Agenda Cover Memorandum

Meeting Date: March 24, 2014

Meeting Type: ☒ COW (Committee of the Whole) ☐ City Council ☐ Budget Workshop

Item Title: Update Union Employees

Action Requested:

☐ Approval

☐ For discussion

☐ Feedback requested

☒ For your information

Staff Contact: Shawn Hamilton, City Manager

Phone Number: 847-318-5205

Email Address: shamilto@parkridge.us

Information:

Local 150 – since the last Union update, the Mayor vetoed the Council approved contract between the City of Park Ridge and the International Union of Operating Engineers (Local 150). His veto message was presented at the Council meeting on March 3. The veto reconsideration vote (if one is called) has been deferred to Monday, April 7, as one Alderman was absent at the last Council meeting.

The consolidated hearing with the Illinois Labor Relations Board for the two ULPs between Local 150 and the City of Park Ridge has been rescheduled for May 6 and 7. That order is attached. Local 150 did subpoena the Alderman & Mayor requiring their attendance at the hearing. The City's Labor Attorney has filed a motion on March 19 to revoke the subpoenas. That motion is attached.

ICOPs – we are awaiting a request to meet and receive their proposal for the wage and insurance openers in the contract. After receipt and analysis, I will bring the proposal to Council for discussion.

Fire – the City received the proposal from IAFF on February 26. Fire management (Chief Zywanski, Deputy Chief Sorenson, Battalion Chief Sankey, and HR Manager Mike Suppan) are putting together management's list of negotiation items. Once completed, that list will be presented to me for discussion and analysis. The next meeting with IAFF will not be scheduled until 1) management completes their analysis and 2) the proposals are brought to the Council for discussion.

Police – we are awaiting a final decision from the Illinois Labor Relations Board regarding the petition asking that the Teamsters be named as the official bargaining representative for Patrol Officers.

Sergeants – no outstanding issues.

As a reminder, any and all union contracts, grievances, and official correspondence can be found on the City's website under City Labor Agreements.

Attachments:

- Order Scheduling Consolidated Hearing
- Motion to Revoke Subpoenas

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Union of Operating Engineers, Local 150,	)	
Charging Party	)	Case No. S-CA-13-197
and	)	
City of Park Ridge,	)	
Respondent	)	
City of Park Ridge,	)	
Charging Party	)	Case No. S-CB-13-047
and	)	
International Union of Operating Engineers, Local 150,	)	
Respondent	)	

ORDER SCHEDULING CONSOLIDATED HEARING

IT IS HEREBY ORDERED:

That the consolidated hearing currently scheduled for March 26 and 27, 2014, in the above-captioned cases is hereby rescheduled to **May 6 and 7, 2014,** commencing at **9:00 a.m.** The parties shall appear in person at the Board's CHICAGO office, 160 N. LaSalle St., Suite S-400, Chicago, Illinois 60601.

A hard copy of the parties' joint pre-hearing memorandum must be filed in the Chicago office of the Illinois Labor Relations Board by the close of business on **April 29, 2014.** The joint pre-hearing memorandum shall include:

1) A list of all exhibits to be offered by each party, and a statement that the parties have exchanged these exhibits.

2) Any objections to exhibits tendered by the other parties.
3) A list of proposed witnesses, an estimate of the time that will be required for the direct examination of those witnesses, and a brief general summary of the matters to which they will testify.
4) A joint statement of the uncontested material facts.

In order for this hearing to proceed quickly and smoothly:

- Exchange your exhibits with the other party as soon as possible.
- Request and serve any subpoenas you require well in advance of the hearing so that I can resolve any objections to the subpoenas prior to the hearing.
- Thoroughly discuss evidentiary stipulations and joint exhibits with opposing counsels before the hearing. Due to our budgetary constraints, we cannot allocate hearing time for issues about which the parties should be able to stipulate.
- Mark your exhibits prior to the start of the hearing. If you plan to introduce five or more exhibits, put them in a binder and use tabs appropriately. Even if you plan to introduce less than five exhibits, feel free to put them in a binder and use tabs appropriately.
- Bring sufficient copies of all exhibits and documents, as our office will not be able to make copies for the parties at the hearing. Make sure to bring enough copies of your exhibits so that the ALJ has her own copy of each exhibit to follow along with during the hearing.
- **If you are unavailable on the hearing date as stated in this order, you must confer with the other party's representatives and file a Joint Motion to Reschedule the Hearing. Said motion must include three mutually agreed upon alternative hearing dates. I will not reschedule the hearing absent a Joint Motion to Reschedule the Hearing by all parties to this matter. I will not respond to individual attempts by any party representative seeking to change the hearing date stated in this order.**

Issued at Chicago, Illinois, this 12th day of March, 2014

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Heather R. Sidwell

Heather R. Sidwell
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Union of Operating Engineers Local 150,	)	
Charging Party-Respondent,	)	
and	)	
	)	Case Nos. S-CA-13-197
City of Park Ridge,	)	S-CB-13-047
Respondent-Charging Party.	)	

MOTION TO REVOKE SUBPOENAS

Respondent, CITY OF PARK RIDGE ("City"), by and through its attorneys, hereby files a motion to revoke the subpoenas requested by the International Union of Operating Engineers, Local 150 ("Union").[1]

PROCEDURAL BACKGROUND

On May 28 and June 7, 2013, the Union and City filed unfair labor practice charges against one another, alleging violations of the Illinois Public Labor Relations Act ("IPLRA"). 5 ILCS 315/1 *et seq.* Subsequently, the Executive Director of the Illinois Labor Relations Board ("Board") issued competing Complaints for Hearing, one against the City and the other against the Union.

The Complaint in Case No. S-CA-13-197 alleges that the City violated Sections 10(a)(7) and (a)(1) of the IPLRA by refusing to draft and sign a collective bargaining agreement that reflects the terms of an alleged "deal" reached on or about January 21, 2013. *See* Cmplt. ¶¶ 17,

[1] The City is filing this motion in the event that the City Council declines to overturn the mayoral veto of the proposed settlement agreement between the parties. As explained in prior e-mail correspondence, if the City Council by chance does overturn the mayoral veto, the above-captioned ULP charges will be withdrawn pursuant to the terms of the parties' settlement agreement.

20. The Complaint also alleges that the City violated Sections 10(a)(4) and (a)(1) of the IPLRA by unilaterally implementing health insurance changes and failing to implement negotiated wage increases.[2] *See* Cmplt. ¶¶ 18-19, 21.

The Complaint in Case No. S-CB-13-047 alleges that the Union violated Sections 10(b)(8) and (b)(1) of the IPLRA by refusing to sign a collective bargaining agreement that reflects the terms of the deal reached on or about February 20, 2013. *See* Cmplt. ¶¶ 17-18. The Complaint also alleges that the Union bargained in bad faith in violation of Sections 10(b)(4) and (b)(1) of the IPLRA by refusing to sign the deal reached on or about February 20, 2013, and asserting that the draft agreement contained discrepancies. *See* Cmplt. ¶¶ 15, 17, 19.

Both Complaints contain the following identical factual allegations:

- Beginning in May 2012, the Union and City commenced bargaining for a successor collective bargaining agreement;
- On or about November 28, 2012, the parties reached a tentative agreement on health insurance premiums and caps, allowing bargaining unit members a choice for a wage increase based upon three options presented by the City;
- On or about December 4, 2012, bargaining unit members chose one of the wage options presented by the City;
- On or about January 21, 2013, the parties agreed that the City would draft the full Agreement reached consistent with the two aforementioned bullet points; and once the draft Agreement was completed, return the draft to the Union for its review;

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[2] As will be explained during a ULP hearing (if one becomes necessary), this is a false allegation. The City implemented the agreed-upon wage increase during the summer of 2013. All bargaining unit members have been paid pursuant to the terms of the parties' collective bargaining agreement since July 2013, and retroactive salary payments were made in September 2013.

- On or about February 15, 2013, Respondent submitted a draft of the Agreement to the Union for review;
- On or about February 20, 2013, the Union contacted the City's representative and acknowledged that the draft of the Agreement "looked good" and requested that the City vote to ratify the Agreement;
- On or about April 5, 2013, the Union's representative contacted the City's representative and asserted the aforementioned Agreement contained discrepancies and refused to sign the agreement.[3]

It is undisputed that neither the City's Mayor nor Aldermen were present for any of the aforementioned bargaining sessions alleged in the two Complaints. Nor were they present for any of the alleged communications in 2013 between the City's and the Union's chief negotiators that form the basis for the alleged violations of the IPLRA. It is undisputed that only the following City representatives attended some (or all) of the parties' negotiations that led to the 2013 agreement described in the ULP Complaints:

- Robert J. Smith, Jr. – Chief Negotiator
- Shawn Hamilton – City Manager
- Michael Suppan – Human Resources Manager
- Wayne Zingsheim – Public Works Director
- Annie Eriksson – Human Resource Generalist

Despite these facts, the Union requested subpoenas *ad testificandum* on March 3, 2014 for the following City elected officials:

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[3] By summarizing these Complaint allegations, the City is not conceding or otherwise admitting the truthfulness of the allegations.

- Mayor David Schmidt
- First Ward Alderman Joseph F. Sweeney
- Second Ward Alderman Nicholas Milissis
- Third Ward Alderman Jim Smith
- Fourth Ward Alderman Roger Shubert
- Fifth Ward Alderman Daniel J. Knight
- Sixth Ward Alderman Marc Mazzuca
- Seventh Ward Alderman Marty Maloney.

ARGUMENT

The City respectfully moves to revoke the Union's subpoenas *ad testificandum* pursuant to Section 1200.90(c) of the Board's Rules and Regulations. *See* 80 Ill. Admin. Code § 1200.90(c). The Administrative Law Judge ("ALJ") clearly has the authority to revoke subpoenas once issued. *See* 80 Ill. Admin. Code § 1200.40(h).

The subpoenas in this matter should be revoked for two reasons: (1) the subpoenaed witnesses have no firsthand knowledge of any of the key factual events described in Complaint No. S-CA-13-197; and (2) their testimony would be unnecessarily cumulative and duplicative even assuming they did have such first-hand knowledge.

I. THE SUBPOENAED WITNESSES WERE NOT PRESENT FOR, AND HAVE NO FIRST-HAND KNOWLEDGE OF, ANY OF THE BARGAINING SESSIONS OR NEGOTIATIONS DESCRIBED IN COMPLAINT NO. S-CA-13-197

As a preliminary matter, the Union must admit that neither the City's Mayor nor any of its Aldermen were present for a single one of the parties' collective bargaining sessions held in 2012 and 2013. As such, neither the City's Mayor nor its Aldermen have any firsthand knowledge of any of the verbal and/or written communications exchanged between the parties.

The subpoenaed witnesses therefore have no material or relevant information to provide the ALJ and ILRB for purposes of clarifying whether there was a "meeting of the minds" between the City's and Union's bargaining teams.[4] Indeed, any information that the Mayor and Aldermen may have learned from any other individual about communications made during the bargaining sessions would be inadmissible hearsay, if introduced for the truth of the matter asserted. *See, e.g., J.W. Mays, Inc.*, 147 N.L.R.B. 942, 948 (1964) (employee's testimony about what he heard one supervisor say that another supervisor heard about the general manager's surveillance activities was inadmissible hearsay). The U.S. Court of Appeals for the Fifth Circuit addressed a similar issue where the National Labor Relations Board ("NLRB") found a discriminatory discharge based on supervisory comments two steps removed from the source:

> The defect in the Board's conclusion stems directly from the basic weakness in the General Counsel's case. In the final analysis, the evidence of discriminatory discharge comes down to what a couple of employees said supervisor Bailey said he heard the station manager say as to the cause of Oliveria and Hester's discharge.
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> . . .
>
> . . . What we have is: witness A testifies he overheard B state that C said such and such. Obviously A can prove what B said. But the decisive thing is what C is supposed to have said. And A cannot prove what C said by stating what B said C said. And yet, for all practical purposes, that is all we had here since B-Supervisor Bailey- in this barroom after-the-event discourse did not undertake, assuming he had that knowledge or position in the Company hierarchy- to state what he, rather than the station manager (C) had done or said.
>
> . . .

[4] In light of the parties' competing Section 10(b)(8) and 10(a)(7) allegations, the ALJ likely will be called upon to determine whether the parties' bargaining teams reached a "meeting of the minds" at the bargaining table. *See, e.g., Metropolitan Alliance of Police*, 23 PERI ¶ 170 (ILRB 2007) (union guilty of bad faith bargaining by failing to submit a tentative agreement to its membership for ratification, due to the parties' "meeting of the minds").

> Whatever might ultimately be the technical admissibility of proof of this kind, we have no difficulty in concluding that it lacked that substantial quality on which to rest a finding of discriminatory motive in a record as equivocal as this one.

General Tire of Miami Beach, Fla., Inc. v. NLRB, 332 F.2d 58, 60-61 (5th Cir. 1964). Similarly here, the best way for proving "who said what to whom" at the bargaining table is to question the bargaining team members themselves, *not* individuals who may have heard rumors on a second or third hand basis.

In light of these undisputed facts, it is unclear why the Union has subpoenaed the City's Mayor and Aldermen, other than for possible harassment purposes in retaliation for the Mayor's recent March 3 veto of the parties' proposed settlement agreement.[5] The only reference to the Mayor and City Council in the above-captioned Complaints occurs in the context of the City Council's ratification of the parties' agreement and override of the Mayor's veto. *See* City Cmplt. ¶¶ 14, 16; Union Cmplt. ¶¶ 13, 16. The City Council's debate about ratification, however, has nothing to do with the communications and understandings reached at the bargaining table so as to establish a possible "meeting of the minds." Again, the bargaining team members themselves are the only competent witnesses who can testify about such matters.

Even assuming, *arguendo*, that the City Council debates in April and May 2013 regarding the draft collective bargaining agreement have some minimal relevance for the above-captioned allegations, it is undisputed that all of the City Council debates occurred in *open session*. Unlike many Illinois communities, Park Ridge's governing body prides itself on open debate and avoids closed sessions. As a result, any and all dialogue among the City Mayor and Aldermen regarding the "deal" reached by the parties at the bargaining table can be readily accessed via the City's website at http://www.parkridge.us/events/meetings.aspx. Specifically,

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[5] Coincidentally, March 3 is the date on which the Union requested subpoenas for Mayor Schmidt and the entire City Council.

the website includes the agenda for the April 1 and May 6, 2013 City Council meetings that are referenced in the Complaints, along with the written minutes from the meetings and the actual audio recordings, so that the parties and ALJ can hear firsthand what the Mayor and City Council members said about the proposed collective bargaining deal. By extension, their live testimony at a ULP hearing is unnecessary and burdensome for all involved. The ALJ therefore should revoke the Union's requested subpoenas.

II. ANY ALLEGED RELEVANT TESTIMONY BY THE CITY'S MAYOR AND ALDERMEN WOULD BE NEEDLESSLY DUPLICATIVE, AND BY EXTENSION A WASTE OF THE ILRB's AND PARTIES' RESOURCES

Even assuming, *arguendo*, that the City's Mayor and Aldermen's testimony had some marginal relevance for the above-captioned ULP allegations (which the City adamantly denies is the case), there is no reason why the Union must call eight separate elected officials. Again, the key witnesses to "who said what to whom" during the underlying bargaining sessions are the bargaining team members themselves. As a result, the City's Mayor and Aldermen presumably would have nothing else to add that the parties' chief negotiators could not say themselves. Alternatively, if the Union wishes to explore the discussions by the Mayor and Aldermen held in open session in April and May 2013 (which can be readily accessed via the City's website), calling eight separate witnesses to provide the very same testimony is an enormous waste of time and resources for the taxpayers of the City of Park Ridge and the State of Illinois.

As the ALJ can probably imagine, the City's elected officials receive minimal compensation (Council Members $1,200 annually and the Mayor $12,000 annually) for serving the citizens of Park Ridge. By extension, most of the City's elected officials have "day" jobs that would have to be interrupted if they are forced to attend a ULP hearing at the ILRB's office for two consecutive days. Without an explanation for why eight City elected officials need to

testify about the very same topic (about which they have no first-hand knowledge), the Union's subpoenas should be revoked as needlessly duplicative and wasteful.

III. MAYOR SCHMIDT AND ALDERMAN MALONEY'S SUBPOENAS SHOULD BE REVOKED BASED ON UNDUE HARDSHIP

Finally, the City's attorneys recently became aware after the hearing was scheduled that Mayor Schmidt[6] has a pre-scheduled business trip to Sioux Falls, South Dakota on May 6 and 7, 2014. In light of this fact, forcing Mayor Schmidt to cancel his business trip obviously would create an undue hardship, including but not limited to the potential forfeiture of airfare and the adverse impact on Mayor Schmidt's legal practice. By the same token, Alderman Maloney has a pre-scheduled business trip for the entire week of May 5. Therefore, he likewise will be unable to attend the May 6 and 7 hearing.

Other ILRB ALJs have revoked subpoenas based on similar hardship claims. For example, ALJ Hamburg-Gal recently revoked a subpoena for witnesses who had pre-scheduled vacations that coincided with the scheduled hearing dates. *See* Exhibit A (copy of motion to revoke and e-mail order from ALJ Hamburg-Gal revoking subpoena for two Village Board members due to pre-scheduled vacations). As a result, the ALJ should revoke Mayor Schmidt's and Alderman Maloney's subpoenas on an additional ground, *i.e.*, because of the undue hardship that would be caused if they are forced to cancel their business trips in order to attend the May 6 and 7, 2014 hearing at the ILRB's offices in downtown Chicago.

* * *

[6] Mayor Schmidt is an attorney with the law firm of Chittenden, Murday & Novotny.

WHEREFORE, the City respectfully moves the ALJ to revoke all of the subpoenas that the Union has requested for the City's Mayor and Aldermen.

Respectfully submitted,

CITY OF PARK RIDGE

By: _____
One Of Its Attorneys

Robert J. Smith, Jr.
James J. Powers
Clark Baird Smith LLP
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Suite 1120
Rosemont, Illinois 60018
(847) 378-7700

March 19, 2014

CLARK BAIRD SMITH LLP
ATTORNEYS AT LAW
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847.378.7700 OFFICE • 847.378.7070 FAX

August 16, 2013

Via Facsimile Transmission and U.S. First Class Mail
Anna Hamburg-Gal
Illinois Labor Relations Board
160 North LaSalle Street
Suite N-400
Chicago, Illinois 60601-3103

Re: Village of Barrington Hills, Case No. S-CA-13-161

Dear Judge Hamburg-Gal:

Please treat the following letter as a supplement to the Village's Combined Motion for Summary Judgment and Motion to Quash Subpoenas in the above-captioned matter.

In addition to the arguments set forth in the Village's prior Motion, the Village wishes to raise yet three additional bases for quashing some (if not all) of the subpoenas that the Union has requested.

First, upon information and belief, the Union has failed to timely submit witness and mileage fee checks to some (and possibly all) of the subpoenaed individuals. For example, it is our understanding that the four currently sitting Village Trustees who have been subpoenaed (*i.e.*, Trustees Fritz H. Gohl, Karen S. Selman, Patty Meroni, and Joseph S. Messer) were never served with the witness and mileage fees that are required by Section 1200.90(a)(3) of the Board's Rules and Regulations. The undersigned counsel agreed to accept service on behalf of the four Trustees. *See* attached e-mail. By doing so, the undersigned made it clear that he was not waiving the witness' entitlement to receive their required witness and mileage fees. A copy of the e-mail is attached. Subsequently, copies of the four subpoenas were e-mailed to the undersigned on or about Wednesday August 7, 2013. To date, however, we have not received "hard copies" of the subpoenas accompanied by the required witness and mileage fees.

In this respect, Section 1200.90 of the Board's Rules clearly states that "[t]he party requesting the subpoenas shall also be responsible for payment of the witness fees for attendance, subsistence and mileage. . . . The requesting party must tender all fees with the subpoenas." 80 Ill. Admin. Code § 1200.90(a)(3). Upon information and belief,

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the four currently sitting Village Trustees (and possibly others) never received their witness and mileage fees within the required 5 days of the first date of the hearing.[1] For this additional reason, the Administrative Law Judge ("ALJ") should revoke any and all subpoenas issued in connection with the above-captioned matter that did not have witness and mileage fees tendered with the subpoena by yesterday, August 15, 2013.

Second, the undersigned counsel received a telephone call this morning from a process server by the name of Ralph Briscoe (Tel. No. 630-688-1984). Mr. Briscoe informed the undersigned that he was attempting to serve subpoenas on several of the Village's former Trustees and President (*i.e.*, Robert Abboud, Elaine Ramesh and Harold Gianopulos), and asked whether I would accept service. I repeated the same message that I had conveyed to MAP in the attached e-mail. Based on this telephone call, it appears that some subpoenas *ad testificandum* have not yet been served as of today, August 16, 2013. As explained in the footnote below, however, the deadline for serving such subpoenas on witnesses would have been yesterday, August 15, 2013, pursuant to Sections 1200.30(b) and 1200.90(a)(3) of the Board's Rules. Please note that the Village has no firsthand knowledge as to whether the Village's former Trustees and President were served on or before yesterday with the requisite witness and mileage fees. However, to the extent that any of the subpoenaed individuals were not timely served by yesterday's deadline, the Village requests that the ALJ revoke those subpoenas as well.

Third and finally, it has come to our attention that two of the Village's currently sitting Trustees (*i.e.*, Fritz Gohl and Karen Selman) are on vacation all of next week and unavailable to attend the hearing on August 22, 2013. It is our understanding that these trips were pre-scheduled well before the Union had requested the subpoenas in the above-captioned matter. To the extent that the ALJ declines to revoke the subpoenas for Fritz Gohl and Karen Selman based on any of the above reasons and/or the reasons set forth in the Village's original Motion to Quash, the ALJ should revoke the subpoenas for Mr.

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[1] According to the ILRB's Rules, a subpoena *ad testificandum* must be served "at least 5 days before the hearing date." 80 Ill. Admin. Code § 1200.90(a)(3). Section 1200.30(b) of the ILRB's Rules further state that "[w]hen a time period prescribed under the Act or this Part is less than 7 days, intervening Saturdays, Sundays, or legal holidays shall not be included." 80 Ill. Admin. Code § 1200.30(b). In this case, the first day of hearing is scheduled for August 22, 2013. The fifth day before the hearing, excluding the intervening Saturday and Sunday, would have been yesterday, August 15, 2013.

Gohl and Ms. Selman due to their unavailability and the hardship that would be created if they were forced to attend.

Very truly yours,

CLARK BAIRD SMITH LLP

By: _____
James J. Powers

Enclosure
cc: Steven Calcaterra (w/encl.) (via facsimile and U.S. Mail)

James J. Powers

From: Hamburg-Gal, Anna <Anna.Hamburg-Gal@Illinois.gov>
Sent: Wednesday, August 21, 2013 10:40 AM
To: 'Steve Calcaterra'; James J. Powers
Cc: ted209@aol.com; Anthony Polse; Ray Garza; Rick Tracy; Gary Deutschle; Karen Zajicek
Subject: S-CA-13-161 - Barrington Hills, ruling on subpoenas for witnesses

Dear Parties,

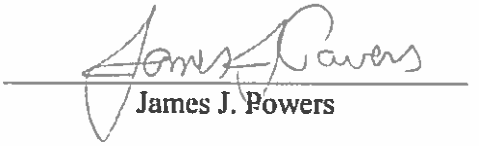
1. Gohl and Selman – the motion to quash the subpoenas for these witness is **granted** based on undue hardship. However, the Union may schedule an additional day of hearing to call these witnesses, at a time when they are available, if the Union believes their testimony is necessary.
2. Remaining witnesses (including Ramesh) – the motion to quash the subpoenas for these witnesses is **denied**. A variance is granted from the Board's rules regarding timely service and submission of witness and mileage fees. The witnesses were served and received their fees. Accordingly, there is no prejudice to the Respondent in granting this variance. (The Respondent has not stated that it represents Mr. Gianopulos for the purposes of quashing the subpoena. His subpoena therefore stands.)

Anna Hamburg-Gal
Administrative Law Judge
Illinois Labor Relations Board
160 N. LaSalle St., Suite S-400
Chicago, IL 60601
Direct Line: (312) 793-6380
Fax: (312) 793-6989

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing Motion to Revoke Subpoenas to be served upon the following individual by electronic and U.S. Mail on March 19, 2014:

Kenneth Edwards
IUOE Local 150
6200 Joliet Road
Countryside, Illinois 60525



James J. Powers