

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

Policemen's Benevolent Labor Committee,	)	
	)	
Labor Organization	)	
	)	
and	)	Case No. S-DR-11-002
	)	
City of Taylorville,	)	
	)	
Employer	)	

**DECLARATORY RULING**

On July 15, 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 Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. The Employer, the City of Taylorville, initially refused to join in the petition and moved for its dismissal, but the parties now join in requesting issuance of a declaratory ruling limited to the question whether a proposal with respect to health insurance benefits offered by the Employer is a mandatory or 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 mandatory subject of bargaining.

**I. Background**

The Labor Organization is the exclusive bargaining representative of a bargaining unit of the Employer's full-time sworn, peace officers and police sergeants. That unit's most recent collective-bargaining agreement expired on June 30, 2008. Article 21 of that agreement provided in relevant part:

**SECTION 21.01 Health Insurance.** The Employer shall provide the same health insurance coverage for bargaining unit employees as all other City employees at the full rate, and their dependents for the same percentage, for the life of the Contract.

Single Employee:	Full premium amount
Employee plus one (1) dependent:	Full premium amount for the employee plus one half (1/2) of the dependent's cost over the base amount as of June 30, 1991.
Employee with two (2) or more dependents:	Full premium amount for the employee plus one half (1/2) of the dependent's [sic] cost over the base amount as of June 30, 1991.

The Employer proposed replacing everything after the initial provision of Section 21.01 with the following language here placed in italics:

**SECTION 21.01 Health Insurance.** The Employer shall provide the same health insurance coverage for bargaining unit employees. *The City shall have the right to change insurance carriers, providers and/or the ability to make plan benefit changes within reason at any time. In the event the City considers changes to carriers, providers and/or plan benefits, the city will make an effort to seek the Union representatives [sic] input about such a change. A notice of the change in insurance carriers, providers and/or plan benefits, along with pertinent data will be given to the Union two (2) weeks before the change will take effect, and a meeting will be held with a representative or representatives of the City to explain the change before the change takes effect.*

*Employee and/or employee dependent contributions for the term of this agreement are as follows:*

*Upon signing[,] 20% of the total premium for all participation categories.*

*7/1/10: 20% of the total premium for all participation categories*

*7/1/11: 20% of the total premium for all participation categories.*

*7/1/12: 20% of the total premium for all participation categories.*

## II. Issue

The question posed is whether the Employer's proposal is a permissive or mandatory subject of bargaining.

The Labor Organization argues that the proposal is a permissive subject of bargaining because, in agreeing to it, it would effectively waive its right to bargain over changes to an otherwise mandatory subject of bargaining—health benefits. The Employer argues the proposal is a mandatory subject of bargaining because it 1) sets a benchmark for the level of benefits for the life of the contract; 2) seeks a monetary contribution from employees for insurance coverage; and 3) seeks to impose a standard to guide the resolution of any dispute over potential changes in the insurance carrier or plan—that the change be reasonable.<sup>1</sup>

## III. Relevant Statutory Provisions

The duty to bargain is set out in Section 7 of the Illinois Public Labor Relations Act, the relevant portions of which 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.

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<sup>1</sup> The parties agree that the Labor Organization "input" that the proposed language obligates the Employer to "make an effort to seek" is not itself bargaining, nor does that language reopen bargaining,

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 4 shields certain areas from the duty to bargain. Generally, it provides:

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

5 ILCS 315/4 (2010).

#### **IV. Discussion and Analysis**

The applicable standard for resolving the seeming conflict between Section 7 and Section 4 and for determining whether bargaining proposals concern a mandatory or permissive subject of bargaining is established in Central City Educ. Ass’n v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496, 523 (1992). Under that standard, a topic is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: 1) is either not a matter of inherent managerial authority; or 2) is a matter of inherent managerial authority, but the benefits of bargaining on the decision-making process outweigh the burdens bargaining imposes on the employer’s authority. The parties agree that health benefits are a mandatory subject of bargaining under this line of analysis, see City of Kankakee (Kankakee Metro. Wastewater Util.), 9 PERI ¶2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶2038 (IL SLRB 1991), and the duty to bargain extends to issues that arise during the term of a collective bargaining agreement, Mt.

Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Relations Bd., 278 Ill. App. 3d 814, 816 (4th Dist. 1996). The Employer's proposal would allow the Employer to make mid-term changes in the level of health benefits without reopening bargaining on that topic, and the Labor Organization argues that by agreeing to the proposal it would waive its right to bargain on this mandatory subject as provided by the Act. The waiver of a statutory right is considered a permissive, not mandatory, subject of bargaining. Vill. of Wheeling, 17 PERI ¶2018 (IL LRB SP 2001); County of Cook (Cook County Hosp.), 15 PERI ¶3009 (IL LRB 1999); Bd. of Trustees of the Univ. of Illinois, 8 PERI ¶1014 (IL ELRB 1991), aff'd, 244 Ill. App. 3d 945 (4th Dist. 1993); Bd. of Regents of the Regency Univ. Sys. (N. Ill. Univ.), 7 PERI ¶1113 (IL ELRB 1991).

The Employer argues the type of waiver at issue is no different than that present every time a party agrees to be bound throughout the term of a collective bargaining, asserting that inclusion of the term "within reason" in its proposal sufficiently establishes ascertainable standards limiting its freedom to make unilateral changes to the bargaining unit's health benefits, and thus providing the Labor Organization with sufficient certainty in future benefit levels over the life of the contract. It claims its proposal is both distinguishable from the proposal found to be a permissive subject of bargaining in City of Danville and Danville Police Command Officers' Ass'n, 26 PERI ¶ (IL LRB-SP G.C. 2010), and in accordance with the holding in Keystone Cons. Indus. v. NLRB, 606 F.2d 171 (7th Cir. 1979), finding that the mandatory nature of a proposal concerning a change in insurance plan administrators depended upon whether the change had a material or significant effect or impact upon a term or condition of employment.

I find Keystone Cons. Indus. unhelpful. That case concerned whether a change in a benefit plan administrator would impact a term or condition of employment, while at issue here

are changes in the health benefits themselves, a topic that has a direct impact on terms and conditions of employment.

I agree City of Danville is distinguishable. The proposal at issue in City of Danville would have allowed the Employer to make unilateral changes in benefits limited by reference to the benefits provided other city employees, a clear reference point external to the collective bargaining agreement, but a reference point which the employer could manipulate—unilaterally with respect to unrepresented employees, but even for employees represented by other unions, by means of potential concessions in areas other than benefits, and most significantly without any involvement by the labor organization. I found that proposal required waiver of a statutory right to bargain, and that it was a permissible, not mandatory, subject of bargaining.<sup>2</sup>

The danger of manipulation of the standard by the Employer is absent in the present situation, and while the standard of reasonableness could be more precise, it is common enough in collective bargaining agreements. I agree with the Employer that it does provide a limit on the Employer's discretion and consequently does not approach the type of broad waiver of bargaining rights found to be permissive subjects of bargaining in the context of collective bargaining zipper clauses. Mt. Vernon Education Association, IEA-NEA v. Illinois Educational Labor Relations Board, 278 Ill. App. 3d 814, 816-17 (4th Dist. 1996).

I note also that unilateral implementation of a similarly broad provision by an employer upon impasse was found not to have violated provisions of the National Labor Relations Act analogous to those of the Illinois Public Labor Relations Act, E.I. du Pont Nemours & Co. v.

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<sup>2</sup> The perceived need to distinguish City of Danville is illusory. Both parties cite that decision as if it had some precedential value, and one party even references it as if it were a decision of the Board. It was a declaratory ruling issued by the Board's General Counsel, and as such has no precedential value. 80 Ill. Admin. Code 1200.143(a)(5). In similar fashion, the declaratory ruling in this case does not bind the Board or any of its agents, even in the related unfair labor practice proceeding pending before the Board.

N.L.R.B., 489 F.3d 1310, 1319-20 (D.C. Cir. 2007) distinguishing McClatchy Newspapers, Inc., v. N.L.R.B., 131 F.3d 1026, 1032 (D.C. Cir. 1997), and that the case authority examined in that case over whether such implementation violated the NLRA drew distinctions among topics of bargaining all of which were deemed mandatory. See McClatchy Newspapers, Inc. and N. Calif. Newspaper Guild, Local 52, 321 NLRB 1386, 1388 (1996). On the more fundamental question of the mandatory nature of a bargaining topic, the Supreme Court has held that “[w]hether a contract should contain a clause fixing standards for such matters as work schedules or should provide for more flexible treatment of such matters is an issue for determination across the bargaining table, not by the Board.” N.L.R.B. v. Am. Nat’l Ins., 343 U.S. 395, 408 (1952). Following that lead, and with the understanding that the Labor Organization is certainly under no obligation to agree to the Employer’s proposal, I find the proposal limiting the Employer’s discretion to change health benefit levels to those “within reason” to be a mandatory subject of bargaining.

**Issued in Chicago, Illinois, this 22nd day of February, 2012.**

**STATE OF ILLINOIS  
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**Jerald S. Post  
General Counsel**

