STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-11-150
and	)	
	)	
City of Sparta,	)	
	)	
Respondent	)	

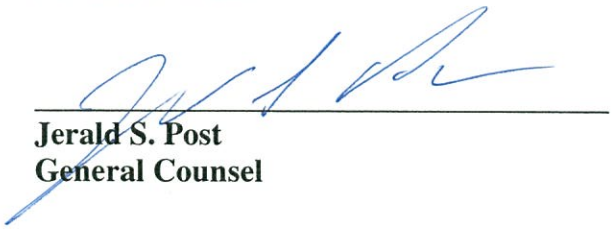
ORDER

On August 19, 2103, Administrative Law Judge Michelle N. Owen, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its November 5, 2013 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 6th day of November 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Jerald S. Post
General Counsel

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-11-150

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

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Party, Policemen's Benevolent Labor Committee, as the exclusive representative of a bargaining unit composed of the Respondent's patrol officers and dispatchers, by changing the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings.

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

WE WILL reimburse, with interest at 7% per annum, any employee who has sought reimbursement for health care costs such that the employee incurs no greater out-of-pocket expenses under the existing insurance plan than what the employee would have incurred under the plan in effect prior to the December 1, 2008 changes to insurance.

DATE _____

_____
City of Sparta
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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

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

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-11-150
and	)	
	)	
City of Sparta,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 26, 2011, the Policemen's Benevolent Labor Committee (Charging Party or PBLC or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the City of Sparta (Respondent or City) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2012), as amended. The charge was investigated in accordance with Section 11 of the Act and on July 26, 2011, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on February 9, 2012, in Springfield, Illinois, at which time PBLC presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

1. 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 Board's State Panel pursuant to Section 5(a) of the Act.
3. At all times material, the Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) thereof.

4. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's Patrol Officers and Dispatchers, as certified by the Board on December 18, 1998, in Case No. S-RC-99-038 (Unit).
6. At all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement (Agreement) setting out terms and conditions of employment for the Unit, with a term of April 1, 2005 through March 31, 2010.
7. Article 21 of the Agreement provides for health insurance coverage for Unit employees.
8. Health insurance benefits for Unit employees involve wages, hours and terms and conditions of employment within the meaning of Section 7 of the Act and are thereby a mandatory subject of bargaining.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings, pursuant to Section 14(l) of the Act, by allegedly changing unit employees' health insurance benefits in breach of a Memorandum of Agreement (MOA) which settled a grievance concerning Respondent's prior changes to unit employees' health insurance benefits.

The Charging Party separates its arguments concerning Respondent's alleged violation of Section 10(a)(4) into an assertion that the Respondent violated the Act when it (1) repudiated the grievance settlement agreement and (2) when it changed employees' health insurance benefits during the pendency of interest arbitration proceedings.[1]

In support of the repudiation claim, the Charging Party first asserts that the City and the Union entered into a valid and binding settlement agreement because the mayor had actual and apparent authority to enter into the agreement and because the City ratified the agreement by accepting its benefits, performing under its terms for two years, and failing to inform the Union

[1] Notably, as the Charging Party acknowledges, the complaint does not allege repudiation.

that the mayor lacked authority to settle the grievance. Next, the Charging Party asserts that the Respondent breached the MOA because it refused to reimburse an employee for the increased co-pay costs he incurred under the new healthcare plan, as promised under the agreement.

The Charging Party rejects the Respondent's contention that the Municipal Code invalidates the agreement and asserts that the "Municipal Code yields to the Act and the grievance procedure" in the collective bargaining agreement under Section 15 of the Act. Further, the Charging Party argues that the settlement agreement did not terminate on March 31, 2010, the expiration date of the parties' collective bargaining agreement, because the CBA continues in effect until either party gives written notice of termination within 120 days of its expiration.[2]

In support of the unilateral change claim, the Charging Party asserts that the Respondent violated the Act when it changed its health insurance plan and thereby increased co-pays by as much as 200% during the pendency of interest arbitration. The Charging Party rejects the Respondent's assertion that it was permitted to make minor changes to health care under Section 14(l). In the alternative, the Charging Party asserts that the Respondent did not "substantially maintain the same insurance coverage," as required by the contract, because its changes to health insurance were not minor. The Charging Party also notes that the City cannot rely on the collective bargaining agreement for its defense without undermining its attack on the MOA because both documents were signed by the mayor, but not the City Council.

Finally, the Charging Party moves for sanctions arguing that the Respondent made denials without reasonable cause which were found to be untrue and engaged in frivolous litigation.

The Respondent argues that it did not violate the Act when it changed unit employees' health insurance coverage because the contract merely requires the City to "substantially maintain" the same insurance coverage. The Respondent asserts that its change was not substantial because it customarily made annual changes to insurance co-pays during the term of the contract similar to the change at issue. Further, the Respondent notes that bargaining unit members had no reasonable expectation that their health insurance would remain exactly the

[2] The Charging Party also notes that the Respondent cannot argue that the Agreement was both void and that the Respondent performed as required under that same agreement.

same, given the current health care crisis and the fact that the Respondent had no discretion to negotiate co-pay issues with the insurance broker.

In the alternative, the Respondent asserts that it did not change the status quo when it refused to reimburse an employee for his increased co-pay costs, as required under the MOA, because the agreement is void since the City Council never approved it. The Respondent asserts that it could not have ratified the MOA because it was unaware of its existence. The Respondent further argues that its past actions do not undermine this conclusion. First, the Respondent asserts that it reimbursed employees' deductibles pursuant to past practice and not pursuant to the MOA. Second, the Respondent argues that it never reimbursed employees' co-pay amounts, as the MOA required, and notes that no employee ever sought such reimbursement until after the Union filed its charge.[3]

III. FINDINGS OF FACT

The City employs approximately 35 to 39 full-time workers, including members of the police department. The Charging Party represents the City's patrol officers and dispatchers. The Teamsters represent employees in the water, sewer, and street department.

On November 30, 2005, the Charging Party and the City entered into a collective bargaining agreement with a term of April 1, 2005 through March 31, 2010. Then-Mayor Randy Berteto signed the collective bargaining agreement (CBA or agreement) on behalf of the City. The agreement does not bear any signatures of the City Council's members. Current City Mayor Charles Kelley testified that the City Council ratified the CBA.[4]

The CBA addresses insurance. It states that the City must pay 100% of the insurance premium for family coverage for those unit employees who began their employment prior to 2005. It further provides that the City must pay a smaller percentage of the coverage for those unit employees who began their employment after that date.

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[3] There is no need to amend the complaint to conform to evidence presented at hearing in this case, even though the Charging Party did not amend its charge to specifically include the co-pay reimbursement issue, because the complaint issued after an employee sought reimbursement of his co-pays charges and the language of the complaint covers the Respondent's alleged conduct with respect to this matter.

[4] In particular, he testified that he could not remember a collective bargaining agreement that the City Council had not ratified. Kelley further noted that when he negotiated a contract with the Teamsters for the water, sewer, and street department employees, he met with the union and a negotiating group from the City Council. Once the parties reached an agreement, they presented it to the City Council for ratification by a vote.

Specifically, Section 1 of Article 21 provides in relevant part that "the Employer agrees to continue to pay the entire amount of monthly premium thereon for the employee and the employee's dependents for all employees hired prior to April 1, 2005." Further, it states that "the Employer agrees to pay the entire amount of the monthly premium for single employee coverage," for those employees hired on or after April 1, 2005.[5] Finally, it states that the "Employer shall substantially maintain the same insurance coverage during the term of this Agreement" and that "all provisions of this Agreement shall be subject to the terms of Article 26 [the duration clause]." Section 3 of Article 21 provides that "if any federal or state health care reform legislation is enacted during the term of this Agreement which may have an effect upon this Article, either party may, upon fourteen days notice to the other, bargain over the impact of the same."

The contract's duration clause provides, in relevant part, that the agreement "shall continue in effect from year to year thereafter unless notice of termination is given in writing by certified mail by either party no earlier than one hundred twenty (120) days preceding expiration."

Prior to 2007, the City used the insurance carrier Group Health Plan. Under that carrier's plan, employees paid no deductible. The insurer paid 100% of employees' costs after employees' expenditures exceeded the deductible, but only 80% if the services were ancillary and only after employees had made the out of pocket maximum payments ($1500 (individual)/$3000 (family)). The insurance paid 100% of employees' in-hospital expenses. It required employees to pay a $10 doctor's office visit co-pay and a $75 emergency room co-pay. It did not cover "urgicare" facility services, preventative lab services, chiropractic services, or wellness services. Nor did it cover out of network care. The insurance paid for 80% of the cost of physical/speech/occupational therapy. It had an unlimited maximum lifetime benefit.

In 2007, the City's Coordinator of Public Affairs, Corey Rheinecker, began soliciting bids for health insurance coverage for City employees. The City cannot negotiate insurance coverage with the insurer and must accept one of the plans offered by the carrier.

The City informs employees when it changes insurance plans by posting a memo on police officers' bulletin boards. The City then calls a meeting to explain the changes. In the

[5] The City pays a percentage of the cost of coverage for employees' dependents if those employees were hired after April 1, 2005.

past, PBLC communicated with former Mayor Rob Link and Coordinator Rheinecker concerning changes to medical insurance coverage.[6] City Council members never communicate with unit employees concerning such matters.

On November 1, 2007, the City began insuring employees through Blue Cross/Blue Shield. Under that carrier's plan, the individual deductible was $500 and the family deductible was $1500. The insurer paid 100% of employees' costs after employees exceeded the deductible.[7] The plan covered 100% of in-hospital expenses, but only after employees had paid the deductible. Employees still paid a $10 doctor's office visit co-pay, but the emergency room co-pay was reduced to $50. The plan still covered physical/speech/occupational therapy, however, instead of covering 80% of unlimited costs after employees paid the deductible, the insurance covered 100% of those costs, but only up to $5000. The plan newly covered chiropractic services and paid 100% of its costs up to $1000, after the employees paid the deductible. Similarly, the plan newly covered wellness expenses, but required employees to pay a $10 co-pay for those services. In addition, the plan newly covered out of network services but imposed a $1000 (individual)/$3000 (family) deductible. The insurer paid 80% of employees' out-of-network costs after employees exceeded the deductible; once the insured employee incurred $1000 (family)/$3000 (individual) of out of pocket costs, the insurer assumed responsibility for 100% of additional costs. Further, the insurer paid 80% of out-of-network in-hospital benefits and doctor's office visits after employees paid the deductible. In addition, the plan reduced the maximum lifetime benefits from an unlimited amount to $5 million. The drug costs increased to $10 for generic drugs, but decreased to $20 and $35 for tier II and III drugs, respectively.

That year, the City also instituted a deductible reimbursement program in which the City refunded employees for the cost of all medical care that counted toward the deductible. The City hired a third party administrator who arranged employees' reimbursement. Employees sent their explanation of benefits forms to Rheinecker who forwarded it to the administrator. The

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[6] The process by which the City informs employees of changes to health care has remained the same within the period at issue here.

[7] This is indicated by the coinsurance percentage. Coinsurance is a percentage that the insurer pays after the insurance policy's deductible is exceeded. Once the insured's out-of-pocket expenses meet the out of pocket maximums, the insurer will assume responsibility for 100% of any additional costs.

administrator then issued the refund. [8] During the 2008 contract year, no unit employee filed a grievance complaining that the Respondent failed to reimburse employees' deductibles.

On October 23 or 24, 2008, Mayor Link issued a memo to all City employees which stated that "[e]ffective 11-1-08 thru 10-31-09 the new Blue Cross/Blue Shield of Illinois insurance policy will go into effect" and that "effective 11-1-08 employees will be responsible to pay the first $500.00 deductible for medical claims with the co-pay drug card at $15/$30/$50."

On October 27, 2008, Union attorney Shane Voyles wrote a letter to Police Chief Thomas Ashley stating that the Union would grieve the health insurance changes announced by the Mayor the previous week.

On November 1, 2008, the new insurance plan became effective. The individual deductible under the plan increased to $1500 (individual)/$4500 (family). In contrast to the prior plan, the insurer paid only 90% of employees' in-network costs after employees exceeded the deductible; once the insured incurred $1000 (family)/$3000 (individual) of out-of-pocket costs, the insurer assumed responsibility for 100% of additional costs. The plan no longer covered 100% of in-hospital expenses after employees paid the deductible and instead covered only 90%. Doctor's visit and emergency room visit co-pays remained $10 and $50, respectively. The plan no longer covered 100% of "urgicare" facility expenses after employees paid the deductible and instead covered only 90%. Doctor's visit and emergency room visit co-pays remained $10 and $50, respectively. The plan still covered physical/speech/occupational therapy, however, instead of covering 100% of those costs up to $5000, it only covered 90% of those costs, up to that amount. Similarly, although the plan still covered chiropractic services, instead of covering 100% of those costs up to $1000, it only covered 90% of those costs, up to that amount. The co-pay for wellness services remained the same. The deductible for out-of-network services increased to $3000 (individual)/ $9000 (family). In contrast to the prior plan, the insurer only paid 70% of employees' out-of-network costs after employees exceeded the deductible, instead of 80%; further although the insurer assumed responsibility for 100% of costs incurred after the insured met the out of pocket maximum payments, those maximums increased from $1000 (individual)/$3000 (family) to $2000 (individual)/$6000 (family). Further, in contrast to the prior plan, the insurer only paid 70% (instead of 80%) of the costs of out-of-network in-hospital

[8] The City used this procedure through the end of 2010. On January 1, 2011, the City changed its third-party administrator.

benefits and doctor's office visits, after employees paid the deductible. The maximum lifetime benefit remained the same. However, drug costs increase to $15 for generic, $30 for tier II drugs, and $50 for tier III drugs. According to the Mayor's October announcement, employees were required to shoulder the first $500 of the deductible, but the City would reimburse them for the remaining $1000.

On November 21, 2008, the Union filed a step one grievance with Chief Ashley stating that on October 17, 2008, and continuing thereafter, the City violated Article 21, Section 1 of the Collective Bargaining Agreement. Specifically, the grievance quoted Article 21 which provides that "the Employer's present basic hospitalization program, dental insurance program, and vision insurance program covering all employees, including employees and their dependents, shall continue in effect." The grievance specified that the employer "has announced changes which violate this article." The Union demanded that the employer "rescind all charges in health insurance to follow the contract."

On December 10, 2008, Shane Voyles filed a step two grievance which moved the grievance to arbitration. The Union and the City chose Arbitrator Paul Betts to resolve the dispute.

Sometime after April 2009, the Union withdrew its grievance in reliance on a Memorandum of Agreement (MOA) signed by the Union and the Mayor.[9] The MOA's subtitle states that it addresses "changes resulting from the City's attempts to obtain less expensive health insurance." The MOA stated that the City made changes to its health insurance plans to save costs and maintain a similar level of coverage and benefits. Further, it provided that the "Union shares the City's interest in obtaining affordable health insurance coverage, but grieved increases in employee out-of-pocket expenses, including, but not limited to, deductible levels and co-pay amounts."

The MOA stated that the parties wished to resolve the matter in the following manner: First, "the City agree[d] that under whatever health insurance plan it obtain[ed], it [would] reimburse employees as necessary to achieve no net increase in employee out of pocket expenses so that after reimbursement by the Village [sic], the employee incurs no greater out of pocket expenses under the new plan than what existed under the plan in effect prior to the December 1, 2008 changes." To achieve this goal, employees were required to fill out certain forms. In

[9] This document is undated.

exchange, the Union "agree[d] that it [would] not file any ULP charges as a result of this matter, or in response to any statement from either party about settling this matter." Finally, the MOA specified that the parties agreed that the MOA would "remain in effect for the duration of the current collective bargaining agreement."

Voyles signed the MOA on behalf of the Union and Mayor Link signed on behalf of the City. The City Council approves bills of the City. No one person can approve the bills or bind the treasury of the municipality. The City Council never voted to approve the MOA. Current City Mayor Charles Kelley testified that former Mayor Link "must have acted on his own [in signing the MOA] because he didn't have authority and advice and consent of the council to do it." Patrol officer and then-Union president David Dotson[10] testified that he believed that Mayor Link acted on behalf of the City in signing the MOA. Mayor Link never informed Dotson that he was unauthorized to act on the City's behalf. No member of the City Council, or anyone involved with the City, informed Dotson that the MOA was invalid. The City never went to court to invalidate the MOA.

After the parties signed the MOA, the Mayor instructed Rheinecker to continue paying 100% of the union employees' deductibles. The Union instructed its members to contact Rheinecker concerning reimbursement. Unit members submitted bills that fell under the deductible and Rheinecker ensured that the City reimbursed them.[11] Doston testified that he was not aware of any Union member who lost money under the City's plan to raise the deductible. Rheinecker knew that Mayor Link had discussed insurance coverage and deductible issues with the Union, but Rheinecker testified that he did not take part in those discussions.

On November 1, 2009, the City enrolled in a new insurance plan (BPPC2313) which increased the in-network deductible to $2500 (individual)/$7500 (family) and the out-of-network deductible to $5000 (individual)/$15000 (family). The City continued to reimburse unit employees for the entire cost of the deductible. All other aspects of the plan remained the same as they had been in the previous year's plan.

At the end of January 2010, the parties began negotiations for a new contract. Mayor Link represented the City. No attorneys accompanied him. Mayor Link never informed the Union that he did not have authority to bind the City to a new contract.

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[10] Dotson was president of the Union between 2008 and 2009.

[11] Subsequently, the City hired an outside agency to handle those reimbursement matters.

In 2010, patrol officer Jeremy Kempfer became Union president.

Sometime in 2010, Charlie Kelley replaced Link as City Mayor. Neither Kelley nor any other City agent ever informed the Union that the MOA between the City and the Union was void.

On March 1, 2010, Julie Loftis, Office Manager for the PBLC initiated the interest arbitration process by filing a Request For Mediation Panel with the Board.[12]

On November 1, 2010, the City again changed its insurance plan. The plan added a $30 specialist co-pay and an emergency room visit co-pay of $150. All other aspects of the plan remained the same as they had been in the previous year's plan. At hearing, Dotson answered in the affirmative when asked whether he thought "in light of the national health insurance crisis" whether it was "reasonable that there might be some changes that [would be] presented to the City for the coverage of health insurance for the employees."

The November 1, 2010 plan came into effect in early 2011. On June 11, 2011, Kempfer incurred a $150 charge for an emergency room visit and a $30 charge for a visit to a specialist. Kempfer paid the co-pay on June 11, 2011. Kempfer submitted a claim to the City for reimbursement of the increased co-pays by sending his explanation of benefits form to Chief Ashley. Ashley stated that the City would not reimburse him. To date, the City has not reimbursed Kempfer for these co-pays.[13]

On June 23, 2011, the Respondent filed Rheinecker's affidavit with the Board. In that document, Rheinecker admitted that the City contracted with Blue Cross Blue Shield to provide health insurance coverage for all City employees as of March 31, 2010, the expiration date of the parties' contract. Further, he admitted that the insurance broker advised the City that the "renewal plan of Blue Cross Blue Shield contained slight variations from the previous plan" including "a $30.00 co-pay (not $10.00) for a visit to a specialist and an $150.00 co-pay (not $50.00) for an emergency room visits [sic]." Rheinecker further admitted that "it is not questioned that the new plan contains a Thirty Dollars [sic] ($30.00) specialist co-pay and a One Hundred Fifty Dollars ($150.00) co-pay for emergency room visits as stated in the pending charge." Finally, with respect to the pending charge, Rheinecker stated that "it is certainly not

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[12] City attorney Alan Farris stated that the City did not know about the Union's request for mediation, made on March 1, 2010, at the time it filed its answer on August 5, 2011.

[13] At the time the Union filed its charge with the Board, Kempfer had not yet submitted any request for reimbursement of the co-pay.

the position of the City that Section 14(l) is inapplicable...clearly the initiation of arbitration procedures had occurred."

On October 19, 2011, Voyles filed a demand for compulsory interest arbitration for a successor contract between the Union and the City.[14]

On September 12, 2011, the City Council met. The minutes of that meeting quote Finance Commissioner Stephens who acknowledged that "the police department has not been paying [the] $500.00 deductible" which other City employees had paid for a year and a half. The minutes do not address the City's treatment of employees' co-pays.

On December 1, 2011, the City again changed its insurance plan. Under the new plan, the individual deductible decreased to $1500, the doctor's visit co-pay increased to $20, the specialist co-pay increased to $40, and the emergency room visit co-pay remained at $150. All other aspects of the plan remained the same.

Rheinecker testified that between 2007 and 2009 he did not receive claims from any bargaining unit members seeking reimbursement of co-pays, even though the City had changed its insurance during that time and even though such changes included alterations to the employees' co-pay obligations. Further, he stated that he had not received any complaints from bargaining unit members that they had not received reimbursements for the deductibles they paid. Dotson similarly testified that he did not remember that any Union member made a claim for reimbursement of co-pays when those co-pays increased.

IV. DISCUSSION AND ANALYSIS

The City violated Section 10(a)(4) and (1) of the Act when it refused to reimburse an employee for his increased co-pay expenses pursuant to the MOA, but not when it adopted the new health insurance plan under which the employee incurred those increased costs.

Section 14(l) of the Act provides, that "during the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act." An employer violates Section 10(a)(4) and (1) of the Act when it unilaterally changes employees' terms and conditions of employment during

[14] The parties scheduled an interest arbitration hearing for February 22, 2012.

the pendency of interest arbitration proceedings.[15] Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009); Vill. of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

There is no dispute that the Respondent changed bargaining unit members' health insurance plan during the pendency of interest arbitration proceedings, that health insurance is a mandatory subject of bargaining, and that the Respondent did not secure the Union's consent to the change. Similarly, there is no dispute that the Respondent refused to reimburse an employee for his increased co-pay expenditures under the new plan during that time. Accordingly, the only remaining issue is whether the Respondent, by that conduct, changed the status quo of employees' terms and conditions of employment in violation of Section 10(a)(4) and (1).

As discussed below, the City changed the status quo when it refused to reimburse an employee for his increased co-pay expenditures under the 2010 health insurance plan. However, the City did not change the status quo when it implemented the 2010 plan under which the employee incurred those charges. For clarity, the City's changes to the insurance plan are discussed first.

a. Changes to the Insurance Plan

The City did not change the status quo when it adopted the 2010 insurance plan, which on its face imposes new and increased co-pay costs, because the parties' past practice demonstrates that the City historically made similar changes and effectuated them in the same manner as the change at issue here.

The status quo with respect to health insurance coverage depends on the employees' reasonable expectations, in light of the parties' collective bargaining agreement and past practice because the language of the CBA in this case is ambiguous. The express terms of the parties' recently expired collective bargaining agreement are the primary indicator of the status quo as to wages, hours and other conditions of employment. Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009). However, the past practices of the parties to the contract are relevant, especially as to matters not covered by the agreement. Id.; Cnty. of Cook (Dep't of Cent. Mgmt. Serv.), 15 PERI

[15] The Act further provides that "the proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under the Act" and clarifies that "[a]rbitration procedures are deemed to be initiated by the filing of a letter requesting mediation." 315 ILCS 14(l) & (j) (2012).

¶ 3008 (IL LLRB 1999); Vill.of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). As articulated by the Florida Public Employees Relations Commission, where a condition of employment is embodied in a contract provision, the status quo regarding that condition of employment during the term of the contract or following its expiration is determined by reference to the precise wording of the contract provision. Sheriff of Orange Cnty., 36 FPER ¶ 348 (FL PERC 2010). If the contract provision is explicit, the Board should not look to any extrinsic evidence of past practice to determine the status quo because "employees' reasonable expectations as to the continuation of certain benefits should properly be founded upon precise contractual language rather than upon a past practice, even when parties have not followed or enforced the contract." Id. (reversing an ALJ who looked at past practice to determine that merit step pay increases survived the expiration of the contract at issue, where the express terms of the contract limited the employees' post-contractual merit step pay increases to those subsequently negotiated by the parties); see also Escambia Cnty. School Bd., 10 FPER ¶ 15160 (FL PERC 1984) ("When clarification [of the contract language] is necessary, evidence of contract negotiations and the history of collective bargaining between the parties may be considered.").

The Illinois labor boards and the Illinois Courts have not specifically expressed these rules but have applied them. For example, in Village of Oak Park, the Board refused to consider past practice concerning longevity pay where the expired contract expressly addressed its treatment. See, Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009). The Board noted that "there is no support for the Union's contention that the status quo is somehow divorced from the express terms of the recently expired collective bargaining agreement." Id. (past practice concerning historical grant of longevity pay did not establish status quo where contract expressly stated that employer would cease such payments and revert to prior contract's provision if the longevity provision were deemed unlawful); see also Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990) (where the alleged unilateral change "does not involve an explicit contractual provision," the union must establish that the respondent changed the status quo by deviating from an established past practice). Likewise, in Vienna School District, the Educational Labor Relations Board used the parties' past practice to clarify the application of contractual salaries and determined that the status quo was not the actual dollar amount set forth, but rather the salary structure pursuant to which the Respondent had implemented annual step

increases for ten years. Vienna School Dist. No. 55, 3 PERI ¶ 1008 (IELRB 1986) aff'd, 162 Ill. App. 3d 503 (Ill. 4th Dist. 1987).

Thus, the Board has defined status quo not as stasis, but as maintenance of existing policies and procedures. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Vill. of Downers Grove, 22 PERI ¶ 161 (IL LRB-SP 2006). A term or condition of employment must be an established practice to constitute the status quo. Vienna School Dist. No. 55 v. Ill. Educ. Labor Rel. Rel. Bd., 162 Ill. App. 3d 503, 506 (4th Dist. 1987); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998). The test for determining whether a specific practice is sufficiently established is objective. Vienna School Dist. No. 55, 162 Ill. App. 3d at 506. The Union must show that the practice: (1) was unequivocal; (2) had existed substantially unvaried for a significant period of time prior to the change; and (3) could reasonably have been expected by the bargaining unit employees to have continued unchanged. Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990).

Here, the parties' contract is ambiguous because it requires the City to "maintain substantially the same" insurance coverage throughout the term of the contract, but does not define those terms.[16] The parties' past practice clarifies the meaning of this language and shows that the City may satisfy this requirement even if it adopts an insurance plan which, on its face, increases employees' co-pays, as the City did in this case.

First, the parties' past practice demonstrates that the City did not change the status quo by adopting an insurance plan which increased employees' co-pays because it historically made similar changes to its insurance plan in the past. For example, the City twice adopted insurance plans which changed employees' prescription co-pays. Prior to 2007, employees' paid $8/$25/$50 for tier I/II/III drugs. However, under the 2007 plan, their obligations changed to $10/$20/$35. Similarly, under the 2008 plan, employees' co-pay obligations changed yet again to $15/30/$50.

Likewise, the City twice increased employees' financial responsibility for out-of-network services by changing the maximum out-of-pocket costs that employees could incur and by changing the percentage of employee contribution for each service which contributed to

[16] It also requires the City to pay the entire premium for dependent coverage for those employees hired before April 1, 2005 and a percentage of dependent coverage for employees hired after that date. This requirement is not addressed below because there is no allegation that the City failed to perform its obligations in this regard.

satisfying that stated limit.[17] In 2007, the insurance plan required employees to pay not more than $1000 (individual)/$3000 (family) out-of-pocket expenses before insurance would cover 100% of out-of-network health care costs. Further, the plan required employees to pay 20% of each such out-of-network service until they met the stated limit. In 2008, the insurance plans raised those maximum out-of-pocket costs to $2000 (individual)/$6000 (family). Further, the plan increased the percentage of employees' required contribution for each such service to 30%, up to the stated limit. In 2009, the insurance again raised employees' maximum out-of-pocket costs for out of network services to $5000 (individual)/$15000 (family).[18]

Next, the City once increased employees' financial responsibility for in-network services. Prior to 2008, the insurance paid for 100% of in-network health care costs.[19] However in 2008, the insurance imposed a maximum out-of-pocket limit of $1000 (individual)/$3000 (family) for insurance expenses and required employees to pay 10% of the costs of such services until they met the limit.

Further, the City twice changed employees' payment obligations for physical/speech/occupational (PSO) therapy. Prior to 2007, the insurance plan required employees to pay 20% of PSO therapy services up to $1500 (individual)/$3000 (family) but covered 100% of the costs of any such services once employees had incurred those maximum out-of-pocket costs.[20] However in 2007, the insurance plan no longer required employee contribution to PSO therapy services and instead paid 100% of its costs, but only covered employees for $5000 worth of such services. Finally, in 2008, the insurance plan again required employees to pay 10% of PSO therapy costs after meeting the deductible, and only covered employees for $5000 worth of such services.

Taken together, these regular and repeated changes constitute the status quo where the contract is ambiguous and contains no specific guarantee of costs or benefits. See Univ. of

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[17] Notably, employees would start incurring expenses to meet that out-of-pocket maximum only after they had already incurred expenses to meet the deductible. As stated in the facts, the City customarily reimbursed employees for payments incurred toward the deductible.

[18] The employees would incur costs which would meet those maximums only after they had incurred costs to meet the deductible.

[19] These costs applied only after employees had met their deductible. Further, the insurance imposed maximum permissible limits on certain services such as physical/speech/occupation therapy and chiropractic services.

[20] The description of the plan in the record states "ded then 80%" for PSO Therapy services. However since there was no deductible prior to 2007, it is more likely that the 80% referenced the co-insurance for ancillary services which set a maximum out-of-pocket payment of $1500 (individual)/$3000 (family).

California, 20 PERC ¶ 27138 (CA PERB 1996) (Board considered employer's regular, yearly adjustment to employees' selected health plan as status quo during negotiations for an initial contract where there was no preexisting contract language addressing substantive nature of benefits); Unatego Cent. School Dist., 20 PERB ¶ 3004 (NY PERB 1987) (where contract provided that employer was required to use the "State Health Insurance Plan," there was no change in the status quo where employer maintained that plan, even when the benefits of the plan changed, because the parties did not bargain to maintain specific coverage, benefits, or costs related to the plan).

Second, the manner in which the City implemented its 2010 change supports the City's assertion that it did not change the status quo when it adopted the new plan because the City effectuated that plan in the same manner as it effectuated its previous changes to insurance. For the prior three years, the City instituted insurance changes on November 1 of each year, which then took effect one or two months later. Further, the City informed employees when it changed insurance plans by posting a memo on police officers' bulletin boards and by calling a meeting to explain the changes. Here, the City again instituted a change to insurance on November 1 and there is no indication from the record that the City deviated from its past practice with respect to the manner in which it announced those changes to employees.[21]

Contrary to the Union's contention, the City did not change the status quo when it adopted the 2010 plan, even though no prior plan had ever imposed a co-pay increase of $130,[22] because the City customarily made similar changes to insurance (and in the same manner) as those at issue here. As such, the Union's argument presents an overly restrictive view of the applicable status quo.[23]

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[21] This finding adopts the rationale of the non-precedential ALJ decision in Vill. of Wilmette. Vill. of Wilmette, 20 PERI ¶ 131 (IL LRB-SP ALJ 2004) (no change in the status quo from increase in office visit co-payments where employer effected changes to its insurance plan on the same date for 7 out of 8 years, informed employees of the change in the same manner each time, and where the changes included additional plan benefits, new co-pays for office visits, increases in co-pays for prescription drugs, increases in out-of-pocket-maximums, added exclusions for coverage, and increase in plan benefit limits for transplant procedures).

[22] This number is the sum of the newly-added specialist co-pay ($30) and the increase to the emergency room co-pay ($100).

[23] This finding similarly adopts the rationale of the non-precedential ALJ decision in Vill. of Wilmette. Vill. of Wilmette, 20 PERI ¶ 131 (IL LRB-SP ALJ 2004) (where Union contended that the employer changed the status quo by increasing co-pays, ALJ labeled the argument "overly restrictive" because the employer had made similar changes in the past and effectuated them in the same manner as those at issue.)

Thus, the City did not change the status quo in violation of Section 10(a)(4) and (1) of the Act when it adopted a health insurance plan which added a new co-pay and increased an existing co-pay charge by $100.

2. Changes to Reimbursements

However, the City changed the status quo, in violation of Section 10(a)(4) and (1) of the Act, when it failed to reimburse an employee for his increased co-pay expenses as required by the MOA because the MOA is valid and binding on the City, even though the City Council did not approve it, as the Illinois Municipal Code required.

The Illinois Municipal Code (Code) provides that the corporate authorities and committee members shall not enter contracts on behalf of the municipality and that the municipality's officers shall not incur expenses on the municipality's behalf unless "an appropriation has been previously made concerning that contract or expense." 65 ILCS 5/8–1–7 (2012). Any contract made, or expense incurred, in violation of that section is null and void.[24] Id. Further, the Code provides that the passage of any ordinance or resolution to create liability against a city for the expenditure or appropriation of its money requires the approval of a majority of all members holding office on the city council.[25] In addition, it states that the mayor must "report to the council for its action on all matters requiring attention in any department."[26] 65 ILCS 5/10-4-2 (2012).

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[24] "Except as provided otherwise in this Section, no contract shall be made by the corporate authorities, or by any committee or member thereof, and no expense shall be incurred by any of the officers or departments of any municipality, whether the object of the expenditure has been ordered by the corporate authorities or not, unless an appropriation has been previously made concerning that contract or expense. Any contract made, or any expense otherwise incurred, in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof." 65 ILCS 5/8–1–7 (2012).

[25] "The passage of all ordinances for whatever purpose, and of any resolution or motion (i) to create any liability against a city or (ii) for the expenditure or appropriation of its money shall require the concurrence of a majority of all members then holding office on the city council, including the mayor, unless otherwise expressly provided by this Code or any other Act governing the passage of any ordinance, resolution, or motion." 65 ILCS 5/3.1-40-40 (2012).

[26] The Respondent only cites to this latter section of the Code and another which states that the corporate authorities may provide their employees group insurance. See 65 ILCS 5/4-5-1 (2012). The other sections are noted above because the Respondent more generally argues that the MOA is void because it was not approved of by the City Council, as required by the Code.

Section 15(a) of the Act provides that "in case of any conflict between the provisions of this Act and any other law (other than Section 5 of the State Employees Group Insurance Act of 1971 and other than the changes made to the Illinois Pension Code by this amendatory Act of the 96th General Assembly), executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control." 5 ILCS 315/15(a) (2012) (emphasis added).

Accordingly, where the parties' collective bargaining agreement contains a "specific grant of authority" to an individual or office holder to administer the contract and settle grievances, that agreement conflicts with, and supersedes, the requirements of the Municipal Code. As such, the parties' agreement permits the designated individual to bind the municipality without a vote by the City Council. See City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP 2006) (rejecting Respondent's contention that grievance settlement agreement signed by City Clerk was null and void under the Municipal Code, absent the City Council's approval and specific appropriation of funds; finding that Clerk had express authority under the contract to resolve grievances at the second step and had apparent authority by virtue of his past settlement of such grievances).[27]

Here the MOA is valid and binding on the City because the mayor had actual authority to settle grievances under the contract and apparent authority to bind the City to the settlement agreement. First, the contract contains a specific grant of authority to the mayor to settle grievances because it names the holder of the mayor's office as the City's representative and expresses the City's intent to maintain an orderly collective bargaining relationship, furthered by the parties' joint effort to resolve grievances. To illustrate, the contract's preamble provides that the parties "by their duly authorized representative[s] and/or agent[s] mutually" agree to the contract's terms. As stated on the contract's signature page, the office holder of mayor is the City chosen, authorized representative for purposes of the contract. Finally, the parties express their mutual intent to "work together to...prevent as well as to adjust misunderstandings and

[27] See also Vill. of Washington Park, 14 PERI ¶ 2026 (IL SLRB ALJ 1998) (Village was bound by the settlement agreement signed by the Police Committee, even without ratification by the Village Board or the Mayor, where the contract specified that the Committee was the Village's designated representative for the second step of the grievance procedure and where there was no evidence that the Village informed the union of any limitations on the Committee's authority to settle those grievances).

grievances relating to employee's [sic] wages, hours and working conditions." Read together, these provisions show the mayor has authority to administer the contract to maintain an orderly collective bargaining relationship by settling grievances when necessary.

Second, Mayor Link had apparent authority to bind the City to the MOA based on the City's express representations, the mayor's status, and the parties' past practices. Apparent authority is authority imposed by equity. Patrick Engineering v. City of Naperville, 2012 IL 113148, ¶ 34 (Ill. 2012). It is the authority which the principal knowingly permits the agent to assume, or the authority which the principal holds the agent out as possessing. Id. Thus, it is the authority which a reasonably prudent person, exercising diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. Id. A designated agent taking part in collective bargaining negotiations is deemed to have apparent authority to bind the principal absent affirmative, clear, and timely notice to the contrary. Bd. of Educ. Granite City Comm. Unit School Dist. No. 9 v. Ill. Educ. Labor Rel. Bd., 366 Ill. App. 3d 330, 337-38 (1st Dist. 2006). The Board has applied the doctrine of apparent authority to bind employers to grievance settlement agreements, even in cases where the employer has sought to invoke the protections of the Municipal Code to avoid the agreement's obligations. City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP 2006) (applying the doctrine of apparent authority to find grievance settlement agreement enforceable even where the employer raised a defense based on the Municipal Code). In one such case, the Board cited City of Burbank for the proposition that "an agent acting with apparent authority binds a municipality" and noted that the cited case "remains good law" on that point, even though other appellate court decisions subsequently criticized the Burbank court's reasoning. City of Oak Forest, 22 PERI ¶ 13 FN4 (IL LRB-SP 2006) (citing City of Burbank v. Ill. State Labor Rel. Bd., 185 Ill. App. 3d 997, 1003 (1st Dist. 1989).[28] Appellate court cases have affirmed this proposition, even in the face of different statutes which purport to strip otherwise apparent agents of their authority. Bd. of Educ. Granite City Comm. Unit School Dist. No. 9, 366 Ill. App. 3d at 338 (rejecting District's argument that it could not

[28] The Board distinguished the following two cases. City of Belleville v. Ill. Fraternal Order of Police Labor Council, 312 Ill. App. 3d 561 (5th Dist. 2000) (City filed suit for declaratory relief and seeking to void an addendum to its collective bargaining agreement signed by the Mayor); Nielsen-Massey Vanillas Inc. v. City of Waukegan, 276 Ill. App. 3d 146 (2nd Dist. 1995) (resolution which authorized the City to make an agreement with the plaintiff to issue revenue bonds up to a certain value and which designated agents of the City to take any further action necessary to carry out the intent and purposes of the agreement did not confer upon the Director of Economic Development the authority to loan the plaintiff money outside the revenue bond process).

cloak its negotiators with apparent authority since such an act would be contrary to the School Code which mandated, in part, that official business be transacted only at a school board meeting).

Applying these principles here, it was prudent for the Union to believe Mayor Link had authority to bind the City to this grievance settlement agreement (the MOA) because the City designated the office of mayor as its authorized agent in the parties' collective bargaining agreement and never informed the Union of the limitation on his authority.[29] Bd. of Educ. Granite City Comm. Unit School Dist. No. 9, 366 Ill. App. 3d at 337 (employer must give affirmative, clear, and timely notice that its authorized agent has no authority to bind it, otherwise doctrine of apparent authority applies). Further, it was reasonable for the Union to understand that the mayor had authority to settle the grievance because the City Code grants him, as "chief executive," supervision and control over the police chief, the individual with express contractual authority to settle grievances at the first step. Sparta City Code § 30.05 (C). Finally, the parties' past practices further justified the Union's belief because Mayor Link previously signed another Letter of Understanding with the Union, on behalf of the City, in his capacity as "employer representative."[30] City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP 2006) (clerk had apparent authority to bind City to grievance settlement agreement where clerk had signed similar agreements for the City, in the past). Taken together, these facts provide ample basis for finding that the mayor had apparent authority to bind the City to the MOA.

Notably, the Board should apply the doctrine of apparent authority, even though later courts found flaws in the Burbank court's rationale,[31] because those later cases are

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[29] Moreover, if the City successfully contended that the Mayor had no authority to bind the City to the settlement agreement, the City would merely admit to violating Section 10(a)(4) of the Act on other grounds because an employer bargains in bad faith when it fails to notify a union that its representatives cannot bind it. Ill. Dep't of Cent. Mgmt. Serv. and Dep't of Corrections v. Ill. State Labor Rel. Bd., 216 Ill. App. 3d 570, 576 (4th Dist. 1991) (notice of limitation on agent's authority required for good-faith bargaining); City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP 2006) (Board adopted ALJ's decision which references this alternate ground for finding bad faith under similar facts).

[30] This Letter of Understanding pertains to a drug testing policy implemented in 2007. It names Mayor Rob Link as the "Employer Representative."

[31] The Burbank court held that the City could exercise its home rule authority to approve a ULP settlement agreement without the City's Council's approval or appropriation of funds as required by the Municipal Code because the Code was enacted prior to the effective date of State Constitution. Later courts clarified that a municipality may not simply disregard the Code and may only expressly override it by passing an ordinance rendering that section of the Code ineffective. City of Belleville, 312 Ill. App. 3d at 564; see also Nielsen-Massey Vanillas Inc. v. City of Waukegan, 276 Ill. App. 3d at 152 ("a

distinguishable on two grounds. First, unlike the alleged agents in those cases, the mayor here acted pursuant to a "specific grant of authority." City of Oak Forest, 22 PERI ¶ 13 FN4 (IL LRB-SP 2006) (applying the same rationale). As discussed above, the plain language of the contract here sufficiently sets forth the mayor's authority with respect to grievance settlements and contract administration, even though the grant of authority under this contract is broader and less explicit than that found in the City of Oak Forest contract. Second, those appellate court cases do not address the unique circumstances attendant to the settlement of labor disputes arising out of an existing, ratified contract. As such, the courts in those cases did not weight the Act's policy favoring voluntary settlement of grievances embodied in Section 8 or the fact that "expediency and finality in the settlement of labor disputes is of the utmost importance to labor management relations and industrial peace." City of Burbank, 3 PERI ¶ 2009 (IL SLRB 1986) (addressing ULP settlement agreement), aff'd in part and rev'd in part, City of Burbank v. Ill. State Labor Rel. Bd., 185 Ill. App. 3d 997 (1989); City of Oak Forest, 22 PERI ¶ 13 (IL LRB-SP 2006) (addressing grievance settlement).

Contrary to the City's contention, the status quo requires reimbursement of co-pays, even though there is no evidence that employees had ever made such request in the past, because the employees' reasonable expectations concerning reimbursement are properly based on the express, unambiguous terms of the MOA and not the City's past practice. See Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009) (Union's argument of past practice rejected where contract language was express); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990) (addressing past practice only where contract did not involve an explicit contractual provision); Sheriff of Orange Cnty., 36 FPER ¶ 348 (FL PERC 2010) (employees' reasonable expectations are properly founded on precise contractual language rather than upon a past practice).

Consequently, the MOA establishes the status quo with respect to the City's obligation to reimburse employees for certain health care costs, and the City's failure to provide such reimbursements upon an employee's request for it changed the status quo in violation of Section 10(a)(4) and (1) of the Act. Specifically, the MOA provides that "the City agrees that under whatever health insurance plan it obtains, it will reimburse employees as necessary to achieve no

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referendum passed or an ordinance enacted under the grant of power found in section 6 of the article VII of the Constitution of 1970 supersedes a conflicting statute enacted prior to the effective date of the constitution"; rejecting the reasoning in Burbank as "seriously flawed").

net increase in employee out-of-pocket expenses so that after reimbursement...the employee incurs no greater out of pocket expenses under the new plan than what existed under the plan in effect prior to the December 1, 2008 changes." Under the 2008 plan, there was no specialist co-pay and the co-pay for emergency room visits was $50. By contrast, under the 2010 plan, the specialist co-pay is $30 and the co-pay for emergency room visits is $150. Here, Kempfer incurred a $30 charge for a visit to a specialist and a $150 charge for an emergency room visit on June 11, 2011. He requested reimbursement for $130, the difference between the co-pays under the 2008 plan and those under the 2010 plan. The City refused to reimburse him and thereby changed the status quo.

In sum, the City violated Section 10(a)(4) and (1) of the Act when it refused to reimburse an employee for his increased co-pay expenses pursuant to the MOA, but not when it adopted the new health insurance plan under which the employee incurred those increased costs.

3. Sanctions

The Union's motion for sanctions is denied.

Section 11(c) of the Act provides that the Board has discretion to include an appropriate sanction in its order if a party has made allegations or denials without reasonable cause and found to be untrue, or has engaged in frivolous litigation for the purposes of delay or needless increase in the cost of litigation. The test for determining whether a party has made factual assertions which were untrue and made without reasonable cause is an objective one of reasonableness under the circumstances. Chicago Transit Auth., 16 PERI ¶ 3021 (IL LLRB 1999); Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999); Cnty. of Rock Island, 14 PERI ¶ 2029 (IL SLRB 1998), aff'd, 315 Ill. App. 3d 459 (3rd Dist. 2000). The test for determining whether a party has engaged in frivolous litigation is whether the party's defenses to the charge were not made in good faith or did not represent a "debatable" position. Chicago Transit Auth., 16 PERI ¶ 3021 (IL LLRB 1999); Cnty. of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty., 12 PERI ¶ 3008 (IL LLRB 1996); City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995).

The Respondent did not deny, without reasonable cause, that it entered into the MOA to settle a grievance concerning Respondent's 2008 change to insurance benefits because this denial addresses a legal conclusion, namely the validity of the MOA. Any untrue allegations or denials

sufficient to support the imposition of sanctions must address issues of fact rather than issues of law. Cnty. of Bureau and Bureau Cnty. Sheriff, 29 PERI ¶ 163 (IL LRB-SP 2013) (Respondent's denial of the Board's jurisdiction did not warrant the imposition of sanctions though the Board clearly had jurisdiction over the matter); Vill. of Midlothian, 29 PERI ¶ 125 (IL LRB-SP 2013) (Respondent's denial of straightforward statements of current Board law did not warrant the imposition of sanctions); Chicago Transit Auth., 19 PERI ¶ 12 (IL LRB-LP 2003) (addressing allegedly untrue "factual assertions" when ruling on a motion for sanctions), see also Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 (IL SLRB 1998). Here, the veracity of the Respondent's denial addresses a matter of law because it depends on the mayor's authority which the Board must evaluate in light of relevant precedent and principles of agency.

Next, the Respondent did not deny, without reasonable cause, the allegations that it implemented changes to unit employees' health insurance without reaching agreement or proceeding to interest arbitration with the Union. Contrary to the Union's contention, Coordinator of Public Affairs Corey Rheindecker's affidavit, submitted to the Board agent during investigation[32] does not categorically demonstrate that the Respondent knew that its denial was false when it filed its answer. Rather, that document merely addresses the magnitude of the change and the fact that the Respondent undertook it during the pendency of interest arbitration. The Respondent never expressly admitted that it took such action without the Union's consent. Thus, even though this denial was found to be false and not even debatable after a full factual development at hearing, the Board should grant the Respondent leeway here, where there may have been limits on the information available in the early stages of the adjudicative process, particularly where the Respondent did not provide an express admission on the matter, prior to filing the complaint. See City of Bloomington, 26 PERI ¶ 99 (IL LRB-SP 2010) (granting leeway when respondent made clearly false denials, not debatable after a full factual development at hearing, when there were limits on the information available at the early stages of the adjudicative process).

[32] This document may be used in the sanctions analysis, even though it was filed during investigation of the charge, because the parties agreed to its admission into evidence. But see City of Harvey, 18 PERI ¶ 2032 FN 35 (IL LRB-SP 2002) (document from investigatory file not used to support sanctions where the ALJ admitted it into evidence over Respondent's objections and where the Charging Party obtained it from the Board agent without the Respondent's knowledge or acquiescence; in the decision, the ALJ reversed his earlier ruling to admit the document).

Finally, the Respondent did not engage in frivolous litigation when it argued that a $100 increase in co-pay charges failed to constitute a significant change. In determining whether a Respondent has engaged in frivolous litigation, the courts view a Respondent's legal arguments in the context of all its submissions. Wood Dale Fire Protection Dist., 395 Ill. App. 3d 523, 535-36 (2nd Dist. 2009). Notably, the mere fact that a respondent's arguments were unsuccessful does not indicate that the respondent engaged in frivolous litigation or that the respondent advanced those arguments in bad faith. City of Markham, 27 PERI ¶ 7 (IL LRB-SP 2011). Here, the Respondent advanced other arguments which it successfully supported with relevant case law. Further, there is no evidence that the Respondent advanced this particular argument in bad faith. Accordingly, the Respondent did not engage in frivolous litigation.

Thus, the Charging Party's motion for sanctions is denied.

V. CONCLUSIONS OF LAW

The City violated Sections 10(a)(4) and (1) of the Act when it changed the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings by failing to reimburse employees, upon request and pursuant to the MOA, for those co-pay costs which exceeded the co-pay costs they would have incurred prior to the 2008 change to the health insurance plan.

VI. RECOMMENDED ORDER

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

1. Cease and desist from:
   (a) Failing and refusing to bargain collectively in good faith with the Charging Party, Policemen's Benevolent Labor Committee, as the exclusive representative of a bargaining unit composed of the Respondent's patrol officers and dispatchers, by changing the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings.
   (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) Reimburse, with interest at 7% per annum, any employee who has sought reimbursement for health care costs such that the employee incurs no greater out-of-pocket expenses under the existing insurance plan than what the employee would have incurred under the plan in effect prior to the December 1, 2008 changes to insurance.

(b) Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. 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 Respondent has taken to comply herewith.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement 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 19th day of August, 2013

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Michelle N. Owen*

Michelle Owen
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-11-150

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

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

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Party, Policemen's Benevolent Labor Committee, as the exclusive representative of a bargaining unit composed of the Respondent's patrol officers and dispatchers, by changing the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings.

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

WE WILL reimburse, with interest at 7% per annum, any employee who has sought reimbursement for health care costs such that the employee incurs no greater out-of-pocket expenses under the existing insurance plan than what the employee would have incurred under the plan in effect prior to the December 1, 2008 changes to insurance.

DATE _____

_____
City of Sparta
(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.