STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party,	)	
and	)	Case No. S-CA-16-006
State of Illinois, Department of Central Management Services,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 24, 2015, Charging Party, American Federation of State, County and Municipal Employees, Council 31 ("Union" or "AFSCME"), filed a charge alleging that the Respondent, State of Illinois, Department of Central Management Services ("State"), violated Section 10(a)(4) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315 (2014) *as amended*, when it ceased to pay step increases on July 1, 2015. The charge was investigated in accordance with Section 11 of the Act, and, on October 16, 2015, the Executive Director issued a Complaint on that claim. On November 6, 2015, I granted the Union's Motion to Amend the Complaint to add the allegations that the State violated Section 10(a)(4) of the Act when it "refused to pay wage increases associated with job progression and longevity increases to newly eligible employees since July 1, 2015." The State timely filed its Answer and Affirmative Defenses to the Amended Complaint on November 13, 2015.

The Parties proceeded to hearing on the Amended Complaint on December 14, 2015. At hearing, each side was given full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both Parties timely filed post-hearing briefs. After full consideration of the stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. STIPULATED FINDINGS OF FACT

The Parties stipulate and I find as follows:

1. Respondent State of Illinois, Department of Central Management Services, is a public employer within the meaning of Section 3(o) of the Act.

2. The Charging Party, American Federation of State County and Municipal Employees, Council 31 is a labor organization within the meaning of Section 3(I) of the Act.

3. AFSCME is the exclusive bargaining representative of approximately 38,000 State employees who work in agencies, departments, boards and commissions subject to the Governor.

4. AFSCME and CMS were the Parties to a collective bargaining agreement ("2012-2015 Agreement") which covered the period from July 1, 2012 and which had a stated expiration date of June 30, 2015. The Agreement covered the employees in eight collective bargaining units.

5. The Agreement contains provisions regarding the payment of pay increases pursuant to Article XXXII, Section 4 (step increases) and Article XXXII, Section 6(c)(longevity pay).

6. In February 2015, AFSCME and CMS began negotiations for a new collective bargaining agreement.

7. Between January 1, 2015, and June 30, 2015, the State paid the increases set forth in the Agreement for step increases and longevity pay. The State also adhered to the other economic terms of the Agreement.

8. Since June 27, 2015, AFSCME and CMS have executed three "Tolling Agreements." Those Tolling Agreements are Union Exhibits 37, 38 and 39.

9. On or about June 16, 2015, during the negotiations for a new CBA, Respondent's representatives announced that employees with anniversary dates after June 30 would not receive step increases because they were proposing the freezing of steps and longevity during the new CBA, and, therefore, would not continue those payments while negotiating.

10. At the time Respondent's representatives made these announcements, the Parties were not at impasse in negotiations.

11. The State of Illinois has been without a complete budget since July 1, 2015.[1]

12. From the expiration date of the 2008-2012 Agreement until the parties' agreement to a new Agreement in 2013, the State continued to allow advancement through semi-automatic

[1] I took administrative notice of this stipulated fact during the course of the hearing. Stipulations 1-10 were agreed to by the Parties in their joint pre-hearing memorandum and memorialized in the record as ALJ Exhibit 1.

progressions, with the corresponding pay adjustments, as set forth in Section 9, Article 19 of the 2008-2012 Agreement.[2]

II. ISSUES AND CONTENTIONS

The Union contends that since July 1, 2015, the State has violated the Act by unilaterally changing the status quo by failing to pay bargaining unit members the step increases, longevity pay, and raises related to in-series promotions pending negotiations for a successor agreement. Further, the Union argues that the tolling agreements entered by the Parties and the State Pay Plan, 80 Ill. Adm. Code 310.20 *et seq.*, obligate the State to pay these increases.

The State argues that it has no contractual obligation to pay increases under the 2012-2015 Agreement, as it was rendered null and void pursuant to Section 21.5 of the Act. Therefore, the State argues that there is no need to look to the status quo because there was no existing legal obligation to pay increases. In the alternative, the State argues that by not paying increases to bargaining unit members after the contract was terminated, it was maintaining the status quo. Moreover, requiring the State to pay increases after June 30, 2015, would violate Section 21.5(a) of the Act by unlawfully extending the 2012-2015 Agreement. Finally, the State argues that neither the tolling agreements nor the Pay Plan obligates the payment of step increases after July 1, 2015.

III. OUTSTANDING EVIDENTIARY MATTER

At hearing, I reserved ruling on one exhibit offered and moved by the Union. Union Exhibit 20 is a copy of an arbitration award between the Parties issued by Arbitrator Anthony V. Sinicropi issued July 30, 1987. The issue before the arbitrator was whether the Pay Plan's requirement of satisfactory performance in order to receive a step increase also applied to the step increases provided in the collective bargaining agreement. At hearing, the Union indicated that this exhibit was offered in support of its legal theory that "when [I] decide what is meant by the term 'status quo,' [I] have to take into account what the [P]ay [P]lan says as well as what the contract says." The State argued the arbitration award was irrelevant, presumably because it did

[2] During my post-hearing consideration of this case and preparation of this recommended decision and order, I determined that there was a lack of evidence clarifying the practice regarding semi-automatic in-series promotions during the 2012 negotiations. In an attempt to address this point, on January 27, 2016, I held a conference call with Union counsel, Stephen Yokich, and counsel for the State, Jeff Fowler. In that call, I invited the parties to stipulate as to what occurred during the 2012 negotiations with respect to semi-automatic in-series promotions. If the Parties were able to stipulate, I would open the record to include the stipulation. On January 29, 2016, the Parties forwarded me this stipulation. I include the January 29, 2016, email in the record as ALJ Exhibit 1A, an addition to the Parties' other stipulations.

not directly relate to the status quo after termination of a contract by Section 21.5 or otherwise. I reserved ruling on admission of the exhibit, as I had not had an opportunity to review it. Having now taken the opportunity to review the award, I find that it is relevant to the question posed before me. Therefore, I overrule the State's objection and admit Union Exhibit 20.

IV. OTHER FINDINGS OF FACT

The Parties have a lengthy bargaining relationship which began when then-Governor Dan Walker executed Executive Order No. 6 in 1974. At that time, AFSCME only represented two bargaining units. Prior to being represented by AFSCME, the bargaining unit employees were compensated like all other State employees, through application of the State's Pay Plan.[3] Over the years, AFSCME became the exclusive representative for more bargaining units, and the Parties continued to negotiate collective bargaining agreements for the employees in those units. In each of these contracts, the Parties agreed to include step increases, though the parameters of the steps have changed over time.

A. The Parties' pre-2000 Agreements and Bargaining History

In 1979, the Parties executed one contract for all of the AFSCME-represented bargaining units.[4] The terms of this Master Contract regarding step increases continued through the Parties' 1981-1983 Agreement. In 1983, for the first time, negotiations for a successor agreement extended past the stated expiration date of the existing agreement, due in part to the State's uncertain budgetary situation. On June 28, 1983, the Parties executed an Extension Agreement, wherein they agreed to extend the terms of the 1981-1983 Agreement, but agreed to freeze step increases. The Parties agreed in the 1983 Extension Agreement that:

> the payment of in-grade current step increases will be frozen effective July 1, 1983, and remain frozen by emergency rule until the General Assembly appropriates sufficient funds pursuant to a tax increase in which event they will be paid. Upon a new contract being negotiated, the steps will be adjusted and paid in accordance with the terms of the new agreement.

The Parties further agreed that the 1983 Extension Agreement would "continue in effect while the Parties are negotiating a new agreement which may be made retroactive to the date the

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[3] The Personnel Code, 20 ILCS 415/1 *et. seq.*, establishes a system of personnel administration for State of Illinois government under the Governor. Section 8a(2) of the Personnel Code directs the Director of the Department of Central Management Services to establish a pay plan. 20 ILCS 415/8a(2). The State's Pay Plan is codified at 80 Ill. Adm. Code 310 *et seq.*

[4] In 1979, the Parties first negotiated a single contract for the AFSCME-represented bargaining units. This agreement has come to be referred to as the AFSCME "Master Contract."

agreement would otherwise have terminated." Bargaining unit members did not receive increases between July 1, 1983, and the time the 1984-1986 Agreement was completed.

The State also amended the Pay Plan via emergency rulemaking to prohibit all "within range salary increases for any employees subject to this Pay Plan, unless such increases are provided by contract extending past July 1, 1983, regardless of other stated provisions elsewhere in this Pay Plan, effective July 1, 1983, until such time as the Pay Plan is further modified to allow for such increases." 7 Ill. Reg. 8162.[5]

The Parties eventually completed negotiations and executed an agreement effective February 10, 1984, through June 30, 1986. The 1984-1986 Agreement included increases retroactive to September 1, 1983.

Also in 1983, there was a second set of negotiations surrounding RC-27, a unit whose certification was revoked by a panel of arbitrators for the Office of Collective Bargaining. In the March 1983 award revoking the certification of the original unit, the arbitrator directed the Parties to continue the terms of the previously negotiated bargaining unit while any new representation matters were pending. Specifically, the award directed that "[t]he existing current collective bargaining agreement shall be maintained consistent with the conditions elaborated herein." The State complied with the order and honored the substantive provisions of the then-revoked collective bargaining agreement, including payment of step increases, pending the ongoing representation matters and negotiations for an initial agreement with the newly-certified bargaining units. The unit was subsequently re-certified as bargaining units RC-62 and RC-63. These RC-27/RC-62 and -63 bargaining unit employees received step increases from March 1983, when their certification was revoked, through December 1984, when the Parties completed negotiations for a collective bargaining agreement. The State's emergency rulemaking effective July 1, 1983, also made specific provisions for position classes previously subject to the RC-27 contract: "the same salary range as established under the contract will continue to apply until specific action is taken to move the class to another salary schedule."

Following the 1984-1986 agreement, the Parties arbitrated an issue in their 1986-1989 Agreement. In short, the 1986-1989 Agreement shortened the length of time an employee must serve on Step 5 or 6 from 18 months to 12 months in order to advance to the next step. In the

[5] Due to the difficulty of obtaining copies of old Illinois Register filings, I have attached the notice of emergency rule as Attachment A.

relevant provision, the language included that "employees on Steps 5 or 6 shall receive a step increase to the next higher step upon completion of twelve (12) months creditable service in such steps and within such position classification, including successor title changes not involving pay grade changes." The State denied a step increase for an AFSCME member on the basis that she did not have satisfactory performance during the applicable 12-month period.

The Union grieved and argued before Arbitrator Sinicropi that the plain language of the contract provision required automatic step increases regardless of performance. The State argued successfully that the Parties initially negotiated steps premised on the steps outlined in the Pay Plan, which require satisfactory performance. Moreover, the State urged the arbitrator to construe the language in light of the Pay Plan, the past practice, and the purpose and intent of a merit system pay plan.

In his July 30, 1987, award, Arbitrator Sinicropi held that no conflict between the collective bargaining agreement and the Pay Plan required him to disregard the Pay Plan's requirement of satisfactory performance in awarding steps. Looking at the Pay Plan together with the provision of the collective bargaining agreement, the arbitrator decided that both applied where, as in that case, they did not conflict. Therefore, he denied the grievance. The arbitrator held that the Parties' bargaining history and the State's past practice of withholding step increases where performance was unsatisfactory further supported his finding.

B. The Parties' post-2000 Agreements and Bargaining History

After many years of completing successor bargaining prior to the current contract's expiration date, in 2008, the Parties' negotiations extended beyond the negotiated end of the contract. On June 25, 2008, and July 18, 2008, the Parties entered into Extension Agreements, wherein they agreed to extend the terms of all current agreements through the end of the first and second mediation sessions, respectively. During the time of the extension, the parties agreed that "the terms of such agreements will continue without change." They also agreed that all negotiated wage increases would be retroactive "unless the Parties mutually agree to the contrary." Pursuant to the 2008 Extension Agreement, bargaining unit members received step increases between July 1, 2008, and the effective date of the negotiated successor agreement, September 5, 2008.

In 2012, the Parties again were unable to reach agreement by the negotiated termination date, June 30, 2012. During the negotiations for the 2015-2015 Agreement, the State initially

proposed elimination of step increases and freezing general wage rates, including longevity pay increases. In late June 2012, the Parties negotiated over the terms of an extension agreement. The Union initially proposed an agreement that mirrored the 2008 Extension Agreement that extended all terms of the soon-to-expire agreement without change. The State did not agree, and submitted a counter-proposal that included the following provisions:

> 1. It is understood that the parties agree to extend the terms of the current collective bargaining agreement, in accordance with the conditions set forth herein, unless otherwise terminated as provided herein. Except as provided herein, the collective bargaining agreement, including all applicable terms, shall continue my mutual agreement of the parties subject to service of ten (10) days written notice by either party to the other that said party intends to cancel the agreement. During said extension period, the terms of the collective bargaining agreement, except as provided herein, shall continue without change.
>
> 2. In consideration of the extension of the current agreement, the parties acknowledge that wage rates, and their effective dates, steps and lane changes and any other service based increases, and their effective dates, are the subject of negotiations between the parties. By the terms of the expired agreements, these items do not extend beyond June 30, 2012 unless the parties mutually agree otherwise.

The Union did not execute the State's proposal. The Parties apparently continued to negotiate over the extension agreement. On June 27, 2012, the Parties entered an Extension Agreement through the first mediation session, which contained the following provisions:

> 1. It is understood that the parties agree to extend the terms of the current collective bargaining agreement, in accordance with the conditions set forth herein, through the end of the first mediation session. During said extension period, the terms of the collective bargaining agreement, except as provided herein, shall continue without change.
>
> 2. In consideration of the extension of the current agreement, the parties acknowledge that wage rates, and their effective dates, steps and lane changes, and their effective dates, are the subject of negotiations between the parties. Any grievances related to step and lane changes filed after June 30, 2012, shall be held at Step 4a [of the grievance procedure] while the parties continue to negotiate.

The Parties executed two additional Extension Agreements on October 2, 2012, and October 31, 2012, which contained the same language as cited above and extended the other

terms of the 2008-2012 Agreement through the second and third mediation sessions, respectively. The State did not pay step increases or longevity increases from July 1, 2012, through November 21, 2012. The State continued to allow advancement through semi-automatic in-series promotions and continued to pay increases associated with the promotions from July 1, 2012, through the time the 2012-2015 Agreement was executed.

After the third mediation session, the State declined to execute another Extension Agreement, and terminated the 2008-2012 Agreement effective November 21, 2012. On November 21, 2012, the State's Deputy Director for Labor Relations issued a memorandum regarding collective bargaining with AFSCME, which identified that the Parties had not yet reached an agreement on the terms of the successor agreement and that the current agreement had expired. The memorandum contained the following assertions:

> The State, except as described below and until further notice, is obligated to continue to operate under the existing terms and conditions of employment as set forth in the current collective bargaining agreement (e.g. procedures for filling vacancies, temporary assignments and layoffs).
>
> Until new terms are negotiated, employees will continue to be paid their current wages and will remain at their current steps. Therefore, no wage or step increases should be paid under an expired agreement. (emphasis in memorandum).

The State did not pay step increases or longevity increases between the termination of the contract on November 21, 2012, and the completion of the successor agreement. The Parties continued negotiating, and ultimately executed an agreement that included increases retroactive to July 1, 2012.

The Parties disagreed about whether the State was required to pay these increases, and filed grievances in July and October 2012, which were, according to the Parties' Extension Agreements, held at Step 4a of the grievance procedure. The grievances were resolved prior to arbitration in consideration of the State's negotiated agreement in the 2012-2015 Agreement to pay step increases retroactively to July 1, 2012. This resolution was made "without precedent or prejudice to either party," and the Parties agreed that the resolution could "not be utilized in any subsequent proceedings except for the enforcement of its terms."

On August 16, 2013, the Union also filed an unfair labor practice charge with the Board in Case No. S-CA-13-020, alleging that the non-payment of step increases, including longevity, was a violation of the Act. The Union withdrew this charge at the investigation stage.

In addition to the contract terms as described above, the Parties have agreed to include the following language in every contract from the 1989-1991 Agreement through the 2012-2015 Agreement: "Employees shall receive a step increase to the next step upon satisfactory completion of 12 months creditable service." During negotiations for the 2000-2004 agreement, the Parties agreed to add Step 8. In the 2012-2015 Agreement, the Parties agreed to include three additional steps below Step 1 (Steps 1a, 1b, and 1c) for all employees hired on or after the date the 2012-2015 Agreement was signed.

C. The Parties' Negotiations in 2015

On June 16, 2015, the Director of CMS issued a memorandum on the subject of collective bargaining to agency directors as well as personnel and labor relations staff regarding what would happen if successor agreements were not reached by June 30, 2015. The memorandum indicated that if the parties to the collective bargaining agreement agreed to continue to negotiate for a successor agreement past June 30, 2015, and the union agreed to work without a contract, with one exception, the State would operate as if the terms and conditions of employment set forth in the current collective bargaining agreement still apply. "Until new terms are negotiated, employees will continue to be paid their current wages and will remain at their current steps and/or in-hire rates. Therefore, no wage, in-hire, or step/lane increases, or semi-automatic advancements should be awarded under an expired agreement." (emphasis in original). The Union was notified of this at or around the date of the memorandum.

As the negotiated termination date arrived, the State exercised its contractual right to terminate the contract. On June 27, 2015, the Parties entered into the first of three "tolling agreements."[6] The agreements did not explicitly extend all of the terms of the expired agreement, like the 2008 Extension Agreement and contained different language from the 2012 Extension Agreement. The Tolling Agreements executed by the Parties each contain the following provisions:

> The Parties disagree with respect to the Employer's obligation to continue step increases and semi-automatic promotion increases. The Agreement does not prejudice either Party's position on that issue.
>
> The Parties additionally agree that they will abide by all legal obligations each may have, including the obligation to negotiate in good faith for a successor

[6] The other two tolling agreements were executed July 29, 2015, and September 9, 2015.

collective bargaining agreement following the expiration of the current collective bargaining agreement.

Unless expressly provided herein, the Parties agree that by entering into this Tolling Agreement, they do not waive any legal rights or entitlements that exist in law but for this agreement and that all legal and contractual rights that exist on June 30, 2015 shall remain in effect during the term of this Agreement.

During bargaining for a successor agreement, the State again initially proposed elimination of the Steps provision in its entirety. During negotiations, the State modified its proposal to include a freeze on the movement between steps for the duration of the Agreement. Since July 1, 2015, the State has not paid step increases to bargaining unit members.

The State initially proposed elimination of longevity pay in its entirety. Beginning on July 1, 2015, the State ceased paying longevity increases set out in the 2012-2015 Agreement. In early November 2015, the State withdrew its proposal to eliminate longevity increases. After withdrawing its proposal, the State notified its agencies that they could process longevity increases.

The State initially proposed elimination of semi-automatic in-series promotions. Beginning on July 1, 2015, the State ceased paying increases associated with these promotions. In November 2015, the State withdrew its proposal. Following the withdrawal of this proposal, the State notified its agencies that if employees were eligible to move to a higher title via a semi-automatic in-series promotion, they should be moved to that title and paid at the June 30, 2015, rate for the higher title.

Due to the lack of a complete budget, the State of Illinois is without appropriation authority to pay its employees. In July 2015, the Union was one of a number of labor organization plaintiffs to a temporary restraining order action filed in St. Clair County. The plaintiffs prevailed, and on July 10, 2015, Judge Robert LeChien issued a restraining order directing the Illinois Comptroller to draw and issue warrants accomplishing payment of wages to the Union's members at their normal rates of pay.

V. DISCUSSION AND ANALYSIS

Under Section 7 of the Act, Parties are required to bargain collectively over employees' wages, hours and other conditions of employment— the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed. of State Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353, 362 (1988).

The Board has long held that an employer violates its duty to bargain when it unilaterally changes the status quo involving a mandatory subject of bargaining without providing the exclusive representative with adequate notice and a meaningful opportunity to bargain about the changes, reaching an agreement on the matter, or bargaining to impasse regarding that change. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Vill. of Lisle, 23 PERI 39 (IL LRB-SP 2007); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994). Here, the Union argues that the State has violated its duty when it unilaterally ceased to pay step increases, longevity pay, and increases resulting from semi-automatic promotions pending negotiation on a successor agreement. The State argues it was under no obligation to continue paying increases by operation of Section 21.5 of the Act and that it has not failed to maintain the status quo given the past practice of the Parties.

The Act also addresses the termination of contracts. For example, Section 21.5 of the Act provides:

> (a) No collective bargaining agreement entered into, on or after the effective date of this amendatory Act of the 96th General Assembly between an executive branch constitutional officer or any agency or department of an executive branch constitutional officer and a labor organization may extend beyond June 30th of the year in which the terms of office of executive branch constitutional officers begin.
>
> (b) No collective bargaining agreement entered into, on or after the effective date of this amendatory Act of the 96th General Assembly between an executive branch constitutional officer or any agency or department of an executive branch constitutional officer and a labor organization may provide for an increase in salary, wages, or benefits starting on or after the first day of the terms of office of executive branch constitutional officers and ending June 30th of that same year.
>
> (c) Any collective bargaining agreement in violation of this Section is terminated and rendered null and void by operation of law.
>
> (d) For purposes of this Section, "executive branch constitutional officer" has the same meaning as that term is defined in the State Officials and Employees Ethics Act.

5 ILCS 315/21.5; *see also* 5 ILCS 315/7 (prescribing the steps a party must take in order to terminate a contract).

Here, the Union argues that the State violated its duty when it unilaterally ceased to pay steps increases, longevity pay, and increases resulting from semi-automatic promotions pending

negotiation for a successor agreement. The State argues it was under no obligation to continue paying increases by operation of Section 21.5 of the Act and that, even if it was obliged to do so, it has not failed to maintain the status quo given the past practice of the Parties.

A. Application of Section 21.5 of the Act to this matter.

The State argues that Section 21.5 freed it from any obligation to pay increases in two ways: (1) the 2012-2015 Agreement runs afoul of Section 21.5(b) because it calls for increases in salary, wages, or benefits after Governor Rauner took office in January 2015; and (2) requiring payment of contractual increases after June 30, 2015, would unlawfully extend the 2012-2015 Agreement beyond June 30, 2015. The State argues that because the 2012-2015 Agreement violates one or both of these provisions, it is rendered null and void by operation of Section 21.5(c); as such, the State contends that Section 21.5 of the Act presents a complete defense to any alleged unfair labor practice charge arising out of its failure to pay increases.

The legislature added this section to the Act effective February 16, 2011. The 2012-2015 Agreement was the first agreement between the Parties to which Section 21.5 is applicable. This relatively new language has not been subject of prior litigation before the Board; therefore, there is no applicable Board or Illinois court case law interpreting this language.

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. Gruszeczka v. Ill. Workers' Compensation Comm'n, 2013 IL 114212 ¶ 12; Cty. of Du Page v. Ill. Labor Relations Bd., 231 Ill. 2d 593, 603-04 (2008); Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990). The most reliable indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning. Cnty. of DuPage, 231 Ill. 2d at 604. Words and phrases should not be considered in isolation; rather, they must be interpreted in light of other relevant provisions and the statute as a whole. Id. (*citing* Williams v. Staples, 208 Ill. 2d 480, 487 (2004); In re Detention of Lieberman, 201 Ill. 2d 300, 308 (2002)). Where an enactment is clear and unambiguous, an administrative agency has no liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations and conditions the legislature did not express. Kraft, Inc., 138 Ill. 2d at 189.

A statute is not ambiguous simply because the parties disagree as to its meaning. Commonwealth Edison Co., 2014 IL App (1st) 132011, ¶ 21. A statute is ambiguous if its meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner. Krohe v. City of Bloomington, 204

Ill. 2d 392, 395–96 (2003); People v. Fort, 373 Ill. App. 3d 882, 885–86 (1st Dist. 2007) ("There are times when courts cannot determine the meaning of a statute by examining its plain language or when the statute is capable of being understood by reasonably well-informed persons in two or more different senses, thus creating statutory ambiguity."); *see also* Commonwealth Edison Co. v. Ill. Commerce Comm'n, 398 Ill. App. 3d 510, 523 (2nd Dist. 2009) ("A statute is ambiguous if it may be reasonably read as expressing multiple meanings.").

1. The 2012-2015 CBA violates the clear and plain language of Section 21.5(b).

Section 21.5(b) reads in relevant part, "No collective bargaining agreement ... may provide for an increase in salary, wages, or benefits starting on or after the first day of the terms of office of executive branch constitutional officers and ending June 30th of that same year."

The State argues that the statutory language is clear and, giving the statutory language its plain and ordinary meaning, the 2012-2015 CBA violates Section 21.5(b). Essentially, the State's argument is that if a collective bargaining agreement calls for pay increases, even if those increases are triggered by employees meeting service-based milestones, after new constitutional officers take office, the agreement runs afoul of Section 21.5(b) and is rendered null and void by Section 21.5(c).

The Union does not expressly state that the language of Section 21.5 is ambiguous. However, it argues that Section 21.5(b) should be interpreted to mean that increases to the base rate of pay, for example a new pay scale dated February 1, 2015, would be violative, but increases to pay resulting from length of service, are not. Its arguments on this point are not grounded in the language of the statute itself. Instead, the Union looks to a pre-Act court ruling regarding a collective bargaining impasse, the context of the Act, the Parties' historical treatment of service-based wage increases versus general wage increases, and the State's own actions.

Despite the Union's arguments, there is no rule of construction that authorizes a court or administrative agency to "declare that the legislature did not mean what the plain meaning of the statute says." Henrich v. Libertyville High School, 186 Ill. 2d 381, 391 (1998). Moreover, where an enactment is clear and unambiguous, an administrative agency has no liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations and conditions the legislature did not express. Kraft, Inc., 138 Ill. 2d at 189. Here, I decline the Union's invitation to read into the statute exclusions and limitations that are not expressed by the clear language of the Act. Instead, I will give the language its plain and ordinary meaning.

Here, it is uncontested that the 2012-2015 Agreement calls for employees who have satisfactorily completed 12-months at their current step to be moved to one step higher, and paid at the rate of that higher step. It also provides for additional increases for employees who attain 10 or 15 years of continuous service and have three or more years of creditable service at Step 8. The 2012-2015 Agreement also contains a provision by which employees who serve a specified amount of time in a lower title in a series is promoted to a higher title and receives an increase consistent with pay at the higher title. The Parties do not dispute that at least some bargaining unit members would have reached these milestones between January 12, 2015, and the negotiated expiration date, June 30, 2015.

Therefore, the only question is whether these increases are increases in salary or wages, as those terms are ordinarily understood. The Supreme Court has recognized that it "is appropriate to use a dictionary to ascertain the meaning of an otherwise undefined word or phrase." Poris v. Lake Holiday Property Owners Ass'n, 2013 IL 113907. Merriam-Webster's dictionary defines "salary" as "an amount of money that an employee is paid each year." "Salary." Merriam-Webster Online Dictionary. 2016. http://www.merriam-webster.com (21 Jan. 2016). Black's Law Dictionary similarly defines "salary" as "[a]n agreed compensation for services – especially professional or semi-professional services – usually paid at regular intervals on a yearly basis, as distinguished from an hourly basis." Salary, Black's Law Dictionary (10th ed. 2014). Merriam-Webster and Black's define "wage" as "an amount of money that a worker is paid based on the number of hours, days, etc., that are worked" and "payment for labor or services, usually based on time worked or quantity produced," respectively. Wage, Black's Law Dictionary (10th ed. 2014); "Wage." Merriam-Webster Online Dictionary. 2016. http://www.merriam-webster.com (21 Jan. 2016).

Given these definitions, I find that the increases at issue in this case are increases in salary and/or wages. This interpretation is consistent with the statute as a whole, which obligates parties to bargain generally over "wages, hours[,] and other conditions of employment." *See e.g.* 5 ILCS 315/2; 5 ILCS 315/3(b) ("'Collective bargaining' means bargaining over terms and conditions of employment, including hours, wages, and other conditions of employment ..."). Certainly, pay increases resulting from length of service fall within the broad, general category of "wages." Therefore, I find that the 2012-2015 Agreement violates the plain reading of Section 21.5(b) and is rendered null and void pursuant to Section 21.5(c) of the Act.

2. *Even if the language in Section 21.5(b) were ambiguous, use of extrinsic aids also reveal that the 2012-2015 Agreement is violative of Section 21.5(b); thus, Section 21.5(c) renders it null and void.*

Though it does not expressly say so, the Union appears to contend that the language in Section 25.1(b) is ambiguous in that it almost immediately asserts (mistakenly) that there is no legislative history on the enactment. As stated above, the Union's challenge to application of the plain and ordinary meaning of language of Section 21.5 is multi-faceted.[7]

i. Service-based increases are increases in salary or wages.

The Union argues that "increase in salary [or] wages" in Section 21.5 should be interpreted more narrowly than the plain and ordinary meaning suggests. The Union contends that this provision really means an increase in the scheduled rates of pay that may be included in a collective bargaining agreement and not an increase in overall compensation received. The Union points to a 1977 Fourth District case for the proposition that step increases are not salary. In Bd. of Ed. of Springfield Public School v. Springfield Ed. Assoc., 47 Ill. App. 3d 193 (4th Dist. 1977), the court entered a temporary restraining order requiring the Board of Education to maintain the status quo by continuing to operate under an expired collective bargaining agreement, including continuing to provide increases as a result of step and lane movements provided by that agreement.

The court rejected the Board of Education's argument that by doing so, the court was intruding into the Board's authority granted by the School Code, Ill. Rev. Stat. 1975, ch. 122, par. 10-20.7. Id. at 198. The court noted that the temporary restraining order "did not order the Board to raise teachers' salaries." Id. The Union points to this statement for the proposition that step increases here, like the step and lane increases granted to Springfield teachers, are not "salary." The Union's argument on this point is misplaced. Later in the same paragraph, the court noted that the teachers' salaries were, in fact, increased, if only "incidentally," by operation of the prior contract. Id. Even if the case cited by the Union was not internally inconsistent on the point, I still find that the situation the Bd. of Ed. of Springfield Public School court faced to be so dissimilar to the case presented that it can provide no guidance to this inquiry. Specifically, the court was addressing status quo in the context of a temporary restraining order,

[7] The Union's arguments regarding the basis of the present unfair labor practice charge and that the State's proposed application is contrary to other provisions of the Act beyond Section 21.5, are addressed below.

which it defined as "the last, actual peaceable, uncontested status which preceded the controversy." Id. at 196. This is a decidedly different question than that posed in this case, such that the court's discussion fails to provide any guidance to my consideration of the matters before me.

ii. The evidence does not support that the General Assembly would have considered the historical practice of treating general wage increases differently than service-based increases.

The Union further argues that the Parties have bargained general wages as a separate and distinct form of compensation from service-based increases. While that may be true, I find no support for the Union's leap that the legislature would have known, let alone "undoubtedly considered this historical practice" when enacting Section 21.5. Instead, the legislative history reflects the broad application of the clear language. The legislation resulting in this amendment was introduced and debated in January 2011 in two separate bills, Senate Bill 3383 and House Bill 5424.[8] Through the bill concurrence process, Public Act 96-1529 derived from House Bill 5424.[9] However, the only substantive discussion of the Section 25.1 portion of the legislation occurred in the House of Representatives debate of Senate Bill 3383 on January 5, 2011.[10] During her introduction of the legislation, House of Representatives sponsor Representative Carol Sente identified that the purpose of the collective bargaining portion of the bill was intended to ensure that "labor agreements will not extend beyond the fiscal year of the current administration, so the hands will not be tied of future administrations." 96th Gen. Assemb., H.R. Proceedings, 1/5/2011, at pp. 59-60. In response to a question posed during the floor debate, Rep. Sente indicated that the result of passage of the bill would be that "from the beginning of a new administration until June 30 wages and benefits cannot increase from an old administration."

[8] *See* 96th Gen. Assemb., SB 3383, House of Representatives Floor Amendment No. 2, filed 1/4/2011; 96th Gen. Assemb., HB 5424, Senate Floor Amendment No. 2, filed 1/6/2011.

[9] 96th Gen. Assemb., House of Representatives Roll Call, House Bill 5424, Motion to Concur in Senate Amendment No. 1 and 2 passed 102-11-03, 1/7/2011.

[10] When HB 5424 was debated in the house on January 7, 2011, the sponsor Representative Carol Sente informed members, "Senate Bill 3383, the budgeting for outcomes Bill has returned. We passed it two days ago." 96th Gen. Assemb., H.R. Proceedings, 1/7/2011, at p. 19.

iii. A broad interpretation of Section 21.5 would not inappropriately overturn the Act's intent to preserve historical patterns and practices.

The Union argues that a broad interpretation of Section 21.5 would "overturn the historical practice of individual employees receiving step increases on a pre-existing pay schedule as their experience merits it." First, the evidence does not support that a historical practice exists of individual employees receiving step increases on a pre-existing pay schedule as their experience merits it. Next, to be sure, the Act contains provisions that preserve historical practices, both related to bargaining unit composition and subjects over which historical parties are able to negotiate. However, the clear language of Section 21.5 does not conflict with any specific provision targeted at the preservation of historical units or practices. Instead, it places additional limitations on certain collective bargaining agreements. Nothing in the Union's argument demands a different interpretation of Section 21.5 than the plain and ordinary meaning of the clear language.

3. Finding that the 2012-2015 Agreement is null and void does not end my inquiry on the alleged unfair labor practice.

The State argues that a finding that the 2012-2015 Agreement is null and void alleviates any obligation to pay increases and is therefore dispositive of the unfair labor practice alleged in this case. To the contrary, the Union argues that Section 21.5 does not privilege unilateral action by the State, because the obligation to maintain status quo pending negotiations is a function of the Parties' obligation to bargain in good faith established by the Act, not by operation of any collective bargaining agreement between the Parties. I agree.

The amendment enacting Section 21.5 established additional limitations with respect to collective bargaining agreements entered into with constitutional officers. I find that the clear language of the amendment left intact the obligation to refrain from making unilateral changes to the status quo during negotiations. This obligation exists regardless of the existence of a collective bargaining agreement. *See e.g.* County of Grundy, 32 PERI ¶ 26 (IL LRB-SP 2015) (employer required to maintain status quo pending negotiations for initial contract; termination was not an unfair labor practice where status quo was at-will employment).

Therefore, though the 2012-2015 Agreement is rendered null and void by operation of law and was terminated by the State at the end of its negotiated terms, my inquiry does not end there. I must also consider the traditional question posed in unilateral implementation cases –

did the State make a unilateral change to wages, hours, or terms and conditions of employment without first bargaining to agreement or impasse.

4. Maintaining the status quo while negotiating a successor agreement does not unlawfully extend a collective bargaining agreement in violation of Section 21.5(a).

In addition to its argument that it had no contractual obligation to pay increases since the contract was rendered null and void by operation of Section 21.5(b), the State also argues that Section 21.5(a) is legally dispostitive of the present action. The State contends that should the Board require it to pay the contractual increases past June 30, 2015, that would unlawfully extend the 2012-2015 Agreement "beyond June 30th of the year in which the terms of the office of executive branch constitutional officers begin." 5 ILCS 315/21.5(a).

As I have already concluded that the 2012-2015 Agreement is null and void but that I still must determine whether the State violated the status quo, there is little need to address the State's arguments regarding the 2012-2015 Agreement's possible violation of 21.5(a). In short, even if the Agreement violates 21.5(a), the remedy under 21.5(c) is to null and void the contract, which I have already done. However, for the sake of completeness and for the convenience of the Board, I will address it regardless.

The State argues throughout its pleadings that the language of 21.5 is unambiguous, and I agree. Section 21.5(a) unambiguously limits the term of *a collective bargaining agreement* to June 30th of the year following the beginning of a constitutional officer's term. The language of the statute, which I am bound to follow when I find that it is clear and unambiguous, makes prohibitions and limitations on *collective bargaining agreements* entered into by constitutional officers. Certainly, any collective bargaining agreement with an expiration date beyond June 30th of a year following a new administration would violate Section 21.5. It is uncontested that the 2012-2015 Agreement was set to expire by its terms, and by the State's termination of the contract, at midnight on June 30, 2015. Based on these facts, I find that the 2012-2015 Agreement, with its June 30, 2015, negotiated expiration date, comports with Section 21.5(a) of the Act.

Despite asserting that the language is clear, the State goes on to argue that continuing the contractual increases following June 30th would unlawfully extend the collective bargaining agreement. I disagree. To accept the State's argument I would need to find that Section 21.5(a) really means that "no provisions of or practices established by a collective bargaining agreement

may extend beyond June 30th." This interpretation is much broader than the clear language of the Act, which instead means just what it says – "No collective bargaining agreement ... may extend beyond June 30th." I decline to interpret Section 21.5(a) more broadly than the plain language demands.

This interpretation is consistent with other provisions of the Act. The amendment does not reference an employer's duty to bargain in good faith, which includes the obligation to refrain from making unilateral changes to mandatory subjects of bargaining pending negotiation for an agreement. Nor does it expressly overrule the requirement to maintain the status quo for protective services units, like the RC-6 unit at issue in this case, or otherwise explicitly amend. *See* 5 ILCS 315/14(l) (requires the Parties to refrain from making changes to "existing wages, hours, and other conditions of employment" during interest arbitration without the consent of the other party; interest arbitration begins with mediation). "For a later enactment to operate as a repeal by implication of an existing statute, there must be such a manifest and total repugnance that the two cannot stand together." Jahn v. Troy Fire Prot. Dist., 162 Ill. 2d 275, 280 (1994). Here, the plain reading of the clear language of Section 21.5(a) demands a narrower application than that proposed by the State, one that does not place it in contradiction with other portions of the Act.

The State points to Massachusetts case where the court held that a contractual evergreen clause, which explicitly extends the terms of the agreement while negotiations are pending, was in violation of a statutory limitation on the length of contracts. Boston Housing Authority v. Nat'l Conf. of Firemen and Oiler's Local 3, 458 Mass. 155, 162-63 *citing* G.L. c. 150E, §7(a) (collective bargaining agreements "shall not exceed a term of three years"). Unlike the Massachusetts case, here, the maintenance of status quo related to mandatory subjects of bargaining is not derived from the 2012-2015 CBA but rather the obligation the statute itself places on parties.

Finally, the State argues that, generally, more specific provisions govern over general provisions over the same subject. *See* Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 346 (2008). In this case, Section 21.5(a) may certainly be a more specific provision than the Act's more general statements regarding bargaining in good faith. However, Section 21.5 is specific as to the limitations it imposes on collective bargaining agreements. I find that it is not on the same subject as the duty to bargain in good faith provisions; therefore, 21.5 does not govern over

Section 7 with respect to the Parties' obligations to bargain in good faith. As such, even if I found the language to be ambiguous, this statutory construction canon does not aid consideration of this matter.

B. Status quo between the Parties is non-payment of increases absent an agreement to do so.

In order to make a prima facie case, the Union must first show that there has been a unilateral change in a mandatory subject of bargaining. City of Peoria, 11 PERI ¶ 2007 (IL SLRB 1994). Neither party argues in this case that the pay increases from movement through steps or from longevity are not a mandatory subject of bargaining. Accordingly, the remaining issue on this point is whether the State altered the status quo by failing to pay increases while the Parties bargain their successor agreement.

Illinois courts have long held that a term or condition of employment *must* be an established practice to constitute a status quo. Thornton Fractional High School Dist. No. 215 v. Ill. Ed. Labor Relations Bd., 404 Ill. App. 3d 757, 763 (1st. Dist. 2010); Vienna School Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503, 507 (4th Dist. 1987). The Board has held that status quo is established by the employer's promises or by a course of conduct which makes a particular benefit part of the established wage or compensation system. Vill. of Lisle, 23 PERI ¶ 39 (IL LRB-SP 2009); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998); *see also* NLRB v. Katz, 369 U.S. 736 (1962).

The test for determining whether a specific practice is sufficiently established is objective. Vienna School Dist. No. 55, 162 Ill. App. 3d at 515; Vill. of Lisle, 23 PERI 39 (IL LRB-SP 2007). The status quo against which an employer's conduct is evaluated must take into account the regular and consistent past patterns or changes in the conditions of employment. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012). In other words, the Board has defined status quo not as stasis, but as maintenance of existing policies and procedures. Vill. of Downers Grove, 22 PERI ¶ 161 (IL LRB-SP 2006).

With respect to wage increases, the Board considers the reasonable expectation of the employees in continuance of their existing terms and conditions of employment, the amount of discretion vested in an employer with respect to an established practice, and whether the status quo would have been clearly apparent to an objectively reasonable employer at the time in question. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Vienna School Dist. No. 55, 162 Ill. App. 3d at 515.

1. Bargaining unit employees could not reasonably expect to receive increases absent an agreement to pay them.

It is uncontested that from the inception of the Parties' bargaining relationship, they have negotiated over and ultimately agreed to include step increases in their collective bargaining agreements. Similarly, since 1981, the Parties have agreed to some form of payment of increases to employees who had reached and served in the highest Step. The State has paid increases resulting from semi-automatic in-series promotions since at least 1984.[11] However, these provisions have morphed over time, with changes to duration, amount, and method of payment. Moreover, these pay increases have *always* and *only* been paid by agreement of the Parties.

Given the Parties' historical backdrop described more fully below, I find that employees could not reasonably expect to receive pay increases after the negotiated term of the 2012-2015 Agreement ended absent a specific agreement between the parties to pay increases. Most importantly, this history reveals there can be no finding that in 2015 there was an established practice of paying increases in the absence of a specific, negotiated agreement to do so.

i. The numerous negotiated agreements to pay increases do not make an expectation of increases in the absence of an agreement reasonable.

The Union argues that employees reasonably expected annual pay increases as set out in the Parties' contract and relies primarily on the numerous collective bargaining agreements and extension agreements the Parties negotiated and executed that provided for payment of increases. To be sure, under these agreements, bargaining unit employees have received pay increases upon meeting the contractually-defined conditions. The Union's argument on this point, and the cases from the National Labor Relations Board cited in support, certainly simplifies the test for determining the status quo. Under the Union's analysis, if bargaining unit employees have ever successfully negotiated for a benefit, then an employer must continue that benefit during successor negotiations. Put another way, the Union appears to argue that the expired collective bargaining agreement *is* the status quo. However, that is not the state of the law in Illinois. The Board's case law and Illinois appellate court cases interpreting the requirement to maintain status quo to comply with the Act reveal that the test is more nuanced than that proposed by the Union. If the existing collective bargaining agreement were the status quo, there would have been no

[11] The Union's witness referred to the 1984-1986 Agreement for RC-62 and RC-63 when testifying about semi-automatic promotions, but there was no testimony regarding any practice predating this 1984-1986 Agreement.

need to develop the test set out in Vienna School Dist. case and no need for the test to be consistently applied in Illinois. *See e.g.* City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Thornton Fractional High School Dist. No. 215 v. Ill. Ed. Labor Relations Bd., 404 Ill. App. 3d 757 (1st Dist. 2010). Application of this nuanced test to the facts presented here calls for a different conclusion than that urged by the Union.

The past history between the Parties is clear – pending negotiations for a successor agreement, increases are only paid by agreement of the Parties. Put another way, bargaining unit employees have never received pay increases unless the Parties negotiated and agreed to them. In a bargaining relationship that extends over four decades, on only four occasions have these Parties bargained past the negotiated term of an agreement: 1983, 2008, 2012, and 2015. Increases were only paid in 2008. Bargaining unit employees did not receive increases during negotiations as a matter of course. Instead, the Parties negotiated and specifically agreed to extend the 2004-2008 agreement *without change* pending negotiations, which resulted in the payment of increases during negotiations.

In 2012, the most recent negotiations and the negotiations which are most factually similar to the case at hand, increases were not paid where the Parties did not agreed to do so. Like in 2015, the State informed its agencies and the Union that during negotiations employees would "continue to be paid their current wages and will remain at their current steps" and followed through with this course of conduct until the contract was settled. The Union did not litigate to decision the question whether this course of conduct was violative of the expired contract's provisions or a violation of the Act. In short, nothing has occurred since 2012 that would cause employees to reasonably expect anything different to happen in 2015 than what occurred in 2012.

I should note that the facts surrounding the payment of increases resulting from semi-automatic in-series promotions differs slightly from the treatment of step increases and longevity increases. The Parties have stipulated that these increases, unlike steps increases and longevity pay, were paid by the State during the 2012 negotiations. These facts do not change my analysis, because the record reflects that, like step and longevity increases, increases related to semi-automatic in-series promotions have only been paid by agreement of the parties. Specifically, the record regarding the 2012 negotiations can only be read to conclude that the Parties negotiated for and ultimately agreed to pay these increases pending negotiations. The Union

initially proposed extending all terms without change. In its counterproposal, the State asserted that pay increases, by the terms of the expiring 2008-2012 Agreement, did not extend beyond June 30, 2012, and indicated its intent to terminate the provisions related to "wage rates, and their effective dates, steps and lane changes and *any other service based increases*, and their effective dates" (emphasis added), and as they "were the subject of negotiations between the parties" would not be paid. However, in the final, negotiated extension agreement, the Parties agreed to extend the terms of the current agreement except as to wage rates and step/lane changes. As a result, the State only refrained from paying step increases as opposed to *all* service-based increases, like those resulting from semi-automatic in-series promotions. The record reflects the State paid the semi-automatic in-series promotions, because the Parties negotiated and agreed. These facts make clear that, like the other increases, increases resulting from semi-automatic in-series promotions have only been paid by the State when it has specifically agreed to do so. Therefore, employees' expectations to receive them absent agreement is likewise unreasonable.

ii. The Parties' practice from 1983 does not support a reasonable expectation of payment of increases absent an agreement to do so.

The Union also argues that the non-payment of steps in 1983 is not indicative of a past practice of non-payment of steps during negotiations for a successor agreement. Instead, the Union cites, City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012), for the proposition that a promise of later payment supports a finding that continuous payment of steps is the status quo. In that case, the City withheld raises from firefighters during negotiations for their initial contract, while awarding raises to all other City employees, represented and unrepresented, based on the City's Personnel Policies and Practices. The firefighters would have received these raises had they not been bargaining an initial contract. Id. The Board found that where the City's own policies in effect at the time "affirm[ed] that eligible employees will receive their step increase." Id. It was with this backdrop that the Board found that the status quo required payment of steps at the time the City's own policies called for.

This case does not support the Union's argument for a number of reasons. The facts surrounding the Parties' negotiations in 1983 are distinctly different from that in City of Lake Forest that this decision is not particularly helpful to any inquiry posed to me. First, the City of Lake Forest Board specifically made a distinction between the Lake Forest firefighters' *initial* contract and negotiations for a successor agreement, which would give rise to the consideration

of the past practice of parties. Id. Next, the City had in place a practice that afforded raises to all employees at a certain time, and the City's conduct was contrary to its established practices and policies. Id. Here, consideration of the Parties' historical practice in 1983 reflects that the State's policy of step increases was frozen for *all* employees, such that the existing policy as of July 1, 1983, was the indefinite suspension of these types of increases.

Further, the City of Lake Forest never contended that the firefighters may not receive increases at all; instead, it asserted that the amount of the increase was the subject of negotiation and would be paid once the contract settled. Id. In 1983, the Parties were hopeful that additional revenues would be generated such that they could negotiate and implement increases. However, the record reveals that when the Parties agreed to freeze steps and the State unilaterally amended the Pay Plan to suspend increases, no one knew whether the General Assembly's efforts to pass a tax increase would be successful.

City of Lake Forest certainly does not pose such a parallel to the Parties' 1983 negotiations such that it would warrant my disregarding the Parties' treatment of increases in 1983. As such, I reject the Union's invitation to do so.

Contrary to the Union's argument on this point, the evidence from 1983 reveals that the State unilaterally changed the Pay Plan to withhold the payment of increases absent a contractual agreement to do so. Accordingly, as of July 1, 1983, there was no State practice or policy of paying increases absent a specific contractual agreement to do so,[12] so bargaining unit employees did not receive increases while negotiations for a successor agreement were pending. The Parties' conduct in 1983 is not evidence of a past practice of payment of increases as a matter of status quo or an established practice to pay increases absent an agreement to do so.

iii. The Union's 2012 grievances and unfair labor practice charge do not alter the status quo between the Parties.

The Union argues that the State's non-payment of certain increases in 2012 should not be considered as the basis of an established practice or the 2015 status quo, because the Union challenged the State's non-payment. This Board has addressed a similar question in City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). There, the Board held that an employer did not alter status quo by not paying previously-negotiated merit increases during negotiations. In that case the Board relied on similar, relevant facts: pay increases had not been paid in the past until an

[12] Employees in the decertified RC-27 bargaining unit received increases under the collective bargaining agreement the Parties were ordered to continue to honor.

agreement was reached; the employer announced via memorandum that increases would be paid upon reaching an agreement with the unions; Local Union President "grumbled" in response to learning that increases would be disbursed after an agreement was reached but did not claim that the employer was changing a past practice; and the employer withheld increases from employees represented by other unions until it reached an agreement on economic terms. Id. Based upon these facts, the Board found that the status quo was a dynamic one that "entailed a merit pay plan that continued from year to year, with disbursement of merit pay increases being withheld pending tentative agreement on economic issues for the current year." Id. Like the situation facing the Board in the City of Peoria case, here, pay increases have previously only been paid by agreement of the Parties; in both 2012 and 2015, the State announced its intention to withhold payment of increases absent new negotiated terms; and the State similarly did not pay increases to members of other unions' bargaining units absent negotiated terms.

In this case, the Union points out that it did more than grumble about increases not being paid pending negotiations in 2012. Pursuant to the 2012 Extension Agreements, they filed grievances directly at the 4th level of the negotiated grievance procedure and filed an unfair labor practice charge with the Board. The Union argues that these actions "prevent[] the State from relying on 2012 as evidence of [a practice of non-payment of increases]." In support of this argument, the Union cites Lake Park Comm. High School Dist. 108, 4 PERI ¶ 1082 (IL ELRB 1988). In that case, the Educational Labor Relations Board ("IELRB") held that the employees could not reasonably be expected to be advanced along a previously-negotiated salary schedule during negotiations for a new agreement where the employer had previously not allowed such advancement until an agreement was reached. The IELRB noted that prior to the teachers being represented by a certified exclusive representative, the employer had always given increases at the start of the school year. However, once the parties began negotiating, the employer did not pay increases until agreement was reached and the union did not protest this in the past. Therefore, the IELRB found that when looking at the applicable practice – the parties' practice from when the bargaining relationship began – there was no change in the status quo. In so finding, the IELRB noted the Union's prior acquiescence to the practice of not paying increases until reaching an agreement changed the reasonable expectations of the employees.

Similarly in Oakwood Comm. Unit School Dist. No. 76, 9 PERI ¶1090 (IL ELRB 1993), the IELRB dismissed an unfair labor practice charge finding that status quo was the payment of

increases only after the completion of the agreement, not at the beginning of the school year, as both times negotiations extended past the beginning of the school year, increases were paid only after the agreement was completed. The union argued that it consistently and forcefully took the position that bargaining unit members were entitled to salary increments at the start of the school year and expected to receive them. In rejecting the union's argument, the IELRB held, "[o]ne party may not unilaterally establish a reasonable expectation, nor may a party deny a clear past practice merely by saying so."

Between the Parties in this case, the past practice is that pay increases are not paid unless the Parties specifically agree to do so. In 1983, the parties agreed to non-payment. In 2008, the parties negotiated and agreed to payment of increases pending negotiations. In 2012, the first time the Parties disagreed about whether to pay increases while negotiations were pending, increases were not paid.

In the case before me, the Union's witness testified that the Union filed the 2012 grievances because it was the Union's position that the 2012 Extension Agreements required the State to pay step increases. However, as the Union points out, its allegation here is not premised on a contractual violation. Therefore, its 2012 grievances are not relevant to the question of employees' expectations of a status quo in the absence of an agreement. Further, I find that the Union's filing of an unfair labor practice charge, which it subsequently withdrew during investigation, is insufficient to transform the otherwise unreasonable expectation of receiving wages absent agreement into a reasonable one. To find otherwise would mean that any party could unilaterally obviate an existing practice by doing nothing more than filing a charge. I decline to find that merely filing a charge with the Board sufficiently creates a reasonable expectation for payment of increases in the absence of an agreement to do so.

iv. The terms of the 2012-2015 Agreement do not create an obligation to pay increases absent an agreement to do so.

Next, the Union argues that because the 2012-2015 Agreement's pay increase provisions do not expressly state that they expire with the contract, they continue on indefinitely. The Union points to recent cases from the National Labor Relations Board, The Finley Hospital, 362 NLRB No. 102 (2015), and SW General, Inc., 360 NLRB No. 109 (2014), to support its position that service-based increases continue after the expiration of a collective bargaining agreement unless the parties have clearly and unmistakably waived their right to bargain in the language of

the agreement or by the history of dealing.[13] The Union contends that there is no express language linking wage provisions to the negotiated termination date. *See* Zion School Dist. No. 6, 3 PERI ¶ 1091 (IELRB 1987) (where agreement contained provision that lane increases "*shall* be effective at the beginning of each semester" the IELRB found that the language created an expectation of receiving salary increments).

The State argues to the contrary, that where a contract has an express expiration date, the terms do not extend beyond the contract date unless there is express language indicating such extension was intended and agreed by the parties. The State cites to Illinois appellate court precedent supporting the proposition that unless there are "clear terms that certain benefits continue after the agreement's expiration," the benefits terminate with the contract. Thompson v. Policemen's Benevolent Labor Committee, 2012 IL App (2d) 110926, ¶ 11; Litton Financial Printing Division v. National Labor Relations Board, 501 U.S. 190 (1991).

However, I need not address whether the contract terms extend beyond the negotiated termination. As discussed above, Section 21.5 of the Act rendered the contract null and void. Therefore, as a matter of law, though the Parties' obligation to maintain the status quo survives, the specific contract provisions certainly do not extend past the negotiated termination date of the Agreement. Moreover, the added limitations on collective bargaining agreements as set out in Section 21.5 certainly changed the landscape of collective bargaining with executive branch constitutional officers such that an employee should not reasonably rely on the expired contract terms to expect pay increases indefinitely into the future.

v. The Pay Plan does not require payment of increases or otherwise make an expectation of increases in absence of an agreement reasonable.

As an initial matter, the State correctly points out that there is not private cause of action for an alleged violation of the Personnel Code, from which the Pay Plan derives. Metzger v. DaRosa, 209 Ill. 2d 30 (2004). Moreover, the Board is an entity of limited jurisdiction. *See generally* State of Ill., Dep't of Cent. Mgmt. Servs., 23 PERI ¶ 127 (IL LRB-SP 2007) (Board lacked jurisdiction to consider allegation that employee was retaliated against because of a human rights complaint). A public employer's violation of State law or regulation does not necessarily result in a violation of the Act. As such, any question of whether the State has

[13] In the course of my consideration of this matter, I also considered Wilkes-Barre Hospital company, LLC D/B/A Wilkes-Barre General Hospital, 362 NLRB No. 148 (2015). However, like the NLRB precedent cited by the union, Wilkes-Barre is not applicable to this case.

violated the Pay Plan is not before me. However, I do not read the Union's argument in that light. The Union is not arguing that a Personnel Code violation is an unfair labor practice. Instead, the Union argues that the Pay Plan supported a reasonable expectation of raises and/or otherwise supports paying increase as the status quo. Therefore, I consider the Parties' arguments regarding the Pay Plan only to the extent that they are raised in that context.

At hearing, the Union argued that when I decide what "status quo" means, I should look not only to the collective bargaining agreement but to the Pay Plan, as well. I am inclined to agree. At the inception of the bargaining relationship, all State employees, who at that point were all unrepresented, received annual increases pursuant to the Pay Plan. As evidenced by the 1987 arbitration award the Union introduced, the Parties' collective bargaining agreements incorporated by reference the Pay Plan, and where they did not conflict, they both applied. The record is clear that since the Parties began negotiating salary schedules and increases, the negotiated tables, including salary grades and steps, were placed in the Pay Plan whole cloth.

The Union points to Section 310.80 of the Pay Plan in support of its argument that increases should have been paid after July 1, 2015. This section, effective July 28, 2015, contains the following:

> Except as otherwise provided for in this Section, for employees occupying positions in classes that are paid in conformance with the Schedule of Negotiated Rates (Appendix A) and without a negotiated provision in the currently effective bargaining unit agreement, increases shall be granted as follows and will become effective the first day of the pay period following the date of approval:
>
> a) Satisfactory Performance Increase --
>
> 1) Each employee who has not attained Step 8 of the relevant pay grade, and whose level of performance has been at a satisfactory level of competence, shall be successively advanced in pay to the next higher step in the pay grade after one year of creditable service in the same class.
>
> 2) A satisfactory performance increase shall become effective on the first day of the month within which the required period of creditable service is reached.
>
> 3) No satisfactory performance increase may be given after the effective date of separation.

80 Ill. Admin. Code 310.80 (effective July 28, 2015). The State argues that a Pay Plan provision effective after the State began the complained-of conduct cannot inform my analysis; however,

the language of this section has been the same since 2010. Accordingly, I reject the State's contention.

However, I find that that Section 310.80 does not support an employee's reasonable expectation to be paid step increases in the circumstances giving rise to this case. First, the introductory paragraph identifies to whom this provision is applicable; it only applies to employees in "classes that are paid in conformance with the Schedule of Negotiated Rates (Appendix A) and without a negotiated provision *in the currently effective bargaining unit agreement.*" Id. (emphasis added). In this case, on July 1, 2015, there was no "currently effective bargaining unit agreement;" therefore, this provision does not apply to require increases and cannot make an expectation of increases reasonable. Further, this provision has been in place since July 1, 2010. 80 Ill. Adm. Code 310.80 (effective July 1, 2010 amended at 34 Ill. Reg. 9759). As such, it was in place when the 2008-2012 CBA was terminated and the State refrained from paying step increases in the absence of a collective bargaining agreement or extension. It would not be reasonable for an affected bargaining unit employee to rely on this provision of the Pay Plan to expect the continued payment of step increases in the absence of a collective bargaining agreement.

Moreover, instead of forming a basis for an independent obligation to pay increases or to support an employee's expectation to receive increases absent an agreement to do so, the Pay Plan reinforces that the status quo is payment of increases only by agreement. Effective July 1, 2003, step increases were suspended for non-bargaining unit employees. 80 Ill. Adm. Code 310.80 (amended at 28 Ill. Reg. 2680, effective January 22, 2004). In 2009, the State amended the Pay Plan to officially suspend annual increases for employees not in a bargaining unit. *See* 80 Ill. Adm. Code 310.454(e) ("Effective July 1, 2009, annual merit increases and bonuses are suspended..."). [14] The Pay Plan reinforces that since at least 2009, the State did not have an established practice of paying service-based increases absent agreement with a certified exclusive bargaining representative to do so. *See* Thornton Fractional High School Dist. No. 215, 4040 Ill. App. 3d at 763.

[14] Like the service-based increases for bargaining unit employees, eligibility for "Annual Merit Increases and Bonuses" provided for in Section 310.450 required 12 months creditable service since the last review and satisfactory performance. 80 Ill. Adm. Code 310.450.

vi. The tolling agreements do not make an expectation of increases in absence of an agreement reasonable or otherwise require payment of increases.

On or about June 16, 2015, the State informed its agencies and the Union that, like in 2012, it would not be paying increases during negotiations. The Parties did not negotiate an extension agreement as they had in the past, instead the State terminated the 2012-2015 Agreement as of its stated termination date. The Parties do not dispute that the State exercised its contractual right to terminate the 2012-2015 Agreement as of the June 30, 2015. With the backdrop, the Parties negotiated the first of three tolling agreements. In each of the three tolling agreements, the Parties negotiated and agreed not to resort to "strike, work stoppage, work slowdown, or lockout" for the life of the tolling agreement. The Parties also agreed to "adhere to their statutory obligations regarding good faith negotiations," which as discussed herein includes the duty to maintain the status quo. With respect to these obligations, the Parties identified in the tolling agreement that they "disagree with respect to the Employer's obligation to continue step increases and semi-automatic promotion increases." The tolling agreements also all contain the following provision, "[u]nless expressly provided herein, the Parties agree that by entering into this Tolling Agreement, they do not waive any legal rights or entitlements that exist in law but for this agreement and that all legal and contractual rights that exist on June 30, 2015 shall remain in effect during the term of this Agreement."

The Union points to this last provision in support of its argument that the tolling agreements provide for payment of the increases in this case. Specifically, the Union argues that as of June 30, 2015, bargaining unit members had a contractual right to the increases; thus, the State was required to pay them during the term of each tolling agreement. This argument is untenable given the first clause of this provision – *"[u]nless expressly provided herein."* The tolling agreement does, in fact, expressly state that there is a disagreement over any obligation to pay increases. The Union argues that the earlier provision merely reserves the State's right to argue that it is not obligated to pay the increases. This reading of the tolling agreement is incongruous with the facts giving rise to the agreement and with the language of the agreement itself. Therefore, I decline to accept the Union's argument on this point.

Moreover, I find that the tolling agreements, which acknowledge a disagreement about an obligation to pay increases following an announcement that increases would *not* be paid, do not make an expectation of receiving increases during the term of the tolling agreements reasonable.

2. The State exercises discretion over pay increases.

The Illinois General Assembly has empowered the State, through the Director of the Department of Central Management Services, to develop a pay system for all employees under the jurisdiction of the Personnel Code, 20 ILCS 415/8a. To that end, the State develops and implements the Pay Plan. 80 Ill. Adm. Code 310 *et seq.* In its brief, the Union recognizes that the State is unilaterally responsible for implementing the Pay Plan, which is identified by rule as the controlling policy and procedures "in matters of employee pay administration." 80 Ill. Adm. Code 310.20. The Pay Plan is amended on a regular basis; the source note depicting regulatory changes is more than eight single-spaced pages. This legislative mandate, exercise of regulatory authority, and facts elicited at hearing all support a finding that the State exercises a great deal of discretion over pay increases in the absence of negotiated terms regarding the same.

In 1983, when the State's fiscal affairs were in dire straits, by emergency amendment the State froze all increases that were not specifically called for by contract extending past July 1, 1983. In 2003, the State amended the Pay Plan to delete reference for employees not in a bargaining unit, and in 2009, officially suspended the only other avenue for regular raises outside those specifically set out in collective bargaining agreements. In 2010, the State amended Section 310.80 – Increases in Pay – to make it applicable only to bargaining unit employees without a negotiated provision in "the currently effective collective bargaining agreement." There is nothing in the record to support a finding that in the absence of a negotiated agreement, the State's discretion over pay increases is limited in any way.

3. Status quo of not paying increases in the absence of agreement was clearly apparent to an objectively reasonable employer in June and July 2015.

The last step of the Vienna School Dist. test requires the Board to ascertain whether the status quo was clearly apparent to an objectively reasonable employer as of the date of the complained-of action. I have found that the State has never over a 40-year bargaining relationship paid service-based increases in the absence of an agreement to do so. I similarly find that an objectively reasonable employer would find that to be clearly apparent.

VI. CONCLUSIONS OF LAW

The Respondent did not fail to bargain in good faith with the Charging Party by making a unilateral change to the status quo pending negotiations on a successor agreement.

VII. RECOMMENDED ORDER

The charge is dismissed.

VIII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 30 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 15 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 3rd day of February, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

s/ *Sarah R. Kerley*

Sarah R. Kerley
Administrative Law Judge

Attachment A

State of Illinois
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
PAY PLAN

PART I - NARRATIVE

Section 1.00 STATUTORY AUTHORITY Chapter 127, Section 63b108a (2) Illinois Revised Statutes 1967: THE PERSONNEL CODE.

Section 2.00 POLICY AND RESPONSIBILITIES It is the policy of the State of Illinois to provide fair and reasonable compensation to employees for service rendered.

The policy and procedures expressed herein are controlling in matters of employee pay administration. It shall be the responsibility of each agency head:

a. To submit promptly all proper and required personnel actions with justifications or other notices of changes affecting employee pay or pay status.

b. To cause, within his agency, full compliance with all the provisions of this Plan.

Section 3.00 JURISDICTION All positions of employment in the service of the State of Illinois shall be subject to the provisions of this Plan unless specifically excluded now, or hereafter, under Section 4c (GENERAL EXEMPTIONS) or Section 4d (PARTIAL EXEMPTIONS) of the Personnel Code or other pertinent legislation. Those positions to which jurisdiction of the Personnel Code has been or may be later extended shall also be subject to the provisions of this Plan.

Section 4.00 PAY SCHEDULES The attached Schedule of Salary Grades, Schedule of Rates, Physician Administrator Rates and the Merit Compensation System are hereby made a part of this Plan. Each employee subject to this Pay Plan, except those whose rates of pay is determined under the Schedule of Rates, or the Merit Compensation System of this Pay Plan or Section 8,a. of the Personnel Code shall be paid at a step in the appropriate salary grade in the Schedule of Salary Grades for the class of position in which he is employed.

Due to extreme fiscal circumstances there will be no within range salary increases for any employees subject to this Pay Plan, unless such increases are provided by contract extending past July 1, 1983, regardless of other stated provisions elsewhere in this Pay Plan, effective July 1, 1983, until such time as the Pay Plan is further modified to allow for such increases.

If the Pay Plan is modified during Fiscal Year 1984 to allow for such increases, employees who, because of this provision, were blocked from receiving an ordinarily scheduled increase, will be eligible for a lump sum payment. This payment will be equal to the amount of base salary lost because of the block on within range

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increases. The creditable service date of employees so effected will be changed to reflect that the increase was granted as scheduled prior to the block.

If the Merit Compensation salary schedule is amended during Fiscal Year 1984, Merit Compensation employees will be eligible on the first day of their previously established Performance Review month, that is, 12 months after the last Performance Review date regardless if a salary increase was received at that time.

For those classes previously subject to the RC-27 contract prior to July 1, 1983, as listed in Part II, Schedule of Rates, Appendix AI, the same salary range as established under the contract will continue to apply until specific action is taken to move the class to another salary schedule.

(filed June 29, 1983, effective July 1, 1983)

Section 5.00 DEFINITIONS The following are definitions of certain terms and are for purposes of clarification as they affect the Schedule of Salary Grades and Schedules of Rates, only. Part V of this Pay Plan contains the administrative features of the Merit Compensation System.

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