

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

City of Elgin,	)	
	)	
Charging Party	)	
	)	
and	)	
	)	Case No. S-CB-13-019
Elgin Association of Fire Fighters,	)	
International Association of Firefighters,	)	
Local 439,	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE'S ORDER  
DENYING MOTION TO DEFER TO ARBITRATION**

On October 2, 2012, the City of Elgin (City) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240, alleging that the Elgin Association of Fire Fighters, International Association of Firefighters, Local 439 (Union) violated Sections 10(a)(4) and 10(a)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on August 30, 2013, the Board's Executive Director issued a Complaint for Hearing.

On September 17, 2013, the Union filed a timely Answer to the Complaint for Hearing, and on September 24, 2013, the Union filed a motion to defer this charge to arbitration. The City filed a timely response in opposition to the Union's motion on October 2, 2013. For the reasons that follow, I deny the Union's motion to defer to arbitration.

**I. INVESTIGATORY FACTS**

The Union is the exclusive representative of a bargaining unit (Unit) composed of the City's full-time employees in the job titles or classifications of Firefighter, Fire Lieutenant, and Captain. The City and Union were parties to a collective bargaining agreement for the Unit which expired December 31, 2011. The Complaint for Hearing alleges that, since on or before December 31, 2011, the parties have been negotiating a successor agreement. The Union denies

this allegation and states that the parties' negotiations culminated in an interest arbitration proceeding pursuant to Section 14 of the Act which resolved the terms of the parties' successor bargaining agreement with the exception of a minimum shift staffing provision. The Union admits that, in or about August 2012, it submitted its proposal on minimum shift staffing as an outstanding issue in these interest arbitration proceedings. The Complaint for Hearing further alleges, but the Union denies, that by this action the Union insisted to impasse on a permissive subject of bargaining in violation of Sections 10(b)(4) and (1) of the Act. The Union denies that minimum shift staffing is a permissive subject of collective bargaining.

The Union states that the instant charge should be deferred to grievance arbitration in light of the Board's May 20, 2013, decision to defer to grievance arbitration the unfair labor practice charge pending in Case No. S-CA-12-125. In the relevant portion of Case No. S-CA-12-125, the Union in this matter alleges that the City violated Sections 10(a)(4) and 10(a)(1) of the Act by repudiating the parties' existing agreement with regard to minimum shift staffing. In discussing the matter, the Board recited the following facts: The parties were subject to a collective bargaining agreement (Agreement) scheduled to expire December 31, 2011, which provides that the Agreement remains in force after its expiration while the parties bargain for a new contract. The Agreement also contains a management rights clause which allows the Union to set standards of service, determine the operations conducted by the department, and change its methods, equipment, or facilities provided that these changes do not conflict with other provisions of the Agreement. On February 10, 2010, the parties signed a variance agreement (Variance) stating that the Union would reduce minimum shift staffing to 34 from 36, and that, following the expiration of the Variance, minimum shift staffing would return to the status quo ante. This Variance clarified that the status quo ante was 36 firefighters per shift. The Variance was scheduled to expire on December 31, 2010; in August 2010, the parties extended this expiration date to December 31, 2011. Following the expiration of the Variance, on January 1, 2012, the City increased minimum shift staffing to 36 firefighters per shift. On January 29, 2012, the City removed an ambulance from active service, thereby reducing minimum shift staffing back to 34. The Union filed the charge in Case No. S-CA-12-125 alleging that this action constituted repudiation of the parties' Agreement in light of the Variance.

By order of May 20, 2013, the Board deferred the Union's repudiation claim to arbitration, reasoning that deferral was proper under the National Labor Relation Board's

(NLRB) precedent in Collyer Insulated Wire, 192 NLRB 837 (1971), because contract interpretation was at the center of the charge.

## II. ISSUES AND CONTENTIONS

In its motion to defer, the Union argues that deferral is appropriate for several reasons. First, the Union argues that the issue of whether minimum shift staffing involves a matter of inherent managerial authority must be resolved by an arbitrator because it is inextricably linked to the City's contention in Case No. S-CA-12-125 that the management rights clause in the parties' Agreement gives the City the right to unilaterally remove an ambulance from service. Furthermore, the Union argues that I am bound by the Board's deferral in Case No. S-CA-12-125 and must accept it as the law of the case because the instant charge involves the same parties. Finally, the Union states that failure to defer the instant charge would create a risk of contradictory results in the two matters regarding the determination of whether minimum shift staffing is a matter of inherent managerial authority.

In response, the City states that deferral is not appropriate because contract interpretation is not at the center of the instant charge, the basis of which is the Union's proposal to modify a successor agreement. The City argues that this issue has no relation to the terms of any current agreement. Furthermore, the City argues that deferral is not appropriate because arbitration is not available in this instance under the terms of the parties' agreement and the Union has not asserted a willingness to nonetheless arbitrate this dispute.

## III. DISCUSSION AND ANALYSIS

Section 11 of the Act provides that the Board may defer an unfair labor practice charge to grievance arbitration if the charge involves the application of a collective bargaining agreement that contains a grievance procedure with binding arbitration as its final step. 5 ILCS 315/11(i) (2012). In City of Mt. Vernon, 4 PERI ¶ 2006 (IL SLRB 1988), the then-State Board adopted a policy of deferring charges involving the application or interpretation of collective bargaining agreements. In that case, the Board listed the primary deferral doctrines employed by the NLRB. Each of these policies is known by the lead case in the area, namely, Spielberg Manufacturing Co., 112 NLRB 1080 (1955); Dubo Manufacturing Corp., 142 NLRB 431 (1963); and Collyer Insulated Wire, 192 NLRB 837 (1971). Spielberg concerns deferral to an existing arbitration award. Dubo applies in cases where the charging party has voluntarily initiated a grievance.

Collyer concerns cases where the charging party has not initiated a contract grievance. The Collyer standard applies in the instant matter.

Under Collyer, deferral to grievance arbitration is appropriate, even where no grievance has been filed, when the following three conditions are present: (1) a question of contract interpretation lies at the center of the dispute; (2) the dispute arises within an established collective bargaining relationship where there is no evidence of enmity by the respondent; and (3) the respondent asserts a willingness to waive any and all procedural barriers to the filing of a grievance. Collyer Insulated Wire, 192 NLRB 837 (1971); and State of Illinois (Department of Central Management Services), 9 PERI ¶ 2032 (IL SLRB 1993). The Complaint for Hearing and the Union's Answer raise two issues for hearing: first, whether the Union's proposal on minimum shift staffing is a permissive subject of bargaining, and second, if so, whether the Union insisted to impasse on the proposal in violation of Sections 10(a)(4) and 10(a)(1) of the Act. Because a question of contract interpretation does not lie at the center of these issues, I find that deferral is not appropriate.<sup>1</sup>

To resolve the first issue, I must apply the balancing test set forth in Central City Education Association v. Ill. Educational Labor Relations Board, 149 Ill. 2d 496 (Ill. 1992), to determine whether the proposal on minimum shift staffing is a mandatory or permissive subject of bargaining. Village of Oak Lawn v. Illinois Labor Relations Board, 2011 IL App. (1st) 103417, ¶ 17 (citing County of Cook v. Illinois Labor Relations Board, 347 Ill. App. 3d 538, 545 (1st Dist. 2004)). Pursuant to that test, an issue is a mandatory subject of bargaining if it concerns wages, hours, or terms and conditions of employment and is not a matter of inherent managerial authority. Id. (citing City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191 (1998)). In the event a matter concerns wages, hours, or terms and conditions of employment and is also a matter of inherent managerial authority, that matter will be deemed a mandatory bargaining subject only if the benefits that bargaining will have on the decision-making process outweigh the burdens it will impose on the employer's authority. Id. The resolution of this issue does not raise a question of contract interpretation. In Case No. S-CA-12-

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<sup>1</sup> The Charging Party also argues that deferral is not appropriate because the parties' contract grievance procedures are not available in this instance. In support thereof, the Charging Party states that the parties' contractual grievance mechanism does not permit the City to file a grievance against the Union. The Charging Party further argues that this matter does not meet the definition of a "grievance" so as to be arbitrable under the parties' Agreement, and that any potential grievance filed by the City would be time-barred and the Union has not committed to waiving this time bar. However, because the first prong of the Collyer deferral standard is not met, it is unnecessary for me to address these arguments.

125, the Board determined that deferral was appropriate because resolving the Union's repudiation claim would require an Administrative Law Judge to first determine whether the City breached the Agreement and Variance. The Board emphasized that contract interpretation is central to this issue because the Agreement and Variance are open to more than one reasonable interpretation. However, no provision of the Agreement or Variance is at issue in the application of the Central City test. As the City correctly notes, the instant charge is based not on the parties' current Agreement, but rather on the Union's proposal to modify a *successor* agreement.

The Union argues that the issue of whether minimum shift staffing is a matter of inherent managerial authority must be resolved through arbitration because "[t]his determination is inextricably linked to the City's contention in [Case No. S-CA-12-125] that the [Agreement's] management rights clause provides it the right to unilaterally reduce shift manning requirements." This argument is premised on a misunderstanding of the managerial rights at issue in each charge. In its decision to defer to arbitration in Case No. S-CA-12-125, the Board decided that deferral was necessary to determine whether the management rights clause of the parties' Agreement, in light of the Variance, permitted the City to unilaterally remove an ambulance from service and thus reduce minimum shift staffing. Thus, the issue before the arbitrator in Case No. S-CA-12-125 is the City's *contractual* managerial rights; the Central City test instead relies on *inherent* managerial rights. Inherent means intrinsic or existing as an essential constituent or characteristic of a thing. The American Heritage Dictionary, 661 (2<sup>nd</sup> College ed. 1985). Thus, an inherent managerial right is an intrinsic right; it may exist outside of a contractual agreement and is not dictated by contractual managerial rights. An arbitrator's interpretation of the contractual managerial rights contained in the parties' Agreement has no bearing on the inherent managerial rights of the City during negotiations of a successor agreement. Contrary to the Union's assertion, the two are distinct issues and are not inextricably linked.

This distinction also resolves the Union's concern that failure to defer this matter may lead to contradictory results in the two cases. Though the Union alleges there is a risk that the Board in this case and the arbitrator in Case No. S-RC-12-125 will reach contradictory conclusions on the question of whether minimum shift staffing is an inherent managerial right, as discussed above the question at issue in Case No. S-RC-12-125 involves contractual rather than inherent managerial rights. Thus, the determination of whether the City had the right under the

parties' expired but still effective Agreement to remove an ambulance from service thus reducing minimum shift staffing cannot reasonably be in conflict with the determination of whether minimum shift staffing is a topic over which the parties must bargain in the future. Likewise, assuming that the Board's decision to defer to arbitration in another case between these parties on the issue of contractual managerial rights is the law of the case as to the instant charge, neither I nor the Board are thereby bound to defer in this case where the issue is the distinct question of inherent managerial rights under the application of Central City.

As to the second issue for hearing, whether the Union insisted to impasse on its minimum shift staffing proposal, it is likewise clear that resolution of this issue does not require the interpretation of the parties' Agreement. Instead, there are unresolved questions of law as to the point at which parties reach impasse in the context of Section 14 and whether the mere submission of a proposal on a permissive subject to an interest arbitrator constitutes an unfair labor practice. See Village of Bensenville, 14 PERI ¶ 2042 (IL SLRB 1998) (“[W]e hold that the mere submission to an interest arbitrator of a contract proposal pertaining to a permissive subject of bargaining does not violate the statutory duty to bargain in good faith.”). But see Village of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001) (In finding that an employer had insisted to impasse on two proposals relating to permissive subjects of bargaining, the Board emphasized that there was no dispute that the parties, who were involved in interest arbitration proceedings pursuant to Section 14 of the Act, were at impasse.) and City of Elgin, 30 PERI ¶ 8 (IL LRB-SP 2013) (In a non-precedential decision, the Executive Director's dismissal of an unfair labor practice charge filed by the Union became final, with two members voting to uphold the dismissal on the grounds that the underlying issue was moot and two members voting to reverse the dismissal on the grounds that the charge raised an issue for hearing regarding whether the City insisted to impasse on a permissive subject.). The parties' Agreement, however, has no bearing on the issues of whether the parties were at impasse or whether the Union committed an unfair labor practice by submitting its proposal on minimum shift staffing to interest arbitration.

#### **IV. CONCLUSIONS OF LAW**

Deferral to arbitration is not appropriate in this case because a question of contract interpretation does not lie at the center of the instant dispute.

V. **ORDER**

IT IS HEREBY ORDERED that the Union's motion to defer to arbitration in this matter be denied.

VI. **EXCEPTIONS**

Pursuant Sections 1220.65(d) and 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Order and briefs in support of those exceptions no later than 30 days after service of this Order. 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 Order. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions 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 9<sup>th</sup> day of October, 2013,**



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**Heather R. Sidwell  
Administrative Law Judge  
Illinois Labor Relations Board**