STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Laborers, Local 622,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-12-124
	)	
County of Bond and Bond County Supervisor Of Assessments, Bond County Clerk, Bond County Treasurer, Circuit Clerk of Bond County And State's Attorney of Bond County,	)	
	)	
Respondent	)	

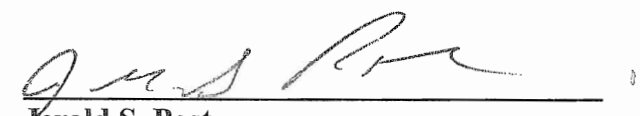
ORDER

On July 23, 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 October 9, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 10th day of October, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Laborers, Local 622, Charging Party and County of Bond and Bond County Supervisor of Assessments, Bond County Clerk, Bond County Treasurer, Circuit Clerk of Bond County, and State's Attorney of Bond County, Respondent	)))))))))))))	Case No. S-CA-12-124

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 5, 2012, Laborers, Local 622 (Charging Party) filed an unfair labor practice charge in Case No. S-CA-12-124 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the County of Bond and Bond County Supervisor of Assessments, Bond County Clerk, Bond County Treasurer, Circuit Clerk of Bond County, and State's Attorney of Bond County (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). Subsequently, on February 27, 2012, the Charging Party amended its initial charge. 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 9, 2012. On July 12, 2012, the Respondent filed a motion for

deferral to arbitration.[1] Later, on July 20, 2012, the Charging Party filed a position statement requesting that the Respondent's motion for deferral be denied.

I. DISCUSSION AND ANALYSIS

At all times material, the Charging Party has been the exclusive representative of a bargaining unit certified by the Board on March 29, 2011 (Unit). On or about July 13, 2011, the Charging Party and the Respondent commenced negotiations for an initial collective bargaining agreement (CBA) for the Unit. From on or about July 13, 2011 to December 29, 2011, the parties have met on nine occasions to negotiate this initial CBA. According to the Complaint for Hearing, the Respondent violated Sections 10(a)(4) and (1) of the Act when, in or about January of 2012, the Respondent altered Unit employees' health insurance premiums, coverage, deductibles, co-pays, and out-of-pocket maximums without reaching impasse or agreement with the Charging Party.[2]

As characterized by the Respondent's July 12, 2012 motion for deferral, this unfair labor practice charge consists of an allegation that the Bond County Board changed the insurance benefits of bargaining unit employees without first informing or asking the unit and its representatives. The Respondent's motion also alleges that "the parties are currently scheduled to submit this very same issue to interest arbitration" in August of 2012. Accordingly, the

---

[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.

[2] The Complaint for Hearing also alleges that the alteration of Unit employees' health insurance premiums, coverage, deductibles, co-pays, and out-of-pocket maximums is a mandatory subject of bargaining within the meaning of the Act.

Respondent moves that the instant proceeding be deferred to the currently scheduled binding interest arbitration.[3]

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

[3] The Respondent's motion for deferral states that the Charging Party has been contacted and has advised the Respondent that it has no objection to a deferral of these issues to arbitration. However, the Charging Party's July 20, 2012 position statement clearly requests that the Respondent's motion for deferral be denied.

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. Indeed, there is no provision in the Act providing for deferral to interest arbitration.

[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.

Village of Oak Park, 25 PERI ¶169 (IL LRB-SP 2009). Put differently, while the parties may have submitted a dispute to an arbitrator, it does not appear that this was the result of the parties' final and binding grievance arbitration procedure. In fact, as suggested by the Charging Party's July 20, 2012 position statement, as there clearly is no CBA at this time, it follows that no grievance arbitration procedure exists. Thus, strictly speaking, 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, 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, contract interpretation is clearly not an issue in this case. Instead, the crux of the dispute presented by the Complaint for Hearing appears to be factual or legal in nature. Because of the largely prospective nature of interest arbitration, the arbitrator is unlikely to specifically consider the factual circumstances of this instant dispute. Moreover, even if this arbitrator does determine, for example, the appropriate insurance benefits for the Unit employees, presumably, that arbitrator is also unlikely to address the statutory issues presented by the Complaint for Hearing. On the other hand, legal questions concerning the Act are within the special competence of the Board. See The R. W. Page Corporation, 219 NLRB 268, 270 (1975).

It should also be noted that, according to Section 1200.45(b)(4) of the Rules, motions to defer an unfair labor practice matter to arbitration may be made in accordance with Section 1220.65 of the Rules. As noted by the Charging Party's position statement, in relevant part,

Section 1220.65(b) permits a party to file such a motion within 25 days after the issuance of a complaint for hearing. However, the instant Complaint for Hearing was issued on April 25, 2012 and the Respondent's motion for deferral was filed on July 12, 2012. Thus, according to a strict reading of the appropriate Rules, it appears that the Respondent's motion was not timely filed. In light of the foregoing, I deny 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 23rd day of July, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge