**STATE OF ILLINOIS**
**ILLINOIS LABOR RELATIONS BOARD**
**GENERAL COUNSEL**

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| City of Decatur,<br><br>Employer,<br><br>and<br><br>International Association of Firefighters, Local 505,<br><br>Labor Organization/Petitioner. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. S-DR-22-001 |

## DECLARATORY RULING

On March 9, 2022, the City of Decatur (Employer) and the International Association of Firefighters Association, Local 505, (Union) jointly filed a Petition for Declaratory Ruling (Petition) pursuant to Section 1200.143(b) of the Rules and Regulations of the Illinois Labor Relations Board (Board). 80 Ill. Adm. Code §1200.143(b). The Petition seeks a determination regarding whether the maintenance of the position of Fire Inspector and a specific or minimum number of positions concerns a mandatory or permissive subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq*., (Act). Both parties filed briefs in support of their respective positions.

## I. BACKGROUND

The Union represents an historical bargaining unit comprised of all "classified fire service employees" below the rank of Battalion Chief in the Employer's Fire Department, including the Fire Inspector position at issue in this determination. The Union and Employer have been parties to a series of collective bargaining agreements since at least 1979, covering the historic bargaining unit, with the first agreement effective May 1, 1979, through April 30, 1981 (1979-81 CBA, Un.

Ex. 2). In that first agreement and the two successive agreements, which had effective dates of May 1, 1981, through April 30, 1983 (1981-83 CBA) and May 1, 1983, through April 30, 1985 (1983-85 CBA), listed the Fire Inspector position as a classified fire service employee position, assigned to salary grade 20. See, e.g., 1979-81 CBA, Ex. A (Un. Ex. 2 p. 16). The parties are currently negotiating over a successor to their most recent collective bargaining agreement covering the period from January 2017 through December 31, 2019 (2017-2019 CBA).

Article 8, Section 9, of the parties' 2017-2019 CBA includes a provision relating to Fire Inspectors and states in relevant part:

> (a) The Fire Chief may establish the assignment of Fire Inspector. Such assignment shall have the responsibility of determining the cause or origin of fires, interviewing arson suspects or witnesses, appearing in court as prosecution witnesses in arson and other cases, performing various public education functions and other related duties as assigned. Individuals assigned as Fire Inspectors pursuant to this subparagraph (a) may resign from such assignment at any time, with sixty (60) days' notice, and such officers shall be re-assigned by the Chief according to their respective ranks. Three (3) officers may be assigned as Fire Inspector at any time.

There have been three Fire Inspectors in the Employer's Fire Department until May 2020, when all three individuals employed as Fire Inspectors retired. The Employer has not filled these positions and announced that it wanted to take a different approach with respect to fire inspections. The Union filed two unfair labor practice charges in Case Nos. S-CA-20-221 and S-CA-21-086, alleging the Employer violated sections 10(a)(4) and 10(a)(1) by failing to post and fill or promote the vacancies when the three individuals retired and transferring work out of the bargaining unit. Complaints for hearing were issued by the Board's Executive Director to which the Employer filed an answer, denying the allegations and also filing affirmative defenses. Both cases are currently awaiting hearing before Administrative Law Judge Michelle Owen.

## II. ISSUES

The Petition, which was jointly filed by the parties, states the issue as "Is the Union's Proposal to maintain the position of Fire Inspector and/or a specific or minimum number of fire inspector positions in the bargaining unit a mandatory or permissive subject of bargaining?" The Union contends the maintenance of Fire Inspectors in the bargaining unit and their staffing levels concern mandatory subjects of bargaining because (1) these topics involve historical subjects of bargaining, for which the limitations on an employer's bargaining obligations under Sections 4 and 14(i) of the Act are not applicable; and (2) even if they are not deemed historical subjects of bargaining, the topics at issue concern manning which is a mandatory subject under the express language of Section 14(i) as well as under a Central City analysis.

The Union also contends that the Employer's proposals and unilateral changes have the effect of transferring bargaining unit work to individuals outside the bargaining unit, which *is* a mandatory subject of bargaining. Lastly, the Union asserts the Employer's proposals and unilateral actions constitute a permissive subject of bargaining because they seek the Union to waive its rights under the Substitutes Act.

The Employer contends the Union's proposal concerns a permissive subject of bargaining under Section 14(i) because it directly affects the total number of employees in its Fire Department, citing City of Danville, 31 PERI ¶ 187 (IL LRB-SP GC 2014). It also asserts that the Union's proposal is a permissive subject of bargaining under a Central City analysis because the Union cannot address its concerns regarding its organizational structure, standards of service or functions of the City, and direction of employees.

## III. RELEVANT STATUTORY PROVISIONS

The duty to bargain is set forth in Section 7 of the Illinois Public Labor Relations Act, relevant portions of which provide:

> For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
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> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.
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> The duty "to bargain collectively" shall also include negotiations as to the terms of a collective bargaining agreement. The parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement. Such arbitration provisions shall be subject to the Illinois "Uniform Arbitration Act" unless agreed by the parties.

Section 4 of the Act protects certain managerial rights as follows:

> Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

However, Section 4 also contains the following in its second paragraph:

> To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

For security employees, peace officers, and firefighters and paramedics Section 2 of the Act requires an alternate means of dispute resolution for those precluded from striking, 5 ILCS 315/2, and Section 14 provides the procedures for such alternative dispute resolution: binding arbitration, 5 ILCS 315/14. Section 14(i) provides, in relevant part:

> In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (including manning and also including residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreements to other units of government; and v) the criterion pursuant to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

Section 14(i) also contains the following caveat related to historical bargaining rights:

> To preserve historical bargaining rights, this subsection shall not apply to any provision of a fire fighter collective bargaining agreement in effect and applicable on the effective date of this Act; provided, however, nothing herein shall preclude arbitration with respect to any such provision.

5 ILCS 315/14(i).

Section 1200.143(b) of the Board's rules provides the process for issuing declaratory rulings for those employees subject to the requirements Section 14 of Act, and states in relevant part:

> In protective service employee bargaining units covered by 80 Ill. Adm. Code 1230. Subpart B, if, after the commencement of negotiations and before reaching agreement, the exclusive representative and the employer *have a good faith disagreement over whether the Act requires bargaining over a particular subject or particular subjects*, they may jointly petition for a declaratory ruling concerning the status of the law.

80 Ill. Adm. Code § 1200.143(b) (emphasis added).

## IV. DISCUSSION AND ANALYSIS

For reasons discussed below, the maintenance of the position of Fire Inspector and a specific or minimum number of Fire Inspector positions concerns mandatory subjects of bargaining because they were matters that the parties bargained for before the effective date of the Act.

Parties are required to bargain collectively regarding the employees' wages, hours, and other conditions of employment—the mandatory subjects of bargaining. American Federation of State, County & Municipal Employees v. Illinois State Labor Relations Board, 190 Ill. App. 3d 259, 269 (1st Dist. 1989). In Central City Education Association, IEA-NEA v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992), the Illinois Supreme Court provided a refined analysis of mandatory subjects of bargaining where matters concern both wages, hours and conditions of employment and also inherent managerial authority. However, the second paragraph of Section 4 of the Act makes clear that matters concerning wages, hours or conditions of employment are mandatory subjects of bargaining if the parties had, prior to the effective date of the Act, entered agreements on those topics.

With respect the second paragraph of Section 4, the Union asserts the Fire Inspector position has been part of the bargaining unit of classified fire service employees since the parties' initial collective bargaining agreement, which covered the period beginning May 1, 1979, through April 30, 1981 (1979-81 CBA). It further contends that the parties engaged in pre-Act bargaining over staffing levels, pointing to the manning requirements in Article 11, titled Company Strength, as support for its claim that the parties engaged in pre-Act bargaining over the staffing levels of Fire Inspectors.

There is much merit to the Union's position. As the Union contends, the ruling in City of Rockford, 31 PERI ¶ 170 (ILRB-SP GC 2013) is applicable to the instant determination. In City of Rockford, the General Counsel found that the parties had bargained over the general subjects of company strength, "the broad scope of which include[d] issues regarding the minimum number of personnel," before the Act's effective date, concluding that those subjects were mandatory subjects of bargaining under Section 4 and 7 of the Act. See id. The General Counsel reasoned that the express language of Section 4 imposed bargaining obligations on public employers over general subjects that were bargained for and agreed to pre-Act, and thus, changes to specific terms or language related to a particular subject do not remove that obligation. See id. ("Section 4 of the Act does not bind parties to the specific terms of their agreement on a given matter or subject as of the effective date of the Act but imposes a continuing duty to bargain over that same matter or subject.").

Here, the parties negotiated and agreed to matter of the inclusion of the Fire Inspector position in the bargaining unit as evidenced by the listing of that position as a "classified fire service employee" in Exhibit A to the 1979-81 CBA, the 1981-83 CBA, and the 1983-85 CBA. The fact that the parties over time included contract language specific to Fire Inspectors in

contracts post-Act, is immaterial. See City of Rockford, 31 PERI ¶ 170 (ILRB-SP GC 2013). Pre-Act, the parties engaged in bargaining over whether to include the Fire Inspector position in the bargaining unit and agreed to include the position. As such, it follows that the parties contemplated having a minimum of one Fire Inspector. Having no Fire Inspectors would not make sense in light of the agreement to include the Fire Inspector position in the bargaining unit.

Moreover, the parties' pre-Act bargaining over the subject of company strength as evidenced by Article 11, titled Company Strength, of the 1979-81 CBA lends support to the finding that the parties bargained over the subject of minimum staffing levels. Article 11 was first included in the 1979-81 agreement and has remained in subsequent agreements though the parties' most recent agreement, albeit with some minor language changes. Although Article 11 does not specifically mention Fire Inspectors or their numbers, the general subject of Article 11 does relate to staffing or manning requirements for "classified fire service employees," which as discussed above, includes the position of Fire Inspector.

Taken together, the parties' pre-Act bargaining over and agreement on the inclusion of the Fire Inspector position and Article 11, Company Strength, which relate to the subjects of manning and staffing levels, leads to the conclusion that the maintenance of the Fire Inspection position and the specific number or minimum number of positions concerns a mandatory subject of bargaining pursuant to the second paragraph of Section 4 of the Act. Because this determination is made under Section 4 of the Act, it is not necessary to analyze the subjects at issue under Section 14(i) or use the analysis set forth in Central City Education Association v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496 (1992). It is also unnecessary to address the Union's arguments related to the Employer's conduct and the transfer of bargaining unit work.

## V. Conclusion

The Union's proposal to maintain of the position of Fire Inspector and/or a specific or minimum number of Fire Inspector positions concerns mandatory subjects of bargaining because they were matters that the parties bargained for and agreed to before the effective date of the Act.

**Issued in Chicago, Illinois, on May 20, 2022.**

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

**/s/ Helen J. Kim**

**Helen J. Kim**
**General Counsel**