

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

International Association of Firefighters,	)	
Local 505,	)	
	)	
Labor Organization	)	
	)	
and	)	Case No. S-DR-12-002
	)	
City of Decatur,	)	
	)	
Employer	)	

**DECLARATORY RULING**

On November 14, 2011, the City of Decatur (Employer) unilaterally filed with the General Counsel of the Illinois Labor Relations Board 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. The Employer is requesting a determination as to whether a proposal made by the International Association of Firefighters, Local 505 (Labor Organization) regarding layoffs 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 a bargaining unit of the Employer's sworn firefighters below the rank of Battalion Chief (Unit). The parties are currently finalizing a successor collective-bargaining agreement with a term from May 1, 2010 through April 30, 2013. They have reached an agreement on all issues except Article 6 titled "Reduction in Personnel." This article is the only issue the parties have submitted to a pending

interest arbitration proceeding. The Labor Organization has submitted the following proposal to add a new Article 6, Section 4:

The City may lay off employees for bona fide reasons of economic necessity, when the force of the Fire Department is reduced and positions displaced or abolished, or for other legitimate reasons.

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. When the proposed decision to layoff is motivated primarily by economic considerations based upon a lack of revenue and whether the capability of the Union to offer alternatives which may address or alleviate economic conditions leading to the layoffs or other reasons affecting working conditions that are amenable to bargaining, 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 as to such alternatives may include proposals that address or alleviate economic and conditions precipitating the layoffs, including existing wages and benefits provided to members of the bargaining unit, other labor costs or early retirements to avoid or limit the scope of a layoff. 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 accordance with Article 18 except that the grievance shall be filed initially with the Fire Chief (Section 5).

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 if they relate to a mandatory subject of bargaining. The Arbitrator shall have the authority to examine such reason(s) and to determine their validity. Such reasons shall include:

- 1) Whether economic reasons are bona fide.
- 2) Whether a layoff based on a reorganization involving the reduction, displacement or abolishment of physician is principally motivated by the legitimate business reasons (Cf. City of Burbank v. ISLRB, 128 Ill. 2d 335, 334 [sic] (1989); and
- 3) Whether a layoff due to a lack of work is the result of the use of non-certificated substitutes for certificated Firefighters or Firefighter/Paramedics contrary to the prohibitions of the Illinois Municipal Code, 65 ILCS §10.2.1-4

The arbitrator shall have no authority to modify a decision to lay off based on reasons that are permissive subjects of bargaining or conditions removed from mandatory bargaining under Section 14(i) of the IPLRA.

Subject to the limitations of this Article, the Arbitrator may grant a remedy for improper layoff by rescinding or modifying the layoff and otherwise making the grievants whole.

The Labor Organization previously submitted a petition for a declaratory ruling on a proposed Article 6, Section 4, which in some respects was identical to the present proposal. I issued a declaratory ruling on that prior petition on August 1, 2011, finding the Labor Organization's proposal to be a permissive subject of bargaining. That finding was based on: 1) a determination that the Labor Organization's proposal was an attempt to have the Employer waive its statutory right to interest arbitration pursuant to Section 14 of the Act; and 2) that the proposal allowed an arbitrator to examine the validity of any reasons for a layoff presumably encompassing reasons which concerned permissive subjects of bargaining. While the Labor Organization's latest proposal does not raise these same concerns, it raises others which make that proposal a permissive subject of bargaining.

The first paragraph of the Labor Organization's latest proposal grants the Employer discretion to lay off employees for bona fide reasons of economic necessity but subsequently requires the Employer to negotiate any alternatives to the proposed layoff offered by the Labor Organization. Those alternatives may include proposals that ease the economic conditions necessitating the layoff, including proposals with respect to the parties' previously negotiated wage and benefit package, other labor costs and early retirement. Thus, on the one hand the Labor Organization's latest contract proposal reserves to the Employer the authority to decide a layoff is necessary while on the other hand requiring it to negotiate alternatives to that decision which may include proposals to change previously agreed-upon provisions concerning layoffs,

wages, benefits, retirement and, presumably, other mandatory subjects of bargaining. In essence, the Labor Organization's proposal would impose a duty on the Employer to renegotiate the parties' existing agreement. Such a proposal is a permissive subject of bargaining under Section 7 of the Act as well as decisions issued pursuant to the Act.<sup>1</sup> Ill. Dep't of Military Affairs, 16 PERI 2014 (IL LRB-SP 2000); Chicago Transit Auth., 14 PERI 3002 (IL LLRB 1997).

The Labor Organization's proposal is also a permissive subject of bargaining because it seeks to broaden the scope of grievance arbitration to address a dispute which does not concern the administration or interpretation of the parties' collective bargaining agreement. Section 8 of the Act provides in relevant part that

the collective bargaining agreement negotiated between the employer and exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise.

The Labor Organization's proposal allows it to grieve a layoff and, should the grievance proceed to arbitration, grants the arbitrator the authority to determine whether the layoff is "contrary to the prohibitions of the Illinois Municipal Code, 65 ILCS §10.2.1-4." However, the parties have not incorporated that section of the Code as part of their collective bargaining agreement and so disputes or issues pertaining to that section of the Code do not fall within the scope of Section 8 of the Act as "disputes concerning the administration or interpretation of the agreement." Given this, the Labor Organization's proposal seeks to waive the Employer's

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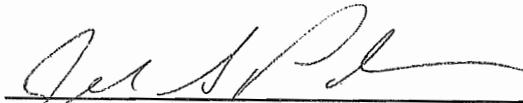
<sup>1</sup> Section 7 of the Act defines the "duty to bargain," including requirements a party must meet to terminate or modify a collective bargaining agreement. Regarding those duties, Section 7 states, in relevant part:

[T]he duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

statutory right under Section 8 of the Act to limit grievance arbitration to disputes concerning the administration or interpretation of the collective bargaining agreement. 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." For this reason, and in the absence of any argument in support of a finding that an issue arising under Chapter 65, Section 10.2.1-4 of the Illinois Municipal Code is a mandatory subject of bargaining, I must find that the proposal at issue is a permissive subject of bargaining and not properly before an interest arbitrator pursuant to the Act.

**Issued in Chicago, Illinois, this 30th day of December, 2011.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**



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**Jerald S. Post  
General Counsel**

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**AFFIDAVIT OF SERVICE**

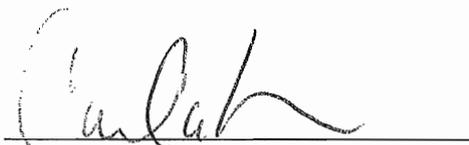
I, John F. Brosnan, on oath state that I have this 30th day of December, 2011 served the attached **DECLARATORY RULING OF THE ILLINOIS LABOR RELATIONS BOARD** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

J. Dale Berry  
Cornfield & Feldman  
25 East Washington Street, Suite 1400  
Chicago, IL 60602

Jill Leka  
James Powers  
CLARK BAIRD SMITH  
6133 N River Road, Suite 1120  
Rosemont, IL 60018



**SUBSCRIBED and SWORN to**  
before me this 30<sup>th</sup> day  
of December, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC

