

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

Elgin Fire Association of Fire Fighters,)	
Local 439, International Association)	
of Firefighters,)	
)	
Labor Organization)	
)	
and)	Case No. S-DR-13-003
)	
City of Elgin,)	
)	
Employer)	

DECLARATORY RULING

On October 2, 2012, the City of Elgin (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 §1200.143, a Petition for Declaratory Ruling. The Employer is requesting a determination as to whether three proposals offered by the Elgin Fire Association of Fire Fighters, Local 439, IAFF (Labor Organization) with respect to a bargaining unit of sworn firefighters are mandatory or permissive subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act). Both the Employer and the Labor Organization filed timely briefs.

I. Background

The Labor Organization is the exclusive bargaining representative of a bargaining unit of the Employer's full-time sworn, firefighters in the rank of firefighter, lieutenant and captain (Unit). The most recent collective-bargaining agreement expired on December 31, 2010, and was voluntarily extended by agreement of the parties until December 31, 2011.

January 2012 the parties began negotiations for a successor collective-bargaining agreement. The parties could not reach an agreement even with the assistance of a mediator and proceeded to interest arbitration pursuant to Section 14 of the Act. The final set of proposals presented to the arbitrator by the Labor Organization on September 26, 2012, includes three proposals that the Employer asserts are non-mandatory subjects of bargaining. These proposals are as follows:

1. Amendment to Article 10, Section d “Mechanic Pay and Requirements”

Mechanics shall be selected from voluntary applicants and shall meet NFPA 1071 requirements.

2. Amendment to Article 8, Section b – “Working Out of Class”

No employee shall be required to work out of class. Only employees who are on a valid eligibility list for one rank above the employee’s current rank shall be eligible to work out of class. In the event there are an insufficient number of employees on the applicable eligibility list, then the approved acting officer list may be used to supplement the valid eligibility list.

3. Amendment to Article 10, Section c “Assigned Driver Engineer Pay”

A. Selection. Each vacancy in an Engineer’s position shall be filled by appointing a firefighter with the most departmental seniority within ten (10) calendar days after the vacancy occurs. There shall be a probationary period of one (1) year for each new Engineer. Each Engineer should be granted permanent status after serving the probationary period unless there exists just cause to remove the employee from the position.

B. Appointment Refusal. If a firefighter chooses not to accept the appointment as a probationary Engineer, the next senior firefighter will be appointed, and so on. However, when an appointment has been refused, that individual must wait one (1) year before that employee can accept another appointment.

II. Relevant Statutory Provisions

The duty to bargain is defined in Section 7 of the Act which provides in relevant

part:

A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.

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 condition 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.

Section 4 of the Act, titled Management Rights, states:

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

This Board, the Illinois Local Labor Relations Board and the courts have indicated that Section 7 of the Act must be broadly construed to effectuate the legislature’s intent to grant public employees full freedom of association, self-organization, and designation of representatives for the purpose of negotiating over wages, hours, and other terms and conditions of employment. AFSCME Council 31 v. Cook County, 145 Ill. 2d 475 (1991); City of Decatur v. AFSCME, Local 268, 122 Ill. 2d 353 (1988).

III. Discussion and Analysis

The Shift Mechanic Proposal

Within the Employer’s fire department (Department) there is a number of specialty assignments which are performed by firefighters and lieutenants selected at the sole discretion of

Department administrators. One of those specialty assignments is Shift Mechanic. There are three Shift Mechanics each of whom, as set forth in the Department's assignment description, are responsible for "maintaining the mechanical condition of the fire department fleet to include but not limited to: diagnosis of mechanical defects, repairs of gasoline and diesel vehicles and equipment, welding and fabrication, and preventative maintenance on the department's wide-variety [sic] of apparatus, tools and equipment." The Shift Mechanics' assignment description further states that they are responsible for, among other things, "[p]erforming minor mechanical repairs on all heavy-duty vehicles. Preparing, replacing or outsourcing defective machinery, mechanical equipment or otherwise specialized equipment" and "[i]nspecting defective machinery and mechanical equipment including gas or diesel engines, motors, hydraulic pumps, compressors, pneumatic tools, hydraulic and electrical controls on aerial equipment."

The Department's established minimum requirements for the Shift Mechanic assignment are three years of Department experience and certification as a Firefighter III. The Department also prefers that Shift Mechanics have previous mechanical experience or related mechanical education, training, specialized knowledge or skills. The selection process for the Shift Mechanic assignment is set forth by Department policy and consists of submission of a resume, a recommendation letter from an applicant's immediate supervisor and oral interviews with superior officers and Fire Academy instructors. Shift Mechanics receive a monthly stipend for performing this assignment in addition to their regular firefighter salary.

The Labor Organization's proposal regarding Shift Mechanics raises two issues: 1) whether the selection of Shift Mechanics being limited to volunteers is a permissive or mandatory subject of bargaining and 2) whether the requirement that a Shift Mechanic be qualified for that position in accordance with standards established by the National Fire

Protection Association (NFPA) is a permissive or mandatory subject of bargaining. The parties agree that appropriate analysis for both issues is set forth in Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496 (1992), In that case, the Illinois Supreme Court established a three-part test for determining whether any given subject is a mandatory or permissive subject of bargaining:

The first part of the test requires a determination of whether the matter is one of wages, hours and terms and conditions of employment. . . . If the answer to this question is no, the inquiry ends and the employer is under no duty to bargain.

If the answer to the first question is yes, then the second question is asked: Is the matter also one of inherent managerial authority? If the answer to the second question is no, then the analysis stops and the matter is a mandatory subject of bargaining. If the answer is yes, then the . . . matter is within the inherent managerial authority of the employer and it also affects wages, hours and terms and conditions of employment.

At this point in the analysis the [Board] should balance the benefits that bargaining will have on the decision making process with the burdens that bargaining will impose on the employer's authority. Which issues are mandatory, and which are not, will be very fact-specific questions which the [Board] is eminently qualified to resolve.

Central City, 149 Ill. 2d at 523.

The Labor Organization asserts that its proposal regarding mechanics being selected from volunteers affects wages and terms and conditions of employment with respect to Unit members now required to take on those additional duties. The Labor Organization cites City of Peoria, 3 PERI ¶2025 (IL SLRB 1987), and Village of Oak Park, 9 PERI ¶2019 (IL SLRB G.C. 1993), in support of that proposition. However, unlike City of Peoria or Village of Oak Park, the proposal regarding volunteers does not concern either the assignment of duties outside the traditional province of the Unit members' existing duties or their duties when acting in the capacity of a higher ranking officer. Rather than the cases relied on by the Labor Organization, the Employer

refers to Village of Bensenville, 14 PERI ¶2042 (IL SLRB 1998), in which the issue of assigning police officers to perform as dispatchers was found not to involve their wages, hours or terms or conditions of employment and was thus a permissive subject of bargaining, Yet Bensenville did not involve either an increase or decrease in an individual's wage rate for assuming dispatcher duties and therefore is not dispositive of the question presented by the Labor Organization's proposal. Given that a Unit member earns an additional stipend for being assigned as a Shift Mechanic, the proposal that Shift Mechanic assignments be filled by volunteers concerns who is eligible for that stipend and thus, however tenuously, is a matter of wages and/or terms and conditions of employment.¹

The Labor Organization asserts that under City of Peoria and Village of Oak Park, the Employer has no inherent managerial right to unilaterally determine who will be selected to work as a Shift Mechanic. However, as previously noted, the proposals at issue in those cases do not concern the assignment of work traditionally performed by bargaining unit personnel whereas in this case the assignment of Shift Mechanic work by the Employer is a long-established practice. In contrast, the decision in Village of Bensenville, addressed a proposal to abolish the long-established practice of an employer assigning patrol officers to perform dispatch duties when dispatchers were on break time. For this reason, the decision in Village of Bensenville, is the more relevant precedent. As determined in that decision:

[W]e find merit to [the employer's] contention that [the union's] telecommunications proposal involves matters of inherent managerial policy under the Act reserved exclusively to [the employer]. Section 4 of the Act grants management exclusive decision-making authority over matters including standards of services, organizational structure, and direction of employees. As [the employer] argues, the proposal infringes on [its] ability to direct its personnel and determine the optimal method and

¹ The Labor Organization, without further explanation, appears to argue that its proposal that Shift Mechanics be chosen from volunteers is related to concerns about firefighter safety. It is not readily apparent, if at all, how Shift Mechanics being volunteers promotes or jeopardizes firefighter safety.

means of providing police and dispatch services, inasmuch as it would prevent [the employer] from using patrol officers to perform dispatch duties, except in certain narrowly defined situations. In addition, we have recognized that public employers have an inherent managerial right “to determine and assign duties within the ambit of an employee's function....” City of Peoria, 3 PERI ¶2025 at VIII-181. Similarly, other labor relations agencies generally adhere to the view that the determination of work assignments and incidental tasks encompassed within an employee’s essential job functions are matters of inherent managerial policy and are not mandatory subjects of bargaining. See, e.g., City of Philadelphia, 29 PPER ¶29142 (PA LRB 1998) (city’s managerial prerogative to direct its work force included right to assign police sergeants to review investigative reports). [FN6] See also Triborough Bridge and Tunnel Authority, 15 PERB ¶3124 (1982); Town of Oyster Bay, 12 PERB ¶3086 (1979); Waverly Central School District, 10 PERB ¶3103 (1977). See also Village of Evergreen Park, 12 PERI ¶2036 (IL SLRB Gen. Counsel 1996) (union proposal relating to shift assignments was non-negotiable where it severely infringed on employer’s ability to deploy personnel and determine manner of providing services); See also, Village of Highland Park, 12 PERI ¶2020 (IL SLRB Gen. Counsel 1996) (union proposal to establish 15-minute training period was non-negotiable where it interfered with employer’s ability to manage its workforce and determine method and means of public service).

The same reasoning is applicable to this case. The Labor Organization’s proposal restricts the selection of Shift Mechanics to those individuals who volunteer for that assignment and in so doing impacts the Employer’s inherent managerial authority to set standards of services, establish its organizational structure, and direct its employees.

In balancing the benefits of bargaining over the proposal that Shift Mechanics be selected only from volunteers with the burdens that bargaining will impose on the Employer's inherent managerial authority, the balance clearly rests in favor of finding that proposal to be a permissive subject of bargaining. The decision in Village of Bensenville recognized that the proposal limiting the use of patrol officers to perform dispatch duties, except in certain narrowly defined situations, placed too heavy a burden on the employer’s managerial authority to direct its employees. The Labor Organization’s volunteer Shift Mechanic proposal is even more

burdensome as it allows for no circumstances in which the Employer may unilaterally assign Shift Mechanic duties to a Unit member. Nothing in the record suggests the existence of a substantial employee interest in bargaining over the volunteer Shift Mechanic proposal or benefit of bargaining to the decision-making process sufficient to overcome the burden that such an absolute restriction places on the Employer's inherent managerial authority.² Essentially, the Labor Organization's proposal asks employer to waive its inherent statutory right to direct its employees, set standards of service or establish its organizational structure through or by the use of Shift Mechanics. Such a waiver request is itself a permissive subject of bargaining.

The Labor Organization's proposal that the Employer may only assign Shift Mechanic duties to an individual who meets the qualifications of the NFPA to perform those duties would seem to have a connection to the safety of the Employer's firefighting personnel. However, there is no evidence that demonstrates such a relationship. Village of Bensenville, 14 PERI ¶2042 (IL SLRB 1998) (evidence fails to demonstrate that proposal requiring patrol officers have specified certification or training to perform dispatch duties is directly related to safety). Assuming that the first element of the Central City analysis was met the second element would be met as well given that the NFPA proposal affects the Employer's inherent managerial right to establish how it will function and to direct its employees. In balancing the relevant interests the result again favors the Employer. Whatever safety concerns the Labor Organization may have can be addressed through means other than the blanket application of the NFPA qualifications. In short, the NFPA proposal is too broad a restriction on the Employer's inherent managerial rights. This is especially true given the absence of evidence that the qualifications for Shift

² For this same reason the Labor Organization's reliance on Village of Lombard, 15 PERI ¶2007 (IL SLRB G.C. 1999) is misplaced. The proposal regarding mandatory overtime in that case allowed the employer the unlimited right to assign mandatory overtime in emergency situations while limiting that right in non-emergency circumstances.

Mechanic the Employer already has in place do not address the Labor Organization's safety concerns³ and the proposal does not provide the Employer with any other options for training a Unit member except training in accordance with NFPA standards.

The Engineer Proposal

The second proposal at issue concerns the appointment to the position of Engineer. An Engineer is responsible for driving any Employer fire department vehicle. Prior to the expiration of the last bargaining agreement the parties had agreed upon the procedure for making Engineer assignments. All Engineers had to be non-probationary firefighters, certified fire apparatus engineers and had to have completed the Employer's driver training program. Seniority in the Department was a significant factor in the Fire Chief's Engineer assignment from among similarly well-qualified applicants. Depending on the Department's operational needs the Fire Chief could also require paramedic certification for Engineers assigned to an ambulance/ladder truck.

As with its Shift Mechanics proposal the Labor Organization's proposal for the selection of Engineers concerns who is eligible for the additional stipend granted Engineers and therefore, however tenuously, concerns a matter of wages and/or terms and conditions of employment. It also concerns a substantial Employer interest in the safe operation of Department vehicles and standards of emergency services it provides. In balancing these competing interests, as with the Shift Mechanic proposal, the Engineer proposal limits the selection of Engineers to only volunteers. The Employer has no ability, under any circumstance, to assign a Unit member to an Engineer position or any discretion in the selection of a qualified applicant for the position.

³ For the same reason set forth in footnote 1 above, the Labor Organization's reliance on Village of Lombard is unpersuasive.

Again, as with the Shift Mechanic proposal, nothing in the record suggests the existence of a substantial employee interest in bargaining over the selection of Engineers, or benefit of bargaining to the decision-making process, sufficient to overcome the burden the Labor Organization's proposal places on the Employer's inherent managerial authority. See Village of Bensenville. Essentially a request that the Employer waive its inherent statutory right to direct its employees or set safe standards of service, the proposal is a permissive subject of bargaining.

The Working Out of Class Proposal

The Employer has a long-established practice of allowing employees in one rank to work out of class or "act up" i.e. to temporarily serve in the next higher rank during which time they receive an increase in pay. The Employer has also certain minimum years of service and certification requirements an individual must meet in order to be eligible to act up. Article 8, Section b, of the parties' last bargaining agreement addressed compensation for acting up and during negotiations for a successor agreement the Labor Organization offered the additional language here at issue. Under that proposed language Unit members can no longer be required to act up and only those Unit members on the existing list for promotion to the next rank would be eligible to act up in that rank. Should no one on that list be available then an individual would be chosen from an approved acting officer list. The Employer argues that this proposal is a permissive subject of bargaining under the Central City analysis while the Labor Organization asserts that that same analysis demonstrates its proposal is a mandatory subject of bargaining.

The Labor Organization asserts that based on Village of Oak Park, 9 PERI ¶2019 (IL SLRB G.C. 1993) its proposal concerns a matter of wages, hours and terms and conditions of employment. That non-precedential finding arose from an employer's decision to eliminate its

well-established practice of giving firefighters the opportunity act up and with it the opportunity to receive premium pay. This fact pattern is not analogous to the instant case wherein the Labor Organization's proposal does not eliminate opportunities for Unit members to act up but grants them sole discretion in deciding whether they will act up. For this reason I find merit in the Labor Organization's argument that its proposal does not address whether Unit members may act up but only how an opportunity to act up will be assigned. Because the selection process essentially determines who will receive an opportunity to act up and receive additional pay, the Labor Organization's "act up" proposal concerns a term and condition of employment. Nonetheless, I find the proposal to be a permissive subject of bargaining.

The Board has held that an employer has the inherent managerial right to determine and assign duties within the ambit of an employee's function. Village of Bensenville, 14 PERI ¶2042 (IL SLRB 1998); City of Peoria, 3 PERI ¶2025 (IL SLRB 1987). Because the Labor Organization's proposal limits the pool of Unit employees eligible to serve in an act up capacity, the proposal also implicates the Employer's managerial right to direct Unit employees and establish standards of service in that there may be no one willing and/or eligible to act up who is capable of providing the Employer's desired level of supervision. The balance between the relevant interests favors the Employer. As with its proposal concerning Shift Mechanics the Labor Organization's "act up" proposal is too broad. The proposal virtually eliminates the Employer's ability to require a Unit member to act up, even in emergency circumstances, or to ensure that the individual serving in that capacity is capable of performing the duties. In so doing, the "act up" proposal unduly infringes upon the Employer's managerial authority to direct employees and establish standards of service.

Issued in Chicago, Illinois, this 3rd day of January 2013.

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A handwritten signature in black ink, appearing to read "Jerald S. Post", is written over a solid horizontal line.

**Jerald S. Post
General Counsel**