

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

Illinois Fraternal Order of Police Labor	)	
Council,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-12-136
	)	
City of Champaign,	)	
	)	
Respondent	)	

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

On February 2, 2012, the Illinois Fraternal Order of Police Labor Council (Charging Party) filed an unfair labor practice charge in Case No. S-CA-12-136 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Champaign (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(2) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On April 25, 2012, the Board’s Executive Director issued a Complaint for Hearing. The Respondent filed an answer to the Complaint for Hearing on May 14, 2012.

In its answer, the Respondent asserts, in part, that this dispute “should be referred to the parties’ contractual grievance arbitration procedure for resolution.” After reviewing the Respondent’s answer, the undersigned Administrative Law Judge determined that the facts presented by the information available at the time did not permit a proper determination of whether deferral is appropriate in this instance. Accordingly, the Administrative Law Judge, on

May 15, 2012, instructed the Respondent to supply additional information in support of its motion to defer. In accordance with this instruction, the Respondent, on May 23, 2012, filed a memorandum in support of its motion to defer. Subsequently, on May 25, 2012, the Charging Party, pursuant to Section 1220.65(c) of the Rules, filed a response in opposition to the Respondent's motion to defer.<sup>1</sup>

## I. DISCUSSION AND ANALYSIS

The central issue to be addressed by this Recommended Decision and Order concerns whether to grant the Respondent's motion to defer the processing of the Complaint for Hearing to the parties' contractual grievance and arbitration procedures.<sup>2</sup> The decision of whether to defer an unfair labor practice complaint to arbitration is governed, in part, by Section 11(i) of the Act. Pursuant to Section 11(i), if an alleged unfair labor practice 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. In accordance with this Section, the Board has adopted a discretionary policy limiting the circumstances under which the Board will determine the merits of an unfair labor practice charge

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<sup>1</sup> Parties have the right to request deferral of unfair labor practice charges to the parties' grievance arbitration procedure under Section 1220.65(b) of the Rules. According to Section 1220.65(d) of the Rules, if a 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 that motion in accordance with Section 1200.45 of the Rules. I, the undersigned Administrative Law Judge, believe that a hearing on the deferral issue is not warranted and will, instead, administratively decide the initial question of deferral. See City of Mt. Vernon, 4 PERI ¶2011 (IL SLRB 1988). As outlined below, parties may appeal the Administrative Law Judge's ruling on the motion to defer in accordance with Section 1200.135(b) of the Rules.

<sup>2</sup> As a secondary matter, it might also be noted that the Respondent concludes its answer by requesting that the Board dismiss the Complaint for Hearing in its entirety. However, the Respondent has provided no convincing Board rule or clear precedent in support of this particular position. Furthermore, concerning this issue, a reading of Section 1220.50 of the Rules suggests that the Administrative Law Judge assigned to a particular case has no authority to dismiss a complaint prior to a hearing unless the charging party fails to appear. Thus, it appears that dismissals, at this point in the procedure, are generally inappropriate as a matter of policy.

which also may be a contract violation. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114 (IL LRB-SP 2003); Chicago Transit Authority, 1 PERI ¶3004 (IL LLRB 1985).

Over time, the Board has adopted standards for exercising its discretionary deferral authority. Traditionally, the Board makes use of the deferral doctrines of the National Labor Relations Board (NLRB), which has a well-established policy of deferring cases to arbitration at various stages of the proceedings. County of Cook and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990); Chicago Transit Authority, 1 PERI ¶3004. In accordance with the NLRB's policy, the Board has generally recognized three types of arbitral deferral, reflecting three different factual scenarios: (1) "Collyer deferral," which concerns pre-arbitral deferral; (2) "Dubo deferral," which concerns deferral to pending arbitration; and (3) "Spielberg deferral," which concerns post-arbitral deferral. State of Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114; City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988); Collyer Insulated Wire, 192 NLRB 837 (1971); Dubo Manufacturing Corporation, 142 NLRB 431 (1963); Spielberg Manufacturing Company, 112 NLRB 1080 (1955). In all these lead cases, there is a general recognition that the bargaining process is best served by encouraging parties to resolve their disputes, when possible, through their negotiated grievance arbitration procedures. City of East Peoria, 24 PERI ¶91 (IL LRB-SP 2008).<sup>3</sup>

In this case, the Respondent specifically asserts that this matter is appropriate for deferral to grievance arbitration under the doctrine established in Collyer Insulated Wire, 192 NLRB 837 (1971). In accordance with this position, the Charging Party's response exclusively analyzes this case through a Collyer deferral lens. The doctrine established in Collyer provides a three-prong

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<sup>3</sup> This policy is also embodied in Section 8 of the Act, which mandates the inclusion of a grievance and arbitration procedure unless the parties expressly agree otherwise. See City of Mt. Vernon, 4 PERI ¶2011.

test to determine when deferring an unfair labor practice is appropriate. Specifically, under the Collyer doctrine, deferral to arbitration is appropriate where (1) a question of contract interpretation is the center of the dispute, (2) the dispute arises within an established collective bargaining relationship where there is no evidence of enmity by the employer toward the union or employees' rights, and (3) the employer has credibly asserted its willingness to arbitrate the dispute. City of East Moline, 24 PERI ¶34 (IL LRB-SP 2008). For the following reasons, I find that the circumstances presented by this case do not weigh in favor of deferral.

In this case, at all times material, the Charging Party has been the exclusive representative of a bargaining unit comprised of all police officers and police sergeants employed by the Respondent. The Complaint for Hearing alleges that on or about April 11, 2011, certain bargaining unit employees had a meeting with the Respondent's city manager in order to discuss dissatisfaction with the way a promotional lieutenant's exam was prepared and administered and to make complaints about the Respondent's chief and deputy chief. According to the Complaint for Hearing, the Respondent subsequently awarded those bargaining unit employees who attended the April 11, 2011 meeting relatively lower scores on their promotional exams. As alleged by the Complaint for Hearing, the Respondent took this action because of those employees' April 11, 2011 activity and in order to discourage unit employees' support for the Charging Party in violation of Sections 10(a)(2) and (1) of the Act.

Generally, it is appropriate to defer to an arbitrator's expertise in matters of contract interpretation. See Village of Bolingbrook, 20 PERI ¶139 (IL LRB-SP 2004); State of Illinois, Department of Central Management Services, 9 PERI ¶2032 (IL SLRB 1993); City of Mt. Vernon, 4 PERI ¶2011. In its filings, however, the Respondent has not convincingly presented a colorable issue of contract interpretation connected to the issues underlying the charge. Though

the Respondent has demonstrated that some grievance arbitration machinery exists, the Respondent has not, for example, highlighted disputed language in the parties' collective bargaining agreement. Similarly, the Respondent does not appear to have raised defenses clearly related to alleged contractual rights. In addition, the charge at issue as characterized by the Complaint for Hearing is not obviously linked with any contractual provisions. Significantly, in this way, it is not clear that at the heart or center of each of the complained of acts is a dispute over the interpretation of the parties' collective bargaining agreement. To the contrary, at this time, the crux of this dispute generally appears to be either factual or legal in nature.

Regarding the second Collyer prong, the parties to this case do have an established bargaining relationship at least to the extent that, at all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement covering the unit described above. However, the Complaint for Hearing notably maintains that the Respondent took certain actions in violation of Sections 10(a)(2) and (1) of the Act. Section 10(a)(1) states, in relevant part, that it is an unfair labor practice for an employer or its agents to interfere with, restrain, or coerce public employees in the exercise of the rights guaranteed in the Act. Section 10(a)(2) provides, in part, that it is an unfair labor practice for an employer or its agents "to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization." Intuitively, such allegations, taken together, are thematically related to a charge of enmity. To some degree, this alleged aspect of hostility or animus distinguishes the instant matter from Collyer, a case in which no claim of enmity by the employer was made. See Collyer Insulated Wire, 192 NLRB at 842. Moreover, as acknowledged by the Respondent, these same allegations have formed the basis of a grievance in the past. Accordingly, at this time, it is not readily apparent that the

parties' collective bargaining relationship has been entirely without enmity as required by the second Collyer prong.

Regarding the third Collyer prong, the Respondent has asserted a general willingness to arbitrate this dispute. In addition, the Respondent has agreed to waive any time limits under the collective bargaining agreement that would otherwise preclude the Charging Party from pursuing arbitration. However, as suggested by the Charging Party's response, an arbitrator may not have the authority to adequately address the alleged unfair labor practices at issue. Indeed, a brief review of the provided collective bargaining agreement reveals no contract language that squarely addresses those issues specifically alleged by the Complaint for Hearing. See State of Illinois, Department of Central Management Services, 9 PERI ¶2032. On the other hand, the circumstances alleged do seem to directly implicate the statutory protections provided by Sections 10(a)(2) and (1) of the Act. Further, and perhaps more importantly, for the foregoing reasons, the Respondent has not convincingly satisfied the two additional prongs of the Collyer deferral test. Therefore, I find that the Collyer conditions for deferral to arbitration have not been adequately met and, accordingly, that this case is inappropriate for deferral.

The Respondent's argument wholly relies on Collyer deferral doctrine. However, Collyer deferral generally applies where the union has not initiated a contract grievance. City of East Moline, 24 PERI ¶34. Here, despite the Charging Party's alleged choice not to pursue its grievance to arbitration, because a related grievance has apparently been filed, it is possible that this factual scenario might nevertheless more appropriately be characterized as "deferral to pending arbitration." Generally, deferral to pending arbitration, or "Dubo deferral," arises when the parties have initiated the arbitration process and a party requests that the Board hold the unfair labor practice proceeding in abeyance until the arbitration award issues. In such instances,

the Board will defer the processing of an unfair labor practice charge if (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 Illinois, Department of Central Management Services (Department of Human Services), 19 PERI ¶114; PACE Northwest Division, 10 PERI ¶2023 (IL SLRB 1994); City of Mt. Vernon, 4 PERI ¶2006 (1988); Dubo Manufacturing Corporation, 142 NLRB 431.

The Respondent seems to have presented exhibits demonstrating (1) the filing of related grievance documents and the Respondent's responses thereto as well as (2) the existence of a collective bargaining agreement which includes a grievance procedure with arbitration as a final and binding step. Thus, the Respondent largely appears to have satisfied the first two prongs of a Dubo deferral analysis. However, regarding the third Dubo prong, it does not readily appear that the arbitration will resolve the dispute presented in this instance. Put differently, while the Charging Party has indeed filed a related grievance and the Respondent has agreed to waive any precluding time limit issues, as suggested by the foregoing, the Respondent has not convincingly demonstrated that the parties' collective bargaining agreement will in fact allow an arbitrator to adequately address the unfair labor practice charge presented by the Complaint for Hearing. Accordingly, under either deferral analysis, deferral is not clearly appropriate in this instance.

## II. ORDER

IT IS HEREBY ORDERED that the Respondent's motion for deferral is denied.

### **III. EXCEPTIONS**

Pursuant to Section 1200.135 of the 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 5 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 Springfield, Illinois, this 1st day of June, 2012.**

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**Martin Kehoe  
Administrative Law Judge**

