

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Schaumburg Professional Firefighters Association, IAFF, Local 4092,)	
)	
)	
Labor Organization)	
)	
and)	Case No. S-DR-13-001
)	
Village of Schaumburg,)	
)	
Employer)	

DECLARATORY RULING

On July 13, 2012, the Schaumburg Professional Firefighters Association, IAFF, Local 4092 (IAFF) and the Village of Schaumburg (Village) jointly 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 parties are requesting a determination as to whether their bargaining proposals with respect to job descriptions and an entire agreement provision are mandatory or permissive subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act).¹ Both the IAFF and the Village filed timely briefs.

The IAFF is the exclusive bargaining representative of a bargaining unit of the Village's sworn full-time firefighters below the rank of captain. The most recent collective-bargaining agreement for that unit expired on April 30, 2011. The parties began negotiations for a successor agreement in early April 2011 and have had a three day interest arbitration hearing in June 2012. At that hearing the parties could not agree on whether their respective proposals the topics of job

¹ The petition, as filed, also sought a determination on the parties' proposals concerning subcontracting. The parties have since come to an agreement on subcontracting.

descriptions and an entire agreement provision were mandatory or permissive subjects of bargaining. To resolve this dispute the parties agreed to submit their proposals on these topics to the Board for a declaratory ruling.² The parties and the arbitrator also agreed to hold the interest arbitration on these issues in abeyance pending that ruling.

Job Descriptions

Section 16.5 of the parties' most recent collective-bargaining agreement contains the following provision regarding job descriptions:

If the Village revises any job description for employees covered by this Agreement or issues any new job description for employees covered by this Agreement, the Village will provide the Union with a copy of any such revised or new job description. The Union may request that any new or revised job description be placed on the agenda of the next meeting of the Labor-Management Committee.

IAFF's proposal at interest arbitration was to delete the current version of Section 16.5 and replace it with the following language

Job descriptions for employees covered by this Agreement are attached hereto and incorporated herein as Appendix __.

The Village's proposal was to retain the existing language of Section 16.5.

² The Village has filed a motion to strike portions of the IAFF's brief which address the Employer's proposal regarding job descriptions stating that the parties never agreed to submit that proposal to the Board for a declaratory ruling. The motion to strike is denied. The instant petition is not limited to the IAFF's proposals. Rather, the petition expressly states that it was a joint request seeking a declaratory ruling on

Whether the parties' proposals regarding the following topics constitute mandatory or permissive subjects of bargaining:

- 1) No Subcontracting;
- 2) Job Descriptions; and
- 3) Entire Agreement

Additionally, e-mail correspondence between the parties reveals their intention that each of their proposals would be addressed in their request for a declaratory ruling. Lastly, the Village's request to file a supplemental brief regarding its job description proposal is denied as it offers no reasonable explanation for its failure to address that proposal in its initial supporting brief.

While IAFF and the Village's briefs address whether job descriptions are a mandatory or permissive subject of bargaining, IAFF admits in its supporting brief that the parties have come to an agreement on job descriptions.³ Furthermore, IAFF states that its proposal merely seeks to include the job descriptions which were agreed to as a result of the parties' discussions as an appendix to the successor agreement. The issue subject to the parties' request for a declaratory ruling then is not whether job descriptions are a mandatory subject of bargaining, but whether a proposal to include the agreed-upon descriptions as an attachment to the parties' collective bargaining agreement is a mandatory subject of bargaining. Neither party has squarely addressed this issue.

In Local 143-140 3B, International Union of Operating Engineers and Chicago Board of Education, 6 PERI 1048 (IL ELRB 1990) the Illinois Educational Labor Relations Board (IELRB) examined whether an employer lawfully refused to incorporate negotiated side agreements with a union on a mandatory subject of bargaining – promotions – as part of the main collective bargaining agreement. The union asserted it had a statutory right to insist that the side agreements be made part of the main agreement, otherwise the side agreements would not be subject to the grievance procedure negotiated as part of the main agreement. In finding the employer's refusal to bargain over that issue was not an unfair labor practice the IELRB relied upon Section 10(c) of the Illinois Educational Labor Relations Act⁴ (IELRA) and concluded that:

³ It is unclear from the parties' briefs and supporting documentation whether their agreement on job descriptions has been memorialized and, if so, by what type of document.

⁴ Section 10(c) of the Illinois Educational Labor Relations Act states in relevant part

The collective bargaining agreement negotiated between representatives of the educational employees and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement. The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement. The costs of such

Under the plain language of the statute, all “collective[ly] bargained agreements” are subject to grievance arbitration. As we held in [citation omitted] the requirement “is not optional; it is mandatory.” Thus, regardless of whether a collectively bargained agreement, such as the promotion agreements at issue here, is included in the main agreement, or remains outside of the contract in the form of a side agreement, the grievance arbitration requirement of Section 10(c) remains. For this reason, there is no statutory requirement or “statutory right” to have a collectively bargained side agreement included in the overall contract. The “statutory right” to grievance arbitration ... applies equally to a collectively bargained side agreement, physically outside the main contract. The physical location of the agreement is not determinative. Rather, the key is whether the agreement is “collectively bargained.” If it is ... the agreement [is] subject to grievance arbitration as a matter of law.

Section 8 of the Act is substantially identical to Section 10(c) of the IELRA.⁵ I therefore conclude, for the reasons stated in Chicago Board of Education, *supra*, that the IAFF has no statutory right under the Act to have a copy of the parties’ agreed-upon job descriptions included as an attachment to their main collective bargaining agreement. Absent such a statutory right, the IAFF’s proposal to that effect is a permissive subject of bargaining.

The Village’s proposal to maintain the prior collective-bargaining agreement’s provision regarding job descriptions concerns neither the substance of the job description nor the Village’s

arbitration shall be borne equally by the educational employer and the employee organization.

⁵ Section 8 of the Act states:

The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes or the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois “Uniform Arbitration Act”. The costs of such arbitration shall be borne equally by the employer and employee organization.

duty to bargain over job descriptions.⁶ Still, the proposal is a mandatory subject of bargaining. While a job description may address permissive subjects of bargaining, it undoubtedly also addresses matters that concern wages, hours, or terms or conditions of employment i.e. mandatory subjects of bargaining. Information regarding such mandatory subjects being presumptively relevant to the IAFF's function or role as exclusive bargaining representative of Village firefighters, the Village has a statutory obligation to provide that information to the IAFF. City of Chicago (Chicago Fire Department), 12 PERI 3015 (IL LLRB 1996); Wellington Industries, Inc., 358 NLRB 1 (NLRB 2012); Alcan Rolled Products of Ravenswood, LLC, 358 NLRB No. 11 (NLRB 2012); Kennametal, Inc., 358 NLRB 1 (NLRB 2012). Finding no conceivable interest of, or burden upon, the Village which outweighs IAFF's interest in being provided a copy of the job descriptions of bargaining unit employees, it follows that the obligation to provide that information is itself a mandatory subject of bargaining. Accordingly, the Village's proposal to retain the current language of Section 16.5 is a mandatory subject of bargaining.

Entire Agreement Proposal

The entire agreement provision of the parties' current collective bargaining agreement states as follows:

This Agreement, upon ratification, supersedes all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties, and concludes collective-bargaining for its term, provided that nothing herein shall be interpreted to prevent the parties from mutually

⁶ The IAFF's contention that the current Section 16.5 merely obligates the Village to "meet and confer" over job descriptions is unsubstantiated by the plain language of that Section. There is simply no reference to "meet and confer" or similar language in Section 16.5 and while that Section allows IAFF to request that new or revised job descriptions be placed on the agenda for labor-management meetings it does not address the nature of any ensuing discussion, waive any statutory right IAFF has to bargain over job descriptions or limit the Village's statutory obligation to do so.

agreeing in writing to a modification or change in the provisions of this Agreement.

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective-bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to are covered in this Agreement, including the impact of the Village's exercise of its rights as set forth herein on wages, hours or terms or conditions of employment. Nothing herein shall waive whatever legal right the Union may have to negotiate over any proposed change in, or its impact on, the wages, hours and terms and conditions of employment which directly affects employees covered by this Agreement and which is not referred to or covered by this Agreement.

The Village's proposal is to maintain this provision while IAFF proposes to change that provision so that the second paragraph reads as follows:

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective-bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, to negotiate any issue which was know [sic] to them at the time of bargaining and which either was or could have been negotiated, and that the understandings and agreements reached by the parties after the exercise of that right and opportunity are set forth in this Agreement. This paragraph does not waive the Union's right to impact/effects bargaining and such right is specifically preserved.

The parties agree that under Board law the waiver of a party's right to bargain must be "clear and unequivocal." They also agree that whether a proposed entire agreement provision or zipper clause is a permissive or mandatory subject of bargaining depends on the breadth of the proposal. A narrowly worded zipper clause is a mandatory subject while a broad one is a

permissive subject of bargaining. In this case, the Village's proposal has identical language as the proposal at issue in Village of Skokie, 26 PERI 17 (IL ILRB-SP Gen. Coun. 2010) found to be a broad zipper clause and a permissive subject of bargaining:

The Village [Skokie] and the Council, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, including the impact of the Village's exercise of its rights as set forth herein on wages, hours or terms and conditions of employment.

Consistent with a narrow zipper clause the proposal clearly indicated the parties' intention to waive bargaining over any subject matter expressly addressed in their agreement. However, the proposal also waived the union's right to mid-term impact bargaining on subjects other than those expressly referenced in the agreement, in particular the impact of the employer's exercise of its rights under the agreement's management rights article. With the scope of the impact waiver being unspecified the proposal was not sufficiently "clear and unequivocal" to constitute a narrowly worded zipper clause but was, instead, a broadly worded zipper clause and a permissive subject of bargaining. Similarly, the Village's proposal in this case is a permissive subject of bargaining. The Village argues otherwise asserting that, unlike the proposal in Skokie, its proposed zipper clause has additional language that narrows the scope of its proposal such that it qualifies as a mandatory subject of bargaining. That language preserves IAFF's right to "negotiate over any proposed change in, or its impact on, wages, hours and terms and conditions of employment and which is not referred to or covered by that agreement." While this additional language preserves IAFF's right to negotiate over the impact of any proposed change in the future it does not address the unforeseen, unspecified or non-bargained impact on a mandatory subject of bargaining arising from a party's exercise of rights already set forth in a collective bargaining agreement. City of Madison, Case No. S-DR-10-01 (IL ILRB-SP Gen. Coun. 2011)

(Broad zipper clauses are those that seek to foreclose all future bargaining topics of which the parties were unaware or could not negotiate at the time they entered into the agreement). Failing this, there is no significant difference between the proposed broad zipper clause in Skokie and the Village's entire agreement proposal.

With respect to the IAFF's proposed entire agreement provision it limits the waiver of the parties' right to future bargaining only on topics the parties were aware of and that could have been negotiated at the time they entered their agreement. Being a narrow zipper clause the IAFF proposal is a mandatory subject of bargaining. City of Madison, supra.

Issued in Chicago, Illinois, this 21st day of September 2012.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD**



Jerald S. Post
General Counsel

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Schaumburg Professional Firefighters)
Association, IAFF, Local 4092,)
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Labor Organization)
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and)
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Village of Schaumburg,)
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Employer)

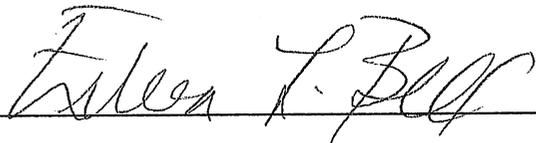
Case No. S-DR-13-001

AFFIDAVIT OF SERVICE

I, Eileen Bell, on oath state that I have this 21st day of September, 2012 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.

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SUBSCRIBED and SWORN to
before me this 21st day
of September, 2012.



NOTARY PUBLIC

