STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Champaign Firefighters, Local 1260,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-17-138
	)	
City of Champaign (Fire Department),	)	
	)	
Respondent	)	

ORDER

On April 11, 2019, Administrative Law Judge Matthew S. Nagy, 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 July 9, 2019 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 9th day of July 2019.

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

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ADMINISTRATIVE LAW JUDGE'S DEFERRAL ORDER

On June 6, 2017, Champaign Firefighters, Local 1260 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the City of Champaign Fire Department (Respondent or City), engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2016), as amended. The charge was investigated in accordance with Section 11 of the Act. On February 5, 2019, the Board's Executive Director issued a Complaint for Hearing (Complaint), alleging that the Respondent violated Sections 10(a)(4) and 10(a)(1) of the Act by unilaterally altering its disciplinary policy when it rescinded previously issued discipline to a member of Charging Party's bargaining unit and instead subjected that employee to a higher level of discipline.

On or about February 27, 2019, the City filed its answer to the Complaint. Therein, the City asserted that the allegations set forth in the Complaint should be deferred to the parties' grievance arbitration process. On March 11, 2019, the City filed a motion to defer the Complaint to arbitration (Motion). In its Motion, the City argues that certain provisions of the parties' collective bargaining agreement (CBA) permit the course of action taken against the bargaining unit employee, and that this contractual language must be interpreted to determine if the City has breached its duty to bargain under the Act. It continues that such contract interpretation is properly done before an arbitrator through the parties' grievance arbitration process. The City notes that it agrees to arbitrate the dispute and waives any procedural timeline defenses it may have.

On or about April 9, 2019, the Union filed its response to the City's Answer, in which it argues that deferral is inappropriate. Specifically, it notes that the issue in the instant charge involves, in part, the issuance of a written reprimand, and that the parties' CBA does not allow for written reprimands to be appealed to arbitration. Consequently, the grievance arbitration process cannot resolve the dispute, and therefore deferral is inappropriate.

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) (2016). This policy of deferral recognizes that parties' collective bargaining relationships are best nurtured by encouraging resolution of their disputes through their voluntary and agreed-upon grievance arbitration procedures. See PACE Northwestern Division, 10 PERI 2023 (ISLRB 1994).

Here, the parties' CBA contains a grievance procedure which culminates in binding arbitration as its terminal step. Moreover, the dispositive issue in the instant charge requires an application of the terms of that CBA in order to determine whether or not those terms permitted the City to take the action against the bargaining unit employee as pled in the Complaint. If the arbitrator determines that the CBA permitted the City's course of action, there would no basis for finding a violation of the Act under Section 10(a)(4) because the City 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 (ILLRB 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). As such, I find deferral is facially appropriate in this instance.

The question to be resolved here is which theory of deferral is most appropriate. It is undisputed that the Union filed a grievance over the City's decision to rescind certain lower-level discipline to the bargaining unit employee in question and instead impose higher-level discipline in the form of a written reprimand. Ordinarily, this would invoke the Dubo deferral test, which requires the Board to find, in order to defer, 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 Union argues that prongs two and three of the Dubo test cannot be satisfied here because the parties' CBA does not permit for grievances concerning written reprimands to be advanced to arbitration, and therefore, the arbitration process necessarily cannot resolve the dispute. However, notwithstanding the language of the CBA, the City has nonetheless indicated its willingness to arbitrate the grievance filed by the Union in this case. Accordingly, the Union's concerns on this point are without merit.

The City argues that deferral under the Collyer standard is appropriate. However, the Collyer test only applies where a union has not yet initiated a contract grievance. State of Ill. (Dep't of Cent. Mgmt. Serv.), 9 PERI ¶2032 (IL SLRB 1993) ("[T]he parties' grievance arbitration procedure is the preferred method of resolving the dispute, even where the parties have not yet invoked the grievance machinery."); Collyer Insulated Wire, 192 NLRB 837 (1971). Here, a grievance has been filed, and to the extent there may exist any timeliness, procedural, or contractual issues which would otherwise prevent the grievance from advancing to arbitration, the City, by agreeing to arbitrate the grievance, has waived any objections it may have on those grounds.

Given the totality of the circumstances in this case, I find that deferral of the instant charge under the Dubo standard to be the most appropriate disposition. I conclude by noting that the Board retains jurisdiction over this charge "to determine whether the arbitrator's award addresses the issues raised in an unfair labor practice charge to ensure that the statutory rights of a charging party and/or public employees are being protected." PACE Northwestern Division, 10 PERI 2023.

I. RECOMMENDED ORDER

IT IS HEREBY ORDERED the present unfair labor practice charge shall be deferred to arbitration. The Complaint in Case No. S-CA-17-138 will be held in abeyance until the parties have fully 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 to defer to the arbitrator' s disposition. A party's request should contain a copy of the award along with a detailed statement of the facts and circumstances hearing on whether the proceedings were fair and

regular and whether the award is consistent with the purposes and policies of the Act. If a party fails to make such a request within the time specified, the Board may dismiss the Complaint upon request of another party or on the Board's own motion. It is also ordered that the parties inform the Board of any significant delay in the arbitration process or of any resolution of the matter prior to issuance of an award.

II. 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 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 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 Springfield, Illinois this 11th day of April, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Matthew S. Nagy*

Matthew S. Nagy
Administrative Law Judge