

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

Skokie Firefighters Local 3033, IAFF,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-053
)	
Village of Skokie,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On October 11, 2013, Charging Party, Skokie Firefighters Local 3033, IAFF, (Union), filed an unfair labor charge with the State Panel of the Illinois Labor Relations Board (Board), alleging that, Respondent, Village of Skokie (Village), violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012). The charges were investigated in accordance with Section 11 of the Act, and on September 8, 2014, the Board’s Executive Director issued a Complaint for Hearing. For the reasons identified below, I recommend the following:

I. PRELIMINARY FINDINGS

Pursuant to Paragraphs 1 through 10 of the Complaint for Hearing (Complaint), the parties stipulate, and I find that:

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, Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a) of the Act.
3. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 20(b) of the Act.
4. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Charging Party has been the exclusive representative of a bargaining unit consisting of all persons employed by Respondent in the ranks of Firefighter, Fire Lieutenant, and Firefighters and Lieutenants certified as Paramedics (Unit).

6. At all times material, Charging Party and Respondent have been parties to a collective bargaining agreement (CBA) with a term of May 1, 2009 through April 30, 2010.
7. Article XXI of the CBA includes language on the examination process for the rank of Lieutenant.
8. Various provisions within Article XXI constitute a waiver of the Union's statutory rights set forth in the Fire Department Promotion Act, 50 ILCS (FDPA) (2002).
9. On or about June of 2010, the Union and the Village began negotiations for a successor collective bargaining agreement.
10. On or about December of 2012, the parties commenced interest arbitration proceedings to address a series of outstanding issues.

II. BACKGROUND / INVESTIGATORY FACTS

On October 7, 2014, the Village filed its Answer to the Complaint, in which it denied the following paragraphs contained in the Complaint:

11. On or about August 29, 2013, the Village insisted on the status quo language concerning Article XXI, the examination process for the rank of Lieutenant, which is a waiver of the Union's statutory right under the FDPA.
12. By the Action taken in paragraph 11, Respondent insisted to impasse on a permissive subject of bargaining.
13. By its acts and conduct described in paragraphs 11 and 12, Respondent has failed and refused to bargain in good faith with the Union, in violation of Section 10(a)(4) and (1) of the Act.

The Village's Answer also contained three affirmative defenses, the following of which is relevant to this Recommended Decision and Order:

Regardless of whether the Village's proposal was a mandatory or permissive subject of bargaining, Board law firmly establishes that the mere submission of a permissive subject of bargaining in interest arbitration is not a violation of the Act. See Village of Bensenville, 14 PERI ¶ 2042 (ISLRB 1998). Therefore, even if the factual allegations contained in the Complaint were true, the Complaint does not establish the commission of an unfair labor practice, and the Complaint should be dismissed.

During the course of this case, an Administrative Law Judge's Recommended Decision and Order in City of Wheaton, Case No. S-CA-14-067 (IL LRB-SP ALJ 2014),¹ was pending before the Board. City of Wheaton, involved the same issue of law raised in the instant Complaint and the Village's at-issue affirmative defense. On October 14, 2014, the undersigned Administrative Law Judge (ALJ) corresponded via e-mail with the parties. In the course of these e-mails, the

¹ Available on the Board's website: <http://www.state.il.us/ilrb/subsections/pdfs/aljrdos/S-CA-14-067.pdf>

Union clarified that the events identified in ¶ 11, ¶ 12, and ¶ 13 of the Complaint occurred during interest arbitration that was identified in ¶ 10.

Upon review of the Complaint, the Answer, and through correspondence with the parties, the undersigned determined that the Union's affirmative defense was solely a matter of law, which, if proven, negates the need to hold an oral hearing on the unfair labor practice charges alleged in the Complaint. On October 16, 2014, and October 21, 2014, pursuant to Board Rule 1200.40(c), the undersigned informed the parties of this determination, granted the Village leave to file a brief in support of its affirmative defense, and granted the Union leave to file a response. In response to these instructions, on October 31, 2014, the Village filed a Motion to Dismiss in which it again argued that the conduct alleged in the Complaint does not constitute a violation of the Act. On January 26, 2016, the Board issued a written decision in City of Wheaton, finding that submitting a permissive bargaining subject to interest arbitration does not alone violate a party's duty to bargain in good faith. City of Wheaton, 31 PERI ¶ 131 (IL LRB -SP 2015). On February 6, 2015, the Union responded to the Village's Motion to Dismiss.

III. ISSUES AND CONTENTIONS

The Village argues that the Complaint should be dismissed because according to Board precedent submitting an permissive bargaining subject to an interest arbitrator does not violate Section 10(a)(4) of the Act. Specifically, in support of this proposition the Village cites the leading case, Village of Bensenville, 14 PERI ¶ 2042, and distinguishes other cases involving the same topic. The Union opposes the Village's Motion, and specifically argues that the Motion is untimely, leave to file the Motion was improperly granted, and that the facts in this case involve issues of law and fact that warrant a hearing, in spite of the City of Wheaton decision.

IV. DISCUSSION AND ANALYSIS

Initially, this case considers whether the Board has the authority to dismiss a complaint without an oral hearing based on a change in Board precedent. The purpose of the Board is to enforce the Act, and to that end the Board has promulgated Administrative Rules. Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules). The Board's Rules provide that at the conclusion of an investigation into an unfair labor practice charge, if the investigation reveals that the charge involves an issue of law or fact sufficient to warrant a hearing, the Board's Executive Director shall issue a complaint for

hearing setting the matter for hearing before an ALJ. 80 Ill. Admin. Code §§ 1220.40(a)(3) and 1220.50(a). Board Rule 1200.40(c) grants the ALJ the discretionary authority to “regulate the proceedings of the case.” 80 Ill. Admin. Code § 1220.40(c). Pursuant to Rule 1200.40(c), the Village was given leave to file a written brief in support of its affirmative defense. In response, Village filed a Motion to Dismiss, which contained the very same legal issues alleged in its affirmative defense, thus titling the filing as a Motion does not negate its substantive value. As the ALJ is expressly authorized to regulate the proceedings and for the reasons identified below, I find that ruling on the Village’s affirmative defense prior to commencing to an oral hearing on the allegations contained in the Complaint is legally appropriate and the most efficient use of Board resources.

In Wheaton, the Board reconciled its precedent regarding whether merely submitting a permissive bargaining subject to an arbitrator violates the Act. City of Wheaton, 31 PERI ¶ 131; see Vill. of Midlothian, 29 PERI ¶ 125 (IL LRB-SP 2013); Vill. of Hazel Crest, 26 PERI ¶ 146 (IL LRB-SP 2010); Vill. of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001); Vill. of Bensenville, 14 PERI ¶ 2042. The Board specifically reaffirmed its Bensenville holding that submitting “a permissive subject of bargaining to interest arbitration does not, in and of itself, violate a duty of good faith bargaining under Section 10(a)(4) [of the Act].” City of Wheaton, 31 PERI ¶ 131. The Complaint in the instant matter alleges that the Village violated its duty to bargain in good faith by insisting to impasse on a permissive bargaining topic. The only basis for this allegation is that the Village submitted to the interest arbitrator a provision that would waive the Unions’s statutory right under the FDPA, and that is allegedly a permissive bargaining subject. Since the Board, in Wheaton, stated that such actions alone do not violate the Act, it is within my authority to find that there is no longer an issue of law or fact sufficient to warrant an oral hearing.

The Union’s argument that dismissing the Complaint is inappropriate because there are remaining questions of fact, including those not alleged in the Complaint that require an oral hearing, is contrary to Board policy and procedure. Issues at hearing are limited to those alleged in the Complaint. See City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012). Here, the sole issue presented in the Complaint is whether the Village breached its duty to bargain in good faith when it submitted a permissive bargaining topic to an interest arbitrator. As explained above, the Board has recently held that this action alone does not violate the Act. City of Wheaton, 31 PERI ¶ 131.

The Union also argues that Wheaton is not controlling, but this case should be analyzed under the Board's decisions in Wheeling and Midlothian, because this case also involves a proposal that requires a waiver of statutory rights. As specifically addressed in Wheaton, in Wheeling and Midlothian the Board found violations of the Act when the issues that the parties presented to the Board "concerned the nature of the particular proposal and not the precise topic of whether submission of a permissive subject of bargaining to interest arbitration constitutes an unfair labor practice." City of Wheaton, 31 PERI ¶ 131. Specifically, in Midlothian, the Board found that the employer violated the Act by insisting to impasse that the union relinquish a statutory right. Id. While the Complaint in the instant case identifies that the permissive topic at issue involves a waiver of statutory rights under the FDPA, it does not allege that the Village violated the Act by insisting to impasse that the Union waive these statutory rights. Thus, whether this action violates the Act is not an issue before the Board. On that point, the Union argues that because the Board, not the Union, drafted the Complaint, "all factual allegations are not necessarily contained within the Complaint." Yet, the Union has not sought leave to amend the Complaint to include additional factual allegations. Also, and more importantly, the Union drafted the charge, which states:

By rejecting Local 3033's proposal [to alter Article XXI of the CBA and insisting on status quo language which waives certain statutory rights contained in FDPA] the Village insisted to impasse on a permissive subject of bargaining. Waiver of any provisions of the [FDPA] is a permissive subject of bargaining under Section 10(e) [of the Act]. The Village's insistence to impasse on a permissive subject of bargaining is a violation of Section 10(a)(4) and (1) of the Act.

The charge is silent on whether requiring the Union to waive a statutory right violates the Act, and thus proceeding to hearing solely on an issue not specifically presented, is inappropriate. As such, I reject the Union's argument that even in light of the Wheaton decision there are remaining issues of fact that warrant resolution through an oral hearing.

In sum, when the Board's Executive Director issued the Complaint for Hearing in this case whether it violated the Act to simply submit a permissive bargaining topic to an interest arbitrator was an unresolved question of law that required resolution through an oral hearing. Prior to commencing an oral hearing, the Board resolved this question in the negative. Accordingly, proceeding to an oral hearing now is an unnecessary and an inefficient use of Board resources. Therefore, this case should be dismissed.

V. CONCLUSIONS OF LAW

Respondent did not violate Sections 10(a)(4) and (1) of the Act when it submitted to interest arbitration the language concerning the examination process for the rank of Lieutenant.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing shall be dismissed.

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 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 seven (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 at 160 North LaSalle Street, Suite S-400, Chicago, IL 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 of 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 11th day of March, 2015.

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



**Deena Sanceda
Administrative Law Judge**