STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent Labor Committee,	)	
	)	
Labor Organization	)	
	)	
and	)	Case No. S-DR-11-004
	)	
County of Macoupin and	)	
Sheriff of Macoupin County,	)	
	)	
Employer	)	

DECLARATORY RULING

On August 5, 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 health insurance 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 replace the existing Article 18, Section 22.2 regarding group health insurance with the following provision:

> Effective September 1, 2010, bargaining unit employees will begin paying five per cent (5%) of the cost of the employee's premium per month.
>
> The Employers reserve the right to change or provide alternate insurance carriers, health maintenance organizations or to self-insure. The Union agrees that when changing insurance carriers, a plan identical to the current plan may not be available. New coverage and benefits will be substantially similar to the current plan among the various plans considered by the Employers. The Employers shall notify the Union at least thirty (30) days in advance of the changing insurance carriers to review the new benefits.

On March 31, 2009, the parties entered into a settlement agreement of a pending unfair labor practice charge and grievances as follows:

> 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 per the settlement agreement all remaining issues at the point the parties' negotiations reached an impasse and any future issues were to be decided in a single interest arbitration hearing. Additionally, the Employer asserts that this agreement applied to issues concerning both mandatory and permissive subjects of bargaining. The Employer further asserts the existence of issues of fact such as whether the Labor Organization has breached the settlement agreement by requesting a declaratory ruling, whether the Labor Organization has changed its prior position that the provision at issue is a mandatory subject of

bargaining, whether an identical insurance plan is available, and whether either the arbitrator or the Board has the authority to require the Employer to provide an identical insurance plan rather than a substantially similar plan.[1]

Neither party disputes that the subject of health insurance benefit levels is a mandatory subject of bargaining. The issue in dispute, instead, is whether the Employer's health insurance proposal is a permissive subject of bargaining because it seeks to waive the Labor Organization's statutory right to bargain over health insurance benefit levels. The Employer agrees that its proposal allows it to unilaterally change employee insurance benefits during the term of the parties' agreement, tacitly admitting that it seeks to free itself from its statutory duty to negotiate with the Labor Organization over a mid-term change in a mandatory subject of bargaining. Essentially, the Employer's proposal would serve as a waiver of the Labor Organization's statutory right to bargain over such changes. 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."

The Employer asserts that the Labor Organization agreed to submit the Employer's proposal to arbitration even if it concerned a permissive subject of bargaining. In support of that assertion, the Employer offers the parties' March 31, 2009, settlement agreement. However, that agreement makes no express mention of the Employer's proposal or health insurance benefits in general. Furthermore, the Employer offers no support for its proposition that in waiting to object to the Employer's proposal until well into the parties' negotiations, the Labor Organization forfeited its right to do so. The Labor Organization's right to make that objection is itself a

[1] None of these issues or the Employer's commentary on the Labor Organization's motivation or alleged bad faith has any bearing on the limited question addressed: whether the Employer's proposed health insurance provision is a permissive subject of bargaining.

statutory right grounded in the Act's Section 14(i) limitation of the scope of an interest arbitration to "wages, hours, and conditions of employment" i.e. mandatory subjects of bargaining. Given the absence of any clear, unambiguous statement that it would not object to submitting the Employer's proposal to an arbitrator, the Labor Organization reserved its statutory right to do so.

Issued in Chicago, Illinois, this 12th day of December, 2011.

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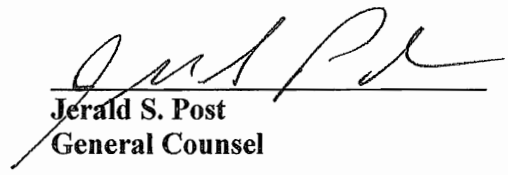

Jerald S. Post
General Counsel

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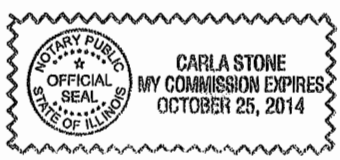
Policemen's Benevolent Labor Association, Labor Organization and County of Macoupin and Sheriff of Macoupin County, Employer	))))))))))))	Case No. S-DR-11-004

AFFIDAVIT OF SERVICE

I, Elaine Tarver, on oath state that I have this 12th day of December, 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 12th **day**
of December, 2011.

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