

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
GENERAL COUNSEL**

International Brotherhood of)	
Teamsters, Local 700,)	
)	
Labor Organization)	
)	Case No. S-DR-15-001
and)	
)	
County of Lake and Sheriff of Lake County,)	
)	
Employers)	

DECLARATORY RULING

On July 9, 2014, the County of Lake and Sheriff of Lake County (Employers) filed a unilateral 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. The Employers request a determination as to whether the proposal submitted by the International Brotherhood of Teamsters, Local 700 (Union) concerning shift preferences is a mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). Both parties filed briefs.

I. Background

The Union is the exclusive bargaining representative of a bargaining unit of five employees in the job classification of Correctional Lieutenant, employed jointly by the County of Lake and Sheriff of Lake County. On July 10, 2014, the parties proceeded to interest arbitration to establish their first collective bargaining agreement.

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 purpose 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.

5 ILCS 315/7 (2012).

Section 4 of the Act provides:

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.

5 ILCS 315/4 (2012).

III. The Union's Proposal

Shift Preference

Management recognizes the hardships that shift work places on individuals and the importance of working with individuals to accommodate shift preferences. Management agrees to solicit choice of shift preference of all the bargaining unit members during each year during the month of December. Management further agrees to place each bargaining unit member on their choice and seniority will be the

determining factor (member with more seniority will have preference over lower seniority members where conflict exists between members).

IV. Issues

At issue is whether the Union's shift preference proposal is a mandatory subject of bargaining.

The Employer argues that the Union's proposal is a permissive subject of bargaining because it limits the Employer's managerial right to determine its standard of service and its ability to organize its department as it sees fit. The Employer explains that the Union's proposal makes no allowance for the Employer's legitimate operational needs by basing shift assignments solely on seniority and officer choice. For example, it does not permit the Employer to consider job-specific knowledge in making shift assignments, nor does it permit the Employer to deviate from the seniority-based assignments to accommodate extended absences or to expose lieutenants to different operational and supervisory issues present on another shift. According to the Employer, the small number of employees in the unit magnifies the adverse affect of the Union's proposal on the Employer's inherent managerial authority. Finally, the Employer states that its agreement to the inclusion of the identical shift-preference language in other contracts is immaterial to the characterization of the instant proposal as permissive or mandatory because parties may voluntarily agree to, and incorporate, permissive subjects of bargaining in their contracts. In fact, they may insist on the removal of such permissive subjects in future negotiations, even if they have agreed to their inclusion in the past.

The Union opposes the Employer's petition, arguing that it raises disputed issues of fact that should be referred to the interest arbitrator for determination. First, the Union asserts that there is a factual dispute as to the lieutenants' interchangeability, relevant to the proposal's

impact on the Employer's inherent managerial authority. The Union claims that the current lieutenants' comparable experience, capability, and seniority obviates the Employer's need for flexibility in making shift assignments, and in turn eliminates the proposal's infringement on the Employer's inherent managerial authority. The Union argues that it is impossible to draw inferences with respect to the Employer's need for flexibility, given the small size of the unit (five employees), and that disputes over this key factual issue render a declaratory ruling improper.

Similarly, the Union asserts that the petition raises factual issues concerning the burdens that bargaining over this proposal would impose on the Employer's inherent managerial authority. According to the Union, bargaining places little burden on the Employer's inherent managerial authority because the Employer has no need for flexibility in making shift assignments. The Union disputes the Employer's anticipated contention that the lieutenants materially differ with respect to their past training and certifications. In turn, the Union rejects the conclusion that the Employer must retain the discretion to select lieutenants specially suited to a particular shift or to pair more experienced lieutenants with less experienced ones.¹ The Union additionally notes that bargaining this proposal is not too burdensome because the Employer agreed to near identical language in the collective bargaining agreements covering Corrections Sergeants and Corrections Officers.

Finally, the Union analogizes its proposal on shift preference to seniority-based job-bidding procedures, which the Illinois Educational Labor Relations Board suggested was a mandatory subject of bargaining. The Union explains that its shift preference proposal, like job bidding procedures, is a mandatory subject of bargaining because it has no connection to the

¹ The Union also observes that there presently are no rookies to train.

selection of new employees and instead relates to the manner in which employees move laterally within the same job classification.

V. Discussion and Analysis

The Union's seniority-based shift preference proposal is a permissive subject of bargaining because it removes all Employer discretion to ensure that shift-staffing meets its operational needs.

Pursuant to Section 7 of the Illinois Public Labor Relations Act, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment — the "mandatory" subjects of bargaining. 5 ILCS 315/7 (2012); City of Decatur v. Am. Fed'n of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353 (1988); Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000); City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). Moreover, Section 4 of the IPLRA provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy." 5 ILCS 315/4 (2012).

To resolve the tension between Section 7 and Section 4, the Illinois Supreme Court has established the three-part Central City test: First, ask whether the matter is one of wages, hours and terms and conditions of employment. If the answer is "no," there is no duty to bargain. If the answer is "yes," the second step is to ask if the matter is also one of inherent managerial authority. If that answer is "no," there is a duty to bargain. If it is "yes," one must proceed to the

third step and "balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority." Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 523 (1992).

The Union's shift preference proposal satisfies the first prong of the test because it concerns wages, hours, and other terms and conditions of employment. Shift assignments dictate when an employee will be on duty and thereby directly affect hours of work. City of Hickory Hills, 18 PERI ¶ 2044 (IL LRB-SP GC 2002); Vill. of Evergreen Park, 12 PERI ¶ 2036 (IL SLRB G.C. 1996); Vill. of Arlington Heights, 6 PERI ¶ 2052 (IL SLRB G.C. 1990).

However, the Union's shift preference proposal also concerns the Employer's inherent managerial authority because it directly impacts the Employer's ability to fulfill its governmental mission of maintaining public safety through the provision of correctional services. City of Hickory Hills, 18 PERI ¶ 2044; Vill. of Evergreen Park, 12 PERI ¶ 2036; Vill. of Arlington Heights, 6 PERI ¶ 2052. Here, the Union's proposal diminishes the Employer's ability to manage its operation because it removes the Employer's flexibility to assign employees to particular shifts and contains no exceptions to seniority-based assignments for emergencies, extended absences, or training purposes. Vill. of Evergreen Park, 12 PERI ¶ 2036.

The proposal's rigidity and the persuasive reasoning of prior Declaratory Rulings demonstrate that there are no outstanding issues of fact bearing on the Employer's inherent managerial authority, which render this declaratory ruling improper. First, the proposal's failure to accommodate special circumstances demonstrates that it impinges on matters of inherent managerial authority, regardless of the lieutenants' purported interchangeability. City of Hickory Hills, 18 PERI ¶ 2044 ("Where seniority is the sole criterion in determining shift assignments, such a proposal is not a mandatory subject of bargaining").

Second, the issues that the Union categorizes as factual are more appropriately viewed as objections to the Employer's stated managerial concerns, which my predecessors have accepted at face value in issuing Declaratory Rulings. The General Counsel in Village of Evergreen Park drew a similar distinction between "facts" and "concerns," when the Village claimed that the declaratory ruling was improper, as the Union does here. See Village of Evergreen Park, 12 PERI ¶ 2036. In that case, the Village argued that a declaratory ruling required the resolution of disputed facts pertaining to the effect of shift assignments on productivity, the Village's need to train inexperienced officers by assigning them to work on all shifts, and the proposal's disproportionate adverse affect on less senior officers, who would receive the least favorable shifts. Id. The General Counsel found that the alleged factual disputes raised by the Village did not preclude a declaratory ruling because they merely highlighted the ways in which the Union's proposal could infringe on the Village's managerial authority. Id. The Union here similarly claims that the Village must flesh out its need for flexibility with evidence. Yet, the Employer's presentation of its legitimate concerns in this case is sufficient to permit a determination as to the mandatory or permissive nature of the Union's proposal. Accordingly, I take the Employer's concerns at face value and find that the Union's skepticism of those concerns does not render this Declaratory Ruling inappropriate. Id.

Addressing the third prong, the burden imposed on the Employer's managerial authority of bargaining this proposal outweighs any benefits that bargaining could provide the negotiation process. The burdens of bargaining a seniority-based shift preference proposal are significant where, as in this case, the proposal fails to accommodate an employer's legitimate interests in fulfilling its governmental mission and does not preserve management's right to deviate from a seniority system when necessary to achieve these ends. Vill. of Evergreen Park, 12 PERI 2036.

Here, the Union's proposal compromises management's power to assign employees with special qualifications to special tasks, determine that employees with certain abilities perform better on certain shifts, train employees, strengthen supervision, and respond to emergencies. City of Hoboken, 20 NJPER ¶ 25197 (NJ PERC 1994); Vill. of Arlington Heights, 6 PERI ¶ 2052. The impact on the employer's managerial authority is more pronounced in this case where the bargaining unit is small because there are fewer lieutenants on any single shift. Accordingly, the Union's proposal necessarily restricts the Employer to a narrower set of personal and professional strengths on each shift, while simultaneously eliminating the Employer's input to tailor their selection.

Notably, this difference renders immaterial the Employer's past inclusion of similar language in contracts covering other, larger groups of employees, and therefore does not bear on the burdens of bargaining over the same language with respect to the instant group. City of Elgin, 30 PERI ¶ 202 (IL LRB-SP 2014)(whether parties have bargained in the past over the subject at issue may be relevant to the third step of the Central City analysis), but see City of Mattoon, 13 PERI ¶ 2004 (IL SLRB GC 1997)(parties' inclusion of a provision in their previous collective bargaining agreement does not make an otherwise permissive subject a mandatory subject)(citing, Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 407 U.S. 157, (1971); Sheet Metal Workers Int'l Assn. Local Union No. 420 v. Huggins Sheet Metal, Inc., 752 F.2d 1473 (9th Cir 1985); Atlas Metal Parts Co., v. National Labor Relations Bd., 660 F.2d 304 (7th Cir. 1981); Bd. of Regents of the Regency Univs. Sys. (N. Ill. Univ.), 7 PERI ¶ 1113 (IL ELRB 1991); Flint School Dist., 1984 MERC Lab. Op. 336 (MI ERC 1984); Chula Vista School Dist., 14 PERC ¶ 21162 (CA PERB 1990); City of Johnstown, 25 PERB ¶ 3085 (NY PERB 1992).

Further, the benefits of bargaining this proposal are negligible because the Union failed to reference any equally important benefit to the bargaining process that negotiating over this proposal would confer. Vill. of Evergreen Park, 12 PERI 2036 (seniority-based shift preference proposal was permissive subject of bargaining where it made no allowance for legitimate managerial concerns); City of Hoboken, 20 NJPER ¶ 25197 (seniority-based shift preference proposal was permissive subject where the exception to seniority-based assignment was too narrow and did not allow employer to accommodate its training needs); Vill. of Arlington Heights, 6 PERI ¶ 2052 (finding seniority-based shift preference proposal mandatory where Employer retained the right to assign a small number of employees to shifts and stations based on the Employer's assessment of their skills, and without regard to seniority).

Finally, contrary to the Union's contention, it is impossible to draw a comparison between the Union's proposal in this case and the seniority-based bidding procedure, considered a mandatory subject of bargaining by the Illinois Educational Labor Relations Board in Serv. Employees Union, Local No. 119 and Bd. of Trustees of Univ. of Ill., 7 PERI ¶ 1061 (IL ELRB 1991). First, the IELRB presented no reasoning on the mandatory nature of that proposal and addressed only whether the Respondent bargained to impasse. Second, the outcome of any such analysis would not be transferable to this case, which involves the special needs of an employer with corrections- and public safety-related functions. Id. (addressing maids and building service workers); Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992) ("the scope of bargaining in the public sector must be determined with regard to the employer's statutory mission and the nature of the public service it provides"); see also State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, affirmed, 190 Ill. App. 3d 259 (1st Dist. 1989). In addition, the

decision in Bd. of Trustees of Univ. of Ill. predates the Illinois Supreme Court's decision in Central City and clearly did not apply the prescribed analysis.

For these reasons, I find the Union's shift preference proposal is a permissive subject of bargaining.

Issued in Chicago, Illinois, this 19th day of August, 2014.

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