

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

2/14/12

Illinois Fraternal Order of Police)	
Labor Council,)	
)	
Labor Organization)	
)	
and)	Case No. S-DR-12-007
)	
City of Batavia,)	
)	
Employer)	

DECLARATORY RULING

On December 6, 2011, the City of Batavia (Employer) 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. The Employer is requesting a determination as to whether a proposal with respect to vacation leave offered by the Illinois Fraternal Order of Police Labor Council (Labor Organization) is a mandatory or 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 full-time sworn, peace officers in the rank of Patrolman. The most recent collective-bargaining agreement for that unit expired on December 31, 2010. Article XXII of the agreement, titled "vacation" states in relevant part:

1. **Vacation Schedule.** The following schedule shall be maintained during the term of this Agreement.

<u>Years of Service</u>	<u>Vacation</u>
After one year through five*	Two weeks (80 hours)
After five through twelve	Three weeks (120 hours)
After twelve through twenty	Four weeks (160 hours)
After twenty years	Five weeks (200 hours)

*While two weeks of vacation is granted to employees who have served the City for one year, one week of said vacation shall be available for use after six months of employment.

Vacation days are not accruable but up to five (5) days of vacation time may be carried over for use within nine months of the beginning of succeeding year.

2. **Vacation Selection.** Employees shall select their vacations according to seniority, with all vacations chosen by March 1 of each year if seniority is to apply. The vacation selection in the first round shall not exceed two (2) weeks in duration, with subsequent selections made in successive rounds. Vacation schedules made in subsequent rounds shall not be restricted to two (2) weeks in duration as long as operational needs are met. All weeks of the calendar year shall be eligible for vacation selection, but no employees shall be granted more than one (1) week's vacation during the last two (2) weeks of December. No vacation time will be allowed on Christmas Eve or Christmas Day, Loyalty Day (First Sunday in May) and on the Day of the City's Annual Fireworks Show (Normally on or near July 4), except as may be specifically authorized by the Chief in his discretion for extraordinary circumstances.

The Employer operates three eight-hour patrol shifts for which it has established minimum manning levels of either four or five sworn officers. Other than the annual vacation selection described in Article XXII above, the current and well-established practice is that patrol officers may submit requests for vacation and compensatory leave without any prior notice to the Employer, and that all such requests are granted without regard to minimum manning levels. During bargaining for a successor agreement, the Employer proposed that all requests for vacation or compensatory leave be submitted five days in advance while reserving to the Employer the right to deny such a request if to grant it would result in falling below the minimum manning requirement for a given patrol shift. The Labor Organization's counter proposal was to retain the past practice of always granting short-term vacation requests.¹

¹ This description reflects the parties' current bargaining position in advance of interest arbitration.

The question posed by the Employer's petition is whether the Labor Organization's proposal is a permissive subject of bargaining because granting all requests for short-term leave inhibits the Employer's exercise of its inherent managerial authority to establish and maintain minimum manning levels.

The parties agree that the applicable standard for determining whether the bargaining proposal under consideration concerns a mandatory or permissive subject of bargaining is established in Central City Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 149 Ill.2d 496, 523 (1992). Under that standard, a topic is a mandatory subject of bargaining if it concerns wages, hours and terms and conditions of employment and: 1) is either not a matter of inherent managerial authority; or 2) is a matter of inherent managerial authority, but the Board determines that the benefits of bargaining on the decision-making process outweigh the burdens bargaining imposes on the employer's authority.

The parties concede that the Labor Organization's proposal regarding vacation and compensatory leave concerns a matter of wages, hours and terms and conditions of employment. They also concede that under the Act the Employer has the inherent managerial authority to establish shift manning levels. However, the Labor Organization suggests its proposal to maintain current practices does not involve a matter of inherent managerial authority because the Employer remains free to: a) decrease its unilaterally set minimum shift manning levels; or b) call in other patrol officers to maintain its previously determined minimum shift manning level. The collective bargaining agreement requires such call-ins to be paid at overtime rates, but that is merely a matter of money, according to the Labor Organization, not a matter of inherent managerial authority.

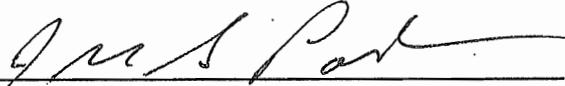
I disagree with the Labor Organization's assertion that its proposal has no bearing on shift manning levels. It is more than obvious that having to grant an unlimited number of officers their requests for time off, which the Labor Organization's proposal allows, has an impact on the Employer's ability to maintain minimum manning levels, and even more so in the absence of advance notice. That the Employer may be able to meet its minimum shift manning levels by taking additional extraordinary measures to its detriment, such as absorbing overtime costs as the Labor Organization proposes, does not eliminate the fact that the proposal adversely impacts a matter of inherent managerial authority.

Finding the topic concerns both a matter of wages, hours and terms and conditions of employment and a matter of inherent managerial authority, I must weigh the benefits bargaining on the topic might provide to the decision-making process against the burdens such bargaining would impose on the Employer's managerial authority. Central City, 149 Ill. 2d at 523. It has previously been determined that when a bargaining proposal directly impacts a public employer's exercise of its inherent managerial authority, the proposal is a permissive subject of bargaining unless it also accommodates the employer's ability to meet its legitimate interests, governmental mission or operational necessity. City of Hickory Hills, 18 PERI 2044 (IL SLRB G.C. 2002); Vill. of Evergreen Park, 12 PERI 2036 (IL SLRB G.C. 1996); Vill. of Arlington Heights, 6 PERI 2052 (IL SLRB G.C. 1990). Such an accommodation might, for example, provide that time off requests will be approved except where such approval would result in shift manning levels dropping below established minimums, or that requests for leave be submitted a given period in advance of the starting date of the requested leave. Except through the potential expenditure of funds to cover overtime costs, which funds the Employer may not have, the parties' past practice makes no accommodation for the Employer's exercise of its inherent right

to determine manning levels.² Accordingly, I find the Labor Organization's proposal to preserve the past practice with respect to vacation time to be a permissive subject of bargaining.

Issued in Chicago, Illinois, this 14th day of February, 2012.

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**Jerald S. Post
General Counsel**

² The Labor Organization observes that the Employer has operated its Police Department for a number of years without any limitations on the use of vacation or compensatory leave. Nevertheless, just as bargaining over a permissive subject of bargaining does not transform it into a mandatory subject of bargaining, past practice does not determine the mandatory or permissive nature of a bargaining proposal.