

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

Illinois Fraternal Order of Police Labor)	
Council,)	
)	
Labor Organization)	
)	Case No. S-DR-15-002
and)	
)	
Village of Lansing,)	
)	
Employer)	

DECLARATORY RULING

On July 11, 2014, the Village of Lansing (Employer) 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 Employer requests a determination as to whether the proposal submitted by the Illinois Fraternal Order of Police Labor Council (Union) concerning the residency requirement 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 Village of Lansing has a population of less than 1,000,000. The Union is the exclusive bargaining representative of a bargaining unit of police officers employed by the Village of Lansing. The parties' most recent collective bargaining agreement expired on April 30, 2012. On February 11, 2013, the parties began negotiations for a successor agreement. On January 24, 2014, the Union filed a demand for interest arbitration. The parties chose an arbitrator and agreed to arbitration ground rules. The parties' ground rules state that the parties

agree to submit the non-economic issue of residency to the interest arbitrator. On July, 11, 2014, the parties submitted their final offers to the interest arbitrator. The Union proposed to maintain the status quo concerning residency, which permits employees with 10 full years of service to establish residency outside of the Village, including outside the State of Illinois. The Employer proposed to change the status quo by permitting such employees to establish residency outside of the Village, but only within the State of Illinois. Both parties' proposals provide that an employee's failure to comply with the residency requirement will result in discipline.

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).

Section 14(i) of the Act provides the following in relevant part:

In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following:

- i) residency requirements in municipalities with a population of at least 1,000,000;
- ii) the type of equipment, other than uniforms, issued or used;
- iii) manning;
- iv) the total number of employees employed by the department;
- v) mutual aid and assistance agreements to other units of government; and
- vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties.

Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

5 ILCS 315/14(i) (2012).

III. The Union's Proposal

The Union's proposal provides the following in relevant part:

Section 25.1 Residency Requirement

Employees shall be required to reside within the Village of Lansing. After an employee completes ten (10) full years of service, that employee can establish

residency outside the Village of Lansing, without restriction, to include establishing residency outside of the State of Illinois.

IV. Issues

At issue is whether the Union's residency proposal concerns a mandatory subject of bargaining.

The Employer argues that the Union's proposal concerns a permissive subject of bargaining because it expressly authorizes bargaining unit members to establish residency outside the State of Illinois. The Employer contends that Section 14(i) of the Act classifies such proposals as non-mandatory subjects of bargaining by providing that an Arbitrator's decision "shall not allow residency outside of Illinois."¹ It points to case law and legislative history to support that proposition. Finally, the Employer asserts that the parties' inclusion of the Union's proposed language in prior collective bargaining agreements does not transform an otherwise permissive proposal into a mandatory one.

The Union argues that its proposal concerns residency, a well-established mandatory subject of bargaining for peace officers in municipalities with a population of less than 1,000,000. The Union acknowledges the limiting language of Section 14(i), cited by the Employer, but argues that such language does not render permissive the subject matter of the Union's proposal. To that end, the Union objects to the characterization of its proposal as one addressing "residency outside of Illinois" and instead asserts that the subject matter concerns "residency" more broadly. The Union argues that a narrower construction of its proposal would be contrary to the purposes of a Declaratory Ruling, which should not deconstruct a particular offer but should simply ascertain whether its subject matter addresses a mandatory or permissive topic of bargaining. According to the Union, adopting the Employer's narrow construction would

¹ This language is echoed in the Board's rules. 80 Ill. Admin. Code 1230.90(l).

improperly require me to substitute my judgment for that of the arbitrator in weighing the proposal's merits and determining whether it may be awarded as a matter of law. Finally, the Union contends that the petition is moot because the arbitrator is authorized to craft his own residency provision rather than adopting proposals presented by the parties.²

V. Discussion and Analysis

The Union's residency proposal does not address a topic specifically excluded from interest arbitration under Section 14(i) of the Act, as the Employer contends. Rather, it addresses a mandatory subject of bargaining under the Central City test. However, Section 14(i) precludes an arbitrator from awarding the Union's proposal and incorporating it into an award.

Pursuant to Section 7 of the IPLRA, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment — the “mandatory” subjects of bargaining. 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

² The Union also notes that the procedural posture of this case is different from the norm. Usually, one party advances a particular subject matter to interest arbitration while the other party later objects to its submission. Here, by contrast, the Employer both advanced the subject of residency to interest arbitration and now objects to the Union's proposal on that very subject. The Union concludes that the Employer is forcing the matter.

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 Board applies the Central City test to determine whether a topic is a mandatory subject of bargaining, unless the topic is specifically excluded from interest arbitration under Section 14(i) of the Act. Vill. of Oak Lawn v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (1st) 103417 ¶ 23. Where Section 14(i) specifically excludes a topic from interest arbitration, application of the Central City test is unnecessary because such specifically excluded topics cannot be mandatory bargaining subjects. Id.; see also Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel, 347 Ill. App. 3d 538, 545 (1st Dist. 2004).³

Tenets of statutory construction and legislative history demonstrate that the Union’s proposal does not address a topic that is specifically excluded from interest arbitration. First, the content of the Union’s proposal is not reflected in the list of topics that the arbitration “award shall not include.” Section 14(i) “precludes certain *listed topics* from being classified as [mandatory bargaining subjects].” Vill. of Oak Lawn, 2011 IL App (1st) 103417 at ¶ 20 (emphasis added). It thereby creates exceptions to the broader rule that lists topics to which the award “shall be limited.” Id. Under well-established tenets of statutory interpretation, topics left off the list of exclusions are not precluded from classification as mandatory subjects of bargaining. Ill. State Treasurer v. Ill. Workers' Compensation Com'n, 2013 IL App (1st)

³The omission of a topic from the list of exclusions does not establish that the topic is a mandatory subject of bargaining. Vill. of Oak Lawn, 2011 IL App (1st) 103417 at ¶ 18, 20 (Section 14(i) “only relates to the classification of a matter as a mandatory bargaining subject insofar as it precludes certain listed topics from being classified as such”).

120549WC ¶ 28 (“the enumeration of exceptions in a statute is construed as an exclusion of all other exceptions.”). Here, that list of exclusions fails to reference residency requirements for municipalities of Lansing’s size that allow residency outside of Illinois. Thus, Section 14(i) does not identify the subject of Union’s residency proposal as a topic of bargaining excluded from interest arbitration.

Further, the legislature intended to allow parties to submit even broad residency proposals to the interest arbitrator, such as the Union’s in this case. In fact, the purpose of Section 14(i)’s residency provision was to widen the scope of the arbitrator’s jurisdiction rather than to narrow it. Representative Schakowsky stated that the amendment served to “allow residency requirements ... to be a subject of bargaining and [to] utilize the arbitration process as a way to settle unresolved disputes over the issue.”⁴ 90th Ill. Gen’l Assembly, House of Rep. Tr. May 12, 1997, p. 111. Representatives Scott and Boland echo this statement. 90th Ill. Gen’l Assembly, House of Rep. Tr. April 18, 1997, pp. 27 & 31.⁵ Boland’s nod to the qualifying language in Section 14(i) simply acknowledges that the statute restricts the type of residency proposal that an arbitrator may grant. *Id.* p. 24.⁶ His statement is therefore consistent with the uniformly expressed legislative intent to channel residency disputes through the interest arbitration process. Thus, the Union’s submission of the instant proposal to the arbitrator furthers the legislature’s intent that parties resolve their disputes over residency through interest arbitration.

⁴ Representative Schakowsky commented on identical language addressing firefighter residency.

⁵ Representative Scott stated that the amendment “allows for the negotiation of the subject” and that it “will just make [residency for certain municipalities] a negotiable item.” Representative Boland similarly stated that the amendment “allow[s] this to be a bargaining issue ... to be settled by an arbitrator if ... the two sides don’t come to an agreement.”

⁶ Representative Boland noted that “this Bill also states that an arbitrator would not be allowed to grant an award allowing firefighters to reside outside of the State of Illinois.”

Moreover, the benefits of bargaining over residency requirements, implicitly acknowledged by the amendment of Section 14, render the instant residency proposal a mandatory subject of bargaining under the Central City test. Addressing the first prong, residency requirements directly affect bargaining unit employees' terms and conditions of employment because they restrict employees' choice of where to live, significantly impacting matters ranging from cost of living to choice of school district. Further, they may lead to an employee's discharge if violated. Cnty. of Cook, 347 Ill. App. 3d at 551 (residency requirement satisfied first prong of the Central City test where failure to comply resulted in discipline); City of Country Club Hills, 17 PERI ¶ 2043 (IL LRB-SP 2001).

With respect to the second part of the Central City test, the Employer has not argued that residency is a matter of inherent managerial authority. It only notes that the qualifying language in Section 14(i) was intended to eliminate the fiscal impact of permitting public employees to reside outside the State and to foster state patriotism. However, the Employer does not address the Central City test on brief and does not explain the manner in which the Union's proposal infringes on one or more of the managerial rights enunciated in Section 4 of the Act. Town of Cicero v. IAFF, Local 717, 338 Ill. App. 3d 364, 370 (1st Dist. 2003) (residency did not implicate a matter of inherent managerial authority where the Employer did not present a basis for that assertion); but see Cnty. of Cook, 347 Ill. App. 3d at 552; Am. Fed. of State, Cnty., and Mun. Empl., AFL-CIO, 190 Ill. App. 3d at 267-68. Thus, residency is not a matter of inherent managerial authority in this case.

Finally, any potential burden that bargaining over the Union's residency proposal places on the Employer's inherent managerial authority is outweighed by the significant benefits of bargaining to the decision-making process. Indeed, the well-established benefits of bargaining

over residency requirements are equally applicable where the proposal permits residency outside the state, as it does here. Residency issues are well-suited to the arbitration process because the “interest arbitrator is in an ideal position to compare the employees’ individual autonomy with regard to living conditions to the societal benefit of the proposed restriction.” City of Country Club Hills, 18 PERI ¶ 2042 (IL LRB-SP GC 1999). He may weigh the parties’ interests, consider the public welfare, and assess residency requirements imposed by similar communities. Id. For this reason, “the entire decision-making process can only benefit from the arbitrator’s expertise in making such evaluations.” City of Country Club Hills, 17 PERI ¶ 2043 (emphasis added). Similarly, in this case, the parties may reap the benefits of the arbitrator’s expertise in fashioning a resolution to their dispute under Sections 14(g) and (h) of the Act.⁷ Id.; 5 ILCS 315/14(g) & (h).

Furthermore, the Employer’s inherent managerial authority is not in fact burdened by the submission of the Union’s proposal to interest arbitration because the arbitrator cannot grant the Union’s proposal. Section 14(i) bars the arbitrator from incorporating the Union’s proposal into the award by mandating that “residency requirements shall not allow residency outside of Illinois.” 5 ILCS 315/14(i). Section 15 of the Act further states that such a restriction takes precedence in case of a conflict with “any other law ... relating to wages, hours and conditions of employment and employment relations.” 5 ILCS 315/15. Thus, the limiting language in Section 14(i) eliminates any purported burdens of bargaining over the Union’s proposal on the Employer’s inherent managerial authority.

⁷ The arbitrator is not limited to the parties’ opposing proposals concerning non-economic topics such as residency. In relevant part, Section 14(g) of the Act provides the following: “As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).” 5 ILCS 315/14(g).

For these reasons, I find that the Union's proposal addresses a mandatory subject of bargaining even though the arbitrator may not award the Union's proposal in this case.

Issued in Chicago, Illinois, this 25th day of August, 2014.

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Jerald S. Post
General Counsel