

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Labor Organization	)	
	)	
and	)	Case No. S-DR-10-012
	)	
County of Macoupin and	)	
Sheriff of Macoupin County,	)	
	)	
Employer	)	

DECLARATORY RULING

On June 25, 2010, the Policemen's Benevolent Labor Committee (Labor Organization) unilaterally filed a Petition for Declaratory Ruling 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. The Labor Organization is requesting a determination as to whether a proposal made by the County of Macoupin and Sheriff of Macoupin County (Employer) regarding work schedules is a permissive subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).

Both the Employer and the Labor Organization filed timely briefs. For the reasons that follow, I find the proposal at issue to be a permissive subject of bargaining

The Labor Organization is the exclusive bargaining representative of two bargaining units previously represented by the Illinois Fraternal Order of Police Labor Council (FOP). Each of the units includes sworn peace officers/deputies employed by the Employer. The parties engaged in negotiations for a successor collective-bargaining agreement to the previous FOP

agreements for both bargaining units. During negotiations the Employer proposed that the new agreements retain Article 12, Section 1, of the prior FOP agreements entitled "Hours of Work and Overtime." That article stated as follows:

Schedules will be implemented by the Sheriff with input from the Union. The Sheriff will meet and discuss any schedule changes with the Union prior to making any changes to schedules. The Union shall have the right to impact bargain over any significant changes to schedules. Any impasse resulting from such bargaining will be resolved in accordance with Section 14 of the IPLRA.

Employees will be given forty-eight (48) hours notice of temporary shift changes, except in cases of emergencies.

Nothing in the preceding paragraph or in this section shall preclude an employee from voluntarily agreeing to a temporary shift change with less than forty-eight (48) hour notice. The Employer is not required to offer these hours as an overtime shift.

On March 31, 2009, the parties entered into a settlement agreement of an unfair labor practice charge and grievances, some of which related to work schedule changes and Article 12, Section 1. The settlement agreement reads:

Parties agree to bargain impact of scheduling changes during negotiations and that impact items shall be incorporated into impasse procedures, if necessary.

Impact procedures shall include-for deputies working eight hour shifts

- schedule of weekends off
- secondary income opportunity
- overtime hours of work-transition
- workload/follow-up of cases

The combined grievances shall be withdrawn.

The ULP filed on 7/2/09 by PBLC shall be withdrawn.

Arbitrator Goldstein shall serve as interest arbitrator if necessary.

The Employer maintains that during the parties' negotiations, the Labor Organization took the position that Article 12, Section 1, concerned a mandatory subject of bargaining. Certain actions by the Labor Organization, including its filing of a Demand for Compulsory

Interest Arbitration referencing hours of work, indicate that it did so. Additionally, the Employer asserts the existence of other issues of fact such as whether the issues raised in the settlement agreement are already pending before an arbitrator, whether the Labor Organization has breached the settlement agreement, whether the Employer has, to its detriment, relied upon the settlement agreement and whether the Labor Organization has acted in bad faith in asserting at this late date that Article 12, Section 1, is a permissive subject of bargaining.<sup>1</sup>

Neither party disputes that the subject of work schedules, i.e. hours of work, is a mandatory, as opposed to a permissive, subject of bargaining. The issue in dispute, instead, is whether Article 12, Section 1, is a permissive subject of bargaining because it seeks to waive the Labor Organization's statutory right to bargain over hours of work. As the Board stated in Village of Wheeling, 17 PERI ¶2018 (IL LRB-SP 2001), citing to numerous public and private sector precedents: "It is well settled that a proposal seeking a waiver of a statutory right is a permissive subject of bargaining." Article 12, Section 1, is such a waiver, in that it obligates the Employer to only "meet and discuss" schedule changes with the Labor Organization as opposed to bargaining in good faith over such changes. That there is a difference between "meet and discuss" and the obligation to bargain in good faith under the Act is evident from language in Article 12, Section 1 that reserves the Labor Organization's "right to impact bargain over any significant changes to schedules" (emphasis added) instead of to "meet and discuss." Though the Employer contends that Article 12, Section 1, does not waive the Labor Organization's statutory right to bargain over the impact of a schedule change, the Employer makes no similar claim with respect to the decision to change schedules. Instead, the Employer argues that the Labor Organization knew the ramifications of Article 12, Section 1, of the prior FOP agreements

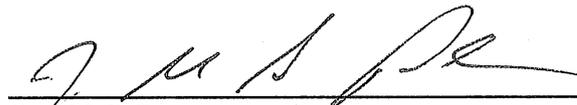
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<sup>1</sup> None of these issues have a bearing on the limited question addressed herein of whether Article 12, Section 1, concerns a permissive subject of bargaining.

when it replaced the FOP as bargaining representative and that the Labor Organization must expect to be bound by that provision. However, the nature of a permissive subject of bargaining is that a party is free to choose whether or not it will bargain to agreement over that subject without relinquishing its right to choose otherwise with respect to subsequent agreements. In other words, the Labor Organization, having no duty in the first instance to bargain over a waiver of its statutory bargaining rights, is not bound by any prior agreed upon waiver of its bargaining rights. Such a waiver, as exemplified by Article 12, Section 1, is and remains a permissive subject of bargaining.

**Issued in Chicago, Illinois, this 9th day of November, 2011.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**

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

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD

Policemen's Benevolent Labor Association, )  
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 Labor Organization )  
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 County of Macoupin and Sheriff of Macoupin )  
 County, )  
 Employer )  
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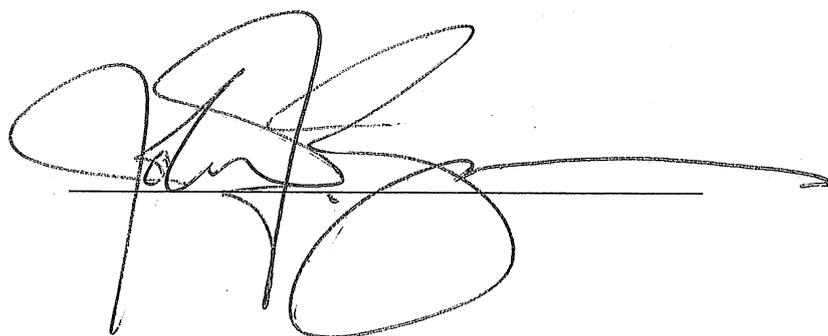
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AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 9th day of November, 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.

Jack Knuppel  
State Attorney Appellate Prosecutor  
725 S Second Street  
Springfield, IL 62704

Sean Smoot  
PBPA  
435 W Washington Street  
Springfield, IL 62702



SUBSCRIBED and SWORN to  
before me this 9<sup>th</sup> day  
of November, 2011.



NOTARY PUBLIC

