STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Fire Fighters, Local 4646	)	
Charging Party,	)	
and	)	Case No. S-CA-21-087
Village of Oak Brook,	)	
Respondent.	)	

ORDER

On June 28, 2022, Administrative Law Judge Sharon Purcell, 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 Decision and Order during the time allotted, and at its November 10, 2022 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 November 10, 2022.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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

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Administrative Law Judge's Recommended Decision and Order

On March 18, 2021, the Illinois Association of Fire Fighters, Local 4646 (Charging Party, IAFF, or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the Village of Oak Brook (Respondent or Village) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315, *as amended.* The charges were investigated in accordance with Section 11 of the Act and on June 30, 2021, the Board's Executive Director issued a Complaint for Hearing.

On June 30, 2021, the Executive Director also issued a complaint for hearing in *Illinois Fraternal Order of Police Labor Council and Village of Oak Brook*, Case No. S-CA-21-103, alleging that the Village violated Section 10(a)(4) and (a)(1) of the Act when it refused to pay its police officers who are members of a bargaining unit represented by Illinois Fraternal Order of Police Labor Council (ILFOP) a 2.75% wage increase as agreed to in their CBA and failed to submit a grievance over that action to arbitration. The complaint alleged that the Village's actions constituted a repudiation of the CBA.

On February 9, 2022, Respondent filed a motion to defer case no. S-CA-21-087 to arbitration. On February 14, 2022, Charging Party filed its response in opposition to the motion to defer.

I. The Complaint and Answer

As the complaint alleges and the Village answers, the Union is the exclusive representative of all full-time employees of the Village's Fire Department (Department) in the titles Lieutenant, Firefighter, or Firefighter/Paramedic. The Union and the Village are parties to a collective bargaining agreement (CBA) with a term of January 1, 2019, through December 31, 2022, governing the bargaining unit. Article 12 of the CBA provides that bargaining unit members were to receive a wage increase of 2.75% starting January1, 2021. On December 8, 2020, the Village approved its budget for the 2021 fiscal year, which did not appropriate funds sufficient to pay the wage increase. On December 11, 2020, Benjamin Gehrt, legal counsel for the Village, sent a letter to IAFF's legal counsel, Keith Karlson, acknowledging that the bargaining unit members would not receive the wage increase. The complaint alleged that the Village's failure to pay the wage increase constituted a substantial breach and repudiation of the CBA in violation of Section 10(a)(4) and (a)(1) of the Act. The Village denied the allegation. As affirmative defenses, the Village asserts that (1) the complaint fails to state a claim for relief under the Act; and (2) the Village's actions are authorized under Illinois statutory law.

II. Procedural History

A. The Circuit Court Litigation

On February 2, 2021 (prior to issuance of the complaint here), the Village filed a complaint for declaratory action and stay of arbitration against the IAFF and a complaint for declaratory action and stay of arbitration against the Illinois Fraternal Order of Police Labor Council (ILFOP) in the circuit court of DuPage County. In each case, the Village argued that (1) Section 21 of the

Act makes multiyear CBAs subject to the employer's appropriations power,[1] and (2) Section 8-1-7 of the Illinois Municipal Code (Code) authorizes the existence of multiyear CBAs and in the absence of that legislation all the provisions of a multiyear CBA would be void *ab initio*. The Village stated that at the time it signed the CBA, COVID-19 had not yet appeared, and it could not have predicted the economic toll the pandemic would take on the Village. It stated that the IAFF filed a grievance and demanded arbitration after the Village notified it that the employees would not receive wage increases. The Village asked the circuit court to rule that (1) the Municipal Code gives it the power to decide how much money to appropriate for salaries and other personnel expenses; (2) Section 21 of the Act applies to the Village; and (3) the Village lawfully exercised its appropriations power when it passed the 2021 fiscal year budget that did not include wage increases.

With respect to the Village's request that the court stay arbitration of the IAFF's grievance, the Village stated that under the CBA only grievances involving an allegation of a misapplication or violation of an express provision of the CBA can be submitted to arbitration. It argued that the parties' dispute does not involve an express provision of the CBA and therefore it does not involve a question of contract interpretation. Rather, it asserted that the dispute involves a question of statutory interpretation regarding the meaning of the Municipal Code and its application to Section 21 of the Act. The Village argued that it never agreed to have disputes over its fiscal authority under the Municipal Code resolved by an arbitrator.

B. The Unfair Labor Practice Proceedings

[1] Section 21 of the Act provides: Subject to the appropriation power of the employer, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this Act. 5 ILCS 315/21.

On July 9, 2021, I granted the Village's unopposed motion to consolidate Case No. S-CA-21-103 with the instant case for hearing and its request for an extension of time to August 2, 2021, to answer the complaints. On August 2, 2021, the Village filed its answers to the complaints, and it also filed a motion to hold the consolidated unfair labor practice cases in abeyance pending resolution of the circuit court litigation. It argued in its motion that the facts of the unfair labor practice cases were not in dispute and that the circuit court's resolution of whether the Municipal Code gives the Village authority to engage in the at-issue conduct would largely, if not entirely, resolve the unfair labor practice allegations. And it asserted that Section 21 of the Act supersedes the terms of the multi-year CBA. The Village contended that the only question in the case is a legal issue arising under the Municipal Code. It argued that the Board lacks expertise and jurisdiction to decide the issue. The Village asserted that the Board could not fully address the legal issues raised in the unfair labor practice complaints until the circuit court ruled on the appropriate application of the Municipal Code.

On August 6, 2021, the IAFF and the ILFOP filed a joint response opposing the motion to hold the case in abeyance. They argued that the dispute arises under the Act and that the circuit court lacks jurisdiction to interpret the Act. On August 11, 2021, the Village requested leave to file a reply to the Union's response to its motion by August 25. I received no objection and, on August 16, granted the request.

On August 30, 2021, counsel for the Village indicated that the Village and the unions were working to finalize details of a settlement of their disputes. It stated that the circuit court had extended the proceedings before it to September 30, 2021, to allow the parties to explore settlement and asked that the unfair labor practice proceedings likewise be stayed to that date. The IAFF and

the ILFOP each indicated it did not oppose the stay request. I granted the request and directed the parties to provide a status report on or before October 5, 2021.

On September 30, 2021, the Village reported that it and the ILFOP were working out the final written details of a settlement agreement, and that it and the IAFF were still engaged in settlement discussions. It further reported that, the previous day, the circuit court granted the Village's uncontested motion to extend the time to October 21, 2021, for the Village to file a responsive pleading in the litigation pending there to permit the parties to explore settlement. The Village asked that the unfair labor practice cases also "be continued/held in abeyance" until October 21. There was no objection from the ILFOP or IAFF, and I granted the request.

On November 1, 2021, I asked the parties for a status report. The IAFF reported that it was ready to proceed on the case. On November 2, 2021, the ILFOP informed me that it had received a signed settlement agreement from the Village and would withdraw its unfair labor practice charge once the Village complied with the settlement terms. The ILFOP asked for a 60-day status date. The Village responded with another request to reply to the unions' response to the Village's motion to hold the case in abeyance. I granted the Village's request and, as the ILFOP requested, set a status date of January 7, 2022.

On November 9, 2021, the Village filed its reply. It argued that the Municipal Code, not the Act, is at the heart of the parties' dispute and it lawfully exercised its appropriations power under the Municipal Code. It contended that the Board cannot resolve this matter without interpreting the Municipal Code. The Village asserted that the Board cannot address the legal issues alleged in this case "without opining on a matter strictly within the wheelhouse of state courts." It also maintained that it is attempting to litigate the issues as expeditiously and efficiently

as possible, and the circuit court's determination as to the Village's authority under the Municipal Code would advance that end.

On December 27, 2021, at the ILFOP's request, the Executive Director withdrew the charge in Case No. S-CA-21-103.

C. The Circuit Court Dismisses the Village's Complaint

On February 4, 2022, the circuit court dismissed the Village's complaint for declaratory judgment and stay of arbitration against the IAFF. On March 22, 2022, the circuit court issued its written decision dismissing the Village's complaint for declaratory judgment and stay of arbitration against the IAFF.[2] The court noted the Village's argument that the parties' dispute centers on its appropriations power under the Municipal Code, which deals with appropriations in the context of a multi-year contract, and which it asserted is a question over which only the court has jurisdiction. In its ruling, the court considered and relied on Section 8-1-7 of the Municipal Code, and in particular Section 8-1-7(d), which provides:

> To promote orderly collective bargaining relationships, to prevent labor strife and to protect the interests of the public and the health and safety of the citizens of Illinois, this section shall not apply to multi-year collective bargaining agreements between public employers and exclusive [representatives] covered by the provisions of the Illinois Public Labor Relations Act.

[65 ILCS 5/8-1-7(d)].

The court stated that it was persuaded that the Board has exclusive jurisdiction over the dispute and, so finding, dismissed the Village's complaint.

D. The Village's Motion to Defer this Case to Arbitration

On February 9, 2022, the Village filed a motion to defer this case to arbitration. The IAFF opposes the motion. Neither party set forth in its filing the substance of the grievance. However,

[2] The court acknowledged that the ILFOP and the Village settled their dispute.

the Village included it as an appendix to its motion to defer and, so, I set forth the relevant portions here:

> NATURE OF GRIEVANCE: Employer is unwilling to pay 2.75% cost of living increases as is mandated by the CBA. . . .
>
> FACTS SUPPORTING GRIEVANCE: On December 11, 2020 Employer's attorney, Ben Gerht, sent a letter to counsel for the Union. [ ] In that letter, the Employer expressed its intent to breach and repudiate the CBA in violation of several provisions of the CBA. Employer stated it refuses to pay the contractually agreed upon wage increases. On December 21, 2020, during an in-person labor-management meeting, the Employer explained its refusal to pay the contractually mandated wages is due to its "unwillingness" to do so, not an inability to pay. Section 21 of the IPLRA does not alleviate the Employer of its obligation to abide by the CBA. Instead, the Illinois Municipal Code exempts multi-year collective bargaining agreements from the appropriations process. Employer's unilateral act intentionally breaches Article XII of the CBA. It also breaches any provisions of the CBA providing benefits and/or wages based upon base salary. . . .
>
> SPECIFIC RELIEF REQUESTED TO MAKE WHOLE: To pay all wages (including straight time, overtime, holiday, pension contributions, and any other wages/benefits based off base salary) owed to covered employees, plus reasonable interest and/or investment return.

On January 27, 2021, IAFF counsel Keith Karlson sent an email to Mr. Gehrt informing him that the Union disagreed with the Employer's denial of the grievance. He wrote, "please consider this email as the union's election to resolve this grievance via arbitration. Please provide a list of arbitrators the Village suggests for resolution of this matter." On February 7, 2022, Mr. Gehrt sent an email to Mr. Karlson telling him that in anticipation of a decision in the circuit court in the immediate future, the Village had authorized him to select an arbitrator. He further indicated that following the January 27, 2021, email, the IAFF did not request a panel of arbitrators from FMCS, and he asked Mr. Karlson to request the panel so they could engage in the striking process.

III. Issues and Contentions

This case presents the issue of whether deferral of the unfair labor practice charge to the grievance arbitration process is appropriate where Charging Party invoked the CBA's grievance arbitration procedure.

First, the Village asserts that its motion is timely filed. It acknowledges that Section 1220.65(b)(2) of the Board's Rules provides that a party may file a motion to defer within 25 days after the complaint issues. 80 Ill. Admin. Code § 1220.65(b)(2). But the Village asserts that the motion nevertheless is timely because it was granted an extension of time answer the complaint. It further contends that the grant of its request on August 30, 2021, to stay the proceedings correspondingly tolled the time to file a motion to defer.

Additionally, the Village asserts that a variance under Board Rule 1200.160 from the requirements of Board Rule 1220.65 is appropriate. It notes that the requirements of Rule 1220.65 are not statutorily mandated. It contends that granting a variance will not injure the Union as the case is in the early stages and the existing grievance demonstrates the Union's interest in resolving the dispute through that process. The Village further argues that, in light of the purpose of arbitration and the existing stay, it would be unreasonable to strictly interpret the filing requirement of Rule 1220.65(b)(2). It asserts that doing so would deprive the parties of the ability to use their collectively bargained resolution process, *i.e.*, grievance arbitration, and would burden the Board's docket. The Village contends that the case was essentially stayed while the parties litigated in circuit court, and I considered its motion to hold the case in abeyance. It asserts that it would have been impractical and burdensome for the Village to ask for deferral while the circuit court litigation was pending.

Substantively, the Village argues that the Board should defer this case to arbitration under the *Dubo* standard for deferral because the IAFF grieved the Village's refusal to pay the wage

increases, the Village is willing to arbitrate, and the grievance has been advanced to arbitration to decide whether the Village violated Article 12.1 of the CBA or properly exercised its appropriations power as authorized by the Municipal Code. According to the Village, the IAFF's grievance and the unfair labor practice charge present identical issues. It states that both turn on the interpretation of Article 12.1 of the CBA and the Village's appropriations power under the Municipal Code. The Village asserts that whether the arbitrator finds for the Union or the Village, this case will be moot.

The IAFF argues that the motion to defer is untimely and that arbitration will not resolve the statutory issue alleged in the complaint. With respect to the motion's timeliness, it asserts that the complaint issued on June 30, 2021, and therefore, to be timely under Rule 1220.65, the motion had to be filed on or before July 25, 2021. The IAFF points out that the Village did not file a motion asking to extend the time for filing the motion to defer and did not include such a request in either the answer to the complaint or the motion to hold the case in abeyance, each of which the Village filed on August 2, 2021. Therefore, the Village waived deferral.

The IAFF also contends that the Village has not met the standards for granting a variance from the Board's rules for filing a motion to defer. First it asserts that section 1200.160 of the Board's rules only permits the Board and not the ALJ to grant a variance and therefore the Village's motion must be denied. As to the criteria for a variance set forth in section 1200.160, the IAFF acknowledges that the time for filing a variance is not statutorily mandated and therefore section 1200.160(a) is not met. However, the IAFF argues that it will be injured if a variance is granted. It asserts that the Village's motion to defer is a stall tactic and part of its ongoing failure to honor its contractual obligations evidenced by its circuit court action which included its motion to stay arbitration, and by its motion to hold the unfair labor practice proceeding in abeyance. The

IAFF states that the Village has paid retroactive wage increases to all its employees who are members of bargaining units, except the members of the IAFF bargaining unit. It argues that if the IAFF prevails at arbitration, the Village will ask the circuit court to vacate the award. The IAFF contends that its members will be injured by the ongoing delay. It also argues that denying the variance will not be unreasonably burdensome to the Village given that the Village did not explain why it was unable to file a timely motion to defer. It states that the Village, having filed an action in circuit court and several additional pleadings thus far, cannot reasonably assert that it is burdened by expensive and duplicative litigation.

The IAFF urges that the Board must address the Village's claim that its failure to pay the wage increases is permitted under Section 21 of the Act. It states that the Board has exclusive jurisdiction to do so. And it asserts that the circuit court's finding that the Board has exclusive jurisdiction over the dispute precludes deferral to arbitration.

IV. DISCUSSION AND ANALYSIS

Section 11(i) of the Act, 5 ILCS 315/11(i), gives the Board discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure if an unfair labor practice involves the interpretation or application of a collective bargaining agreement. The interpretation and application of collective bargaining agreements is a function peculiarly within the special expertise of arbitrators. *City of Mt. Vernon*, 4 PERI ¶ 2006 (IL SLRB 1988). In *City of Mt. Vernon*, the Board adopted the deferral polices enunciated by the National Labor Relations Board decades earlier in *Spielberg Mfg. Co*., 112 NLRB 1080 (1955), *Dubo Mfg. 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 union has voluntarily initiated a grievance. And *Collyer* applies where the union has not initiated a grievance. *City of Mt. Vernon*, 4 PERI ¶ 2006.

Dubo deferral arises when, as here, the union has filed a grievance and a party asks the Board to hold the unfair labor practice proceeding in abeyance until the grievance arbitration process is complete. The Board may defer processing of the unfair labor practice charge if (1) the parties have already voluntarily submitted their dispute to their agreed-upon grievance arbitration procedure; (2) that procedure culminates in final and binding arbitration; and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. *State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.)*, 19 PERI ¶ 114 (IL LRB-SP 2003); *Pace Nw. Div.*, 10 PERI ¶ 2023 (IL SLRB 1994); *City of Mt. Vernon*, 4 PERI ¶ 2006.

A. *The Motion to Defer Is Procedurally Inappropriate*

1. *The Motion to Defer Is Untimely*

Initially, I find that the Village's motion to defer is untimely. Pursuant to Board Rule 1220.65(b)(2), 80 Ill. Admin. Code § 1220.65(b)(2), a motion to defer must be filed within 25 days after the issuance of the Complaint. The complaint was issued on June 30, 2021, and therefore the motion to defer should have been filed no later than July 25, 2021, the 25th day from the complaint's issuance. The Village filed its motion on February 9, 2022, more than six months after the complaint issued, clearly beyond the time frame required under the Board rule. The Village asserts that the grant of its request for an extension of time in which to answer the complaint correspondingly extended the time in which to file a motion to defer. And it contends that granting its request to stay proceedings while the parties discussed settlement tolled the filing requirement set forth in Rule 1220.65(b)(2).

But permitting the extension of time in which to file an answer to the complaint did only what the Village asked – it gave the Village additional time to file its answer to the complaint. The Village did not request an extension of time to file a motion to defer and nothing in Board Rule

1220.40(b), 80 Ill. Admin. Code § 1220.40(b), which sets forth the requirements for answering the complaint, ties the filing requirement for deferral set forth in Rule 1220.65(b)(2) to the complaint's answer. The Village cites no authority for its position, and none exists. Its argument can only be rejected.

Likewise, the Village only asked to stay the unfair labor practice proceedings because the parties were pursuing settlement. The IAFF and the ILFOP agreed to that request. The Village never asked for, or even hinted that it might ask for, deferral to the arbitration process. As the parties indicated they all were in favor of staying the proceedings, I granted the request to allow them to explore settlement. The requirements of Rule 1220.65 were unaffected. In any event, as noted above, the request to stay the proceedings was made on August 30, 2021, which already was more than one month beyond July 25, 2021, the latest date on which the motion to defer could be filed in accordance with the Board's rule. In other words, the Village already had failed to meet the Rule's requirement and granting the parties time to pursue settlement could not change that fact. The Village's argument is devoid of merit and is rejected.

2. *The Village's Motion Does Not Meet the Criteria for Granting a Variance from Board Rule 1220.65*

The Village asks for a variance from the provisions of Section 1220.65 to permit it to file its motion to defer beyond the time the rule prescribes. The Board has discretion to grant a variance from its rules pursuant to Section 1200.160 of the Rules, which states:

> The provisions of this part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:
>
> a) the provision from which the variance is granted is not statutorily mandated;
>
> b) No party will be injured by the granting of the variance; and
>
> c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

80 Ill. Admin. Code § 1200.160.

The Board has discretion to grant a variance if all three prongs are satisfied. However, even if all three prongs are met, granting a variance is a matter of Board discretion and not a matter of right of the party. *Wood Dale Fire Protection Dist. v. Ill. Labor Relations Bd., State Panel*, 395 Ill. App. 3d 523, 530 (2d Dist. 2009); *City of Ottawa*, 27 PERI ¶ 6 (IL LRB-SP 2011). The Board must consider the respondent's excuses, explanations, and mitigating circumstances in determining whether strict adherence to its filing rule is unreasonable or unnecessarily burdensome. *Wood Dale*, 395 Ill. App. 3d at 530, 532-33.

Here, the first requirement of Section 1200.160 is met because the 25-day filing rule in Section 1220.65(b)(2) is not statutorily mandated. With respect to the second prong, the IAFF states that the Village's ongoing tactic of delay has and will continue to injure the bargaining union members. It asserts that the Village's strategy of seeking a favorable circuit court ruling on its arguments that the Municipal Code and Section 21 of the Act permitted its conduct and that the parties' dispute did not present a question of contract interpretation but only a question of statutory interpretation was intended to delay resolution of the parties' dispute, causing harm to the employees. And the IAFF asserts that the Village would further delay resolution by returning to the circuit court to seek to vacate an adverse arbitration award.

This argument is unpersuasive. Through the Uniform Arbitration Act, the General Assembly has provided parties with the circuit court processes. *See* 710 ILCS 5/2(b) ("On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate."); 5 ILCS 315/8 ("The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act'."); *Dep't of Cent. Mgmt. Servs. v. Am. Fed'n of State, Cnty. & Mun. Emps.*, 222 Ill. App. 3d 678, 685

(1st Dist. 1991) (parties are statutorily entitled to challenge arbitration award in court). Nothing in the circuit court's order dismissing the Village's action indicates the litigation was instituted for the purpose of delay. And the IAFF'S assertion that the Village will again go to the circuit court in the event of an adverse award is speculative and does not show injury to the bargaining unit members. The Village's use of the litigation avenue provided by the General Assembly is not a basis for denying a variance.

Additionally, the IAFF's contention that the circuit court's order dismissing the Village's complaint prohibits deferral of this case to arbitration is rejected. The IAFF provides no support for this novel argument because there is none. The General Assembly gave the Board jurisdiction over unfair labor practices, and, with that, the discretion to defer a dispute when appropriate. The circuit court's order does not have the effect the IAFF claims.

However, the Village filed its motion to defer and request for a variance more than six months beyond the timeframe Rule 1220.65(b)(2) prescribes. I find that granting a variance in such circumstance is harmful to the bargaining unit members because it delays to an unwarranted degree the final resolution of the dispute over the Village's failure to pay the wage increases, a term of employment of critical importance to any employee. Accordingly, the Village fails to meet the second criterion for granting a variance from the requirements of Rule 1220.65.

The Village asserts that the case essentially was stayed while the circuit court litigation was pending and its motion to hold this case in abeyance was under consideration and, therefore, it would be burdensome and impractical to require it to have requested deferral while the circuit court litigation was pending. But it does not explain why that is so. As explained above, I granted the parties' request to stay proceedings based on their representation that they were exploring settlement. It was unrelated to the circuit court proceedings and to the Village's motion to hold

this case in abeyance pending resolution of the circuit court litigation. Moreover, that the motion to hold this case in abeyance remained pending did not implicitly grant the motion as the Village suggests. The Village's statement that because the circuit court has dismissed the action, the Village's motion to hold this case in abeyance is moot is correct. It is also an acknowledgement that the motion to hold the case in abeyance had never been granted, either explicitly or implicitly. In any event, because the motion is moot, no ruling on it will be forthcoming.

The Village also states that denying deferral would deprive the parties of use of the arbitration process. This argument is disingenuous, given the Village's efforts in the circuit court to block the use of the arbitration process. Although, as explained above, the Village had a right to pursue that avenue, that it did so is, at least, inconsistent with its currently articulated concern over encouraging and safeguarding access to and use of the arbitration process. Because of the Village's failure to explain why requiring the timely filing of the motion to defer would be burdensome and unreasonable, I find that it did not meet the third criterion for granting a variance under Rule 1220.160. Because the Village failed to meet the second and third criteria for granting a variance under Rule 1220.60, its request for such is denied.

The Village's motion to defer is untimely and it does not meet the requirements for a variance from the filing requirements of Rule 1220.65. Accordingly, the Village's motion to defer is denied.

B. *Dubo Deferral Is Substantively Appropriate*

Even if the Board finds that the Village's motion is procedurally inappropriate, it nevertheless may find that deferral is substantively appropriate and defer this matter to arbitration. Section 11(i) of the Act gives the Board discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure. And Section 1220.65(a) of the Board's

Rules provides that the Board may, on its on motion, defer an unfair labor practice charge to the grievance arbitration process. Deferral on the Board's own motion has no timeliness requirement. *See* 80 Ill. Admin. Code § 1220.65(a). As the Board has explained, "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." *Pace Nw Div.*, 10 PERI ¶ 2023; *Vill. of Oak Park*, 30 PERI ¶ 51 (IL LRB-SP 2013). Though the Village's motion is not procedurally appropriate, because it is the preferred policy to allow the parties to settle contractual disputes under their bargained upon grievance and arbitration procedure, and the Board has discretion to defer this matter, whether deferral is substantively appropriate will be considered.

As described above, the Village sought to stay the arbitration in circuit court and now seeks to defer this proceeding to the arbitration process, although the parties have not indicated that they have chosen an arbitrator or agreed on an arbitration hearing date. In any event, as explained below, the only issue with respect to the motion to defer is whether there is a reasonable chance that the arbitration process will resolve the parties' dispute. In this case, I find there is.

Here, the IAFF filed a grievance over the subject matter of the unfair labor practice charge, and therefore the Village's motion to defer is considered under the *Dubo* standard. As explained above, deferral under this standard is appropriate if (1) the parties have already submitted their dispute to the grievance arbitration process; (2) the process culminates in final and binding arbitration; and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. *PACE Nw Div.*, 10 PERI ¶ 2023. The Village contends that these requirements are met. The IAFF disputes that the requirements for deferral are met. And as described above, it also

asserts that the Village has sought to delay resolution of the dispute and has engaged in other bad faith bargaining conduct.

The IAFF's argument with respect to the Village's motives and conduct is rejected as irrelevant to the *Dubo* analysis. While *Collyer* deferral considers whether there is evidence of enmity by the respondent towards the employees' exercise of protected rights, the *Dubo* analysis does not. The first of the *Dubo* requirements is that the parties have submitted their dispute to the grievance and arbitration procedure. The IAFF did so and, plainly, the Village currently is agreeable to the process. Accordingly, the first requirement is met. The grievance process agreed to in the parties' CBA culminates in final and binding arbitration. Therefore, the second requirement is met. The question to be resolved, then, is whether the third requirement is met: that there is a reasonable chance that the grievance and arbitration process will resolve the dispute.

The Village argues that the IAFF's claim that the Village improperly refused to pay the salary increases turns on the interpretation of Article 12 of the CBA and the Village's appropriations power under the Illinois Municipal Code. It contends that the IAFF's argument that the Village's contract violation rises to the level of contract repudiation rests solely on a violation of Article 12. It asserts that the arbitrator must decide whether the Village violated Article 12 or whether it properly exercised its authority under the Municipal Code, and that this is the same question as that before the Board. However, the Village incorrectly describes the issue before the Board. The issue before the Board is not whether the Municipal Code permits the Village's conduct. The issue before the Board is whether the Village's conduct violated section 10(a)(4) of the Act.

As described above, the IAFF elected arbitration to settle its grievance. Now, it argues that arbitration is not appropriate because it will not resolve the parties' dispute which centers on

Section 21 of the Act. Conversely, the Village sought to stay arbitration in the circuit court. There and in its motion to hold this case in abeyance it argued that it had a statutory right to forgo paying salary increases to the bargaining unit members and there were no disputed facts at issue, including interpretation of the parties' CBA. The Village now expresses concern for ensuring the accessibility of the arbitration process for the parties and states that the dispute centers on Article 12 and the Municipal Code.

The parties have changed their positions on whether arbitration can settle this dispute. But the passage of time and litigation does not change the nature of the dispute. The IAFF filed a grievance alleging that the Village violated Article 12's agreement to provide salary increases to the firefighters. The issue relevant to the Village's decision not to pay the salary increases involves the application of the parties' collective bargaining agreement, in particular Article 12. Given that the IAFF already invoked the CBA's grievance procedure to resolve the dispute over Article 12, there is a reasonable chance that arbitration will resolve the dispute presented by the complaint for hearing. Therefore, I find the third and final *Dubo* deferral prong is satisfied. Consequently, I recommend that the Board exercise its discretion to defer this case to arbitration.

Finally, while deferring this matter, the Board retains jurisdiction over the unfair labor practice charge until the parties exhaust the grievance arbitration process. *See Vill. of Midlothian Police Dep't*, 34 PERI ¶ 145 (IL LRB-SP 2018); *PACE Nw Div.*, 10 PERI ¶ 2023. Accordingly, a party may request that the Board review the arbitration award to determine whether it addresses the issues in the complaint to ensure the protection of statutory rights. *Id*. This charge meets the *Dubo* standard and may appropriately be deferred to the CBA's grievance arbitration procedure.

V. CONCLUSIONS OF LAW

It is appropriate to defer this charge to the CBA's grievance arbitration procedure.

VI. RECOMMENDED ORDER

This unfair labor practice charge is deferred to arbitration. The complaint in case no. S-CA-21-087 will be held in abeyance until the parties have completed the grievance arbitration process. Within 30 days after the termination of that process, a party may notify the Board of the termination and request that the Board review the award to determine whether there are any substantial issues left unresolved by the arbitration or to proceed with the charge on the basis that the award is contrary to the policies underlying the Act. A party's request should include a copy of the award along with a detailed statement of the facts and circumstances bearing on the party's request for review of the award. If no party makes such request within the time specified, the Board may dismiss this charge upon a party's request or on its own motion. It is also ordered that the parties inform the Board of any significant delay in the grievance arbitration process or of any resolution of the matter prior to issuance of an award.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's 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 at Chicago, Illinois this 28th day of June 2022

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Sharon Purcell

Sharon Purcell
Administrative Law Judge