STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Skokie Firefighters, Local 3033, IAFF,	)	
	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-12-109
	)	
Village of Skokie,	)	
	)	
Respondent	)	
	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER DEFERRING TO ARBITRATION

On January 30, 2012, Skokie Firefighters, Local 3033, IAFF (Union/Charging Party), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Sections 1200 through 1240 (Rules), alleging that the Village of Skokie (Village/Respondent) violated Sections 10(a)(4) and (1) of the Act by unilaterally modifying the status quo during the pendency of interest arbitration proceedings. In particular, the Complaint alleges that the Respondent implemented changes affecting minimum manning levels and implemented a Wellness/Fitness program, both without the Charging Party's consent and without reaching an agreement. On August 25, 2012, the Board issued a Complaint for Hearing in the above-captioned matter.

On May 11, 2012 the Respondent filed its Answer to the Complaint and on May 18, 2012, the Respondent filed a motion to defer to arbitration. Respondent alleges that the underlying charges concern Village rights explicitly outlined in the bargaining agreement. The Respondent maintains that specifically at issue is the interpretation of Articles 12.5 (Physical

Fitness Program) and XVIII (Management Rights) of the collective bargaining agreement, which warrants arbitration, the preferred method of resolving this dispute.

On June 1, 2012, the Board received the Charging Party's response in opposition to the Respondent's motion to defer. The Charging Party argues that the allegations are statutory and, coupled with the Respondent's animosity toward bargaining unit employees, that makes arbitration unlikely to resolve the matters in dispute.

I. INVESTIGATORY FACTS

The Charging Party and Respondent are signatories to a master collective bargaining agreement (Agreement) setting out terms and conditions of employment for the bargaining unit. The most current Agreement has a term of May 1, 2009 through April 30, 2010. Section 25.1 of the parties' Agreement provide that the agreement shall remain in full force and effect after the expiration date, and until the new agreement is reached unless either party gives at least 10 days written notice to either party. The parties have been engaged in protracted negotiations over the terms of a successor to the Agreement.

There are two separate provisions in the Agreement at issue: Section 12.5 (Physical Fitness Program) and XVIII (Management Rights). The former states, in relevant part, "in order to maintain and improve efficiency in the Fire Department ...the Village may establish a reasonable physical fitness program, which shall include individualized goals.... Before any such program is implemented, the Village shall review and discuss the program at a meeting of the Labor Management Committee." The latter recognizes the Village's right to "determine all operations and services of the Village,...to establish the qualifications for employment,...to assign overtime,...to determine the methods, means, organization and number of personnel by

which operations are conducted, [and] to make, alter, and enforce reasonable rules, regulations, orders and policies...."

II. ISSUE AND CONTENTIONS

The issue is whether to grant the Respondent's motion to defer the processing of the complaint to arbitration in accordance with the parties' contractual grievance and arbitration procedures. The Charging Party asserts that the Respondent has a duty to bargain the decisions to implement the physical fitness and staffing policies. The Respondent asserts that it has a contractual right to revise said agreements and if the Charging Party believes it violated the parties' Agreement that matter should be resolved through the contractual grievance and arbitration procedures and accordingly deferred to arbitration. The Charging Party contends that deferral is inappropriate in this case because the issues are a matter of statutory right and not contract interpretation, and the Respondent has shown enmity toward the Union.

III. DISCUSSION AND ANALYSIS

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer to refuse to bargain collectively in good faith with a labor organization that is the exclusive representative. Section 7 of the Act defines the duty to bargain as including an obligation to negotiate in good faith over questions arising under the terms of an agreement. Thus, an employer violates Section 10(a)(4) when it changes an employee's wages, hours, and other conditions of employment unless the change involves a matter of "inherent managerial policy" excluded from bargaining by Section 4 of the Act. City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). Also, Section 7 requires Respondent to bargain over mandatory subjects of bargaining affecting wages, hours, and other terms and conditions of employment. Mandatory subjects have been determined as those that vitally affect bargaining unit employees.

Pursuant to Section 11(i) of the Act, if an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement. This gives the Board discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure. In Chicago Transit Authority (ATU, Local 241 and 308), 1 PERI ¶ 3004 (IL LLRB 1985) and City of Mt. Vernon, 4 PERI ¶ 2006 (IL SLRB 1988), the Board adopted the deferral principles enunciated in Collyer Insulated Wire, 192 NLRB 837 (1971).

The Collyer doctrine establishes a three-prong test to determine when deferring an unfair labor practice is appropriate. Under Collyer, deferral should occur when: 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 towards the union or employee's exercise of protected rights, and, 3) the respondent has credibly asserted its willingness to arbitrate the dispute. In its motion to defer, the Respondent expressed its willingness to waive any and all procedural barriers to the Union's filing of a grievance.

The Respondent is being charged with violating the Act by a filing to maintain the status quo during the pendency of interest arbitration when it unilaterally implemented Standard Operating Guideline 453, which provided for a Wellness/Fitness policy for bargaining unit employees. According to the Respondent, the interpretation of the language in Section 12.5 (Physical Fitness Program) is at the heart of this issue and therefore deferral to arbitration is appropriate.

The Charging Party first asserts that the Agreement is silent with regard to the subject matter of both the fitness program and the staffing policy. The Charging Party then goes on to argue that the physical fitness program policy in the Agreement "merely identifies the manner in which a fitness program may be created and does not itself establish such a program." The mere fact that the Charging Party is arguing the interpretation of a provision indicates that the matter is appropriate for deferral. The Charging Party believes the language directs the Village on how to **create** a program, whereas the Respondent believes that the language also gives it the ability to establish said program. It is clear that the meaning of the language regarding the fitness program is the center of this dispute.

The Respondent maintains that its implementation of the staffing policy outlined in Standard Operating Guideline 200 is permitted by the terms in Article XVIII, Management Rights. The Charging Party's argument that the broad language in the management's rights clause does not rise to the level of express language required to properly defer the matter to arbitration is not persuasive. The Charging Party cites to County of Rock Island where the Board denied deferral rejecting the employer's argument that staffing was its right under the broad management rights clause. County of Rock Island, 25 PERI ¶ 3 (IL SLRB 2009). However, the facts here are dissimilar. The portion of the management rights clause relied on in the above-referenced case, in relevant part, merely states "[the agreement] among other things, provides the Sheriff with authority to, allocate and assign the workforce, and establish work schedules and assignments." Here, the language at issue is more explicit giving the Employer the right to "determine the methods, means, organization and **number of personnel** by which operations are conducted...." The management rights clause alludes to the Employer's right to make changes in the number of personnel and the extent of that language is entitled to

interpretation by an arbitrator. An arbitrator's interpretation of Sections 12.5 and XVIII should resolve the instant unfair labor practice charge, by determining whether the Employer's conduct was permissible under the terms of the Agreement. [1]

Contrary to the Respondent's assertions, the Charging Party maintains that there is a pattern of employer animosity toward the bargaining unit. In support of its contention, the Charging Party cites the parties' inability to successfully negotiate all but one contract since the bargaining unit was certified in 1986. Instead, every other contract has been the result of interest arbitration. The Charging Party also cites that the Respondent's recent filing of an unfair labor practice against it regarding a coin toss and the Charging Party's increase in processing grievances due to the Respondent's violation of the Agreement, as examples of enmity toward the bargaining union. Although the history of the parties' relationship may be strained, these are not clear examples of employer enmity toward the bargaining unit. It is not uncommon to engage in interest arbitration to finalize a collective bargaining agreement. Moreover, the dispute between the parties regarding the coin toss does not suggest a situation where the Respondent has expressly demonstrated hostility toward the bargaining unit. Lastly, the Charging Party does not provide specific examples of the reasons for which it has increased its processing of grievances against the Respondent to enable the Board to decide whether actual enmity exists with these grievances.

Since arbitration may resolve the underlying disputes, there are no clear examples of employer enmity and the Respondent has credibly asserted its willingness to waive any procedural barriers to filing a grievance, I find that Respondent's Motion to Defer to Arbitration must be granted.

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[1] 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).

IV. RECOMMENDED ORDER

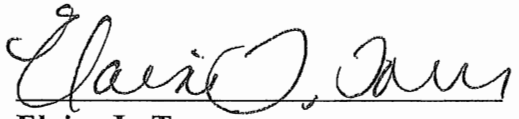
IT IS HEREBY ORDERED that this matter be deferred to arbitration, subject to the limitations set above. I will cease processing this complaint until the parties have completed the contractual grievance arbitration process. Within 15 days after the termination of the contractual grievance procedure, the 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 polices 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 17th day of July, 2012.



Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board

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	)	
Village of Skokie,	)	
	)	
Respondent	)	

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 17th day of JULY, 2012, served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER DEFERRING TO ARBITRATION** in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

Ms. Lisa B. Moss
Ms. Laura L. Fischer
CARMELL CHARONE WIDMER MOSS
& BARR
One East Wacker Drive, Suite 3300
Chicago, Illinois 60601

Mr. Benjamin Gehrt
CLARK BAIRD & SMITH
6133 North River Road
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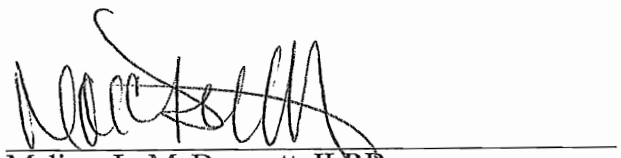
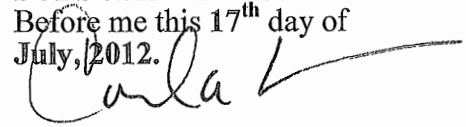
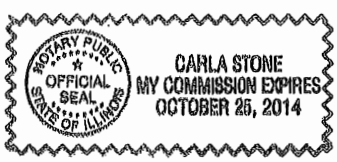
Rosemont, Illinois 60018



Melissa L. McDermott, ILRB

SUBSCRIBED and **SWORN** to
Before me this 17th day of
July, 2012.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