STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-12-098
	)	
City of Sparta,	)	
	)	
Respondent	)	

ORDER

On July 9, 2012 Administrative Law Judge Martin Kehoe, 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 April 12, 2012 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 11th day of September, 2012.

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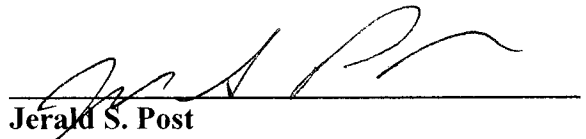

Jerald S. Post
General Counsel

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	)	
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 21, 2011, the Policemen's Benevolent Labor Committee (Charging Party) filed an unfair labor practice charge in Case No. S-CA-12-098 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Sparta (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On April 25, 2012, the Board's Executive Director issued a Complaint for Hearing. The Respondent filed an answer to the Complaint for Hearing on May 4, 2012. In its answer, the Respondent requests, in part, that the Board exercise its discretion and defer this unfair labor practice charge to a pending interest arbitration.[1] As of the issuance of this Recommended Decision and Order, the Charging Party has not filed a response or other answering document.

[1] Parties have the right to request deferral of unfair labor practice charges to the parties' grievance arbitration procedure under Section 1220.65(b) of the Rules. According to Section 1220.65(d) of the Rules, if a motion to defer the resolution of an unfair labor practice charge is made after the issuance of the Complaint for Hearing, the Administrative Law Judge shall rule on that motion in accordance with Section 1200.45 of the Rules. I, the undersigned Administrative Law Judge, believe that a hearing on the deferral issue is not warranted and will, instead, administratively decide the initial question of deferral. See City of Mt. Vernon, 4 PERI ¶2011 (IL SLRB 1988). As outlined below, parties may appeal the Administrative Law Judge's ruling on the motion to defer in accordance with Section 1200.135(b) of the Rules.

I. DISCUSSION AND ANALYSIS

At all times material, the Charging Party has been the exclusive representative of a bargaining unit (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. The Charging Party and the Respondent have been parties to a collective bargaining agreement (CBA) setting out terms and conditions of employment for the Unit, with a term of April 1, 2005 through March 31, 2010. Section 10.1 of this CBA (the CBA's "hours of work provision") evidently provides, in part, that the normal work period for Unit employees shall consist of five eight-hour work days. However, at some point around December of 2007 or January of 2008, the parties agreed to a three-month trial period that changed this eight-hour work period to a twelve-hour work period.[2] According to the Complaint for Hearing, since January of 2008, the Respondent has scheduled Unit employees to twelve-hour work shifts.[3]

The Respondent admits that, in or before March of 2010, the Charging Party and the Respondent allegedly commenced negotiations for a successor agreement. On March 1, 2010, pursuant to Section 14 of the Act, the Charging Party filed a Request for Mediation Panel with the Board. The April 25, 2012 Complaint for Hearing alleges that the Respondent failed and refused to bargain in good faith with the Charging Party in violation of Sections 10(a)(4) and (1) of the Act when the Respondent, on November 9, 2011, rescinded the parties' work period agreement and changed the number of hours Unit employees worked and thus failed to maintain existing terms and conditions of employment pursuant to Section 14(l) of the Act.

The Respondent's answer states that the Respondent and the Charging Party participated in interest arbitration on February 22, 2012 and that the parties have completed their post-hearing

[2] The Respondent's answer asserts that this change "was only temporary for a trial period" and was not "adopted as an amendment to permanently change" the hours of work provision of the CBA.

[3] Concerning this asserted fact, the Respondent's answer indicates that, "after the temporary trial period of the revised hours of work had expired," it returned to the schedule designated by the CBA's hours of work provision "after due notice to the Charging Party of such return." The Respondent further denies that this change is a breach of the parties' work period agreement. The Respondent also alleges that the Charging Party made no demand for negotiations after this notice was provided by the Respondent.

briefs and have filed the same with the arbitrator. The Respondent also states that this interest arbitration includes consideration of the CBA's hours of work provision. As noted above, in its answer, the Respondent requests, in part, that the Board exercise its discretion and defer this unfair labor practice charge to this pending interest arbitration.

The decision of whether to defer an unfair labor practice complaint to arbitration is governed, in part, by Section 11(i) of the Act. Pursuant to Section 11(i), if an alleged unfair labor practice involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement. In accordance with this Section, the Board has adopted a discretionary policy limiting the circumstances under which the Board will determine the merits of an unfair labor practice charge which also may be a contract violation. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114 (IL LRB-SP 2003); Chicago Transit Authority, 1 PERI ¶3004 (IL LLRB 1985).

Over time, the Board has adopted standards for exercising its discretionary deferral authority. Traditionally, the Board makes use of the deferral doctrines of the National Labor Relations Board (NLRB), which has a well-established policy of deferring cases to arbitration at various stages of the proceedings. County of Cook and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990); Chicago Transit Authority, 1 PERI ¶3004. In accordance with the NLRB's policy, the Board has generally recognized three types of arbitral deferral, reflecting three different factual scenarios: (1) "Collyer deferral," which concerns pre-arbitral deferral; (2) "Dubo deferral," which concerns deferral to pending arbitration; and (3) "Spielberg deferral," which concerns post-arbitral deferral. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114; City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Collyer Insulated Wire, 192 NLRB 837 (1971); Dubo Manufacturing Corporation,

142 NLRB 431 (1963); Spielberg Manufacturing Company, 112 NLRB 1080 (1955). In all these lead cases, there is a general recognition that the bargaining process is best served by encouraging parties to resolve their disputes, when possible, through their negotiated grievance arbitration procedures. City of East Peoria, 24 PERI ¶91 (IL LRB-SP 2008).[4]

Deferral to pending arbitration, or "Dubo deferral," arises when the parties have initiated the arbitration process and a party requests that the Board hold the unfair labor practice proceeding in abeyance until the arbitration award issues. In such instances, the Board will defer the processing of an unfair labor practice charge if (1) the parties have already voluntarily submitted their dispute to their agreed-upon grievance arbitration procedure, (2) that procedure culminates in final and binding arbitration, and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114; PACE Northwest Division, 10 PERI ¶2023 (IL SLRB 1994); City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Dubo Manufacturing Corporation, 142 NLRB 431. Because it appears that the ultimate result of the parties' interest arbitration is still "pending," arguably, this analysis should consider these three Dubo deferral prongs. However, in general, since the Respondent's request for deferral involves interest arbitration rather than traditional grievance arbitration, none of the three Dubo deferral prongs can be satisfied.

Notably, Section 11(i) of the Act expressly authorizes the Board to defer unfair labor practice charges only to grievance arbitration procedures. Chicago Transit Authority, 1 PERI ¶3004 (Il LLRB 1985). Indeed, there is no provision in the Act providing for deferral to interest arbitration. Village of Oak Park, 25 PERI ¶169 (IL LRB-SP 2009). Put differently, while the parties may have submitted their dispute to an arbitrator, it does not appear that this was the result of the parties' final and binding grievance arbitration procedures. Thus, strictly speaking,

[4] This policy is also embodied in Section 8 of the Act, which mandates the inclusion of a grievance and arbitration procedure unless the parties expressly agree otherwise. See City of Mt. Vernon, 4 PERI ¶2011.

the circumstances presented by this case do not clearly satisfy the first two Dubo deferral prongs and deferral is inappropriate.

In addition, because this case involves interest arbitration, this arbitrator is unlikely to resolve the entire dispute. Thus, the third Dubo deferral prong is also not satisfied. To explain, while the alluded to interest arbitration is likely to determine the future contractual rights of the parties, such arbitration is unlikely to address their prior contractual rights. Likewise, because of the nature of the arbitration, the arbitrator is unlikely to specifically consider the factual circumstances of this instant dispute. Also, even if this arbitrator does determine the appropriate work week for the Unit employees, presumably, that arbitrator is unlikely to address the statutory issues presented by the Complaint for Hearing.

Section 14(j) of the Act states that "[a]rbitration procedures are deemed to be initiated by the filing of a letter requesting mediation." Accordingly, the Complaint for Hearing alleges that the Charging Party's Request for Mediation Panel constitutes the commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act. Significantly, Section 14(l) indicates, in relevant part, that "[d]uring 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 party" and that "proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration proceedings under this Act." See County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18 (IL LRB-SP 2011); Village of Crest Hill, 4 PERI ¶2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶2025 (IL SLRB 1987). Thus, in order to resolve this matter, it must be determined, inter alia, what wages, hours, and other conditions of employment were in place on March 1, 2010 (i.e., the date the Charging Party filed a Request for Mediation Panel with the Board) and whether the Respondent changed the same without first reaching agreement with the Charging Party. Traditionally, interest arbitration does not address such issues.

Indeed, it is generally appropriate to defer to an arbitrator's expertise in matters of contract interpretation. See Village of Bolingbrook, 20 PERI ¶139 (IL LRB-SP 2004); State of Illinois, Department of Central Management Services, 9 PERI ¶2032 (IL SLRB 1993); City of Mt. Vernon, 4 PERI ¶2011 (IL SLRB 1988). However, at this time, it is not clear that whether or not the Unit employees' wages, hours, and other conditions of employment were consistent with the hours of work provision of parties' CBA or the parties' work period agreement is necessarily dispositive in this instance. Moreover, as suggested, it is not clear that these issues will even be considered. Further, contract interpretation does not appear to be central to this case. Instead, the crux of the dispute presented by the Complaint for Hearing appears to be factual or legal in nature. Legal questions concerning the Act are within the special competence of the Board rather than of an arbitrator. See The R. W. Page Corporation, 219 NLRB 268, 270 (1975). In light of the foregoing, I decline the Respondent's request to defer the instant matter to interest arbitration.

II. ORDER

IT IS HEREBY ORDERED that the Respondent's motion for deferral is denied.

III. EXCEPTIONS

Pursuant to Section 1200.135 of the 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 10 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 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-

exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 9th day of July, 2012.

STATE OF ILLINOIS
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STATE PANEL

Martin Kehoe

Martin Kehoe
Administrative Law Judge