STATE OF ILLINOIS
LABOR RELATIONS BOARD
LOCAL PANEL

Service Employees International Union, Local 73,	)	
Charging Party	)	Case No. L-CA-14-045
and	)	
County of Cook,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On Jaunary 10, 2014, Service Employees International Union, Local 73 ("Charging Party" or "Union") filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board ("Board") alleging that various departments within the County of Cook ("Respondent" or "County"), violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315 (2012), as amended by failing to bargain in good faith with the Union when it issued an order requiring all County offices closed on November 29, 2013, except public healthcare and public safety offices. The charge was then investigated in accordance with Section 11 of the Act, and on June 17, 2014, the Board's Executive Director issued a Complaint for Hearing. Pursuant to Section 1220.50(f) of the Board's Rules and Regulations, 80 Ill. Adm. Code §§ 1200-1300 ("Board's Rules"), on June 19, 2014, the undersigned issued an Amended Complaint for Hearing ("Amended Complaint"). On July 3, 2014, Respondent filed an Answer to the Amended Complaint. On July 15, and 16, 2014, Respondent filed a Motion to Defer and a Motion for Variance. Charging Party filed responses to both motions on August 1, 2014. After full consideration of the filings, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. At all times material, Respondent is a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent is subject to the jurisdiction of the Local Panel of the Board, pursuant to Section 5(b) of the Act.

3. At all times material, Respondent is subject to the Act, pursuant to Section 20(b) thereof.

4. At all times material, Charging Party is a labor organization within the meaning of Section 3(i) of the Act.

5. At all times material, Charging Party is the exclusive bargaining agent for several units of employees employed by Respondent.[1]

6. At all times material, Charging Party and Respondent were engaged in negotiations over the terms of a collective bargaining agreement to succeed an agreement that expired December 31, 2008.

7. At all times material, Maureen T. O'Donnell has been Bureau Chief of Human Resources for Respondent.

II. BACKGROUND

On July 3, 2014, the undersigned e-mailed the parties the following:

> Dear parties:
> I have received Respondent's Answer to Complaint for Hearing. I note Respondent [raises] several affirmative defenses, including that the 'underlying dispute should be deferred or referred to arbitration pursuant to the parties' collective bargaining agreements.' Deferral requires the filing of a specific motion. Pursuant to Board Rule 1220.65(b)(2) such motion must be filed within 25 days after the issuance of the Complaint. If I do not receive a motion for deferral containing all the relevant information necessary for me to rule, i.e. a copy of the arbitration clause, a legal argument identifying the applicable deferral standard[,] and application of such standard to the facts in this case, the next step will be to schedule a hearing.

On July 15, 2014, Respondent filed a Motion to Defer. Also, on July 15, the undersigned issued an Order to Show Cause, providing:

> I am in receipt of the County's Motion to Defer which was hand-delivered to the Board today, July 15, 2014. Pursuant to Board Rule 1220.65(b)(2) such motion must be filed within 25 days after the ***issuance*** of the Complaint. The Amended Complaint was issued on June 19th, 2014, making the 25th day July 14th. This motion is untimely, as today is 26 days after the issuance of the Complaint.
> Therefore, **IT IS HEREBY ORDERED** that Respondent shall explain why its Motion should be considered. Respondent shall file a response to this Order no later than Monday, July 21, 2014[,] at 5pm.

In response to this Order, on July 16, 2014, Respondent filed a Motion for Variance.

---

[1] The Amended Complaint alleges, that "[a]t all times material, Charging Party is the exclusive bargaining unit composed of over 3000 employees in various job titles and classifications (Unit)." Respondent contends that while the Charging Party is the exclusive bargaining agent for some of its employees, these employees constitute several units, not one single unit.

Respondent attached several exhibits to its Motion to Defer, including the following: Articles II and III of the parties' 24 collective bargaining agreements ("CBAs"), and two grievances Charging Party filed regarding the facility closures on November 29, 2013.

The Union filed grievance #GV130730 on behalf of "all affected SEIU Local 73 members – Bureau of Administrative/Officers under the President" at "all affected locations." In this grievance, the Union alleges that "management has violated Article 1 Section 1 (Recognition), Article 3 (Overtime), Article 6 (Holidays), Article 14 and all other relevant sections of the CBA in that the County is mandating employees to take a non[-]paid shut down day for [November 29, 2013,] the day after Thanksgiving that was never negotiated with the Union." The Union filed grievance #GV130715 on behalf of the bargaining unit members at all "Health and Hospitals (John H. Stroger/Cermak, Service and Maintenance Oak Forest, Technicians, Technologist and Healthcare Professionals)." In this grievance the Union alleges that the County violated Article I Section 1.1 and 1.2, Article V, Section 5.1 and "any other articles or rule of law to the Agreement between the Union and County" when the County implemented an unpaid closure day on November 29, 2013. In both grievances, the Union characterizes the County's actions as "unilateral" and as a remedy requests that the County cease from taking additional unilateral actions and bargain over the effects of this unilateral action.

The Union alleges that the County violated only some of the 24 CBAs between the parties, but the Union does not specify that the unfair labor practice charge is only brought on behalf of only some of the employees it represents, consequently, I infer that the matter before the Board involves all the County employees the Union represents, including those employed by the County as a joint employer. Since the Union represents bargaining units pursuant to 24 different CBAs and the grievances filed only alleged that the County violated some of those CBAs, the instant matter involves CBAs that the Union has not filed grievances over. Specifically, the record contains no information as to whether the Union has grieved the County's actions regarding CBAs for the following departments/joint employers: County of Cook/Treasurer of Cook County, County of Cook/Cook County Clerk (Administrative Support Staff), County of Cook/Cook County Clerk (Supervisors), County of Cook/Sheriff of Cook County (Clerical), County of Cook/Sheriff of Cook County (Youth Services Administrative), and County of Cook/Recorder of Deeds.

Article II in every CBA between the parties contains a County Authority clause. The majority of the parties' CBAs have nearly identical County Authority clauses, which provide:

> The Union recognized that the [Employer] has the full authority and responsibility for directing its operations and determining policy. The [Employer] reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon it and vested in it by the statutes of the State of Illinois, and to adopt and apply all rules, regulations, and policies as it may deem necessary to carry out its statutory responsibilities; provided, however, that the [Employer] shall abide by and be limited only by the specific and express terms of this Agreement, to the extent permitted by the law.
>
> The Employer and the Union recognize that this Agreement does not empower the Employer to do anything that it is prohibited from doing by law.

The CBAs involving hospital employees have County Authority clauses which provide:

> For the purpose of assuring the maintenance of efficient and uninterrupted medical care, and recognizing that all functions of the Hospital are integrally related to such care, the parties agree that the County shall have full right and authority to manage all functions of the Hospital and to direct its employees, except as such rights are specifically limited by this Agreement. These rights include, but are not limited to, the right to manage the business of the Hospital; to determine standards of patient care; to develop and use new methods, procedures and equipment; ... to decide whether to purchase or use its own personnel; to direct the working force; to determine the schedules and nature of work to be performed by employees, and the methods, procedures and equipment to be utilized by the employees in the performance of their work; ... to utilize employees wherever and however necessary in cases of emergency, or in the interest of patient care or the efficient operation of the Hospital; and to maintain safety, efficiency and order in the Hospital. The exercise or non-exercise of rights hereby retained by the County shall not be construed as waiving any such right, or the right to exercise them in some other way in the future.

In October 2014, the parties supplied the undersigned their CBAs' arbitration provisions. These provisions detail the parties' arbitration grievance procedure which provides that if a party is not satisfied with the resolution of the grievance procedure at Step 3, then the union may seek to proceed to impartial arbitration, and that "the decision of the Arbitrator shall be binding."

III. ISSUES AND CONTENTIONS

The issue is whether the Board should defer the allegation in the Amended Complaint to the parties' agreed-upon arbitration proceedings. Respondent argues that its authority to close many of its facilities stems from the County Authority clause in each of the parties' CBAs, and that deferral to arbitration is appropriate so that an arbitrator can interpret such clause. Charging

Party argues that deferral is inappropriate because a question of contract interpretation does not lie at the center of this dispute because the County is requesting that an arbitrator determine whether the Charging Party waived its statutory right to bargain over closure dates, and an arbitrator is not authorized to make such a determination. Charging Party further contends that Respondent's deferral request does not comply with the Board's Rules, and that waiving compliance is inappropriate. In response, Respondent argues that its deferral request does comply with the Board's Rules, but, also argues, that if the Board finds otherwise, the Board should waive compliance with its Rules.

IV. DISCUSSION AND ANALYSIS

In order to defer this case to grievance arbitration, deferral must be both procedurally and substantively appropriate.

A. Deferral is Procedurally Appropriate.

As a preliminary matter, whether Respondent's deferral request complies with Board Rules 1220.65(b)(2) or 1220.40 is in question, and, if it has not complied, whether the Board will grant a variance from strict compliance with these rules is also in question.

1. Compliance with Board Rules

Respondent argues that on previous occasions raising a deferral request as an affirmative defense has been sufficient under the Board's Rules, making a variance pursuant to Section 1200.160 unnecessary.

a. Board Rule 1220.40(b)

Requesting deferral to arbitration is not an affirmative defense under Section 1220.40(b) of the Board's Rules. "An affirmative defense raises new matters that, assuming the allegations in the complaint to be true, constitute a defense to the action and have the effect of defeating the plaintiff's claims on the merits." Zieger v. Manhattan Coffee Co., 112 Ill. App. 3d 518, 533 (5th Dist. 1983). In order to process, enforce, and apply the Act, the Board promulgated Section 1220 of its Rules to detail the procedures for initiating, processing, and resolving unfair labor practice charges. See 80 Ill. Admin. Code § 1220. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound

by those rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health Facilities Planning Bd., 269 Ill. App. 3d 944, 948 (4th Dist. 1995) citing Union Electric Co. v. Dep't of Revenue, 136 Ill. 2d 385, 391 (1990). Administrative rules have the force and effect of law. People v. Molnar, 222 Ill. 2d 495, 508 (2006); Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 771 (4th Dist. 2011). In addressing whether a deferral request is an affirmative defense within the meaning of Section 1200.40(b) of the Board's Rules, the best indication is the language of the Rules themselves. See Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d 593, 603-04 (2008); Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990). It is a well-established canon of statutory interpretation that a statute should be read as a whole, with all relevant parts considered so that each word, sentence, and phrase of a statute be given reasonable meaning and not rendered redundant. Kraft, Inc., 138 Ill. 2d at 189; People ex rel. Dep't of Labor v. Sackville Const., Inc., 402 Ill. App. 3d 195, 198 (3rd Dist. 2010).

Section 1200.40(b)(1) and (2) of the Board's Rules provides:

> **Section 1220.40 Charge Processing and Investigation, Complaints and Responses**
>
> (b) Whenever the Executive Director issues a complaint for hearing, the respondent shall file an answer within 15 days after service of the complaint and deliver a copy to the charging party by ordinary mail to the address set forth in the complaint. Answers shall be filed with the Board with attention to the designated Administrative Law Judge.
>
> 1) The answer shall include a specific admission, denial or explanation of each allegation or issue of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the circumstances of the allegation.
>
> 2) The answer shall also include a specific, detailed statement of any affirmative defenses.
>
> (Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

Section 1220.65 of the Board's Rules provides:

> **Section 1220.65 Deferral to Arbitration**
>
> (a) The Board may, on its own motion or the motion of a party, defer the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in a collective bargaining agreement.
>
> (b) A party may file a motion to defer the resolution of an unfair labor practice charge:
>
> 1) at any time during the investigation prior to the issuance of a complaint for hearing, dismissal, or deferral order. The motion shall be made in writing

to the Board agent investigating the unfair labor practice charge and shall be served in accordance with 80 Ill. Adm. Code 1200.20.

2) within 25 days after the issuance of a complaint for hearing. The motion shall be made in writing to the Administrative Law Judge assigned to the case and shall be served in accordance with 80 Ill. Adm. Code 1200.20.

(c) Responses and any other answering documents, including memoranda and affidavits, must be filed within 5 days after service of the motion, or as otherwise required by the Administrative Law Judge or the Board. Responses must be served in accordance with 80 Ill. Adm. Code 1200.20.

(d) If the motion to defer the resolution of an unfair labor practice charge is made during the investigation, the Executive Director will rule on the motion by issuance of an order or a complaint for hearing. Parties may appeal the Executive Director's orders in accordance with 80 Ill. Adm. Code 1200.135(a). Complaints for hearing are not appealable. If the motion to defer the resolution of an unfair labor practice charge is made after the issuance of a complaint for hearing, the Administrative Law Judge shall rule on the motion in accordance with 80 Ill. Adm. Code 1200.45. Parties may appeal the Administrative Law Judge's ruling on the motion to defer in accordance with 80 Ill. Adm. Code 1200.135(b).

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

There are multiple distinctions between an affirmative defense and a motion to defer that support the conclusion that a motion to defer is not an affirmative defense as identified in the Board's Rules. First, a respondent must file its answer including any affirmative defenses within 15 days after *service* of a complaint, while either party may file a motion to defer within 25 days after the *issuance* of a complaint. Second, if a respondent fails to allege an affirmative defense the defense may be waived, but if a party does not file a motion to defer, the Board may still defer the matter on its own motion. Third, the Board's Rules are silent on whether a charging party is required to file a response to any affirmative defenses alleged in the answer, in contrast to the deferral to arbitration rule, which specifically provide that the non-moving party must file its "responses and any other answering documents ... within 5 days after service of the motion, or as otherwise required." See Forest Preserve Dist. of Cook Cnty. v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 749 (1st Dist. 2006) (holding that a charging party's failure to respond to a respondent's affirmative defenses did not constitute an admission because the Board's Rules do not require such a response).

Board history also reveals that a deferral request is not an affirmative defense. In Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶3019 (IL ILLRB 1990), the then Local Labor Relations Board upheld the Administrative Law Judge's ("ALJ's") decision not to defer the

matter to arbitration in part because deferral was raised for the first time at hearing instead of being raised as an affirmative defense in its answer. Rule 1220.65 was subsequently added to the Board's Rules and became effective May 1, 2003. Consequently, this rule supersedes previous precedent, and to add such a contrary administrative rule in light of such precedent indicates that the holding that deferral is an affirmative defense is no longer controlling.

Whether a request for deferral is either an affirmative defense or a motion for the ALJ to rule upon is significant because how a deferral is categorized determines the Board's subsequent actions and the parties' actions in response. Section 1220.40(b)(2) of the Board's Rules requires that the "answer shall include a specific, detailed statement of any affirmative defenses." A party must first raise its affirmative defense in its pleading, or risk forfeiting the defense. Collins v. Dep't. of Health and Family Services ex rel. Paczek, 2014 IL App (2d) 130536; Int'l. Ass'n of Firefighters Local No. 23 v. City of E. St. Louis, 213 Ill. App. 3d 91, 95-96 (5th Dist. 1991) citing Alco Standard Corp. v. F. & B. Mfg. Co., 132 Ill. App. 2d 24 (1970) (finding that respondent should have raised an arbitration decision as an affirmative defense to a breach of contract claim because it complied with the contract law notion of accord and satisfaction). A party must also prove its asserted affirmative defense or again risk forfeit. Wright v. Pucinski, 352 Ill. App. 3d 769, 772 (1st Dist. 2004); Wayne Tp. Bd. of Auditors, DuPage Cnty. v. Ludwig, 154 Ill. App. 3d 899, 905 (2nd Dist. 1987); Baylor v. Thiess, 2 Ill. App. 3d 582, 584 (1st Dist. 1971). Affirmative defenses raise questions of fact or law that may require evidence to be taken at hearing. Cnty. of Cook, 27 PERI ¶57 (IL LRB-LP 2011). In which case, absent a motion requesting a ruling on such defenses, an ALJ would rule upon such defenses after the conclusion of the hearing in the Recommended Decision and Order.

In contrast, pursuant to Board Rule 1200.45, motions, including motions to defer, "must briefly state the grounds for the motion and any relief requested." A Motion to Defer brought after the issuance of the complaint requires the assigned ALJ to determine that either it is necessary for the ALJ to hold a hearing to resolve the allegations in the complaint by applying the Act, or that an arbitrator can appropriately resolve the allegations in the complaint by interpreting the parties' CBA. As discussed below, for such a motion to be granted, the moving party must provide sufficient information, and absent sufficient information, the ALJ will be forced to deny the motion.

b. Board Rule 1220.65(b)(2)

Respondent argues that both its Answer and subsequent Motion to Defer comply with the Board's Rule regarding deferral to arbitration.

i. Answer

Incorporating the National Labor Relations Board's policy, the Board has recognized three types of arbitral deferral: a Collyer deferral, which concerns pre-arbitral deferral where the union has not initiated a contractual grievance; a Dubo deferral, where the union has voluntarily initiated a grievance and is awaiting arbitration; and a Spielberg deferral, involving a post-arbitral deferral. City of Chicago, 10 PERI ¶3001 (IL LLRB 1993); City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Collyer Insulated Wire, 192 NLRB 837 (1971); Dubo Mfg. Corp., 142 NLRB 431 (1963); Spielberg Mfg. Co., 112 NLRB 1080 (1955).

In order for deferral to be proper the applicable legal test must be satisfied. A Collyer deferral is appropriate where 1) a question of contract interpretation is at the center of the dispute; 2) the dispute arises within an established collective bargaining relationship where there is no evidence of enmity by the respondent toward the union or an employee's exercise of protected rights; and 3) the respondent has credibly asserted its willingness to arbitrate the dispute. Chicago Trans. Auth., 17 PERI ¶3019 (IL LRB 2001); Collyer Insulated Wire, 192 NLRB 837. Under the Dubo deferral standard, the Board may appropriately defer the charges in the complaint where 1) the parties have already voluntarily submitted their dispute to their agreed-upon grievance arbitration procedure; 2) that procedure culminates in final and binding arbitration; and 3) there exists a reasonable chance that the arbitration process will resolve the dispute. State of Ill. Dep't. of Cent. Mgmt. Serv. (Dep't. of Human Serv.), 19 PERI ¶114 (IL LRB-SP 2003); City of Chicago, 10 PERI ¶3001 (IL LLRB 1993); City of Mt. Vernon, 4 PERI ¶2006; Dubo Mfg. Corp., 142 NLRB 431. Under the Spielberg deferral standard, the Board may defer to an existing arbitration award where 1) the unfair labor practice issues have been presented to and considered by an arbitrator; 2) the arbitration proceedings appear to have been fair and regular; 3) all parties to the arbitration agreed to be bound by the award; and 4) the arbitration is not clearly repugnant to the purposes and policies of the Act. Chief Judge of the Sixteenth Jud. Cir., 29 PERI ¶50 (IL LRB-SP 2012); Chicago Trans. Auth., 16 PERI ¶3010 (IL LLRB 1999); Spielberg Mfg. Co., 112 NLRB 1080.

To determine which standard is applicable, a respondent must first indicate whether the union has filed a grievance regarding the charges alleged in the complaint, and must identify the status of any grievance. Then, depending on the status, further documentation may be required. For example, in the case of a Collyer deferral, in order to determine whether the matter is one of contract interpretation, the respondent may be required to supply the contract provisions it alleges are appropriate for arbitration. In the case of a Dubo deferral, the grievance, the contract provisions alleged to have been violated, and the question that will be submitted to the arbitrator may be required to properly consider whether deferral is appropriate. Finally, in the case of a Spielberg deferral, the arbitrator's award must be reviewed in order to determine whether the arbitrator properly considered the issues raised in the unfair labor practice charge.

Here, the at-issue affirmative defense Respondent raised in its Answer provides, "[t]he underlying dispute should be deferred or referred to arbitration pursuant to the parties' collective bargaining agreements." Respondent does not identify which deferral standard is applicable, or how it has satisfied the applicable standard. Furthermore, Respondent's Answer alleges that it and the Charging Party "are parties to more than one collective bargaining agreement, each of which speaks for itself," though its Answer did not include attachments of these agreements to support Respondent's deferral request. Therefore, deferral is inappropriate as requested in Respondent's Answer because Respondent failed to provide sufficient information.

ii. Subsequent Motion

Whether as an independent motion or as a response to the undersigned's request for further information, Respondent's subsequent Motion to Defer does not comply with the Board's Rules because it was untimely. As noted above, pursuant to Board Rule 1220.65(b), once a complaint has been issued, a party may file a motion to defer the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in the parties' collective bargaining agreement "within 25 days after the issuance of a complaint for hearing." According to the affidavit of service attached to the Amended Complaint, the Board issued and mailed a copy of the Amended Complaint to Respondent's attorney by U.S. mail on June 19, 2014. Pursuant to Board Rule 1200.20 and 1200.30, a timely motion to defer should have been hand delivered, postmarked, or faxed and postmarked no later than July 14, 2014. Respondent hand delivered its Motion to Defer to the Board's Chicago office on July 15, 2014, making the Motion untimely. If

Respondent's Motion to Defer were to be interpreted as a motion in support of a request made in its Answer, this filing is still untimely because the Respondent was specifically informed that any deferral motion must contain "all the relevant information necessary" to rule on the deferral within the time provided by Section 1220.65(b)(2).

2. Variance from Board's Procedural Rules

While I reject Respondent's argument that a variance is not required because it in fact complied with Board Rules, I also do not find that a variance from Rule 1220.65 is appropriate in this case. Section 1200.160 of the Board's Rules provides that the Board may waive compliance with Sections 1210, 1220 or 1230 of the Board's Rules if 1) the provision in question is not statutorily mandated; 2) the variance from the rule will not injure any party; and 3) it would be unreasonable or unnecessarily burdensome to apply the rule in this particular case.

The parties agree that the first prong is satisfied in that the requirement that a motion to defer be filed within 25 days is not mandated by the Act and is strictly governed by the Board's procedural rules. Regarding the second prong, Charging Party contends that failing to comply with the mandated deadline is injurious. Respondent argues that there is no injury, and points out that had it mailed the Motion to Defer on the last timely date, the Board would not have received it until approximately two days after it actually received the Motion to Defer by hand delivery. In this particular case, I find that granting a variance by allowing Respondent to file a motion one day late injures neither party.

The third prong is not satisfied. Respondent argues that it would be unreasonable to apply the 25-day filing requirement in this case for several reasons. First, Respondent argues that its timely Answer included a request for deferral and other ALJs have considered such filings as sufficient under Board Rule 1220.65. Second, Respondent argues that because its Answer identified deferral as an affirmative defense, Charging Party was on notice of such deferral request. Third, Respondent argues that because the Motion to Defer is meritorious, the Board should grant the variance in order to grant the Motion to Defer. Respondent's argument that its Answer should be interpreted as a Motion to Defer lacks merit for the reasons stated above. Moreover, Respondent was specifically informed that deferral would only be considered upon the filing of a specific motion consistent with Board Rule 1220.65. In the same communication, both parties were informed that the Board had already received the Respondent's Answer to the

Complaint, that a specific motion for deferral was still required for a deferral to be granted, and requested additional information in order to consider any such motion. This indicates that *both* parties were on notice that the Answer to the Complaint did not satisfy Board Rule 1220.65. Thus, I find that Respondent's arguments do not address whether compliance with the Board's administrative rule is unreasonably burdensome. I further note that Respondent has not articulated its reason for failing to comply with the Rule 1220.65. For these reasons, I find that Respondent has not demonstrated that variance is appropriate.

3. Deferral on Board's Own Motion

Under Section 11(i) of the Act, the Board's discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure is based upon the policy that the collective bargaining process is best served by encouraging parties to resolve their disputes, whenever possible, through their agreed-upon dispute resolution procedure. Vill. of Oak Park, 30 PERI ¶51 (IL LRB-SP 2013). Though the County's Motion to Defer is not procedurally appropriate, because of the Board's stated preference, in this case, I will analyze whether deferral is substantively appropriate. If it is otherwise substantively appropriate, I will recommend that the Board defer this matter on its own motion pursuant to Board Rule 1220.65(a).

B. Deferral is Substantively Appropriate.

As stated above, analyzing the appropriateness of a deferral depends on whether a grievance has been filed and the status of that grievance. The Union alleges that the County violated the Act when it unilaterally ordered all County offices closed on November 29, 2013, except public healthcare and public safety offices, and doing so without providing the Union notice or an opportunity to bargain. The Union filed two grievances alleging that these actions also violate a majority of the parties' CBAs. However, the record indicates that the matter before the Board is applicable to the employees under every CBA between the parties. Accordingly, both Collyer and Dubo deferral standards must be considered.

1. Collyer deferral

In applying the Collyer test, the Board has twice deferred to arbitration disputes over County closure dates. See Cnty. of Cook (Health & Hospitals System), 28 PERI ¶108 IL LRB-LP 2012) (deferring allegations that the County added five shutdown days with reduced staffing at certain

healthcare facilities without bargaining with the union); Cnty. of Cook, 28 PERI ¶66 (IL LRB-LP 2011) (deferring allegations that the County unilaterally implemented shutdown and furlough days without bargaining with the union). While neither case involved the Charging Party, the Board analyzed portions of those parties' CBAs containing County Authority provisions identical to the provisions in this case. Cnty. of Cook (Health & Hospitals System), 28 PERI ¶108; Cnty. of Cook, 28 PERI ¶66. The Board noted that the County may very well possess the authority to close its facilities on the disputed days, and held that the phrase that the County's authority "shall be limited only by the specific and express terms of this Agreement to the extent permitted by law[,]" created a very real question of whether this provision constitutes the union's waiver of its duty to bargain over the closure dates, or constitutes an exception to any waiver. Cnty. of Cook (Health & Hospitals System), 28 PERI ¶108; Cnty. of Cook, 28 PERI ¶66; Cf. City of Elgin, 30 PERI ¶8 (IL LRB-SP 2013) (finding deferral inappropriate where the employer's alleged unilateral changes to a program's eligibility requirement because an arbitrator's finding would not mandate that the union clearly and unmistakably waived its right to bargain over the alleged change). In accordance with Board precedent, I reject the Union's argument that an arbitrator cannot properly determine whether this language constitutes waiver, and find that the first prong of the Collyer deferral test is satisfied because the issue at the center of this dispute is a question of contract interpretation. Regarding the second prong, neither party argues that there is enmity between them, and the record is void of any expressed animosity between the parties. Thus, I find that the first two prongs for a Collyer deferral are satisfied.

Regarding the third prong, the Collyer doctrine provides that the moving party agree to waive procedural defenses to a future grievance. In Cnty. of Cook, the Local Panel affirmed the Executive Director's order deferring the matter despite the fact that the respondent had not specifically indicated its willingness to waive procedural defenses to a future grievance. Cnty. of Cook, 28 PERI ¶66. The deferral order adopted by the Board included the following, "Respondent is on notice that raising a timeliness objection to the grievance under these circumstances is, at a minimum, imprudent." Id. See also Byron Fire Prot. Dist., 31 PERI ¶134 (IL LRB-SP 2015) (State Panel refused to defer a matter where the respondent expressly refused to waive procedural defenses). Thus, Respondent is again on notice of the necessity of raising timeliness objections to any grievance filings regarding the following CBAs between it and the

Union: County of Cook/Treasurer of Cook County, County of Cook/Cook County Clerk (Administrative Support Staff), County of Cook/Cook County Clerk (Supervisors), County of Cook/Sheriff of Cook County (Clerical), County of Cook/Sheriff of Cook County (Youth Services Administrative), and County of Cook/Recorder of Deeds. Also, since the County has brought this motion, and the Union has sought arbitration of the same matter, I find that both parties have credibly asserted their willingness to arbitrate the closure date. Consequently, a Collyer deferral is substantively appropriate.

2. Dubo deferral

Since I have determined that deferral is appropriate under the Collyer standard, it would be illogical to find that the same County actions do not meet the Dubo standard. Furthermore, I find that even when analyzed independently deferral is substantively appropriate under the Dubo standard. The Union has filed two grievances in which it alleges that the County's decision to close many of its facilities on November 29, 2013, violate several provisions of the parties CBAs. Thus, the Union has acquiesced that the County's actions are subject to interpretation by an arbitrator. As indicated in the parties' CBAs, if the Union is not satisfied after Step 3 of the grievance procedure it may seek to enter impartial arbitration, and the "decision of the Arbitrator shall be final." Therefore, I find that the first two prongs for a Dubo deferral are met.

The third prong requires that there exists a reasonable chance that the arbitration process will resolve the parties' dispute. The unfair labor practice charge before the Board concerns whether the County violated Sections 10(a)(4) and (1) of the Act by failing to bargain in good faith with the Union when it issued an order requiring all County offices closed on November 29, 2013, except public healthcare and public safety offices. The County argues that ordering the closures is not a mandatory bargaining subject because it is within the County's managerial authority to order such closures as identified in the parties' collective bargaining agreements, and, therefore, such matter was bargained over when the parties negotiated their CBAs. It is well-settled that when no bargaining occurred, an employer violates its obligation to bargain in good faith when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the union notice and an opportunity to bargain. Cnty. of Cook v. Licensed Practical Nurses Ass'n of Ill. Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Cnty. of Cook (Dep't of Cent. Serv.), 15 PERI ¶3008 (IL LLRB 1999).

Whether the closing of County offices for one day is a mandatory bargaining subject is examined pursuant to the framework that the Illinois Supreme Court established in Central City Educ. Assoc. v. Ill. Ed. Labor Rel. Bd., ("Central City") 149 Ill. 2d 496, 522 (1992) (analyzing the mandatory subject provision of the Illinois Educational Labor Relations Act (IELRA) and later applying that analysis directly to this Act in City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 206-207 (1998)). The Central City test first considers whether a topic concerns the wages, hours, and terms and conditions of employment of employees in the bargaining unit. Cnty. of Lake, 28 PERI ¶67 (IL LRB-SP 2011). If it does, the second prong of the Central City test asks whether the topic is also a matter of inherent managerial authority. Id. Finally, if the topic both concerns the wages, hours, and terms and conditions of employment of the employees in the bargaining unit and concerns a matter of inherent managerial authority, the third step of the Central City test requires weighing the benefits that bargaining will have on the decision making process against the burdens that bargaining imposes on the employer's authority. Vill. of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2009). If the benefits outweigh the imposition on the employer's authority, then the matter is mandatory bargaining subject. Id.

The deferral issue in this case goes to the second prong of the Central City test, whether the closures are within the County's inherent managerial authority. The employer is burdened to satisfy this prong. See Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d at 552. Here, the County argues that it is within its authority as identified in the County Authority clauses of the parties' CBAs. In determining whether the County's actions violate the sections of the CBAs identified by the Union, the arbitrator must reconcile those provisions the Union argues the County violated, with the County Authority provision. If the arbitrator finds that it is within the County's inherent managerial authority to order the closures, the second prong of the Central City test is satisfied. Consequently, the Union's unfair labor practice will fail because if the CBAs permit the County to close the facilities, then the parties in fact already bargained over the closures when they bargained over the County Authority clauses in their CBAs. The Union argues that the arbitrator will not be interpreting whether the parties bargained over the closure dates, but rather will be interpreting whether the Union waived its right to bargain over such dates, and that an arbitrator is not authorized to make such a determination. As explained above, the Board has held that arbitrators are authorized to make such determinations when the

determination is based solely upon reconciling provisions of the parties' CBA. See Cnty. of Cook (Health & Hospitals System), 28 PERI ¶108; Cnty. of Cook, 28 PERI ¶66; Cf. City of Elgin, 30 PERI ¶8 (IL LRB-SP 2013). Accordingly, I find that there is a reasonable chance that the arbitration process will resolve this dispute. Thus, a Dubo deferral is substantively appropriate.

Therefore, because the Board is procedurally permitted to defer this matter on its own motion, as provided for in Board Rule 1220.65(a), and because I find that deferral is substantively appropriate, I recommend that the Board defer this matter.

V. CONCLUSIONS OF LAW

Deferral to the parties' grievance arbitration procedure is appropriate.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED the unfair labor practice charge shall be deferred to arbitration. The Amended Complaint in Case No. L-CA-14-045 will be held in abeyance until the parties have fully completed the grievance arbitration process. Within 30 days after the termination of that process, a party may notify the Board of the termination and request that the Board review the award to determine whether to defer to the arbitrator's disposition. A party's request should contain a copy of the award along with a detailed statement of the facts and circumstances bearing on whether the proceedings were fair and regular and whether the award is consistent with the purposes and policies of the Act. If a party fails to make such a request within the time specified, the Board may dismiss the Amended Complaint upon request of another party or on the Board's own motion. It is also ordered that the parties inform the Board of any significant delay in the arbitration process or of any resolution of the matter prior to issuance of an award.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation.

Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 29th day of May, 2015.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
LOCAL PANEL

Deena Sanceda
Administrative Law Judge