

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

City of Decatur,)	
)	
Employer)	
)	
and)	Case No. S-DR-11-010
)	
International Association of Firefighters,)	
Local 505,)	
)	
Labor Organization)	

DECLARATORY RULING

On June 13, 2011, the Employer, City of Decatur, 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 proposal by the International Association of Firefighters, Local 505 (Labor Organization) to establish a procedure to be followed prior to implementing a layoff is a mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended, (Act).¹

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.

¹ The Employer included with the Petition a letter indicating that the Labor Organization did not respond to the Employer's request that it join in the Petition.

I. Background

The Labor Organization is the exclusive bargaining representative of a bargaining unit of the Employer's sworn firefighters below the rank of Battalion Chief. The most recent collective-bargaining agreement for that unit expired on April 30, 2010. The parties began negotiations for a successor agreement in February 2010. During negotiations the Labor Organization made the following proposal to add as a new Article 6, Section 4:

Decisions To Lay Off Active Employees. Prior to implementing any involuntary layoff of any active firefighter(s), the City shall provide at least 60 days written notice to the Union together with a statement of the reasons supporting its proposed action. The Union may require the City to negotiate as to its proposed alternatives to the proposed layoff by serving a demand to bargain within 10 days of receiving the City's notice. Negotiations shall continue for a period of 45 days or longer if the parties mutually agree to extend negotiations. If no agreement is reached, the City may implement its proposed layoff(s) subject to the Union's right to grieve the City's action.

In addition, prior to implementing any layoffs, the City shall issue a final statement of its reasons for the action which shall include a specification of any savings resulting and any effect on response times of fire companies to emergency calls as compared to existing response times.

The Union may appeal any layoffs to contest the City's asserted reasons for the layoffs. The Arbitrator shall have the authority to examine the City's reason(s) and to determine their validity, including whether economic reasons are bona fide and whether alternatives proposed by the Union are sufficient to offset any bona fide financial necessity established by the City. In the event the City's reasons are found to be insufficient based on the foregoing factors, the Arbitrator may grant a remedy for the injury by rescinding or modifying the layoffs and otherwise making the grievants whole.²

² The Employer asserts that the Labor Organization later added the following as the final sentence of its proposal:

In the event the Arbitrator determines that alternative(s) proposed by the Union are sufficient to offset any bona fide financial necessity established by the City, the remedy awarded by the Arbitrator shall be contingent upon the Union's agreement to implement its proposed alternative.

The Labor Organization makes no mention of this addition which has no bearing on whether the Labor Organization's proposal is a mandatory or permissive subject of bargaining.

The Labor Organization invoked the interest arbitration procedures set forth in Section 14 of the Act and submitted to the arbitrator as a final offer its proposed Article 6, Section 4.

II. Issue and Positions

The Petition raises the issue of whether the Labor Organization's proposal establishing a procedure to be followed prior to implementing a layoff is a mandatory or permissive subject of bargaining within the meaning of the Act.

The Labor Organization asserts that a ruling finding its proposal is a mandatory subject of bargaining would effectuate the Act's policy of favoring interest arbitration of contract disputes affecting firefighters. Layoffs are also a mandatory subject of bargaining because the Act contemplates that even where a union proposal impacts an employer's inherent managerial authority the benefits of bargaining over layoffs outweigh the burdens placed on that authority. Lastly, the Labor Organization asserts that its proposal imposes a procedural burden composed of four minimal requirements: 1) a 60-day notice prior to layoff; 2) a statement by the Employer of its reason(s) for the proposed layoff; 3) a 30-day period of negotiations prior to implementation of a layoff and; 4) a right to appeal to the grievance arbitration procedure for review of the validity of the Employer's stated reasons for an implemented layoff.

The Employer maintains that the Labor Organization's proposal is a permissive subject of bargaining because as an alternative form of impasse resolution it effectively asks the Employer to waive its right to the interest arbitration procedures outlined in Section 14 of the Act. Moreover, the procedure proposed is overbroad to the extent it requires bargaining over layoffs that are unrelated to labor costs savings and subjects an employer's layoff decision to arbitral review. The Employer further maintains that an arbitrator's award of the Labor Organization's cost-saving alternatives could impact other already agreed-to contract terms which, absent an

explicit reopener provision, is a permissive subject of bargaining. Finally, the Employer argues that in deferring bargaining over an economically motivated layoff the proposal unduly burdens the exercise of its managerial rights and permits a future interest arbitrator to rule on the total number of its fire department employees, itself a permissive subject of bargaining.

III. Relevant Statutory Provisions

The public policy of the Act is set forth in Section 2 as follows:

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.

It is the purpose of this Act to regulate labor relations between public employers and employees, including the designation of employee representatives, negotiation of wages, hours and other conditions of employment, and resolution of disputes arising under collective bargaining agreements.

It is the purpose of this Act to prescribe the legitimate rights of both public employees and public employers, to protect the public health and safety of the citizens of Illinois, and to provide peaceful and orderly procedures for protection of the rights of all. To prevent labor strife and to protect the public health and safety of the citizens of Illinois, all collective bargaining disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees shall be submitted to impartial arbitrators, who shall be authorized to issue awards in order to resolve such disputes. It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.

Section 14 of the Act sets forth a procedure to resolve disputes concerning collective-bargaining agreements involving bargaining units of security employees, peace officers, fire fighters and paramedics as follows:

- (a) In the case of collective bargaining agreements involving units of security employees of a public employer, Peace Officer Units, or units of fire fighters or paramedics, and in the case of disputes under Section 18, unless the parties mutually agree to some other time limit, mediation shall

commence 30 days prior to the expiration date of such agreement or at such later time as the mediation services chosen under subsection (b) of Section 12 can be provided to the parties. In the case of negotiations for an initial collective bargaining agreement, mediation shall commence upon 15 days notice from either party or at such later time as the mediation services chosen pursuant to subsection (b) of Section 12 can be provided to the parties.... If any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties, either the exclusive representative or employer may request of the other, in writing, arbitration, and shall submit a copy of the request to the Board.

- (b) Within 10 days after such a request for arbitration has been made, the employer shall choose a delegate and the employees' exclusive representative shall choose a delegate to a panel of arbitration as provided in this Section. The employer and employees shall forthwith advise the other and the Board of their selections.
- (c) Within 7 days of the request of either party, the Board shall select from the Public Employees Labor Mediation Roster 7 persons who are on the labor arbitration panels of either the American Arbitration Association or the Federal Mediation and Conciliation Service, or who are members of the National Academy of Arbitrators, as nominees for impartial arbitrator of the arbitration panel.... If the parties fail to notify the Board in a timely manner of their selection for neutral chairman, the Board shall appoint a neutral chairman from the Illinois Public Employees Mediation/Arbitration Roster.
- (d) The chairman shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing.... The hearing conducted by the arbitration panel may be adjourned from time to time, but unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Majority actions and rulings shall constitute the actions and rulings of the arbitration panel. Arbitration proceedings under this Section shall not be interrupted or terminated by reason of any unfair labor practice charge filed by either party at any time.
- (e) The arbitration panel may administer oaths, require the attendance of witnesses, and the production of such books, paper, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.
- (f) At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks....

- (g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
- (h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
- (1) The lawful authority of the employer.
 - (2) Stipulations of the parties.
 - (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
 - (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
 - (5) The average consumer prices for goods and services, commonly known as the cost of living.
 - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
 - (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining,

mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(i)

In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreements to other units of government; and v) the criterion pursuant to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h)....

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

(k) Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel. The party against whom the final decision of any such court shall be adverse, if such court finds such appeal or petition to be frivolous, shall pay reasonable

attorneys' fees and costs to the successful party as determined by said court in its discretion. If said court's decision affirms the award of money, such award, if retroactive, shall bear interest at the rate of 12 percent per annum from the effective retroactive date.

- (l) During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under the Act.
- (m) Security officers of public employers, and Peace Officers, Fire Fighters and fire department and fire protection district paramedics, covered by this Section may not withhold services, nor may public employers lock out or prevent such employees from performing services at any time.
- (n) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means.

The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, or in the case of firefighters employed by a state university, at the next regularly scheduled meeting of the governing body after issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

- (o) If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.
- (p) Notwithstanding the provisions of this Section the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.

IV. Discussion

The Labor Organization asserts that its proposal seeks to establish procedural requirements before implementation of a layoff in furtherance of the stated purpose of the Act to provide an "alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees who, by the Act, are prohibited from engaging in a strike. However, there is no dispute that Section 14 of the Act fulfills that stated purpose in establishing a statutory procedure for the resolution of labor disputes involving such employees. In proposing an alternate dispute resolution procedure with respect to layoff decisions, the Labor Organization is tacitly seeking to have the Employer waive its procedural rights under Section 14. Such a proposed waiver is a permissive subject of bargaining. Mt. Vernon Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 278 Ill. App. 3d 814, 820 (4th Dist. 1996); Vill. of Wheeling, 17 PERI 2018 (IL SLRB 2001); Vill. of Skokie, 26 PERI 17 (IL LRB-SP G.C. 2011). The Act itself recognizes this principle when it provides in Section 14(p) that an employer and an exclusive bargaining representative *may* agree to an alternative form of impasse resolution.

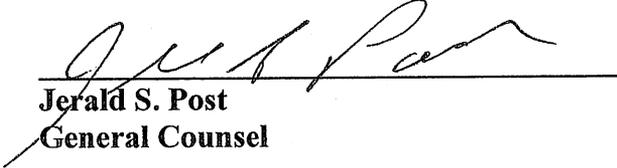
A second reason the Labor Organization's proposal is a non-mandatory subject of bargaining is that not all layoff decisions are based on labor costs. The proposal at issue recognizes this in allowing an arbitrator to examine the validity of any reason offered by the Employer for a layoff including economic necessity. Presumably, an arbitrator may determine a layoff decision is grounded on a legitimate Employer concern or interest that is a permissive subject of bargaining. The Labor Organization's proposal thus allows it to insist on bargaining over a permissive subject of bargaining to the point of impasse, or to make reaching a labor agreement with the Employer contingent on the acceptance of a proposal by the Labor Organization that the arbitrator may ultimately find concerns a permissive subject of bargaining.

Either result is prohibited by, and in direct conflict with, established Board law: Hazel Crest Prof'l Firefighters, Local 4087, Int'l Ass'n of Fire Fighters, 26 PERI 146 (2010); City of Country Club Hills, 17 PERI 2043 (IL LRB-SP 2001); Vill. of Wheeling, 17 PERI 2018 (IL LRB-SP 2001); Cnty. of Cook (Cook Cnty. Hosp.), 15 PERI 3009 (IL LLRB 1999); City of Mattoon, 13 PERI 2016 (IL SLRB 1997); Cnty. of Cook, 6 PERI 3003 (IL LLRB 1989); Cnty. of Kane and Kane Cnty. Sheriff, 4 PERI 2031 (IL SLRB 1988).

For these reasons, I find the Labor Organization's proposal with respect to layoff decisions is a permissive subject of bargaining.

Issued in Chicago, Illinois, this 1st day of August, 2011

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD**



Jerald S. Post
General Counsel

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

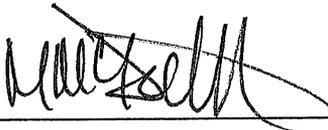
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AFFIDAVIT OF SERVICE

I, Melissa McDermott, on oath state that I have this 1st day of August, 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.

Jill Leka
Clark Baird Smith
6133 N River Road, Suite 1120
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J. Dale Berry
Cornfield & Feldman
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SUBSCRIBED and SWORN to
before me this **1st day**
of **August, 2011.**



NOTARY PUBLIC

