

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

Village of Skokie,	)	
	)	
Employer	)	
	)	Case No. S-DR-16-006
and	)	
	)	
Skokie Firefighters Local 3033, IAFF,	)	
	)	
Labor Organization	)	

**DECLARATORY RULING**

On May 12, 2016, the Village of Skokie (Village or Employer) and the Skokie Firefighters Local 3033, IAFF (Union) jointly filed a 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. They request a determination as to whether the Employer’s proposal to maintain the status quo of the Entire Agreement clause, set forth in Article XXIII of the parties’ expired Collective Bargaining Agreement, 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 were parties to a collective bargaining agreement that was effective May 1, 2010 through April 30, 2014. On October 7, 2014, the parties began negotiations for a successor agreement. During negotiations, the Employer proposed to maintain the status quo language of the Entire Agreement clause. The Union objected to the inclusion of the Entire Agreement clause in the parties’ successor agreement on the grounds that

it addressed a permissive subject of bargaining. The Union subsequently requested compulsory interest arbitration. The parties selected Jules Crystal to serve as their interest arbitrator.

## **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).

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

This Agreement, upon ratification, supersedes all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties, and concludes collective bargaining for its term unless otherwise expressly provided herein.

The Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, including the impact of the Village's exercise of its rights as set forth

herein on wages, hours or terms and conditions of employment, provided that if the Village exercises its rights as set forth in this Agreement so that wages, hours or conditions of employment are impacted, a grievance may be filed involving the meaning, application or an alleged violation of the provision(s) of this Agreement which the Village relies on in taking the action in question and the resolution of said grievance in accordance with the grievance procedure set forth in this Agreement shall be in lieu of effects bargaining. This paragraph does not waive the right to decisional bargaining over any subject or matter not referred to or covered in this Agreement which is a mandatory subject of bargaining and concerning which the Village is considering changing during the term of this Agreement.

#### **IV. Issues**

The issue is whether the Entire Agreement clause proposed by the Employer is a mandatory or permissive subject of bargaining.

The Union asserts that the proposal addresses a permissive subject of bargaining because it contains a broad zipper clause that waives its right to midterm bargaining. The Union observes that it seeks a waiver of the Union's right to bargain over the impact of the Employer's exercise of its management rights, which precludes midterm bargaining over some unforeseeable matters not covered by the agreement.<sup>1</sup> The Union rejects the Employer's claim that the proposal narrows the scope of the waiver by substituting grievance arbitration for midterm bargaining, and emphasizes that the two are not equivalent.

The Employer argues that its proposal addresses a mandatory subject of bargaining because the Entire Agreement clause does not seek the waiver of the Union's right to midterm bargaining.<sup>2</sup> The Employer asserts that the proposal seeks a waiver of bargaining over only matters foreseen by the parties during negotiations and covered by the agreement. The parties anticipate that the Employer's midterm exercise of its rights may impact employees' terms and

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<sup>1</sup> The Union observes that two prior Declaratory Rulings reached the same conclusion with respect to similar, if not identical, contract proposals and further notes that one of those also addressed the same employer at issue here.

<sup>2</sup> The Employer bifurcates its analysis of the clause, noting that the first part is a standard narrow zipper clause, when read in isolation. The Union does not dispute this construction and instead focuses on the second part of the proposal.

conditions of employment and the proposal even sets forth a process, grievance arbitration, by which the parties will resolve those foreseen issues. In addition, the Employer notes that the parties' agreement covers impacts issues. Finally, the Employer argues the proposal's substitution of grievance arbitration for effects bargaining eliminates the waiver, or mitigates its effects, because it channels the impacts dispute to a different forum that is still part of the collective bargaining process. The Employer reasons that this feature distinguishes the instant proposal from similar proposals that have been deemed permissive subjects of bargaining.

## **V. Discussion and Analysis**

The Employer's proposal on the Entire Agreement clause is a permissive subject of bargaining because it seeks the Union's waiver of its right to midterm bargaining over the impacts of the Employer's exercise of management rights.

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). Under the Act, public employees have the statutory right to midterm bargaining, but that right is not absolute. City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015) citing Mt. Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 278 Ill. App. 3d 814, 816 (4th Dist. 1996)(applying Illinois Educational Labor Relations Act); 5 ILCS 315/6 (setting forth duty to bargain); 5 ILCS 315/7 ("no party to a collective bargaining contract shall terminate or modify such contract unless the party desiring such termination or modification" satisfies the requirements of the Act.). The right to midterm bargaining applies only to those subjects that are neither fully bargained nor the subject of a clause in a collective bargaining agreement. Mt.

Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 278 Ill. App. 3d at 816; Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000).

Accordingly, a proposal that forecloses bargaining over unknown or unforeseeable matters (“broad zipper clause”) waives the right to midterm bargaining. Mt. Vernon Educ. Ass'n, IEA-NEA, 278 Ill. App. 3d at 823-4. By contrast, a proposal that forecloses bargaining only over subjects that the parties fully negotiated (“narrow zipper clause”) does not waive the right to midterm bargaining, even if the parties did not include reference to that subject in their agreement.<sup>3</sup> Id.

Here, the Employer’s proposal is analogous to a broad zipper clause because it forecloses the Union’s right to bargain over unforeseeable matters that arise during the term of the contract, specifically, the impact of the Employer’s exercise of its management rights. The Union cannot know the full impact of the Employer’s exercise of management rights, particularly where those rights are broadly stated. In fact, the impetus for the exercise of those rights may have not yet arisen at the time of bargaining, and the Employer itself may not yet know how it will exercise the rights it reserved. The Union’s anticipation of some managerial changes, such as layoffs, and its present decision to bargain over their effects, does not eliminate the uncertainty inherent in the Employer’s exercise of its rights in full. The proposal’s broad foreclosure of bargaining over all impacts of the Employer’s exercise of management rights therefore forecloses bargaining over at least some unforeseeable matters, including matters not referenced by the agreement. Thus, the Employer’s proposal in this case qualifies as a “zipper clause that is not clearly narrow and that is therefore a permissive subject of bargaining.” Vill. of Skokie, 26 PERI ¶ 17 (IL LRB-SP G.C. 2010) (addressing nearly identical language and finding

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<sup>3</sup> I decline to find, as the Employer urges, that a broad zipper clause is a mandatory subject of bargaining where the Illinois Appellate Court has reached the opposite conclusion. Mt. Vernon Educ. Ass'n, IEA-NEA, 278 Ill. App. 3d 814 at 823-4. In light of the Court’s clear ruling on this matter, case law from other jurisdictions is unpersuasive.

it a permissive subject of bargaining); see also Vill. of Schaumburg, 31 PERI ¶¶ 163 (IL LRB-SP G.C. 2012) (proposal that expressly waived union's right to bargain over impact of employer's exercise of management rights waived the union's right to mid-term impact bargaining on subjects other than those expressly referenced in the agreement and was a permissive subject of bargaining).

Notably, the Employer's proposal remains permissive under this analysis even though the parties anticipate that the Employer's future exercise of its management rights might raise impacts issues. The parties' recognition of this self-evident employment reality adds no definition to the Employer's future managerial changes or the form that its impacts might take. It is this uncertainty that renders the Employer's proposal a permissive subject of bargaining because the proposal consequently seeks the Union's waiver of midterm bargaining over some unforeseeable and unknown matters. Mt. Vernon Educ. Ass'n, IEA-NEA, 278 Ill. App. 3d at 823-4.

Similarly, the proposal's inclusion of a mechanism for resolving impacts bargaining issues (grievance arbitration) fails to narrow the breadth of the zipper clause. First, it likewise adds no definition to the Employer's unforeseeable managerial changes or their impacts. Second, it does not eliminate the waiver of the Union's right to midterm bargaining over the impacts of the Employer's exercise of management rights, as the Employer suggests. The Employer's proposal does not merely channel the parties' impacts disputes to a different, but equivalent forum; rather, it changes the remedy available to the Union by limiting the addition of new contractual provisions to address those impacts. Under the Employer's proposal, the grievance arbitrator's authority is confined to interpreting the parties' collective bargaining

agreement.<sup>4</sup> The parties' separate grievance and arbitration procedure,<sup>5</sup> incorporated by reference into the Employer's proposal, further limits the arbitrator's authority by providing that the "arbitrator shall have no right to...add to...the provisions of this Agreement." See Section 13.4.<sup>6</sup> The Employer accurately observes that the grievance procedure is "part of the continuous collective bargaining process."<sup>7</sup> However, that observation carries little weight in support of the Employer's position where the Employer's proposal expressly excludes a swath of unforeseeable topics from the collective bargaining process and where the grievance arbitrator's narrow authority under the parties' agreement reinforces that exclusion.

Finally, the Employer's reliance on a Vermont Labor Relations Board (VLRB) decision is misplaced for two reasons. Town of Hartford, 32 VLRB 357 (VT LRB 2013). First, that decision does not stand for the proposition, advanced by the Employer, that grievance arbitration is always an adequate forum for the resolution of impacts issues that flow from the exercise of an employer's management rights. Rather, the VLRB merely held that grievance arbitration was an adequate forum to address such impacts under one discrete and well-defined set of circumstances. Town of Hartford, 32 VLRB 357 (deferring a charge that alleged a unilateral change to employee's schedule and overtime). Second, it is inappropriate to apply a generalization of that holding here, as the Employer does. The VLRB made its determination

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<sup>4</sup> This authority is consistent with an arbitrator's authority under common law and the Illinois Uniform Arbitration Act. Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago, 318 Ill. App. 3d 628, 634 (2000) (citing the Illinois Uniform Arbitration Act 710 ILCS 5/1 et seq. (1999)).

<sup>5</sup> I refer to Article XIII Grievance and Arbitration Procedure in the parties' prior contract. Neither party has indicated that they proposed changes to this provision for their successor agreement.

<sup>6</sup> Indeed, if the arbitrator did impose new contract terms and did not merely interpret the existing language, he would exceed his authority and his award could be vacated. American Federation of State, County and Municipal Employees, AFL-CIO v. State, 124 Ill. 2d 246, 254 (1988) ("scope of an arbitrator's power generally depends upon what the parties agreed to submit to arbitration" and is determined by provisions on the arbitration agreement); Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago, 318 Ill. App. 3d 628, 634 (1st Dist. 2000)(arbitrator is authorized only to interpret existing provisions and cannot change or alter terms).

<sup>7</sup> United Steelworkers of Am. v. Warrior & Gulf Nav. Co., 363 U.S. 574, 581 (1960).

after the employer exercised its management rights, once the employer's change, the impacts of that change, and the applicability of other contract terms were readily identifiable. Id. Here, by contrast, the Employer seeks the same determination as reached by the VLRB where it has not yet exercised its management rights and where the impacts of that exercise may touch upon matters not covered by the parties' contract and not contemplated by the parties during negotiations. Cf. Town of Hartford, 32 VLRB 357 (at least three provisions apart from the management rights clause addressed how the employer would exercise the rights it reserved, at issue in the charge). Indeed, the same unknown factors that render Town of Hartford inapplicable here illustrate that the Employer's proposal is a permissive subject of bargaining. See Vill. of Skokie, 26 PERI ¶ 17 (where management rights clause did not limit employer with respect to matters outside the agreement, clause that waived bargaining over impacts flowing from exercise of management rights was a permissive subject).

Thus, the Employer's proposal on the Entire Agreement clause is a permissive subject of bargaining.

**Issued in Chicago, Illinois, this 21st day of June, 2016.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**



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