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

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| Metropolitan Alliance of Police, Westchester Patrol, Chapter #651, | ) | |
| Charging Party, | ) | |
| and | ) | Case No. S-CA-24-099 |
| Village of Westchester, | ) | |
| Respondent. | ) | |

**ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER**

On June 12, 2024, the Metropolitan Alliance of Police, Westchester Patrol Chapter #651 (Charging Party or Union), filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the Village of Westchester (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 (2023), as amended. The charge was investigated in accordance with Section 11 of the Act, and on August 15, 2024, the Board's Executive Director issued a complaint for hearing.

A hearing was held on January 16, 2025, at the Board's Chicago office, at which time all parties appeared and were given a full opportunity to participate, present evidence, examine witnesses, argue orally, and 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. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.

4. At all times material, the Union has been the exclusive representative of a bargaining unit (Unit) composed of all sworn personnel employed by the Village of Westchester in the rank of Patrol Officer, but excluding Sergeants, Lieutenants, Police Chief, and all other employees of the Village; and all supervisory, managerial, and confidential employees as defined by the Illinois Public Labor Relations Act, as certified by the Board on May 31, 2011, in case S-RC-11-067.
5. At all times material, the Respondent and the Union have been parties to a collective bargaining agreement (CBA) for the Unit, effective by its terms from May 1, 2020, through April 30, 2023, which includes a grievance procedure culminating in final and binding arbitration.
6. The Respondent and the Union have commenced negotiations for a successor agreement to the CBA.

## II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it failed and refused to provide the Union with the complete Pontifex compensation report.

The Union argues that the Respondent violated the Act when it refused to provide the entire compensation report upon the Union's request for it. It contends that the information contained in the report was presumptively relevant to bargaining because it directly related to the issue of wages, a mandatory subject, and because the Respondent relied on the report during negotiations. The Union further argues that the Respondent's failure to provide the entirety of the report meaningfully interfered with its ability to bargain by preventing the Union from adequately verifying how the Respondent calculated its financial position and from challenging the assumptions underlying the Respondent's wage proposals. The Union denies that the compensation report was confidential or included bargaining strategy and contends that it merely represented raw wage data. The Union additionally contends that the Respondent's refusal to provide the entirety of the report demonstrates bad faith. It reasons that the Respondent provided insufficient legal basis for withholding the information, disclosed some of the materials to another union, and leveraged the missing information in seeking settlement of this case. The Union argues, in the alternative, that even if certain parts of the report were deemed confidential, the Respondent failed to seek an accommodation from the Union.

The Respondent denies that it violated the Act by withholding parts of the compensation report until after bargaining was complete. It asserts that the undisclosed information in the compensation report was not presumptively relevant because it represented the Respondent's bargaining strategy. In the alternative, the Respondent contends it rebutted the presumption of relevance and demonstrated that the information was not subject to disclosure. It argues that the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) prohibited it from disclosing the entirety of the compensation report and asserts that it timely informed the Union of this fact. The Respondent next contends that it appropriately withheld the missing parts of the report where they concerned the Respondent's bargaining strategy or alternatively, were analogous to litigation plans subject to the attorney work-product privilege.

The Respondent next contends that the Union failed to prove that the Respondent's failure to provide the entirety of the report meaningfully interfered with the Union's duty as collective bargaining representative. On this point, the Respondent contends that the Union did not truly need the missing information because it continued negotiations without it. In addition, the Respondent observes that the Union had access to the list of external comparable communities used in the Respondent's report and could have compiled the missing wage data on its own. The Respondent emphasizes that the Union can only speculate as to how the course of bargaining might have changed had the Respondent produced the report in its entirety. The Respondent further denies that it acted in bad faith, and specifically denies the Union's anticipated claim that it withheld the complete report to use as a bargaining chip in settlement negotiations after the Village Board approved its release to the Union.

## III. <u>FINDINGS OF FACT</u>

The Respondent is a non-home-rule municipality that operates under the council-manager form of government. The Village Board is the policy-making entity, and the village manager oversees the day-to-day operations of the Respondent, to carry out Village Board's directives. Barry Krumstok is the village manager and John Schwarz is the assistant village manager.

The Union represents a bargaining unit of patrol officers employed by the Respondent. Adam Ragular is a police officer employed by the Respondent and is also the Union president.

The parties' most recent collective bargaining agreement had a term of May 1, 2020, to April 30, 2023. In January 2023, prior to the agreements' expiration, the Union demanded to bargain a successor contract. Due to changes in the Respondent's executive administration, negotiations were delayed by agreement of the parties.

In July or August 2023, the Respondent attempted to engage the patrol union in interest-based bargaining. At that time, the Respondent provided a package deal including a wage proposal. The Union rejected interest-based bargaining.

In August 2023, the Respondent retained Pontifex Consulting Group ("Pontifex") to conduct a pay-in-class study and provide a compensation report. As part of the study, Pontifex was charged with conducting a market survey to ascertain wage rates in comparable municipalities and provide recommendations for compensation structure adjustments based on labor market equity. The report stated that it was the Respondent's goal to attract and retain staff and prevent "poaching" from other agencies. Pontifex was not tasked with providing bargaining strategies for the Respondent.

In December 2023, the parties began mediation. Wages and holiday pay were two of the subjects at issue in the negotiations.

On January 9, 2024, Pontifex presented its report to the Village Board during an executive session that was closed to the public pursuant to Section 2(c)(1) of the Open Meetings Act, which states that a public body may hold closed meetings to consider [the appointment, employment, compensation, discipline, performance, or dismissal of specific employees…." 5 ILCS 120/2(c)(1).[1] The Respondent's intent of going into the executive session was for the consultant to present its report, to discuss its recommended wages, and to ascertain the direction that the Village Board wished to go. The Pontifex report did not include any recommendations about collective bargaining or recommendations on how the Respondent should proceed in negotiations. However, the Respondent used Pontifex's compensation study to discuss strategies relating to its wage proposals with the Union.

[1] This section of the Open Meetings Act states that a public body may hold closed meetings to consider [the appointment, employment, compensation, discipline, performance, or dismissal of specific employees…." Another section of the Open Meetings Act states that a public body may hold closed meetings to consider "Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees." 5 ILCS 120/2(c)(2).

On February 6, 2024, Ragulas sent an email to Assistant Village Manager Schwarz to request a copy of the Pontifex compensation report. He explained that the sergeants' union had advised him that the study had been published and was available.

The Union believed that the compensation report would include compensation rates paid to officers in the police departments of comparable towns. Ragulas testified that such information would help the union create a wage package for submission to the Respondent and help the Union better negotiate over wages. In addition, the Union believed that the compensation report would explain which towns combined holiday pay with salary and which did not, potentially helping to resolve a dispute between the parties about whether holiday pay should remain separate from salary. The Union did not specifically explain its stated need for the requested information to any agent of the Respondent.

On February 9, 2024, Schwarz responded, stating that the Village Board had reviewed the results of the report in a closed session and that the Village Board had only authorized the release of part of that report to the sergeants' union, following execution of a new sergeants' agreement that mandated its disclosure. The full compensation report was not public, and the Village Board had not authorized its release. Accordingly, Schwarz did not provide the entire Pontifex compensation report to Ragulas and instead provided only those materials from the report that the Respondent had provided the sergeants union. This included a document entitled "Compensation Evaluation Report January 2024" and a document entitled "Competitive Compensation Analysis – Police Sergeant Union." The compensation evaluation report detailed the methodology of the compensation study including the list of comparable municipalities it used. The competitive compensation analysis for the sergeants listed the Village minimum, midpoint, and maximum salary range rate as well as the market average minimum, midpoint, and maximum salary range rate. Schwarz testified that the consultant's salary recommendations were the market averages for the minimum, midpoint, and maximum of the salary range.

The disclosed material did not include a competitive compensation analysis for the patrol officers, or for positions covered by the public works union and the police clerk's union. It did not include recommended wages for any non-unionized personnel. When Ragulas received Schwarz's response, he did not know what information from the Pontifex report was missing.

The Union and the Respondent continued mediation following Schwarz's response to the Union's information request. In total, the parties held five or six lengthy mediation sessions. Both parties presented several wage proposals through the mediator and explained their positions. There was a lot of communication between the Union and the Respondent regarding wage proposals and contract language.

During mediation, the Union informed the Respondent that the compensation report was relevant and necessary for the Union to fulfill its duty as exclusive bargaining representative. The Respondent informed the Union that the compensation report was being held in executive session because it was part of the Respondent's bargaining strategy. The Respondent used the numbers in the report to strategize regarding the wage proposals provided to the Union. However, the compensation report did not instruct the Respondent on how to negotiate with the patrol union.

Ragulas testified that the Respondent's failure to provide the entire Pontifex report hindered the Union's ability to evaluate the Respondent's proposals. He acknowledged that the Union did its own research concerning comparable municipalities' wage rates prior to making their wage proposals and that collective bargaining agreements from other municipalities were available to the Union. However, he explained that the Union did not know the Respondent's basis for its proposed salaries without the compensation report and could not provide a good counterproposal. He further explained that the Union needed to know what was in the compensation study to facilitate open communication with the Respondent and to help the bargaining process move along. Ultimately, the parties' dispute over wages was not resolved at the bargaining table.

On May 9, 2024, at Ragulas's direction, Union attorney Steve Calcaterra submitted an information request to Respondent's attorney Erin Blake again seeking the compensation report commissioned by the Respondent from Pontifex. Ragulas testified that the Union wanted the Pontifex information pertaining to the patrol officers' salary to help the Union determine its final offer for interest arbitration.

On May 13, 2024, Blake responded. She noted that the Union had submitted a request for the Pontifex report in February 2024 and attached the Respondent's response to that earlier request but provided no new information.

On May 14, 2024, Calcaterra responded that the information provided did not include the patrol officer wage and benefit information.[2]

[2] He also mistakenly stated that the information did not include the sergeants' wage/benefit information, which was in fact included.

On May 30, 2024, Blake responded that it was her understanding that the Village Board had not authorized the release of the study results requested by the Union. She did not offer any other reason for refusing to release the full Pontifex compensation study. At hearing, Schwarz testified that, at this time, the Respondent was still using the study for bargaining purposes.

Sometime in May 2024, the Respondent requested interest arbitration. At that time the Respondent had made a wage offer but the Union did not wish to accept the offer because it did not know the basis of the offer. The Union did not know whether the Pontifex report supported it.

On June 12, 2024, the Union filed its unfair labor practice charge in this case.

In May or June 2024, the parties proceeded to interest arbitration. Sometime after June 12, 2024, the Union made a final wage offer for submission to interest arbitration without the benefit of the compensation study results. At interest arbitration, the Union disclosed the external comparables it used for its wage proposal, for the arbitrator's review and consideration. The Respondent also submitted a final wage offer but did not use the compensation study as an exhibit at interest arbitration. Although not known to the Union at this time, the Pontifex data showed that on average, the Union's members were underpaid and the Respondent's last, best, and final wage offer exceeded the market average minimums in the Pontifex study.

In the latter part of the summer, the Board of Trustees approved the disclosure of the patrol-related information for release to the Union. Schwarz testified that he did not release the patrol-related information from the compensation report at that time because the Respondent did not wish to provide the information unless the Union withdrew the unfair labor practice charge involving the refusal to provide the information.

The day before hearing in this case, the Respondent provided additional information from the Pontifex report to the Union. It provided the Village minimum, midpoint, and maximum salary range rate as well as the market average minimum, midpoint, and maximum salary range rates for patrol officers. The Respondent also provided the completed form that outlined the recommended compensation system for non-bargaining unit personnel. As of the date of hearing, there was no information related to patrol officers within the compensation study that had not been released to the Union. The information still missing from the report provided to the Union, now publicly available through a FOIA request, includes similar market averages for other bargaining unit groups employed by the Respondent.

## IV. DISCUSSION AND ANALYSIS

The Respondent violated Sections 10(a)(4) and (1) of the Act when it failed to provide the Union with the complete Pontifex compensation report.

Section 10(a)(4) of the Act provides that it is an unfair labor practice "for an employer or its agents . . . to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." 5 ILCS 315/10(a)(4). The duty to bargain collectively in good faith requires public employers to provide information within their control to exclusive bargaining representatives where the information is relevant and necessary for the exclusive representative to properly discharge its statutory duty. State of Illinois, Department of Central Management Services, 35 PERI ¶ 100 (IL LRB-SP 2018); County of Champaign, 19 PERI ¶ 73 (IL LRB-SP 2003); State of Illinois, Department of Central Management Services, 9 PERI ¶ 2032 (IL SLRB 1993).

The Board will find a violation of Sections 10(a)(4) and (1) of the Act arising from an employer's refusal to furnish a union with requested information where "(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) (stating principle; finding no violation) citing Chicago Transit Authority, 4 PERI ¶ 3013 (IL LLRB 1998). "In making this determination, the relevant question is whether the demanded information is relevant; however, certain affirmative defenses for not producing the requested information, such as the confidentiality of the requested information or a claim of employee privacy, are taken into consideration." City of Bloomington, 19 PERI ¶ 11. The Board applies a balancing approach for determining whether the interests of the union in being provided information outweigh the legitimate countervailing interests of the employer. Cnty. of Cook v. Illinois Loc. Lab. Rels. Bd., 266 Ill. App. 3d 53, 57 (1st Dist. 1994) citing City of Chicago, 4 PERI ¶ 3025. Employers need only turn over relevant documents if their necessity to the representative for statutory purposes outweighs the legitimate interests of the employer in controlling access to them. City of Bloomington, 19 PERI ¶ 11.

The standard for judging whether a particular request is relevant and necessary is whether, based on a liberal discovery-type standard, the requested information is related to the union's function as the employees' bargaining representative and the information appears to be reasonably necessary for the performance of this function. County of Champaign, 19 PERI ¶ 73; City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015 (IL LLRB 1996); State of Ill., Department of Cent. Mgmt. Services, 9 PERI ¶ 2032. However, an employer is not required to provide information that relates to nonbargainable subjects such as matters involving the employer's inherent managerial authority. County of Champaign, 19 PERI ¶ 73; Village of Franklin Park, 8 PERI ¶2039 aff'd 196 Ill. App. 3d 576 (1st Dist. 1990).

Information relating to unit employees, including all terms and conditions of employment, is deemed presumptively relevant, and the employer has the initial burden to rebut that presumption. City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015 citing, Chicago Transit Authority, 4 PERI ¶ 3013. When a union requests information from an employer that does not fall within the presumptively relevant category, such as that regarding non-unit employees or applicants, the union has the initial burden to show relevancy. City of Chicago, 23 PERI ¶ 120 (IL LRB-SP 2007); City of Chicago (Chicago Fire Dep't), 12 PERI ¶ 3015.

Here, the Pontifex report is presumptively relevant because it addresses patrol officers' wages, a mandatory subject of bargaining, and shows how they compare to market averages in comparable municipalities. In the alternative, the Pontifex report is demonstrably relevant to the Union's role as bargaining representative, as discussed below.

First, the aggregated market wage data calculated from the wages of patrol officers in comparable municipalities was relevant and necessary for the Union to develop its wage proposals and its final wage offer for submission to interest arbitration, as explained by Union President Ragulas. Wages paid to employees in comparable communities performing similar services to those performed by bargaining unit employees are considered by interest arbitration panels in setting peace officer contracts, and wage surveys are commonly used by bargainers. 5 ILCS 315/14(h). The fact that the Union may have been able to perform its own research and obtain wage data of patrol officers employed by municipalities listed as comparable in the Pontifex study, does not relieve Respondent of the obligation to provide it to the Union, absent special circumstances. Colgate-Palmolive Co., 261 NLRB 90, 92 n. 13 (1982).

The parties' participation in the interest arbitration process renders the remaining extra-bargaining unit wage information relevant because it is of the type that an interest arbitrator must consider when setting wages. Section 14(h) of the Act provides that an interest arbitration panel "shall base its findings" on a broad range of wage data. This includes a comparison of wages not just of employees performing similar services in other municipalities but with "other employees generally" in both public and private employment in comparable communities. 5 ILCS 315/14(h). The Pontifex report contains exactly this type of information in aggregated form.

Next, the requested information was additionally relevant and necessary for the Union to assess the Respondent's wage proposals. In the private sector, "an employer is obligated to supply to the union the results of wage surveys that it had taken or utilized, where it relied on such surveys in its bargaining positions." Tubari, Ltd., 299 NLRB 1223, 1228 (1990); Mobil Expl. & Prod., 295 NLRB 1179, 1180 (1989); Gen. Elec. Co., 188 NLRB 920, 921 (1971). This principle is equally applicable in the public sector, particularly in protective service units, where a broad range of economic data must be considered in setting wages. 5 ILCS 315/14(h). Applying that principle here, the Pontifex report is relevant to negotiations over wages because the Respondent commissioned the report to help it maintain a competitive position in the local labor market. See Gen. Elec. Co., 188 NLRB at 921. It gained even greater relevance when the Respondent affirmed its reliance on the report during mediation, claiming that it was using the report for "bargaining strategy." The Union was therefore entitled to review the Pontifex compensation report to determine whether it supported the Respondent's bargaining position on wages.

Contrary to the Respondent's suggestion, the Union was not obligated to show that disclosure of the full report would have changed the course of bargaining to prove its relevance and necessity. It was merely obligated to demonstrate the probable or potential relevance of the information to its representation of unit employees by presenting objective facts or other circumstances that establish the relevance of the requested information, and it did so here, as outlined above. Cf. City of Chicago, 23 PERI ¶ 120.

There is no merit to the Respondent's implication that the complete Pontifex report was not truly relevant where, after the Respondent produced part of the document, the Union did not immediately follow up to obtain the missing pages. Setting aside the Respondent's threshold statutory obligation to respond completely to information requests for relevant and necessary information absent available defenses, discussed below, it is significant that the Union renewed its request at critical junctures in the negotiations. It reiterated its request for the full Pontifex report during mediation, did so again after mediation, and then followed up with a more targeted request for the missing compensation analysis of patrol officer wages prior to formulating its final offer for interest arbitration. Thus, the Union consistently demonstrated its interest in, and need for, the full Pontifex report.

Turning to the Respondent's affirmative defenses, the Respondent has failed to prove that it was privileged to withhold the missing pages of the Pontifex report. Certain affirmative defenses for not producing the requested information, such as the confidentiality of the requested information or a claim of employee privacy, are available to the employer; however, these defenses are narrowly construed. Chicago Transit Authority, 4 PERI ¶ 3013. The burden is on the respondent to prove a confidentiality defense. City of Chicago, (Chicago Fire Dep't), 12 PERI ¶ 3015.

Here, the Respondent has not shown that the Pontifex report was confidential pursuant to the Illinois Freedom of Information Act (FOIA), and thus exempt from disclosure to the Union, as it contends on brief. The Respondent did not provide any support for its proposition that it was prohibited from providing information to the Charging Party due to FOIA requirements. Notably, the fact that information may be exempt from public disclosure under a state's "freedom of information" law, does not mean that an employer cannot be required under applicable labor law to provide the information to a union to which it owes a duty to bargain. Wayne County, 23 MPER ¶ 43 (MERC 2010); United States Postal Service, 305 NLRB 997 (1991). Moreover, the Section of FOIA relied upon by the Respondent does not even address the type of information covered by the Union's information request. Section 7(1)(l) of FOIA exempts from public disclosure the minutes of meetings of public bodies closed to the public whereas the Union sought a compensation report, not the minutes of meetings at which it was discussed. 5 ILCS 140/7(1)(l).

Similarly, the Respondent has also not shown that the requested information was exempted from disclosure under the Open Meetings Act, as it argues on brief. Section 2.06 of the OMA, relied upon by the Respondent, exempts from public inspection or discovery the verbatim record of meetings closed to the public. However, the Union's request for the Pontifex report did not seek the verbatim records of the closed meeting at which the Respondent discussed that report. 5 ILCS 120/2.06.

The Respondent's broader claim, that the OMA privileged the Respondent from disclosing requested materials because it allows closed meetings for collective bargaining discussions, overlooks two key points: First, the closed meeting at which the Respondent discussed the Pontifex report was not closed pursuant to the OMA's collective bargaining-related provision but instead a different provision used to discuss compensation paid to specific employees. Compare 5 ILCS 120/2(c)(1) and (2).[3] Second, even if the meeting had been closed under the provision applicable to collective bargaining, the materials discussed therein would not be subject to a blanket privilege only a qualified one to shield bargaining strategy. Illinois Educ. Lab. Rels. Bd. v. Homer Cmty. Consol. Sch. Dist. No. 208, 132 Ill. 2d 29 (1989).

Turning to the issue of bargaining strategy, the Respondent has failed to show that the Pontifex report could be lawfully withheld on the grounds of collective bargaining-related confidentiality. The Board's analysis of the authorized access test of the confidential exclusion, set forth in Section 3(c) of the Act, provides guidance because it exists to prevent an employer's collective bargaining strategies from being prematurely disclosed to employees with whom it will bargain. Chief Judge of Cir. Ct. of Cook Cnty. v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, AFL-CIO, 218 Ill. App. 3d 682, 698 (1st Dist. 1991) aff'd, 153 Ill. 2d 508 (1992). If the type of information included in the Pontifex report qualifies as information related to the effectuation or review of the employer's collective bargaining policies under Section 3(c) of the Act, then it likely may be withheld during bargaining. Conversely, if it is not, then the Respondent's bargaining-related confidentiality defense must fail.

Here, the material contained in the various compensation analyses is not of the type that would likely be deemed confidential under the authorized access test. Examples of confidential

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[3] (c) Exceptions. A public body may hold closed meetings to consider the following subjects:

> (1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.
>
> (2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

5 ILCS 120/2(c)(1) and (2).

information under the authorized access test include bargaining strategy and actual bargaining proposals. Health & Hosp. Sys. of Cnty. of Cook v. Illinois Lab. Rels. Bd., Loc. Panel, 2015 IL App (1st) 150794, ¶ 67. Confidential information does not include statistical information upon which an employer's labor relations policy is based or information that might be relevant to collective bargaining but does not reveal bargaining strategies, such as reports from finance or benefits experts. Chief Judge of Cir. Ct. of Cook Cnty., 218 Ill. App. 3d at 699; City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010). The Pontifex report, as it pertains to unionized staff, is a compilation of statistical, market information about wages paid to employees in comparable municipalities, compiled by a finance expert, and juxtaposed with existing wage data of unit members. For each bargaining unit, the report contains three numbers, a market average minimum, midpoint, and maximum, obtained from wages paid to employees in the matching titles from comparable municipalities. Although the assistant village manager characterized these market averages as wage recommendations, the report does not include any guidance on how the Respondent should proceed in negotiations to obtain any particular result. Pontifex was not hired to provide any bargaining strategies, and the testimony shows that the Respondent intended to use the report to inform its bargaining approach rather than to submit the information contained therein as a bargaining proposal. The Respondent's bare assertion that the aggregated market data was itself bargaining strategy is inconsistent with the Board's understanding of confidential material, discussed above. It is also inconsistent with the NLRB's approach of requiring disclosure of similar compensation studies, upon request, when an employer relies upon them in negotiations or to inform wage rates. Tubari, Ltd., 299 NLRB at 1228; Mobil Expl. & Prod., 295 NLRB at 1180; Gen. Elec. Co., 188 NLRB at 921.

The cases relied upon by the Respondent,[4] addressing confidentiality in the context of subpoena requests, are inapplicable here. They address the theoretical harms of producing material that is not yet available for review. See infra. In this case, however, the patrol officer compensation analysis was submitted into evidence, and the material that was not submitted was described by the Respondent's witnesses as including the same type of information.[5] A review

[4] Berbiglia, Inc. v. NLRB, 233 NLRB 1476 (1977) (revoking subpoena seeking union communications); Joseph Macaluso, Inc., 618 F.2d 51, 56 & n. 3 (9th Cir.1980) (affirming decision to revoke subpoena for FMCS mediator testimony to preserve impartiality of mediator).
[5] See Tr. P. 93:22-24 & 94:1-2.

of the information submitted into evidence demonstrates that its full disclosure, and the disclosure of similar data covering other employee groups, would have caused no harm to the collective bargaining process. The patrol officer compensation analysis does not outline the Respondent's bargaining strategy, and its disclosure would not have impaired the Respondent's ability to bargain on an even footing with the Union. Rather, it is raw data that assists the bargaining process when freely exchanged and is not ordinarily deemed confidential. See discussion supra; The Respondent's assertion that the Union could have calculated the information itself using the disclosed list of comparables highlights this point.

The Respondent's attempt to characterize the Pontifex report as part of the Respondent's "over-all bargaining strategy," akin to attorney work-product, is similarly unavailing. While the Respondent may have discussed bargaining strategy during a closed meeting while reviewing the figures in the report, the figures themselves—aggregated wage data from comparable municipalities reflecting market averages—do not represent bargaining strategy, proposals, or plans.

Next, the Respondent's failure to provide the complete Pontifex report meaningfully interfered with the Union's ability to bargain with the Respondent over wages. The Respondent thereby denied the Union the opportunity to negotiate from a common understanding of economic facts. Furthermore, to the extent that the Respondent implicitly justified its wage proposals based on market averages drawn from the report's analysis, it deprived the Union of the ability to verify those claims using the Respondent's own source materials.

The Respondent's failure to provide the Union with the complete Pontifex report also demonstrates bad faith. The Respondent correctly notes that a conclusion of bad faith cannot be based exclusively on a party's partial unresponsiveness to an adversary's information request in a single case, where there are colorable claims that extenuating circumstances caused or contributed to the deficiencies. State of Illinois, Department of Central Management Services, 35 PERI ¶ 100; Chicago Trans. Auth., 4 PERI ¶ 3013. Here, however, the Respondent's refusal to provide the compensation analysis was not excusable inadvertence. Cf. Chicago Trans. Auth., 4 PERI ¶ 3013 (charging party prevailed on grievance for which information was sought). Rather, it was an intentional omission of key parts of the report, known to be of particular interest to the Union and pertaining to the core issue of wages. The Respondent's claim, that it was not legally permitted to disclose the materials until the Village Board allowed the disclosure is further evidence of bad faith because the Village Board is the Respondent's governing body. By advancing this argument, the Respondent effectively admits that it could have released the requested information at any time but elected to withhold it.[6]

The Respondent's shifting explanations for withholding parts of the Pontifex report further show bad faith. Shifting explanations for an employer's action are indicative of unlawful motive in the context of retaliation and discrimination claims and can indicate that an employer's proffered explanations for its actions are not its true reasons. See City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335, 346 (1989); Pace Suburban Bus Div. v. Illinois Labor Relations Board, 406 Ill. App. 3d 484, 498 (1st Dist. 2010); Vill. of New Athens, 29 PERI ¶ 27 (IL LRB-SP 2012) (explanation was not legitimate or relied upon where it was shifting and inconsistent). By extension, shifting explanations can also reasonably be viewed as evidence of bad faith in the context of an employer's response to a union's information request.[7] Here, when the Union first requested the Pontifex report, the Respondent did not expressly assert that the omitted pages represented the Respondent's confidential bargaining strategy. Although the Respondent mentioned that the document was being discussed in a meeting that was closed under Section 2(c)(1) of the Open Meetings Act (OMA), that provision pertains to the discussion of the compensation of specific employees, not to the discussion of collective bargaining matters, which is governed by Section 2(c)(2) of the OMA. Compare 5 ILCS 120/2(c)(1) & (2). Only after the Union followed up on its request to obtain the entirety of the report, during mediation, did the Respondent first raise the claim that the missing pages were being used for "strategy." However, the Respondent's failure to articulate this claim when the Union first made its request for the documents undermines its legitimacy, as does the Respondent's return to its original justification when the Union followed up yet again. While the Respondent's persistence in withholding certain

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[6] The Union additionally contends that the Respondent acted in bad faith when, many months after the Union's initial request, the Respondent offered to provide the requested information if the Union withdrew its unfair labor practice charge in this case. However, the Board, as a matter of policy, encourages the voluntary efforts of the parties to settle…unfair labor practices…[and] [a]ny facts, admissions against interest, offers of settlement or proposals of adjustment that have been submitted … shall not be used as evidence of an admission of a violation of the Act." 80 Ill. Adm. Code 1200.120. Accordingly, the Respondent's settlement offer and testimony from Assistant Village Manager Schwarz describing the Respondent's conditions of settlement are not relied upon as evidence of an unfair labor practice, and the Respondent's explanations of such offers are not relied upon as evidence of bad faith. Id.

[7] ALJs have applied this approach. See Vill. of Lisle, 41 PERI ¶ 123 (IL LRB-SP ALJ 2025).

pages of the report may convey its view that information was confidential in a general sense, its shifting explanations for keeping the information confidential undermine its claim that those pages contained its bargaining strategy.

Thus, the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to provide the Union with the complete Pontifex report.

## V. CONCLUSIONS OF LAW

1. The Respondent violated Sections 10(a)(4) and (1) of the Act by failing to provide the Union with the complete Pontifex report.

## VI. RECOMMENDED ORDER[8]

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

1. Cease and desist from:
    a. Failing and refusing to provide the Union with the complete Pontifex report.
    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. Bargain collectively in good faith with the Union by providing the Union with the complete Pontifex report.
    b. 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.
    c. 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.

[8] The Union's request for a broader remedy is denied absent citation to precedent showing that Board has granted similar remedies in the past.

## 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, Helen J. Kim, by electronic mail to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov, with copy to helen.j.kim@illinois.gov, or by regular U.S. Mail or hand delivery at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. 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 6th day of May, 2025**

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

/S/ *Anna Hamburg-Gal*

**Anna Hamburg-Gal**
**Administrative Law Judge**

# NOTICE TO EMPLOYEES

## FROM THE
## ILLINOIS LABOR RELATIONS BOARD

### Case No. S-CA-24-099

The Illinois Labor Relations Board, State Panel, has found that the Village of Westchester 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 provide the Metropolitan Alliance of Police, Westchester Patrol, Chapter #651 ("Union"), with the complete Pontifex report.

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 bargain collectively in good faith with the Union by providing the Union with the complete Pontifex report, if we have not already done so.

DATE ____________

_________________________
Village of Westchester
(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.