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The Illinois Public Employee Relations Report provides current, nonadversarial information to those involved or interested in employer-employee relations in public employment. The authors of bylined articles are responsible for the contents and for the opinions and conclusions expressed. Readers are encouraged to submit comments on the contents, and to contribute information on developments in public agencies or public-sector labor relations. The Illinois Institute of Technology and the University of Illinois at Urbana-Champaign are affirmative action/equal opportunities institutions.

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LABOR-MANAGEMENT COOPERATION IN A FIRE DEPARTMENT CLOSURE: THE HIGHWOOD STORY

By, Thomas M. Melody

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Over the last several years, it has become more and more challenging for a municipality to operate a fire department. New statutes have been enacted which impact the ability of municipalities to staff and manage their own fire departments. The Fire Promotion Act dictates how promotions within all fire departments must be made and how vacancies have to be filled. [1] Amendments to the Board of Fire and Police Commissioners Act dictate in detail how full-time firefighters are to be hired. [2] The Public Safety Employee Benefits Act[3] (and the cases interpreting it) have substantially increased costs associated with injured firefighters (and police officers). The so-called Substitutes Bill effectively prohibits the use of part time firefighters absent union agreement, and makes the matter a permissive subject of bargaining. [4] These statutes almost always pre-empt home rule authority.[5] This changing climate has made it increasingly difficult and expensive for municipalities to provide fire protection services. This is particularly true for smaller municipalities with small departments. The City of Highwood is one such municipality.

Highwood is a small suburb located in Lake County, Illinois. It is a home-rule municipality. Pursuant to Article VII, Section 6 of the Illinois Constitution, the City is not strictly limited in power by what is provided for in the Illinois Municipal Code. Rather, as a home rule municipality Highwood can exercise any power and perform any function pertaining to its own government and affairs, unless specifically prohibited from doing so by state legislation. [6] Highwood is home to about 5000 residents and encompasses less than one square mile in territory, and it is almost completely surrounded by the much larger City of Highland Park. In

the early spring of 2015, the City determined that it could not continue to operate its full time fire department. Two different sets of consultants had identified serious problems with the department, and management of the department presented daily challenges. Highwood was looking at an approximate budget shortfall of $200,000 and already had high property tax rates compared to neighboring communities. At the time, Highwood employed seven full-time fire fighters, three of whom were nearing the end of their probationary periods.

The three probationary firefighters had been hired in settlement of a grievance alleging that the City had failed to comply with the minimum-manning provisions of the contract. The City recognized that this grievance had some merit, and the grievance was resolved by the City agreeing to hire more full time personnel, which it did.

The applicable Collective Bargaining Agreement ("CBA") with IAFF Local 3993, was effective through June 30, 2016. Highwood needed to find a way to dramatically reduce costs and to effectively and efficiently provide fire and EMS services to its residents. The elimination of its fire department, either through contracting with a private contractor or through an intergovernmental agreement with another agency, seemed like the only available means to do so. Highwood's first consideration was its existing CBA with the IAFF and its obligations thereunder.

The CBA gave the City the right to contract out, provided that the Union was given thirty days notice via a public meeting of the contracting decision and an opportunity to discuss that decision.[7] The CBA also provided the City with the right to lay off employees. However, this right was substantially curtailed by a bargaining and interest arbitration requirement. Before it could lay anyone off, the City was required by Section 7.6 of the CBA to negotiate as to the proposed decision "and to consider and exhaust all other means to stop the proposed layoffs." If no agreement was reached, the dispute had to go to interest arbitration. [8] It was obvious from the outset that the Union was never going to agree to allow the City to lay off its members and contract out for their services. And, with the standard of having to "consider and exhaust all other means to stop the proposed layoffs" as part of the equation, it seemed equally clear that no interest arbitrator would allow it either.

It thus appeared to the City that while it could contract out for services, it could not, effectively, lay anyone off. The City could, however, dismiss the three firefighters who were still on probation. Section 7.2 of the CBA provided for a twelve-month probationary period during which an employee could be discharged

at the sole discretion of the City, and without recourse to the grievance procedure.[9]

The CBA also contained a minimum-manning clause, which required four "persons" per shift.[10] The clause did not specifically require, as it could have, that these "persons" be bargaining unit members. The City determined that these "persons" could be contractors, and that it could utilize a contractor to fill vacant shifts as long as no one was laid off.

Highwood decided to terminate the three probationers at the end of their probationary period, and to bring in a private contractor to help fill shifts. It was Highwood's position that the CBA gave the City the right to do this. Termination notices were given to the three probationers pursuant to Section 7.2. Highwood announced at its April 8, 2015 meeting that it intended to contract out for firefighting services. The CBA required that the notice be provided to the Union "via a public meeting." Highwood wanted to make sure the Union had notice of the public meeting at which the notice of contacting would be given; it decided that it would inform the Union in advance of the public meeting that it was going to consider subcontracting and announce that intention at the meeting, to satisfy the contractual requirement. Appropriate notice was given to the Union in advance of this meeting. At the meeting the City stated that the contracting decision would not be implemented for thirty days.

The Union, not surprisingly, opposed the terminations and the proposed contracting and filed a grievance. The Union characterized these terminations as "layoffs" which would have triggered the obligations to negotiate, to consider and exhaust all means to stop the layoffs, and to submit the question to interest arbitration pursuant to Section 7.6 of the CBA. The grievance generally alleged multiple violations of the CBA, including the minimum-manning clause. It alleged that the probationary firefighters were terminated in violation of the prior settlement agreement, were fired without just cause, and were not given the required notice for a layoff. The grievance also alleged that the proposed contracting would violate the Substitutes Bill. The Union demanded the immediate reinstatement of the probationers and effects bargaining over the contracting decision.

The Substitutes Bill was a statutory amendment to the Board of Fire and Police Commissioners Act which imposed the requirement that only people who have qualified for regular appointment (i.e., are on a current eligibility list) could be used as temporary or permanent substitutes for classified full time

firefighters. This amendment was effective June 1, 2008, pursuant to Public Act 95-490. The full text of the amendment is as follows:

> In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 2.1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining. Municipal fire departments covered by the changes made by this amendatory Act of the 95th General Assembly that are using non-certified employees as substitutes immediately prior to the effective date of this amendatory Act of the 95th General Assembly may, by mutual agreement with the certified bargaining agent, continue the existing practice or a modified practice and that agreement shall be considered a permissive subject of bargaining. A home rule unit may not regulate the hiring of temporary or substitute members of the municipality's fire department in a manner that is inconsistent with this Section. This Section is a limitation under subjection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.[11]

The Substitutes Bill pre-empted Highwood's home rule authority, and made contracting out a permissive subject of bargaining.

The City responded that the firefighters were released during their probationary periods and not laid off, and that the dismissal of probationers did not require just cause. As these employees were not laid off, no layoff notice and no negotiation was required. The City also argued that the dismissal of the probationers was not a violation of the settlement agreement, because the settlement agreement only required the City to make the hires – it did not require the City to sustain the employment of the individuals hired forever. The City responded that the CBA specifically allowed for contracting out, and allowed for the use of other "persons" to satisfy the minimum-manning requirement. The City maintained that the CBA established compliance with the Substitutes Bill, because the parties had negotiated and agreed to these provisions.

The City recognized its need to meet with the Union per Article XIV (B), and also recognized its duty to bargain the effects of the contracting decision. The parties met on May 18, 2015. From the outset, the Union was adamantly opposed to the City contracting for fire services with a private company. The Union was willing to consider consolidation with another department under appropriate circumstances, because public employees would still perform the work. The Union stated emphatically that it would absolutely oppose the City contracting with a private contractor. The Union also wanted the three probationers put back to

work. The City wanted to eliminate its fire department either through consolidation or contracting.

It did not appear after this meeting that the parties would be able to resolve the issue. With no agreement in sight, the City pressed forward and prepared to enter into a contract with a private contractor to fill the shifts vacated by the probationers, and eventually to take over the entire operation of the department. The City was not going to reinstate the three probationers and let them complete their probationary period. That would have given them the "just cause" protection they claimed to already have. The Union threatened litigation and an unfair labor practice charge, in addition to the grievance that was already on file.

Around this time, the City started talking in earnest with neighboring Highland Park about a possible consolidation. These discussions had taken place in general terms for a long time but never really went anywhere. Now there was a reason to pursue consolidation. The CBA contemplated the concept of consolidation and generally allowed it, subject to negotiation and interest arbitration.[12]

The Union demanded mediation and interest arbitration on the dismissal of the probationers, which it continued to characterize as a layoff. The Union filed a request for mediation with the Illinois Labor Relations Board. The City refused to participate in either, maintaining its position that the termination of the probationers was not a layoff. In the meantime, the City was negotiating with the private contractor. The Union criticized many aspects of the proposed contract with the private contractor.

At this point, the chances of an amicable resolution seemed slim. However, despite strong convictions on both sides, both parties recognized that a negotiated resolution, if possible, would be preferable to litigation on multiple fronts. Highwood's whole reason for attempting to contract out was to save money and plug a budget deficit; that purpose would not be achieved if Highwood had to fight the Union potentially for years in every conceivable forum. In June 2015, the parties entered into an agreement to hold everything in abeyance while they continued to meet and try to resolve the situation. The City agreed not to contract out, and to bring back the three probationers as part-time employees, and the Union agreed to hold their grievance, their demand for interest arbitration, and the threatened litigation and ULP charge in abeyance while the parties continued their discussions. The agreement specifically provided that the three part-time employees would be considered part-time employees for all purposes, and that

their re-hire was not as full-time employees, not pursuant to the CBA, and did not result in time credited toward their probationary periods.

The parties continued to negotiate and started working around the number of $300,000, which is what the Union proposed it would take, roughly, to compensate the employees in exchange for their resignations and closure of the fire department. This figure was presented by the Union as the approximate total amount of money that would be required as severance pay for the four remaining full time employees, and as back pay to compensate the three allegedly wrongfully discharged probationers. This amount was generally acceptable to Highwood because it was less than the amount the City would save in the first year of an agreement with Highland Park. At this point, the parties seemed to at least be in the same ballpark. Negotiations with Highland Park were conducted simultaneously with the IAFF negotiations, so the City had a general idea of what the cost of the Highland Park agreement would be. The City insisted that any payments to the employees would have to come out of actual savings achieved by contracting with Highland Park. In other words, despite repeated and various types of demands, the City would not agree to any payments unless they were contingent on a deal with Highland Park and a successful closure of the Highwood fire department. In addition, all employees would have to resign, waiving and releasing all claims, the Union would have to end all litigation, and the CBA would have to be terminated.

The parties continued to meet and explore individual buy out terms or transfer arrangements for the four remaining full time employees and the three released probationers who were now working as part-time firefighters. The City of Highland Park decided that it would hire only one of the four remaining full time firefighters as a firefighter. Highland Park was willing to hire one other firefighter as an inspector. The Union continued to make it clear that there would be no agreement that included any element of private contracting. The specific terms and conditions of employment for these to-be-transferred employees were often a point of contention, as these issues would be ultimately determined by Highland Park and there were limits to what Highland Park was willing to do. Such issues as whether they would be probationary employees, how much vacation and sick leave they would initially be credited with, seniority for purposes of layoff and shift selection, among others, had to be worked out with Highland Park. Salaries were not an issue because the salaries Highland Park paid were higher than those paid in Highwood. The inspector position that the one employee was offered was a non-union, 9 to 5 position that was substantially different from working as a firefighter. The other two full-time firefighters were at or near retirement eligibility, so the parties decided to negotiate a retirement incentive package for

them. The parties recognized that there would have to be some kind of severance package for the three probationers.

General individual buy-in to these concepts was obtained by the Union from the employees involved. This was critical because if even one of the employees refused to go along there could be no deal.

In August 2015, while these negotiations were continuing, one of the two retirement-eligible firefighters retired. She did so of her own volition and without any incentive package. The City viewed this as money saved; the Union viewed it as a redistribution opportunity. A few days later, the firefighter being considered for the inspector position also retired – again, of his own volition and without waiting for a buyout package. This resolved another issue because it did not appear that the inspector position was going to work out for him. Again, this was viewed by the City as a fortunate circumstance which would help to make the overall deal work, and the Union saw it as an opportunity for the remaining employees to get more of the targeted $300,000. Now, at least, the City and Union only had to deal with post-closure placement for two employees, one of whom Highland Park was willing to employ.

Meanwhile, the Union filed a ULP charge in order to preserve its right to relief within the six-month limitations period, but asked the Labor Relations Board to hold the case in abeyance while the parties continued to negotiate, which of course the Labor Board agreed to do. At this point, after many hours of negotiations, and with the voluntary departure of two of the four full-time firefighters, it started to look like a resolution might actually be possible.

To add another challenge to an already difficult situation, the General Assembly had recently enacted statutory provisions which mandated that the closure of the fire department required referendum approval. A somewhat obscure statute, which became effective January 1, 2015, required that the closure of the fire department be approved by the voters served by the department. It provides:

> If a city or village with 500 or more residents owns, operates or maintains any fire department or fire departments, that city or village may not cease the operation and maintenance of that fire department or those fire departments unless the proposed cessation is first submitted by referendum to the voters of the city or village as provided by Section 15b of the Fire Protection District Act.[13]

Section 15b of the Fire Protection District Act Provides:

> (a) Any local unit of government serving 500 or more residents operating a fire department organized under the provisions of the Municipal Code may cease the

> operation and maintenance of the fire department or fire departments by submitting a referendum to the voters served by the fire department or departments. The referendum proposing the dissolution of the fire department or departments shall be conducted in a manner that is consistent with the requirements provided by subsection (a) of this Section, except that the ballot for such election shall be in substantially the following form:
>
> Shall the (name of fire department) serving the citizens with (list local unit(s) of government) cease to provide emergency services and be dissolved and discontinued?
>
> If a majority of the votes cast on the question are in favor of such dissolution, then the court shall enter an order discontinuing the fire department or departments. [14]

This statute presented two substantial concerns. First, with the required wording of the question it appeared that it would be extremely difficult if not impossible to obtain a majority of votes in favor of dissolution. The question that was required to be on the ballot seemed slanted heavily to achieve a "no" vote. Second, the statute appeared to assume that there would be some action whereby the court would enter a dissolution order if the referendum passed. There was no specific invocation of any court's authority, just a statement that "the court" shall enter an order.

Interestingly, Section 15b precluded home-rule authority, even though it was part of the Fire Protection District Act, while Section 10-4-12 of the Municipal Code did not. This was unusual because the Illinois Constitution provides for certain counties and municipalities to be home rule units.[15] Being a home rule unit generally means that the county or municipality has the authority to exercise any power or perform any function pertaining to its own government and affairs, unless the General Assembly specifically precludes this authority. The Fire Protection District Act applies to and governs fire protection districts; such districts are special districts and are not home rule units. While the pre-emption is effective wherever it is placed, it would seem that the more appropriate placement would have been in the Municipal Code.

The reference to "subsection (a)" in Section 15b was also confusing. Was it a reference to itself, as it occurred in subsection (a) of Section 15b? If so, it was not written the way such references are normally written and the reference to itself did not make sense. Was it a reference to Section 15a of the Fire Protection District Act? That section referenced another section of the Fire Protection District Act that governed the creation of a fire protection district, and this section also required court approval. Of course, it had to in the case of the creation of a fire protection district because there was a new governmental entity being created and a court had to oversee that process as there was no other body to do so. It was

determined that a court hearing was required under Section 15b, and therefore under the more applicable Section 10-4-12, but who the parties were supposed to be and what exactly the City was supposed to ask the court to do were unclear.

In December, 2015, Highwood adopted the necessary Resolution to place the question on the ballot for the March 15, 2016 general primary election. Highwood also began a campaign to provide accurate factual information to its residents about the closure of the fire department and the intended agreement with Highland Park.

The City recognized that the Union could work to defeat the referendum if it wanted to, and that if the referendum did not pass the fire department could not be closed. This was particularly evident in the way in the statute required the referendum question to be worded. In the City's judgment, the referendum requirement and the way the question had to be stated gave the IAFF virtually total control over whether the department could be closed or not. Having firefighters or representatives of the IAFF actively working against the referendum would almost certainly ensure its failure. Accordingly, Union support for the referendum was critical. The City explained to the Union that if the referendum did not pass, the entire deal would be unworkable and that the City would contract out for services with a private contractor as originally intended. The Union first claimed that it could not support the referendum unless it assured itself that levels of fire suppression and ambulance service to Highwood residents would remain acceptable. This was a new wrinkle but Highwood and Highland Park both worked to calm the Union's concerns. Due to Highwood's small size and that Highwood was almost completely surrounded by Highland Park, the closure of the Highwood fire department and the assumption of its work by Highland Park would have no negative impact on response times or the services provided. Then, the Union claimed that it could not support the referendum because it was not a "consolidation" because there would be a net loss of employees rather than an increase. Finally, and after much negotiation and internal discussion, the parties agreed that the Local Union (which was now down to two individuals) would support the referendum, and the State Union would remain officially neutral. This was the most support that the Union was willing to provide.

The negotiations continued with the understanding that everything was subject to the successful passage of the referendum allowing the closure of the fire department, as well as individual agreement to severance packages for the two remaining full-time employees and the three probationers, and an intergovernmental agreement with Highland Park.

The City and the Union eventually reached a comprehensive agreement for the dissolution of the fire department. This agreement resolved all of the outstanding issues relating to the termination of the probationers, the resignation and transfer of existing fire department employees, and the closure of the department. The agreement was reached before the election, so it was contingent upon two major occurrences: (1) the City had to enter into an acceptable intergovernmental agreement with Highland Park to provide all fire service to its residents, and (2) the referendum allowing the closure of the Department had to pass at the March 15, 2016 election. Subject to these contingencies, the key provisions of the agreement were as follows:

1. One of the remaining two full-time firefighters would receive a 3% pay increase and retire and release all claims pursuant to an individual resignation agreement;

2. The other remaining full-time firefighter would resign and release all claims pursuant to an individual resignation agreement and be hired by Highland Park;

3. The three probationary firefighters would resign and release all claims pursuant to individual resignation agreements;

4. The City would not use contractors through the referendum date, and, if the referendum passed, through June 30, 2016;

5. If the referendum failed, the deal was off and both parties would revert to their previous positions;

6. The City would continue to employ the five remaining employees through June 30, 2016.

7. The CBA would terminate and there would be no further bargaining relationship between the City and the Union.

Individual resignation agreements were negotiated and executed by the five remaining employees that were consistent with the overall agreement and spelled out the specific terms of each employee's resignation. Specific terms for the one firefighter being transferred to Highland Park were negotiated and included in his resignation agreement. An agreement with Highland Park was negotiated by which Highland Park took over all fire suppression services for Highwood for an annual fee.

In February 2016, Highwood filed a Verified Petition to Authorize Cessation of Fire Department Operations in the Circuit Court of Lake County. The referendum

passed 781-337 at the March 15, 2016 election, and the City started to wind down its fire department operations. On July 1, 2016, Highland Park took over all fire service for Highwood and the results to date have been a success.

This was a long and difficult process which started out fairly contentiously. At several points throughout the process, negotiations were on the verge of breaking down, and the issues appeared at times to be insurmountable. The City maintained its position that it was going to contract out for services one way or the other – either with Highland Park or with a private entity. The Union, rightfully, wanted to protect the interests of its members and itself. The City wanted to resolve everything by agreement but was prepared to just pick up where it left off with contracting and fight the fights the Union had threatened. The parties found a way to work together to overcome the obstacles that were inherent in the process and the bumps in the road that presented themselves as the events unfolded. In the end, through great effort and meaningful compromises by both sides, the desired result was achieved.

This entire process and its resulting intergovernmental cooperation between Highwood and Highland Park was ultimately a victory for the taxpayers. Highwood will save millions of dollars over the course of the agreement with Highland Park by not having to provide its own fire service, and will be spared the additional efforts involved in managing and maintaining its own fire department. And the residents of Highwood continue to receive high quality fire protection services.

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[1] 50 ILCS 742/1 to 752/65.

[2] 65 ILCS 5/10-2.1-4 to 2.1-16.

[3] 820 ILCS 320/1 to 320/20.

[4] 65 ILCS 5/10-2.1-4.

[5] *E.g.* 50 ILCS 742/10; 65 ILCS 5/10-2.1-4; 65 ILCS 5/10-2.1-6.3; 820 ILCS 320/20.

[6] ILL. CONST. 1970, art. III, § 6.

[7] HIGHWOOD FIREFIGHTERS UNION LOCAL 3993 COLLECTIVE BARGAINING AGREEMENT art. 14, § B (June 30, 2014). "Except where an emergency situation exists, before contracting out or subcontracting of work for which the bargaining unit members are sworn and uniquely qualified to perform, the City will notify the Union with the thirty (30) days' notice via a public meeting of the contracting out/subcontracting decision and allow the Union an opportunity to discuss the

City's decision. The City reserves the right to implement its decision to contract out/subcontract at any time after notice and an opportunity to discuss are given."

[8] HIGHWOOD FIREFIGHTERS UNION LOCAL 3993 COLLECTIVE BARGAINING AGREEMENT art. 7, § 7.6 (June 30, 2014).

"In the event it becomes necessary to lay-off employees for bonafide economic reasons, employees shall be laid-off in the inverse order of their seniority. Employees shall be re-called from lay-off according to their seniority. No new employee(s) shall be hired until all employees on lay-off status desiring to return to work have been re-called and hired. Prior to any possible layoff decision, the City shall provide the Union with at least 30 days notice of such proposed action. Upon request from the Union, the City agrees to negotiate as to the proposed decision and to consider and exhaust all other means to stop the proposed layoffs. Such negotiations shall continue for 40 days or longer if mutually agreed. In the event no agreement is reached between the parties, either party may invoke interest arbitration in accordance with §21.3 of this agreement to resolve their dispute."

[9] HIGHWOOD FIREFIGHTERS UNION LOCAL 3993 COLLECTIVE BARGAINING AGREEMENT art. 7, § 7.2 (June 30, 2014).

"New employees shall serve a probationary period of three hundred sixty-five (365) days or twelve (12) months. Any employee may be discharged with just cause at the sole discretion of the City. A probationary employee shall have no recourse to the grievance procedure or to the Board of Fire and Police Commission to contest his/her discharge. There shall be no seniority among probationary employees. Upon successful completion of the probationary period, an employee shall acquire seniority which shall be retroactive to his/her date of hire."

[10] HIGHWOOD FIREFIGHTERS UNION LOCAL 3993 COLLECTIVE BARGAINING AGREEMENT art. 15, § 15.4 (June 30, 2014). **"**Sufficient personnel shall be maintained on duty and available for response, with apparatus, to alarms and calls for service. Sufficient personnel is defined by roster as a minimum of four (4) persons per shift, comprised of both full time and part time personnel at the Fire Chief's discretion. Nothing in this Agreement shall be construed to limit the City's right to use part-time employees consistent with existing practice."

[11] 65 ILCS 5/10-2.14.

[12] HIGHWOOD FIREFIGHTERS UNION LOCAL 3993 COLLECTIVE BARGAINING AGREEMENT art. 14, § C (June 30, 2014).

"Notwithstanding any other provision of this Agreement, the Union and the City agree that the City shall have the right to consolidate fire services and any or all work performed by employees covered by this Agreement with one or more other entities. Consolidation of services shall not be considered contracting out or subcontracting. In the event that the City exercises its right to consolidate fire services, it shall do so in a manner that ensures that no current full time bargaining unit members are terminated or laid off because of consolidation. Prior to any consolidation, the City shall provide the Union with at least 30 days notice of such proposed action. Upon request from the Union, the City agrees to negotiate the proposed decision. Such negotiations shall continue for 40 days, or longer if mutually agreed. In the event no agreement

is reached between the parties, either party may invoke interest arbitration in accordance with §21.3 of this Agreement to resolve the dispute."

[13] 65 ILCS 5/10-4-12.

[14] 70 ILCS 705/15b.

[15] ILL.CONST. 1970, Art. 7, § 6.

RECENT DEVELOPMENTS

By Student Editorial Board:

Jim Connolly, Ning Ding, Naomi B. Frisch, and Jenna Kim

Recent Developments is a regular feature of the Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the public employee collective bargaining statutes.

I. IELRA DEVELOPMENTS

A. Discrimination

In *Bremen Educational Support Team, IEA-NEA, and Bremen Community High School District 228*, 33 PERI ¶ 42 (IELRB), the IELRB affirmed a decision by the administrative law judge that the district did not violate sections 14(a)(3) and (1) of the IELRA by allegedly discharging a student services secretary in retaliation for her union activities. The secretary, a former president of the local union, questioned whether her successor had attended a union leadership conference for which the successor had requested expense reimbursement. The former president also challenged her successor with bargaining individually with the district to change her position from ten months to twelve months. The successor complained to the district that the former president was harassing her.

The district's assistant superintendent for personnel and student services interviewed the former president as part of his investigation of the harassment complaint. In the interview, the former president denied being aware of any local union investigation into the successor's expense reimbursement request and denied being aware of any investigation into the change in the successor's position from ten month to twelve month. The district discharged the former president for creating an intimidating work environment for the successor and for dishonesty during the investigation of the harassment complaint.

Section 14(a)(3) of the IELRA prohibits employers from "[d]iscriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization." Section 14(a)(3) and (1) respectively apply to discrimination based on union activity and

hostile action due to other protected concerted activity. The IELRB held that a prima facie case of a section 14(a)(3) violation is established by proving that: 1) the employee engaged in union activity; 2) the employer was aware of that activity; and 3) the employer took hostile action against the employee because the employee engaged in that activity.

The IELRB noted that the first and second elements of the prima facie case were fulfilled because the former president was a senior union activist and the district was aware of it. However, the IELRB reasoned, the union provided no evidence that the district discharged the former president because of her union activity. Additionally, the IELRB noted that the union did not present evidence of disparate treatment. Tather, the IELRB found, the former president was discharged because she harassed another employee and lied during the district's investigation. Even if the former president's conduct was in the context of union matters, harassment of another employee is not protected. Therefore, the union failed to establish a prima facie case that the district violated sections 14(a)(3) and (1)

II. IPLRA DEVELOPMENTS

A. Duty to Bargain

In *North Riverside Fire Fighters Local 2714 and Village of North Riverside*, 33 PERI ¶ 33 (ILRB State Panel 2016), the State Panel held that the Village of North Riverside violated sections 10(a)(4) and (1) of the IPLRA by disbanding its fire department and contracting out for fire services while interest arbitration proceedings were pending. The parties' collective bargaining agreement had expired. During negotiations for a successor agreement, the village began investigating the option of contracting out its fire services. The village spoke with the contractor that was already providing paramedic services.

Negotiations for a successor contract proceeded and eventually went to mediation which was unsuccessful. The village refused union requests to continue meeting. The village also filed an action for declaratory judgment in the Circuit Court of Cook County seeking a declaration that it had authority to terminate its relationship with the union. The union filed a demand for interest arbitration. The village asked the ILRB to stay arbitration proceedings pending the outcome of the declaratory judgment action but the ILRB's Executive Director denied the request and ordered the village to proceed in selecting an arbitrator. The parties selected an arbitrator who continued the arbitration pending the outcome of the declaratory judgment action. The village gave all fire fighters a letter advising that it was terminating their employment and offering them employment through the

subcontractor that had been providing paramedic services. The letter stated that the village would not move forward until the declaratory judgment action was resolved. The Circuit Court judge subsequently dismissed the declaratory judgment action for lack of jurisdiction.

The village argued that it properly terminated the collective bargaining agreement under section 7 of the IPLRA and properly subcontracted for fire services. The State Panel disagreed.

Section 7 provides in relevant part:

> The duty to "bargain collectively" shall also mean that no party to a collective bargaining contract shall terminate or modify such contract, unless the party desiring such termination or modification:
>
> (1) serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof, or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;
>
> (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;
>
> (3) notifies the Board within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time; and
>
> (4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days after such notice is given to the other party or until the expiration date of such contract, whichever occurs later.

The State Panel held that section section 7's provisions governing termination of collective bargaining agreements are subject to section 14's provisions governing employees who do not have the right to strike. Section 14(l) provides:

> During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under this Act.

The State Panel held that subcontracting was a mandatory subject of bargaining and the village was required to maintain the status quo pending the outcome of the

interest arbitration. By unilaterally subcontracting its fire services and terminating its fire fighters, the village violated section 14(l) and 10()(4).

In *SEIU Local 73 and Village of Dixmoor*, No. S-CA-13-063 (ILRB State Panel Oct. 3, 2016), the State Panel held that the village violated sections 10(a)(4) and (1) of the IPLRA by unilaterally discontinuing its fire services and entering into an agreement with the City of Harvey for fire services and with a private contractor for EMS services while interest arbitration proceedings were pending.The State Panel relied on and applied its decision in *Village of North Riverside* discussed above.