

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

International Association of Firefighters,	)	
Local 23,	)	
	)	
Charging Party	)	
	)	
and	)	Case Nos. S-CA-10-128
	)	S-CA-10-200
City of East St. Louis (Fire Department),	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On February 24, 2010, and April 7, 2010, the International Association of Firefighters, Local 23, (Charging Party or Union), filed unfair labor practice charges with the Illinois Labor Relations Board’s State Panel (Board) alleging that the City of East. St. Louis (Fire Department) (Respondent or City), violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended. The charges were investigated in accordance with Section 11 of the Act, and, on June 23, 2010, the Board’s Executive Director issued a Complaint for Hearing that also consolidated the above-captioned cases. The charge in Case No. S-CA-10-128 was subsequently withdrawn. The parties submitted a stipulated record in lieu of hearing as well as briefs arguing their respective positions. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

**I.     PRELIMINARY FINDINGS**

1.     I find that the Board has jurisdiction to hear this matter pursuant to Sections 5(a) and 20(b) of the Act.

2. The parties stipulate, and I find, that the Charging Party is a labor organization within the meaning of Section 3(i) of the Act.
3. The parties stipulate, and I find, that the Respondent is a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate, and I find, that the Respondent is a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. The parties stipulate, and I find, that the Respondent is subject to the jurisdiction of the Board's state panel pursuant to Section 5(a) of the Act.

## **II. ISSUES AND CONTENTIONS**

The Charging Party alleges that Respondent has engaged in an unfair labor practice in violation of Sections 10(a)(4) and (1) of the Act by failing to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings pursuant to Section 14(l) of the Act, thereby failing and/or refusing to bargain in good faith with the Union in violation of Sections 10(a)(4) and (1) of the Act. The only issues remaining for adjudication are the minimum manning issues in Case No. S-CA-10-200. The parties stipulated that Case No. S-CA-10-128 is withdrawn.

## **III. FINDINGS OF FACT**

The parties have submitted a stipulated record for consideration in this case. The stipulations of the parties reveal the following relevant facts.

The Union is the exclusive representative of a bargaining unit composed of the firefighters in the City's Fire Department. The Union and the Respondent were parties to a 2006-2008 Collective Bargaining Agreement (CBA), which included a "minimum manning" provision at Section 5.5. This provision stated that the City would staff the Department with a

minimum of 12 full-time uniformed firefighters (including captains, lieutenants, and firefighters) on a daily basis. This provision also stated that the number of full-time firefighters shall not be less than 58 for the duration of the Agreement. This CBA expired on December 1, 2008.<sup>1</sup> Thereafter, the parties were engaged in negotiations for a successor agreement. On April 17, 2009, the Union requested a mediation panel from the Board in Case No. S-MA-09-262, and that request constitutes the commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act.

On October 22, 2009, and thereafter, the City unilaterally implemented a reduction in the level of minimum daily manning for the bargaining unit employees by repeatedly staffing the Department with fewer than 12 full-time uniformed firefighters on a daily basis. The City asserted that this action was based upon a lack of funds. The parties stipulated that implementation of a reduction in the level of minimum daily manning for bargaining unit employees involves wages, hours, and terms and conditions of employment within the meaning of Section 7 of the Act and is thereby a mandatory subject of bargaining. The Union never consented to the implementation of the reduction in the level of minimum daily manning for bargaining unit employees, and further disputed and denied the City's alleged lack of funds.

On April 3, 2010, Arbitrator Marvin Hill, Jr. issued an award in the Matter of Interest Arbitration between City of East St. Louis, Illinois, Employer and IAFF Local No. 23, Union, Board Case No. S-MA-09-262 (2010), pursuant to Section 14 of the Act and Section 1230.100 of the Board's Rules. Service was completed on the parties on April 6, 2010, pursuant to Section 1200.30 of the Board's Rules. The City never rejected this award, thereby rendering the terms of

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<sup>1</sup> The parties' stipulations provide that the CBA expired on December 31, 2009, rather than 2008. However, the CBA itself, included as an exhibit by the Union, indicates that it expired on December 31, 2008. The Reynolds arbitration decision also references the next CBA, which was in effect from January 1, 2009, through December 31, 2011.

that award as the CBA for 2009-2011 between the Union and the City, pursuant to Section 13 of the Act and Section 1230.110 of the Board's Rules. The award also included a copy of the CBA between the parties for 2006-2008. During these interest arbitration proceedings, the City never proposed or otherwise sought a contractual modification to the minimum manning provisions of the CBA. The stipulated changes made by the parties at interest arbitration do not include any changes to Section 5.5 of the CBA.

On January 26, 2011, Arbitrator Brian Reynolds issued an award in a grievance arbitration proceeding between the parties, finding that the City violated the CBA by reducing the daily manning in the Department below 12 employees and ordering a make-whole remedy. The City has not made a payment or otherwise complied with the Reynolds award.

At the time of the Reynolds arbitration, the City was subject to the control of the Financial Advisory Authority (FAA) under the Illinois Distressed City Act. The FAA requires the City to operate under a balanced budget each year. The City ended FY 2009 with a \$2 million deficit that it rolled into the FY 2010 budget. With that \$2 million budget carryover, the City had originally been expecting a deficit of \$6 million for FY 2010. The City then attempted to reduce expenditures through layoffs, furlough days, and hiring and wage freezes. The City received FAA approval to reduce its working capital from 5% to 4%. The City also requested FAA approval to defer bond payments and for a \$2.5 million loan. If the City is unable to operate with a balanced budget, the FAA could take over the City's operations.

As part of its efforts to reduce these deficits, the City reduced staff in its Fire Department. Arbitrator Reynolds found that, since about January 1, 2010, to the time of the arbitration hearing, the City had always employed less than the 58 firefighters required by the contract and had repeatedly staffed the Fire Department with less than 12 firefighters on a daily basis. On

May 15, 2010, the City laid off five firefighters in the bargaining unit. This layoff reduced the total number of firefighters employed by the City from 50 to 45. On August 2, 2010, the City laid off eight more firefighters, reducing the number of firefighters employed by the City from 45 to 37.

Arbitrator Reynolds found that the 2009-2011 CBA contained no wage increases for the firefighters, but it did contain a "parity clause" providing that the unit members would receive a lump sum payment of \$500 and the same wage increase as granted any other City bargaining unit for 2009, 2010, and 2011, offset by the lump sum payment. Arbitrator Hill's interest arbitration award indicates that the parties stipulated to the zero wage increase provision and also to the other provisions and changes of the CBA. Arbitrator Reynolds further noted that, on September 4, 2010, he issued an arbitration award providing the City's police officer bargaining unit with wage increases, which award was accepted by the City. As of the date of Arbitrator Reynolds' award with respect to the grievances filed by the firefighters on minimum manning, he noted that the City had not amended the firefighters' CBA to provide for the corresponding wage increases, had not implemented the wage increases for the firefighters' unit, and has not provided the lump sum to the firefighters.

Arbitrator Reynolds rejected the City's defense that it was excused from compliance in accordance with the "impossibility doctrine." Arbitrator Reynolds found that the City had not proved that its financial situation was unforeseen at the time of the negotiations for the 2009-2011 CBA and that the City was already in a bad financial situation at the time of the negotiations, a fact that its negotiators should have known. Moreover, Arbitrator Reynolds declined to exempt the City under a policy of "extreme hardship," noting that, if such a policy applies, such a decision would be one of public policy for the courts to reach. Arbitrator

Reynolds found that the City violated the CBA and ordered a make-whole remedy, retaining jurisdiction until such time as he is informed by the parties that the award has been fully implemented.

#### **IV. DISCUSSION AND ANALYSIS**

The Complaint issued against Respondent alleges violations of Sections 10(a)(4) and (1) of the Act. Those sections provide, in pertinent part:

(a) It shall be an unfair labor practice for an employer or its agents: (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay...(4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative[.]

At the heart of Charging Party's complaint is the allegation that Respondent's failure to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings between the parties constitutes a failure to bargain in good faith in violation of the Act.

##### **A. Maintenance of Terms and Conditions during the Pendency of the Interest Arbitration**

Section 14 of the Act governs disputes regarding the contracts of security employees, peace officers, and firefighters. The process by which these disputes are resolved, commonly referred to as interest arbitration, begins with a request for mediation pursuant to Section 14(a). Section 14(j) provides, in pertinent part: "Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a)[.]" Pursuant to Section 14(k), interest arbitration awards are reviewable in circuit court. Section 14(l) further provides: "During the pendency of proceedings before the arbitration panel, existing wages,

hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under this Act.” Therefore, under the plain language of the Act, proceedings before the arbitration panel are deemed to be pending upon initiation of arbitration procedures, which in turn are deemed to be pending upon filing a request to the Board for mediation pursuant to Section 14(a). Therefore, at any time after the filing of this request, the interest arbitration proceedings are pending.

In this case, the parties have stipulated that they were engaged in negotiations for a successor agreement after the expiration of the 2006-2008 agreement. The parties further stipulated that, on April 17, 2009, the Union requested a mediation panel from the Board in Case No. S-MA-09-262, and that request constitutes the commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act. The parties have also stipulated that implementation of a reduction in minimum manning involves wages, hours, and terms and conditions of employment within the meaning of Section 7 of the Act and is thereby a mandatory subject of bargaining. Moreover, the parties stipulate that the City unilaterally implemented a reduction in the minimum manning levels on October 22, 2009, and thereafter. The award in the interest arbitration between the parties was not issued until April 3, 2010. As the parties commenced the interest arbitration process on April 17, 2009, and that process was still pending as of October 22, 2009, it is clear that the City took the complained-of actions during the pendency of the interest arbitration regarding the successor agreement. By the plain language of the Act, the City violated Section 14(l) by failing to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings as defined in the Act.

Essentially, the City's actions resulted in changing terms and conditions of employment without bargaining with the Union over these matters, which constitutes a failure to bargain in good faith pursuant to Section 10(a)(4) of the Act. Therefore, I find that the City did violate the Act by failing to maintain minimum manning levels. What remains is to consider whether the City's actions are excused by some defense.

#### **B. The City's Economic Defense**

The City alleges that its actions in unilaterally reducing minimum manning levels should be excused because its actions were a matter of economic necessity. Notably, the Act itself does not provide for such a defense. The record reveals that the City is indisputably under a number of financial constraints due to budget shortfalls and deficits. The City has been subject to the control of the Financial Advisory Authority (FAA) under the Illinois Distressed City Act. The FAA requires the City to operate under a balanced budget each year, and the City was consequently required to determine ways in which it could reduce its costs in order to remedy its financial situation. While I do not question that the City has had financial hardships or that reducing staffing levels could result in cost savings to the City, these considerations, without more, are not sufficient to justify the City's violation of the Act.

In its brief, the Union cites repeatedly to Village of Maywood, 10 PERI ¶2045 (ISLRB 1994), which is a non-precedential case. However, I do find ALJ Kazanjian's reasoning in that decision persuasive. When confronted with a nearly identical set of facts, ALJ Kazanjian examined whether the village had presented a true "emergency" in defense of a unilateral change. In finding that it had not, ALJ Kazanjian focused on the failure of the village to provide evidence of an actual emergency or of the absence of a real alternative to the action it took in

reducing minimum manning of firefighters in the village. With regard to Maywood's situation,

ALJ Kazanjian stated:

Undeniably, the Respondent was in a serious, deteriorating financial position in October of 1992 but there was no exigent or immediate set of circumstances which required the Respondent to take the measures it took in October of 1992. Rather, the problems being addressed by the Respondent were of an ongoing, historical nature as opposed to an immediate emergency such as an unexpected financial reversal or the natural disaster present in City of Wood Dale. The Respondent has not shown that without the change in minimum manning it could not continue to operate nor that it had no other alternative but to make the change in the minimum manning level... Though the Respondent argues that it had to cut expenses in order to reverse its worsening financial condition and meet conditions imposed on it by the Illinois Development Finance Authority, the Respondent does not make a persuasive argument that the change in minimum manning was either a necessary or even effective means in reaching that end.

10 PERI ¶2045.

In this case, the record is devoid of any showing that the reductions in minimum manning implemented by the City were necessary to achieve its goal of balancing the budget or that there was no real alternative to so doing. Once the parties entered the interest arbitration process, the City was compelled to maintain the status quo with regard to terms and conditions of employment during the pendency of the process. It did not do so. Moreover, aside from what appear to me to be bare assertions of lack of funds by the City, the City has not articulated precisely how decreasing minimum manning was necessary within its financial constraints. Decreasing minimum manning and staffing levels might, at face value, seem like valid cost savings measures; however, even the Reynolds arbitration does not provide evidence that any true emergency or exigency existed on October 22, 2009, or thereafter, that would require the City to take this particular action of reducing minimum manning in contravention to the existing terms and conditions of employment to which the firefighters were subject. It is worth noting, too, that Arbitrator Reynolds made a similar finding in his award, rejecting the City's defense of

impossibility in complying with the 2009-2011 agreement, particularly with regard to the layoffs and the parity clause.

It is also worth noting that, while the City attempts to argue that Arbitrator Hill somehow confirmed the “City’s financial emergency” by awarding a zero percent wage increase for three years in the 2009-2011 agreement, the Hill award demonstrates that it was the product of stipulations by the parties, one of which was to a parity clause. As Arbitrator Reynolds noted, although the police were awarded wage increases in interest arbitration, at the time of his award, the City had yet to comply with the parity clause and grant wage increases to the firefighters accordingly, nor had the City complied with that portion of the parity clause requiring lump sum payments to the firefighters. As Arbitrator Reynolds correctly found, the City’s negotiators and representatives with regard to the successor agreement – and any stipulations that formed that agreement – should have known that the City was having financial difficulties; indeed, the City argues that it has been facing financial difficulties for quite some time. If the City had articulated why the particular actions it took in decreasing minimum manning were mandated by a financial emergency that was unforeseen and unexpected, leaving the City with no other option, my analysis might be different. Given the facts before me, however, I find that the City has not demonstrated evidence showing that it is entitled to an emergency defense with regard to its reduction in minimum manning levels on October 22, 2009, and thereafter.

### **C. The Reynolds Arbitration and Deferral**

The City raises in its brief, apparently for the first time, the issue of whether deferral to the Reynolds award would be appropriate in these circumstances. The City also argues that the Reynolds award has rendered the ULP in this case moot. I will address these contentions in turn.

The Board's rules discuss deferral to arbitration procedures. Specifically, the rules provide that 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." 80 Ill. Admin. Code 1220.65(a). If a party wishes to file a motion to defer the resolution of an unfair labor practice charge, it may do so at any time during the investigation of a charge prior to the issuance of a complaint for hearing, dismissal, or deferral order, or it may do so within 25 days after the issuance of a complaint for hearing. 80 Ill. Admin. Code 1220.65(b). In this case, no motion was made by either party during the time frames set by the rules. Therefore, if such deferral is to be made, it must be on the Board's own motion. This suggestion of deferral comes at a late stage of the proceedings. Moreover, the stipulated record does not include a transcript of the hearing in the Reynolds arbitration, nor does it include a full record of the exhibits therein, which may prove necessary to ascertain whether deferral pursuant to Spielberg Manufacturing Company, 112 NLRB 1080 (1955), is appropriate. See Chicago Transit Authority, 14 PERI ¶3010 (ILLRB 1999) (Board "will defer to an arbitration award if a) the contractual issue is factually parallel to the issue in the charge, and b) the arbitrator was presented with the facts "generally relevant" to resolving the unfair labor practice."). Given these considerations, I recommend that the Board decline to defer this charge on its own motion.

Similarly, with regard to the City's argument that the Reynolds award renders the unfair labor practice charge in this case moot, this is not the case, because the Reynolds award did not address the time period beginning October 22, 2009, and ending December 31, 2009. Therefore, I recommend that the Board decline to find that the instant unfair labor practice charge is moot.

**V. CONCLUSIONS OF LAW**

I find that the Charging Party has proved by a preponderance of the evidence that the Respondent engaged in an unfair labor practice pursuant to Sections 10(a)(4) and (1) of the Act, as alleged in the complaint.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that Respondent, its officers and agents, shall:

1. Cease and desist from:
  - a. Failing and/or refusing to bargain collectively in good faith with the Charging Party with respect to the failure to maintain minimum manning levels in accordance with the parties' collective bargaining agreement during the pendency of interest arbitration.
  - b. Failing and/or refusing to bargain in good faith with the Charging Party over changes in mandatory subjects of bargaining.
  - c. In any like or related matter, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
  - a. Restore the policy and practice in effect prior to October 22, 2009, with respect to the required minimum number of firefighters on duty per shift, insofar as this policy and practice is in compliance with the parties' current collective bargaining agreement.
  - b. Make the firefighters whole for any wages and/or overtime pay the firefighters would have received but for the Respondent's reduction in minimum manning

- on October 22, 2009, along with interest thereon computed at seven percent per annum.
- c. Preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of lost wages and/or overtime pay, as well as interest thereon, as set forth in this Recommended Decision and Order.
  - d. Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 30 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.
  - e. Notify the Board in writing, within 20 days from the date of this Decision, of the steps Respondent has taken to comply herewith.

## **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 10 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 Springfield, Illinois, this 3rd day of January, 2013.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**



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**Kimberly Faith Stevens  
Administrative Law Judge**

# NOTICE TO EMPLOYEES

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## FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the City of East St. Louis, Illinois, violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act gives you, as an employee, these rights:

To engage in protected, concerted activity.

To engage in self-organization.

To form, join, or help unions.

To bargain collectively through a representative of your own choosing.

To act together with other employees to bargain collectively or for other mutual aid or protection.

And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT fail or refuse to bargain collectively in good faith with International Association of Fire Fighters, Local 23, as the exclusive representative of a bargaining unit composed of firefighters, by failing and/or refusing to maintain minimum manning levels in accordance with the parties' collective bargaining agreement during the pendency of interest arbitration.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them under the Act.

WE WILL make the firefighters whole for any wages and/or overtime pay the firefighters would have received for the time period between October 22, 2009, and December 31, 2009, along with interest thereon computed at seven percent per annum, but for the Respondent's reduction in minimum manning.

WE WILL preserve and, upon request, make available to the Board or its agents all payroll and other records required to calculate the amount of lost wages and/or overtime pay, as well as interest thereon.

This notice shall remain posted for 30 consecutive days at all places where notices to our bargaining unit members are regularly posted.

Date: \_\_\_\_\_

City of East St. Louis, Illinois  
(Employer)