

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

North Riverside Fire Fighters, Local 2714,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-15-032
and	)	
	)	
Village of North Riverside,	)	
	)	
Respondent	)	

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

On September 18, 2014, the North Riverside Fire Fighters, Local 2714, (Charging Party or Union) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the Village of North Riverside (Respondent or Village) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014). The charge was investigated in accordance with Section 11 of the Act. On December 4, 2014, the Board’s Executive Director issued a Complaint for Hearing. The parties appeared for a hearing on April 16, 2015, but jointly moved to proceed on cross-motions for summary judgment in lieu of an oral hearing. The Union also agreed to withdraw certain allegations contained in the Complaint and, to that end, agreed to strike paragraphs 12, 13, 23, 24, 25, 26, 27, 28, and 29 from the Complaint.

On June 1, 2015, the Union filed a Motion for Summary Judgment and a memorandum of law in support of its motion. The Union attached to its motion an exhibit and an affidavit from the Union President.

On June 19, 2015, the Respondent filed Respondent’s Combined Motion for Summary Determination and Reply in Support of its Motion for Summary Determination. Along with these documents, the Respondent filed an affidavit from Respondent attorney Burton S. Odelson.

On July 10, 2015, the Union filed a Motion for Leave to File Amended Complaint. It enclosed the proposed Amended Complaint with its motion. The proposed amendment alleges that the Respondent violated Sections 10(a)(4) and (1) of the Act by insisting to impasse on a permissive subject of bargaining.

On July 17, 2015, the Respondent filed (1) a Motion to Strike the Union's Exhibits and Affidavits Attached to Its Memorandums of Law; (2) a Motion to Strike Portions of the Union's Reply in Support of its Response and Cross-Motion for Summary Judgment; and (3) a Response to Motion for Leave to File Amended Complaint.

On July 29, 2015, the Union filed (1) a Motion for Leave to File Reply Memorandum in Support of its Motion for Leave to File an Amended Complaint; (2) a Reply Memorandum in Support of its Motion for Leave to File Amended Complaint; and (3) a Response to the Respondent's Motion to Strike the Union's Affidavits and Exhibit.

On August 7, 2015, the Respondent filed a response to the Union's Motion for Leave to File Reply Memorandum in Support of Union's Motion for Leave to File an Amended Complaint.

I denied both motions for summary judgment and reserved ruling on the Union's motion to amend the Complaint. A hearing was conducted on December 14, 15, 16, and 17 in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally. At hearing, the Union restated its Motion to Amend the Complaint. The parties filed timely post-hearing briefs.

After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

**I. PRELIMINARY FINDINGS**

The parties stipulate and I find that:

1. At all times material, the Respondent has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act.
2. At all times material, the Respondent has been subject to the Act, pursuant to Section 20(b) of the Act.
3. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, the Union has been the exclusive representative of a bargaining unit (Unit) comprised of all full-time Firefighters and Lieutenants employed by the

Respondent, as certified by the Board on June 18, 2003, in Case No. S-RC-03-065, and thereafter amended.

5. At all times material, the Union and the Respondent have been parties to a collective bargaining agreement (CBA) effective date commencing May 1, 2009 and expiring April 30, 2014.

## **II. RELEVANT STATUTORY PROVISIONS**

The Illinois Municipal Code Section 10-2.1-4 (Substitutes Act) provides the following in relevant part:

In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 2.1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining.

65 ILCS 5/10-2.1-4 (2012).

## **III. ISSUES AND CONTENTIONS**

The first issue is whether to amend the Complaint. If it is amended, the second issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act by allegedly bargaining to impasse on its proposal to subcontract its firefighting services to Paramedic Services of Illinois, Inc. ("PSI"), a private corporation. The third issue is whether the Respondent failed and refused to bargain in good faith in violation of Sections 10(a)(4) and (1) of the Act by allegedly engaging in surface bargaining. The fourth issue is whether the Respondent refused to bargain in good faith in violation of Sections 10(a)(4) and (1) of the Act by allegedly failing to maintain employees' terms and conditions of employment under Section 14(1) of the Act. The fifth issue is whether the Respondent violated Section 10(a)(1) of the Act when it proposed or requested that Unit employees resign their employment with the Respondent and accept employment with

PSI and then subsequently informed the Union that it intended to terminate the employment of Unit members.<sup>1</sup>

The Union argues in favor of amending the Complaint and asserts that the Respondent violated Section 10(a)(4) and (1) of the Act by bargaining to impasse on a permissive subject of bargaining. According to the Union, the Respondent's proposal sought the waiver of the Union's right under the Illinois Municipal Code Section 10-2.1-4 ("Substitutes Act") by providing for the use of non-classified and non-certificated PSI Firefighter/Paramedics as substitutes for the classified and certificated members of the bargaining unit. The Union further argues that the Respondent bargained to impasse on that allegedly permissive proposal in violation of the Act by refusing to submit the labor dispute to interest arbitration and claiming the right to "unilaterally preempt Section 14(1)" of the Act. The Union suggests that the Respondent's proposal also sought the Union's waiver of its right under Section 14 to proceed to interest arbitration.

The Union next argues that the Respondent violated Sections 10(a)(4) and (1) of the Act by engaging in surface bargaining. The Union claims that the Respondent never intended to reach agreement with the Union on a cost-savings proposal because the only solution that would have solved its financial distress was privatization. As evidence of the Respondent's predetermined mindset, the Union notes that the Respondent (1) failed to give the Union advance notice of its intent to solicit subcontracting bids, (2) informed the Union during negotiations that it would not accept a proposal that did not include privatization, (3) never provided the Union with information regarding the steps it could take to remain competitive as a provider of fire services, (4) failed to consider the Union's allegedly legitimate proposals, and (5) did not verify that PSI's cost estimate was realistic.

The Union further argues that the Respondent violated Section 10(a)(4) and (1) of the Act by changing employees' terms and conditions of employment during the pendency of interest arbitration proceedings. It asserts that the Respondent's issuance of termination letters to firefighters effected such a change, despite the fact that the firefighters remained in their positions.

---

<sup>1</sup> The Complaint also contains an allegation that the Respondent discriminated against public employees in violation of Sections 10(a)(2) and (1) of the Act when it issued notices terminating the employment of all unit employees. However, the Union advanced no argument in support of the Section 10(a)(2) allegation and the derivative Section 10(a)(1) allegation. Accordingly, these issues are not addressed below.

In addition, the Union claims that the Respondent violated Section 10(a)(1) of the Act when it issued letters of termination to unit employees because that conduct interfered, restrained, and coerced employees in the exercise of their protected rights under the Act.

Finally, the Union seeks attorneys' fees and costs.

The Respondent counters the Union's motion to amend the Complaint and, on the merits, rejects the Union's claim that it bargained to impasse over a permissive subject of bargaining. It asserts that its proposal to subcontract is a mandatory subject of bargaining and argues that the proposal did not seek a waiver of the Union's statutory rights under the Substitutes Act. The Respondent emphasizes that the proper focus of the waiver analysis is the language of the proposal rather than PSI's ability to hire certificated employees. Here, the proposal merely provided the name of the intended contractor (PSI) and neither specified the contractor's qualifications nor reserved to the Respondent the discretion to specify those qualifications.

The Respondent next argues that it bargained in good faith over its proposal to consider subcontracting its firefighting services. It notified the Union before taking final action to subcontract, met with the Union to explain its decision to consider subcontracting, provided information to the Union, and gave consideration to the Union's counterproposals. The Respondent denies that Odelson told the Union that the Respondent would not accept a proposal that did not include privatization. The Respondent denies that it rejected the Union's proposals because of union animus and emphasizes that the Union never matched the costs savings presented by PSI.

Finally, the Respondent asserts that it acted within its contractual and statutory authority to terminate its collective bargaining agreement with the Union and to express opposition to the initiation of interest arbitration proceedings.

#### **IV. FINDINGS OF FACT**

The Union represents all firefighters and lieutenants of the Village of North Riverside, excluding the fire chief, deputy fire chief, paid-on-call firefighters any other supervisory positions above the rank of lieutenant. The Respondent and the Union were parties to a collective bargaining agreement that was effective from May 1, 2009 and expired on April 30, 2014. The contract contained a clause that stated "this Agreement shall remain in full force and

effect after any expiration date while negotiations or resolution of impasse proceedings for a new or amended agreement, or any part thereof, are under way between the parties.”

Three of the Union’s firefighters are also licensed as paramedics. However, the Respondent has contracted with Paramedics Services of Illinois, Inc. (PSI) for paramedic services since 1985. The Respondent renewed its contract with PSI for paramedic services in 2013 for an additional five years.

Hubert Hermanek became Mayor of North Riverside in 2013. Sometime after he took office, Finance Director Sue Scarpiniti informed him about the Respondent’s deficit and the Respondent’s underfunded pension. In seven of the past 16 years, the Respondent failed to make pension fund contributions. In three of the remaining years, the Respondent made less than 20% of its required contributions. Under the Pension Reform Act, the State may garnish the Respondent’s revenue sources to fund pensions if the Respondent does not meet its pension funding obligations. The Mayor considered the possibility of privatizing the fire department because privatization would stop the Respondent from incurring future pension obligations.

Mayor Hermanek met with Respondent attorney Burt Odelson in early January 2014 to discuss the feasibility of privatizing the Respondent’s firefighting services. Odelson informed Hermanek that it was legally feasible.

On January 10, 2014, Union President Rick Urbinati visited the office of Village Administrator Guy Belmonte in the Village Hall and handed him a formal, written notification of the Union’s demand to bargain a successor agreement. Urbinati asked Belmonte whether the Respondent was interested in extending the contract in lieu of negotiations. Belmonte stated that he would look into that option.

Sometime after January 15, 2014, Urbinati offered Belmonte an extension of the existing contract, which included pay increases for three years and an increase in insurance costs. The Respondent never responded to this proposal.

In late January or February 2014, Mayor Hermanek met with agents of PSI and attorney Odelson. Hermanek wished to investigate whether PSI could supply the Respondent with firefighting services in addition to the paramedic services it already provided. Hermanek stated that he was not interested in a competitive bidding process because he was comfortable with PSI and happy with their 30 years of good service. He further stated that the Respondent would not privatize if PSI elected not to supply the Respondent with firefighters.

On February 10, 2014, Urbinati visited Belmonte's office again and handed him a second formal demand to bargain a successor agreement. That same day, Urbinati filed a Notice of No Agreement with the Board.

On March 14, 2014, Urbinati and Belmonte jointly requested a mediator from the Federal Mediation and Conciliation Services (FMCS).

Sometime in April 2014, Hermanek and Belmonte met with PSI agents to further discuss the possibility of privatizing the Respondent's firefighting services.

In May 2014, Scarpiniti, Hermanek, and Belmonte met with PSI Vice President of Finance Bob Horak. Horak stated that PSI could provide the Respondent with firefighting services. He assured the Respondent that all firefighters provided by PSI would have all the requisite training and accreditation. Hermanek asked Horak for a cost estimate so that the Respondent could determine the financial feasibility of that option. Hermanek also stated that the Respondent would not contract with PSI for the provision of firefighting services if the Respondent and the Union reached an agreement on a successor collective bargaining agreement.

Sometime in June 2014, Horak provided Scarpiniti with the requested cost estimate. It compared the Respondent's current cost of 16 firefighting personnel (\$2,808,975) with the proposed cost of firefighting personnel supplied by PSI (\$1,797,581.29). It identified the projected cost difference as \$1,005,393.71. The cost comparison did not itemize the aggregate cost. Scarpiniti asked PSI agents how they had arrived at their estimate, but they informed her that such information was proprietary. Horak testified that estimate was a legitimate one on which the Respondent could rely if it chose to contract with PSI, but he further testified that the contract's actual cost could change.

The Mayor directed Scarpiniti to perform a full financial analysis of the PSI proposal. Scarpiniti first analyzed the PSI contract cost. She divided the PSI cost of \$1.7 million by 16, the number of firefighters PSI would provide, and found that the cost was approximately \$100,000 per person. Scarpiniti testified that a cost of \$100,000 per person, including salaries and benefits, appeared reasonable in light of the Respondent's costs for firefighter services. Next, Scarpiniti conducted an in-depth analysis of the Respondent's total cost for 16 personnel.

On June 18, 2014, Mayor Hermanek issued a letter to the Respondent's citizens. He referenced the fact that the Respondent had an operating deficit of \$1.9 million and he noted that

it was a “direct result of the Village’s growing public pension obligation.” The letter also stated the following in relevant part:

The good news is we have an excellent solution – one that allows us to fulfill the state mandate while keeping the strongest emergency and fire protection services in place without having to sacrifice other Village services or seek unaffordable tax increases.

The North Riverside Fire Department currently includes 16 firefighters who are municipal employees of the Village and represented by the International Association of Firefighters Local 2714, as well as six paramedic/firefighters contracted through Paramedic Services of Illinois (PSI) since 1985. These PSI paramedics have worked side-by-side with our firefighters to provide Village residents and businesses with essential emergency services that are skilled, responsive and often lifesaving.

We are seeking a proposal to extend our contractual services partnership with PSI to include fire protection services and prevent layoffs. We have specifically requested and PSI has agreed, as part of their proposal, to keep all current North Riverside firefighters, preserving their current base salaries, earned pension benefits and current health insurance, while allowing the Village to substantially reduce the adverse impact of future pension obligations imposed by the State. All firefighters would not only keep their jobs and current fire pension, but also start earning another retirement benefit through a PSI 401k. This approach will generate savings of more than \$700,000 per year for North Riverside.

The parties began their negotiations in late June 2014. The Respondent’s negotiating team consisted of Scarpiniti, Belmonte, Fire Chief Brian Basek, and attorneys Cary Horvath and Burt Odelson. Mayor Hermanek was not a formal member of the bargaining team, but the team consulted him throughout the bargaining process. The Union’s bargaining team included Union President Rick Urbinati, Union Secretary Derek Zdenovec, firefighter Chris Kribales, and attorney Dale Berry. Attorney Elisa Redish also represented the Union at some of the meetings.

The Respondent had three main bargaining goals. First, it sought to achieve savings on an annual basis. Second, it sought to address its growing pension obligations and long-term liabilities related to its health care benefits. Third, it wished to achieve those goals while maintaining employee benefits.

## 1. June 24, 2014 Bargaining Session

The parties met for their first bargaining session on June 24, 2014. Union Attorney Dale Berry, Union Vice President Daniel Fortuna, Lieutenant Mike Wisniewski, firefighter Dave Rajk, and Kribales, represented the Union. Chief Basek, Belmonte, Scarpiniti, and attorneys Horvath and Odelson represented the Respondent.

The Respondent informed the Union that it would seek privatization of the Respondent's firefighting services unless the Union could offer a proposal that saved the Respondent \$700,000. The Respondent provided the Union with Scarpiniti's cost comparison of the PSI proposal to the Respondent's costs of employing 16 firefighters. The Respondent explained the cost comparison to the Union and explained why it sought the cost-savings. The Respondent also informed the Union that it did not wish to eliminate the PSI contract for paramedic services because hiring additional employees in lieu of PSI contractors would increase the Respondent's pension liability. The Respondent additionally noted that it recently renewed its PSI contract for another five years. According to Urbinati, one of the Respondent's attorneys stated that the Union's contract was expired and that the Respondent would not be bargaining a successor contract with the Union.

The Union presented its initial proposal. It proposed wages increases, it proposed the hire of three additional firefighter/paramedics and it proposed to eliminate the PSI contract in favor of "fire-based EMS." In lieu of the PSI contract, the Union sought to institute the Silver Spanner program, an interim, three-year program that would allow the Respondent to temporarily use firefighters from other municipalities as firefighter/paramedics on a part-time basis, at \$16 an hour, while it trained its existing firefighters to perform paramedic services. At the time the Union made its proposal, only three of the Respondent's 13<sup>2</sup> firefighters were also certified as paramedics. The paramedic training of firefighters could take as long as two to three years.

According to Scarpiniti, the Union's proposal did not address any of the Respondent's long-term goals. The cost-savings presented by the proposed use of the Silver Spanner program were short-lived and would last only while the Respondent used part-time firefighters from neighboring towns. The costs increased when the Respondent considered the addition of three new hires and the cost of training employees as paramedics. In addition, the wages in the

---

<sup>2</sup> In 2013, the Respondent employed 16 firefighters. Firefighter John Nalbandian testified that as of the hearing date, the Respondent employed 13 firefighters and that only three of them were trained as paramedics.

Union's proposal for 2014, 2015, and 2016 were higher than those used by Scarpiniti in developing her cost comparison between PSI and maintaining the fire department. The Respondent made clear to the Union that hiring additional personnel would place an undue burden on the Respondent's pension obligations and that the parties needed to find a way to solve the outstanding pension obligations rather than adding to them.

The Union's bargaining team informed the Respondent that it would take the Respondent's proposal to its members and that it would seek to match the savings sought by the Respondent's privatization proposal.

## 2. June 24, 2014 Executive Session

On June 24, 2014, Village Board held an Executive Session. The Village Board did not take a vote on privatization. After the session, the Village Board gave its staff direction to investigate the possibility of privatizing the Respondent's firefighting services.

## 3. July 8, 2014 Union Meeting

On July 8, 2014, the Union met to discuss the manner in which it would match the cost savings of the Respondent's proposal and to discuss privatization more generally. The members agreed to try and match the cost savings of the Respondent's proposal. To that end, the Union developed a counterproposal, which was based on employee benefit data<sup>3</sup> and information from comparable municipalities. Urbinati received some of the employee benefit data from Scarpiniti, but did not use the cost of pensions she had advanced. Urbinati received some other benefit data from Shawn Gillis, an employee of the Associated Fire Fighters of Illinois, who did not meet with Scarpiniti to verify the information.

At his meeting, the Union members also agreed not to resign their employment and work for PSI. Each union member signed a declaration addressed to Mayor Hubert Hermanek, Fire Chief Brian Basek, and the members of the North Riverside Village Board. It stated the following:

"We, the undersigned members of the North Riverside Fire Fighters Union – Local 2714 do hereby declare and affirm that we will not now, or at any time in

---

<sup>3</sup> This information included insurance costs, estimated overtime costs, costs of training, and acting pay.

the future, accept any type of employment position with the company known as Paramedic Services of Illinois., Inc. This declaration is dated July 8, 2014.”

#### 4. July 10, 2014 Bargaining Session

The parties met for their second negotiation session on July 10, 2014. Present at the meeting were all members of the Respondent’s bargaining team, except for attorney Odelson. Attorney Robinson also appeared on behalf of the Respondent. All members of the Union’s bargaining team were present. Attorney Elisa Redish and Lieutenant Wisniewski also appeared on behalf of the Union.

The Union presented its first counterproposal, which called for a five-year contract. The Union again proposed that the Respondent eliminate the PSI paramedic contract, transition to fire-based EMS through use of the Silver Spanner program, and hire three additional firefighters. However, the Union’s proposal contained the following novel elements: The Union proposed to reduce minimum manning. It proposed to extend the base salary of new hires so that they would achieve a maximum salary only after seven years instead of five years. It proposed a zero percent wage increase in the first year and a 2.25% wage increase for each remaining contract year. It proposed that the Respondent place an amount equal to 2.5% of employees’ salaries into the pension on an annual basis. Finally, it proposed a reduction in time off, which would save the Respondent money on overtime costs.

The Union’s proposal contained a summary that compared the Union’s proposal to the PSI proposal. The Union attached salary schedules in a spreadsheet that served to support the Union’s summary comparison. The Union claimed that its proposal matched the costs of PSI’s contract for the period of May 1, 2014 to April 30, 2019.

At the meeting, the Union also generally discussed an early retirement incentive, methods to generate additional revenue from its Fire/ALS Service, current active employee health insurance, post-employment health insurance, and the restructuring of existing benefit liabilities to improve the Respondent’s finances. The Union did not address these matters in its formal proposal.

The parties discussed the costs of their respective proposals. Scarpiniti informed the Union that she wished to review the Union’s numbers more carefully. The parties scheduled another bargaining session for July 21, 2014.

#### 5. July 14, 2014 Meeting Between Hermanek and Urbinati

On July 14, 2014, the Respondent conducted a public hearing to discuss the Respondent's budget appropriations. Following the meeting, Urbinati visited Hermanek's office. Urbinati informed Hermanek that the Union would make a proposal that included the \$700,000 cost-savings sought by the Respondent. Hermanek replied, "if you come up with the \$700,000, you have a deal."

#### 6. July 21, 2014 Bargaining Session

The parties met for their third bargaining session on July 21, 2014. All members of the Respondent's bargaining team and the Union's bargaining team were present. The Respondent did not present a counterproposal at this meeting because Scarpiniti had not yet completed her analysis of the Union's proposal. The parties set another meeting date for August 18, 2014 and the meeting quickly concluded.

#### 7. Interim Meeting Between Urbinati and Scarpiniti

Prior to the August 18, 2014 meeting, Urbinati and Scarpiniti met to discuss the costs of the parties' prospective proposals and the Respondent's pension obligation. Scarpiniti sought to identify pension costs as net pension costs. By contrast, Urbinati sought to identify the costs of the pension that the Respondent would incur from the present and calculated into the future. Urbinati and Scarpiniti were unable to reach a consensus.

#### 8. August 18, 2014 Bargaining Session

The parties met for their third bargaining session on August 18, 2014. Present at the meeting were all members of the Union's bargaining team and the all members of the Respondent's bargaining team. Mayor Hermanek joined the Respondent's bargaining team at the meeting.

Scarpiniti provided the Union with a formal written analysis of the Union's July 10, 2014 proposal and cost comparison in the form of a spreadsheet. The analysis identified and corrected a number of errors in the Union's representations. According to Scarpiniti's calculations, the costs of the Union's proposal exceeded the costs of the PSI proposal and the PSI contract for ambulance services by approximately \$698,085 in the first year, \$705,649 in the second year,

\$748,526 in the third year, and over \$1 million for each of the remaining years. It did not achieve the \$700,000 cost savings sought by the Respondent.

Scarpiniti identified the following inaccuracies in the Union's July 10, 2014 cost comparison. First, the salary schedules that supported the Union's numbers were inaccurate. The Union understated employees' wages by approximately \$60,000, in the aggregate. The Union overestimated the costs of overtime by \$40,000. The Union underestimated the costs of the Silver Spanner program by \$100,000. The Union understated the costs of the worker's compensation program by 3.07%, which equated to \$5000. Scarpiniti also disputed the accuracy of the number used by the Union to represent the cost of the pensions, noting that the Union had actually overestimated the Respondent's pension costs.<sup>4</sup> Finally, the Union's proposal did not consider the cost of the PSI paramedic contract, to which the Respondent was bound.

At the meeting, the Union raised the subject of the Respondent's post-retirement health insurance costs, which amounted to approximately \$500,000. Berry raised the idea of eliminating post-retirement health insurance and noted that its elimination could be a source of savings. Berry presented the Respondent three contracts from other municipalities showing the manner in which they resolved/eliminated their post-employment health insurance obligations.

According to Scarpiniti, Berry made it clear that it would not agree to the reduction of post-employment benefits unless the Respondent applied that reduction to all represented employees. Scarpiniti told Berry that the Respondent could not guarantee a reduction in other unions' post-employment benefits because the Respondent already had contracts in place with the other unions.

The Union never made a proposal that included the elimination of post-retirement health insurance. The Respondent did not follow up with the Union about how the Respondent might achieve savings from eliminating post-employment health insurance.

Urbinati testified that the Respondent reiterated that it would privatize unless the Union matched the savings of its privatization proposal.

---

<sup>4</sup> Scarpiniti initially claimed the cost of pensions should be calculated as an amount equal to 46% of payroll. This included the costs of the Respondent's outstanding pension obligations. However, Scarpiniti reduced that percentage in making her own comparison of the Respondent's personnel costs to the PSI contract costs, in consideration of the Union's claim that the Respondent should consider pension obligations incurred only over the years covered by the contract. The Union proposal calculated the cost of pensions as an amount equal to 22% of payroll, which was a higher percentage than Scarpiniti used.

The parties agreed to meet again on August 26, 2014 and to include a mediator, Thomas Olson. The parties later rescheduled that meeting to September 3, 2014.

#### 9. September 3, 2014 Bargaining Session and Mediation

On September 3, 2014, the parties held their fourth bargaining session. Mediator Tom Olsen was present to facilitate negotiations. All members of the Union's bargaining team were present at the meeting. All members of the Respondent's bargaining team were present except for attorney Horvath.

The parties met jointly with the mediator. Odelson and Berry each made a presentation. The parties then caucused.

The mediator orally conveyed a proposal from the Respondent to the Union and the Union's bargaining team wrote it down. The proposal offered the following: (1) An eleven year contract with a wage and benefit opener at year five (5) and eight (8); (2) Total Union protection with existing grievance procedures; (3) Current health insurance with modest percentage increases in employee contributions; (4) A retirement incentive at twenty-five years (25); (5) Retirement health insurance incentive for next three (3) years; (6) Layoff procedures as currently in expired contract; (7) Current holiday, sick, and personal days; (8) Overtime as is except that current private ambulance service paramedics/firefighters and any new PSI hires would be worked into the overtime system; (9) Three-man engine with paramedics/firefighters from PSI able to work the engine as the fourth-man; (10) Wages in year one of 0% to firefighters and 2% going directly into the pension fund; 2% in year two; 2% in year three; 2.5% in year four and 2.75% in year five; (11) No day-lieutenant by attrition; (12) Vacation time remains as in expired contract except all vacation to be scheduled by the 15th of November for the next year; (13) Call-back and holdover the same as in expired contract except PSI employees are part of the system; (14) Sick leave buyout phased out and used for future health care costs; (15) Continued attendance at Union meetings as per the expired contract except no attendance can cause an overtime situation; (16) Reduce RDO days by two (2) and personal days by two (2) and one slot off for personal and vacation; (17) Replace retired municipal firefighters, by attrition, with paramedic/firefighters supplied by PSI.

Firefighters Zdenovec and Urbinati testified that Burt Odelson then came in to speak to the Union's negotiating team in the Union's caucus room. According to Zdenovec, Odelson told

the Union that the proposal conveyed by the mediator was the Respondent's final proposal. Odelson testified that he could not remember whether he entered the Union's caucus room and expressed dismay that the Union would not accept the Respondent's final offer. Instead, he testified, "I could have done it...I just don't remember if I did that or not."

According to Urbinati, the Respondent's "lawyers" conveyed that the Union "pretty much had to say [they] wanted it...or the [Respondent] would file a lawsuit." Zdenovec testified that Odelson said that the Respondent would not negotiate anymore, that the Respondent was "done with this," and that the lawsuit was the next step.

Odelson testified that he never told the Union the Respondent would file a lawsuit if the Union did not accept the Respondent's proposal. However, he conceded that he and Berry talked about the legalities of privatization, that he told Berry that the Respondent had the unilateral right to terminate the contract after its expiration, and that he stated that the Respondent was not required to proceed to interest arbitration. Scarpiniti testified that she never heard any member of the Respondent's bargaining team use the word lawsuit while in joint session or in caucus.

I credit Zdenovec's testimony based on his demeanor at hearing and in light of Odelson's admission that he and Berry discussed "the legalities" of privatization. I do not credit Urbinati's testimony that the Respondent threatened the Union with a lawsuit because Urbinati did not sufficiently identify the speaker of the alleged threat and did not explain what he meant by the phrase "pretty much."

The Union requested another meeting so that it could have time to review the Respondent's proposal and formulate a counterproposal. Urbinati testified that Odelson stated that "if it doesn't involve privatization, I don't want to hear it." Odelson denied telling the Union on September 3, 2014 that the Respondent would not meet again with the Union unless the Union presented the Respondent with a privatization proposal. I credit Urbinati because his statement is consistent with the Union's subsequent conduct.

The parties agreed to meet again on September 9, 2014.

#### 10. September 9, 2014 Negotiation and Mediation

On September 9, 2014, the parties met for their final bargaining session and mediation. Present at the meeting were all members of the Union's bargaining team and all members of the

Respondent's bargaining team, except for attorney Horvath and Administrator Belmonte. Mayor Hermanek was also present on behalf of the Respondent.<sup>5</sup>

The Union presented a proposal with three options, Options A, B, and C. Option A reiterated the Union's July 10, 2014 proposal. However, the Union additionally proposed to continue bargaining over it.

Option B proposed an 11-year contract that included privatization of the Respondent's fire services. The Union's proposal largely adopted the Respondent's privatization proposal of September 3, 2014. The fundamental difference between the Respondent's proposal and the Union's was that the Union's proposal replaced PSI with "Local 2714 Inc." as the private entity that would supply the Respondent with firefighting services. The proposal specified that the cost to the Respondent for Local 2714 Inc. firefighters would be equivalent to the cost of PSI firefighters. It also specified that the Respondent would use the Silver Spanner program while existing firefighters became trained as firefighter/paramedics. However, it stated that overtime costs would be the same as overtime costs under the PSI proposal. The Union also stated that Local 2714 Inc. would supply firefighters who would have the qualifications required under the Civil Service Act and who were hired pursuant to the civil service hiring procedures. Finally, the Union proposed reopeners on certain terms at years three, five, and eight.

The Union did not give the Respondent information regarding the manner in which Local 2714 Inc. would be organized. It did not provide any financial statements relevant to Local 2714 Inc. In fact, Local 2714 Inc. did not exist as a corporation at the time the Union presented its proposal to the Respondent and it did not exist as a corporation at the time of hearing.

Urbinati testified that the Union presented the privatization proposal because the Respondent stated that it would not meet with the Union unless the Union proposed a contract that included privatization and because Odelson stated that he did not want to hear any proposal that did not include privatization.

Option C was entitled Consolidation. It proposed that the Respondent initiate action to form a Regional Fire Protection Agency with contiguous units of local government in

---

<sup>5</sup> Odelson testified that Hermanek was not present at the September 9 meeting but that Belmonte was present. Odelson initially testified that Horvath was not present but then stated Horvath was present. Scarpiniti testified that Hermanek was present at the September 9 meeting but that Belmonte and Horvath were not. I credit Scarpiniti's testimony as to the individuals present because she testified more consistently on this point and because Urbinati referenced statements made by Hermanek at the meeting.

accordance with the authority provided by P.A. 98-1095, the Regional Fire Protection Agencies Act (RFPAA). The legislation was two weeks old when the Union presented Option C to the Respondent.

Urbinati testified that the Union attached to its proposal a copy of RFPAA. Odelson testified that he could not recall whether the Union had attached a copy of the RFPAA to its proposal. Scarpiniti initially testified that the Union did not include a copy of the RFPAA with its proposal. She later testified that she could not recall whether the Union's proposal included a copy of the RFPAA. On cross examination, Scarpiniti conceded that the Union did include a copy of the RFPAA with its proposal. I credit Urbinati's testimony that the Union did attach a copy of the RFPAA to its proposal because he testified credibly and his testimony is supported by Scarpiniti's admission on cross-examination.

The RFPAA states that citizens must sign petitions to initiate a referendum, which would allow citizens of each town included in the proposed consolidation, to vote on whether to create a Regional Fire Protection Agency. If the referendum passed, the participating towns would pool their resources to fund a single agency for fire protection. The creation of such an agency would reduce costs by reducing the need for each town to have separate firefighting equipment and office personnel.

The Union did not present details as to how it would proceed with the petition process to create a Regional Fire Protection Agency. The Respondent, as a corporate body, could not on its own place a referendum on a ballot for a vote. The Union did not discuss its proposal with the governing Boards of other communities and did not provide any specifics as to the identity of other units of local government that might also be interested in joining a Regional Fire Protection Agency. The parties stipulated that the Union presented consolidation as a concept proposal.

The Respondent discussed all of the options presented by the Union. According to Odelson, the Respondent reviewed the Union's final proposal for about 45 minutes to an hour before rejecting the proposal. Scarpiniti testified that the Respondent took just a "few minutes" to review and reject the Union's proposals. Urbinati testified that the Respondent considered the Union's proposal for only 30 to 40 minutes. I credit Urbinati's testimony that the Respondent considered the Union's proposal for 30 to 40 minutes because the Respondent's witnesses contradicted each other.

Scarpiniti testified that Option A was not acceptable to the Respondent because it required the elimination of the PSI contract and would therefore fail to address the Respondent's pension obligations. She further stated that Option B of the Union's proposal was not acceptable to the Respondent because it required the Respondent to entrust its paramedic services to be outsourced to a corporation that did not exist and to terminate an existing contract with PSI.

Scarpiniti testified that Option C was not acceptable to the Respondent because its implementation would require a referendum vote, which the Respondent determined could not be accomplished at any time in the immediate future. Urbinati testified that Odelson liked Option C, but that Hermanek stated it was too time consuming and that the Respondent "did not have that kind of time." Scarpiniti testified that the Respondent's bargaining team discussed Option C "very briefly" and conceded that none of the members of the team were "familiar with the concept of a regional fire protection agency."

The Respondent then informed the mediator that the parties were at impasse. The mediator informed the Union that the Respondent did not accept any part of the Union's proposal and that the Respondent was finished bargaining.

According to Urbinati, the Respondent's agents stated that the Respondent's latest proposal was its final one and that if the Union did not agree to it, the Respondent would file a lawsuit the following day. Odelson testified that he did not threaten the Union with a lawsuit if it did not accept the Respondent's proposal. Scarpiniti testified that no members of the Respondent's team mentioned the word lawsuit during the initial joint session with the Union. I do not credit Urbinati's testimony because he did not clearly identify the individual who made the alleged statement.

The Union requested another meeting date, but the Respondent refused. Odelson believed that the parties were too far apart to come to agreement. Hermanek testified that he would have been willing to meet with the Union again, had the Union presented a realistic, concrete proposal to achieve the \$700,000 in cost savings sought by the Respondent.

#### 11. Events Following the Conclusion of the Parties' Negotiation

On September 12, 2014, the Respondent filed a Complaint for Declaratory Judgment in the Circuit Court of Cook County, Chancery Division. On October 30, 2014, Respondent filed a

First Amended Complaint for Declaratory Judgment and Related Relief. In its Complaint and First Amended Complaint, the Respondent asked the Court to declare that the Respondent had the authority to terminate its expired collective bargaining agreement with the Union and its existing relationship with Union. It also moved for a preliminary injunction from the Court directing the Board to stay the compulsory interest arbitration proceeding.

On September 17, 2014, the Union filed a formal demand for compulsory interest arbitration with the Board.

On October 2, 2014, Odelson sent a letter to the Board and the Union informing it of the Respondent's lawsuit in Circuit Court and noting that the Respondent believed the Board should hold the interest arbitration in abeyance pending the outcome of the Court's decision. He stated, "I am writing today to inform you that the Village has no intention of selecting an arbitrator at this time."

The Union responded in a letter to the Board and the Respondent, which outlined its position and asserted that the Respondent had an obligation to proceed with the interest arbitration.

On October 6, 2014, attorney Odelson sent a letter to attorney Berry and President Urbinati that included an attachment. Chief Brian Basek handed all firefighters copies of the letter and the attachment on the same date. The letter stated the following:

In accordance with the enclosed Notice, the Village is again offering full employment opportunity for the Firefighters and Lieutenants through PSI. As initially proposed, PSI will hire all members of the bargaining unit at their current base salary, provide the same health care, as well as beginning a 401k pension plan.

The enclosed Notice must be sent pursuant to the Act. However, the Village will not act to remove any Firefighter until the Court has made a determination of the issues relative to the expired contract. Thus, although the enclosed Notice terminates all employment of the bargaining unit members pursuant to statute and the contract, until the Court makes a determination, all Firefighters will remain in their positions.

The letter included an attachment entitled "Notice of Collective Bargaining Agreement Termination Pursuant to 5 ILCS 315/7." The notice of termination stated the following:

The Village of North Riverside (hereinafter "Village") in accordance with 5 ILCS 315/7 hereby notifies the North Riverside Firefighters AFL-CIO, CCC

(hereinafter “Union”) that the Collective Bargaining Agreement and all of its provisions, executed by the Village and Union on August 8, 2011, with an April 30, 2014 ending date, will terminate effective December 5, 2014.

The Village will meet with the Union to confer and bargain concerning the impact of this termination. Effective December 5, 2014, the services of the members of IAFF Local 2714 as Firefighters and Lieutenants in the North Riverside Fire Department will terminate in accordance with the above.

Odelson testified that he sent the Union members the October 6, 2014 letter to comply with the Act to terminate the contract and to assure members that the Respondent would not act on the terminations until the Circuit Court of Cook County made a determination as to the Respondent’s rights and obligations under the Act.

Nalbandian testified that since the effective date of the termination letters he comes to work each day fearing that the Respondent will have locked him out and that he will no longer have a job. He further stated that he now worries about how he will provide for his new child if the Respondent acts to remove him from service.

On October 8, 2014, Odelson sent another letter to the Union and the Board stating, “I suggest that all proceedings before the Board as to arbitrating an expired contract be indefinitely halted until we have a judicial determination.”

On October 14, 2014, the Board’s Executive Director replied that “I am unable to find any authority in the Act or the Rules that authorizes the Board to hold interest arbitration proceedings in abeyance pending the outcome of the lawsuit filed by the Village.” She further directed the parties to inform the Board of their selection of a neutral arbitrator by October 23, 2014.

On December 18, 2014, Circuit Court Judge Diane Larson denied the Respondent’s motion for a preliminary injunction to stay interest arbitration proceedings. Judge Larson further noted that “the Village has not met the irreparable harm prong and the inadequacy of a remedy at law prong.” She further reasoned that “the Court finds that the issues...may be raised before the arbitration panel.”

On February 27, 2015, the Respondent appealed the Circuit Court’s denial to the First District Illinois Appellate Court.

On January 22, 2015, the parties proceeded to interest arbitration before Arbitrator Robert Brookins. Urbinati was the Union’s representative on the panel and Mayor Hermanek was the

Respondent's representative on the panel. The Respondent moved to dismiss the interest arbitration, or alternatively, to stay the interest arbitration pending the Circuit Court's decision on the action for Declaratory Judgment. On January 22, 2015, Arbitrator Brookins adjourned the proceedings until the pending litigation in the Circuit Court concluded.

On October 15, 2015, Circuit Court Judge Diane J. Larson dismissed the Respondent's Complaint with prejudice for lack of jurisdiction and declined to reach the merits of all pending motions, including the Respondent's Motion for Summary Determination. On October 16, 2015, the Respondent appealed the Circuit Court's final order to the First District Illinois Appellate Court.

On April 10, 2015, the Respondent filed a motion before the First District Illinois Appellate Court to voluntarily dismiss its appeal of the Circuit Court's denial of its motion for a preliminary injunction to stay interest arbitration proceedings. In its motion, it noted that the arbitration panel "recognized that the Village was challenging their jurisdiction to determine the Village's ability to terminate the collective bargaining agreement with the Union. The panel then decided it would not conduct a hearing, since the Circuit Court is determining the issues."

As of the conclusion of hearing in this case, the Respondent had not signed a contract with PSI for firefighter/paramedic services.

## **V. DISCUSSION AND ANALYSIS**

### **1. Motion To Amend the Complaint**

The Union's Motion to Amend the Complaint is denied because the evidence presented at hearing does not support the Union's proposed allegations.

Section 1220.50(f) of the Rules and Regulations of the Illinois Labor Relations Board (Rules) provides that "[t]he Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing ... at any time prior to the issuance of the Judge's recommended decision and order." 80 Ill. Admin. Code § 1220.50(f). In applying this rule, the Board has held that the ALJ may amend the complaint to conform the pleadings to the evidence where it "would not unfairly prejudice

any party.” Forest Preserve Dist. of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 746 (1st Dist. 2006) (citing Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004)).<sup>6</sup>

Here, the Union asserts that the Respondent violated Sections 10(a)(4) and (1) of the Act when it bargained to impasse on a permissive subject of bargaining, a proposal that allegedly sought the Union’s waiver of its statutory rights under the Substitutes Act<sup>7</sup> and under Section 14(l) of the Illinois Public Labor Relations Act. Contrary to the Union’s claim, the Respondent’s proposal addresses a mandatory subject of bargaining because it does not seek a waiver of statutory rights.<sup>8</sup>

A proposal seeking the waiver of a statutory right is a permissive subject of bargaining. City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015); Vill. of Midlothian, 29 PERI ¶ 125 (IL LRB-SP 2013); Vill. of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001); Cnty. of Cook (Cook Cnty. Hosp.), 15 PERI ¶ 3009 (IL SLRB 1999); Bd. of Trustees of the Univ. of Ill., 8 PERI ¶ 1014 (IL ELRB 1991), aff’d 244 Ill. App. 3d 945, 612 N.E.2d 1365 (1993); Bd. of Regents of the Regency Univ. System (Northern Ill. Univ.), 7 PERI ¶ 1113 (IL ELRB 1991). A proposal may be permissive by virtue of its effect on statutory rights, even where it appears on its face to address an otherwise mandatory subject of bargaining. See Vill. of Midlothian, 29 PERI ¶ 125. Distinguishing between permissive and mandatory proposals under such circumstances requires more than merely reading the proposal in isolation. Instead, it requires a comparison of the proposal to the statutory right allegedly implicated by the proposal’s acceptance.

A proposal seeks the waiver of a union’s statutory rights where it conflicts with a statutory mandate by offering the union fewer rights than provided under statute. City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015); Vill. of Midlothian, 29 PERI ¶ 125; Vill. of Elk Grove Vill., 21 PERI ¶ 14 (IL LRB-SP GC 2005). Thus, a proposal may seek a waiver of a statutory right even where the proposal’s language does not expressly reference waiver. Ehlers v. Jackson Cnty. Sheriffs Merit Comm’n, 183 Ill. 2d 83 (1998); see also Vill. of Elk Grove Vill., 21

---

<sup>6</sup> An ALJ may also amend a complaint to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original charge, or grew out of the same subject matter during the pendency of the case. 80 Ill. Admin. Code § 1220.50(f); Forest Preserve Dist. of Cook County v. Ill. Labor Rel. Bd., 369 Ill. App. 3d 733, 746 (1st Dist. 2006) (citing Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004)).

<sup>7</sup> 65 ILCS 5/10-2.1-4 (2012).

<sup>8</sup> The Union concedes that the overarching subject matter of the Respondent’s proposal, the subcontracting of unit work, is a mandatory subject of bargaining. The Respondent impliedly agrees because it argues that it did not violate the Act by bargaining to impasse on its subcontracting proposal.

PERI ¶ 14. Yet, a finding of waiver by contract is absolutely precluded where a contract is silent on the subject matter in dispute. Am. Fed'n of State, Cnty. and Mun. Empl. v. State Labor Rel. Bd., 274 Ill. App. 3d 327, 334 (1st Dist. 1995); Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997).

The Respondent's proposal does not seek the Union's waiver of its statutory rights under the Substitutes Act to insist on the Respondent's use of contractors who are "qualified for regular appointment." Instead, the Respondent's subcontracting proposal in this case is analogous to the subcontracting proposal in City of Wheaton that the Board found to be a mandatory subject of bargaining. City of Wheaton, 31 PERI ¶ 131. The proposal in Wheaton generally authorized the Respondent to subcontract unit work, but did not specify the contractors' qualifications or grant the Respondent the discretion to specify what those qualifications would be. Id. The Board reasoned that the proposal did not seek the waiver of the Union's rights under the Substitutes Act because it did not allow the Respondent to deviate from that Act's requirements, which limited the Respondent's choice of subcontracted firefighters to those qualified for regular appointment. Id.

Similarly, in this case, the Respondent's proposal is silent with respect to the contractors' qualifications and the Respondent's discretion to specify them. Contrary to the Union's contention, the proposal's designation of a private contractor does not equate to a specification of the contractors' qualifications because it does not, on its face, allow the Respondent to deviate from the statutory mandate of the Substitutes Act. Whether the named contractor is in fact capable of providing qualified substitutes within the meaning of the Substitutes Act is therefore a concern for the Respondent, who remains bound by its requirements under the proposal's terms, and not the Union, whose rights the proposal preserves. Accordingly, the Union's Motion to Amend the Complaint under this theory is denied.

Next, the Respondent's proposal does not seek the Union's waiver of its statutory rights under Section 14(l) of the Act by allegedly requiring the Union to "surrender existing contract terms protected by Section 14(l)." The right to insist on status quo terms under Section 14(l) of the Act exists only "during the pendency of interest arbitration." 5 ILCS 315/14(l). That right disappears upon agreement regardless of the agreement's terms because interest arbitration proceedings end once the parties reach agreement. The Union's argument therefore rests on the faulty premise that that the Union would otherwise possess the identified statutory right during

the term of a new contract when, in fact, no contract could preserve it. Consequently, the Respondent's offer of new contract terms does not seek the waiver of Union's right to insist on the old status quo under Section 14(1) because that right and the corresponding obligation to bargain cease to exist upon agreement. E.g. Mt. Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd., 278 Ill. App. 3d 814, 816 (4th Dist. 1996)(once parties agree on a contract the duty to bargain covers only those matters not fully bargained and not covered by a clause in the agreement); City of Chicago (Department of Health), 10 PERI ¶ 3031 (IL LLRB 1994)(when parties reach an agreement on a matter at the time they negotiate a collective bargaining agreement, they have fulfilled their affirmative obligation to bargain over that subject for as long as that agreement is in effect).

Thus, the Union's Motion to Amend the Complaint under this second theory is likewise denied.

## 2. Sections 10(a)(4) and (1) – Alleged Surface Bargaining

The Respondent engaged in surface bargaining because it did not give the Union advance notice of its decision to solicit subcontracting bids and it did not give consideration to all of the Union's counterproposals.

The duty to collectively bargain in good faith fundamentally requires both parties to engage in negotiations with "an open mind and a sincere desire to reach an ultimate agreement." Service Employees Int'l Local Union No. 316 v. Ill. Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 751 (4th Dist, 1987); Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013) City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); City of Springfield, 6 PERI ¶ 2051 (IL SLRB 1990). Where a party undertakes a calculated strategy of avoiding reaching an agreement, and does nothing more than "go through the motions of bargaining," the Board will find that the party has engaged in "surface bargaining" in violation of Section 10(a)(4) of the Act. Service Employees Int'l Local Union No. 316, 153 Ill. App. 3d at 751; Chicago Typographical Union, 15 PERI 3008 (IL LLRB 1999). However, the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession." Therefore, "an adamant insistence upon a bargaining position is not of itself a refusal to bargain in good faith." Lake County Circuit Clerk, 29 PERI ¶179 (internal quotes omitted).

In a surface bargaining case, the Board will examine “the totality of the circumstances” to determine whether a respondent engaged in permissible “hard bargaining,” or whether it was instead motivated by a bad faith desire to avoid reaching agreement altogether. Lake County Circuit Clerk, 29 PERI ¶179. The types of conduct indicative of bad faith intent include delaying tactics; unreasonable bargaining demands; an employer’s implementation of unilateral changes involving mandatory subjects of bargaining; failure to designate a representative with sufficient bargaining authority; withdrawal of previously accepted proposals; and arbitrary scheduling of bargaining meetings. Id. The Board recently held that certain bargaining proposals by an employer may draw greater scrutiny in weighing the totality of the circumstances where they are of the type that an employer, “motivated by bad faith[,] might try to exploit in an effort to undermine a union and to avoid agreement on an entire CBA under the guise of ‘hard bargaining.’” Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013).

The Appellate Court has additionally explained that a more specific standard applies for evaluating the “totality of the circumstances” in the subcontracting context. Specifically, “the requirements for good-faith bargaining on the decision to subcontract are [1] notice of the consideration of a subcontract, before it is finalized; [2] meeting with the union to provide an opportunity to discuss and explain the decision; [3] providing information to the union; and [4] giving consideration to any counterproposals the union makes.” Comm. Unit School Dist. No. 5 v. Ill. Educ. Labor Rel. Bd., 2014 IL App (4th) 130294 ¶ 74, 82, & 85; Serv. Empl. International Local Union No. 316, 153 Ill. App. 3d 744, 753 (4th Dist. 1987).

The parties disagree as to the standard that should apply in this case. The Respondent argues that this is a typical subcontracting case and that the appellate court’s four-part test must apply. The Union argues that this matter falls outside the scope of a typical subcontracting case because it arises with respect to employees entitled to interest arbitration and that the broader “totality of the circumstances” test should apply instead. The Union further argues that the Employer’s proposals to privatize should draw greater scrutiny under the Board’s decision in Lake County Circuit Clerk.

The standard applicable to this case is the more specific one articulated by the appellate court. There is no question that the Employer consistently proposed to subcontract all bargaining unit work and that the matter fundamentally at issue here is the Respondent’s proposal to replace unit members with contractors. The Union correctly observes that an Employer’s proposal to

replace bargaining unit members with private contractors would eliminate the bargaining unit. And the Union reasonably argues that an employer's intransigence on a proposal to eliminate the bargaining unit, like an employer's intransigence on a proposal to eliminate a contractual fair share clause, at issue in Lake County Circuit Clerk, is precisely the sort of bargaining position that an employer could exploit in bad faith to avoid agreement. However, the holdings of the appellate court cases cited above preclude the application of the Board's analysis in Lake County Circuit Clerk to this case because their holdings could be no clearer: a more specific test applies in the context of an employer's decision to subcontract and agencies that disregard the test will be reversed. Cnty. Unit Sch. Dist. No. 5 v. Illinois Educ. Labor Relations Bd., 2014 IL App (4th) 130294, ¶ 82 (noting that the "ALJ neglected to cite [the Court's] standard in the subcontracting context"; reversing decision by Illinois Educational Labor Relations Board that affirmed the ALJ's decision); Serv. Empl. International Local Union No. 316, 153 Ill. App. 3d 744, 753 (4th Dist. 1987)(applying same test).

The Union's right to interest arbitration does not change the surface bargaining analysis because that analysis simply examines the manner in which the parties reach alleged impasse, not the method by which they resolve it. Parties do not have the right to interest arbitration unless they first bargain in good faith to impasse. Tri-State Professional Firefighters Union, Local 3165, IAFF, 31 PERI ¶ 78 (IL LRB-SP 2014) aff'd by unpub. ord. no. 1-14-3418 (examining the respondent's bargaining conduct prior to interest arbitration to determine whether respondent engaged in surface bargaining). A respondent's conduct after declaring impasse may inform the analysis of its pre-impasse bargaining. See Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013) (one indicium of bad faith includes employer's implementation of unilateral changes). However, the Union has offered insufficient support for its claim that the mere right to interest arbitration requires a different analysis of surface bargaining in the subcontracting context than that set forth by the Appellate Court.

Applying the first prong of the test, the Respondent did not give the Union notice of the "consideration of the subcontract, before it was finalized" because the Respondent solicited bids for the subcontracting of unit work before informing the Union. The Board in Village of Oak Lawn interpreted the first prong of the test as requiring the employer to give "notice to the union of its intent to seek bids." Vill. of Oak Lawn, 30 PERI ¶ 116 (IL LRB-SP 2013)(citing "SEIU, Local #316 v. Illinois Educational Labor Relations Board"). In that case, the Board affirmed the

Executive Director's dismissal of a bad faith bargaining charge relying on this interpretation of the court's test where the respondent informed the union in advance of its intent to solicit bids. Id. Here, by contrast, the Respondent solicited a bid from PSI in May 2014, but only informed the Union about its plans to subcontract on June 18, 2014, after it received PSI's bid, when Hermanek issued a letter to the Respondent's citizens describing PSI's proposal in positive terms.

Furthermore, although the Respondent satisfied the second and third prongs of the test, it did not satisfy the last prong. The Respondent unequivocally met with the Union to provide an opportunity to discuss and explain the decision. The parties met five times between June and September 2014 to bargain over a new contract and, more specifically, to bargain over the Respondent's proposal to subcontract its firefighting services. At the parties first bargaining session on June 24, 2014, the Respondent explained its rationale for privatization, which included its outstanding obligation to fund the pension. It also provided the Union with a document that compared the cost of an anticipated Union contract with the costs of a PSI contract. The Respondent conveyed to the Union that it sought a \$700,000 cost savings, which a PSI contract for the provision of firefighting services would provide. The Respondent also stated that it would enter a contract with the Union if the Union could provide the same or similar savings. The Respondent reiterated at subsequent bargaining sessions its positions on cost savings and its explanation for underlying its motivation.

In addition, the Respondent provided information to the Union related to its interest to privatize. Specifically, the Respondent provided the Union with proposed costs of the PSI contract and a spreadsheet with itemized costs of the Union contract over five years and a projection of the costs of the PSI contract over five years. The Union suggests that this information was insufficient because the Respondent did not provide the union with an itemized cost of the PSI proposal. The Respondent cannot be faulted for failing to provide the Union with information it did not possess. PSI never provided the Respondent with an itemized cost of its proposal, on the grounds that such information was proprietary.

However, the Respondent did not give consideration to all the Union's proposals and instead summarily rejected the Union's consolidation proposal (Option C), even though it could have addressed the Respondent's financial concerns or served as the basis for additional bargaining. Option C proposed that the Respondent initiate action to form a Regional Fire

Protection Agency with contiguous units of local government in accordance with the Regional Fire Protection Agencies Act (RFPAA), a law that took effect two weeks prior to the parties' bargaining session. A Regional Fire Protection Agency would save costs by allowing the Respondent to pool its fire protection resources with participating towns and share the costs of firefighting equipment and office personnel.

Despite the considerable cost savings a Regional Fire Protection Agency could potentially offer, the Respondent's agents were uninterested in this proposal. The team discussed the proposal very briefly, even though none of the team members were familiar with the concept when the Union presented it. Indeed, the team spent so little effort exploring this option that Scarpiniti could not initially recall whether the Union had attached to its proposal a copy of the law that enabled municipalities to form Regional Fire Protection Agencies.<sup>9</sup> Even attorney Odelson could not recall whether the Union had attached a copy of the law to its proposal, even though an adequate explanation of the brand new legislation to the bargaining team would have likely required reference to its text.

The Respondent's cursory review of the Union's Option C proposal on September 9, 2014 is unsurprising in light of Odelson's statements made during the parties' prior bargaining session a week earlier. Urbinati credibly testified that Odelson said, "if [the Union's counterproposal] doesn't involve privatization, I don't want to hear it." Urbinati's account is believable because it reveals the impetus for the Union's unique final proposal, under which a union-run corporation ("Local 2714 Inc.") would provide the Respondent firefighting services. Urbinati explained that the Union offered this option to comply with Odelson's directive and because the Respondent conveyed through its agents that the Respondent would not meet the Union again, if it did not include such an option. Odelson's statement further supports the conclusion that the Respondent did not consider the Union's consolidation proposal because it did not involve privatization, as the Respondent mandated.

Finally, the reasons advanced by the Respondent's agents for rejecting the Union's consolidation proposal likewise indicate a rush to reach impasse rather than meaningful consideration of the Union's proposals. Both Hermanek and Scarpiniti stated that the Respondent rejected the Union's consolidation proposal because it would take too long.

---

<sup>9</sup> Scarpiniti's memory became sharper on cross-examination, when she admitted that the Union did attach a copy of the RFPAA.

Hermanek stated that the Respondent “did not have that kind of time.” Yet the Respondent was willing to wait 11 years required to reap the full cost-savings of its own privatization plan. Surely, a modicum of investigation into the Union’s novel cost-savings proposal would not have taken so long. Moreover, successful implementation of that proposal could have reaped quicker benefits in equipment and infrastructure costs than the replacement of full-time firefighters with contractors through attrition proposed under the Respondent’s 11-year plan. Notably, the consolidation likewise did not require the Respondent to eliminate its contract with PSI for paramedic services, which was a term in the Union’s other proposals the Respondent found to be objectionable.

Thus, the Respondent violated Sections 10(a)(4) and (1) of the Act by engaging in surface bargaining over its proposal to privatize its fire fighting services.

3. Sections 10(a)(4), 10(a)(1), and 14(l) – Alleged Unilateral Change in Employee’s Terms and Conditions of Employment During the Pendency of Interest Arbitration Proceedings

The Respondent changed employees’ terms and conditions of employment during the pendency of interest arbitration in violation of Sections 10(a)(4), 10(a)(1), and 14(l) of the Act when it issued employees notices of termination on October 6, 2014.

Section 14(l) of the Act provides, that “during the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act.” 5 ILCS 315/14(l). An employer violates Section 10(a)(4) and (1) of the Act when it unilaterally changes employees’ terms and conditions of employment during the pendency of interest arbitration proceedings.<sup>10</sup> Vill. of Oak Park, 25 PERI ¶ 169 (IL LRB-SP 2009); Vill. of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

In general, the express terms of the recently expired collective bargaining agreement are the primary indicator of the status quo as to wages, hours, and other conditions of employment.

---

<sup>10</sup> The Act further provides that “the proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under the Act” and clarifies that “[a]rbitration procedures are deemed to be initiated by the filing of a letter requesting mediation.” 315 ILCS 14(l) & (j) (2012).

Chicago Typographical Union, 15 PERI ¶ 3008 (IL LLRB 1999); Vill. of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). However, the past practices of the parties to the contract are relevant especially as to matters not covered thereunder. Chicago Typographical Union, 15 PERI ¶ 3008; Vill. of Crest Hill, 4 PERI ¶ 2030; City of Peoria, 3 PERI ¶ 2025.

As a preliminary matter, the Respondent does not dispute that it issued employees termination letters during the pendency of the parties' interest arbitration. Likewise, the Respondent does not claim that it acted within its management rights under the terms of the expired collective bargaining agreement when it issued employees the termination letters. It is also clear that the Union did not consent to the Respondent's decision to terminate all unit members. Instead, the Respondent asserts that it made no unlawful changes to employees' terms and conditions of employment when it issued the termination letters because all employees remained in their positions. In the alternative, the Respondent claims that it was entitled to issue notices of termination because it was statutorily entitled to terminate the parties' collective bargaining agreement and, in tandem, terminate its relationship with the Union. For the reasons set forth below, the Respondent's position is untenable.

First, the Respondent changed employees' terms and conditions of employment when it issued unit members unambiguous notices of termination on October 6, 2014 because the notices eliminated the just-cause protection enjoyed by employees under the terms of the expired contract and created an at-will employment relationship instead. A unilateral change is deemed to occur when the employer unambiguously announces that change. Wapella Educ. Ass'n, IEA-NEA v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 168 (4th Dist. 1988). Under the terms of the expired contract, the Respondent agreed that "firefighters and lieutenants shall be disciplined and discharged only for just cause." Here, the Respondent unambiguously eliminated members' employment security by stating that "[e]ffective December 5, 2014, the services of the members of IAFF Local 2714 as Firefighters and Lieutenants in the North Riverside Fire Department will terminate." It further conveyed that unit members would "remain in their positions" only "until the court [made] a determination of the issues relative to the expired contract." In sum, unit members served at the Respondent's pleasure and remained employed only by virtue of the Respondent's self-imposed limitation on their termination (the

court's decision), as of December 5, 2014. Notably, the Respondent concedes to the change in the letter by offering to bargain over its effects.

Finally, there is no merit to the Respondent's argument that it may terminate its obligations to maintain the status quo by terminating the contract, pursuant to Section 7 of the Act. The Respondent's position is undermined by principles of statutory interpretation, the Board's rules, and the approach taken by another public sector jurisdiction on the same issue.

A reasonable interpretation of the Act requires the Respondent to maintain the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings, even though the Respondent wishes to eliminate its fire services entirely. The primary object of statutory construction is to ascertain and give effect to the legislature's intent, which is best indicated by the statute's plain language. McVey v. M.L.K. Enterprises, L.L.C., 2015 IL 118143, ¶ 11. In construing the plain language of the statute, a court considers the statute in its entirety, "keeping in mind the subject it addresses and the legislature's apparent objective in enacting it." People v. Cardamone, 232 Ill.2d 504, 512 (2009). Where a general permission or prohibition is contradicted by a specific prohibition or permission, the specific provision is construed as an exception to the general one, to eliminate the contradiction. People ex rel. Madigan v. Burge, 2014 IL 115635, ¶ 31 (citing RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 132 S. Ct. 2065, 2070 (2012)).

Here, the plain language of Section 14(l) of the Act mandates that the Respondent maintain the status quo during the pendency of interest arbitration proceedings, which indisputably commenced in this case: "During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act." 5 ILCS 315/14(l).

The Respondent contends that Section 7 conflicts with and supersedes the directive of Section 14, but any alleged perceived conflict must be resolved in favor of the more specific provision. People ex rel. Madigan v. Burge, 2014 IL 115635, ¶ 31. Section 7 generally describes the mechanism by which parties may terminate or modify collective bargaining agreements and it describes parties' obligations to maintain the terms and conditions of the existing contracts during the transition period. 5 ILCS 315/7 (enumerating four steps). To that end, it sets forth a specific time frame during which employers must refrain from locking out their employees and a

corresponding time frame during which employees cannot strike. Id. (60 days following notice of termination or until expiration of contract, whichever occurs later). By contrast, Section 14 sets forth the specific mechanism by which parties may modify collective bargaining agreements involving protective service employees—employees who cannot strike. 5 ILCS 315/14(a) (“in the case of collective bargaining agreements involving...units of fire fighters”). With respect to such units, the Act provides that once a party has requested mediation, neither party may change existing wages, hours, and other conditions of employment absent the other party’s consent. 5 ILCS 315/14(j) (interest arbitration proceedings are initiated by a request for mediation); 5 ILCS 315/14(1) (prohibition against changing terms and conditions of employment during the pendency of interest arbitration proceedings). Here, Section 14(1)’s more specific prohibition against unilateral changes to protective service unit employees’ terms and conditions of employment applies where the employees at issue are firefighters.

The Board’s rules reflect the interpretation of the Act, set forth above. Section 1230.50 of the Board’s rules acknowledges the applicability of Section 7 to protective service units, in some respects, but affirms the primacy of Section 14 as it pertains to parties’ conduct following notice to terminate an existing agreement. 80 Ill. Admin. Code 1230.50. To that end, it specifies that “pursuant to Section 7 of the Act,” parties to an agreement covering protective service units must serve notice of their intent to terminate or modify an agreement, within the time period specified under that section. Id. However, if they have not reached agreement on a new contract, they must follow the procedures set forth in Section 14, beginning with mediation. Id. Thus, the Board has implicitly determined that the lockout provision of Section 7, relied on by the Respondent to justify the change, does not apply to protective service units. Cook County State’s Attorney v. Illinois State Labor Relations Bd., 292 Ill. App. 3d 1, 6 (1st Dist. 1997) (An agency’s interpretation of its own rules and regulations and its long-standing interpretation of the provisions of its enabling statute are given deference).

Finally, the approach taken by the Pennsylvania Labor Relations Board under a similar statutory framework supports the conclusion that the Respondent cannot unilaterally change employees’ terms and conditions of employment by terminating the contract where the unit is entitled to interest arbitration. The Pennsylvania Public Employe Relations Act, like the Illinois Public Labor Relations Act, gives protective service employees the right to interest arbitration to balance the bargaining positions of public employers and public employees, who are not

permitted to strike, and to expedite resolution of bargaining impasses. Snyder County and Snyder County Prison Board 36 PPER 96 (PA PERB 2005); 43 Pa. Stat. Ann. § 1101.101-1101.2301; 43 Pa. Stat. Ann. § 1101.801-1101.806a. The Pennsylvania Labor Relations Board rejected an assertion by the Snyder County Prison Board that it could privatize its prison guard services and terminate those protective service employees without first exhausting the interest arbitration impasse resolution proceedings. Snyder County and Snyder County Prison Board, 36 PPER 96. The PLRB reasoned that the employer was required to maintain the status quo and that it was obligated to comply with the statutory alternative dispute resolution procedures if it sought to change it. Id. The court affirmed. Snyder County Prison Board and County of Snyder v. Pennsylvania Labor Relations Board, 2006 WL 6824763 (Pennsylvania Commonwealth Court 2006).

Thus, the Respondent violated Section 10(a)(4) and (1) of the Act when it unilaterally changed employees' terms and conditions of employment during the pendency of interest arbitration proceedings by issuing employees termination letters.

4. Section 10(a)(1) – Interference, Restraint and Coercion of Employees in the Exercise of their Protected Rights.

The Respondent interfered, restrained, and coerced employees in the exercise of their protected rights when it issued termination notices to its firefighters shortly after the Union requested compulsory interest arbitration.

Section 10(a)(1) of the Act provides, in relevant part, that “it shall be 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 this Act.” 5 ILCS 315/10(a)(1) (2012). Section 6 of the Act broadly states that public employees have the right to join unions, to bargain collectively and to “engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.” 5 ILCS 315/6 (2012).

The motivation of a public employer is relevant to a Section 10(a)(1) analysis where the Union alleges that the employees at issue suffered an adverse employment action, as it has here. See Pace Suburban Bus Div. v. Ill Labor Rel. Bd., State Panel, 406 Ill. App. 3d 484, 494-95 (1st Dist. 2010). The Board follows the analytical framework applied to claims arising under Section

10(a)(2), in such cases, to determine whether a public employer took adverse action against an employee for an illegal motive. Pace Suburban Bus Div., 406 Ill. App. 3d at 495; Dep't of Cent. Mgmt. Servs. (State Police), 30 PERI ¶ 70 (IL LRB-SP 2013).

Under Section 10(a)(2) of the Act, the union must show, by a preponderance of the evidence, that (1) the employees were engaged in union or protected, concerted activity; (2) the employer knew of the conduct, and (3) the employer took the adverse action against the employees in whole or in part because of union animus or that it was motivated by their protected conduct. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 345 (1989). The union may prove the third prong of this test through direct or circumstantial evidence. Circumstantial evidence of unlawful motive includes the timing of the employer's action in relation to the protected concerted activity, hostility toward protected concerted activities, disparate treatment, and shifting or inconsistent explanations for the adverse action. Id.

Once the union makes its prima facie case, the employer has the burden to advance a legitimate reason for the adverse employment action. Cnty. of Cook, 2012 IL App (1st) 111514, ¶ 25. Merely offering a legitimate business reason for the adverse action does not end the inquiry, because the reason advanced by the employer must be bona fide and not pretextual. Pace Suburban Bus Div., 406 Ill. App. 3d at 500; North Shore Sanitary Dist. v. State Labor Rel. Bd., 262 Ill. App. 3d 279 (2nd Dist. 1994). In other words, the employer must show that it relied on that reason to take the adverse employment action. Cnty. of Cook, 2012 IL App (1st) 111514, ¶ 25. “[W]here an employer advances legitimate business reasons for the adverse employment action and is found to have relied upon them in part, then the case is characterized as one of ‘dual motive’ and the employer must demonstrate, by a preponderance of the evidence,” that it would have taken the adverse action notwithstanding the employee's protected activity. City of Burbank, 128 Ill. 2d at 345.

The first two prongs of the test are easily satisfied. Bargaining unit members engaged in protected concerted activity when the Union, on their behalf, declined the Respondent's final proposal and requested compulsory interest arbitration on September 17, 2014. There is no dispute that the Respondent knew of the Union's request at the time the Union made it.

Next, the Respondent took an adverse employment action against unit employees when it issued them notices of termination. The definition of an adverse employment action is generous; the union need only show some qualitative change in the terms or conditions of employment or

some sort of real harm. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012) (employee suffered no adverse employment action from negative comments made by management). An action does not need to have an adverse tangible result or adverse financial consequences to constitute adverse employment action sufficient to satisfy the third prong of the 10(a)(2)-type analysis. City of Chicago v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988).

As discussed above, the Respondent's notices of termination announced a qualitative change in the terms and conditions of the firefighters' employment. The Respondent stated that the existing terms of the firefighters' employment would terminate effective December 5, 2014 and conveyed that after that date, the Respondent could remove the firefighters at any time. Even though the Respondent pledged to delay that removal until the court ruled on the Respondent's motion for summary determination, the Respondent's announcement of its absolute, unfettered authority to removed firefighters at any time was a qualitative change in employees' terms and conditions of employment. The Respondent possessed no authority under the terms of the expired contract to summarily remove firefighters without cause. In fact, the Respondent only justified its actions through the express termination of the parties' collective bargaining agreement. Firefighter John Nalbandian's testimony concerning the effects of the termination letter on his mental state further supports a finding that the Respondent changed employees' terms and conditions of employment. Following receipt of the letter, Nalbandian was fearful every day that he would come to work to find himself locked out of the fire station and out of a job.

The Respondent's letter also reasonably constituted a de facto termination of all firefighters' employment, as of October 6, 2014, the date of its issuance, because it unambiguously stated an effective date (December 5, 2014). Wapella Educ. Ass'n, IEA-NEA v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 164 (4th Dist. 1988). Although the Respondent chose to delay the implementation of its decision until the court's ruling, it gave no indication that it would change its position, nor did it assure employees that they would remain employed if the court found in favor of the Union. Cnty. of Cook, 32 PERI ¶ 68 (IL LRB-SP 2015)(extension of deadline for implementation of elimination of unit positions did not extend the limitation period where employer never assured employees they would remain employed). Under these circumstances, there is no merit to the Respondent's claim that it effected no change

on the grounds that it continued to pay employees and allowed them to perform their assigned duties because the employees' enjoyment of those benefits was time-limited and insecure.

Next, the Respondent terminated the firefighters' employment at least in part because of their protected activity—their decision to reject the Respondent's final offer and to instead demand compulsory interest arbitration. There is little question that the Respondent would not have issued the termination letters had the Union accepted the Respondent's proposal and declined to request a panel of arbitrators because the Respondent would have instead agreed to employ unit members for eleven more years and there would have been no need for interest arbitration.

The Respondent asserts that it made its decision on purely economic grounds and in substantial part to alleviate its pension crisis. However, the Respondent cannot reasonably argue that it would have made the same decision absent the Union's protected activity—its request for compulsory interest arbitration. The Union's request for compulsory interest arbitration is inseparable from the Union's decision to reject the Respondent's final proposal of gradual privatization over eleven years: The Union would not have requested compulsory interest arbitration had it accepted the Respondent's proposal because the parties would have been at agreement rather than impasse.

Thus, the Respondent violated Section 10(a)(1) of the Act when it issued its employees notices of termination.

## 5. Remedy

The Respondent must restore the status quo ante, bargain in good faith, and post a notice.

The remedy for an employer's unlawful unilateral change during the pendency of interest arbitration proceedings is to restore the status quo ante. Cnty. of St. Clair and Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011) aff'd by unpub. ord. no. No. 5-11-0317. Here, the Respondent unilaterally changed employees' terms and conditions of employment by eliminating employees' employment security and creating an at-will employment relationship. Accordingly, the Respondent must rescind the termination letters it issued to employees on October 6, 2014.

The remedy for a party's unlawful bad faith or surface bargaining is an order to bargain in good faith. Tri-State Professional Firefighters Union, Local 3165, IAFE, 31 PERI ¶ 78 (IL

LRB-SP 2014) aff'd by unpub. ord. no. 1-14-3418. Accordingly, the Respondent must return to the bargaining table and bargain in good faith to impasse.

The Respondent must also post the notice attached to this decision.

#### 6. Sanctions

The Union's implied request for sanctions is denied because it does not comply with the Board's rules and instead consists of a single unsupported sentence. Vill. of Elburn, 31 PERI ¶¶ 194 (IL LRB-SP 2015); 80 Ill. Admin. Code 1220.90(d)(requiring parties to identify the "allegations and/or denials and/or incidents of frivolous litigation alleged to be subject to sanctions, with citations to the record, and succinct arguments").

### **VI. CONCLUSIONS OF LAW**

1. The Union's Motion to Amend the Complaint is denied.
2. The Respondent violated Sections 10(a)(4) and (1) of the Act by engaging in surface bargaining over its proposal to privatize the fire department.
3. The Respondent violated Section 10(a)(1) of the Act when it issued termination notices to all its firefighters.
4. The Respondent violated Sections 10(a)(4) and (1) of the Act by making unilateral changes to employees' terms and conditions of employment during the pendency of interest arbitration proceedings.

### **VII. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the Respondent, its officers and agents, shall:

- 1) Cease and desist from:
  - a. Failing and refusing to bargain collectively in good faith with the Union, North Riverside Fire Fighters, Local 2714, as the exclusive representative of the bargaining unit including firefighter and lieutenants, over a successor agreement.
  - b. Making unilateral changes to employees' terms and conditions of employment during the pendency of interest arbitration proceedings.
  - c. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.

- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
  - a. On request, bargain collectively in good faith with the Union, North Riverside Fire Fighters, Local 2714, as the exclusive representative of the bargaining unit including firefighter and lieutenants, over a successor agreement.
  - b. Restore the status quo by rescinding the notices of termination issued to employees on October 6, 2014.
  - c. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
  - d. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

#### VIII. **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 General Counsel Kathryn Zeledon Nelson 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 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 25th day of March, 2016

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

*/s/ Anna Hamburg-Gal*

---

**Anna Hamburg-Gal  
Administrative Law Judge**

# NOTICE TO EMPLOYEES

---

---

## FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-15-032

The Illinois Labor Relations Board, State Panel, has found that the Village of North Riverside has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as employees, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Union, North Riverside Fire Fighters, Local 2714, as the exclusive representative of the bargaining unit including firefighter and lieutenants, over a successor agreement.

WE WILL cease and desist from making unilateral changes to employees' terms and conditions of employment during the pendency of interest arbitration proceedings.

WE WILL cease and desist from in any like or related manner, interfering with, restraining or coercing our employees in the exercise of the rights guaranteed them in the Act.

WE WILL upon request, bargain collectively in good faith with the Union, North Riverside Fire Fighters, Local 2714, as the exclusive representative of the bargaining unit including firefighter and lieutenants, over a successor agreement.

WE WILL restore the status quo by rescinding the notices of termination issued to employees on October 6, 2014.

DATE \_\_\_\_\_

\_\_\_\_\_  
Village of North Riverside  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor

Springfield, Illinois 62702

(217) 785-3155

160 North LaSalle Street, Suite S-400

Chicago, Illinois 60601-3103

(312) 793-6400