the current draft of the ordinance in her email. In the ordinance, the Fire Department's budget for the next fiscal year was set at just under $470,000. Jarad testified this amount was only sufficient to maintain the Fire Department in its current form through the end of 2013.

On July 13, 2013, the Village posted a notice in the Fire Department that it was laying off six employees effective July 17th. Among those listed on the layoff notice was Union Steward Pecchia, a firefighter/paramedic. The Union first learned that layoffs were being implemented from one of the affected employees. On July 15th, Fire Chief Johnson sent a letter to McDonald regarding the layoffs. In the letter, Johnson stated that pursuant to Articles IV and XIV of the contract, the Board had decided to no longer offer ALS service "and paramedic staffing will be reduced or eliminated to reflect BLS staffing needs due to [the] Village's dire financial state."[7] Johnson said that the two paramedics on shift would be eliminated to reflect BLS staffing and attached a "list of names of paramedic staff reduced and/or eliminated."

On July 16, 2013, McDonald sent Mayor Armstrong a letter demanding to bargain over the effects of the layoff but did not waive the Union's right to bargain over the decision. Additionally, McDonald filed two grievances. In the first grievance, McDonald stated the Village was in violation of the contract's No Strike/No Lockout provision. McDonald testified that in his opinion the Village had "locked out" the membership by only having two employees

[7] Article IV is the contract's Management Rights clause.

on duty. He also wrote that the Village had yet to provide a written proposal, stated the parties were at impasse, and was "invoking [the Union's] contract right to interest arbitration." In the second grievance, McDonald stated the Village's decision to no longer staff shifts with four people violated the Management Rights and Staffing Standards provisions of the parties' contract. McDonald testified that he worked on the drafting of this contract language and stated that the parties always understood that there would be four people on duty.

Also on July 16th, the parties' current leadership met to bargain for a third time. McDonald handed the grievances to the Village and reiterated the Union's interest in bargaining the effects of the layoff. In particular, the Union wanted some type of severance package and payout of the ULP award. According to McDonald, the Village offered to pay out all money due to the laid off employees over a six-month period. However, the Union found this unacceptable. McDonald testifed "[w]e wanted to see a layoff notice. We wanted to have their COBRA rights. We wanted to discuss any kind of severance package that they were willing to discuss." Jarad testified that the Village made a proposal regarding other benefits in addition to its proposal regarding the ULP award.

As well as discussing the effects of the layoff, the Village proposed additional changes to the Fire Department. Specifically, the Village proposed to drop all full-time firefighters to part-time and drop part-time firefighters to POC. Jarad testified that the Village provided the Union with financial statements documenting the Village's profit and loss numbers from the previous five years. The Village did not, however, directly respond to the Union's financial proposals. The Village also requested the Union take the part-time/POC proposal back to its membership. The Union said it did not understand the Village's proposal and requested the Village put it in writing.

On July 22, 2013, Jarad sent an email to Coffou and McDonald regarding several issues. First, Jarad reiterated the Village's position that the decision to dissolve any or all of the Fire Department was not a mandatory subject of bargaining due to the financial burden on the Village. She also stated that on July 16th, the Village proposed to reduce the Fire Department to a part-time/POC department "for a short-term, temporary duration in order to avoid or limit the scope of any dissolution." Jarad gave a brief description of how the combined part-time/POC Fire Department would operate. She also asked if the Union had had an opportunity to discuss the Village's proposal with Union membership. With regard to the Union's July 8th financial proposals, Jarad stated:

> [T]here have been no alternatives or economic proposals offered by the Union that may address or alleviate the economic conditions leading to dissolution or which may provide the Village with much-needed and long-overdue immediate economic relief, i.e., restructuring the wage or benefits package of the bargaining unit, and exploring options for early retirement or voluntary leave in order to limit the scope of a dissolution other than by way of long-term legislative revenue-generating ideas proposed by the Union on 7/8/13.

She echoed her prior reminders to the Union that the Village needed to pass its appropriations ordinance and file it with the County Clerk by July 31st.

Jarad also addressed the parties' effects bargaining. She stated that the Village was not required to bargain over the decision to reduce or eliminate staffing "because it was an issue that had already been negotiated in the CBA, and because the burden on the Village outweighs any benefits to the Union." However, Jarad said that the Village had offered to pay out any due compensation to affected employees over a series of pay periods. Jarad also wrote that "[i]n the event any or all of the Fire Department is dissolved," the Village would be willing to make the same offer to any affected employees. Finally, Jarad proposed additional bargaining dates if the

Union wished to continue effects bargaining. All of the Village's proposed dates were prior to the ordinance deadline.

McDonald replied to Jarad's email which, according to Jarad, "indicated that my initial e-mail on July 22nd was not consistent with our discussions."[8] On the evening of July 22nd, Jarad responded to McDonald's reply addressing McDonald's statements that the Village was engaging in bad faith bargaining. Jarad reiterated in bullet-point form the Village's combined part-time/POC proposal. She also stated that the Union had repeatedly set bargaining dates far apart; noted that the Union had rejected all of the potential bargaining dates Jarad had suggested in her earlier email and would only meet on July 31st, the day the ordinance was due to be filed with the Clerk; and contended that the Union itself was bargaining in bad faith. Additionally, Jarad responded to the Union's grievance regarding the layoffs stating "[t]he decision to no longer provide or offer ALS services is a bargained for management right, and the Union has clearly and unmistakably waived its right to bargain over any decision to reduce or eliminate the paramedic staffing standards you reference to reflect those BLS needs." Lastly, Jarad maintained the Village's willingness to bargain over the effects of the layoff.

On August 9, 2013, Jarad emailed McDonald regarding his letter demanding effects bargaining. Jarad offered again to bargain over the effects. In response, Mcdonald emailed Jarad stating the laid off employees "want what's owed to them and what if anything is the Village offering in severance." Jarad replied that the Village had already made an offer at the July 16th meeting and via email on July 22nd and 23rd, but the Union had not responded. She also indicated the Village would be willing to continue discussions if they could agree on the next bargaining date. McDonald wrote "[w]hich is rejected" and stated the Union was available on the 15th.

[8] McDonald's email was not introduced as an exhibit at hearing.

The parties did not meet again until August 21st. The Union notified the Village that its membership had rejected the Village's proposal of a part-time/POC department. McDonald testified that the Village did not provide a proposal which addressed its interests stating "[w]e hoped we were hopefully going to get some kind of answers on our effects bargaining, on the layoff notices, on any kind of proposal that the village was going to go forward with. We actually got nothing from them." At that point, McDonald withdrew the Union's previous proposals and proposed to maintain the status quo on all contract provisions with a "three percent raise for the next three years." According to Union, the Village agreed to give the Union's proposal to the Board.

On September 12, 2013, Jarad emailed McDonald stating the Village would be completely dissolving the Fire Department with a projected implementation date of November 15, 2013. Jarad explained that the basis for the Village's decision was the current appropriations ordinance, its inability to "provide and maintain an adequate full-time Fire Departmetn at an annual cost in excess of its means and revenues and which is in excess of its demonstrated needs[,]" and the Union's failure to bargain in good faith. Jarad also said the Village would be looking to enter into an intergovernmental agreement with a neighboring town for fire protection services and would be subcontracting with a private company for EMS. Finally, Jarad offered to bargain over the effects of the decision to dissolve the Department.

On September 21, 2013, McDonald filed a Freedom of Information Act (FOIA) request with the Village Clerk. McDonald testified that at some point Jarad told him that the Village had voted down the Union's proposal. "So I asked her for a copy. She said if you want something, send a FOIA." In the FOIA request, McDonald asked for a copy of all Board meeting minutes from May 1, 2013 through August 29, 2013, and a copy of all Fire Department payroll records

from July 1, 2010, through September 20, 2013. McDonald testified he had requested payroll information because the parties disagreed as to the amount of back pay the employees were due pursuant to the ULP award. McDonald also testified that he never received a response to his FOIA request. Treasurer Williams testified at hearing that the Village had provided the Union with documents regarding payroll in approximately early December when the Village began paying out the ULP award. "[T]hey were given spread sheets for each year showing the wages for each employee and the amounts that were due."

The parties met again on October 11th, but there is some disagreement as to what transpired. The Union's witnesses testify that at the meeting, the Village informed the Union that the Board rejected its last offer. The Union also stated it asked for a copy of the Board minutes, but the Village refused to provide them. By contrast, Jarad testified that at the October 11th meeting, the Union presented the Village with a proposal regarding the effects of the dissolution. Given the dates listed in the Union's proposal, I find the Union did present its effects proposal at the October meeting. The proposal references the Fire Department's closing date as November 15th. However, the next time the parties met to discuss the dissolution, which is when the Union contends it first gave its proposal to the Village, the closing date had moved to December 1, 2013.

On November 18, 2013, the Village Board met and voted to enter into an intergovernmental agreement with the City of Harvey for fire protection services. The Board also contracted with Bud's Ambulance Service for emergency medical services. The following day, Jarad sent McDonald a letter notifying the Union that the Fire Department would officially close on December 1, 2013. Jarad also detailed how the Village would pay out wages and send out

COBRA notices. McDonald contacted Jarad regarding bargaining and the dissolution.[9] Jarad suggested several dates for effects bargaining.

On December 4, 2013, the parties met to bargain over the effects of the dissolution. Coffou and Jarad testified that the parties were able to come to agreement on some issues. However, the Union felt the parties were at a standstill and requested interest arbitration. McDonald testified that he asked the Village if it was going to respond to his FOIA request. In particular, McDonald said he wanted the minutes demonstrating the Board's vote on the Union's final proposal. According to McDonald, new Village Attorney Hubert Thompson said he would not be receiving the minutes because the entire Board had never been presented with or had voted on the Union's final proposal. However, both Jarad and Board Trustee Ira Rolark testified that Jarad had kept the Village Board informed of the parties' bargaining progress during the Board's executive sessions. Trustee Rolark also testified that while the Board had not voted on the Union's initial proposal, it had voted on the Union's final proposal.

C. Village's Financial Status and Demographics

At hearing, the Village presented both testimony and documentary evidence regarding its financial status and demographics. Treasurer Williams testified that when he was hired:

> [O]ne of the mandates I was given was to try and balance the [V]illage's budget. In order to balance that budget, we knew cuts had to be made. As a result of that, we began to discuss how we could bring this down in terms of a volunteer fire department or possibly outsourcing the fire department services.

He also testified that the Village "was running substantially in deficit in excess of a million dollars per year" and could not afford the expense of running a full-time fire department. However, Williams also stated that the Village had not conducted a full audit in several years. Additionally, Williams testified that although the Village had not provided the Union with the

[9] McDonald's letter responding to Jarad's letter is not in the record.

exact financial documents introduced at hearing, he had provided the Union with similar documents. However, Coffou denied ever receiving similar documents. When asked if he had any basis for challenging the validity of the documents, Coffou testified that "I wouldn't have any idea." Pecchia also testified that Williams' numbers did not seem accurate but also did not know how much the Fire Department cost to run.

In addition to Treasurer Williams' assessment, Fire Chief Johnson conducted a financial assessment of the Fire Department documenting the Department's payroll and the cost of maintaining or fixing old equipment. Johnson also stated that the Village's call volume did not warrant a full-time fire department. Coffou testified that the costs listed on Johnson's assessment seemed too high and that some of the equipment listed did not need to be fixed.

Some organized employees did receive raises during this same general time period. However, Treasurer Williams testified that the employees in these bargaining units received raises under contracts that were negotiated prior to the Mayor Armstrong administration.

IV. DISCUSSION AND ANALYSIS

In short, the Union argues that the Village's conduct violated Section 10(a)(4) and (1) of the Act. Section 10(a)(4) requires an employer to bargain collectively in good faith with its employees' union. Among other things, an employer may violate its duty to bargain in good faith by failing to maintain the status quo, failing to meet at reasonable times, and failing or refusing to provide relevant bargaining information upon request. 5 ILCS 315/7; City of Chi., 23 PERI ¶ 120 (IL LRB-LP 2007); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994). In essence, bargaining in "[g]ood faith fundamentally requires both parties to engage in negotiations with 'an open mind and a sincere desire to reach an ultimate agreement.'" Lake Cnty. Cir. Clerk, 29 PERI ¶ 179 (IL LRB-SP 2013) (quoting Serv. Employees Int'l Local Union No. 316 v. Ill. Educ. Labor Relations

Bd., 153 Ill. App. 3d 744, 751 (4th Dist. 1987)). However, the duty to bargain "does not compel either party to agree to a proposal or require the making of a concession." 5 ILCS 315/7.

In this case, the Union contends the Village unlawfully implemented three unilateral changes, refused to provide relevant bargaining information, and generally bargained in bad faith. For the reasons that follow, I find that the Village violated the Act by unilaterally laying off employees and dissolving the Fire Department but I recommend dismissal of the Union's remaining claims.

A. The Village Violated Section 10(a)(4) by Unilaterally Laying Off Employees and Dissolving the Fire Department.

It is well established that an employer violates its duty to bargain in good faith by unilaterally changing a term and condition of employment, i.e. a mandatory subject of bargaining, without first granting the union adequate notice and a meaningful opportunity to bargain. Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009); City of Peoria, 11 PERI ¶ 2007. Generally, an employer can lawfully implement a unilateral change and alter the status quo if it bargains with the union to impasse. Id. However, for bargaining units of security employees, peace officers, firefighters and paramedics, Section 14(l) extends the prohibition on unilateral changes through the conclusion of Section 14's impasse arbitration procedures. Vill. of Oak Park, 25 PERI ¶ 169. "Existing terms and conditions of employment for such employees must be maintained by the employer and exclusive bargaining representative during that period -- to do otherwise violates Section 10(a)(4) of the Act." Id.

To determine if a policy is a mandatory subject of bargaining, the Board utilizes the three-pronged test first enunciated by the Illinois Supreme Court in Central City Educ. Ass'n v. Ill. Educ. Labor Relations Bd. (Central City), 149 Ill. 2d 496 (1992) and later applied to the Act in City of Belvidere v. Ill. State Labor Relations Bd., 181 Ill. 2d 191 (1998). Under the first

prong, the Board must determine if the policy involves wages, hours, or other terms and conditions of employment. Id. If it does, the Board must, under the second prong, determine if the policy is also a matter of inherent managerial authority. Id. Should the policy involve both terms and conditions of employment as well as the employer's inherent managerial authority, the Board will move to the third prong and "balance the benefits that bargaining will have on the decisionmaking process with the burdens that bargaining imposes on the employer's authority." Central City, 149 Ill. 2d at 523.

The Complaint alleges the Village implemented three unilateral changes: (1) reducing staffing levels, (2) laying off six employees, and (3) shutting down the Fire Department. The Village argues that its reduction in staffing and decision to layoff six employees were not violations of Section 10(a)(4) because it had the management right to do so pursuant to the parties' collective bargaining agreement. As to the dissolution of the Fire Department, the Village contends its decision was not a mandatory subject of bargaining. Even it was a mandatory subject, the Village argues the parties bargained to impasse.

As a preliminary matter, I note that the Complaint alleges the change in staffing and the layoffs were due to the Village's decision to "reduce the Fire Department to a combined part-time/paid on call department." However, the facts adduced at hearing establish that the change in staffing levels and layoffs were actually related to the Village Board's vote to downgrade from ALS to BLS service. Under the Act and the Board's Rules, administrative law judges may on their own motion "amend a complaint to conform to the evidence presented in the hearing." 5 ILCS 315/11; 80 Ill. Admin. Code § 1220.50. The Board's case law specifically allows for the amendment of complaints "where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party." Vill. of

Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004).[10] Amending the Complaint to allege that the staffing reduction and corresponding layoffs were results of its decision to change from ALS to BLS service would conform the pleadings to the evidence in the record. Also, I do not find that amending the Complaint prejudices the Village as it presented evidence at hearing regarding the change from ALS to BLS and fully argued its position regarding the change to BLS, the staffing reduction, and the layoffs in its post-hearing brief. As such, I am amending the Complaint to reflect that the Village's decision at issue is the decision to change from ALS to BLS service and not to change to a part-time/POC department.

With this issue resolved, I will turn to the substantive analysis of the Village's decisions.

1. The Village's Decision to Reduce Staffing did not Violate Section 10(a)(4).

The threshold question in any unilateral change case is whether the employer *actually changed* the status quo. City of Peoria, 11 PERI ¶ 2007. "In general, the express terms of the recently expired collective bargaining agreement are the primary indicator of the status quo as to wages, hours and other conditions of employment." Vill. of Oak Park, 25 PERI ¶ 169.[11] When "contract language is unambiguous, it should be given its plain and ordinary meaning." Va. Sur. Co. v. N. Ins. Co. of N. Y., 224 Ill. 2d 550, 556 (2007). While contract terms are ambiguous if they "can reasonably be interpreted in more than one way. The mere fact that parties disagree on some term, however, is not a sign that the term is ambiguous." J.M. Beals Enterprises, Inc. v. Indus. Hard Chrome, Ltd., 194 Ill. App. 3d 744, 748 (1st Dist. 1990) (internal citations removed).

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[10] The Board also allows the amendment of complaints "to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case." Id.

[11] I note that at the heart of the staffing standards issue is a question of contract interpretation which is generally a matter for deferral. However, neither party has requested deferral and the Board has not clarified whether under the Act parties can grieve a contract issue which arises after the contract has expired. See Litton Fin. Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B., 501 U.S. 190 (1991).

In this case, Article XIV of the parties' expired contract provides:

> The Department shall have two (2) firefighters and two (2) paramedics on duty at all times, which may include the Deputy Fire and Division Chiefs in said calculations . . . In the event that the Village no longer offers or provides ALS service, paramedic staffing standards can be reduced or eliminated to reflect BLS staffing standards.

The Union argues that this contract language required four people on duty at all times regardless of any change from ALS to BLS. I find this argument untenable. As the Union points out, the first sentence clearly states that the Village was required to keep two firefighters and two paramedics on duty at all times. However, the second sentence allows the Village to reduce the paramedic staffing standards, or the number of paramedics on duty, as listed in the first sentence if it reduces from ALS service to BLS service, as was the case here. While the Union may have understood Article XIV to require four employees on duty at all times, its belief is not supported by "the plain and ordinary meaning" of the contract provision. As such, I find that the Village's reduction in staffing standards was consistent with the status quo and not a violation of Section 10(a)(4).

2. The Village's Decision to Lay Off Employees Violated Section 10(a)(4).

In contrast with its decision to reduce staffing standards, I find the Village's decision to lay off employees was an unlawful unilateral change. Again, the threshold question is whether the Village's decision to lay off employees was a change in the status quo.

a. The Layoff Constitutes a Change in the Status Quo.

As with its decision to reduce staffing standards, the Village argues that Article XIV granted it the authority to lay off employees in conjunction with a reduction in staffing standards. I am not convinced. Typically, contract provisions granting an employer the right to unilaterally lay off employees feature the terms "layoff," "reduction in force," "exclusive right 'to relieve

employees from duty because of lack of work or other legitimate reasons," or right "to determine the size and composition of the work force." Forest Pres. Dist. of Cook Cnty. v. Ill. Labor Relations Bd., Local Panel, 369 Ill. App. 3d 733, 754-755 (1st Dist. 2006); Am. Fed'n of State Cnty. & Mun. Employees v. Ill. State Labor Relations Bd., 274 Ill. App. 3d 327, 334-335 (1st Dist. 1995) (determining that the union had contractually waived the right to bargain layoffs). However, none of these phrases appear in the parties' contract.

While Article XIV clearly allows the Village to reduce staffing standards, i.e. the number of employees on a given shift, it is silent as to whether the Village can lay off employees following a reduction. Interestingly, while the parties' contract does contain a provision regarding layoffs, it only addresses the employees' recall rights and does not address the *decision* to lay off employees. Thus, the layoff article fails to grant the Village the right to unilaterally lay off employees either. Furthermore, to any extent the Village argues a layoff was an unavoidable consequence of the reduction in staffing standards, I find that argument equally unavailing. The contract lists the employees' positions as both firefighter/EMT and firefighter/paramedic. This would seem to suggest that firefighters can and/or are cross-trained as paramedics and vice versa. I also note that the record does not establish that the laid off employees could only function as paramedics. Pecchia, one of the laid off employees, was a firefighter/paramedic. In short, given that there appears to be alternatives to the layoff, I cannot find that the layoff was a foregone conclusion. Thus, as the contract does not grant the Village the authority to lay off employees, its decision to do so was a change in the status quo.

b. The Decision to Institute a Layoff was a Mandatory Subject of Bargaining.

In addition to finding the Village's decision was a change in the status quo, I find the decision was also a mandatory subject of bargaining. As stated above, a topic is a mandatory

subject of bargaining "if it: (1) concerns wages, hours, and terms and conditions of employment; and (2) is either not a matter of inherent managerial authority; or (3) is a matter of inherent managerial authority, but the benefits of bargaining outweigh the burdens bargaining imposes on the employer's authority." Forest Pres. Dist. of Cook Cnty., 369 Ill. App. 3d at 752.

Undoubtedly, the layoff involved the employees' terms and conditions of employment. "Indeed, unlike other matters, such as the construction of new offices or the renovation of existing buildings, the decision to layoff employees strikes at the very heart of the employment relationship." Am. Fed'n of State Cnty. & Mun. Employees, 274 Ill. App. 3d at 333. It is equally clear from the record evidence that the Village's decision involved its inherent managerial authority. The layoffs were a direct result of the Village's decision to change its standard of EMS service, which was itself motivated primarily by the Village's economic issues. Both standards of service and budgetary issues are within the scope of an employer's management rights. Id.; see 5 ILCS 315/4. As the layoff decision impacted the employees' terms and conditions of employment and involved a matter of the Village's inherent managerial authority, the question remains whether the benefits of bargaining outweigh the burden of bargaining on the Village's authority.

On balance, I find that the decision to lay off employees in this instance was a mandatory subject of bargaining. In several cases, the Board and the courts have found that economically motivated layoffs are amenable to bargaining. In Am. Fed'n of State Cty. & Mun. Employees, the court found that "after weighing the benefits and burdens, it becomes clear that a decision to layoff employees due to a decrease in state funding truly invites the use of the collective bargaining process . . . a bargaining representative is frequently in the best position to provide alternatives which may alleviate economic conditions and avoid employee layoffs." 274 Ill. App.

3d at 333. The court reached a similar conclusion in Forest Pres. Dist. of Cook Cty., 369 Ill. App. 3d 733. In Forest Pres. Dist. of Cook Cty., the District argued "it legally had no choice but to reduce personnel and, therefore, had no obligation to bargain, because of an emergency arising from a complex history of financial mismanagement and its legal duty to safeguard designated funds." 21 PERI ¶ 43, aff'd Forest Pres. Dist. of Cook Cty., 369 Ill. App. 3d 733. However, the ALJ found, and the court and the Board agreed, that the District's economic issues did not shield it from bargaining. Id. The court noted that financial issues are amenable to bargaining, the District knew of its financial issues several months in advance of the layoffs, and there were no other burdens on the Village's authority. Forest Pres. Dist. of Cook Cty., 369 Ill. App. 3d at 753-754. I see no reason to reach a different result in this case.

The record establishes that, like many governmental entities, the Village was having financial issues. However, there is nothing in the record to suggest that the Village's financial situation was so dire as to preclude bargaining. Nor has the Village articulated any other potential burdens bargaining would have had on its authority. Furthermore, the Union could have offered alternatives to the layoff such as making employees who could function as firefighters part-time or POC employees. Given that the burdens on the Village do not outweigh the benefits of bargaining, I find that the Village's decision to lay off employees was a mandatory subject of bargaining and that its implementation of the layoff constituted an unlawful unilateral change in violation of Section 10(a)(4).

3. The Village's Dissolution of the Fire Department Violated Section 10(a)(4).

The last and most significant change at issue is the Village's decision to completely dissolve the Fire Department. Unlike the previous two unilateral changes, the Village does not argue that its decision to dissolve the Fire Department was covered by the parties' contract.

Rather, the Village argues that the decision was not a mandatory subject of bargaining under Central City. In the alternative, the Village argues that even if it was a mandatory subject, it bargained with the Union to impasse. For the reasons that follow, I find that the decision to dissolve the Fire Department was a mandatory subject of bargaining. Furthermore, while I find that the Village had bargained with the Union to impasse, the Village was not entitled to implement its decision prior to completion of interest arbitration proceedings under Section 14 of the Act.

a. Dissolution of the Fire Department was a Mandatory Subject of Bargaining.

Once more, a matter is a mandatory subject of bargaining if it satisfies the three-pronged Central City test. As a preliminary matter, I note that the Village's decision to dissolve the Fire Department was effectively a decision to subcontract all bargaining unit work. See Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); City of Chi. (Department of Police), 21 PERI ¶ 83 (IL LRB-LP 2005). When it ultimately decided to close the Department, the Village simultaneously entered into an intergovernmental agreement for fire protection services and a private contract for emergency medical services. As such, my analysis of the first prong of Central City is slightly modified. Pursuant to City of Belvidere, an employer's decision to subcontract satisfies the first prong if the decision "(1) involved a departure from previously established operating practices, (2) effected a change in the conditions of employment, or (3) resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit." 181 Ill. 2d at 208. As the employees' positions were completely eliminated, the Village's dissolution of the Fire Department clearly satisfies at least two of these criteria and, therefore, satisfies the first prong of the Central City test.

I also find that the Village's decision involved its inherent managerial authority. The evidence establishes that its decision to dissolve the Department and subcontract all bargaining unit work was due in large part to the Village's financial concerns. The Village also contends it decided to dissolve the Department because there was a lack of "demonstrated need for a full-time department." Assuming the Village is suggesting that its decision to dissolve the Department was connected to its right to determine standards of service, I would also find that sufficient to establish the Village's managerial authority was at issue. Whether its authority to determine standards of service is truly at the heart of this decision is a question I will leave for the balancing analysis. Again, as the decision involved the employees' terms and conditions of employment and the Village's inherent managerial authority, the question is then whether the benefits of bargaining outweigh the burden on the employer's authority.

The Village argues that its financial issues and lack of need for a full-time fire department "establish that the benefits of collective bargaining were greatly [outweighed] by the burden bargaining imposed on the Village's inherent authority." I disagree. First, to the extent the Village argues it did not need a fire department in *any* form, I find its argument unsupported by the record. While it may not have needed a full-time fire department to meet its citizens' demands, the Village's suggestion that it did not need a fire department period is belied by its actions. If it truly did not need a fire department or emergency medical services, it would have simply eliminated the Fire Department and not subcontracted both services. Moreover, even assuming that the Village's decision was in part due to dwindling demand, the record is clear, as is the Village in its brief, that the overarching reason behind the Village's decision was its perceived financial status.

The overwhelming catalyst for the events in question, including the dissolution of the Fire Department, was the Village's determination or belief that it was having financial difficulty. Most, if not all, of the Village's overtures to the Union highlight its financial state. Thus, the Village's decision at its core was a financial one. The courts and the Board have been clear that financial issues are particularly amenable to bargaining. See Am. Fed'n of State Cty. & Mun. Employees, 274 Ill. App. 3d at 333; Vill. of Ford Heights, 26 PERI ¶ 145. The Village argues that its "crushing financial burden" renders a bargaining requirement unbearable. However, I have been unable to find any case law, nor has the Village provided any, holding for the proposition that financial issues are usually amenable to bargaining unless the employer's financial problems are particularly atrocious. Even if that were the rule, I would not find it applicable in this case. While I do not doubt the Village's financial difficulties, the evidence does not establish that its financial problems were so severe as to preclude bargaining. Additionally, the record suggests that the Village has been operating in deficit for some time and is not experiencing a sudden budgetary shortfall. Furthermore, given the time lapse between when Treasurer Williams began his attempts to balance the budget and the Village's ultimate decision to close and outsource the Fire Department, the parties had ample opportunity to bargain. The fact that the Village has now decided to address its recurrent budgetary issues does not in and of itself render a mandatory subject of bargaining suddenly permissive.

Although I am unwilling to find a bargaining requirement in this instance is as burdensome as the Village suggests, there is undoubtedly a burden on the Village given its financial interests. However, I find that the benefits of bargaining over the decision to dissolve the Department and subcontract the unit's work outweigh the burdens on the Village's managerial authority. The closure and subcontracting of the Fire Department is an immensely

important issue to the Union and it could have offered concessions or ideas which would have alleviated the Village's economic issues. See Am. Fed'n of State Cty. & Mun. Employees, 274 Ill. App. 3d 327; Vill. of Ford Heights, 26 PERI ¶ 145. I do note that this analysis is somewhat odd given that, as I will discuss in full below, the parties did actually bargain but their bargaining efforts were ultimately fruitless. However, I cannot find that because their bargaining efforts were unsuccessful, the bargaining topic in question was permissive. The Act explicitly states that parties are not required to reach agreement. To require parties to reach an agreement in cases where bargaining has already occurred in order to find that the topic is a mandatory subject would, among other things, directly contravene the Act. Given that I find the benefits of bargaining outweigh the burdens on the Village, I find that the closure of the Fire Department and subcontracting of its services was a mandatory subject of bargaining.

b. Even Though the Parties Bargained to Impasse, the Act Required the Village to Maintain the Status Quo.

The Village argues that even if the dissolution of the Fire Department was a mandatory subject of bargaining, it did not violate Section 10(a)(4) because it bargained with the Union to impasse. The Village's defense is unavailing. Generally, employers can unilaterally implement a decision if the parties have bargained to impasse. City of Peoria, 11 PERI ¶ 2007. However, when it comes to Section 14 employees, the Act extends this prohibition through the conclusion of interest arbitration. 5 ILCS 315/14(l). Further, the Act provides that interest arbitration starts when mediation commences. 5 ILCS 315/14(a), (j), and (l). Once interest arbitration proceedings begin, an employer can only change a mandatory subject of bargaining if the other party agrees to the change. 5 ILCS 315/14(l). Given that the bargaining unit in question is comprised of Section 14 employees, the question of whether or not the parties were at impasse is not

particularly relevant. However, as Village has raised the issue and it is relevant to my decision regarding relief, I will briefly address whether the parties bargained to impasse.

The Board uses several factors to determine whether parties bargained to impasse including the parties' bargaining history, the length of negotiations, the importance of the issue, the good faith of the parties during negotiations, and the understanding of the parties regarding the status of negotiations. City of Peoria, 11 PERI ¶ 2007. The National Labor Relations Board has also referred to impasse as where "one party is 'warranted in assuming . . . that the [other party] had abandoned any desire for continued negotiations, or that further good-faith negotiations would have been futile.'" Cnty. of Jackson, 9 PERI ¶ 2040 (IL SLRB 1993) (citing Alsey Refractories Co., 215 NLRB 785 (1974)).

The Village contends that the parties were at impasse when it dissolved the Fire Department, entered into an intergovernmental agreement, and subcontracted its EMS services. I agree. Although the parties did not engage in protracted negotiations, they had sufficient time to bargain over the Department's closure. Also, as I will discuss in more detail in my bad faith bargaining analysis, I find that the Village generally bargained in good faith. Critically, the evidence establishes that prior to the Village's implementation of its decision the parties had become entrenched in their positions and mutually understood that negotiations had completely stalled. Among the evidence supporting a finding that the parties were at impasse are the facts that the Union responded to the Village's proposal of a part-time/POC department by proposing to maintain the status quo with a three percent raise and twice demanded interest arbitration. As such, I find that the parties were at impasse when the Village closed the Fire Department.

While the parties were at impasse, the Village fails to address the fact that the unit in question is comprised of Section 14 employees. As I intimated above, impasse is not a shield for

employers when the parties are in interest arbitration. Here, there is no question that the employees at issue are covered by Section 14. The parties also seem to agree that they had gone through the required mediation and therefore had started interest arbitration proceedings. Thus, even though the parties were at impasse, the Village was not entitled to dissolve the Fire Department until it had reached an agreement with the Union or had received an interest arbitration award allowing it to do so.

To any extent the Village's financial argument applies here, I do not find it persuasive. Section 14 only allows employers to unilaterally implement a decision if it is not a mandatory subject of bargaining. Nowhere in Section 14 does it exempt employers from maintaining the status quo in cases of emergency, i.e. extreme financial strain. See City of East St. Louis (Fire Dep't), 30 PERI ¶ 67 (IL LRB-SP 2013); Vill. of Maywood, 10 PERI ¶ 2045 (IL SLRB ALJ 1994) (non-precedential decision noting "that the prohibition expressed in Section 14(l) of the Act against unilateral changes in mandatory subjects of bargaining during the pendency of arbitration proceedings makes no allowance for unilateral changes due to economic necessity."). I also note that interest arbitrators are required to take into account the employer's financial status and the potential impact on the public when crafting their awards. 5 ILCS 315/14(h).

Obviously, the interest arbitration process, as well as the bargaining process, takes time. However, many cases, the employer's financial status is not a sudden problem, but rather the result of a slower and more gradual process. Simply put, while I am sensitive to the Village's financial difficulties, the fact that the Village has now decided to "balance [its] budget" does not necessitate ignoring the requirements of the Act. Therefore, while the Village and the Union bargained to impasse, the Village violated Section 10(a)(4) when it implemented its decision while the parties were engaged in interest arbitration proceedings.

B. The Village did not Violate Section 10(a)(4) by Refusing to Provide Information.

In addition to the unilateral change issues, the Union argues the Village violated Section 10(a)(4) of the Act by failing to provide it with relevant bargaining information. Encompassed within an employer's duty to bargain in good faith is the duty to provide bargaining information upon a union's good faith request. City of Chi., 23 PERI ¶ 120. The union's requested information must also be relevant. Id. In other words, "the information must be directly related to the union's function as a bargaining representative and reasonably necessary for the performance of that function." Id. The Board uses a liberal discovery-type standard when determining whether or not information is relevant. Id. Further, while information regarding terms and conditions of employment is presumptively relevant, an employer is not required to turn over information regarding non-mandatory subjects of bargaining. Cnty. of Champaign, 19 PERI ¶ 73 (IL LRB-SP 2003). Even so, the Board will only find a violation when "(1) the employer has failed to act in good faith, or (2) the employer's failure to produce the requested information has meaningfully interfered with the union's ability to fulfill its representative's role." City of Bloomington, 19 PERI ¶ 11 (IL LRB-SP 2003).

In this case, the Union contends that it requested Board meeting minutes and payroll information for bargaining unit members via a Freedom of Information Act (FOIA) request, but the Village refused to provide the information. The evidence also establishes that the Union orally requested the Board meeting minutes separately from its FOIA request. However, the evidence is insufficient to demonstrate that the Union requested the payroll information aside from the FOIA request.

As a threshold matter, I find the Union's FOIA request to be an insufficient "good faith request" as required by the Act. It is important to note, as the Union points out in its brief, that it

is not uncommon for public employers to avoid supplying bargaining information by seeking refuge under FOIA's exemptions. However, I find those cases distinguishable from the instant case. In one case cited to by the Union, Dep't of Cent. Mgmt. Servs. (Dep't of Trans.), the employer refused to provide certain requested information arguing that the information was exempt under FOIA. 29 PERI ¶ 124 (IL LRB-SP 2013). However, in that case, the union sent the employer a letter requesting information as the employees' certified bargaining representative. It did not, as the Union did here, file a FOIA request. Id. Similarly, in the second case cited to by the Union, a non-precedential decision, the union filed both a FOIA request and "a separate information request 'pursuant to the Illinois Public Labor Relations Act.'" Vill. of Lyons, 30 PERI ¶ 185 (IL LRB-SP ALJ 2014). Although the information available to the Union under FOIA and through the Act can significantly overlap, FOIA and the Act still have distinctly different enforcement mechanisms. FOIA details what a party must do if a public employer refuses to comply with a FOIA request including requiring the aggrieved party file a request for review with a Public Access Councilor. 5 ILCS 140/9-11.5. Quite simply, the Board does not have the authority to enforce a FOIA request, even one filed by a union. As such, any failure by the Village to supply information requested solely through a FOIA request is insufficient to trigger a potential violation of Section 10(a)(4). Therefore, I find any failure by the Village to respond to the Union's FOIA request for the payroll information is not an unfair labor practice.

As to the Union's request for the Board's meeting minutes, the record evidence supports a finding that the Union orally requested the information from the Village prior to its filing of a FOIA request. Thus, the issue here is whether the information is relevant and whether the Village provided the information. The Union states it requested the minutes "to verify [Jarad's statements] that the Village Board had, in fact, received and rejected its proposals." The Union

also suggests that the minutes would have allowed it to determine which individuals voted down the proposal and thus give the Union the opportunity to "revise the proposals in a way that would make them more appealing to those Board Members." While I find the record establishes that the Union wanted the meeting minutes to verify Jarad's statements, I am less certain that the Union wanted the information to better revise its proposals. Even assuming it did, at least in part, want to use the minutes to revise its proposal, neither of the Union's proffered reasons convince me that this information is relevant.

Simply needing to verify Jarad's statements seems to have little to do with the Union's statutory role and more to do the Union's desire to file an unfair labor practice charge. However, the Board does not allow for pretrial discovery, and Section 10(a)(4) is not a substitute. See In Re Saginaw Control & Eng'g, Inc., 339 NLRB 541, 544 (2003). Furthermore, while the Union could use the minutes to alter its proposals, given the parties were nearly at impasse when the Union requested the information and that the Union had other available avenues for getting the information, I cannot find that the minutes were "reasonably necessary" or that the Village's failure to provide the minutes "interfered with the [U]nion's ability to fulfill its representative's role." In light of these deficiencies, I conclude that the Union failed to establish that the Village violated Section 10(a)(4) by refusing to provide relevant bargaining information.

C. The Village did not Violate Section 10(a)(4) by Bargaining in Bad Faith.

The Union's final argument contends that the Village, overall, bargained in bad faith in violation of Section 10(a)(4).[12] Section 10(a)(4) explicitly requires employers to bargain in "good faith." Essentially, the good faith requirement mandates that employers "engage in

[12] The Complaint is somewhat ambiguous as to whether I am to consider the other individual or per se violations of the Act as part of the bad faith bargaining allegation. As I have already addressed those issues at length and the Union does not argue that I should consider those same allegations in this analysis as well, I will only focus on the remaining allegations in the Complaint and those raised by the Union in its brief.

negotiations with 'an open mind and a sincere desire to reach an ultimate agreement." Lake Cnty. Cir. Clerk, 29 PERI ¶ 179 (citing Serv. Employees Int'l Local Union No. 316, 153 Ill. App. 3d at 751). However, while parties are required to enter into negotiations with an open mind and do more than go through the motions of bargaining, the Act "does not compel either party to agree to a proposal or require the making of a concession." 5 ILCS 315/7; Lake Cnty. Cir. Clerk, 29 PERI ¶ 179. Furthermore, "an adamant insistence upon a bargaining position is not of itself a refusal to bargain in good faith." Lake Cnty. Cir. Clerk, 29 PERI ¶ 179 (internal citations removed). In order to determine if an employer bargained in bad faith, the Board will consider "the totality of the circumstances." Id. Conduct indicative of bad faith bargaining includes delay tactics, unreasonable demands, implementation of unilateral changes, and failing to appoint a bargaining representative with sufficient authority. Id.

The Union argues that "beyond those specific violations of Section 10(a)(4), there were numerous other acts . . . that demonstrated that the [Village] was failing to bargain in good faith." In support of its argument, the Union contends that the Village failed to respond to its proposals, failed to submit "any written proposals of its own," made misrepresentations to the Union and the Village Board, and failed to follow its own procedures during Board meetings. However, based on the totality of the Village's conduct, I conclude the Village bargained in good faith.

First, as to the Union's contention that the Village failed to respond to its proposal, I find this unsupported by the record. Although the Act requires the Village to actually respond to proposals, it does not compel the Village to give a line by line formal response. The record establishes that the Village did response to the Union's initial proposal by virtue of its statements to the Union that it was considering dissolving all or part of the Fire Department because of its

financial circumstances. The Village also rejected the Union's economic ideas, as well as the Union's proposal to maintain the status quo with a three percent raise.

Additionally, I am not persuaded by the Union's argument that the Village bargained in bad faith by failing to provide any formal written proposals of its own. Again, the Act does not require parties to exchange formal written proposals in order for them to bargain in good faith. Parties frequently bargain orally and in person, and requiring the parties to only exchange written proposals or to exchange written proposals each time the parties make a suggestion would unnecessarily encumber bargaining. I also note that the case cited to by the Union for the proposition that the failure to provide a written proposal or counterproposal was indicative of bad faith bargaining is a default judgment and thus of no precedential value. See City of Braidwood, 28 PERI ¶ 24 (IL LRB-SP ALJ 2011). While it may be indicative of bad faith bargaining for an employer to refuse to provide a written proposal when requested, that is not the case here. In this case, when the Union requested the Village provide a written proposal to present to its members, Jarad complied and sent the Union a written version of its oral proposal.

I also find the Union's argument that the Village intentionally lied to its own Board unsupported by the record. The Union argues that the Village lied to its Board when it said the Union's proposal was a three percent raise each year for three years when its proposal was actually three percent divided over three years. Given the Union's testimony regarding its final offer, I find the Village's representation to its Board an entirely reasonable interpretation of the Union's proposal. Thus, I cannot find that the Village's statements regarding the Union's proposal, without more, are sufficient to establish that the Village intentionally misrepresented the Union's final offer.

In addition, the Union argues the Village made several intentional misrepresentations to its representatives during bargaining. First, the Union argues that the Village said that the Village Board had voted on the Union's proposal when it in fact had not voted on the proposal. Both Jarad and a Board Trustee testified that the Village Board was informed of all bargaining matters. Although McDonald testified that the Village admitted to lying, I find that, at best, his testimony supports a finding that there was some miscommunication about what the Board had technically done. While the Open Meetings Act requires boards to vote on final contracts in open session, it does not prevent boards from discussing bargaining proposals in closed session. See 5 ILCS 120/2. I find it more likely that the Board Trustees in closed session discussed the Union's final proposal and found it unacceptable on its face given the Village's own proposal. Thus, there was no actual vote, but more of an informal poll during the Board's discussion. Given the information in the record, I cannot conclude that the Village intentionally lied to the Union about the Board's vote on the final proposal.

Second, the Union contends that the Village intentionally mispresented its financial status. In support of its argument, the Union contends that Williams provided inconsistent financial information during bargaining, failed to provide financial documents as requested, and argues that the Village's financial information is patently unreliable as it has not conducted an audit in several years. While the Village's numbers may be inaccurate, particularly given the lack of audits in the prior years, I cannot find that the record supports a finding that the Village made an intentional misrepresentation to the Union. The Union's witnesses were not able to point to any concrete examples of any mistakes or misrepresentations in the Village's financial information provided during bargaining or at hearing. Rather, the Union's witnesses said the

Village's numbers "seemed" wrong. I cannot find this sufficient basis for concluding that the Village intentionally misrepresented its financial status.

I am also unsure as to how to address the Union's argument that the Village's failure to follow its own rules during a Board meeting is indicative of bad faith. The Union specifically argues that the Board's failure to follow the Robert's Rules of Order during a meeting is evidence of bad faith bargaining. The Act does not require employers conduct their meetings in any particular matter. Further, the record does not suggest that the parties had established bargaining ground rules which included the Robert's Rules of Order. Regardless, one instance of the Village failing to follow its usual rules is not sufficient evidence of bad faith.

Finally, I do not agree with the Union's contention that Village "did not listen to, consider, or respond to the Union's demands: [simply sticking] to its dissolution position." The Act does not require the Village to make a concession or agree to a proposal. In fact, although the Village maintained its position that serious structural changes need to be made, the overall tenor of the Village during the time in question demonstrates that it was open to bargaining. Jarad frequently suggested potential bargaining dates to the Union, sometimes sending several follow-up emails. Furthermore, the Village invited the Union to make suggestions or proposals that would alleviate the need for shutting down the Fire Department. However, the Union was simply unable to provide proposals that the Village thought would solve its problems.

In sum, I find that under the totality of the circumstances, the Village satisfied its duty to bargain in good faith as required by the Act.

V. CONCLUSIONS OF LAW

A. The Village did not violate Section 10(a)(4) and (1) when it changed the Fire Department's staffing standards.

B. The Village violated Section 10(a)(4) and (1) by unilaterally laying off bargaining unit employees.

C. The Village violated Section 10(a)(4) and (1) by unilaterally closing the Fire Department and subcontracting all bargaining unit work.

D. The Village did not violate Section 10(a)(4) and (1) by unlawfully failing or refusing to provide relevant bargaining information to the Union

E. The Village did not violate Section 10(a)(4) and (1) by bargaining in bad faith.

VI. RECOMMENDED ORDER

It is hereby ordered that the Respondent, Village of Dixmoor, its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with the Service Employees International Union, Local 73 (Union), by failing and/or refusing to bargain over the decision to lay off employees until the parties reached agreement or completed Section 14's impasse procedures;
2. Failing to bargain collectively in good faith with the Union by failing and/or refusing to bargain over the decision to close the Fire Department and enter into an intergovernmental agreement and private contract which subcontracted bargaining unit services until the parties reached agreement or completed Section 14's impasse procedures;

3. Giving force and effect to the intergovernmental agreement and private contract which subcontracted all bargaining unit work;
4. Failing and refusing to bargain collectively in good faith with the Service Employees International Union, Local 73, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. Reinstate and make whole any employees who were discharged, laid off, or otherwise adversely affected by the layoff;
2. Reinstate and make whole any employees who were discharged, laid off, or otherwise adversely affected by the closure of the Fire Department and subcontracting of all bargaining unit work;
3. Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours or terms and conditions of employment of employees represented by the Union including any decision to implement layoffs or close the Fire Department and subcontract all bargaining unit work;
4. Upon request, bargain collectively in good faith with the Union over the decision to implement layoffs or close the Fire Department and subcontract all bargaining unit work until the parties reach agreement or complete Section 14's impasse procedures;
5. Preserve and, on request, make available to the Board or its agents for examination and copying all payroll and other records required to calculate the amount of back pay due under the terms of this order;

6. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced or covered by any other material;
7. Notify the Board in writing, within 20 days from the date of this decision, of the steps the Respondent has taken to comply herewith.

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 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this

statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on December 17, 2015
STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Kelly Coyle
Kelly Coyle
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

S-CA-14-063
Addendum

The Illinois Labor Relations Board, State Panel is charged with protecting rights established under the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). The Board has found that the Village of Dixmoor has violated Sections 10(a)(4) and(1) of the 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

The Act also states that a public employer cannot interfere with, restrain or coerce its employees in the exercise of these rights. The Act further imposes upon a public employer and the exclusive representative of a bargaining unit the duty to bargain collectively.

Accordingly, we assure you that:

WE WILL cease and desist from:

a. Failing to bargain collectively in good faith with the **Service Employees International Union, Local 73,** by failing and/or refusing to bargain over the decision to lay off employees in relation to the decision to change from ALS to BLS service until the parties reached agreement or completed Section 14's impasse procedures;

b. Failing to bargain collectively in good faith with **Service Employees International Union, Local 73** by failing and/or refusing to bargain over the decision to close the Fire Department and enter into an intergovernmental agreement and private contract which subcontracted all work of the firefighter, paramedic, captain, and lieutenant bargaining unit represented by **Service Employees International Union, Local 73** until the parties reached agreement or completed Section 14's impasse procedures;

c. Giving force and effect to the intergovernmental agreement and private contract which subcontracted all bargaining unit work;

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.