STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
GENERAL COUNSEL

Troopers Lodge #41, Fraternal Order of Police,	)	
	)	
Labor Organization,	)	
	)	Case No. S-DR-16-004
and	)	
	)	
Illinois State Police,	)	
	)	
Employer.	)	

DECLARATORY RULING

On January 13, 2016, the Illinois State Police (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 its proposal on health insurance is a permissive or mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014). Troopers Lodge #41, Fraternal Order of Police (Union) objects to the Employer's petition on the grounds that it is untimely filed. Both parties filed briefs addressing procedural and substantive issues.

I. Background

The Employer and the Union are parties to a collective bargaining agreement that expired on June 30, 2015. On or about May 11, 2015, the parties commenced negotiations for a successor contract. On August 20, 2015, the Union filed a demand for Compulsory Interest Arbitration. The parties selected Dan Nielsen as their neutral interest arbitrator. The parties agreed to submit their final offers to the interest arbitrator two days prior to the first day of

hearing, scheduled for December 23, 2015. They likewise agreed to present their objections to any proposals on the first day of hearing. The parties later agreed to exchange final offers on health insurance on January 8, 2016. They additionally agreed that they would have the opportunity to object to the proposals and have the opportunity to revise them in the face of those objections. The interest arbitration hearing began as scheduled on December 23, 2015.

On January 8, 2016, the parties exchanged final offers on health insurance. The Union objected to the Employer's proposal. On January 12, 2016, the Employer made a revised final offer on health insurance in response to the Union's objection. On January 13, 2016, the parties recommenced their interest arbitration hearing and the Union objected to the Employer's revised final offer. On that date, Arbitrator Nielsen heard testimony on the parties' health insurance proposals.

II. Relevant Statutory and Constitutional 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 15(a) of the Act provides, in relevant part:

> In case of any conflict between the provisions of this Act and any other law (other than Section 5 of the State Employees Group Insurance Act of 1971 and other than the changes made to the Illinois Pension Code by this amendatory Act of the 96th General Assembly), executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control.

5 ILCS 315/15(a) (2014).

Section 5 of the State Employees Group Insurance Act of 1971 provides the following:

> § 5. Employee benefits; declaration of State policy. The General Assembly declares that it is the policy of the State and in the best interest of the State to assure quality benefits to members and their dependents under this Act. The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members and their dependents. Specifically, but without limitation, members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers. All contracts for provision of employee benefits, including those portions of any proposed collective bargaining agreement that would require implementation through contracts entered into under this Act, are subject to the following requirements:
>
> (i) By April 1 of each year, the Director must report and provide information to the Commission concerning the status of the employee benefits program to be offered for the next fiscal year. Information includes, but is not limited to, documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program. By the first of each month thereafter, the Director must provide updated, and any new, information to the Commission until the employee benefits program for the next fiscal year is determined. In addition to these monthly reporting requirements, at any time the Commission makes a written request, the Director must promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission any additional requested information in the possession of the Director concerning employee benefits programs. The Commission

may waive any of the reporting requirements of this item (i) upon the written request by the Director. Any waiver granted under this item (i) must be in writing. Nothing in this item is intended to abrogate any attorney-client privilege.

(ii) Within 30 days after notice of the awarding or letting of a contract has appeared in the Illinois Procurement Bulletin in accordance with subsection (b) of Section 15-25 of the Illinois Procurement Code, the Commission may request in writing from the Director and the Director shall promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission information in the possession of the Director concerning the proposed contract. Nothing in this item is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

(iii) Except as otherwise provided in this item (iii), no contract subject to this Section may be entered into until the 30-day period described in item (ii) has expired, unless the Director requests in writing that the Commission waive the period and the Commission grants the waiver in writing. This item (iii) does not apply to any contract entered into after the effective date of this amendatory Act of the 98th General Assembly and through January 1, 2014 to provide a program of group health benefits for Medicare-primary members and their Medicare-primary dependents that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act.

(iv) If the Director seeks to make any substantive modification to any provision of a proposed contract after it is submitted to the Commission in accordance with item (ii), the modified contract shall be subject to the requirements of items (ii) and (iii) unless the Commission agrees, in writing, to a waiver of those requirements with respect to the modified contract.

(v) By the date of the beginning of the annual benefit choice period, the Director must transmit to the Commission a copy of each final contract or agreement for the employee benefits program to be offered for the next fiscal year. The annual benefit choice period for an employee benefits program must begin on May 1 of the fiscal year preceding the year for which the program is to be offered. If, however, in any such preceding fiscal year collective bargaining over employee benefit programs for the next fiscal year remains pending on April 15, the beginning date of the annual benefit choice period shall be not later than 15 days after ratification of the collective bargaining agreement.

(vi) The Director must provide the reports, information, and contracts required under items (i), (ii), (iv), and (v) by electronic or other means satisfactory to the Commission. Reports, information, and contracts in the possession of the Commission pursuant to items (i), (ii), (iv), and (v) are exempt from disclosure by the Commission and its members and employees under the Freedom of Information Act. Reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) must be kept confidential by and may not be disclosed or used by the Commission or its members or employees if such disclosure or use could compromise the fairness or integrity of the procurement, bidding, or contract process. Commission meetings, or portions of

Commission meetings, in which reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) are discussed must be closed if disclosure or use of the report or information could compromise the fairness or integrity of the procurement, bidding, or contract process.

All contracts entered into under this Section are subject to appropriation and shall comply with Section 20-60(b) of the Illinois Procurement Code (30 ILCS 500/20-60(b)).

The Director shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members and, where elected, their eligible dependents. Any contract or, if applicable, contracts or other arrangement for provision of benefits shall be on terms consistent with State policy and based on, but not limited to, such criteria as administrative cost, service capabilities of the carrier or other contractor and premiums, fees or charges as related to benefits.

Notwithstanding any other provisions of this Act, by January 1, 2014, the Department of Central Management Services, in consultation with and subject to the approval of the Chief Procurement Officer, shall contract or make otherwise available a program of group health benefits for Medicare-primary members and their Medicare-primary dependents. The Director may procure a single contract or multiple contracts that provide a program of group health benefits that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act. The initial procurement of a contract or contracts under this paragraph is not subject to the provisions of the Illinois Procurement Code, except for Sections 20-60, 20-65, 20-70, and 20-160 and Article 50 of that Code, provided that the Chief Procurement Officer may, in writing with justification, waive any certification required under Article 50.

The Director may prepare and issue specifications for group life insurance, health benefits, other employee benefits and administrative services for the purpose of receiving proposals from interested parties.

The Director is authorized to execute a contract, or contracts, for the programs of group life insurance, health benefits, other employee benefits and administrative services authorized by this Act (including, without limitation, prescription drug benefits). All of the benefits provided under this Act may be included in one or more contracts, or the benefits may be classified into different types with each type included under one or more similar contracts with the same or different companies.

The term of any contract may not extend beyond 5 fiscal years. Upon recommendation of the Commission, the Director may exercise renewal options of the same contract for up to a period of 5 years. Any increases in premiums, fees or charges requested by a contractor whose contract may be renewed pursuant to a renewal option contained therein, must be justified on the basis of (1) audited experience data, (2) increases in the costs of health care services provided under the contract, (3) contractor performance, (4) increases in contractor responsibilities, or (5) any combination thereof.

> Any contractor shall agree to abide by all requirements of this Act and Rules and Regulations promulgated and adopted thereto; to submit such information and data as may from time to time be deemed necessary by the Director for effective administration of the provisions of this Act and the programs established hereunder, and to fully cooperate in any audit.

5 ILCS 375/5 (2014).

Section 7.1 of the State Employees Group Insurance Act of 1971 provides the following:

> Any benefit received by an employee under this Act pursuant to a collective bargaining agreement may be extended by the Director to employees whose wages, hours and other conditions of employment with the State are not subject to a collective bargaining agreement. In addition, if any benefit is offered by the Department of Central Management Services to employees who are not members of a recognized bargaining unit, then that benefit shall also be offered to all bargaining unit members through their certified exclusive representative.

5 ILCS 375/7.1 (2014).

III. The Employer's Proposal

The Employer's proposal is 18 pages long and is attached to this Declaratory Ruling as an appendix.

IV. Issues

At issue is (1) whether the Employer's petition is timely filed and (2) whether the Employer's health care proposal is a mandatory subject of bargaining.

As a threshold matter, the Union argues that the Employer's petition is untimely filed under the Board's Rules because the Employer filed it unilaterally, after the first day of the parties' interest arbitration hearing. The Union further asserts that I should not grant a variance from the Board's Rule to allow a late filing because doing so would increase the Union's litigation costs, delay resolution of the issues, and foreclose the arbitration panel from considering the mechanics of implementing the Employer's proposal. Finally, the Union argues

that the Employer has no viable excuse for its late filing and suggests that the Employer waived the right to file a unilateral petition by agreeing to delay the submission of health insurance proposals until after the commencement of the interest arbitration proceeding. The Union denies that it "created" the timeliness issue by reneging on an agreement to join in the Employer's petition for a declaratory ruling on disputed issues.

The Employer counters that its petition is timely filed under the circumstances. It claims that the interest arbitration hearing had not yet commenced with respect to health insurance when the Employer filed its petition because the parties had not yet presented testimony on that issue. In the alternative, the Employer asserts that if its petition is deemed untimely filed, I should grant a variance from the Board's filing rule. The Employer argues that application of the regulatory deadline in this case would be unduly burdensome where the parties agreed to submit their offers on health insurance after the commencement of the interest arbitration hearing and where the Union allegedly reneged on an agreement to join in the Employer's petition for a declaratory ruling on disputed issues.

On the merits, the Employer argues that it has no obligation to bargain over plan design, benefits, rates and other costs of insurance because the State Employees Group Insurance Act preempts the duty to bargain these matters. The Employer further asserts that Sections 7 and 14(h) of the Illinois Public Labor Relations Act (IPLRA) likewise relieve the Employer of any mandatory obligation to collectively bargain over the provisions of its statewide Health Insurance Plan and the plan design, benefits, rates, premiums, and other costs. It also asserts that plans design and health care costs are permissive subjects of bargaining under the Central

City test. Finally, the Employer claims that the Board has already resolved this very issue in favor of the Employer.[1]

In the alternative, the Employer asserts that if it is required to bargain over health insurance costs, then its proposal is a mandatory subject of bargaining because it does not seek a waiver of the Union's right to midterm bargaining or reserve to the Employer unfettered discretion to determine premium contributions and set salary tiers. The Employer further argues that the Union's inability to provide input on plan design for fiscal year 2017 does not impact the analysis because the Employer has no obligation to bargain over plan design. Finally, the Employer asserts that its proposal does not violate the Pensions Protection Clause of the Illinois Constitution.

The Union argues that the Employer is required to bargain over health insurance generally, but claims that the Employer's proposal addresses a permissive subject of bargaining because it requires the Union to waive its right to midterm bargaining over changes to health insurance. Specifically, the Union asserts that the proposal allows the Employer to (1) unilaterally determine employee contributions for the State's existing health plan; (2) unilaterally determine salary tiers, and in turn, contributions, for employees who earn more than $100,000 a year; and (3) unilaterally provide five new health plans.[2] Finally, the Union argues that the Employer's proposal violates employees' statutorily and constitutionally protected rights by stating that they can maintain the current level of cost sharing for health insurance only if they relinquish their entitlement to receiving State-funded health insurance coverage during retirement.

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[1] The Employer likewise notes that the Union filed a grievance related to health insurance under the prior collective bargaining agreement in which it allegedly conceded that the plan design was not a mandatory subject of bargaining, but the Employer does not explain the legal significance of this claim.

[2] Two of these plans are "in-house" plans and three of these plans are provided via a private medical exchange.

V. Discussion and Analysis

1. Timeliness

The Employer's petition for declaratory ruling is untimely under strict application of the Board's rules, but I find it appropriate to grant a variance from the regulatory time limit given the facts of this case.

Section 1200.143(b) of the Board's Rules sets forth the procedures for filing petitions for declaratory ruling that address protective service employee bargaining units, at issue here. It states that a party to an interest arbitration covering such protective service units may file a unilateral request for a declaratory ruling provided that it has "requested the other party to join it in filing a declaratory ruling petition[,]...the other party has refused the request[, and] the petition is filed no later than the first day of the interest arbitration hearing." 80 Ill. Admin. Code 1200.143(b).

Here, the Employer's petition is untimely under the Board's rule because the Employer filed it on January 13, 2016, after the arbitrator held the first day of hearing in the parties' interest arbitration on December 23, 2015. The Employer claims that the interest arbitration had not commenced when it filed its request for declaratory ruling because the interest arbitrator had not yet taken testimony on the proposals at issue; however, plain language of the rule creates a bright-line test that gauges timeliness based on the start of hearing process rather than on the evidence that the parties have introduced.

Nevertheless, a variance from the Board's rules is warranted here because adhering to the rule in this case would defeat the purpose of the declaratory ruling process. Under the Board's Rules, the Board—and by implication, the General Counsel—may grant a variance from any of its provisions if (1) the provision from which the variance is granted is not statutorily mandated;

(2) no party will be injured by the granting of the variance; and (3) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. 80 Ill. Admin. Code 1200.160.

Here, the regulatory deadline for filing a unilateral petition for declaratory ruling is not statutorily mandated.

Next, neither the Union nor the Employer is injured by the grant of a variance. The Union claims that it must bear the burden of increased legal expenses in responding to the Employer's substantive arguments. Yet, such a burden does not weigh in favor of denying the variance because it is not unique to the Union or this case and is instead the natural, expected consequence of granting any variance from a regulatory filing deadline. The Union further asserts that a declaratory rule would foreclose the arbitrator from considering the mechanics of implementing the Employer's proposals, but such an argument is disingenuous where it is the Union that seeks to remove the proposals from the arbitrator's consideration by declaring them permissive. If the Union wishes the arbitrator to consider the mechanics of implementing the Employer's proposals, it can simply withdraw its objections to their consideration. The Union next claims that the declaratory ruling process would delay the interest arbitration, but the declaratory ruling process is in fact an expedited mechanism compared to the available alternatives. If the Union persisted in its claim that the arbitrator could not consider the Employer's proposals, the Employer could file an unfair labor practice charge alleging that the Union violated the Act by refusing to bargain over a mandatory subject. 80 Ill. Admin. Code 1230.90(k)[3]; Vill. of Bensenville, 14 PERI ¶ 2042 (IL SLRB 1998) ("raising objections to

[3] Section 1230.90(k) of the Board's Rules provides the following: "Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue. However, except as provided in subsections (1) and (m) of this Section, the arbitration

submission of mandatory subjects of bargaining to interest arbitration is contrary to the statutory duty to bargain in good faith and constitutes an unfair labor practice under the Act"). Finally, the Union has not identified any injury to the Employer in granting this variance and I see none.

Lastly, strict application of the deadline would be unreasonable and unnecessarily burdensome where the parties agreed to submit their final proposals on health insurance well after the first date of the interest arbitration hearing. The timeliness rule reasonably contemplates that parties will exchange their proposals before the interest arbitration hearing because the arbitrator cannot consider proposals that the parties have not yet presented him. To that end, it requires parties to file unilateral declaratory rulings prior to the first day of hearing, when parties are presumed to have already exchanged all their final proposals. Here, by contrast, the parties by agreement did not exchange final health insurance proposals until two weeks after the start of the arbitration hearing. Thus, applying the timeliness rule to this case would paradoxically require a party to file a unilateral petition for a declaratory ruling before it received the proposal that would be its subject.

Thus, the Employer's request for a variance from the filing deadline is granted and I therefore resolve the substantive matters raised by the parties below.

a. Duty to Bargain Over Health Insurance Costs and Plan Design[4]

The Employer's proposal on health insurance addresses a mandatory subject of bargaining. Moreover, this mandatory proposal is not rendered permissive by virtue of its impact

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panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to be a subject over which the parties are required to bargain." 80 Ill. Admin. Code 1230.90(k).

[4] An employer's control and authority over employees' health insurance benefits is germane to its duty to bargain. Had the Employer in this case disclaimed such control and authority over employees' health insurance benefits, I would have referred that factual dispute to the interest arbitration for determination. See Illinois Department of State Police, 31 PERI ¶ 176 (IL LRB-SP 2014). However, the Employer here does not disclaim control and authority, and it is therefore presumed.

on the Union's statutory rights because it does not seek the Union's waiver of its statutory right to midterm bargaining over changes to health insurance costs or benefits.

As a preliminary matter, I note that the analysis of this Declaratory Ruling is informed by a Declaratory Ruling issued by my predecessor that addresses the same parties and substantially the same issues as are raised in this case. See Illinois Department of State Police, 31 PERI ¶ 176 (IL LRB-SP G.C. 2014). There, as here, the Employer argued that the burdens of bargaining over health care costs outweighed the benefits of bargaining under the Central City test, that the Group Insurance Act preempted the duty to bargain over health care costs, and that the Board had already resolved the very issue in favor of the Employer.

The similarities between this Declaratory Ruling and the prior one weigh in favor of the same outcome with respect to the overarching subject of health insurance. As my predecessor noted, the Board has previously held that questions regarding employees' health insurance benefits are mandatory subjects of bargaining because they affect employees' terms and conditions of employment and do not implicate matters of inherent managerial authority. City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991); see also Georgetown-Ridge Farm Comm. Unit School Dist. 4, 7 PERI ¶ 1045 (IL ELRB H.O. 1991), aff'd, 7 PERI ¶ 1106 (IL ELRB 1991), aff'd, 239 Ill. App. 3d 438 (4th Dist. 1992); Vienna School Dist. No. 55, 3 PERI ¶ 1008 (IL ELRB 1986), aff'd, 162 Ill. App. 3d 503 (4th Dist. 1987). He also resolved issues of preemption raised by the Employer and distinguished the case cited by the Employer as outcome determinative. He concluded that the proposal addressing the costs of health insurance was a mandatory subject of bargaining. The Employer has presented no basis for departing from the analysis set forth in the prior Declaratory Ruling.

Furthermore, although that prior Declaratory Ruling on health insurance focused on the costs of insurance, the analysis is also applicable to plan design, upon which the Employer additionally focuses in this case. Plan design is inextricably linked to plan cost and it also bears directly on the level of benefits offered to employees. In turn, it impacts their terms and conditions of employment. Finally, the prior General Counsel's analysis with respect to the issues of inherent managerial authority, the balancing test, preemption, and Board case law was couched in broad enough terms to sufficiently address the Employer's arguments with respect to the Employer's obligation to bargain over plan design.

Nevertheless, I acknowledge that the Employer raises some salient considerations with respect to its managerial authority to provide a plan to employees, and burdens of bargaining over health care plan design it provides. While I am cognizant of my role in the Declaratory Ruling process to resolve the parties' obligation to bargain over particular subjects, I am also mindful of its limitations. The Central City balancing test can be most completely performed following a full factual inquiry before a Board ALJ, whereas I am precluded from resolving factual disputes raised by the parties in a declaratory ruling. See 80 Ill. Admin. Code 1200.143(b)(2). Moreover, the Board is at liberty to reexamine its case law and interpretations of the Act, whereas I am guided by the Board's prior case law and I am also informed by prior Declaratory Rulings, in the interests of maintaining consistency. Accordingly, if either party wishes to develop a full factual record or advocate for a change in established case law, they should employ the unfair labor practice procedures set forth by the Act and the Board rules.

I address the parties' remaining arguments on the issue of waiver to complete the analysis concerning the classification of the Employer's proposal and, to that end, find that the Employer's health insurance proposal is not a permissive subject of bargaining by virtue of its

impact on the Union's statutory right to midterm bargaining. Contrary to the Union's assertion, the Employer's plan does not seek the Union's waiver of its right to bargain over midterm changes to employees' health insurance benefits.

A proposal that reserves to the Employer broad and unfettered discretion to make midterm changes to a mandatory subject of bargaining may be deemed a permissive subject of bargaining because it seeks the Union's waiver of its right to midterm bargaining over that subject. City of Wheaton, 31 PERI ¶ 166 (IL LRB-SP 2015)(health care proposal deemed permissive); Cnty. of Peoria, 31 PERI ¶ 166 (IL LRB-SP G.C. 2013)(same); City of Danville, 26 PERI ¶ 32 (IL LRB-SP G.C. 2010)(same). In turn, a proposal that seeks the waiver of a statutory right is a permissive subject of bargaining. Vill. of Midlothian, 29 PERI ¶ 125 (IL LRB-SP 2013); Vill. of Wheeling, 17 PERI ¶2018 (IL LRB SP 2001); Cnty. of Cook (Cook Cnty. Hosp.), 15 PERI ¶ 3009 (IL LLRB 1999); Bd. of Trustees of the Univ. of Ill., 8 PERI ¶1014 (IL ELRB 1991), aff'd 244 Ill. App. 3d 945, 612 N.E.2d 1365 (1993); Bd. of Regents of the Regency Universities System (Northern Ill. Univ.), 7 PERI ¶ 1113 (IL ELRB 1991).

Here, the Employer's proposal does not grant the Employer unfettered discretion to set employees' health care benefits or costs. The Employer's discretion, while admittedly broad, is limited with respect to at least one of its offered plans both in terms of the amount it may charge to employee and the extent of the benefits it must provide. The Union first contends that Employer reserves to itself the authority to unilaterally determine employee contribution increases or decreases for fiscal year 2017, 2018, and 2019 under the State's existing health insurance plan. However, the Employer's proposal provides that the Employer may not increase employee contributions by more than 10% over that paid by employees in the preceding fiscal year. Accordingly, the Employer cannot unexpectedly hike employees' health insurance above

that predetermined percentage and the Union can seek appropriate wage increases from the employer to counterbalance those anticipated, prescribed increases. Cf. City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015).

The Union next contends that the Employer reserves to itself the authority to unilaterally determine salary tiers for employees who make more than 100,000 per year and, in turn, to use those tiers to unilaterally set employee contributions. However, the Employer's discretion to set salary tiers is tempered with respect to the existing state plan by its self-imposed restriction to limit increases on employee contributions to no greater than 10% of the amount paid by the employee in the prior year. Though no such restriction exists for the other plans offered by the Employer, employees who wish to retain a plan with identifiable and self-limiting costs can elect to remain on the Employer's existing health insurance plan. Thus, the Employer's discretion is limited in at least some significant respects.

In addition, the Union asserts that the Employer reserves to itself the authority to unilaterally create or introduce new insurance plans and concomitantly reserves the right to set the terms of all their benefits and costs. This aspect of the Employer's plan is the broadest of all because the Union does not know what benefits the Employer will offer and at what cost. However, the details provided by the Employer with respect to the already-existing plan and the limits placed by the Employer on its increases to employee contributions under that plan provide a sufficient constraint on the Employer's discretion to render its proposal a mandatory subject of bargaining.

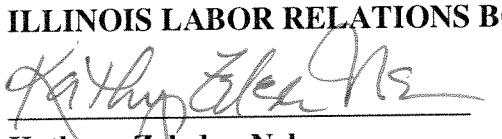
Finally, the Union's nod to a potential constitutional issue in this case does not transform an otherwise mandatory subject of bargaining into a permissive one. As I have previously noted, I lack the authority to dispositively decide constitutional issues. Crowley v. Bd. of Educ. of City

of Chicago, 2014 IL App (1st) 130727, ¶ 35; Singh v. Reno, 182 F.3d 504, 510 (7th Cir.1999). The Union may challenge the award in court and raise its constitutional arguments in that proper forum if the arbitrator adopts the Employer's proposal on health insurance and the Union persists in its claim that the health insurance provision violates its members' constitutional rights.

Thus, the Employer's health insurance proposal is a mandatory subject of bargaining.

Issued in Chicago, Illinois, this 1st day of March, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD



Kathryn Zeledon Nelson
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