

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

Policemen’s Benevolent Labor	)	
Committee,	)	
	)	
Labor Organization	)	
	)	Case No. S-DR-16-002
and	)	
	)	
Village of Sauget,	)	
	)	
Employer	)	

**DECLARATORY RULING**

On January 7, 2016, the Village of Sauget (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 1300. The Employer requests a determination as to whether the retroactive payment of increases in rates of compensation for fiscal years commencing prior to the initiation of arbitration procedures is a permissive or mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014). Both parties filed briefs.

**I. Background**

The Employer and the Union are parties to a collective bargaining agreement that expired on April 30, 2012. On January 11, 2012, the Union notified the Employer of its desire to modify the existing collective bargaining agreement. On April 3, 2012, the Board received from the Union a unilateral Request for Mediation Panel. The Union did not complete the form and left blank the question “[w]hen was notice filed on the other party.” On May 7, 2012, the parties began negotiations for a successor contract. On September 24, 2014, the Employer and

the Union jointly requested mediation from the Federal Mediation and Conciliation Service. The parties' interest arbitration is scheduled for hearing on April 13, 2016. The Employer's fiscal year commences on May 1.

## **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 (2014).

Section 14(j) of the Act provides the following:

Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If

a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

5 ILCS 315/14(j) (2014).

### **III. The Union's Proposal**

The parties have not submitted their final offers to the interest arbitrator and the Employer has not provided the precise language of the Union proposal at issue in this declaratory ruling. However, the Employer anticipates that the Union will seek wage increases retroactive to May 1, 2012, or alternatively, to May 1, 2013. The Union does not deny that it seeks to submit such proposals to the interest arbitrator. Accordingly, the matter discussed below is a proposal from the Union that seeks wage increases retroactive to May 1, 2012, or alternatively, to May 1, 2013.

### **IV. Issues**

At issue is whether the Union's proposal for wage increases retroactive to May 1, 2012, or alternatively to May 1, 2013, is a permissive or a mandatory subject of bargaining.

The Employer argues that a proposal for wage increases retroactive to either date is a permissive subject of bargaining in this case because the Union failed to properly invoke interest arbitration proceedings prior those dates. According to the Employer, Section 14(j) of the Act allows an arbitrator to award wage increases retroactive only to the fiscal year following the date on which a union initiates interest arbitration proceedings. The Employer claims that the arbitrator in this case cannot award wage increases retroactive to either date because the Union

effectively initiated interest arbitration proceedings only in April 2014, after the commencement of the Employer's fiscal year 2013.<sup>1</sup> The Employer concedes that the Union filed a unilateral request for mediation with the Board on April 3, 2012, but argues that its request was ineffective to initiate interest arbitration proceedings where the Union did not complete the form and did not serve it on the Employer. The Employer concludes that it is only obligated to bargain over wage increases that are retroactive to May 1, 2014, because that is the first fiscal year following the Union's communication to the Employer seeking a joint request for mediation.

The Union argues that its proposal on retroactive wage increases is a mandatory subject of bargaining because the subject of wages is undoubtedly a mandatory subject. In addition, the Union denies that Section 14(j) of the Act impairs the authority of an arbitrator to award retroactive wage increases or otherwise limits the award of retroactive wages increases to the fiscal year following the date on which the Union initiated interest arbitration proceedings. The Union argues that such an interpretation contravenes the legislature's intent that parties mediate their disputes, penalizes parties who engage in voluntary mediation, and impermissibly imposes a waiver of the Union's statutory right to bargain wages. Accordingly, the Union asserts that Section 14(j) simply circumscribes the date on which a presumptively valid retroactive wage award may be implemented.

In the alternative, the Union asserts that, even if I accept the Employer's interpretation of Section 14(j), any purported limitations on the arbitrator's authority to award retroactive wage increases does not limit retroactivity to May 1, 2014. According to the Union, any limitations on the arbitrator's authority to award retroactive wage increases are inapplicable because the

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<sup>1</sup> According to the Employer, the Union initiated interest arbitration proceedings on April 9, 2014, when it contacted the Employer about jointly requesting mediation.

Employer agreed to participate in mediation. Furthermore, the Union also notes that it gave the Employer notice of its intent to bargain a successor contract in January 2012.

Finally, the Union contends that the Employer's petition must be dismissed as improper because it requires the resolution of a factual dispute concerning the Union's service of its April 3, 2012 unilateral Request for Mediation Panel on the Employer.

## **V. Discussion and Analysis**

The characterization of the Union's proposal as a mandatory or permissive subject of bargaining turns on factual disputes that I refer to the interest arbitrator for consideration. Under Section 14(j) of the Act, an interest arbitrator cannot award a proposal for retroactive wage increases if the date of retroactivity is earlier than the start of the first fiscal year following the initiation of interest arbitration proceedings or, alternatively, earlier than the date on which the parties mutually agreed to extend the statutory mediation period. This case raises a factual dispute as to whether or when the Union effectively initiated interest arbitration proceedings. It also raises a factual dispute concerning the earliest date on which the parties mutually agreed to extend the statutory mediation period. The analytical framework below serves to guide the arbitrator's analysis.

As a general matter, wages are a mandatory subject of bargaining. 5 ILCS 315/7; 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).

However, Section 14(j) limits the authority of an arbitration panel to award certain proposals seeking retroactive wage increases and thereby circumscribes the parameters of a future arbitration award with respect to such increases. Cnty. of Vermilion, 15 PERI ¶ 2009 (IL LRB-SP 1999); see also Cook Cnty. Sheriff's Dep't., 5 PERI ¶ 3005 (IL LRB 1988). I must reject the Union's claim that Section 14(j) simply limits the date on which an arbitrator may require an employer to implement a retroactive wage proposal because such a construction is contrary to the Board's prior interpretations of that Section. Id. Indeed, the Board has explained that the arbitrator's authority to award retroactive wage proposals under Section 14(j) depends on the parties' conduct, noting that a Union must take some action to preserve the arbitrator's authority to award retroactive wage proposals. Cnty. of Vermilion, 15 PERI ¶ 2009 (union's request for mediation panel secured the arbitration panel's ability to award a retroactive wage increase); see also Cook Cnty. Sheriff's Dep't., 5 PERI ¶ 3005 (union did not violate the Act by initiating interest arbitration in an attempt to preserve arbitrator's authority to make an award affecting employees' retroactive rates of compensation). I acknowledge that the plain language of Section 14(j) of the Act does not entirely square with the Board's prior constructions of it,<sup>2</sup> but I am bound by the Board's interpretations and that interpretation informs the remaining analysis.

In turn, where an arbitrator is barred from awarding a retroactive wage proposal under Section 14(j), that proposal is necessarily a permissive subject of bargaining because there is little value in requiring parties to bargain over a proposal that an arbitrator can neither award nor

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<sup>2</sup> Section 14(j) provides that "*the commencement of a new municipal fiscal year after the initiation of arbitration procedures* under this Act, but before the arbitration decision, or its enforcement, *shall not* be deemed to render a dispute moot, or to otherwise *impair the jurisdiction or authority of the arbitration panel or its decision.*" 5 ILCS 315/14(j) (emphasis added). By contrast, the Board has expressly stated that "Section 14(j) of the Act sets out limits to the authority of an arbitration panel." Cnty. of Vermilion, 15 PERI ¶ 2009.

modify. 5 ILCS 315/14(g) (on economic issues, arbitrator must award either the union's proposal or the employer's proposal).<sup>3</sup>

Under Section 14(j), a union may secure an arbitrator's authority to award retroactive wage increases by initiating interest arbitration proceedings. 5 ILCS 315/14(j) ("Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation"); Cook Cnty. Sheriff's Dep't., 5 PERI ¶ 3005 (addressing propriety of union's conduct in filing a request for mediation to preserve arbitrator's authority to award retroactive wage increases). Alternatively, a union may secure an arbitrator's authority to award retroactive wage increases if the union and the employer "mutually agree[... to] exten[d...] the statutorily required period of mediation." 5 ILCS 315/14(j). Such an agreement renders inapplicable the limitations otherwise imposed by Section 14(j), which the Board has interpreted as a limitation on the arbitrator's authority to grant certain retroactive wage increases. Id.; see generally Cnty. of Vermilion, 15 PERI ¶ 2009 and Cook Cnty. Sheriff's Dep't., 5 PERI ¶ 3005.

I reject the Union's contention that Section 14(j) punishes unions that voluntarily mediate their disputes. It simply requires them to take action to secure the arbitrator's authority to award retroactive wage increases by obtaining the employer's agreement to the extension of the mediation period. Notably, if the employer does not agree to extend the period of mediation, Section 14(j) provides an alternate avenue by which a union may secure the arbitrator's authority to award retroactive wage increases. 5 ILCS 315/14(j) (union may initiate interest arbitration proceedings by filing a letter requesting mediation); 80 Ill. Admin. Code 1230.150(c) (union may file unilateral request for mediation).

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<sup>3</sup> Cf. Vill. of Lansing, S-DR-15-002 (Union's residency proposal was a mandatory subject of bargaining even though arbitrator could not award it as written where arbitrator was empowered to fashion his own solution on that non-economic issue).

I likewise reject the Union's assertion that the Board's interpretation of Section 14(j) requires the Union to waive its statutory right to bargain over retroactive wages. The Union's argument to that effect conflates the doctrines of waiver and forfeiture. Waiver is the intentional relinquishment or abandonment of a known right, whereas forfeiture is the failure to make the timely assertion of the right. United States v. Olano, 507 U.S. 725, 733 (1993). Here, as the Board has noted, a union's right to retroactive wages is not absolute and a union must therefore preserve that right by taking one of the two actions set forth under Section 14(j) of the Act. A union's failure to take either action is therefore not an implied waiver of the right to bargain over retroactive wage increases, as the Union here claims, but is instead a forfeiture of the right to an award of retroactive wage increases.

Applying these principles, the character of the Union's proposal in this case as mandatory or permissive depends on whether and when the Union secured the arbitrator's authority to award that proposal under Section 14(j) either by (1) initiating interest arbitration proceedings or (2) by reaching agreement with the Employer to extend the mediation period. If the Union secured the arbitrator's authority to award retroactive wage increase prior to May 1, 2012 or prior to May 1, 2013, then the arbitrator may respectively award wage increases retroactive to May 1, 2012 or May 1, 2013.

Addressing the first matter, there is a factual dispute as to whether the Union initiated interest arbitration proceedings prior to May 1, 2013, by properly filing a request for mediation panel with the Board and serving it on the Employer. The Act provides that a Union may initiate interest arbitration proceedings by filing a letter requesting mediation; the Board's Rules provide that a union's unilateral request for mediation panel may satisfy this requirement. 5 ILCS 315/14(j); 80 Ill. Admin. Code 1230.150(c). However, the Board's Rules and the Request for

Mediation Panel form itself also require a union to serve that form on the employer. See 80 Ill. Admin. Code 1200.20(e) (all documents [except those specifically excluded by a 1200.20(d)<sup>4</sup>] shall be served by the party filing the document on all other parties to the proceedings.”). Indeed, the Board has stricken documents as ineffective where a party has failed to provide proof of service or failed to otherwise indicate that it served the opposing party with the same documents it submitted to the Board. Vill. of University Park, 29 PERI ¶ 126 (IL LRB-SP 2013). Accordingly, a union’s unilateral request for mediation does not effectively initiate interest arbitration proceedings unless the union serves its request on the employer. Vill. of University Park, 29 PERI ¶ 126; 80 Ill. Admin. Code 1200.20(e).

Here, the Employer correctly notes that the Union’s April 2012 request for mediation fails to indicate that the Union served the Employer with its request, but the Union’s claim that it did in fact serve the Employer raises issues of fact that I properly refer to the arbitrator for consideration. See 80 Ill. Admin. Code 1200.143(b)(2). The arbitrator may consider the form’s procedural defects in resolving the issue of service, but he must allow the Union to introduce evidence in support of its claim that it served the Employer and thereby effectively initiated interest arbitration proceedings.

In turn, if the arbitrator determines that the Union properly served the Employer with its April 3, 2012 request for mediation, then the Union’s proposal seeking wage increases retroactive to May 1, 2012, is a mandatory subject of bargaining. Conversely, if the arbitrator determines that the Union failed to properly serve the Employer with its request for mediation, then the Union’s proposal seeking wage increases retroactive to May 1, 2012, is a permissive subject of bargaining.

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<sup>4</sup> Section 1200.20(d) exempts from the service requirement “[a]ll petitions, intervening claims and amendments to those documents.” 80 Ill. Admin. Code 1200.20(d). The Union’s request for mediation panel does not fall within this exception.

Addressing the second matter, there is likewise a factual dispute as to the earliest date on which the parties “mutually agreed” to extend the period for mediation. If the parties mutually agreed prior to May 1, 2012, to extend mediation, then the Union’s proposal seeking wage increases retroactive to that date is a mandatory subject of bargaining. Similarly, if the parties mutually agreed prior to May 1, 2013, to extend mediation, then the Union’s proposal seeking wage increases retroactive to that date is likewise a mandatory subject of bargaining. Conversely, if the parties mutually agreed to extend mediation only after May 1, 2013, then any proposal seeking wage increases retroactive to that date, or to any earlier date, is a permissive subject of bargaining. Notably, the arbitrator must reject any contention by the Union that the mere commencement of the statutory mediation period preserves his authority to award retroactive wage increases where the Board’s interpretation of Section 14(j) requires affirmation action by the Union or the parties to achieve that end. See discussion supra.

Thus, the mandatory or permissive nature of the Union’s proposal for wage increases retroactive to May 1, 2012, or alternatively, to May 1, 2013, turns on questions of fact concerning the Union’s service of its request for mediation panel on the Employer and the date on which the parties mutually agreed to extend the mediation period. I refer resolution of these factual questions to the interest arbitrator.

**Issued in Chicago, Illinois, this 2nd day of February, 2016.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**



**Kathryn Zeledon Nelson  
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