

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

International Association of Fire Fighters,)	
Local 26,)	
)	
Labor Organization)	
)	
and)	Case No. S-DR-12-003
)	
City of Rock Island,)	
)	
Employer)	

DECLARATORY RULING

On July 14, 2011, the International Association of Fire Fighters, Local 26 (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 provision of the parties' recently expired collective bargaining agreement that bars suspensions, demotions, or dismissals from being subject to the grievance and arbitration procedure, is a permissive 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.

The Labor Organization is the exclusive bargaining representative of a bargaining unit of the Employer's full-time sworn firefighters below the rank or title of Assistant Fire Chief. The most recent collective-bargaining agreement for that unit expired on March 20, 2011. Article VII, Section 7.10, of that agreement states the following regarding grievances:

¹ A previous petition filed in Case No. S-DR-12-001 sought the same determination, but was dismissed for failure to comply with Board rules.

The Board of Fire and Police Commissioners shall have exclusive jurisdiction over disputes or differences of opinion related to the suspension, demotion or dismissal of any Board appointed employee pursuant to Chapter 24, Illinois Revised Statutes, Section 10.2.1-1 et seq. Disputes or differences of opinion regarding suspension, demotion or dismissal shall not be subject to the grievance and arbitration provisions of this Article. With regard to an employee's appeal of discipline or hearing on disciplinary charges, the Board of Fire and Police Commissioners shall not have the authority to increase any discipline imposed or recommended by the Fire Chief or the City.

Article VIII, Section 8.1, of the agreement states the following regarding discipline:

Both parties agree with the tenets of progressive corrective discipline and agree that disciplinary actions may be imposed on any employee in the bargaining unit for just cause. Disciplinary actions may include the following ...: oral reprimand; written reprimand; suspension (notice to be given in writing); and discharge (notice to be given in writing).

During the parties' negotiations for a successor agreement, Labor Organization took the position that Section 7.10 could not remain in effect past the expiration of the prior agreement because it was a permissive subject of bargaining in that it waived Labor Organization's statutory right to grieve disciplinary disputes.² Employer's response was that Section 7.10 did not concern a permissive subject of bargaining and did not serve as a waiver of any statutory right to grieve discipline.

The issue to be decided is whether Section 7.10 of the parties' now expired labor agreement concerns a permissive subject of bargaining. In Village of Wheeling, 17 PERI ¶2018 (IL LRP-SP 2001), the Board considered this issue with respect to a contractual provision that, for all relevant purposes, is identical to Section 7.10 of the parties' predecessor agreement. In Village of Wheeling, the provision at issue stated in part:

All parties recognize that the Board of Fire and Police Commissioners ... has certain exclusive statutory jurisdiction over employees covered by this Agreement, to hire, and discipline employees and to make, alter and enforce

² A 2007 interest arbitration award adopted with some modification the Employer's proposal to keep Article VII, Section 7.10, in effect for the now expired agreement.

reasonable rules and regulations relating thereto. Nothing in this Agreement is intended in any way to replace or diminish the jurisdiction of the Board of Fire and Police Commissioners to hire and discipline employees and these matters under their jurisdiction shall not be subject to the grievance procedure.

The employer in Village of Wheeling, as does the Employer here, argued that this provision did not concern a permissive subject of bargaining, but the Board found otherwise stating:

The Employer's proposals herein are permissive because they seek the Union's waiver of its right, guaranteed by Section 8, [of the Act] to arbitrate disputes concerning administration or interpretation of the contract. Under the Employer's first proposal, all disciplinary matters remain under the jurisdiction of the Board of Fire and Police Commissioners and continue to be excluded from the contractual grievance procedure. The parties' collective-bargaining agreement, however, specifically provides the standard to be used for discipline, namely, "just cause." Once the parties agree to a contractual "just cause" standard, Section 8 of the Act created a corresponding right to arbitrate disputes over the application of that disciplinary standard. While the union may have previously agreed to exclude such matters from arbitration, it is no longer willing to do so. Because the Employer's proposal seeks the Union's waiver of the statutory right to arbitrate disputes relating to the application of the contractual just cause standard, it is a permissive subject of bargaining.

There is nothing present in the instant controversy that supports a finding in this case that is contrary to Village of Wheeling. Employer attempts to distinguish Village of Wheeling on the basis that the provision there at issue required a Board of Fire and Police Commissioners to apply a contractually agreed-upon "just cause" disciplinary standard when making its disciplinary determinations rather than the "for cause" standard expressed in Section 10-2.1-17 of the Illinois Municipal Code.³ However, the relevant contractual provision in Village of Wheeling, as set forth above, does not require the Board of Fire and Police Commissioners to apply a contractually agreed-upon "just cause" standard. Rather, like Section 7.10 here at issue,

³ Section 10-2.1-17 provides, in relevant part:

[N]o officer or member of the fire police department of any municipality subject to this Division 2.1 shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense.

65 ILCS 5/10-2.1-17 (2010) (formerly Ill. Rev. Stat., ch. 24, ¶10-2.1-17 (1991)).

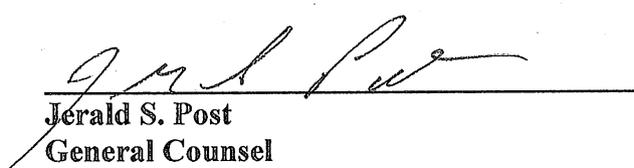
it only reserves to the Board of Fire and Police Commissioners its statutory jurisdiction and authority to discipline and enforce reasonable rules and regulations in the performance of its statutory duties. Furthermore, Article VIII, Section 8.1, of the parties' previous agreement states in part that:

Both parties agree with the tenets of progressive corrective discipline and agree that disciplinary actions may be imposed upon any employee in the bargaining unit for just cause. [Emphasis added]

So, contrary to the Employer's assertion, the parties have in fact bargained a "just cause" standard for discipline, and in doing so have established a corresponding statutory right to arbitrate disputes over whether "just cause" for discipline exists. Village of Wheeling, 17 PERI ¶2018. There is no dispute that Section 7.10 of the parties' predecessor agreement would require the Labor Organization to give up that statutory right in favor of the Board of Fire and Police Commissioners' application of a "for cause" standard. As Village of Wheeling makes clear, Section 7.10 is a permissive subject of bargaining.⁴

Issued in Chicago, Illinois, this 31st day of October, 2011.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD**



**Jerald S. Post
General Counsel**

⁴ Labor Organization asserts that, because it is a permissive subject of bargaining, Section 7.10 lapsed at the time the predecessor agreement expired. Employer has taken no exception to this assertion except to contend that Section 7.10 is not a permissive subject of bargaining. There being no other dispute, I have limited my discussion to Employer's contention.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

City of Rock Island,

Employer

and

International Association of Fire Fighters,
Local 26,

Labor Organization

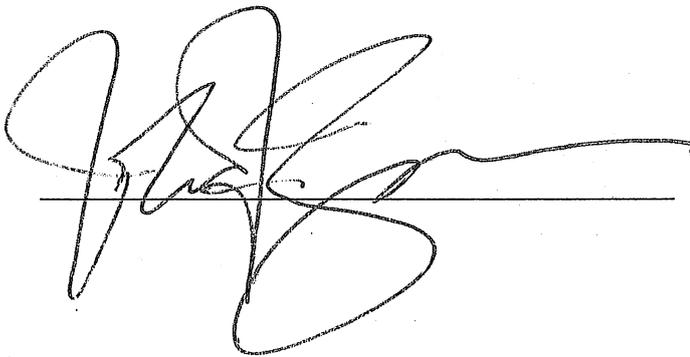
Case No. S-DR-12-003

AFFIDAVIT OF SERVICE

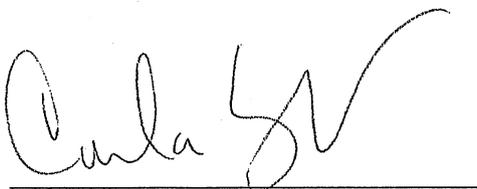
I, John F. Brosnan, on oath state that I have this 31st day of October, 2011 served the attached **DECLARATORY RULING OF THE ILLINOIS LABOR RELATIONS BOARD** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Arthur Eggers
Califf & Harper, P.C.
506-15th Street
Moline, Illinois 61265

J. Dale Berry
Cornfield & Feldman
25 E. Washington Street, Suite 1400
Chicago, Illinois 60602



SUBSCRIBED and SWORN to
before me this 31st day
of October, 2011.



NOTARY PUBLIC