

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

City of Rockford,)	
)	
Employer)	
)	
and)	Case No. S-DR-13-005
)	
International Association of Firefighters,)	
Local 413,)	
)	
Labor Organization)	

DECLARATORY RULING

On December 6, 2012, the City of Rockford (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 one of the proposals for a successor collective bargaining agreement offered at interest arbitration by the International Association of Firefighters, Local 413 (Union) is a mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), (Act). Both parties filed timely briefs.

I. Background

The Union is the exclusive historical bargaining representative of a unit comprised of the City's firefighters, firefighter/paramedics, driver-engineers, lieutenants, captains, inspectors, mechanics, 911 telecommunicators, alarm operators, EMS and training coordinators. The parties have had a series of collective-bargaining agreements since at least 1979, the most recent expiring on December 31, 2011. Bargaining for a successor agreement began in October 2011 and on February 28, 2012, after reaching impasse, the Union requested interest arbitration. One of the Union's final proposals at arbitration is as follows:

Section 4.1 - Company Strength

In accordance with the total complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.

The parties mutually agree this section shall mean that the current level of manpower will be continued, no fewer than sixty-two (62) personnel shift (A, B, C), who are assigned to a maximum of thirteen (13) fire suppression companies and seven (7) ambulances. Non-fire suppression companies and non-ambulances cannot be staffed by the sixty-two (62) personnel mentioned above. Plus two (2) airport personnel, so long as an Intergovernmental agreement between the Airport Authority and the City of Rockford fire services at the airport is in effect. The manning number will be increased by airport personnel pursuant to the provisions below.

The airport manning will be directly related to the index of fire protection required at the airport. An independent company will be implemented at the airport (Officer, Driver and firefighter) effective January 1, 2010 or when the fire protection index increases, whichever is sooner.

Effective January 1, 2008 an additional driver engineer per shift will be added to the airport firefighting company.

The parties' first mention of a "Company Strength" provision was Article 4, Section 1 of their three-year agreement effective January 1, 1979. That provision stated as follows:

In accordance with the total complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.

This same provision appears in the parties' three-year agreement effective January 1, 1982, and presumably in their two-year agreement effective January 1, 1986.¹ The same provision appears in the parties' two-year agreement effective January 1, 1988. With that agreement the parties' executed a side bar agreement stating the following:

¹ Neither party submitted any record of a collective bargaining agreement for the period January 1, 1985, through December 31, 1986. However, neither party suggests that there was any change in the language of Article 4, Section 1, from that of the prior and subsequent agreements.

This Side-Bar Agreement between the City of Rockford and the International Association of Firefighters, Local Number 413 is in reference to Section 4.1 of the Collective Bargaining Agreement between the parties dated January 1, 1988, and should be read in accordance with that section while interpreting and applying the Collective Bargaining Agreement.

Section 4.1 reads as follows:

“In accordance with the total complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.”

The parties mutually agree this section shall mean that the current level of manpower, no fewer than fifty-four (54) men working for shift (A, B, C) who are assigned to companies or ambulances, including a maximum of fifteen (15) companies and three (3) ambulances.

The language of Section 4.1 and the parties’ side bar agreement remained the same until the agreement effective January 1, 1992. In that agreement the parties added this final sentence to the second paragraph of the side-bar agreement:

In the event that a fifteenth company is put into service the level of manpower shall increase to fifty-seven (57) men

and added this new paragraph:

It is also agreed by the parties that in the event that more men are available than the levels set forth above, they shall be used on companies and ambulances.

Until the parties’ agreement of January 1, 2006, through December 31, 2008, the language of Section 4.1 remained as it was in 1979 while the changes already noted (and other minor changes as well) were made to the side bar agreement. With the January 2006 agreement the side bar agreement was eliminated and the current language of Section 4.1 was adopted.

II. Relevant Statutory Provisions

The duty to bargain is set out in Section 7 of the Illinois Public Labor Relations Act,

relevant portions of which 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 4 of the Act protects certain managerial rights as follows:

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.

However, Section 4 also contains a caveat of particular relevance to the question at issue:

To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they

have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

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). In Central City Education Association, IEA-NEA v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992), the Illinois Supreme Court provided a refined analysis of mandatory subjects of bargaining where matters concern both wages, hours and conditions of employment and also inherent managerial authority. However, the second paragraph of Section 4 of the Act makes clear that matters concerning wages, hours or conditions of employment are mandatory subjects of bargaining if the parties had, prior to the effective date of the Act, entered agreements on those topics.

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 Union has proposed at interest arbitration to change Section 4.1 by reducing the maximum number of fire suppression companies and increasing the maximum number of ambulances in the Employer's fire department to which the existing 62-member bargaining unit of firefighters may be assigned and adding that none of those 62 shall staff non-fire suppression companies or non-ambulances. The issue under consideration then is whether the proposal to change the maximum number of companies and ambulances and limit the assignment of current

personnel to fire suppression companies and ambulances is a mandatory or permissive subject of bargaining.

Since January 1, 1979, there has been a provision in the parties' collective bargaining agreement regarding the subject of company strength as reflected in Section 4.1, titled "Company Strength." That same language of Section 4.1, as it existed in the 1979 agreement, has been included in every subsequent collective bargaining agreement. That language refers to the "total complement" of personnel, the number of stations to be manned and the manpower available in placing an obligation on the Employer to "distribute men and officers to achieve the highest efficiency in operations in the greatest protection, and in the interest of firefighter safety." Given this, the parties engaged in pre-Act bargaining over the matter or subject of company strength, the broad scope of which includes issues regarding the minimum number of personnel and the maximum number of fire suppression companies and ambulances available for assignment to them. That the parties subsequently more specifically addressed these issues within the Section 4.1 Company Strength provision only reinforces this conclusion.

It is true, as the Employer asserts, that Section 4.1 as it existed in 1979 makes no reference to a specific number of personnel, fire suppression companies or ambulances. The Employer argues that in granting it discretion over these matters the parties' Section 4.1 of the 1979 agreement only reinforces the Employer's inherent managerial right to determine how it would staff and operate its' fire department. The Employer's argument does not account for the fact that this asserted inherent management right was the subject of and created through pre-Act bargaining over which, pursuant to Section 4 of the Act, the Employer has a continuing duty to bargain. State of Illinois, Department of Central Management Services, 3 PERI 2026 (ISLRB 1987). That the specifics of the company strength provision have changed is irrelevant. Section

4 of the Act does not bind parties to the specific terms of their agreement on a given matter or subject as of the effective date of the Act, but imposes a continuing duty to bargain over that same matter or subject.² Thus, the Act anticipates that parties will alter their pre-Act agreement on any given matter or subject. Were this not so, there would be no reason to impose a continuing duty to bargain over all matters addressed in pre-Act bargaining agreements.³

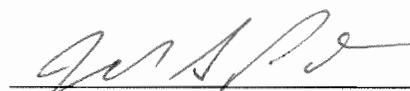
Because the Union's proposal regarding Section 4.1 of the parties' existing collective bargaining agreement is a mandatory subject of bargaining pursuant to the second paragraph of Section 4, it is not necessary to use the analysis set forth in Central City Education Association v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992), to resolve any tension between Section 7's duty to bargain and Section 4's reservation of managerial rights.

IV. Conclusion

I find the language in the Union's final offer concerning company strength concerns a mandatory subject of bargaining.

Issued in Chicago, Illinois, this 21st day of February 2013.

**STATE OF ILLINOIS
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**Jerald S. Post
General Counsel**

² For this reason I find no significance in the fact that the Union admitted in a 2010 arbitration hearing that the present language of Section 4.1 of the parties' agreement has been in existence since January 1989, a date after the effective date of the Act.

³ The Employer further argues that the Union's proposal would require it to use no more than 13 companies and seven ambulances. However, the better interpretation of the Union's proposal is that it establishes a maximum on the number of companies and ambulances that can be assigned to the current complement of 62 bargaining unit members. Nothing in that proposal limits the Employer's ability to increase the number of unit members in order to add an additional company or ambulance.