

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

International Association of Firefighters,)	
Local 429,)	
)	
Labor Organization)	
)	Case No. S-DR-15-003
and)	
)	
City of Danville,)	
)	
Employer)	

DECLARATORY RULING

On July 24, 2014, the City of Danville (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 three proposals submitted by the International Association of Firefighters, Local 429 (Union), concerning suppression force strength, equipment levels, and station minimum requirements address mandatory subjects 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 historical unit of all uniformed positions within the Danville Fire Department, including Probationary Firefighters, Firefighters, Fire Lieutenants, Captains and Assistant Chiefs, but excluding the Director of Public Safety and clerical personnel. The parties' most recent collective bargaining agreement expired on April 30, 2014. The Union filed a demand for interest arbitration on June 11, 2014. The Union proposed to retain the status quo concerning Article VII, Section 7.1 of the parties' expired

agreement, entitled "Manning Requirements," which addresses suppression force strength, equipment levels, and station minimum requirements, in relevant part. The City proposed to remove certain language within that Section and asserts that the Union's proposals address permissive subjects of bargaining.

II. Relevant Statutory Provisions

The duty to bargain is defined in Section 7 of the Illinois Public Labor Relations Act:

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 fire fighter, and fire department or fire district paramedic matters, 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 matters:

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

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

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

III. The Union's Proposals

The Union's proposals include the following:

Article VII, Section 7.1, Manning Requirements

(b) Equipment Manning - All engine companies shall be manned with no less than (3) personnel, and all truck companies shall be manned with not less than two (2) personnel. The City agrees to man at least four (4) Engines, three (3) of which will be manned with a Lieutenant, and one (1) truck company as the minimum apparatus in the Fire Department.

(j) The City agrees to fill vacancies when the authorized strength of the 24/48 suppression force, including Officers and Firefighters, falls below 51. The City

agrees that when such vacancies exist, the City will draft a letter to the Board of Fire and Police Commissioners notifying them of such vacancy. Said letter shall be provided to the Board prior to their next available meeting, with a copy to the Union.

(l) All four fire stations shall remain open and in service at all times during this Agreement.

IV. Issues

At issue is whether the Union's proposals concerning (1) suppression force strength, (2) equipment levels, and (3) station minimum requirements concern mandatory subjects of bargaining.

The Employer argues that the Union's proposal concerning suppression force strength is a permissive subject of bargaining under Section 14(i)(iii) of the Act because it effectively dictates the total number of employees in the Department. Similarly, the Employer argues that the Union's proposal concerning minimum equipment levels constitutes a permissive subject of bargaining under Section 14(i)(ii) because it also dictates the type of fire equipment the Department must use.

Further, the Employer asserts that the Union's proposals are permissive subjects of bargaining under the test established in Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 523 (1992). First, it states that the minimum size of the department, the number/types of equipment used, and the number of stations kept open by the City do not affect employees' terms and conditions of employment. According to the Employer, they have no bearing on firefighters' workload per shift, the quantity and kind of work they perform, or equipment manning levels.¹ Rather, the Employer asserts that these proposals address matters of inherent managerial authority because they impact the Employer's prerogative to control the

¹ The Employer does not object to the portion of the Union's proposal addressing equipment manning.

size and organization of its department, manage its budget, and determine standards of service. Finally, while denying the need to reach the balancing test, the Employer contends that the outcome favors its position. It asserts that bargaining over the types/number of equipment used and the number of stations it maintains would be fruitless because its decisions on these matters are motivated by the desire to reduce non-labor costs, over which the Union has no control. Further, the Employer argues that the burden of bargaining over the “size and shape” of the department likewise outweighs any benefits because bargaining significantly infringes on the Employer’s inherent managerial authority. Finally, the Employer asserts that its inclusion of the disputed proposals in prior contracts does not transform them into mandatory subjects of bargaining, where it did not bargain them prior to the effective date of the Act.

The Union argues that Section 14(i) of the Act does not preclude bargaining over its proposals. The Union denies that its proposal on suppression force strength determines the total number of employees employed by the fire department and states that it covers only the Department’s fire suppression personnel. Likewise, the Union denies that its equipment proposal addresses the type of equipment used and explains that it specifies equipment levels, over which the Act permits bargaining in this case.

Further, the Union asserts that its proposals address mandatory subjects of bargaining under the Central City test. The Union effectively concedes that they impact the Employer’s inherent managerial authority, but argues that the burdens of bargaining must “give way” where the proposals so significantly impact firefighter safety and well-being. The Union also observes that the burdens of bargaining its proposals are not too great because the City negotiated with the Union over equipment levels since 2003, and fire suppression manning and fire station minimums since 2009.

V. Discussion and Analysis

The Union's proposal concerning suppression force strength is a permissive subject of bargaining under Section 14(i) of the Act. Although Section 14(i) may not preclude the parties from bargaining over the Union's equipment level proposal, that proposal is nonetheless a permissive subject of bargaining under the Central City test. The Union's minimum fire station proposal is likewise a permissive subject of bargaining under the Central City test.

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. 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 Act 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, 149 Ill. 2d at 523.

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).²

Section 14 excludes the Union's suppression force strength proposal from the arbitrator's consideration because the Union's proposal establishes the total number of employees the Department must employ. In Village of Oak Lawn, the Illinois Appellate Court held that the Act does not bar a manning proposal from interest arbitration if it incidentally affects the total number of employees employed by the department. Vill. of Oak Lawn, 2011 IL App. (1st) 103417 at ¶ 25 (addressing minimum shift manning proposal). By implication, the Act does bar a manning proposal from interest arbitration if, as in this case, the relationship between the proposal and the total number of department employees is direct. Here, the Department employs 52 individuals and the Union's proposal effectively requires the Employer to retain all of them. The proposal dictates that the Employer must employ 51 firefighters; necessity dictates that the Employer must additionally employ the Director of Public Safety, who is the Department's sole manager.³ Thus, the Union's fire suppression force proposal is a permissive subject of bargaining because it divests the Employer of discretion to reduce its total number of

²The 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").

³ Currently, no clerical employees work in the fire department. Furthermore, according to the employer, any future clerical employees would be employees of the City rather than of the Department.

employees.⁴ But see Vill. of Lombard, 15 PERI ¶ 2007 (IL LRB-SP GC 1999) (union’s proposal concerning paramedic certification did not determine the total number of employees in the department where the Employer maintained discretion to hire as many firefighters as it desired); Vill. of Streamwood, 26 PERI ¶ 122 (IL LRB-SP GC 2010) (declining to find direct correlation between union’s shift manning proposal and total number of employees where there was no 1-to-1 ratio).

However, Section 14(i) does not exclude the Union’s equipment proposal from interest arbitration because it does not dictate the type of equipment used. Pursuant to Section 14(i)(ii) of the Act, an arbitration award shall not address the type of equipment used, other than uniforms and turnout gear. 5 ILCS 315/14(i)(ii). Here, the Union’s proposal relates more closely to equipment levels than equipment types. In fact, the proposal expressly seeks to establish the Department’s “minimum apparatus” and its most specific language addresses the numbers of vehicles used. The proposal’s generic reference to “trucks” and “engines” does not run afoul of Section 14(i)(ii) because it preserves the Employer’s discretion to choose amongst the various types of engines and trucks available on the market.

Nevertheless, the Union’s minimum equipment proposal is a permissive subject of bargaining under the Central City test, as is the Union’s minimum fire station proposal. The burdens on the Employer’s inherent managerial authority by bargaining over both these proposals would outweigh the benefits of bargaining to the negotiation process. Applying the first prong of the test, the Union accurately observes that equipment levels and fire station

⁴ Other jurisdictions likewise hold that fire suppression force strength, or “aggregate manning,” is not a mandatory subject of bargaining. Philadelphia Fire Fighters’ Union, Local 22, Int’l Ass’n of Fire Fighters, AFL-CIO v. City of Philadelphia, 37 PPER ¶ 67 (Pa. Commw. 2006) (vacating an arbitration award that mandated an increase of a City’s minimum complement of firefighters; finding that total number of firefighters on the force was not arbitrable); City of Niagara Falls, 9 PERB ¶ 3025 (NY PERB 1976) (aggregate manning levels are not a mandatory subject of bargaining).

numbers impact employees' terms and conditions of employment because a reduction in either adversely affects firefighter safety. Timely initial and secondary responses are critical to maintaining firefighter safety because fires grow exponentially larger and more dangerous the longer they burn. Yet, in the case of multiple fires, any reduction from four engines would impair the Department's capacity to timely respond to calls and to provide a timely backup line ("third arriving engine"). Similarly, a reduction in fire stations likewise increases response times by increasing the travel distance to certain fires.⁵ Thus, both equipment levels and number of fire stations affect employees' terms and conditions of employment because they correlate with firefighter safety in this case. City of Chicago, 19 PERI ¶ 69 (IL LRB-LP 2003) (issues involving the safety of unit employees affects employees' terms and conditions of employment); see also City of Pinole, 38 PERC ¶ 91 (CA PERB 2013) (acknowledging that closure of a fire station impacted employees' terms and conditions of employment).

With respect to the second prong, the Employer asserts (and the Union does not dispute) that decisions concerning equipment levels and fire station numbers are matters of inherent managerial authority under Section 4 of the Act because they impact the Employer's standards of service and overall budget. 5 ILCS 315/4.

Addressing the third prong, the burden imposed on the Employer's managerial authority by bargaining these proposals outweighs any benefits that bargaining could provide the decision making process.⁶ Here, the burden imposed on the Employer's managerial authority is substantial because bargaining would force the Employer to negotiate over the manner in which

⁵ I reject the notion that a reduction in fire stations also impacts fire fighter safety by diminishing the availability of personnel/equipment because there is no direct link between the two.

⁶ I note the ALJ's decision in Oak Lawn, adopted by the Board, misstates the Central City test as requiring a weighing of the employee's interest in bargaining rather than the benefits that bargaining would provide to the decision making process. Oak Lawn Prof'l Fire Fighters Ass'n and Vill of Oak Lawn, 26 PERI ¶ 118 (IL LRB-SP 2010). The appellate court did not review this portion of the ALJ's decision. Vill. of Oak Lawn, 2011 IL App (1st) 103417 at ¶ 26.

it fulfills its primary function—the provision of fire suppression services—and the level of services it wishes to provide. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013) (unilateral action found lawful where employer changed the manner in which its component parts interacted); Vill. of Lombard, 15 PERI ¶ 2007 (IL LRB-SP GC 1999) (decision limiting the employer’s authority to determine training necessary for employees was a permissive subject of bargaining).

The inclusion of the Union’s proposals in prior collective bargaining agreements does not undercut the burdens of bargaining in this case, where the Employer’s priorities, circumstances, and policy objectives may have changed over time. 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).

Conversely, the benefits of bargaining over equipment levels and number of fire stations are limited. First, the Employer’s public policy decisions concerning departmental functions and levels of service are not amenable to bargaining. Further, any economically-motivated portion of these decisions cannot be counterbalanced by concessions from the Union because the implicated costs are both substantial and non-labor-related. As the Employer notes, the Union has no control over the capital outlays for replacement vehicles and continuing expenditures required to maintain a fire station. Moreover, those costs are so significant that the Union is unlikely to make an offer that would mitigate their economic impact and sway the Employer’s decision. Vill. of Bensenville, 19 PERI ¶ 119 (IL LRB-SP 2003) (in determining whether an issue is amenable to bargaining the Board considers whether the union is capable of offering

proposals that are an adequate response to the employer's concerns); Fraternal Order of Police, Chicago Lodge No. 7 v. Ill. Labor Rel. Bd., 2011 IL App (1st) 103215 ¶ 25 (burdens outweighed the benefits where Union's offers were aimed at the proposal's effects and not at the underlying decision); Vill. of Lombard, 15 PERI ¶ 2007 ("employer's decisions which are not economically motivated, but based upon policy considerations and its direction of its enterprise are not amenable to bargaining"); but see Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010) (matters concerning labor costs are especially amenable to bargaining); see also Vill. of Bensenville, 19 PERI ¶ 119 (IL SLRB 2003); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1994); State of Ill. (Dep't of Cent. Mgmt. Serv.), 1 PERI ¶ 2016 (IL SLRB 1985); see also Georgetown-Ridge Farm Comm. Unit Dist. 4, 10 PERI ¶ 1044 (IL ELRB 1994), aff'd in unpub. order Georgetown-Ridge Farm Comm. Unit Dist. 4 v. Ill. Educ. Labor Rel. Bd., 271 Ill. App. 3d 1157 (4th Dist. 1995); Cent. City School Dist. 133, 9 PERI ¶ 1051 (IL ELRB 1993).

Finally, the safety issues identified by the Union do not transform an otherwise permissive subject into a mandatory one where outstanding safety-related matters may be resolved through impact bargaining. Vill. of Bensenville, 14 PERI ¶ 2042 (IL LRB-SP 1998) (finding that Union's proposal addressed a permissive subject of bargaining even though the Union asserted that its proposal mitigated safety concerns); City of New York, 40 PERB ¶ 3017 (NY PERB 2007) ("application of the term 'safety' is not a label capable of automatically transforming a nonmandatory subject ... into a mandatory subject of bargaining"); Muhlenberg Township, 30 PPER ¶ 30142 (PA PERB 1999) (employer's decision to implement a first responder program was permissive subject of bargaining where safety issues resulting from increased work load could be addressed through effects bargaining) and City of Philadelphia v. Pennsylvania Labor Rel. Bd., 138 Pa. Commw. 113 (1991).

For these reasons, I find that the Union's proposals are permissive subjects of bargaining.

Issued in Chicago, Illinois, this 4th day of September, 2014.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD**

A handwritten signature in black ink, appearing to read "J. S. Post", written over a horizontal line.

**Jerald S. Post
General Counsel**