STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Hazel Crest Professional Firefighters, International Association of Fire Fighters, AFL-CIO, CLC,	)	
Labor Organization	)	
and	)	Case Nos. S-CA-16-015 S-CB-16-011
Village of Hazel Crest,	)	
Employer	)	

ORDER

On September 26, 2016, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its January 10, 2017 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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, this 11th day of January 2017.

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Helen J. Kim
General Counsel

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Village of Hazel Crest,	)	
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 17, 2015, the Hazel Crest Professional Firefighters International Association of Fire Fighters AFL-CIO, CLC (Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the Village of Hazel Crest (Employer) engaged in unfair labor practices within the meaning of Sections 10(a)(4), (2), and 14(l) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The Union claimed that the Respondent unilaterally changed its past practice regarding duty trades during the pendency of interest arbitration proceedings, in violation of Sections 10(a)(4) and 14(l) of the Act. The Union further claimed that the Respondent made the change to retaliate against employees for engaging in protected activity, in violation of Section 10(a)(2) of the Act.

On October 6, 2015, the Employer filed a charge against the Union alleging that it violated Section 10(b)(4) of the Act by refusing to respond to the Employer's information requests relevant to negotiations for a successor contract, refusing to respond to or consider the Employer's bargaining proposals made during those negotiations, and refusing to respond to proposed dates for collective bargaining. The charge was investigated in accordance with Section 11 of the Act.

On October 7, 2015, the Union amended its charge to allege that the Employer violated Sections 10(a)(4) and (1) of the Act by repudiating a tentative agreement that settled a successor contract. It also alleged that the Employer violated Sections 10(a)(7) and (1) of the Act by refusing to reduce a collective bargaining agreement to writing and refusing to sign that agreement. The charge was investigated in accordance with Section 11 of the Act.

On July 28, 2016, the Board's Executive Director issued a Complaint for Hearing on the charge in Case No. S-CA-16-015.

On August 12, 2016, the Employer filed a timely answer to the complaint in Case No. S-CA-16-015. It also filed a Motion to Defer the Duty-Trades Allegations of the Union's Complaint to Arbitration. On August 22, 2016, the Union filed a Response.

On August 29, 2016, the Board's Executive Director issued a Complaint for Hearing on the charge in Case No. S-CB-16-011 and consolidated that case with Case No. S-CA-16-015. The Union filed a timely answer.

I. INVESTIGATORY FACTS

The Union and the Employer were parties to an agreement that was effective from May 1, 2012 to April 30, 2015. The contract contains a management rights clause that provides in relevant part that the Employer's rights include the right "to make, alter and enforce rule, regulations, orders and other polices which are promulgated under the Hazel Crest Personnel Rules, the Hazel Crest Fire Department Standard Operating Procedures Manual and Fire Department Rules and Regulations…." Article 5.3 of the contract provides that "employees may exchange shifts subject to the Chief's discretionary approval, which discretion shall not be abused."

On March 24, 2015, the Union filed a grievance alleging that the Employer violated Article V Section 5.3 of the parties' collective bargaining agreement by enforcing Section 20.8-1 of the policy and procedure manual related to duty trades. That policy limited the number of duty trades that unit members could make. In the grievance, the Union argued that "past practice for over 10 years has allowed members to trade an unlimited number of shifts per month, and also members have been allowed to trade shifts when other members were off on Kelly days or vacation days."

The Union subsequently filed the charge in Case No. S-CA-16-015, and the Executive Director issued a Complaint for hearing on that charge. The Complaint includes the following allegations: (1) an allegation that the Employer violated Sections 10(a)(2) and (1) of the Act when it unilaterally implemented a change to duty trades to discriminate and retaliate against unit members because of their no confidence vote against Chief Charles Jackson, and their presentation of that vote to the Village Board of Trustees; (2) an allegation that the Employer

violated Section 10(a)(1) of the Act when it unilaterally implemented a change to duty trades to retaliate against unit members because of their no confidence vote against Chief Charles Jackson, and their presentation of that vote to the Village Board of Trustees; (3) an allegation that the Employer violated Sections 10(a)(4) and (1) of the Act when it changed the status quo of a mandatory subject of bargaining during the pendency of interest arbitration proceedings by unilaterally implementing changes to its duty trades practices; (4) an allegation that the Employer refused to reduce to writing and/or sign a successor collective bargaining agreement that reflects a tentative agreement reached on or about March 30, 2015; (5) an allegation that the Employer failed and refused to bargain in good faith in violation of Sections 10(a)(4) and (1) of the Act when it denied that the parties reached a tentative agreement and sought to renegotiate that agreement.

On August 12, 2016, the Employer filed its Motion to Defer the Duty-Trades Allegations of the Union's Complaint to Arbitration. On August 22, 2016, the Union filed its Response.

II. ISSUES AND CONTENTIONS

The issue is whether the allegations in the Complaint related to duty trades are properly deferred to grievance arbitration.

The Employer seeks to defer to arbitration all allegations in the Complaint related to duty trades.[1] The Employer contends that deferral is proper under Collyer because the Employer's contractual authority to enforce an existing rule is at the center of all allegations at issue in its motion. The Employer further asserts that the dispute arises in the midst of a stable bargaining relationship between the Union and the Employer, spanning four collective bargaining agreements, during which time the Employer has never been found guilty of unfair labor practices. The Employer also states that it agrees to arbitrate the duty trades allegations contained in the complaint and that it waives any procedural defense to their arbitration.

The Union asserts that Collyer deferral is inapplicable because the Union filed a grievance related to the Employer's alleged unilateral change to the duty trades policy.

[1] The body of the Respondent's argument asserts that the "duty trades" allegations concern solely the Respondent's alleged retaliation and discrimination against unit employees. However, as the Union notes and the Respondent later concedes, the duty trades allegations also include an alleged unilateral change. Accordingly, I read the Respondent's motion as seeking to defer both the unilateral change allegation and the retaliation/discrimination allegations to the grievance arbitration process.

Accordingly, the Union analyzes deferral under Dubo instead and argues that deferral is improper because there is not a reasonable chance that deferral will resolve the entire duty trades dispute. The Union also notes that deferral would cause litigation in multiple forums because the Employer does not seek to defer allegations in the Complaint related to the Employer's alleged refusal to bargain in good faith over a successor contract and its refusal to sign or reduce that agreement to writing. The Union further notes that these allegations are inextricably intertwined with the allegations that the Employer seeks to defer, and that deferral of the duty trades allegations is additionally inappropriate for that reason.

Finally, the Union argues deferral of the retaliation and discrimination claims is also inappropriate under Collyer. The Union asserts that the retaliation and discrimination claims are independent Section 10(a)(2) allegations and that the Board does not defer such allegations under Collyer. The Union reiterates that deferral of the retaliation and discrimination allegations would cause piecemeal litigation where the Employer did not seek to defer all allegations in the Complaint.[2]

III. DISCUSSION AND ANALYSIS

The Employer's motion to defer the "duty trades" allegations in the Complaint is granted because the standard for deferral under Dubo is satisfied.[3] The parties have submitted their dispute to a binding grievance arbitration process, and there is a reasonable chance that arbitration will resolve the duty trades dispute in its entirety.

Section 11 of the Act provides that the Board may defer an unfair labor practice charge to grievance arbitration if the charge involves the application of a collective bargaining agreement that contains a grievance procedure with binding arbitration as its final step. 5 ILCS 315/11(i) (2014). There are three tests used by the NLRB and adopted by the Board to determine whether deferral is appropriate: the Collyer test applies where the union has not yet initiated a contract grievance. Collyer Insulated Wire, 192 NLRB 837 (1971); State of Ill. (Dep't of Cent. Mgmt. Serv.), 9 PERI ¶ 2032 (IL SLRB 1993). The Dubo test applies in cases where the union has voluntarily initiated a grievance and is involved in the grievance arbitration process. Dubo

[2] The Union also asserts that the Respondent's motion is incomprehensible. The Respondent's motion admittedly contains some inconsistencies, but it is reasonably construed in the manner set forth above.
[3] Although the Respondent presents its argument for deferral under Collyer, Dubo is in fact the proper framework for analysis.

Manufacturing Corp., 142 NLRB 431 (1963); City of Mount Vernon, 4 PERI ¶ 2006 (IL SLRB 1988). The Spielberg/Olin test applies where an arbitrator has already heard the grievance and has issued an award. Spielberg Manufacturing Co., 112 NLRB 1080 (1955); Olin Corp., 268 NLRB 573, (1984); City of Alton, 22 PERI ¶ 102 (IL LRB-SP 2006).[4]

To satisfy the test for a Dubo deferral, the Board must find that (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); City of Chicago, 10 PERI ¶ 3001 (IL LLRB 1993); City of Mt. Vernon, 4 PERI ¶ 2006; Dubo Mfg. Corp., 142 NLRB 431.

The first and second prongs of the Dubo test are clearly satisfied. The parties voluntarily submitted their dispute over the Employer's authority to enforce its duty trades policy to their agreed-upon grievance arbitration procedure, and the contract's grievance procedure culminates in final and binding arbitration.

The third prong of the Dubo test is also satisfied because arbitration would likely resolve all aspects of the duty trades dispute raised in the Complaint. First, the arbitrator's determination concerning the Employer's authority to enforce the duty trades policy would likely resolve the unilateral change dispute because his interpretation of the contract would be dispositive of whether the Employer made an unlawful change. If the arbitrator determined that the contract permitted the Employer's course of action, there would no basis for finding a violation of the Act under Section 10(a)(4) because the Employer could not have made an unlawful unilateral change. State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Public Aid, 10 PERI ¶ 2006 (I LLRB SLRB 1993) (where contract permits employer's action, the union is deemed to have waived the right to bargain over it and there is no unlawful unilateral change); Bd. of Trustees of Cmty. Coll. Dist. No. 508, Cook County v. Cook County Coll. Teachers Union, Local 1600, AFT, AFL/CIO, 74 Ill. 2d 412, 415 (1979) (parties are bound by an arbitrator's construction of the contract). Conversely, if the arbitrator determined that the contract did not permit the Respondent's course of action, the arbitrator would likely order a restoration of the status quo

[4] In addition, the NLRB and the ILRB have expanded the Spielberg/Olin policy by permitting deferral to prearbitration grievance settlements. U.S. Postal Service, 300 NLRB 196 (1990); Alpha Beta Co., 273 NLRB 1546 (1985); Vill. of Lyons, 16 PERI ¶ 2032 (IL LRB-SP 2000).

and would thereby award substantially the same remedy as the one available from the Board. Village of Dolton, 17 PERI ¶ 2017 (IL LRB-SP 2001) (Board's policy on remedy is to order a make-whole remedy and restore the status quo ante); City of Chicago, 10 PERI ¶3001 (IL LLRB 1993)(noting that Board could also order the posting of a notice, but finding that alleged violation was nevertheless substantially remedied by arbitrator; reviewing under Spielberg).

Second, the arbitrator's determination concerning the Employer's authority to enforce the dormant duty trades policy, to limit trades, would likely also resolve the retaliation and discrimination allegations. The contract contains language that both allows the Employer to enforce its policies and also prohibits the Employer from abusing its discretion in denying duty trades. The Employer's authority to enforce its duty trades policy turns on whether the Employer's enforcement of its policy constitutes an abuse of discretion in denying trades. The Union's claim that the Employer enforced its policy to discriminate and retaliate against employees because of their protected activity is relevant to determining whether the Employer abused its discretion under the contract. In turn, the arbitrator would likely resolve aspects of the dispute related to retaliation and discrimination, raised before the Board, in addressing whether the Employer abused its discretion in applying the dormant duty trades policy.

Notably, deferral of the duty trades allegations also promotes administrative efficiency. Although a hearing would still proceed on the alleged violations related to the parties' negotiations over their successor contract, deferral of the duty trades allegations would simplify an already complicated consolidated case, and expedite its resolution. State of Ill., Dep't of Cent. Mgmt. Servs., 31 PERI ¶ 142 (IL LRB-SP 2015) (citing benefit of efficiency in addressing deferral under Dubo).

Contrary to the Union's contention, the remaining allegations contained in the Complaint do not bar deferral because they are unrelated to the deferred duty trades allegations and are not intertwined with them. Both the Illinois Labor Relations Board (ILRB) and the National Labor Relations Board (NLRB) disfavor piece-meal deferral, in other words, deferral of some allegations where other, related allegations are found to be not suitable for deferral. Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990) (deferral disfavored where it would create litigation in multiple forums); Daimler Chrysler Corp., 344 NLRB 1324, 1324 fn.1 (2005) (NLRB disfavors piece-meal deferral of complaint allegations); Beverly Healthcare, 335 NLRB 635, 671 (2001) (same); Avery Dennison, 330 NLRB 389, 390-391 (1999) (same).

However, both the ILRB and the NLRB will grant deferral of some allegations while declining to defer others where the deferred issue is entirely unrelated to the issue that is not deferred. Clarkson Industries, 312 NLRB 349, 352-353 & fn. 19 (1993) (deferring unilateral change allegations entirely unrelated to nondeferrable allegations of an unlawful threat and discriminatory disciplinary warning); City of Elgin, 30 PERI ¶ 8 (IL LRB-SP 2013) (affirming ALJ's denial of a motion to defer allegation related to changes to the Acting Captain Program; reversing ALJ's denial of a motion to defer allegation related to repudiation of a variance agreement); but see N. Mem'l Health Care, 364 NLRB No. 61 (2016) (declining to defer Section 8(a)(5) bad faith bargaining claims where they were "highly intertwined" with non-deferrable claims).

Here, the remaining allegations relate to the Respondent's conduct during bargaining over a successor contract, which includes the Respondent's alleged refusal to adhere to a tentative agreement, its alleged refusal to reduce a contract to writing, and its alleged refusal to sign it. They do not relate to duty trades and their resolution will not require an assessment of the same evidence as required for the resolution of the duty trades allegations. Indeed, the only similarity between the duty trades allegations and the contract allegations is that they both allege, in part, that the Respondent violated Section 10(a)(4) of the Act. However, that limited similarity does not bar deferral where the allegations themselves have a separate factual basis. City of Elgin, 30 PERI ¶ 8 (IL LRB-SP 2013) (deferring one Section 10(a)(4) allegation related to repudiation of a variance agreement while denying deferral of a separate Section 10(a)(4) allegation related to unilateral changes to the Acting Captain Program). Although the Union claims that these two alleged violations of Section 10(a)(4) are "inextricably intertwined" because they occurred at around the same time, it has cited no case law that would suggest that timing alone connects two allegations that appear unrelated on their face.

There is likewise no merit to the Union's anticipated argument that the Board cannot defer the independent alleged violations of Section 10(a)(2) and (1) that stem from the Employer's enforcement of its duty trades policy. Indeed, the Board has clearly stated that it will defer even independent Section 10(a)(2) and 10(a)(1) allegations under Dubo, which is the standard applied here. PACE Northwest Division, 10 PERI ¶2023 (IL SLRB 1994); City of Waukegan, 29 PERI ¶ 128 (IL LRB-SP 2013) (deferring retaliation claim under Dubo, despite Union's assertion that the Respondent's conduct implicated statutory issues).

Finally, a separate analysis of deferral under Collyer is unnecessary in this case where the union filed a grievance, where the grievance touches on each of the allegations that the Employer seeks to defer, and where arbitration is reasonably likely to resolve them all. Collyer Insulated Wire, 192 NLRB 837 (Collyer applies where the Union has not yet filed a grievance); see cases supra.

Thus, the Respondent's motion to defer the duty trades allegations in Case No. S-CA-16-015 is granted.

IV. CONCLUSIONS OF LAW

Deferral of the duty trades allegations in Case No. S-CA-16-015 is proper under Dubo.

V. RECOMMENDED ORDER

The Respondent's motion to defer the duty trades allegations in Case No. S-CA-16-015 is granted. The deferral includes alleged violations of Section 10(a)(4), (2) and (1) stemming from the Respondent's enforcement of its duty trades policy.

VI. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago office 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 filing 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 and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the

exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30 day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 26th day of September, 2016

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge