

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

City of Carbondale Police Department,	)	
	)	
Employer	)	
	)	
and	)	Case No. S-DR-14-002
	)	
Illinois Fraternal Order of Police	)	
Labor Council,	)	
	)	
Labor Organization	)	

**CORRECTED DECLARATORY RULING<sup>1</sup>**

On July 17, 2013, the City of Carbondale Police Department (Employer/City) and the Illinois Fraternal Order of Police Labor Council (Labor Organization/FOP) filed a joint request for a Petition for a 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 FOP’s proposals concerning work standards offered in response to the City’s intention to establish such standards are mandatory subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). Both parties filed timely briefs; the City on August 2, 2013, and FOP on August 7, 2013.<sup>2</sup>

**I. Background**

FOP is the exclusive bargaining representative of a unit of patrol officers and investigators in the City’s police department. On March 5, 2013, City representatives informed

---

<sup>1</sup> The declaratory ruling initially issued in this case on September 13, 2013, contained a typographical error on page seven, erroneously referring to a permissive subject of bargaining as mandatory.

<sup>2</sup> FOP was granted an extension of time to file its brief.

FOP representatives of its intent to include quantifiable performance measures or standards for bargaining unit personnel as part of the existing evaluation procedure. On March 7, 2013, FOP representative James Daniels sent a letter to the City's police chief Jody O'Guinn requesting that the parties bargain over new work standards prior to their implementation.<sup>3</sup> On June 3, 2013, the City submitted a draft of its intended monthly performance standards to FOP which, in matrix fashion, listed eight job functions (such as traffic stops, warrant arrests and closed investigations) and set a range of numerical values to determine if, for a given function, an employee needed improvement or met or exceeded expectations.<sup>4</sup> Also, the performance of each officer and investigator would now be evaluated on a monthly basis rather than once a year.

On June 14, 2013, FOP sent a letter to the City demanding to bargain over the performance standards prior to their implementation and offering FOP's proposed standards. On June 17, 2013, the City responded to the FOP's demand to bargain stating that it had no duty to bargain over performance standards which only reflected in writing the City's already established expectations of employee performance.

On July 1, 2013, FOP submitted to the City its own proposed matrix of performance standards altering the numeric range assigned by the City to each of the eight job functions to determine whether an employee needed improvement or met or exceeded expectations. FOP acknowledged that, under Board law, its proposed matrix of performance standards concerned substantive aspects of the City's evaluation system over which the City had no statutory duty to bargain. FOP also requested bargaining over procedural aspects of the evaluation system and offered three criteria to be considered in mitigation of an individual's failure to reach a given

---

<sup>3</sup> According to Daniels, O'Guinn told him the reason for the performance standards was to increase the productivity of the officers and investigators and to hold them responsible for their productivity.

<sup>4</sup> For example, a police officer who made 10 to 20 traffic stops in a month was rated as meets expectations.

level of performance. The first criterion to be considered in mitigation was whether that individual was on leave, at training or otherwise unavailable for duty a significant part of the month. The second criterion was if productivity was impacted by factors outside of the individual's control such as weather conditions or substantial departmental operations changes. The last criterion was if the individual was involved in time consuming calls, extended special assignments, or other legitimate activity that made it difficult to meet the monthly standard. FOP's letter stated that if any of these criteria were satisfied then an individual's failure to meet the performance standards in any given month "will be considered mitigated."

## **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.

### **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 Relations Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). See Central City Educ. Ass’n, IEA-NEA v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496 (1992) (providing 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. 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).

As stated in the parties’ joint Petition for a Declaratory Ruling, the issues in dispute concern FOP’s proposals in its July 1, 2013, letter to the City. In that letter FOP made two proposals. One proposal was to change the numeric values the City used to determine whether the performance of officers and investigators in each of eight job functions needed improvement, met expectations or exceeded expectations. In each of the eight functions FOP proposed a lower performance standard than the City. For example, where the City proposed that a range of 0 to 10 traffic stops in a month indicated an officer needed improvement in that area, FOP proposed that the range should be 0 to 9 traffic stops, and where the City proposed that 9 or more closed

investigations in a month indicated an investigator exceeded expectations in that area, FOP proposed a range of 7 or more closed investigations. In addition to lower performance standards, FOP's July 1, 2013 letter also proposed that the City include three mitigating factors for an individual's failure to reach a given level of performance in any given month: whether the individual was on leave, at training or otherwise unavailable for duty a significant part of the month; if the individual's productivity was impacted by factors outside his or her control; and if the individual was involved in legitimate activity that made it difficult to meet the monthly standard. Both parties primarily rely on the decision in Village of Orland Park, 21 PERI 42 (ILLRB-SP 2005), to support their positions on whether either of these two proposals is a mandatory subject of bargaining.

In Village of Orland Park the issue before the Board was whether an employer's unilateral change in its evaluation process concerned a mandatory subject of bargaining. For several years public works employees were given one performance evaluation by Village foremen that determined their step wage increase. The foremen based their annual evaluation, in part, on the informal, verbal comments from crew leaders about their crew member's performance. The foremen may or may not have made notes on these comments throughout the year. Deciding to change this process, the Village required foremen, every two or three months, to have crew leaders submit formal reports on their crew's work performance. The foremen then used these reports to issue quarterly employee performance evaluations as well as an annual evaluation.

Applying the test for determining whether any given subject is mandatorily negotiable, as set forth in Central City Educ. Ass'n and City of Belvidere v. Ill. State Labor Relations Bd., 181 Ill. 2d 191 (1998), the Board, in Village of Orland Park made a distinction between the

substantive and procedural aspects of an employer's evaluation process stating:

We believe the difference between the mechanical, procedural aspects of an employee's evaluation, and the substantive factors by which his work performance is rated, is critical to our determination of whether the [employer's] project evaluation system is a mandatory subject of bargaining.

Further, the Board illustrated the difference between substantive factors and procedural aspects, stating as examples of substantive criteria such matters as the factors upon which an employee's performance is rated and the expected level of performance, and as examples of procedural aspects issues such as the timing of the evaluation and whether and how an evaluation may be appealed. The Board, in concluding that the substantive criteria of employee evaluations, as opposed to the procedural aspects, are not a mandatory subject of bargaining stated:

We find, however that the substantive aspects of the evaluations do involve matters of inherent managerial discretion....It is clear that the purpose of evaluations is to assess the quality of employee work performance; ensuring the quality of that performance, in turn, necessarily involves important policy determinations and the overall direction of an employer's workforce. [Citation omitted] In addition, the [Employer's] ability to determine the standard and level of employee work performance also relates directly to the standards of service it provides to the surrounding community. Thus the [Employer's] decisions about the substantive portion of the project evaluation system clearly impact matters of inherent managerial authority.

Having considered the burdens and benefits of bargaining over the [Employer's] decision about substantive criteria included in the project evaluations, we conclude that that decision is not amenable to bargaining. We find that unless an employer is able to determine the tasks for which its employees will be responsible, and the level of performance that is expected on those tasks, the employer truly is unable to manage its workforce and control the quality and standards of services it provides. The substantive criteria of employee evaluations, in our view, are thus crucial to an employer's ability to direct its employees and requiring bargaining over those criteria would severely impede that ability. The mechanical aspects of the evaluation process to not implicate those same concerns.

In this case, FOP has proposed changes in the numeric values the City intends to use to determine whether the performance of its employees in each of eight job functions needs

improvement, meets expectations or exceeds expectations. These numeric values establish the City's expectations of its employees' job performance and are the basis upon which employee work performance is rated. Consequently, as the FOP conceded in its July 1, 2013, letter to the City, the decision in Village of Orland Park dictates a finding that these values are substantive evaluation criteria and that FOP's proposal to change these values is not a mandatory subject of bargaining. However, FOP, in its supporting brief, argues that this case differs from Village of Orland Park because the City's concern in changing the evaluation system was to increase productivity of certain employees rather than to adjust the standard of service provided to its citizens. FOP offers no support for a finding that the decision in Village of Orland Park rests on any consideration of the reasons why an employer establishes or changes its standards and levels of employee work performance. Instead, that decision makes clear, without any such consideration, that an employer's "ability to determine the standard and level of employee work performance also relates directly to the standards of service it provides to the surrounding community." Thus, even if the Village was changing performance standards solely out of concern for worker productivity, it would also be setting the standards of service it provides.<sup>5</sup>

FOP's second proposal is also a permissive subject of bargaining. While Village of Orland Park does not specifically address mitigating factors for an employee's failure to meet a given performance standard, mitigation has less to do with the mechanical or procedural aspects of the evaluation process than adjusting the numerical performance values established by an employer based on a given set of circumstances. If an employer has the inherent right to establish performance standards free of any statutory duty to bargain over those standards it

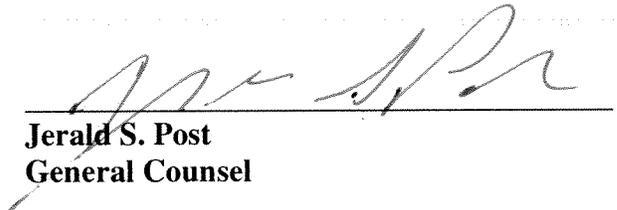
---

<sup>5</sup> The City disputes FOP's contention that the City's police chief told FOP representatives that the new performance standard was established in order to cause some employees to be more productive. For this reason, if there was merit to FOP's attempt to distinguish Village of Orland Park, it would raise a question of fact that could not be addressed in this declaratory ruling.

follows that the employer also has the inherent authority to determine what, if any, adjustments it will make to those standards free of any mandatory duty to bargain over that issue. FOP's proposal is that if one of three criteria is met any deficiency in an employee's performance "will be considered mitigated" thereby limiting the City's discretionary authority to adjust the substantive criteria of performance evaluations.<sup>6</sup>

**Issued in Chicago, Illinois, this 18th day of September, 2013.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**



---

**Jerald S. Post  
General Counsel**

---

<sup>6</sup> In its supporting brief, the City concedes that a proposal suggesting mitigating factors an employer may consider upon an appeal or review of an employee's performance evaluation could reasonably be found to be a procedural matter and a mandatory subject of bargaining.