

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

City of Danville (Police Department),)	
)	
Employer)	
)	
and)	Case No. S-DR-13-004
)	
Policemen's Benevolent Labor Committee,)	
Danville Police Command Officers Assn.,)	
)	
Labor Organization)	

DECLARATORY RULING

On December 5, 2012, the City of Danville (Employer) 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 certain of the Employer's proposals 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). Subsequently, the Policemen's Benevolent Labor Committee, Danville Police Command Officers' Association (Union) joined in the request for a declaratory ruling. Both parties filed timely briefs.

I. Background

The Union is the exclusive bargaining representative of a unit of full-time sworn peace officers holding the rank of sergeant employed by the Employer. During the course of negotiations, the Employer and the Union failed to reach agreement on a number of proposals regarding health insurance benefits. The parties declared impasse and exchanged final offers on August 13, 2009. On August 19, 2009, the parties filed a Petition for Declaratory Ruling requesting a determination on whether the Employer's then current proposal on health insurance

benefits was a mandatory or permissive subject of bargaining. They also initiated statutory impasse procedures, resulting in an arbitration hearing on August 24, 2009. On April 28, 2010, I found the Employer's then current proposal on health insurance benefits to be a permissive subject of bargaining. City of Danville, 26 PERI ¶ 32 (IL LRB-SP G.C. 2010). That proposal granted the Employer such an extremely broad range of flexibility to make major changes in health insurance benefits that it constituted a waiver of the Union's statutory right to bargain over mid-term changes with respect to a mandatory subject of bargaining i.e. health insurance. The Employer subsequently changed its proposal on health insurance benefits and it is that proposal which is the subject of this declaratory ruling.

The Employer's proposed language with regard to health insurance benefits is as follows. (The proposed additions are denoted with italicized text and the proposed deletions with bold, italicized text):

Article 22, Section 1. Group Insurance: *Single coverage medical and hospitalization insurance shall be paid in full with no cost to the employee.* From and after the execution of this Agreement, employees covered by this Agreement shall, *pay monthly* by payroll deduction, *contribute toward their applicable monthly premium* for *dependent health insurance* coverage as follows: (The Employer deleted any reference to the cost of insurance reserving the right to present its final offer on insurance contributions during a mutual exchange of final offers.)

Payroll deduction shall be in equal installments on bi-weekly basis. Such insurance shall cover the employee and his/her dependents with no reduction in current coverage, except as provided below.

- (A) *Accident. The first accident or injury for each covered person in a calendar year shall be covered as under the Employer's insurance plan in effect on May 1, 1993, but the second and each subsequent accidental injury to the same covered person in a calendar year shall be treated as any other covered illness.*
- (B) *Deductible. The deductible shall be \$200 per individual, \$600 per family per year;*
- (C) *Co-payment. Co-payment by the employee shall be on the basis of 20% of the first \$3000 plus deductible.*
- (D) *Maternity benefits: The Employer will provide maternity benefits as stated*

in the current insurance plan as follows:

“The terms sickness or illness, wherever it appears in this policy or any Benefit Provision which forms a part of this policy, shall be deemed to include pregnancy. It is further provided that disability due to or expenses incurred as a result of pregnancy shall be payable on the same basis and subject to the same limitations as disability due to expenses incurred as a result of any other sickness or illness”

(e) Plan Administration. The Employer shall have the right to adopt, without reduction of current coverage (except as herein provided), any one or more of the following utilization management programs: hospital preadmission and admission assistance; and medical and psychiatric case management. Failure or refusal of any covered person to comply with the requirements of the hospital preadmission and admission to the program so adopted may result in a penalty of not more than \$250 with respect to the hospitalization question. Any of such programs so adopted by the Employer will be explained to the Union prior to implementation.

*Section 22.2 Rights to Select Carriers. The insurance benefits provided for herein shall be provided under a group policy or policies or through a self-insured plan selected by the Employer. Effective January 1, 2013, or as of the date of issuance of Interest Arbitrator Richard Stanton's Award in ILRB Case No. S-MA-11-336 (whichever is later), the Employer shall provide employees with the option to elect health care coverage for themselves and their dependents in either a: Employer-provided Preferred Provider Organization (“PPO”) Plan; Health Maintenance Organization (“HMO”) Plan; or Point of Service (“POS”) Plan. The Summary Plan Descriptions for the PPO, HMO, and POS Plan options are attached to this Agreement as “Exhibits D.1 thru D.3” respectively. The Employer shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the Employer 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 similar*.*

Section 22.3. Optional Managed Care Plan(s). The Employer shall have the right to offer one or more optional HMO, PPO or similar managed-care health plans from time to time. Any employee who elects to participate in such a plan as an alternative to the Employer's group insurance provided under Section 22.1 and 22.2 above, shall pay, in addition to the deductions for dependent coverage, if any, such part of the premium cost for such plan as exceeds the Employer's then budgeted per employee escrow cost under its self-insured insurance program.

Section 22.3.: Copy of Plan: Upon request by the Union, the Employer shall provide the Union with a complete copy of the current policy or policies or self-insured plan for such insurance benefits.

Section 22.4. Section 125 Plan: The Employer agrees to adopt a plan pursuant to the provisions of section 125 of the Internal Revenue Code with respect to the payroll deduction for employee contributions for insurance hereunder. Such Plan shall be adopted within 90 days after the date of this Agreement.

The question is whether the subject matter raised by the Employer's proposal is a mandatory subject of bargaining. The Employer believes that the health insurance benefits provision in Section 22 is a mandatory subject of bargaining and therefore subject to interest arbitration upon impasse. The Union believes that the provision is a permissive subject because it requires the Union to waive its statutory right to bargain over a mandatory subject, and therefore is not subject to interest arbitration.

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. American Federation of State, County & Municipal Employees v. Illinois State Labor Relations Board, 190 Ill. App. 3d 259, 269 (1st Dist. 1989). See Central City Education Association, IEA-NEA v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992) (providing more refined analysis of mandatory subjects 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 Board has consistently held that questions regarding employees' health insurance benefits are mandatory bargaining subjects. City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991). The Board has further stated that the waiver of a statutory right is a permissive subject of bargaining. Village of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001); County of Cook (Cook County Hospital), 15 PERI ¶ 3009 (IL LLRB 1999); see also Board of Trustees of the University of Illinois, 8 PERI ¶ 1014 (IL ELRB 1991), aff'd, 244 Ill. App. 3d 945 (4th Dist. 1993); Board of Regents of the Regency Universities System (Northern Illinois University), 7 PERI ¶ 1113 (IL ELRB 1991). Statutory rights provided to public employees by the Illinois Public Labor Relations Act include "the right ... to bargain collectively through representatives of [the employees'] own choosing on questions of wages, hours and other conditions of employment." 5 ILCS 315/6; International Association of Firefighters, Local 413 and City of Rockford, 14 PERI ¶ 2030 (IL LRB-SP 1998). The duty to bargain extends to issues that arise during the term of a collective bargaining agreement. Mt. Vernon Education Association, IEA-NEA v. Illinois Educational Labor Relations Board, 278 Ill. App. 3d 814, 816 (4th Dist. 1996).

The Union, as it did in City of Danville, 26 PERI ¶ 32 (IL LRB-SP G.C. 2010), argues that the Employer's proposal permits the Employer to make unilateral changes to health insurance benefits during the term of the agreement without bargaining or impasse procedures provided under the Act and therefore contains a de facto waiver of bargaining over a mandatory topic. A waiver in a collective bargaining agreement must be established by clear and express

contractual language. American Federation of State, County & Municipal Employees v. Illinois State Labor Relations Board, 190 Ill. App. 3d 259, 269 (1st Dist. 1989). The Union argues that a waiver is established by the language in the Employer’s proposal stating that “[t]he [Employer] shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed care plan or changing policies.” Rather than clear and express language waiving the Union’s statutory bargaining rights, this provision is ambiguous. This is particularly so in the absence of a record of the parties’ negotiations or other evidence that the Employer intended that provision to be a waiver or that it intended to reserve to itself the authority to change insurance carriers, self-insure, implement a managed care plan or change policies. Even if the phrase “notify and consult” was clearly intended to waive the Union’s right to bargain over these changes during the term of the parties’ successor agreement; the Employer’s proposal would still be a mandatory subject of bargaining.

“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 Education Association, 278 Ill. App. 3d at 816-17. “Broad” zipper clauses, with broad language expressly waiving bargaining on matters unforeseen or unknown by either party at the time of the contract, are permissive subjects of bargaining. Id.¹ The language at issue in this case can be seen as a narrow zipper clause waiving further bargaining on a defined set of subjects known to the parties at the bargaining table: changing insurance carriers, self-insurance, implementing a managed care plan or changing policies. As with a narrow zipper clause the language at issue, even though a

¹ Decisions of this Board comport with this understanding of zipper clauses. Service Employees International Union, Local 73, and Illinois Secretary of State, 24 PERI ¶ 22 (IL SLRB 2008) (citing State of Illinois, Department of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000) (“Midterm bargaining over mandatory subjects is required ... if they were neither fully bargained during the course of negotiating the collective bargaining agreement, nor the subject of a clause in a collective bargaining agreement.”)).

waiver, is a mandatory bargaining subject.²

The Union argues that the Employer's proposal is overly vague in stating that regardless of any mid-term Employer proposals as to insurance carriers, self-insurance, managed care plans or policy changes "the level of benefits as provided for herein shall remain substantially similar." The Union asserts that the parameters of what the Employer means by "similar" are unknown and unforeseeable as the Union cannot know what the benefit would be similar to. This assertion has no merit. The Employer's proposal specifically references three insurance options: a Employer-provided Preferred Provider Organization Plan, a Health Maintenance Organization Plan or a Point of Service Plan. The Employer's proposal also provides a summary of benefits provided by each plan. Thus, the Union has a benchmark with which it can determine whether or not any insurance changes proposed by the Employer results in benefit levels remaining substantially similar. It was the lack of such a benchmark on which the prior Danville declaratory ruling rested.³

² The Union argues that the Employer's proposal impinges on its right under Section 8 of the Act to grieve and arbitrate disputes concerning contract administration and interpretation and is therefore a permissive subject of bargaining. There is nothing in the Employer's proposed provision, however, that limits the Union's right to file or arbitrate grievances based on an alleged breach of that provision. The Union also relies on the prior Danville declaratory ruling and the finding therein that the Employer's insurance proposal was a permissive subject of bargaining. While the proposal at issue in that earlier ruling had almost the same notify and consult language as the instant case, the permissive nature of the proposal was not based on that language but on language linking the insurance benefits of Union represented employees to those of other Employer employees.

³ As stated in that case:

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.

IV. Conclusion

For these reasons, I find the language in the Employer's final offer at issue in this case is a mandatory subject of bargaining.

Issued in Chicago, Illinois, this 31st day of January 2013.

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**Jerald S. Post
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