

No. 1-12-1832

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF BARRINGTON HILLS,)	Petition for review of order
)	of Labor Relations Board.
Petitioner-Appellant,)	
)	
v.)	No. S-CA-10-189
)	
THE LABOR RELATIONS BOARD, JACALYN J.)	
ZIMMERMAN, as Chairman of the Labor Relations)	
Board, PAUL S. BESSON, JAMES Q. BRENWALD,)	
MICHAEL G. COLI, and ALBERT WASHINGTON,)	
as Members of the Labor Relations Board,)	
METROPOLITAN ALLIANCE OF POLICE,)	
VILLAGE OF BARRINGTON HILLS POLICE)	
DEPARTMENT, and GARY DEUTSCHLE,)	
)	
Respondents-Appellees.)	

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Order of the Labor Relations Board was affirmed where its findings that the Village violated sections 10(a)(1) and 10(a)(3) of the Labor Relations Act (5 ILCS 315/10(a)(1), (3) (West 2010)) were not clearly erroneous.

¶ 2 The appellant, the Village of Barrington Hills (the Village), filed this action for direct administrative review of the final order of the respondent, the Labor Relations Board (the Board),

No. 1-12-1832

which found that the Village committed unfair labor practices in violation of sections 10(a)(1) and 10(a)(3) of the Public Labor Relations Act (the Act) (5 ILCS 315/10(a)(1), (3) (West 2010)) when it rescinded a previously-announced 2% wage increase for its patrol officers and revoked a previously-approved tuition reimbursement benefit for patrol officer, Gary Deutschle. Deutschle was also a union organizer and local chapter president for the respondent, Metropolitan Alliance of Police (MAP). The Board determined that the Village had rescinded the wage increase and revoked Deutschle's tuition reimbursement approval because of the patrol officers' unionizing activities. The Board ordered a make-whole remedy, granting the officers the 2% wage increase as promised, with interest, and providing for Deutschle's tuition reimbursement in accord with the Village's policies. The Village argues that the Board erred in finding that it violated sections 10(a)(1) and 10(a)(3) of the Act, because its decisions were based on financial concerns, not anti-union animus. We affirm.

¶ 3 On February 8, 2010, MAP filed a charge with the Board against the Village, alleging the following facts. On November 24, 2009, Village's Police Chief, Michael Murphy, announced to all police department personnel in an office memorandum that the Village had approved the 2010 budget, which included a 2% wage increase for all police department employees. On November 26, Deutschle received an e-mail message from Alice Runvik, a police department administrative assistant, informing him that his request for tuition reimbursement had been approved by the Village. On November 30, MAP mailed its petition for representation to the Board; a copy of which was also sent to Village President, Robert Abboud, along with a letter requesting that the Village maintain the *status quo* regarding wages and other conditions of employment as required by the Act. On December 7, the Board served notice of the petition on Abboud. On December 22, counsel for MAP

No. 1-12-1832

was informed that the Village did not approve the wage increase due to the filing of the petition and that Abboud opined that wages were now a mandatory subject of bargaining. Additionally, counsel for MAP was informed that Deutsche's tuition reimbursement approval had been revoked. MAP's complaint that the Village violated sections 10(a)(1) and 10(a)(3) of the Act proceeded to a hearing before an administrative law judge (ALJ) on November 9, 2010.

¶ 4 The following background information is derived from the testimony adduced at the hearing. The Village is an appropriation-based municipality, which begins its financial process for the next fiscal year by drafting a budget. The budget is assembled from information provided by Village officers, including the police chief. For instance, Murphy submits the police department's proposed budget for the next fiscal year to the finance and public safety committees, and it is reviewed by the Village treasurer, who uses the information to formulate a budget. The Village budget is approved by a consensus of the board of trustees, not by resolution or ordinance. According to Robert Kosin, the Village's director of administration, the budget is not concrete and does not obligate the Village to certain expenditures. Rather, it is a forecast of revenue and expenses for the upcoming year and is a reliable document for planning purposes. The approved budget is then used by the Village treasurer and attorney to draft the property tax levy, which is then presented to the board of trustees for adoption. Once adopted, the levy is tendered to the county clerks of the four counties and used to collect property taxes. The Village treasurer and attorney then draft the appropriation ordinance for the board of trustees. Once the appropriation ordinance is adopted, the Village pays its expenses on a monthly basis. Abboud submits a monthly list of expenses to the board of trustees during its regular monthly meeting for approval. Once each expense is approved, Abboud may disburse the

No. 1-12-1832

funds.

¶ 5 The parties stipulated to the following facts. The Village employed 19 sworn police officers, including one police chief, three lieutenants, three sergeants, and 12 patrol officers. On November 24, 2009, Murphy sent a memorandum to all police department personnel, stating that the Village had approved the 2010 budget the day before and that budget included a 2% wage increase for all department members. On November 26, 2009, Deutschle received an e-mail from Runvik, stating his request for tuition reimbursement had been approved. On November 30, MAP sent its petition to organize the patrol officers to the Board and Abboud.

¶ 6 The parties further stipulated that the Village was aware that the patrol officers were engaged in collective activities protected by the Act by the filing of the petition. They also agreed, that in 2010, police department positions that were not covered by MAP received wage increases: the police chief received a 1.8% increase; lieutenants received a 3% increase; and sergeants received a 2% increase. The Village and MAP were still negotiating the patrol officers' 2010 wages.

¶ 7 The parties further stipulated that Deutschle received tuition reimbursement in January 2010 for law school course work completed in 2009. Deutschle initially requested tuition reimbursement approval on September 4, 2009, for his Spring 2010 classes and received approval via an e-mail from Runvik on November 26, 2009. Deutschle was the chapter president of MAP's Chapter 576 unit and one of three patrol officers negotiating a collective bargaining agreement on behalf of the Barrington Hills Police Department with the Village.

¶ 8 Deutschle testified that he had been employed as a police officer by the Village since January 1, 2006. At the time, Deutschle was working toward his Master's Degree. In order to receive the

No. 1-12-1832

tuition reimbursement benefit, Deutschle was required to submit a request for approval to the Village; after the coursework was completed, he submitted his grades and receipts for tuition and books. He completed this process and received tuition reimbursement for seven Master's Degree classes taken in 2006 and some law school classes taken in 2009. After receiving approval for his Spring 2010 classes, Deutschle was later informed by a lieutenant that his tuition reimbursement approval was withdrawn. No reason was given for the withdrawal. He continued with his classes despite this information. Deutschle never filed a grievance with the Village to contest its decision to withdraw his tuition reimbursement approval.

¶ 9 Deutschle was president of MAP's Chapter 576 since its inception in October or November 2009; he actively organized Chapter 576, speaking to each patrol officer about the possibility of forming a union. Deutschle testified that he believed the Village engaged in coercive activity after the petition for organization was filed, including questioning employees, retracting previously-approved vacation benefits, and threatening to change health insurance coverage and work hours. Deutschle also testified that patrol officers received a \$50 gift card for Christmas two weeks after all other non-union employees received their gift cards. The gift cards were hand-delivered to the officers by Abboud; all other employees received the cards in their department mailboxes on their pay day, which was the usual manner of delivery. Deutschle asked that another employee be present when he went to receive the gift card, fearing Abboud might try to intimidate him because of his unionizing efforts.

¶ 10 Steven Calcaterra, counsel for MAP, testified that, when officers told him that they were not receiving their 2% wage increase, he contacted counsel for the Village. On January 7, 2010, counsel

No. 1-12-1832

for the Village informed Calcaterra that the Village decided to renege on the 2% wage increase, because wages were a mandatory subject of collective bargaining. Later, Calcaterra spoke directly with Abboud, who also stated that he believed wages for 2010 were to be determined through collective bargaining. Abboud further informed him that the budget was subject to change despite having been approved. Called as a rebuttal witness, counsel for the Village, Thomas McGuire, denied that he ever stated that the Village rescinded the increase because of the officers' pending union organization efforts.

¶ 11 Murphy testified that he issued his November 24, 2009, memo to inform the staff that the Village passed its 2010 budget, which included a 2% wage increase for them. About a week after he issued this memo, Murphy spoke to Abboud. Murphy learned that Abboud wanted to cap the tax levy lower than the existing 5%, meaning that the Village would have to make cuts on the budget that was approved. Abboud explained to Murphy that uncertain economic conditions were making it likely that the budget would need to be amended. Abboud informed Murphy that the budget was not a binding document. Murphy testified that Abboud discussed Calcaterra's letter, stating that it was possibly going to help him make budget-cut decisions, because the letter requested that employment conditions be frozen while the union petition was pending. Murphy understood Calcaterra's letter as the union's request to "hold everything in 2009." Upon this information, Murphy issued another memo on December 15, clarifying that the budget was subject to change and that the 2% wage increase was not binding. Other than Abboud's desire to cap the tax levy under 5%, Murphy was unaware of any other economic change affecting the Village that occurred after the budget had passed.

No. 1-12-1832

¶ 12 Murphy testified that he worked with the public safety chairman, Fritz Gould, to formulate the police department's proposed budget. The proposal, which included the 2% wage increase, was submitted in October 2009, to the Village for consideration and approval. From 2006 to 2009, Murphy followed this procedure and successfully obtained annual wage increases totaling approximately 20% for police department employees. Murphy testified that he sought to get his department's wages in line with the wages of departments in similar suburbs. By 2009, patrol officers were in the top quarter of the compensation matrix for the position. Murphy also admitted that in prior years, he issued similar memoranda after the budgets were approved, informing employees about upcoming wage increases. He denied that Abboud or any other Village official had ever previously informed him that the budget was not "set in stone."

¶ 13 Robert Kosin, the Village administrator, testified that the funds to pay police officers' wages predominantly came from property taxes. Kosin testified that beginning in 2008, property values declined, the number of foreclosures increased, and therefore, the Village expected to receive less in property tax revenue. After the 2010 budget passed, the Village sought to amend the budget, namely because: insurance premiums were greater than originally predicted; the price of road salt had increased; the Village had to increase its contributions to the Municipal Retirement Fund; and the State threatened to withhold certain revenues.

¶ 14 Abboud testified that the Village board meets and approves expenditures on a monthly basis. Therefore, the budget that the Village board passed was not a binding document on the Village; each expenditure was still subject to approval during the month after it was incurred. Abboud identified the letter from MAP's counsel, indicating that the Village was required to maintain the *status quo*

No. 1-12-1832

regarding wages and terms and conditions of employment. Abboud believed the Village did maintain the *status quo* as of the date of the letter, because it maintained the 2009 wages and conditions of employment. He understood that 2010 wages and fringe benefits, such as education benefits, would be the subject of collective bargaining. He explained that he was concerned that the wage increase could be viewed as an attempt by the Village to entice officers to refrain from unionizing.

¶ 15 Regarding the change in the 2010 budget, Abboud testified that during that time the cost of salt had dramatically increased, and the Village had to allow for increased contributions to the Municipal Retirement Fund. Abboud testified that the Village became aware that there would be an increase in the Municipal Retirement Fund contribution in early 2009, but it was not until mid-to late-November that it received a final determination of its obligations. Abboud also testified that the Village knew that the price of salt was increasing in the latter half of September or early November. In November 2009, Abboud also knew that there was a possibility that the Village would receive property tax revenues late; specifically, Cook County warned that it may be four months late in payments. He wanted the tax levy to be capped at under 5%, because of the decrease in property values. Abboud achieved capping the 2010 tax levy at 4.72% when the budget was modified at a December 21, 2009, board meeting. According to Abboud, this was achieved in part by eliminating the 2% wage increase, decreasing the educational reimbursement funds, reducing the amount of salt the Village used, and postponing certain road work projects. However, Abboud admitted that, heading into the November 23, 2009, budget approval meeting, he was aware of these uncertainties and still voted to pass the budget with the higher tax levy rate and the 2% wage increase for police

No. 1-12-1832

department employees.

¶ 16 Abboud admitted that the officers' petition for organization had a "marginal" impact in his decision to withhold the 2% wage increase, but he denied it had any impact on his decision to withdraw Deutsche's tuition reimbursement approval. He denied that he withdrew the 2% wage increase in retaliation for the patrol officers' union efforts. He testified that the decision was based upon the economic conditions of the Village. Abboud admitted, however, that some non-union personnel received the wage increase in 2010. He explained that those employees received the increase because they were at the lower end of the compensation matrices for their positions whereas the officers were at the higher end of the compensation matrix for area patrol officers.

¶ 17 Regarding the Christmas gift cards, Abboud testified that he hand-delivered them to patrol officers because he did not get to see them as frequently as other Village employees and wanted the opportunity to visit with each officer. Abboud admitted that he had never personally delivered the gift cards to patrol officers in past years. He explained that this was his first time delivering the cards, because he did not have the usual annual meeting with the officers due to the pending union activities. However, he admitted that the gift cards were always distributed with paychecks or mailed to employees in past years, regardless of the annual meeting.

¶ 18 On January 10, 2010, the ALJ issued her decision and order, finding that the Village violated section 10(a)(1) of the Act when it changed the *status quo* by rescinding the previously-promised 2% wage increase, because the patrol officers had a reasonable expectation that they would receive that increase in 2010. She determined that the evidence established that the Village did not conduct itself as it would have absent the union's presence and that the officers' protected activities triggered the

No. 1-12-1832

Village's decision to withhold the wage increase. The ALJ further determined that the Village violated section 10(a)(3) of the Act, because the timing of the Village's action and its disparate treatment of the patrol officers and other employees demonstrated the Village harbored anti-union animus when it rescinded the wage increase. She noted that the Village's reasons for the adverse action were "shifting, pretextual, and [did] not rebut MAP's *prima facie* case." For the same reasons, the ALJ found that the Village violated sections 10(a)(1) and 10(a)(3) of the Act when it rescinded Deutschle's tuition reimbursement approval. The ALJ recommended that the Village grant the patrol officers a 2% wage increase, retroactive to January 1, 2010, with interest, and provide reimbursement for Deutschle's Spring 2010 classes upon receipt of his grades and required documentation pursuant to the Village's policy. The Board adopted the ALJ's decision and recommendations on May 29, 2012. The Village timely appealed.

¶ 19 The standard of review applicable to an administrative agency's decision depends upon whether the question presented is one of fact or law. *City of Belvidere v. State Labor Relations Board*, 181 Ill. 2d 191, 204, 692 N.E.2d 295 (1998). In examining an administrative agency's factual findings, our review is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. *Id.* at 205. An administrative agency's findings on a question of law are reviewed using the less-deferential *de novo* standard of review. *Id.* Where the administrative agency's determination involves a mixed question of fact and law, the clearly erroneous standard of review is appropriate. *Id.* The clearly erroneous standard of review falls between a manifest-weight-of-the-evidence standard and a *de novo* standard so as to provide some deference to the agency's experience and expertise. *Id.* A mixed question of law and fact is one in which the "historical facts

No. 1-12-1832

are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or *** whether the rule of law as applied to the established facts is or is not violated.' " *AFM Messenger v. Department of Employment Security*, 198 Ill. 2d 380, 391, 763 N.E.2d 272 (2001) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982)). An administrative agency decision will be "deemed 'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.'" *Id.* at 395 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). In this case, the Board's decision involves considering whether the facts support its findings that the Village violated sections 10(a)(1) and 10(a)(3) of the Act, presenting mixed questions of law and fact. Consequently, we apply the clearly erroneous standard of review. *City of Belvidere*, 181 Ill. 2d at 205.

¶ 20 Section 10(a)(1) of the Act provides that it shall be an unfair labor practice for an employer "to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it." 5 ILCS 315/10(a)(1) (West 2010). Section 10(a)(3) of the Act provides that it shall be an unfair labor practice for an employer "to discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition or charge or provided any information or testimony under this Act." 5 ILCS 315/10(a)(3) (West 2010). The basic elements of an unfair labor practice claim are: (1) the employee is engaged in protected activity; (2) the employer had knowledge of the protected activity; (3) the employer took an adverse employment action against the employee; and (4) the employer's action

No. 1-12-1832

was motivated by the employer's animus toward the employee's protected union activity. *County of Cook v. Labor Relations Board*, 2012 IL App (1st) 111514, ¶ 25, 976 N.E.2d 493.

¶ 21 At the outset, the Board contends that it is unnecessary to demonstrate that an employer harbored anti-union animus to establish a section 10(a)(1) violation where the violation is based on the employer withholding scheduled wage increases or benefits, because of pending representation proceedings. The Board contends that it must demonstrate only that (1) the employees were engaged in protected activity; (2) the employer knew about the activity; and (3) the employer altered the *status quo* of the employees' terms and conditions of employment because of the representation proceedings. For this contention, the Board relies on its previous decisions in *American Federation of State, County, and Municipal Employees, Council 31 v. City of Mattoon*, 11 PERI ¶ 2016 (ISLRB 1995) and *Elk Grove Village Firefighters Association v. Village of Elk Grove Village*, 10 PERI ¶ 2001 (ISLRB 1993). While we may agree with the Board on this point (see *Plasticrafts, Inc. v. National Labor Relations Board*, 586 F.2d 185, 188 (1978), and *Vienna School District v. Educational Labor Relations Board*, 162 Ill. App. 3d 503, 507, 515 N.E.2d 476 (1987) (finding anti-union motive unnecessary where the employer altered the *status quo* of an established wage or employment condition under provisions of the federal unfair labor practices statute and the Educational Labor Relations Act, which parallel section 10(a)(1) of the Act)), we need not address the issue, because we agree with the Board's finding that the Village acted with an anti-union animus in its consideration of the section 10(a)(3) violation. Therefore, we will consider the two claims as having the same elements.

¶ 22 In this case, the Village conceded that (1) the patrol officers were engaged in protected

No. 1-12-1832

activities; and (2) it knew about the activity. The Village argues, however, that rescinding the wage increase and Deutschle's tuition reimbursement were not adverse employment actions. It argues that the budget was always subject to change and therefore the wage increase and tuition funds were never guaranteed. The Village also argues that it was not motivated by anti-union animus; rather, it took these actions, because of changes in its financial condition. The Board determined that the timing of the Village's actions and its disparate treatment of the patrol officers and the non-union employees demonstrated that the Village harbored anti-union animus. We agree with the Board.

¶ 23 We first reject the Village's contention that its actions did not constitute adverse employment actions because its actions did not affect the hiring, termination, denial of promotion, or a substantial change in benefits. The Village's actions affected the terms and conditions of employment in a negative manner. See *Vienna School District*, 162 Ill. App. 3d at 507 (identifying typical terms and conditions of employment, including wages and benefits, and noting that unfair labor practice statute seeks to avoid changes to terms and conditions during representation proceedings). Therefore, the Village's actions constituted adverse employment actions as meant by the Act.

¶ 24 We next reject the Village's contention that the Board erred in finding it acted with anti-union animus based on the timing of its actions and the disparate treatment of the union and non-union employees. The Village argues that it made the budget cuts because of rising salt costs, changes in its contributions to the Municipal Retirement Fund, and decreased property values. The Village further argues that non-union police department employees received wage increases, despite these fiscal concerns, because their wages were at the lower end of compensation matrices for their positions whereas the officers' wages were at the higher end of their compensation matrix.

No. 1-12-1832

¶ 25 The Board may infer that the employer had a discriminatory motive from either direct or circumstantial evidence. *North Shore Sanitary District v. State Labor Relations Board*, 262 Ill. App. 3d 279, 287, 634 N.E.2d 1243 (1994). Factors that may be considered when inferring an anti-union motive include: an employer's expressed hostility toward unionization, knowledge of the union activities, proximity in time between the union activity and the adverse action, disparate treatment of employees or a pattern targeting union supporters for adverse action, inconsistencies between the proffered reason for the action and other actions of the employer, and shifting explanations for the action. *Id.* Here, the Board concluded that the timing of the Village's actions and the disparate treatment of the union and non-union employees established an anti-union motive.

¶ 26 If a *prima facie* case of an unfair labor practice is established, the burden shifts to the employer to advance a legitimate reason for the adverse employment action and to show that it relied on that reason. *County of Cook*, 2012 IL App (1st) 111514, ¶ 25. "The employer must establish that the employee would have suffered the adverse employment action notwithstanding his union activity." *Id.* Merely offering a legitimate business reason for the adverse action does not end the inquiry, because the proposed reason must be *bona fide* and not pretextual. *North Shore Sanitary District*, 262 Ill. App. 3d at 287. "[W]here an employer advances legitimate business reasons for the adverse employment action and is found to have relied upon them in part, then the case is characterized as one of 'dual motive' and the employer must demonstrate by a preponderance of the evidence" that the action would have been taken notwithstanding the union activity. *City of Burbank v. State Labor Relations Board*, 128 Ill. 2d 335, 346, 538 N.E.2d 1146 (1989). Here, the Board rejected the Village's alleged legitimate business reasons, finding them to be "shifting" and

No. 1-12-1832

"pretextual" and failing to rebut MAP's *prima facie* case. We agree.

¶ 27 The timing of the Village's actions point to an anti-union animus, as the Village changed its normal course of conduct shortly after the petition for representation was filed. Normal procedure for police department wage increases dictated that Murphy would submit his budget proposal to the Village in October of the preceding fiscal year. The Village treasurer would incorporate the various departments' proposals and create a budget for the Village board to consider. After the Village approved a budget, Murphy would send a memorandum to his employees, advising them of wage increases for the next year. Murphy testified that this was the procedure he followed for the last four years in which he sought wage increases for his employees. Similarly, the evidence revealed the Village's established practice regarding tuition reimbursement: an employee submits a request for approval; if approved, the employee submits his final grade and required documentation for reimbursement. Deutschle testified that he followed this procedure and received reimbursement for several Master's Degree classes in 2006 and several law school classes in 2009. The Village followed these practices before the petition was filed: on November 23, 2009, the Village passed the 2010 budget, which included the 2% wage increase; on November 24, Murphy sent out a memo to his employees, informing them of the increase; and, on November 26, Deutschle received an e-mail from Runvik, approving his request for tuition reimbursement.

¶ 28 After the petition was sent (November 30) and served on the Village (December 7), the Village strayed from its normal course of conduct. On December 15, Murphy issued a memo, informing his employees that the wage increase was subject to change, after Abboud informed him that MAP's letter to maintain the *status quo* was going to allow him to make budget cuts. On

No. 1-12-1832

December 21, the budget was modified to eliminate the patrol officers' wage increases and decrease the educational funds available for tuition reimbursement; yet, non-union police employees received wage increases. Abboud himself testified that he believed that maintaining the *status quo* meant the Village had to keep wages at 2009 rates and admitted that the officers' petition for organization had a "marginal" impact on his decision to withhold the 2% wage increase. Thus, the timing of the Village's actions, together with Abboud's admission that the officers' petition impacted his decision to withhold the increase, and the disparate treatment of the patrol officers and non-union employees, demonstrate an anti-union animus.

¶ 29 While Abboud attempted to provide legitimate business reasons for the change in the budget, we agree with the Board that those reasons shifted and were pretextual. His reasons included the rising cost of salt, decreasing property values, changes in the Municipal Retirement Fund contributions, and the threat that the Village would receive late tax payments from the counties. However, Abboud admitted that he was aware of these issues before he voted to pass the initial budget on November 23. Further, these reasons do not explain why employees not covered by MAP still received wage increases. Abboud reasoned that those employees received wage increases because they were at the lower end of the compensation matrices for their positions. Yet, the information from the compensation matrices was also available to the Village before it passed the budget.

¶ 30 While Abboud denied that MAP's letter did not influence his decision to rescind Deutsche's tuition reimbursement, no other reason was given for that change in the budget. The Village now argues that Deutsche waived his right to dispute the withdrawal of his tuition reimbursement

No. 1-12-1832

approval by failing to use the Village's grievance procedure. We reject this argument, because the Village fails to cite to any authority that would require an employee to first use an employer's internal grievance process before filing an unlawful labor practice claim. See *Michels v. Labor Relations Bd.*, 2012 IL App (4th) 110612, ¶ 39, 969 N.E.2d 996 ("this court has previously found nothing in the Act requires the grievance procedure must be completed before an aggrieved union member may file an unfair labor practice charge against his union.").

¶ 31 Because the Village's conduct occurred shortly after the filing of the representation petition and the disparate treatment of the union and non-union employees in the wage increases, we cannot find that the Board clearly erred in determining that the Village acted with anti-union animus. The Village's reasons for its conduct failed to rebut the respondents' case, because it was aware of the salt costs, property tax issues, retirement funding changes, and compensation matrices before it passed the budget. There is nothing in the record to suggest the Village was presented with any new information, other than the pending representation petition, that would have caused the ultimate changes to the budget. See *City of Burbank*, 128 Ill. 2d at 348-49 (finding anti-union animus was established where the timing of the City's attitude toward employee coincided with employee's union activities, disparate treatment of the union employee and non-union employees, and employee's termination was not explained by the City's shifting business reasons). Accordingly, we agree with the Board that the Village violated sections 10(a)(1) and 10(a)(3) of the Act when it rescinded the 2% wage increase and Deutsche's tuition reimbursement approval.

¶ 32 Finally, we reject the Village's argument that the Board usurped the discretionary powers of its board of trustees by ordering the make-whole remedy, granting the officers the 2% wage increase,

No. 1-12-1832

retroactive to January 1, 2010, with interest, and Deutsche's Spring 2010 tuition reimbursement, if he submits the necessary documentation. The Act "authorizes the Board, when it finds that an unfair labor practice has been committed, to take such affirmative action as will effectuate the policies of the Act." *Sheriff of Jackson County v. State Labor Relations Board*, 302 Ill. App. 3d 411, 415-16, 705 N.E.2d 924 (1999). "We find that this statutory grant of power, at a minimum, permits the Board to fashion a remedy that will make the charging party whole." *Id.* at 416. Here, the Board's order effectuated the policies of the Act by placing the petitioning patrol officers and Deutsche in the positions they would have been in had the illegal adverse employment actions not occurred. The Board's make-whole remedy does not interfere with the trustees' discretionary authority to make budget decisions and set the tax levy rate; it merely remedies its unfair labor practice in rescinding the previously-approved wage increase and previously-approved tuition reimbursement. Accordingly, we do not find that the Board exceeded its authority in entering the make-whole remedy order against the Village.

¶ 33 For the foregoing reasons, we conclude that the Board's decision that the Village violated both sections 10(a)(1) and 10(a)(3) of the Act was not clearly erroneous.

¶ 34 Affirmed.