

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

1/12/12

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
DEFERRING TO ARBITRATION**

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 the Illinois Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Parts 1200 through 1240 (Rules) alleging that the Village of Glenview (Respondent) had violated Section 10(a) of the Act. After an investigation, the Executive Director of the Board issued a Complaint for Hearing on November 1, 2011, that alleged that the Respondent failed to maintain existing terms and conditions of employment during the pendency of interest arbitration proceedings. In particular, the Complaint alleges that the Respondent unilaterally modified the status quo by implementing changes to the minimum shift staffing levels thereby violating Sections 10(a)(4) and (1) of the Act.¹

¹ On December 9, 2011, the Charging Party filed a motion to amend the complaint for hearing to conform with the allegations in the charge filed before the Board. The undersigned granted the Charging Party's motion and the Complaint for Hearing now alleges that the Respondent "implemented changes to the

I. PRELIMINARY FINDINGS

1. The Respondent has been public employer within the meaning of Section 3(o) of the Act.
2. The Respondent is subject to the Act pursuant to Section 5(a) and 20(b) of the Act.
3. The Charging Party has been a labor organization within the meaning of the Section 3(1) of the Act.
4. At all times material herein, the Charging Party is 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; Fire Captain (Unit).
5. At all times material herein, the Charging Party and Respondent have been parties to a collective bargaining agreement for the Unit, with a term ending in December 2010.
6. At all times material herein, the collective bargaining agreement contains a grievance procedure culminating in binding arbitration.

II. BACKGROUND

The Complaint for Hearing alleges that on or about November 12, 2010, the Charging Party and Respondent commenced negotiations on a successor collective bargaining agreement. In or about November 2010, the Charging Party filed a request for mediation in connection with the negotiations and this request constituted commencement of interest arbitration proceedings within the meaning of Section 14(j) of the Act. On or about December 10, 2010, Respondent notified Charging Party of its intent to take "Ambulance 7" out of service from 1900 hours until 0700 hours, effectively reducing on-duty staffing from 22 persons to 20 during that shift. Respondent states this decision was due to economic challenges which the Respondent faced.

minimum shift staffing levels" instead of the original allegation that the Respondent "implement[ed] changes to the apparatus manning level."

On November 14, 2011, Respondent filed its Answer to the Complaint for Hearing denying that it violated the Act, and on November 18, 2011 filed a Motion to Defer to Arbitration in the above-captioned matter. The Respondent argues that, per the collective bargaining agreement, it has the right to make changes to staffing and that this matter should be deferred to arbitration for contract interpretation. Moreover the Respondent maintains that the instant dispute turns upon the interpretation of Article IV and Section 14.18 of the collective bargaining agreement, and therefore should be deferred to arbitration under the test established in Collyer Insulated Wire, 192 NLRB 837 (1971).

In its December 9, 2011, Response to the Motion to Defer, Charging Party contends that deferral to arbitration is inappropriate in the instant case where it would not enable the parties to resolve the underlying dispute. Chicago Transit Authority, 16 PERI ¶ 3012 (IL LLRB 2000). The Charging Party argues that this reduction in staff is a unilateral change in the status quo during the pendency of interest arbitration and that staffing is a mandatory subject of bargaining.

On December 27, 2011, the Board received the Respondent's Reply In Support of its Motion to Defer to Arbitration addressing certain issues which the Charging Party's response raised.

III. DISCUSSION AND ANALYSIS

The Act favors arbitration as the method for dispute resolution in matters concerning contract interpretation. Pace Northwest Division, 10 PERI ¶ 2023 (IL SLRB 1994). The resolution of the alleged unfair labor practice charge in this case turns on the interpretation of the Management Rights Clause in the collective bargaining agreement and therefore is appropriate for deferral. Central Management Services (Employment Security), 5 PERI ¶ 2035 (IL SLRB 1989).

The parties have the right to request deferral of unfair labor practice charges to the parties' grievance arbitration procedure under Section 1220.65(b)(2) of the Rules. Consistent with its rights, the Respondent filed its Motion to Defer to Arbitration within 25 days of the issuance of the Complaint. The Board also has the discretionary authority to defer to arbitration under Section 11(i) of the Act, and the Board has adopted standards for exercising its discretionary deferral authority using the deferral doctrines of the National Labor Relations Board.

In this case, the Collyer standard applies. Under Collyer deferral to grievance arbitration is appropriate, even where no grievance has been filed, when the following three conditions exist: (1) a question of contract interpretation lies at the center of a dispute over whether a party breached its statutory duty to bargain in good faith; (2) the dispute arises within an established collective bargaining relationship where there is no evidence of the respondent's enmity or anti-union animus; and (3) the employer expresses a willingness to waive any and all procedural barriers to the filing of a grievance. Collyer Insulated Wire, 192 NLRB 837 (1971); State of Illinois (Department of Central Management Services), 9 PERI ¶ 2032 (IL SLRB 1993).

Although the Charging Party argues that the collective bargaining agreement between the parties does not address minimum shift staffing levels, the breadth of this Management Rights Clause is a matter of contract interpretation, which an arbitrator has the expertise to interpret.² There is also no evidence of Respondent having enmity or anti-union animus and the Respondent has willingly waived any and all procedural barriers to filing a grievance. As arbitration may

² The Board shall retain jurisdiction over this deferred complaint to allow the Charging Party to request that the Board reopen it for purposes of resolving any statutory issue not resolved by arbitration or to reconcile an arbitration award with the Act. See City of Chicago, 18 PERI ¶ 3005 (IL LLRB 2002).

resolve the underlying dispute in determining the scope of the Management Rights Clause, I find that Respondent's Motion to Defer to Arbitration must be granted.

IV. RECOMMENDED ORDER

IT IS HEREBY ORDERED that this matter be deferred to arbitration, subject to the limitations set above. I will cease processing this complaint until the parties have completed the contractual grievance arbitration process as to the above-described grievance. Within 15 days after the termination of the contractual grievance procedure, the Charging Party may request that I reopen the case for the purpose of resolving any substantial issue left unresolved by the grievance procedure, or to request that I proceed with the complaint if the arbitration award is contrary to the policies underlying the Act. If the Charging Party fails to make such a request within the time specified, I may dismiss this Complaint for Hearing on my own or upon request of the Respondent.

V. 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 Board's General Counsel at 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 12th day of January, 2012.

A handwritten signature in cursive script, appearing to read "Elaine L. Tarver", written over a horizontal line.

**Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board**