STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Midlothian Professional Fire Fighters Association, Local No. 3128, IAFF,	)	
Charging Party,	)	Case No. S-CA-22-002
and	)	
Village of Midlothian,	)	
Respondent.	)	

ORDER

On June 12, 2023, Administrative Law Judge Donald W. Anderson, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its October 12, 2023, public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, on October 12, 2023.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Helen J. Kim
Helen J. Kim
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Midlothian Professional Fire Fighters Association, Local No. 3148, IAFF,	)	
Charging Party,	)	
and	)	**Case No. S-CA-22-002**
Village of Midlothian,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. INTRODUCTION

On July 2, 2021, the Charging Party, Midlothian Professional Fire Fighters Association, Local No. 3148, IAFF, ("the Charging Party" or "the Union") filed an unfair labor practice charge (the "Charge") with the Illinois Labor Relations Board's State Panel alleging that the Respondent, Village of Midlothian ("the Respondent," "the Employer," or "the Village") engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act ("the Act"), 5 ILCS 315, as amended. The Board's Executive Director issued a Complaint for Hearing ("the Complaint") on September 13, 2021. The Complaint alleges that Charging Party is, and at all relevant times has been, the exclusive representative of a bargaining unit composed of full-time firefighters below the rank of deputy chief, that the Union and the Village are parties to a collective bargaining agreement ("CBA") covering those employees, and that the CBA contains a grievance procedure culminating in final and binding arbitration. The Complaint further alleges that the CBA provides, in Article XX, Section 20.1, that "[t]he Village agrees to maintain the current Hospitalization and Medical

Insurance coverages and benefits in substantially the same manner and level during the term of this Agreement.“ and also provides, in Article XX, Section 20.2, that “[t]he Village reserves the right to institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially the same.’ According to the Complaint, the CBA provisions referenced in Sections 20.1 and 20.2 have existed in the CBA in substantially the same form since the parties’ 1996-1998 CBA.

The Complaint then alleges that, prior to October, 2020, the Village offered its employees five Blue Cross Blue Shield (“BCBS’) health insurance plans, including one Health Maintenance Organization (HMO) plan, one Health Savings Account (HSA) plan, and three (3) different traditional Preferred Provider Organization (PPO) plans. In September and October of 2020, the Complaint alleges, the Village convened an insurance committee to review health insurance plans for the coming year. On October 21, 2020, the Complaint alleges, Union President Keith Latek (“Latek”) sent an email message to Village Treasurer Maggie Britton (“Britton”) stating that “[a]t this time Midlothian Firefighters Local 3148 does not support the change in insurance plans. We don’t feel that it is comparable to the plan we have today.” Later that same day, the Complaint alleges, Britton responded by way of an email message to Latek in which she said that “[a]t last week’s meeting, it was decided that the Village is going to stay with BCBS. The choice, then, was to choose whether to stay with the 5 plans currently offered by BCBS or to opt for the plans where one of them has a 2-tier component.”

In November, 2020, the Complaint alleges, the Village’s insurance committee selected five BCBS insurance plans, including one HMO, two PPO’s and the HSA plan, but eliminating the PPO plan that had existed since 2009 and had the largest bargaining unit enrollment and replacing it with a non-traditional, two-tiered PPO plan (the “contested PPO”) that provided for

in-network and out-of-network insurance coverage. The contested PPO, the Complaint alleges, contained out-of-pocket health insurance increases in deductibles and copayments and decreases in health insurance coverages and benefits for hospitalization and physician services when compared to the PPO that the Village would no longer offer to employees.[1]

On December 3, 2020, according to the Complaint, Latek sent the following email message to Village officials:

> I have just been informed that the new insurance plans the village is going with need to have members go onto the website and renew. I received an email from you stating that it was passive and if there were going to be changes the members did not need to go onto the site and renew by Friday 12/4/2020. While doing this (sic) members realized that the new plans are not comparable to the plans currently enrolled. Back in October we expressed that Midlothian Professional Firefighter Local 3148 did not feel that this new plan was comparable. Can you please explain to me how the village is now trying to have our members enroll in a program not comparable? I appreciate any light you could shine on this situation.

On December 3, 2020, the Complaint alleges, Britton responded to the email from Latek asserting that the insurance committee had recommended the changes that were implemented. On December 4, 2020, the Complaint alleges, the Charging Party filed Grievance No. 20-001, contending that the newly offered plans were not substantially the same as plans previously offered by the Village. The Complaint then alleges that the Village denied the grievance at each step of the grievance procedure, and the grievance was advanced to arbitration before Arbitrator Barry Simon on March 5, 2021.

According to the Complaint, the Village claimed for the first time at the March 5, 2021 arbitration hearing that it implemented the changes to the hospitalization and medical insurance coverages and benefits because the actuarial value of the plans remained the same. During the

[1] Such costs are referred to as "plan design" costs, or the costs paid when an individual actually receives health care. Plan design cost sharing is also referred to as the actuarial value of a health care plan. *See State of Illinois, Department of Central Management Services,* 33 PERI ¶ 67 (ALJ RDO, 2016).

arbitration proceeding, the Complaint alleges, the Village also contended that it had the right to implement the changes to the hospitalization and medical insurance coverages and benefits because the changes did not significantly impact the Village-wide employee utilization of benefits.

Hospitalization and medical insurance coverages and benefits, the Complaint asserts, concern wages, hours and terms and conditions of employment and are mandatory subjects of bargaining. By its actions as described above, the Complaint alleges, the Respondent placed before the grievance arbitrator for consideration and ruling a permissive subject of bargaining, consisting of a waiver of Charging Party's statutory right to bargain changes to its hospitalization and medical insurance coverages.

According to the Complaint, the Union objected at the grievance arbitration proceeding that the Village was using external indicia to impose a waiver of the Union's right to bargain hospitalization and medical insurance coverages. On June 8, 2021, the Complaint alleges, the Arbitrator adopted the Village's interpretation of the CBA and thereby imposed a waiver of the Union's statutory right to bargain changes to its hospitalization and medical insurance coverages. Because the Village's interpretation of the CBA entails a permissive subject of bargaining, the Complaint alleges, the Arbitrator's award adopting that interpretation is repugnant to the Act, in that it enabled the Respondent to implement, unilaterally, the contested PPO without having afforded the Union an opportunity to bargain midterm as the exclusive representative of the employees in the affected unit. By these acts, the Complaint concludes, the Respondent failed and refused to bargain in good faith with the Charging Party in violation of Section 10(a)(4) and (1) of the Act.

On September 28, 2021, the Respondent filed its Answer and Affirmative Defense, denying material allegations in the Complaint and further denying any violation of the Act. As its Affirmative Defense, the Respondent asserts that the Charge is time-barred under Section 11(a) of the Act and that the Complaint should be dismissed for that reason.

On October 6, 2021, the Respondent filed a Motion to Defer Resolution of the Unfair Labor Practice Charge ("Motion to Defer") under Section 11(i) of the Act. On October 7, 2021, recognizing that, under the circumstances, the five day period for responding to a deferral motion established by Board Rule 1220.65 was insufficient, I issued an Order giving the Charging Party until November 5, 2021, to respond to Respondent's Motion and also to its affirmative defense of untimeliness. The Charging Party's response was then filed on November 5.

II. PROCEDURAL POSTURE

Section 11(i) of the Act, 315 ILCS §11(i), provides:

> If an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement.

Pursuant to Section 11(i), Section 1220.65 of the Board's Rules provides that "[t]he Board, on its own motion or the motion of a party, may defer the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in a collective bargaining agreement." A party's motion to defer may be made to the Board agent investigating the charge at any time during the investigation, or it may be made within 25 days after the issuance of a complaint for hearing. If, as in this case, the motion to defer is made after the issuance of the complaint, the motion is directed to the Administrative Law Judge assigned to the case, the Administrative Law Judge is to rule on the motion in accordance with Section 1200.45 of the

Board's Rules. A party may appeal the Administrative Law Judge's ruling in accordance with Section 1200.135(b). Because, unlike other motions made to the Administrative Law Judge following the issuance of a complaint for hearing, a ruling on a motion to defer is appealable to the Board, the ruling on the Respondent's Motion to Defer is styled as a Recommended Decision and Order.

III. DISCUSSION AND ANALYSIS

The Charge in this case was timely filed, but deferral to the parties' grievance and arbitration procedure is warranted.

A. The Charge Was Timely Filed

The Village contends, in its Affirmative Defense, that the Charge was time-barred under Section 11(a) of the Act, which provides, *inter alia,* that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice…." Thus, a charge is untimely if it is filed more than six months after the charging party knows or reasonably should have known of the facts giving rise to the charge. *Jones v. IELRB*, 272 Ill.App.3d 612 (1st Dist. 1995). The six-month limitations period is jurisdictional; the Board has no statutory power to issue a complaint based on unfair labor practices occurring more than six months prior to the date when the charging party knew or reasonably should have known of the facts upon which the charge is based. *Amalgamated Transit Union v. Illinois Labor Relations Board*, 2017 IL App (1st) 160999, ¶ 40.

In this case, the Respondent asserts that the Union had full knowledge as of December 3, 2020 of the change in health plan options that formed the basis for the Charge, and that this date was more than six months prior to the filing of the Charge on July 2, 2021. Accordingly, the Respondent alleges that the Complaint is time-barred and must be dismissed.

But, contrary to Respondent's assertion, the basis of the Charge was not the change in health plan options. As the Union contends, "the alleged violation centers upon the Village's conduct of presenting a permissive waiver of the Union's statutory rights to an arbitrator based upon that permissive position – conduct that did not occur until March 5, 2021." Thus, "[i]t was not until the March 5, 2021 hearing that the Village argued, for the first time, that the changes were substantially similar based upon the actuarial value and Village-wide employee use of benefits – factors that are outside of the bargaining unit and the Union's control or contemplation." Given this allegation, it must be concluded that it was not until the arbitration hearing that the Union knew or reasonably should have known of the factual basis for its charge. Since the hearing took place less than six months prior to the filing of the Charge, the Charge was timely filed under Section 11(a) of the Act, and the Board has jurisdiction to consider and rule upon the allegations in the Complaint.

B. Deferral To The Arbitration Award Is Warranted Under *Spielberg*

1. *Spielberg* Standards

In *PACE Northwest Division*, 10 PERI ¶ 2023 (IL SLRB 1994) ("*PACE Northwest"*), the Board stated that "the policy of deferral, as enunciated in Section 11(i) of the Act, … stands as a recognition of the fact that the collective bargaining relationship between parties subject to the Act is best nurtured by encouraging them to resolve their disputes, whenever possible through their voluntary and agreed upon grievance and arbitration procedure." In furtherance of this

objective, the Board has adopted the three primary deferral policies adopted by the National Labor Relations Board – post-arbitration deferral under *Spielberg Manufacturing Corp.*, 112 NLRB 1080 (1955) (*"Spielberg"*), deferral to pending arbitration under *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963) ("*Dubo"*), and deferral to potential arbitration not yet initiated under *Collyer Insulated Wire*, 192 NLRB 837 (1971) (*"Collyer"*). *City of Mt. Vernon*, 4 PERI ¶ 2006 (IL SLRB 1988) (*"City of Mt. Vernon"*); *State of Illinois, Department of Central Management Services (Department of Human Services)*, 19 PERI ¶ 114 (IL LRB 2003) (*"Department of Human Services"*).

This case involves a *Spielberg*-type deferral. The Board has determined that a *Spielberg* deferral is appropriate if (1) the unfair labor practice issues have been presented to and considered by the arbitrator; (2) the arbitration proceedings appear to have been fair and regular; (3) all parties agreed to be bound by the award; and (4) the arbitration award is not clearly repugnant to the purposes and policies of the Act. *City of Alton*, 22 PERI ¶ 102 (IL LRB-SP 2006) ("*City of Alton*").

2. The Contentions of the Parties

In support of its Motion to Defer, the Village contends that these requirements have been met. It asserts that the unfair labor practice issues were presented to and considered by the Arbitrator, that the arbitration proceedings were fair and regular, that all parties agreed to be bound by the Award, and that the arbitration award was not clearly repugnant to the purposes and policies of the Act.

The Union contends that the first of these requirements was not met. Citing *North Shore Sanitary District v. Illinois Labor Relations Board*, 262 Ill. App. 3d 279, 296 (2d Dist. 1994) ("*North Shore Sanitary District"*), the Union notes that "[p]ost-arbitration deferral, *i.e.*, deferring

to the arbitrator's grievance resolution, "is not appropriate when the arbitrator's decision has not made a factual finding with regard to a critical allegation of the Union's unfair labor practice charge." Citing further *City of Mattoon*, 37 PERI ¶ 30 (IL LRB-SP 2020), *aff'd in unpub. dec. sub nom. City of Mattoon v. ILRB State Panel and Mattoon Firefighters Association*, 2021 IL App. (4th) 200417-U (October 26, 2021) *("City of Mattoon"),* the Union alleges that the unfair labor practice issues were not presented to and considered by the Arbitrator because the Union did not have notice of the violation until the hearing itself.

3. The Collective Bargaining Agreement

The parties in this case have agreed on a collective bargaining agreement that provides for hospitalization and medical insurance coverage and benefits on a Village-wide basis. In their agreement, the parties agreed that such health insurance coverages and benefits would be maintained "in substantially the same manner and level during the term of [the] Agreement." This language, as the Arbitrator determined, means that the Village has the right to make mid-term changes in coverages and benefits as long as the "manner and level" of the health insurance plan resulting from the changes are "substantially the same" as the manner and level of the health insurance plan as it existed prior to the changes. This is an authoritative interpretation of the CBA, inasmuch as it is well settled that parties who have agreed to have their disputes settled by an arbitrator have contracted to accept the arbitrator's construction of their agreement. *AFSCME v. Department of Management Services,* 173 Ill.2d 299, 305 (1996). Thus, the arbitrator's interpretation of a contractual provision becomes a binding part of the parties' agreement, *County of Lake,* 28 PERI ¶ 67 (IL LRB-SP 2011), citing *The Motor Convoy, Inc.*, 303 NLRB 135 (1991), and the Board is bound by the arbitrator's construction. *Department of Central*

Management Services v. American Federation of State, County and Municipal Employees, 222 Ill. App. 3d (1st Dist. 1991).

In addition to the grievance and arbitration procedure, the parties have agreed upon an Entire Agreement, or "zipper", clause that provides, in Article XXIV of the Agreement:

> This Agreement constitutes the complete and entire agreement between the parties, and concludes collective bargaining between the parties for its term except for the limited reopener negotiations specifically provided for in this Agreement. This Agreement supersedes and cancels all prior practices and agreements, whether written or oral, which conflict with the express terms of this Agreement.
>
> The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or ordinance from the area of collective bargaining, and that the understandings and agreements (or any side letters of agreement mutually agreed by the parties to be incorporated in this Agreement) arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred or covered in this Agreement except that the Union or the Village shall have the right to impact or effects bargaining as provided in the Illinois Public Labor Relations Act and the Village shall have the right to temporarily implement management decisions pending final resolution of any impact or effects bargaining as timely requested by the Union, unless specifically provided otherwise in this Agreement and except for any reopener negotiations as specifically provided in this Agreement.

4. The Right to Mid-Term Bargaining

The Complaint alleges that "'Respondent unilaterally implemented the contested PPO, without having afforded the Union an opportunity to negotiate and bargain midterm as the exclusive representative of Respondent's employees with respect to such acts and conduct." But while the Complaint asserts a right to mid-term bargaining over the changes to the health insurance plan, the right to mid-term bargaining is not absolute. *Mt. Vernon Education Association, IEA/NEA v. Illinois Educational Labor Relations Board,* 378 Ill.App.3d 814, 816 (4th Dist. 1996). That right applies to those matters that are not the subject of a clause in the

agreement or not fully bargained. *Id.* Here, the Union waived its right to midterm bargaining to the extent that the issue was fully bargained and thereafter incorporated into the CBA.

5. The Union's Waiver of Mid-Term Bargaining

It is well settled that a union can waive statutory and economic rights on behalf of its members. *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 68; *Ehlers v. Jackson County Sheriff's Merit Commission*, 183 Ill.2d 83, 93-94 (1998). A collective bargaining agreement is deemed to contain a waiver of both parties' right to bargain over matters fully negotiated and covered by the agreement because neither party is required to reopen bargaining over items to which they already have agreed. *Illinois Secretary of State*, 24 PERI ¶ 22 (IL LRB-SP 2008); *City of Chicago*, 18 PERI ¶ 3025 (IL LRB-LP 2002).

In this case, it is clear from the facts presented that the contractual issue as to whether the Village's changes in the Village-wide health insurance plan resulted in coverages and benefits that were "substantially the same" as those available under the prior plan was decided by the Arbitrator and that the Arbitrator's Award was final and binding on the parties. Given the lack of any evidence presented at the arbitration hearing, in support of the Charge, or in response to the Village's Motion to Defer, that the language of Article XXIV of the CBA does not mean what it says, it also must be concluded that the Union clearly and unmistakably waived the right to engage in mid-term bargaining over the health insurance plan changes decision. *East Richland Education Association v. Illinois Educational Labor Relations Board*, 173 Ill.App.3d 878, 891 (4th Dist. 1988).

In addition, while Article XXIV provides for the Union's right to *impact* or *effects* bargaining which, if requested, would have permitted the Village to implement the health insurance plan pending final resolution of effects bargaining, there is no evidence that the Union

ever requested effects bargaining or that the Village ever denied such a request. Therefore, in the absence of such evidence, it must be concluded that, in addition to having waived the right to mid-term bargaining over the decision to implement the health insurance plan, the Union also waived its contractual right to bargain over the effects on the bargaining unit of the changes to the health insurance plan. *See City of East St. Louis v. Illinois State Labor Relations Board,* 213 Ill.App.3d 1031, 1035 (5th Dist., 1991), wherein the court said that "[t]here is no dispute that before there can be a wrongful refusal to bargain, there must have been a request to bargain by the union."

6. The Union's Argument

The essence of the Union's argument is that it was blindsided in the arbitration proceeding by the Village's reliance on plan-wide, and therefore Village-wide, actuarial data to support its contention that the changes in the plan resulted in coverages and benefits that were "substantially the same" as those in existence prior to the change. By relying on plan-wide actuarial data, the Union asserts, the Village argued that it was permitted to make changes in health insurance coverages and benefits based upon factors that were "outside of the bargaining unit and outside of the Union's control and contemplation…." Thus, the Union asserts, "the Village improperly placed a permissive subject of bargaining before the Arbitrator over the Union's objection."

The problem with the Union's argument, however, is that the Union *agreed* in the collective bargaining agreement to the provision of health insurance coverage to its members by means of a Village-wide plan. Even if, *arguendo,* a proposal in collective bargaining calling for the provision of health insurance coverage to bargaining unit employees by means of a plan that

also covers non-unit employees is a permissive subject of bargaining,[2] nothing in the law prohibits a union (or an employer) from agreeing to such a provision as part of the collective bargaining process. *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971); *Florida Power & Light Co. v. IBEW*, 417 U.S. 790 (1974); *Skokie Firefighters Union v. Illinois Labor Relations Board*, 2016 IL App (1st) 152478 ("*Skokie Fighters"*), ¶ 6, citing *Lid Electric, Inc. v. IBEW Local 134*, 362 F.3d 940, 943 (7th Cir. 2004). *See also, City of Cincinnati v. Ohio Council 8, AFSCME,* 61 Ohio St. 3d 658, 664 (1991), wherein the Ohio Supreme Court said:

> While parties to a collective bargaining relationship are required to bargain over mandatory subjects, they are not required to bargain over permissive subjects, though nothing prevents them from doing so…. If, however, the parties choose to bargain on a permissive subject, and reach agreement on a provision relating to it, the provision is just as much a part of the contract, and therefore just as enforceable, as a provision governing a mandatory subject of bargaining.

Thus, having agreed to a Village-wide health insurance plan, the Union cannot now argue that the Village committed an unfair labor practice by defending the administration of its plan in a grievance arbitration proceeding by means of the use of plan-wide data.

The Union further asserts, however, that, while "[t]he Board has consistently held that questions regarding employees' health insurance benefits are mandatory bargaining subjects," *City of Wheaton,* 31 PERI ¶ 131 (IL LRB-SP 2015), *aff'd in relevant part* 2016 IL App (2nd)

[2] While it is unnecessary in the context of this case for me to make a determination as to whether the subject of bargaining in question is mandatory or permissive, it is noteworthy that the Board has ruled that "with regard to those items that directly impact the compensation of covered employees – namely, premiums, deductibles, co-payments and OPMs – we find that these items are mandatory subjects of bargaining pursuant to the Central City analysis and the Labor Act.", *State of Illinois, Department of Central Management Services (Troopers Lodge #41),* 34 PERI ¶ 18, *16 (IL LRB-SP 2017), *aff'd sub nom Illinois Troopers Lodge No. 41 v. Illinois Labor Relations Board,* 2018 IL App (1st) 171382. A review of the Arbitrator's Award in this case reveals that the Union's primary objection to the change in health coverage related to the greater out-of-network costs likely to be incurred by an employee selecting coverage by the "contested PPO." Such costs, which involve deductibles, co-payments, and out-of-pocket maximums, appear to fall within the scope of the above-quoted Board ruling, as affirmed by the Appellate Court.

160105 at ¶ 26, "[t]he Board has also consistently held that "a proposal seeking the waiver of a statutory right is a permissive subject of bargaining," citing *City of Wheaton,* at *10. *City of Wheaton*, however, was an interest arbitration case, dealing with contract formation proposals as opposed to contract interpretation questions. Thus, in a protective services interest arbitration case, a party may advance a proposal with which the other party does not agree. Such a proposal may be included in the final agreement if the proposal involves a mandatory subject of bargaining, but may not be required to be included if the subject is permissive. *Skokie Firefighters; Village of Bolingbrook*, 37 PERI ¶ 59 (IL LRB-SP 2020). By way of contrast, as discussed above, and is true in this case, a party may agree to include in a collective bargaining agreement a provision containing a permissive subject of bargaining; that provision is as binding and enforceable as any other legal contract provision.

Moreover, the disputed language in *City of Wheaton* involved an employer proposal that potentially would have made bargaining unit employees' health insurance benefits dependent on future employer decisions concerning plan benefits made with respect to non-bargaining unit employees. That fact situation is not present here, inasmuch as the same plan provisions apply to all Village employees, with no evident employer discretion to impose on bargaining unit members plan provisions applicable in the first instance to non-bargaining unit employees.

7. Application of the *Spielberg* Standards

a. Presentation to and consideration by the Arbitrator of the unfair labor practice issues.

The first of the requirements for a *Spielberg* deferral is that the issues raised by the unfair labor practice charge must have been presented to and considered by the arbitrator. In this case, a review of the Simon Award establishes that the Arbitrator was presented with and did consider the central factual issue raised by the Charge.

In *Moehring v. Illinois Labor Relations Board*, 2013 IL App (2d) 120342 (*"Moehriing"*) at ¶ 26, the Appellate Court ruled that application of the *Spielberg* standards requires only a determination as to "whether 'the issues were presented to the arbitrator'" (citing *North Shore Sanitary District* and *City of Alton*) and a determination as to "whether the arbitrator made 'a factual finding with regard to a crucial allegation' of the unfair labor practice complaint." There is no requirement in *Moehring* or the cases cited therein that the arbitrator must have *decided* or *resolved* the statutory allegations presented.

In this case, the Arbitration Award states that, at the arbitration hearing, the Village presented evidence from its insurance broker to the effect that both the old and contested PPO plans had an actuarial value of 83%, meaning that each plan covered 83% of the costs, with an insured member being responsible for the remaining 17%. The witness testified that these percentages were computed using a U.S. Department of Health and Human Services AV calculator, which is the industry standard for computations of this type. With respect to this evidence, the Arbitrator ruled that "the Employer has presented a rational basis for assessing the comparability of the two insurance plans, which the Arbitrator finds persuasive."

The Union disagreed. Among other contentions, the Arbitrator noted in the Award, the Union argued "that the Village's interpretation effectively waives its statutory right to bargain health insurance as a term and condition of employment, particularly because the insurance plans cover employees who are not in the bargaining unit." This is the same allegation as the central allegation raised by the Complaint.

In ruling on the Union's argument, the Arbitrator said:

> Although the actuarial average was computed on the basis of all members of the plan, which includes employees outside of the bargaining unit, the Union has not offered any basis to conclude there would be any significant difference if only the bargaining unit members were considered.

In filing the Charge, the Union effectively admitted that the central issue raised by the Charge was presented to and considered by the Arbitrator. In an attachment to the Charge, the Union asserted:

> In this case, the unfair labor practice issues were not presented to and considered by the Arbitrator because there was no pending unfair labor practice charge at the time. Notwithstanding, the Union argued that the Village's criteria constituted a permissive subject of bargaining, but the Arbitrator rejected this argument on the basis that the Union did not prove that the outcome would have been different had only bargaining unit employee utilization been considered.

The fact that there was no unfair labor practice charge on file at the time is irrelevant, for even though the Arbitrator did not resolve, or purport to resolve, the statutory allegations raised by the ensuing unfair labor practice charge, he did make a factual finding concerning the issue that is central to the Complaint. This is sufficient to meet the first *Spielberg* requirement.

b. The proceedings appear to have been fair and regular

There is no evidence that the arbitration proceedings were anything but fair and regular, and the Union does not argue otherwise. The second *Spielberg requirement,* therefore, has been met.

c. All parties to the arbitration agree to be bound by the award.

The CBA states, in Section 14.4, that "[a]ny decision or award of the arbitrator rendered within the prescribed limitations of this Agreement shall be final and binding upon the Village, the Union and the employees covered by this Agreement." This meets the third *Spielberg* requirement.

d. The arbitration award is not clearly repugnant to the purposes and policies of the Act.

The Complaint in this case alleges that the "Respondent has failed and refused to bargain in good faith with the Charging Party in violation of Section 10(a)(4) and (1) of the Act." The evidence, however, establishes that the Respondent did bargain with the Charging Party with respect to the provision of health insurance coverage to members of the bargaining unit by means of a Village-wide health insurance plan referenced in Article XX of the CBA. The parties also agreed upon a grievance and arbitration procedure whereby disputes over the meaning and interpretation of the CBA could be grieved and ultimately resolved by an arbitrator. Utilizing this agreed-upon procedure, the parties' dispute was heard and decided by Arbitrator Barry Simon, operating in accordance with a limitation of authority, agreed upon by the parties in Section 14.4 of the CBA, that provided that the arbitrator was "without power to make any decision or award which is contrary to or inconsistent with, in any way, applicable laws, or rules and regulations of administrative bodies that have the force and effect of law." The resulting Award, which contained "a factual finding with regard to a crucial allegation" of the Complaint, *Moehring,* at ¶ 26, quoting *North Shore Sanitary District*, at 296, was the product of this agreed-upon procedure, the agreed-upon limitations on the authority of the Arbitrator, and the agreed-upon waiver of mid-term bargaining over matters already fully bargained and included in the CBA.

As noted above, the policy of deferral, as embodied in Section 11(i) of the Act, recognizes that the collective bargaining relationship of parties subject to the Act is best nurtured by encouraging them to resolve their disputes by means of voluntary and agreed-upon grievance and arbitration procedures. *PACE Northwest.* Absent evidence that the Arbitrator exceeded his authority under Section 14.4 of the CBA, it must be concluded that the purposes and policies of

the Act are satisfied where, as here, the parties' dispute over the interpretation and application of their collective bargaining agreement was resolved by means of the Arbitrator's authoritative interpretation of the CBA's language. Because the arbitration award was not "clearly repugnant to the purposes and policies of the Act," it is concluded that the fourth *Spielberg* requirement is met.

IV. CONCLUSION

The four *Spielberg* requirements having been met, the Respondent's Motion to Defer is granted.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint be dismissed.

VI. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommended Decision and Order. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-

400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings at ILRB.Filing@illinois.gov. All filings must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions, responses, cross-exceptions, and cross-responses sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions, responses, cross-exceptions, and cross-responses have been provided to them. The exceptions, responses, cross-exceptions, and cross-responses 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 in Chicago, Illinois on January 4, 2022.

Donald W Anderson

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Donald W. Anderson
Administrative Law Judge

Illinois Labor Relations Board
160 N. LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400