STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Glenview Professional Firefighters, Local 4186, International Association of Fire Fighters,	)	
Charging Party	)	
and	)	Case No. S-CA-11-201
Village of Glenview,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On March 30, 2011, the Glenview Professional Firefighters, Local 4186, International Association of Fire Fighters (Charging Party) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240, alleging that the Village of Glenview (Respondent) violated Sections 10(a)(4) and 10(a)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on November 1, 2011, the Board's Executive Director issued a Complaint for Hearing.

Administrative Law Judge Elaine Tarver issued a recommended decision and order (RDO) on January 12, 2012, granting the Respondent's motion to defer the matter as amended[1] to binding grievance arbitration. This RDO, which became binding on the parties following an April 12, 2012, order of the Board's General Counsel, provided that the Charging Party could request this matter be re-opened within 15 days after the termination of grievance arbitration proceedings. On December 3, 2012, arbitrator Lamont E. Stallworth issued an award finding that the Respondent's complained-of conduct was authorized by the management rights clause of the parties' collective bargaining agreement. On December 14, 2012, the Charging Party filed a

[1] As issued, the Complaint for Hearing alleged a violation of Sections 10(a)(4) and 10(a)(1) of the Act on the basis of a unilateral change in apparatus manning levels. ALJ Tarver granted the Charging Party's December 9, 2011, motion to amend the Complaint for Hearing. As amended, the Complaint for Hearing alleges that the Respondent's violation is based on a unilateral change to minimum shift staffing levels.

timely motion to re-open, alleging that the arbitrator's award was repugnant to the purposes and policies underlying the Act and that the arbitrator failed to resolve an issue that was crucial to the underlying charge.

Subsequently, this matter was administratively transferred to the undersigned. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

The parties stipulate, and I find:

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act;
2. At all times material, the Respondent has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act;
3. At all times material, the Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act;
4. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act; and
5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit comprised of all persons employed by the Respondent in the following titles or ranks: Firefighter, Firefighter/Paramedic, Fire Lieutenant, and Fire Captain.

II. ISSUES AND CONTENTIONS

The underlying unfair labor practice charge alleges that the Respondent failed to maintain the existing terms and conditions of employment during the pendency of interest arbitration proceedings when the Respondent unilaterally took one ambulance out of service during non-peak hours. The Charging Party argues that this conduct violated the Act because minimum shift staffing levels are a mandatory subject of bargaining, and the Respondent implemented this change during the pendency of interest arbitration proceedings and without the Charging Party's consent, in violation of Section 14(l) of the Act. The Respondent denies that minimum shift staffing levels are a mandatory subject of bargaining, and maintains that its right to implement this change was protected by the management rights clause of the parties' collective bargaining agreement. Arbitrator Stallworth agreed with the Respondent as to its authority under the management rights clause.

At issue is the Charging Party's motion to re-open this matter. The Charging Party alleges that the arbitration award is repugnant to the purposes and policies underlying the Act because the arbitrator refused to apply the Board's "clear and unequivocal" standard in determining that the Charging Party waived its right to bargain over minimum shift staffing levels. Additionally, the Charging Party argues that the arbitrator failed to resolve an issue crucial to the underlying charge: namely, whether the Respondent failed to maintain the existing terms and conditions of employment during the pendency of interest arbitration pursuant to Section 14(l) of the Act.

III. **FINDINGS OF FACT**

The parties have stipulated to the following facts:

The parties were subject to a collective bargaining agreement covering the bargaining unit represented by the Charging Party. The agreement contained a management rights clause which read as follows:

> Except as specifically limited by the express provisions of this Agreement, the Village retains all traditional rights to manage and direct the affairs of the Village in all of its various aspects and to manage and direct its employees, including but not limited to the following: to plan, direct, control and determine all the operations and services of the Village; to supervise and direct the working forces; to establish the qualifications for employment and to employ employees; to schedule and assign work; to establish work and productivity standards, and from time to time, to change those standards; to administer overtime; to determine the methods, means, organization and number of personnel; to make, alter and enforce reasonable rules, regulations, orders and policies; to evaluate employees; to discipline, suspend and discharge employees for just cause (probationary employees without cause); to change or eliminate existing methods, equipment or facilities; to maintain an effective internal control program to determine the overall budget, and to carry out the mission of the Village; provided, however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement.

By its terms, the agreement remained in full force and effect from its execution until December 31, 2010, and thereafter automatically renewed from year to year unless one party notified the other in writing at least 90 days prior to the anniversary date of the agreement of its desire to modify the agreement. On or about August, 10, 2010, Union President Brian Gaughan notified Village Manager Todd Hileman in writing of the Charging Party's desire to modify the agreement. On or about November 12, 2010, the parties began negotiations for a successor agreement. In November 2010 the Charging Party filed a request for mediation in connection

with these negotiations, which constituted the commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act.

On December 10, 2010, Fire Chief Wayne Globerger issued a memorandum to fire department personnel detailing an overtime reduction plan. Pursuant to this plan, beginning January 1, 2011, one ambulance would be taken out of service during non-peak hours, from 7:00 p.m. to 7:00 a.m, if sufficient staff was not available to operate the ambulance without the use of overtime hours. The Respondent projected that this plan would reduce overtime costs by approximately $300,000. The Charging Party objected to Globerger's plan, and the Respondent delayed implementing its overtime reduction plan while the parties discussed the measure. During their discussions, the Charging Party proposed cost saving alternatives that it believed would save approximately $300,000. The Respondent, however, disputed that the projected savings from these alternatives were sufficient. Unable to reach agreement over alternative cost-saving measures, the Respondent implemented its overtime reduction plan on or about January 21, 2011.

On March 30, 2012, the Charging Party filed the instant charge, alleging that the Respondent's conduct violated Sections 10(a)(4) and 10(a)(1) of the Act. Following the deferral of this matter to grievance arbitration, an arbitration award was issued in the Respondent's favor. This award found that the management rights clause of the parties' collective bargaining agreement gave the Respondent the right to determine the standards of service it would provide and the number of personnel used to provide those services. Therefore, according to the arbitrator, the complained-of conduct was within the Respondent's rights under the agreement that expired December 31, 2010. The Charging Party now moves to re-open this matter, and the Respondent contends that deferral to the arbitrator's award is appropriate.

IV. DISCUSSION AND ANALYSIS

In support of its motion to re-open this matter, the Charging Party argues that deferral to the arbitration award is not appropriate in this case because: (1) the award is repugnant to the purposes and policies of the Act because the arbitrator refused to apply the Board's "clear and unequivocal" standard in determining that the Charging Party waived its statutory right to bargain over minimum shift staffing levels; and (2) the issues of the underlying unfair labor practice charge were not considered by the arbitrator because the arbitrator expressly declined to determine whether the Act permits the Respondent to exercise its rights under the management

rights clause after the expiration of the parties' collective bargaining agreement and during the pendency of interest arbitration proceedings.

Section 11(i) of the Act permits the Board to defer to a grievance arbitration award to resolve an unfair labor practice charge where the underlying charge involves the interpretation or application of a collective bargaining agreement. 5 ILCS 315/11(i) (2010). The Board has adopted the standard established by the National Labor Relations Board (NLRB) in Spielberg Mfg. Co., 112 NLRB 1080 (1955), and will defer to an arbitration award where: (1) the unfair labor practice issues have been presented to and considered by the arbitrator; (2) the arbitration proceedings appear to have been fair and regular; (3) all parties to the arbitration agree to be bound by the award; and (4) the arbitration award is not clearly repugnant to the purposes and policies of the Act. Moehring v. Illinois Labor Relations Board, 2013 IL App (2d) 120342, ¶ 11 (2nd Dist. 2013) (citing City of Alton, 22 PERI ¶ 102 (IL LRB-SP 2006) and Chicago Transit Authority, 16 PERI ¶ 3010 (IL LLRB 1999)). The Charging Party does not contest that the second and third elements of the Spielberg standard have been satisfied. Instead, the Charging Party has moved to re-open this matter on the grounds that deferral is inappropriate under the first and fourth elements.

First, the Charging Party argues that the arbitration award is clearly repugnant to the purposes and policies underlying the Act because the arbitrator refused to apply the Board's "clear and unequivocal" standard in determining that the Charging Party waived its statutory right to bargain over minimum shift staffing levels. A party to a collective bargaining agreement may waive its right to bargain under the Act where contract language evinces a clear and unequivocal intent to relinquish such rights. American Federation of State, County and Municipal Employees v. State Labor Relations Board, 274 Ill. App. 3d 327, 334 (1st Dist. 1995).

In his December 3, 2012, award, the arbitrator concluded that the management rights clause of the parties' agreement reserves to Respondent the right to determine the standards of service it will provide and the number of personnel used to provide those services, including the right to unilaterally reduce the number of ambulances in service. However, in reaching this conclusion the arbitrator did not find that the Charging Party waived its statutory right to bargain over the topic. In fact, the arbitrator expressly refused to determine whether minimum shift staffing is a mandatory subject of bargaining, and thus could not have concluded that the Charging Party had a statutory right to bargain over the topic. Therefore, the arbitrator analyzed

the dispute not as a question of the Charging Party's waiver but as an issue of contract interpretation, expressly finding that the Board's "clear and unequivocal" standard concerning the waiver of a statutory right was inapplicable.

The test for determining repugnancy under Spielberg is not whether the Board would have reached the same conclusion as the arbitrator, but whether the arbitrator's award was palpably wrong as a matter of law, or contrary to a clear line of Board precedent. City of Chicago, 10 PERI ¶ 3010 Fn. 10 (IL LLRB 1993) (citing Inland Steel Co., 263 NLRB 1091 (1982)). The NLRB has clarified that an award is palpably wrong as a matter of law if the decision is not susceptible to an interpretation that is consistent with the National Labor Relations Act. Inland Steel Co., 263 NLRB 1091 (1982). Furthermore, the NLRB has considered this issue and determined that an arbitration award upholding an employer's argument that its actions were justified by a contractual management rights clause is not repugnant, "even if neither the award nor the clause read in terms of the statutory standard of clear and unmistakable waiver." Southern California Edison Co., 310 NLRB 1229, 1231 (1993) (citing Motor Convoy, 303 NLRB 135 (1991)).

The arbitrator in this case carefully confined his award to the issue within his jurisdiction—the interpretation of the parties' agreement. As a result, the arbitrator deemed the "clear and unequivocal" standard the Board would apply when interpreting the collective bargaining agreement in light of the parties' statutory rights to be inapplicable. As a matter of contract interpretation, the Charging Party has not indicated how the award is inconsistent with the Act or Board precedent, other than alleging that the Board would have applied a different standard. This alone, even where the Board may have reached a different conclusion, is insufficient to render the award repugnant to the purposes and policies underlying the Act. Southern California Edison Co., 310 NLRB at 1231. Therefore, assuming without yet deciding that the Charging Party did have a statutory right to bargain over minimum shift staffing levels, I conclude that the arbitrator's refusal to apply the Board's "clear and unequivocal" standard does not render the award repugnant to the purposes and policies of the Act.

Second, the Charging Party argues that the issues underlying the unfair labor practice charge were not presented to and considered by the arbitrator because the arbitrator expressly declined to determine whether the Act permits the Respondent to exercise its rights under the management rights clause after the expiration of the parties' agreement and during the pendency

of interest arbitration proceedings. An arbitrator has adequately considered the issues of an underlying unfair labor practice where the contract issues are factually parallel to the unfair labor practice issues and the arbitrator was presented generally with facts relevant to resolving the unfair labor practice. Olin Corp., 268 NLRB 573, 574 (1984). In this case, the arbitrator determined that the Respondent's actions were consistent with its rights under the management rights clause of the parties' agreement. However, the resolution of the underlying unfair labor practice charge depends on whether the Respondent's actions were consistent with the parties' obligations under Section 14(l) of the Act to maintain existing wages, hours, and other conditions of employment during the pendency of interest arbitration proceedings. In order to make this determination, it is necessary to establish whether the relevant existing wages, hours, and other conditions of employment were comprised of existing shift staffing levels at the expiration of the parties' collective bargaining agreement or the Respondent's right under the management rights clause to make unilateral changes to those levels. Where the arbitrator expressly declined to resolve this question, I cannot conclude that the contract issues resolved by the award are factually parallel to the unfair labor practice issues. I therefore recommend granting the Charging Party's motion to re-open this matter, as further proceedings are necessary to determine the effect of the management rights clause on the parties' obligations under Section 14(l).

Though deferral to the arbitration award is not appropriate in this case, for future proceedings I will nonetheless adopt the arbitrator's interpretation of the management rights clause of the parties' agreement. An arbitrator's interpretation of contractual provisions becomes a binding part of the parties' agreement. County of Lake, 28 PERI ¶ 67 (IL LRB-SP 2011) (citing The Motor Convoy, Inc., 303 NLRB 135 (1991)). This is because parties who have agreed to have their disputes settled by an arbitrator have contracted to accept the arbitrator's construction of the terms of their agreement. American Federation of State, County and Municipal Employees, AFL-CIO v. Dep't of Central Management Services, 173 Ill. 2d 299, 305 (Ill. 1996).

V. CONCLUSIONS OF LAW

1. The arbitrator's refusal to apply the Board's "clear and unequivocal" standard when interpreting the management rights clause of the parties' agreement does not render the award repugnant to the purposes and policies of the Act.

2. Deferral to the arbitration award is not appropriate in this case because the award does not resolve the issues underlying the unfair labor practice charge.

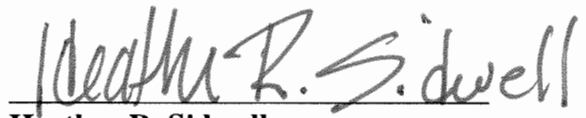
VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Charging Party's motion to re-open this matter be granted.

VII. EXCEPTIONS

Pursuant to Sections 1200.135 and 1220.65(d) 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 20th day of May, 2013,



Heather R. Sidwell
Administrative Law Judge
Illinois Labor Relations Board