

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL

7/11/11

City of Madison,	)	
	)	
Employer	)	
	)	
and	)	Case No. S-DR-10-010
	)	
Policemen's Benevolent Labor	)	
Committee, PBPA Unit #110,	)	
	)	
Labor Organization	)	

**DECLARATORY RULING**

On February 26, 2010, Labor Organization, Policemen's Benevolent Labor Committee, PBPA Unit #110, unilaterally filed with the General Counsel of the Illinois Labor Relations Board pursuant to Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240, a Petition for Declaratory Ruling requesting a determination as to whether a proposed "entire agreement" or "zipper" clause concerned a mandatory, or merely permissive, subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010).<sup>1</sup> Both the Labor Organization and the Employer, the City of Madison, filed timely briefs. For the reasons that follow, I find the clause at issue to be a mandatory subject of bargaining.

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<sup>1</sup> As in Case No. S-DR-10-008, in which a declaratory ruling is being issued this same day, the petition here fails to assert whether the opposing party has refused a request to join in the petition. This is a requirement of Section 1200.143(b)(1) of the Board's Rules. The fact that I am not dismissing the petition on that basis should not be interpreted as establishing a general policy of such leniency in the future.

## I. Background

The Labor Organization represents a unit of officers of the Employer's police department below the rank of chief and assistant chief. It and the Employer were parties to an expiring collective bargaining agreement that contained no "entire agreement" or "zipper" clause typically used by parties "to close out bargaining during the contract term and to make the written contract the exclusive statement of the parties['] rights and obligations." Mt. Vernon Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 278 Ill. App. 3d 814, 816 (4th Dist. 1996) (quoting N.L.R.B. v. Tomco Communications, Inc., 567 F.2d 871, 879 (9th Cir. 1978)).

During mediation for a successor agreement, the Employer proposed<sup>2</sup> that the following provision be added:

This Agreement constitutes the complete and entire agreement between the parties. This Agreement supersedes and cancels all prior practices and agreements whether written or oral which either conflict with, or are not covered by, the express terms of this Agreement. The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the parties waive the right to negotiate on any issue which was known to them at the time of bargaining and which either was or could have been negotiated, and that the understandings and agreements reached by the parties after the exercise of that right and opportunity are set forth in this Agreement.

## II. Issue

The Petition raises the question whether this proposed provision is a mandatory or permissive subject of bargaining.

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<sup>2</sup> Although the petition was accompanied by a previously filed demand for compulsory interest arbitration, the Employer points out that it had not cast this proposal as a final offer, nor had the Labor Organization indicated that its proposals were final positions for purposes of interest arbitration.

### III. Relevant Statutory Provisions

The duty to bargain is set out in Section 7 of the Public Labor Relations Act, and relevant portions provide:

For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

The duty "to bargain collectively" shall also include negotiations as to the terms of a collective bargaining agreement. The parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement. Such arbitration provisions shall be subject to the Illinois "Uniform Arbitration Act" unless agreed by the parties.

5 ILCS 315/7 (2010).

Section 8 of the Act requires that collective bargaining agreements contain grievance procedures:

The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois "Uniform

Arbitration Act". The costs of such arbitration shall be borne equally by the employer and the employee organization.

5 ILCS 315/8 (2010).

#### IV. Discussion and Analysis

Permissive subjects of bargaining are those subjects that, though not mandatory, are nevertheless proper bargaining subjects in that they do not conflict with applicable law. ABA SECTION OF LABOR AND EMPLOYMENT LAW, THE DEVELOPING LABOR LAW 1251 (John E. Higgins, Jr., ed., 5th ed. 2006). In contrast, Section 7 of the Act generally *mandates* parties to bargain over subjects concerning wages, hours, and other conditions of employment. Because a party is not obligated to bargain over waiving its statutory rights, a proposal for such a waiver is considered a permissive subject of bargaining, not a mandatory subject of bargaining. Mt. Vernon Educ. Ass'n, 278 Ill. App. 3d at 820; Bd. of Trustees of Univ. of Ill. v. Ill. Educ. Labor Relations Bd., 244 Ill. App. 3d 945, 949 (4th Dist. 1993).

Broad zipper clauses, ones that seek to foreclose during the term of a collective bargaining agreement all future bargaining over topics of which the parties were unaware or could not negotiate at the time they entered the agreement, are considered to be a waiver of statutory rights. Mt. Vernon Educ. Ass'n, 278 Ill. App. 3d at 825. Consequently, proposals for such broad zipper clauses are permissive, not mandatory, subjects of bargaining. Id. In contrast, zipper clauses that seek to foreclose future bargaining on only topics that could have been negotiated at the time of entering the collective bargaining agreement (narrow zipper clauses) are mandatory subjects of bargaining. Id.

The Employer argues that its proposal is a narrow zipper clause, and the Labor Organization disavows any argument to the contrary. The Labor Organization instead asserts that "[a]ny language that requires [it] to waive its ability to engage in *any* mid-term interest

arbitration is a permissive, rather than mandatory, subject of bargaining” (emphasis supplied). That simply is not the law in Illinois. Mt. Vernon Educ. Ass’n, 278 Ill. App. 3d at 825; see Mt. Vernon School Dist. No. 80, 11 PERI ¶1013 (IL ELRB 1995) (distinguishing N.L.R.B. precedent and adopting rationale of Wisconsin labor relations board), aff’d, 278 Ill. App. 3d 814 (4th Dist. 1996).

Consistent with the opinion of the Illinois Appellate Court in Mt. Vernon Educ. Ass’n, 278 Ill. App. 3d 814, I find the contractual provision proposed by the Employer to be a narrow zipper clause and, consequently, a mandatory subject of bargaining.

**Issued in Chicago, Illinois, this 11th day of July, 2011.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**

  
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**Jerald S. Post**  
**General Counsel**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
GENERAL COUNSEL**

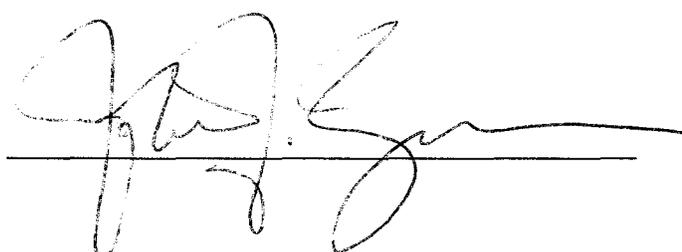
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**AFFIDAVIT OF SERVICE**

I, John F. Brosnan, on oath state that I have this 11th day of July, 2011 served the attached **DECLARATORY RULING OF THE ILLINOIS LABOR RELATIONS BOARD** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Timothy E. Guare  
Hodges, Loizzi, Eisenhammer, Rodrick & Kohn  
3030 Salt Creek Lane, Suite 202  
Arlington Heights, Illinois 60005

Eric Poertner  
PBPA Labor Committee  
435 W. Washington Street  
Springfield, IL 62702



**SUBSCRIBED and SWORN to**  
before me this **11th day**  
of **July, 2011.**

  
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**NOTARY PUBLIC**

