

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

Village of Lake Zürich (Fire Department),)	
)	
Employer)	
)	
and)	Case No. S-DR-11-003
)	
Professional Firefighters of Lake Zürich,)	
International Association of Firefighters,)	
Local 3191,)	
)	
Labor Organization)	

DECLARATORY RULING

On December 12, 2010, the Village of Lake Zürich (Fire Department) (Employer or Department) and the Professional Firefighters of Lake Zürich, International Association of Firefighters, Local 3191 (Labor Organization or Firefighters) jointly filed a Petition for Declaratory Ruling pursuant to Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240, requesting a determination as to whether one of the proposals for a successor collective bargaining agreement offered at interest arbitration by the firefighters is a mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act). Both parties filed timely briefs.

I. Background

The Labor Organization is the exclusive bargaining representative of a unit comprised of the employer's firefighter/paramedics and lieutenant/paramedics. The parties' most recent collective-bargaining agreement expired on April 30, 2011. Section 24.1 of that agreement states

as follows:

If an employee seeks to return to duty from a layoff, sickness, disability, leave of absence, or any other period of time not on duty, or if the Chief or Designee determines that questions exist as to whether an employee is fit for duty or fit to return to duty, then the Village may require, at its expense, that the employee have a physical examination by a qualified and licensed physician selected by the Village to determine whether the employee is able to perform essential functions of his job.

In addition, the Village may also establish a policy regarding regular physical exams to be conducted at the Village expense, and may require employees to undergo such physical exams by a qualified and licensed physician. If the Village determines that conducting physical examinations at work would cause it to be below minimum staffing requirements as established by the Village, the Village may require that employees undergo physical examinations while off-duty without pay at the employees' convenience within thirty (30) days of notice. The failure of the annual physical by any employee covered by this contract shall place the employee on sick leave, if no sick leave is available, other paid time off may be used or the employee may be placed on leave without pay until the employee is able to successfully pass the exam. This may be overridden by an employee's own personal physician who has reviewed the firefighter/paramedic job description and signs off and approves the employee fit for duty by signing and submitting a release form.

All personnel required to participate in the annual fitness/wellness evaluation. This evaluation will be using confidentiality by the certified Peer Fitness Trainers (PFTs) to establish a fitness routine for each person. This fitness routine is designed to better the person's annual fitness/wellness evaluation.

During bargaining for a successor agreement one of the issues concerned a bargaining unit member having been permanently relieved of duty by the Employer based on that member's failure to meet the fitness for duty standard established by the National Fire Protection Association (NFPA). The Labor Organization sought to modify Section 24.1 so that fitness for duty standards would no longer be solely determined by the Employer but by agreement of the parties.¹ The Labor Organization asserted that fitness for duty standards were a mandatory

¹ Specifically, the Labor Organization's proposal was that:

subject of bargaining while the Employer maintained that bargaining over such standards was either permissive or illegal. To resolve this disagreement the parties filed this Petition for Declaratory Ruling stating the issues as:

- 1) Is the selection of the standards used to determine a fire fighter's fitness for duty a mandatory subject of bargaining under Sections 4 and 7 of the Illinois Public Labor Relations Act?
- 2) Is selection of the standards that are applied during a fire fighter's wellness examination for purposes of fitness for duty a mandatory subject of bargaining under Sections 4 and 7 of the Illinois Public Labor Relations Act?

II. Relevant Statutory Provisions

The duty to bargain is set out in Section 7 of the Illinois 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

Any fitness for duty or wellness standard which may be used to remove a bargaining unit member from duty either temporarily or permanently shall not be implemented prior to agreement by the Union.

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.

Section 4 of the Act provides for management rights as follows:

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.

To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

III. Discussion and Analysis

Parties are required to bargain collectively regarding the employees’ wages, hours, and other conditions of employment – the mandatory subjects of bargaining. Am. Fed’n of State, County & Mun. Employees v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). See Central Employer Educ. Ass’n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496 (1992) (providing more refined analysis of mandatory subjects of bargaining where matters concern both wages, hours and conditions of employment and also inherent managerial authority). Permissive subjects of bargaining are those non-mandatory subjects that 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 at 1327 (John E. Higgins, Jr., ed., 6th ed. 2012).

The Employer initially contends that the subject matter of standards used to determine a fire fighter's fitness for duty is not a mandatory subject of bargaining but an unlawful or illegal subject of bargaining because it infringes on the Employer's legal obligations under a myriad of other federal and state employment laws including, but not limited to, the federal Americans with Disabilities Act (ADA) and Occupational Safety and Health Act (OSHA) and the State of Illinois Health and Safety Act (IHSA). The Employer maintains that under the ADA it is required to make an individualized inquiry into each employee's particular condition to determine whether the employee is able to safely perform the essential functions of his job with or without reasonable accommodation and that this assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge. The Employer asserts that under both OSHA and IHSA it has a duty to protect employees against recognized hazards to safety or health which may cause serious injury or death. Though the Employer asserts imposing a duty to bargain over the Labor Organization's proposal would put the Employer in an irreconcilable conflict with these other statutory obligations, the Employer offers no supporting case law for the proposition that this conflict renders the Union's proposal an illegal or prohibited subject of bargaining.² Moreover, the Employer fails to address the existing relevant case law.

In City of Decatur v. Am. Fed'n of State, County & Mun. Employees, Local 268, 122 Ill. 2d 353 (1988), the Court addressed the interplay between Section 7 of the Act and the civil service provisions of the Illinois Municipal Code. In that case, the respondent argued that pursuant to the accommodation provision of Section 7 it had no duty to bargain over disciplinary

² Though this assertion could be interpreted as an argument for preemption the Employer makes no such claim.

matters that fell within the scope of the civil service system. The Court, however, concluded that:

This court has previously noted the broad scope of the Act, with its complex of provisions governing the various aspects of public labor relations. “The Act provides a comprehensive system of collective bargaining for those public employees and employers who fall within its scope.” (*County of Kane v. Carlson* (1987), 116 Ill. 2d 186, 196, 107 Ill. Dec. 569, 507 N.E.2d 482.) We do not believe that the legislature intended to make the broad duties imposed by the Act hostage to the myriad of State statutes and local ordinances pertaining to matters of public employment. The Act provides:

“It is the public policy of the State of Illinois to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection.” (Ill.Rev.Stat.1985, ch. 48, par. 1602.)

To construe the accommodation provision of section 7 narrowly would, we believe, frustrate the declared policy of the State.

As the language of section 7 indicates, the mere existence of a statute on a subject does not, without more, remove that subject from the scope of the bargaining duty. For example, one type of statute that would not relieve an employer of the duty to bargain over an otherwise mandatory subject of bargaining would be a provision establishing a minimum level of benefit, such as a minimum wage law or minimum salary law. In that case, wages would remain a mandatory subject of bargaining, and the employees’ bargaining representative would be free to insist on a level higher—but not lower—than that required by law. (See *Pennsylvania Labor Relations Board v. State College Area School District* (1975), 461 Pa. 494, 509, 337 A.2d 262, 269 (discussing relationship between duty to bargain and accommodation provision in that State’s public employee bargaining law); *New Jersey v. State Supervisory Employees Association* (1978), 78 N.J. 54, 80–82, 393 A.2d 233, 246–47 (same).) Thus, in the determination whether the civil service provisions adopted by the city must override the bargaining duty imposed by the Act, it is appropriate to consider the nature of the other law.

122 Ill. 2d at 364-65.

The Court reaffirmed City of Decatur in American Federation of State, County and Municipal Employees, Council 31, AFL-CIO v. County of Cook, 145 Ill. 2d 475 (1991) and in

Village of Franklin Park v. Illinois State Labor Relations Board, 265 Ill. App. 3d 997 (1st. Dist. 1994), the Appellate Court addressed an employer's duty to bargain over promotion criteria for firefighters as set forth in the Illinois Municipal Code. In affirming a decision of the Board, the Appellate Court in Village of Franklin Park stated:

The Village argument begins with the accommodation provision of section 7 of the Act. That provision excludes from the duty to bargain matters with respect to wages, hours and other conditions of employment “specifically provided for in any other law or * * * specifically in violation of the provisions of any law.”....

The Village suggests that Union proposal 1A, weighting promotion criteria; 1E, limiting promotion to the top candidate; 1F, requiring posting of the exam; and 1G, setting pre-conditions for the exam, go beyond or conflict with the Code. But section 7 of the Act also provides:

“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.” Ill. Rev. Stat. 1989, ch. 48, par. 1607.

Finally the Illinois Supreme Court in *City of Decatur v. American Federal [sic] of State, County and Municipal Employees, Local 268* (1988), 122 Ill. 2d 353, 119 Ill. Dec. 360, 522 N.E.2d 1219, construed the accommodation provision of section 7 of the Act and stated:

“[W]e do not believe that the legislature intended to make the broad duties imposed by the Act hostage to the myriad of State statutes and local ordinances pertaining to matters of public employment. * * * To construe the accommodation provision of Section 7 narrowly would, we believe, frustrate the declared policy of the State.” *City of Decatur*, 122 Ill. 2d at 364, 119 Ill. Dec. at 365, 522 N.E.2d at 1224.

We apply the reasoning of the court in *City of Decatur* and find that section 7 should not be construed narrowly here,

265 Ill. App. 3d at 1005-06.

In this matter the Employer’s argument that the Labor Organization’s proposal is an illegal subject of bargaining prevails only if the subjects raised in that proposal are “specifically

provided for in any other law” or “specifically in violation of the provisions of any law”; keeping in mind that these provisions must be narrowly construed to allow for the broadest possible opportunity for public employees to exercise their rights under the Act.³ The Employer asserts that under the ADA it must make an individualized inquiry into each employee’s ability to safely perform the essential duties of his job. However, the Employer points to no provision of the ADA that prevents the Employer and Labor Organization from utilizing an individualized inquiry or any other aspect of the ADA as part of their negotiated fitness for duty and wellness standard.⁴ Nor does the ADA specifically provide for such a standard or prohibit bargaining over that subject. The same can be said for the Employer’s assertions of irreconcilable conflicts should it be required to bargain over subjects addressed in OSHA and the IHSA. At best then, the Employer’s argument is that because these other statutes relate to fitness of duty or wellness standards that such standards are an illegal subject of bargaining. But as the Supreme Court observed in both Cook County and City of Decatur “[T]he mere existence of a statute on the subject does not, without more, remove that subject from the scope of the bargaining duty” but that, under Section 7 of the Act, parties are obligated to negotiate over clauses which supplement, implement or relate to the effect of other laws. For all these reasons, the Labor Organization’s proposal regarding fitness for duty or wellness standards is not an illegal or prohibited subject of bargaining.

Having found the proposals at issue are a lawful subject of bargaining, it remains to be determined whether or not they are mandatory or permissive subjects of bargaining. To make

³ See City of Sharon v. Rose of Sharon Lodge No. 3, 11 Pa. Cmwlth. 277, 315 A.2d 355 (Pa. Cmwlth. 1973), which found a fitness for duty standard for police to be an illegal subject of bargaining because the applicable collective bargaining statute expressed a limited category of issues on which a public employer was required to bargain.

⁴ The Employer’s position statement reveals an apparent belief that it must agree to the Labor Organization’s proposal in order to fulfill its duty to bargain under the Act. The Act only imposes a duty to negotiate in good faith and does not compel any party to agree to any particular proposal.

this determination, I use the three part analysis outlined in Central City Education Association, IEA/NEA v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992); and City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191 (1998): 1) whether the proposal concerns wages, hours, and terms and conditions of appointment and if so then; 2) whether the matter is one of inherent managerial authority and if so then 3) whether the benefits of bargaining to the decision-making process outweigh the burden bargaining imposes on an employer's authority.

The parties agree that the Labor Organization's proposals on fitness of duty and wellness standards concern wages hours and terms and conditions of employment. With respect to the Employer's assertion that the proposal at issue concerns a matter of inherent managerial authority, the Labor Organization asserts that this is true only if that proposal is specifically linked to the management rights enunciated In Section 4 of the Act. County of Cook v. Ill. Labor Relations Bd., Local Panel, 347 Ill. App. 3d 538 (1st Dist. 2004); County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶3008 (IL LLRB 1998). Both parties agree with the determination in a prior declaratory ruling finding that a union proposal to allow firefighters the option of dropping their paramedic certification involved a matter of inherent managerial authority in that the proposal infringed upon the employer's authority to determine the standard of service it would provide its citizens. Village of Wilmette, 18 PERI ¶2045 (IL LLRB Gen. Coun. 2002). That same finding was made in Village of Lombard, 15 PERI ¶ 2007 (Il SLRB Gen. Coun. 1999). Additionally, the Board has found that an employer's decision to cross-train police officers as firefighters and emergency medical technicians implicated its inherent managerial authority to establish standards of service. Village of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003). Similar to paramedic certification and mandatory training, fitness for

duty/wellness standards define the capabilities and abilities required of an employer's emergency services and public safety personnel which in turn leads to the inevitable conclusion that the Labor Organization's proposals involve the Employer's inherent managerial authority regarding standards of service.

Turning to the third part of the Central City analysis, the Employer maintains there would be no benefit to bargaining over the fitness for duty/wellness proposals since unions and employers are ill-equipped to deal with complex medical questions. Given that this is true, the Employer fails to explain how an employer is any more qualified to deal with such questions because it can act unilaterally. Moreover, bargaining over fitness for duty/wellness proposals will likely have less to do with medical diagnoses than the process of how such determinations will be made. The employer relies on the previously cited ruling in Village of Wilmette wherein the employer's concern for ensuring public safety response was found to outweigh the employees' interest in bargaining over a light duty standard. However, that balance was struck in consideration of the restrictive nature of the unions' light duty proposal and its failure to accommodate the employer's legitimate interest in fulfilling its government mission. As expressly noted in Village of Wilmette, had the union's proposal been less restrictive it would have been a mandatory subject of bargaining. In this case, I do not find, nor does the Employer argue, that the Labor Organization's proposal is overly restrictive. Moreover, unlike Village of Wilmette, the employees subject to the fitness for duty/wellness standards have a compelling interest in negotiating those standards since failing to meet those standards subject them to be relieved from duty and even discharge. In finding, that there is some benefit to bargaining over the Village's decision, there is no record evidence that such bargaining would place an unreasonable burden on the Village's exercise of its inherent managerial authority to determine

the standards of services it provides. In sum, the Village offers no compelling argument that bargaining would place an undue burden on the exercise of its inherent managerial authority. Nor is there any evidence of an immediate crisis or problem in providing timely firefighting and medical services or any other situation which might allow the Employer to unilaterally impose fitness/wellness standards. Finally, the fact that the parties have previously bargained over fitness/wellness standards underscores the conclusion that bargaining over the Labor Organization's proposals is not overly burdensome.

For the foregoing reasons, I find that the Labor Organization's proposals regarding fitness/wellness standards are mandatory subjects of bargaining.

IV. Conclusion

I find the language in the Labor Organization's proposal concerning fitness and wellness standards to be mandatory subjects of bargaining.

Issued in Chicago, Illinois, this 18th day of June 2013.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD**



**Jerald S. Post
General Counsel**