

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

Policemen’s Benevolent Labor Committee,)	
)	
Petitioner)	
)	
and)	Case No. S-DR-13-002
)	
County of Peoria and Sheriff)	
of Peoria County,)	
)	
Employer)	

DECLARATORY RULING

On October 18, 2012, the Policemen’s Benevolent Labor Committee (Petitioner) filed 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, requesting a determination as to whether three proposals offered by the County of Peoria and Sheriff of Peoria County (Employer) during negotiations for a successor collective bargaining agreement were mandatory subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), (Act), as amended. The Employer did not join in the request for a declaratory ruling. Both parties filed timely briefs.

I. Background

The Petitioner is the exclusive bargaining representative of a unit of all sworn peace officers/deputies commissioned by the Sheriff’s Merit Commission below the rank of Lieutenant employed by the County of Peoria and the Sheriff of Peoria County. The unit had previously been represented by the Illinois Fraternal Order of Police Labor Council (FOP). During the parties’ negotiations for a successor collective-bargaining agreement to the previous FOP

agreement the Employer made three proposals: one concerning health insurance, another working hours and the last discipline. The Petitioner asserts that each proposal is a permissive subject of bargaining while the Employer maintains they are all mandatory subjects of bargaining.

II. Relevant Statutory Provisions

The duty to bargain is set out in Section 7 of the Illinois Public Labor Relations Act, and relevant portions provide:

For the purposes of this Act, “to bargain collectively” means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The duty “to bargain collectively” shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty “to bargain collectively” and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

The duty “to bargain collectively” shall also include negotiations as to the terms of a collective bargaining agreement. The parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement. Such arbitration provisions shall be subject to the Illinois “Uniform Arbitration Act” unless agreed by the parties.

Section 8 of the Act requires that a collective bargaining agreement contain a grievance

procedure:

The collective bargaining agreement negotiated between the employer and the 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. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for 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 the employee organization.

III. Discussion and Analysis

Parties are required to bargain collectively regarding the employees' wages, hours, and other conditions of employment—the mandatory subjects of bargaining. Am. Fed'n of State, Cnty. & Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). *See Central City Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd.*, 149 Ill. 2d 496 (1992) (providing a more refined analysis of mandatory subject of bargaining where matters concern both wages, hours and conditions of employment and also inherent managerial authority). Permissive subjects of bargaining are those non-mandatory subjects that are nevertheless proper bargaining subjects in that they do not conflict with applicable law. ABA SECTION OF LABOR AND EMPLOYMENT LAW, *THE DEVELOPING LABOR LAW* at 1327 (6th ed. 2012). A party that insists upon bargaining a non-mandatory subject to the point of impasse violates Section 10(a)(4) and (1) of the Act. City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997).

The Health Insurance Proposal

The Employer proposed the following provision with respect to health insurance:

Health Insurance Plan. The County will make available the same County of Peoria Health Benefit Plan to all employees. The County will pay eighty percent (80%) of the premium cost for members and seventy-five percent

(75%) of the premium cost for member was spouse, and seventy percent (70%) of the premium cost of dependent coverage.

Meet and Confer. Prior to effecting changes in the Health Benefit Plan premium cost, Peoria County will meet and discuss the changes with the Lodge. Alternative suggestions offered by the Lodge will be considered. Such meetings may also be attended by representatives of other Peoria County Bargaining Units.

The Board has consistently held that questions regarding employees' health insurance benefits are mandatory bargaining subjects. City of Kankakee (Kankakee Metro. Wastewater Util.), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991); County of Jackson, 8 PERI ¶ 2008 (IL SLRB H.O. 1992). Additionally, the duty to bargain extends to issues concerning mandatory subjects of bargaining that arise during the term of a collective bargaining agreement. Mt. Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 278 Ill. App. 3d 814, 816 (4th Dist. 1996). The Board has further stated that the waiver of a statutory right is a permissive subject of bargaining. Vill. of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001); Cnty. of Cook (Cook Cnty. Hosp.), 15 PERI ¶ 3009 (IL LLRB 1999); Board of Trustees of the Univ. of Ill., 8 PERI ¶ 1014 (IL ELRB 1991), aff'd, 244 Ill. App. 3d 945 (Ill. App. Ct., 4th Dist., 1993); Bd. of Regents of the Regency Univ. Sys. (N. Ill. Univ.), 7 PERI ¶ 1113 (IL ELRB 1991). One such statutory right provided to public employees subject to the Act is "the right ... to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment." 5 ILCS 315/6 (2010); Int'l Ass'n of Firefighters, Local 413 and City of Rockford, 14 PERI ¶ 2030 (IL LRB-SP 1998).

The Employer argues that its health insurance proposal is a mandatory subject of bargaining rather than a "permissive" subject even though the proposal does not provide for mid-term interest arbitration over health insurance. The Employer argues that its proposal is a mandatory subject of bargaining because it is a "narrow zipper clause" regarding health

insurance. The Employer correctly asserts that “narrow” zipper clauses, which waive bargaining during the term of a contract on all matters negotiated by the parties before the execution of the contract, whether or not contained in the contract, are mandatory subjects of bargaining. Mt. Vernon Educ. Ass’n, 278 Ill. App. 3d at 816. However, the Employer incorrectly characterizes its proposal as a “narrow” zipper clause.

In City of Danville, 26 PERI ¶ 32 (IL LRB-SP G.C. 2010), the employer offered the following health insurance proposal:

The insurance benefits provided for herein shall be provided under a group policy or policies or thorough [sic] a self-inured [sic] plan selected by the City. The City shall notify and consult with the Union before changing insurance carriers, self-insuring or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially the same or similar to the coverage and benefits that are provided to the City’s other full-time employees (who are not members of the bargaining units represented by the Union) as of the effective date of Arbitrator Meyers’ award in ILRB Case No. S-MA-07-220, provided:

- (1) The City will notify the Union at least 60 days in advance of the effective date of any imposed changes in coverage (and prior to signing agreements with insurers implementing those changes) of the precise nature of the changes in coverage contemplated by the City and, if requested by the Union, the City will meet with the Union for the purposes of obtaining the Union’s input and suggestions concerning the proposed changes, further noting that the obligation imposed to notify and meet does not amount to a bargaining obligation or a right to impasse resolution; and
- (2) The Union shall have the right to grieve any changes in coverage under a de novo standard and the City will have the burden to demonstrate that the changes are justified

As in this case, the employer argued that this language constituted a narrow zipper clause and was therefore a mandatory subject of bargaining. The decision in City of Danville found otherwise, stating that:

Contrary to the Employer’s assertion, I find that the proposal grants the

Employer an extremely broad range of flexibility to make mid-term changes to the bargaining unit's health insurance benefits. The Union does not and cannot know what changes could occur to its bargaining unit employees' health insurance benefits during the term of the contract. No sooner than the contract is signed, the Employer could drastically increase deductibles for its non-union employees (or, as the Union suggested, bargain with another unit for higher wages and commensurately higher deductibles) and apply those changes to the bargaining unit employees. This broad authority granted to the Employer under the proposal results in the Union's abdication of its right to bargain over a mandatory subject.

The potential changes that the proposal anticipates are not required to be at all similar to the health insurance benefits in place at the time of the agreement; the changes need only be substantially similar to the benefits of other Employer employees. Such a provision leaves the bargaining unit employees subject to, among other changes, potential increases in health insurance costs that the Union could not have anticipated at the time of the agreement. Because the language of the Employer's proposal allows for such broad discretion in changing health insurance benefits (so long as the changes remain commensurate with non-bargaining unit employees), the Union could only grieve changes to the health insurance benefits that are not "substantially similar to the coverage and benefits that are provided to the Employer's other full-time employees (who are not members of the bargaining units represented by the Union) ..." This use of external indicia to determine the health insurance benefits of bargaining unit employees amounts to a waiver of a statutory right, and therefore is a permissive, not mandatory, subject of bargaining.

In this case, as in City of Danville, the Employer's proposal on health insurance links the benefit provided to bargaining unit employees represented by the Petitioner to the health insurance provided to employees who are not in that bargaining unit. The Employer's proposal thus raises the same concerns addressed in City of Danville. There being no relevant distinction between the healthcare proposal at issue in City of Danville and the Employer's healthcare proposal, the same conclusion results. The Employer's proposal constitutes a proposed waiver of the Petitioner's statutory right to mid-term bargaining over a mandatory subject of bargaining. As previously stated, such a proposed waiver is a permissive subject of bargaining.

The Work Hours Proposal

The Employer's proposal regarding work hours is as follows:

This Article is intended to define the normal hours of work per day per week in effect at the time of the execution of this Agreement. Nothing contained herein shall be construed as preventing the County from restructuring the normal workday for the purpose of promoting the efficiency of the Department or from establishing work schedules of employees. Prior to changing the work schedule on a non-temporary basis, a five (5) day advance notice will be provided to the Union for the purpose of good faith input and discussion regarding the reasons and possible alternatives.

The Employer does not dispute that this proposal concerns the subject of working hours, a mandatory subject of bargaining. The Employer also agrees that the proposal seeks to limit the Petitioner's right to bargain over mid-term changes in work hours and work days and leave such changes to the Employer's discretion with good faith input from and discussion with the Petitioner. Petitioner argues that this proposal is a permissive subject of bargaining as it seeks a waiver of its statutory right to mid-term bargaining over work hours and days. The Employer asserts that the proposal is a mandatory subject of bargaining as it exemplifies a "narrow" zipper clause.

The Employer's proposal regarding work hours and days cannot be characterized as a narrow zipper clause since it has no express, clear, language limiting the Petitioner's mid-term right to bargain over the subjects but only infers such a limitation. Still, the Employer's proposal is a mandatory subject of bargaining as it seeks to reserve to the Employer the authority to change work hours and days. In this way, the Employer's proposal is much like a management rights clause, a proposal which has been deemed a mandatory subject of bargaining. National Labor Relations Board v. American National Insurance Company, 343 U.S. 395 (1952); City of Ottawa, 8 PERI 2028 (IL SLRB G.C. 1992); Toledo Blade Co., 295 NLRB 626 (1989).

The Disciplinary Proposal

The Employer's proposal concerning discipline is as follows:

Disciplinary action consisting of an oral or written reprimand or suspensions of up to five days or less, is hereby defined as summary punishment. Such summary punishment is subject to the grievance and arbitration procedure but not to review by the Merit Commission of the Peoria County Sheriff's Department. All disciplinary action of more than a five (5) day suspension or discharge is subject to the Merit Commission but is not subject to the grievance and arbitration procedure.

The employee shall have the right to appeal a suspension of more than five (5) days, and up to a thirty (30) day suspension to the Merit Commission. The appeal must be initiated by the Employee with the Merit Commission within five (5) days after receipt of the written notice of disciplinary action consistent with the provisions of Merit Commission's Rules and Regulations. In the event the Merit Commission refuses to hear the appeal, the matter becomes subject to the grievance and arbitration procedure. With regard to suspensions in excess of thirty (30) days, including discharge, imposed upon an employee by the Merit Commission, an appeal becomes subject to Article III of the Illinois Code of Civil Procedure (735 ILCS 5/3-101 et seq.)

The Employer and the Petitioner both assert that the subject of disciplinary action, including suspensions for more than five days and discharge, and the method to review such action is a mandatory subject of bargaining as provided by the Illinois Counties Code, 55 ILCS 5, Section 3-8013, which states in relevant part:

Disciplinary measures. Disciplinary measures for actions violating either the rules and regulations of the [Sheriff's Merit] Commission or the internal procedures of the sheriff's office may be taken by the sheriff. Such disciplinary measures may include suspension of any certified person for reasonable periods, not exceeding a cumulative 30 days in any 12-month period. However, on and after June 1, 2007, in any sheriff's office with a collective bargaining agreement covering the employment of department personnel, such disciplinary measures and the method of review of those measures shall be subject to mandatory bargaining, including, but not limited to, the use of impartial arbitration as an alternative or supplemental form of due process.

Removal, demotion or suspension. Except as is otherwise provided in this Division, no certified person shall be removed, demoted or suspended except for cause, upon written charges filed with the Merit Commission by the sheriff.

If the charges against an accused person are not established by the preponderance of evidence, the Commission shall make a finding of not guilty and shall order that the person be reinstated and be paid his compensation for the suspension period, if any, while awaiting the hearing. The sheriff shall take such action as may be ordered by the Commission. However, on and after June 1, 2007, in any sheriff's office with a collective bargaining agreement covering the employment of department personnel, such disciplinary measures and the method of review of those measures shall be subject to mandatory bargaining, including, but not limited to, the use of impartial arbitration as an alternative or supplemental form of due process and any of the procedures laid out in this Section.

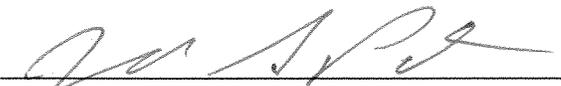
The Petitioner, however, asserts that the Employer's proposal seeks to have it waive its statutory right to bargain over discipline and the method of discipline review. There is no express language in the Employer's proposal which seeks such a waiver and the Petitioner does not argue otherwise. Instead, the Petitioner believes that in proposing that disciplinary action of more than a five day suspension and its review be subject to the Sheriff's Merit Commission is tantamount to a clear and unambiguous expression of the Petitioner's intent to waive its right to utilize the collectively bargained grievance and arbitration procedure in such cases. The Petitioner argues that the Employer's proposal forces it to utilize the Sheriff's Merit Commission procedures despite the above cited provision of the Counties Code stating that alternative methods of review are subject to mandatory bargaining. The Petitioner, however, fails to cite any provision of the Counties Code which prohibits an employer from proposing that the Sheriff's Merit Commission have sole authority to review certain disciplinary actions. Instead, the Counties Code provides otherwise in stating that the duty to bargain over disciplinary measures and the method of review includes not only proposals for the use of impartial arbitration but any other "alternative or supplemental form of due process."

IV. Conclusion

The Employer's proposed health insurance provision is a permissive subject of bargaining. The Employer's proposals concerning work hours and discipline are mandatory subjects of bargaining.

Issued in Chicago, Illinois, this 2nd day of July 2013.

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