STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent and Protective Association, Unit #5,	)	
Springfield Firefighters, International Association of Fire Fighters, Local 37,	)	
Charging Parties,	)	
and	)	Case Nos. S-CA-19-046
	)	S-CA-19-066
City of Springfield,	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On October 24, 2019, Administrative Law Judge (ALJ) Matthew Nagy issued his Recommended Decision and Order (RDO) resolving unfair labor practice charges filed separately by Charging Party Policemen's Benevolent and Protective Association, Unit #5 (PBPA) and Charging Party, Springfield Firefighters, International Association of Fire Fighters, Local 37 (Local 37) against Respondent City of Springfield (City).[1] Both charges allege a rule change approved by the City's civil service commission on September 5, 2018, giving preference points to promotional candidates for City residency, constituted an unlawful unilateral change to a mandatory subject of bargaining in violation of Section10 of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016).

[1] Case No. S-CA-19-066, involving the charge filed by PBPA, and Case No. S-CA-19-046, involving the charge filed by Local 37, were consolidated for hearing.

ALJ Nagy found unfair labor practices in both cases, concluding the City violated Sections 10(a)(4) and 10(a)(1) of the Act. The City filed timely exceptions and the Charging Parties each filed a response to the City's exceptions. After a review of the RDO, the record, the exceptions and responses thereto, we accept the ALJ's findings and recommendations as discussed below:

Theses consolidated cases involve the City's bargaining obligations to the Charging Parties regarding a change to Rule 4.3 of the Springfield Civil Service Commission (Commission) approved on September 5, 2018, after the Charging Parties invoked the Act's impasse procedures. The change added a new subsection "D," awarding candidates who passed their promotional exam three (3) preference points to their final exam score if the candidates have been legal residents of the City for at least nine (9) consecutive months prior to the exam.

ALJ'S FINDINGS

ALJ Nagy determined the charges presented three issues: (1) whether the City was obligated to bargain the change to Rule 4.3 before it was approved by the Commission; (2) whether either of the Charging Parties waived their right to bargain the change to Rule 4.3; and (3) whether in amending Rule 4.3, the City altered the status quo during the pendency of the interest arbitration process.

a. City's Duty to Bargain

Rejecting the City's argument that the Commission is a separate legal entity, the ALJ concluded the City was obligated to bargain the decision to change Rule 4.3 which allows for residency preference points to be used in the promotional process. The ALJ determined such to concern a mandatory subject of bargaining under the three-part test first set forth in Central City Educ. Ass'n v. IELRB, 149 Ill. 2d 496 (1992). The three-part Central City test considers (1) whether a matter concerns the wages, hours, and terms and conditions of employment of

employees in the bargaining unit; if it does then (2) whether the subject is also a matter of the employer's inherent managerial authority as provided in Section 4 of the Act; if yes then (3) the benefits that bargaining will have on the decision-making process are weighed against the burdens that bargaining imposes on the employer's authority. See id.; see also City of Belvidere v. Ill. State Labor Relations Bd., 181 Ill.2d 191 (1998) (adopting the three-part Central City test for matters arising out of the Act). Applying the test, ALJ Nagy found the first part of the test satisfied because the use of residency preference points in the promotional process involves wages, hours, and conditions of employment. The ALJ reasoned the establishment of residency preference points as a factor in the promotional process represented a departure from the City's previous promotional practices and policies, and the Board has previously found promotional factors to be mandatory subjects.

The ALJ then determined the City failed to establish the second part of the test—whether residency preference points involved the City's inherent managerial authority—because the City failed to "link the objective of [such] policy with a core managerial right." Cnty. of Cook v. Ill. Labor Relations Bd., 2017 IL App (1st) 153015, ¶ 46. Even though the ALJ found the second part of the test was not satisfied, the ALJ proceeded to the third part and balanced the burden on the City to bargain the change to Rule 4.3 against the benefits of bargaining and concluded the balanced favored bargaining. He noted that economically motivated decisions are particularly amenable to bargaining and both Charging Parties are capable of offering cost-saving proposals to address the City's financial concerns.

Having concluded the matter of residency preference points in the City's promotional process to be a mandatory subject of bargaining, the ALJ found the City failed to provide both Charging Parties with notice of and an opportunity to bargain the decision to change Rule 4.3.

He noted PBPA and Local 37 learned of the Rule 4.3 change after the change was approved, *i.e.*, after the decision was made, and found the unfair labor practice occurred with the adoption of the rule change rather than when the change would be applied to a bargaining unit member. Addressing the City's contention that it was only obligated to bargain the impact of the rule change, the ALJ emphasized that impact bargaining did not apply in this instance because the change to promotional criteria is not a matter of inherent managerial authority and because impact bargaining would inevitably lead to questioning the underlying decision. Thus, the ALJ reasoned the City was obligated to bargain the decision to use residency preference points in promotions with the Charging parties. Because the City failed to do so, the ALJ concluded the City violated Sections 10(a)(4) and 10(a)(1) of the Act.

b. Waiver and Failure to Maintain Status Quo

The ALJ concluded the Charging Parties did not waive bargaining over residency preference points. He noted the City failed to cite to specific contract language that it claimed demonstrated waiver but considered contract language highlighted by the City in the stipulations regarding the effect of the CBAs' terms on the City's and Commission's lawful authority. The ALJ determined the language in the parties' respective collective bargaining agreements about "supplant[ing] the lawful authority of the Springfield Civil Service Commission" failed to demonstrate waiver because the Commission did not have "lawful" authority under the Act to unilaterally adopt rules concerning wages, hours, and terms and conditions of employment. He further found such language was not sufficiently specific to demonstrate that either Charging Party unequivocally or unmistakably waived bargaining over residency preference points.

Lastly, the ALJ determined the City unlawfully failed to maintain the status quo during the pendency of Section 14 interest arbitration with Charging Parties. He found both Charging

Parties invoked interest arbitration under Section 14 of the Act in January 2018, several months before the rule change was approved on September 5, 2018, and that the evidence failed to indicate that the parties discussed residency preference points in the promotional process during their negotiations for a successor agreement. The ALJ noted that because the change to Rule 4.3 is still in effect, the subsequent settlement of Local 37's successor agreement did not moot the issue.

CITY'S EXCEPTIONS

The City submitted two exceptions to the ALJ's conclusions. It excepts to the ALJ's conclusions that (1) the City committed an unfair labor practice by changing Rule 4.3 before it bargained such with the Charging Parties; and (2) the City unlawfully failed to maintain the status quo during the pendency of Section 14 interest arbitration. We find the City's exceptions lack merit both procedurally and substantively. Thus, for the reasons discussed below, we reject the City's exceptions and adopt the ALJ's findings and recommendations in their entirety.

Procedurally, the City's second exception fails to comport with Section 1200.135(b)(2) of the Board's rules. 80 Ill. Adm. Code §1200.135(b)(2). Section 1200.135(b)(2) requires parties to state the grounds for each exception it submits along with citations to authorities and the record unless they are included in a supporting brief. Id. Here, the City submitted a supporting brief but as Local 37 and PBPA, incorporating Local 37's response by reference, aptly note, nothing in the supporting brief discusses or even mentions the City's exception regarding its failure to maintain the status quo during interest arbitration, much less provides citations to authority or the record. Thus, we reject this exception and accept the ALJ's recommendations on this issue which were well reasoned and supported by the record.

Before addressing the remaining exception, we note the City has failed to contest or except to many of the ALJ's findings and determinations forming the basis for his conclusion

that the City engaged in unfair labor practices when Rule 4.3 was unilaterally changed to allow for residency preference points in the promotional process. As both Charging Parties correctly point out in their responses, the City does not take issue with the ALJ's findings that the Commission is an arm of the City, the City and Commission lack inherent managerial authority with respect to the rule change, or that Charging Parties did not waive bargaining. Because the City has failed to file exceptions regarding these findings by the ALJ, we deem them waived under Section 1200.135(b)(2) of the Board's rules which provide that any exception not specifically urged shall be deemed waived. 80 Ill. Adm. Code §1200.135(b)(2).

The City's first and only remaining exception challenges the ALJ's conclusion that the City unlawfully changed Rule 4.3 because it did so without first bargaining with Charging Parties. Although procedurally sound, the City's remaining exception substantively lacks merit.

The City concedes that changing promotional residency preferences concerns a mandatory subject of bargaining and that before implementing the change, the City was obligated to provide both Charging Parties with notice and an opportunity to bargain. In support of its lone exception, the City points to the Board's decision in City of Springfield (IBEW *et al.*), 35 PERI ¶ 15 (IL LRB-SP 2018), in which the Board reversed the ALJ's finding that the City unlawfully changed its accrued vacation payout policy by adopting an ordinance. The Board in that case found the charging parties had an opportunity to bargain, and in some cases did bargain, before the City's ordinance regarding accrued vacation payouts went into effect. The City's reliance on City of Springfield (IBEW *et al.*) is incorrect for many of the reasons stated in Local 37's and PBPA's responses, the most significant being, the ordinance in City of Springfield (IBEW *et al.*) was passed in July of 2015 and by its own terms became effective on June 1, 2016, almost one year later. Thus, the Board found the parties had the opportunity to bargain, and in some cases

did so, before the effective date of the ordinance. Here, however, the rule change became effective upon approval by the Commission and there was no indication in the record that Charging Parties were given notice of or an opportunity to bargain, or bargained, the proposed change to Rule 4.3 before it was approved by the Commission.

Likewise, the City's reliance on Decatur v. Am. Fed. of State, Cnty., & Mun. Emps., 122 Ill.2d 353 (1988) and Am. Fed. of State, Cnty., & Mun. Emps. v. Cnty. of Cook, 145 Ill.2d 475 (1991) is also inapposite and fails to provide support for its contention that bargaining in this case "must take place after a rule is adopted but before it is applied to union members." As Charging Parties note in their responses, the ALJ distinguished those cases, rejecting this argument made by the City in its post-hearing brief, and we agree with the ALJ's assessment.

For the above reasons, we accept the ALJ's findings and recommendations that the City of Springfield violated Section 10(a)(4) and 10(a)(1) of the Act and adopt the RDO as a decision of the Board.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry

William E. Lowry, Chairman

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on January 9, 2020 (via videoconference), written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on February 6, 2020, and issued on February 6, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent and Protective Association, Unit #5,		
Springfield Firefighters, International Association of Fire Fighters, Local 37,		
Charging Parties,	Case Nos.	S-CA-19-066 S-CA-19-046
and		
City of Springfield,		
Respondent.		

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 1, 2018, Charging Party Springfield Firefighters, International Association of Fire Fighters, Local 37 (Local 37) filed an unfair labor practice charge with the Illinois Labor Relations Board (Board), alleging that the Respondent, City of Springfield (City) violated Sections 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended when its Civil Service Commission adopted a rule which provided for residency preference points as a criteria in the promotional process (S-CA-19-046). On December 21, 2018, Charging Party Policemen's Benevolent and Protective Association, Unit #5 (PBPA) filed an unfair labor practice charge with the Board, likewise alleging that the City violated the Act with respect to the adoption of the same rule by the Civil Service Commission (S-CA-19-066). The charges were investigated in accordance with Section 11 of the Act, and on February 4, 2019 and March 19, 2019, the Board's Executive Director issued a Complaint for Hearing on the charges filed by PBPA and Local 37, respectively. On April 12, 2019, I, the undersigned Administrative Law Judge, issued an Order consolidating both Complaints for the purpose of hearing.

The parties submitted a Combined Stipulation of Facts prior to the hearing in this case. A hearing was conducted on June 13, 2019 in Springfield, Illinois, before the undersigned at which time all parties were given an opportunity to call, examine, and cross-

examine witnesses; introduce documentary evidence; and present arguments.[1] Both parties filed post-hearing briefs in lieu of closing arguments. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find, that:

1. At all times material, the City has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, the City has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.

3. At all times material, Charging Party, Springfield Police Benevolent and Benevolent Association Unit #5 (PBPA) has been a labor organization within the meaning of Section 3(i) of the Act. [S-CA-19-066].

4. At all times material, Charging Party, Springfield Fire Fighters, International Association of Fire Fighters Local 37 (Local 37) has been a labor organization within the meaning of Section 3(i) of the Act. [S-CA-19-046].

5. The City's Civil Service Commission was established by the City pursuant to the City's Code of Ordinances, Title III, Chapter 36, Article IV, Section 36.25.

6. Pursuant to the City's Code of Ordinances, Title III, Chapter 36, Article IV, Section 36.25(b), the commissioners of the City's Civil Service Commission are appointed by the mayor with the advice and consent of the city council.

7. Pursuant to the City's Code of Ordinances, Title III, Chapter 36, Article IV, Section 36.26, the City's Civil Service Commission is responsible for approving or disapproving of any proposed changes to the Rules of the Springfield Civil Service Commission proposed by the City's director of human resources.

[1] At hearing, the City objected to several of PBPA's exhibits on relevancy grounds. In addition, the City noted it would argue the relevancy of the Local 37's exhibits in its brief. I provisionally accepted both Charging Parties' exhibits into evidence. After review of the exhibits and the parties' briefs, I find each to be facially relevant to the instant proceeding and admit the entirety of both Charging Parties' exhibits into the record, while noting that PBPA Exhibit 15 is entered for demonstrative purposes only.

8. Pursuant to the City's Code of Ordinances, Title III, Chapter 36, Article IV, Section 36.26, the City's Civil Service Commission may initiate proposals for changes in the Rules of the Springfield Civil Service Commission.

9. The City currently has 1400 full-time employees. Of these, 237 employees are members of PBPA and 205 employees are members of Local 37. The Commission sets standards for 152 separate job titles of the City's employees.

10. Members of PBPA are included in 2 job titles within the Springfield Police Department: Patrol Officer and Police Sergeant. Three additional job titles are applicable to the Springfield Police Department (Chief of Police, Assistant Chief of Police, and Police Lieutenant), but these positions are not held by members of PBPA. [S-CA-19-066].

11. Members of Local 37 are included in 4 job titles within the Springfield Fire Department: Firefighter, Driver Engineer, Fire Captain and Battalion Chief. Two additional job titles are applicable to Springfield Fire Department (Fire Chief and Division Chief), but these positions are not held by members of Local 37. [S-CA-19-046].

12. James Zerkle is employed as Corporation Counsel for the City of Springfield, and in making statements, was an agent for the City and was authorized to so act on its behalf.

13. Ronald J. Stone is the PBPA Unit #5 Union attorney, and in making statements, was an agent for the PBPA authorized to act on its behalf. [S-CA-19-066].

14. At all times material, PBPA has been the representative of a historical bargaining unit of all sworn police officers employed by Respondent in the rank of Patrol Officer Sergeant. [S-CA-19-066].

15. The bargaining unit referenced in paragraph 14 is a peace officer unit within the meaning of Section 14 of the Act. [S-CA-19-066].

16. At all times material, Local 37 has been the exclusive representative of a bargaining unit composed of the City's employees in the job titles as specified in the Collective Bargaining Agreement. [S-CA-19-046].

17. At all times material, the bargaining unit referenced in paragraph 16 has been a "firefighter or paramedic" unit within the meaning of Section 14 of the Act. [S-CA-19-046].

18. PBPA and the City were parties to a collective bargaining agreement (PBPA CBA) that established terms and conditions of employment for the PBPA Unit and expired on February 28, 2018. [S-CA-19-066].

19. Prior to expiration of the CBA referenced in paragraph 18, in or about December 2017, PBPA filed a request with the City, seeking to open negotiations for a successor CBA for the PBPA Unit. [S-CA-19-066].

20. Since in or about December 2017, PBPA and the City have been in negotiations for a successor CBA for the PBPA Unit. [S-CA-19-066].

21. The CBA between PBPA and the City which expired per its terms on February 28, 2018, but which continues in effect during negotiations provides in Article VI, Sec. 4.1:

> Nothing in this Agreement shall be construed as improperly delegating to others the authority conferred by law on the Employer, or in any way improperly abridging or reducing such authority, and further, nothing herein shall improperly supplant the lawful authority of the Springfield Civil Service Commission. The Employer will not exercise the foregoing management rights inconsistent with this Agreement.
>
> (Emphasis added.) [S-CA-19-066].

22. The CBA between PBPA and the City which expired per its terms on February 28, 2018, but which continues in effect during negotiations provides in Article II, Sec. 2.3:

> Should the Employer create new positions, ranks or classifications within the bargaining unit, the PBPA shall be notified in writing providing the position name, duties, and proposed wage rate. If the

> PBPA disagrees with the new position or classification in regards to wages only, the matter shall be resolved in accordance with the Illinois Public Labor Relations Act.
>
> (Emphasis added.) [S-CA-19-066].

23. On or about January 12, 2018, PBPA invoked the interest arbitration process by requesting to initiate mediation pursuant to Section 14 of the Act. [S-CA-19-066].

24. During bargaining between PBPA and the City, the City proposed a change to the residency requirements that newly hired PBPA Unit members be required to live within the City of Springfield and that current PBPA Unit members would be subject to a grandfather clause. [S-CA-19-066].

25. During bargaining between PBPA and the City, PBPA proposed that the status quo on residency requirements be maintained. [S-CA-19-066].

26. Local 37 and the City were parties to a collective bargaining agreement (Local 37 CBA) that established terms and conditions of employment for the IAFF Unit and expired on February 29, 2016. [S-CA-19-046].

27. On or about January 27, 2016, Local 37 invoked the interest arbitration process by requesting to initiate mediation pursuant to Section 14 of the Act. [S-CA-19-046].

28. During bargaining between both PBPA and Local 37 and the City, the City did not make any proposals relating to residency preference points for promotions.

29. On February 28, 2019, Local 37 and the City signed a successor CBA, effective March 1, 2016, through February 28, 2021. [S-CA-19-046].

30. Both the prior CBA and the successor CBA effective March 1, 2016 between Local 37 and the City contained the following language at Article II, Sec. 2.1:

> Nothing in this Agreement shall be construed as improperly delegating to others the authority conferred by law on the Employer, or in any way improperly abridging or reducing such authority and further; nothing contained herein shall improperly supplant the lawful authority of the Springfield Civil Service Commission.
>
> [S-CA-19-046].

31. On September 5, 2018 the Springfield Civil Service Commission voted to approve of a change to Rule 4.3 of the Rules of the Springfield Civil Service Commission, titled "Veteran's Preference in Examinations and Promotions and Residency Preference for Original Appointment/Entry-Level Positions and Promotions."

32. The change to Rule 4.3 referenced in paragraph 31 added a new subsection D to Rule 4.3, which provides:

> D. Qualified persons who have passed an examination for promotion shall be granted residency preference points if the following condition is met:
>
> 1. The legal residence of the candidate must be an address that is within the City of Springfield corporate limits and has been the candidate's legal residence for at least nine (9) consecutive months as determined by the Chief Examiner in the application packet. Residency preference points shall be made effective and apply to any promotion eligibility list that is certified after the date this rule is passed by the Civil Service Commission. For any written examination taken prior to the certification of an eligibility list that is certified after the date this rule is passed, proof of residency shall be provided within the thirty (30) days after the passage of this rule, and proof of residency shall include but is not limited to a prior utility and/or telephone bill in the candidate's name, rental agreement in the candidate's name or property tax bill in the candidate's name. Thereafter, proof of residency must be provided prior to taking the written examination for promotion, which may include but is not limited to a prior utility and/or telephone bill in the candidate's name, rental agreement in the candidate's name or property tax bill in the candidate's name.
>
> 2. The Civil Service Commission shall add three points to the final examination grade of any candidate who has met the criteria outlined above.

33. The change to Rule 4.3 referenced in paragraph 31 awarded employees of the City three (3) residency preference points on examinations for promotion if the employee has lived within City corporate limits for nine (9) consecutive months prior to the test.

34. The change to Rule 4.3 referenced in paragraph 31 was requested by Mayor Langfelder, and the Rule 4.3 change proposal was drafted by Assistant Corporation Counsel Linda O'Brien for presentation to the Civil Service Commission.

35. 65 ILCS 5/10-1-6 provides the following with respect to Civil Service Commission rule changes:

> All rules made as hereinabove provided and all changes therein shall forthwith be printed for distribution by the commission. The commission shall give notice of the places where the rules may be obtained by publication in one or more newspapers published in such municipality and if no newspaper is published in such municipality, then in a newspaper of general circulation in such municipality. In each such publication shall be specified the date, not less than 10 days subsequent to the date of such publication, when the rules shall go into operation.

36. At all relevant times, the laws of the State of Illinois provide at section 65 ILCS 5/10-1-7

> Examination of applicants; disqualifications
> (a) . . ..
> (b) Residency requirements in effect at the time an individual enters the fire or police service of a municipality (other than a municipality that has more than 1,000,000 inhabitants) cannot be made more restrictive for that individual during his or her period of service for that municipality, or be made a condition of promotion, except for the rank or position of Fire or Police Chief.

37. The change to Rule 4.3 referenced in paragraph 31 was adopted while contract negotiations between PBPA and the City were ongoing and after PBPA had invoked the interest arbitration procedure. [S-CA-19-066].

38. On September 17, 2018 James Zerkle sent an email to Ron Stone explaining the economic reasons for the Civil Service Commission rule change, which email also stated the City's intent not to change existing residency rules, and offering to further discuss the change. [S-CA-19-066].

39. On September 20, 2018, James Zerkle sent an email to Ron Stone offering a residency compromise as part of contract bargaining. Included in that proposal was

a statement that the Civil Service Commission rule change would not apply to existing employees. [S-CA-19-066].

40. Ron Stone sent a letter dated September 27, 2018 to James Zerkle asserting the Civil Service Commission rule change was a mandatory subject of bargaining. [S-CA-19-066].

41. James Zerkle replied to Stone's letter in a responsive letter reiterating that the Civil Service Commission rule change would not apply to existing employees and also offering to bargain the impact of the rule change. [S-CA-19-066].

42. In negotiations with PBPA on Dec. 13, 2018, the City presented PBPA with an "Informal Settlement Proposal" of outstanding issues. Thereafter, PBPA submitted a counter-proposal to the City. [S-CA-19-066].

43. The change to Rule 4.3 referenced in paragraph 31 was adopted while contract negotiations between Local 37 and the City were ongoing and after Local 37 had invoked the interest arbitration procedure. [S-CA-19-046].

44. Local 37 filed an Unfair Labor Charge against the City on or about November 1, 2018 based upon the facts described herein. [S-CA-19-046].

45. The Board issued a Complaint for Hearing based upon the Local 37 Charge described in Paragraph 45. [S-CA-19-046].

46. The PBPA filed an Unfair Labor Charge against the City on or about December 21, 2018 based upon the facts described herein. [S-CA-19-066].

47. The Board issued a Complaint for Hearing based upon the PBPA Charge described in Paragraph 47. [S-CA-19-066].

II. FINDINGS OF FACT

The facts in this case were largely stipulated to by the parties, *supra*. A brief hearing was held, during which Grant Barksdale testified for PBPA and Gary Self testified for Local 37.

a. PBPA (S-CA-19-066)

Grant Barksdale (Barksdale) is currently employed by the City's Police Department and holds the rank of Police Sergeant. Barksdale is the President of PBPA and has held that position for approximately three years. In his capacity as President, Barksdale is involved in contract negotiations, grievances, and discipline. Barksdale was also involved in negotiating the most recent contract between PBPA and the City, which has expired but the terms of which are still in effect. Barksdale explained that the contract was settled through the Board's interest arbitration procedures, during which the issue of residency was addressed, with the PBPA prevailing on the residency issue at interest arbitration.

Barksdale testified that the promotional process for members of PBPA's bargaining unit takes place through the City's Civil Service Commission. A Patrol Officer must serve in that position for seven years before he or she is eligible to apply for a promotion to Police Sergeant. Barksdale testified that during the course of bargaining for a successor agreement, neither party presented a proposal relating to residency preference points as a criterion for promotions for PBPA unit members. Nor were there proposals relating to promotional examinations generally. Barksdale testified that the pay differential between a Police Sergeant and a Patrol Officer is twenty percent, after an initial probationary period.

On January 12, 2018, PBPA sent correspondence to the City in which it requested mediation pursuant to Section 14 of the Act. Later that same day, the PBPA and the City executed an agreement to postpone Section 14 mediation.

At some point after September 5, 2018, Barksdale learned that the City's Civil Service Commission amended its Rule 4.3 to allow for residency preference points to be considered as a criterion for promotions for members of PBPA's bargaining unit. Barksdale testified that he learned of the change from the president of Local 37, Gary Self, during a conversation the two had after Rule4.3 had been changed. Following that conversation, on September 14, 2018, Barksdale sent an email to the Civil Service Commission asking if changes were made to the promotional testing for police and fire during the commission's last meeting. Barksdale was informed that changes were in fact made to several rules, including Rule 4.3. On September 17, 2018, Zerkle sent an email to Stone, in which he noted certain economic reasons for the adoption of Rule 4.3, including that the city had suffered "a loss of jobs and population and increasing unfunded pension liabilities."

Barksdale testified that the parties most recent contract contains provisions that address future events. For example, the parties negotiated a sick leave cash-out provision which capped the amount of sick time a newly-hired bargaining unit member may cash out at the end of his or her career at 400 hours. Previously, the cap was set at 1,200 hours, and that figure still applies to bargaining unit member hired before that contract provision was negotiated. Barksdale noted that the change to the sick-time cash out cap will not affect

any current bargaining unit member for approximately twenty years when those newly-hired bargaining unit members amass over 400 hours of sick time and separate from employment. Barksdale conceded that the City has not refused to bargain the impact of the change to Rule 4.3 with the PBPA.

b. Local 37 (S-CA-19-046)

Gary Self (Self) is currently employed by the City's Fire Department in the rank of Battalion Chief. From 2015 to 2019, Self served as President of Local 37, a position which he also held previously. As President, Self was responsible for ensuring enforcement of the CBA between the union and the City and also was involved in contract negotiations and discipline issues. As President, Self helped to negotiate the most recent contract between the union and the City, including drafting proposals and attending bargaining sessions. The parties' previous contract expired in February of 2016, and the parties came to agreement on a successor agreement in February of 2019. During the approximately three years of bargaining, Self and Local 37's bargaining committee reviewed each contract proposal made by the City. He testified that during this period, the union did not make any proposal relating to residency preference points as a criterion for promotions for Local 37 unit members, and to the best of his knowledge, the City did not make any such proposals either. Self further stated that he did not recall any discussion between the parties during bargaining about residency preference points.

Self testified that a bargaining unit member must serve for ten years before he or she is eligible to apply for a promotion to Captain. Self stated that at the end of the promotional examination process, the top scores can sometimes be separated by tenths of a point. Self went on to say that if a certain promotional candidate was given three points whereas another was not, it could decide which candidate gets the promotion.

Self stated that, prior to September 2018, the Civil Service Commission's rules did not include any provision that provided residency preference points as a criterion for promotions for members of Local 37's bargaining unit. Self testified that a few days after September 5, 2018, he became aware through a conversation with the City's Fire Chief that Rule 4.3 had been changed to include residency preference points as a criterion for promotions for Local 37 unit members. Although he could not recall the exact date, he estimated it was within a matter of days or weeks after the change took place. Self stated that before September 5, 2018, no one from the City—including the City's Fire Chief, the Civil Service Commission, or the City's Corporation Counsel—ever informed him that the City was considering adopting the change to Rule 4.3.

After learning of the change to Rule 4.3, Self subsequently emailed the City's Assistant Corporation Counsel Steven Rahn (Rahn) on September 17, 2018 regarding the

change to Rule 4.3. In that email, Self noted that he believed the change regarding residency points violated various provisions of the parties' CBA.

Self further noted that Local 37 has not requested to bargain the impact of the change to Rule 4.3, but clarified that impact bargaining would be futile since he learned of the change only after it had been adopted.

III. ISSUE AND CONTENTIONS

This case presents three issues. The first issue is whether the City was obligated to bargain the change to Rule 4.3 with the Charging Parties before it was adopted by the City's Civil Service Commission. The City argues that its Civil Service Commission is not obligated to bargain the decision to adopt any rule and cites case law it suggests supports that proposition. The City does concede that it is obligated to bargain the impact of the rule change but avers that because the effect of the rule change has not been applied to any member of either Charging Party's bargaining unit—and will not be for several years, at the earliest—that it has not failed to satisfy this obligation. It concludes that it has offered to bargain the impact of the rule change with both Charging Parties, and that both unions have refused. Both Charging Parties argue that the City was obligated to bargain the decision to change the rule before the change was adopted by its Civil Service Commission, as the change involves a mandatory subject of bargaining.

The second issue is whether either of the Charging Parties waived their right to bargain the issue of residency preference points either by contract or inaction. The City suggests that the language of both of the CBAs between the City and the Charging Parties expressly acknowledges the authority of the Civil Service Commission to make and amend rules. The PBPA argues that the language in the parties' CBA which the City relies on applies only to lawful actions taken by the Civil Service Commission, and that the change to Rule 4.3 was an unlawful unfair labor practice both as a unilateral change generally, and a violation of the City's obligations under Section 14(l) of the Act.

The third issue is whether the City violated its obligation under Section 14(l) of the Act to maintain the status quo during the pendency of interest arbitration with both Charging Parties. Both Charging Parties argue that because the change to Rule 4.3 came after each union had invoked the Board's interest arbitration procedures that the City failed to maintain the status quo during the pendency of interest arbitration as obligated by Section 14(l) of the Act. The City does not address this argument in its brief.

IV. DISCUSSION AND ANALYSIS

a. The City's Obligation to Bargain the Rule Change

i. Legal Status of the Civil Service Commission

As an initial matter, the City, in its Answers to the Complaints for Hearing in both cases, asserts that its Civil Service Commission is a separate legal entity unto itself, and that it is not a party to these cases.[2] However, the Section 3(o) of the Act provides that:

> [P]ublic employer" or "employer" means the State of Illinois; any political subdivision of the State, ***unit of local government*** or school district; ***authorities including departments, divisions, bureaus, boards, commissions***, or other agencies of the foregoing entities; and any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees.

5 ILCS 315/3(o) (emphasis added).

The City provides no case law or authority to support its contention that its Civil Service Commission is a separate legal entity distinct and apart from the City of Springfield. Rather, the City's stipulations point to the opposite conclusion: not only was the Civil Service Commission established by the City through ordinance, but its commissioners are appointed by the City's mayor with the advice and consent of the City's council. Moreover, the Civil Service Commission is authorized to approve or disapprove changes to its Rules which are proposed by the City's director of human resources. For the reasons discussed in more detail, *infra*, those Rules can bear upon the wages, hours, and terms and conditions of bargaining unit members. When this is considered in light of the language of Section 3(o), it is hard to come to any other conclusion than that the City's Civil Service Commission, created and empowered by the City, is an arm of the City of Springfield as a "commission" of the City. Moreover, the Board has held that a civil service commission is not a separate legal entity from the municipality that creates it. See County of Cook (Cermak Health Services), 3 PERI 3030 (ILLRB 1987) (noting that "case law has consistently regarded municipal civil service commissions as creatures of the municipalities establishing them."). As it is not a separate entity, the actions of the City's Civil Service Commission are therefore attributable to the City. See City of Chicago (Department of Sewers), 12 PERI 3023 (ILLRB 1996) (finding the action of "administrative arms" of a city to be attributable to the city as a respondent in the case).

[2] The City does not address this argument in its post-hearing brief.

For these reasons, I find that the City's Civil Service Commission is an arm of the City of Springfield and is not a legally distinct entity unto itself. Accordingly, its actions are attributable to the City.

b. The Decision to Change Rule 4.3

The City violated Section 10(a)(4) and 10(a)(1) of the Act when its Civil Service Commission adopted Rule 4.3 to allow for residency preference points as a factor in the promotional process for the Charging Parties' bargaining unit members without first bargaining the change with the Charging Parties.

i. Mandatory Subject under Central City

Residency preference points relating to the promotional process is a mandatory subject of bargaining.

Section 7 of the Act provides that a public employer and an exclusive representative are under a duty to bargain collectively with respect to wages, hours, and other conditions of employment of the exclusive representative's bargaining unit members. See 5 ILCS 315/7. These are known as mandatory subjects of bargaining. Village of Oak Lawn, 26 PERI 118 (ILRB-SP 2010). It is well-established that a public employer violates its obligation to bargain in good faith, and therefore violates Section 10(a)(4) and 10(a)(1) of the Act, when it makes a unilateral change to a mandatory subject of bargaining without giving a union notice and opportunity to bargain the change. County of Cook v. Licensed Practical Nurses Ass' n of Ill., Div. 1, 284 Ill. App. 3d 145, 153 (1st Dist. 1996); Village of Schaumburg (Police Department), 29 PERI 75 (IL LRB-SP 2012).

A three-part test is used to determine whether a matter is a mandatory subject of bargaining. See Central City Education Ass'n v. IELRB, 149 Ill. 2d 496 (1992); City of Belvidere v. ISLRB, 181 Ill. 2d 191 (1998). This test, known as the "Central City test," first considers whether the matter at hand concerns the wages, hours, and terms and conditions of employment of employees in the bargaining unit. Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI 70 (IL LRB-LP 2015) *aff'd sub. nom*. Cnty. of Cook v. ILRB, 2017 IL App (1st) 153015, 46; City of Chicago, 31 PERI 3 (IL LRB-LP 2014). If it does, the second prong of the Central City test asks whether the subject is also a matter of the employer's inherent managerial authority as provided in Section 4 of the Act. City of Chicago, 31 PERI 3. If the topic concerns wages, hours, and terms and conditions of employment and is a matter of an employer's inherent managerial authority, the third step of the Central City test is invoked, which requires weighing the benefits that bargaining will have on the decision-making process against the burdens that bargaining imposes on the employer's authority. Id. If the benefits of bargaining outweigh the imposition on the employer's authority, then the matter is subject to mandatory bargaining. Id.

A. Central City Step One: Wages, Hours, Terms and Conditions

A matter concerns "wages, hours and terms and conditions of employment" if it "(1) involves a departure from previously established operating practices, (2) effects a change in the conditions of employment, or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit." Int'l Bhd. of Teamsters, Local 700 v. ILRB, 2017 IL App (1st) 152993, 33 (holding that a sheriff's order stating that employees may not associate with individuals who were gang members was a mandatory subject of bargaining); County of Cook v. ILRB, 2017 IL App (1st) 153015, ¶ 46 (holding that a sheriff's order modifying its existing secondary employee policy was a mandatory subject of bargaining); see also Chicago Park Dist. v. ILRB, 354 Ill. App. 3d 595, 603 (1st Dist. 2004).

The establishment of residency preference points as a criterion in the promotional process plainly involves a departure from the City's previously-established operating practices. Prior to September 5, 2018, a candidate who had applied for promotion through the City's Civil Service Commission and was a resident of the City for at least nine months prior was awarded no points in the promotional process for that residency. After September 5, 2018, candidates applying for promotion are awarded three points based on that residency.[3] On that basis alone, I would conclude that residency preference points concern the wages, hours, and terms and conditions of employment of the Charging Parties' bargaining unit members. Moreover, the Board has found, as a general matter, that the criteria for promotions to positions within a bargaining unit are a mandatory subject of bargaining. Village of Franklin Park, 8 PERI 2039 (IL SLRB 1992), *aff'd* Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994) (holding that promotional criteria, including the relative weights of those criteria, are mandatory subjects of bargaining); see also County of Perry and Sheriff of Perry County, 19 PERI 124 (ILRB-SP 2003). The rationale for making such promotional criteria a mandatory subject of bargaining is that employees have an interest in the improved wages and terms and conditions of employment that accompany a promotion. County of Perry, 19 PERI 124; see also City of Chicago, 12 PERI 3015 (IL LLRB 1996); Harris-Teeter Supermarkets. Inc., 293 NLRB 743 (1989).

In this case, the impact of three points for residency preference in the promotional process is particularly palpable, where the record evidence demonstrates that promotions can sometimes hinge on mere tenths of points. These promotions also carry with them other benefits, including a salary increase. Accordingly, I find that the issue of residency

[3] There is some dispute over whether Rule 4.3 applies immediately to all employees seeking promotion, or whether it applies only to employees hired after September 5, 2018. However, because this does not affect the analysis, for the reasons discussed *infra*, I do not need to resolve it.

preference points in promotional examinations affects the wages, hours, and terms and conditions of employment of the Charging Parties' bargaining unit members.

B. Central City Step Two: Inherent Managerial Authority

The second step of the Central City test places the burden on the employer to "link the objective of the challenged policy with a core managerial right." County of Cook v. ILRB, 2017 IL App (1st) 153015, 46; County of Cook v. ILRB, 347 Ill. App. 3d at 552. Section 4 of the Act provides that matters of inherent managerial policy 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." 5 ILCS 315/4 (West 2014).

The record suggests the motivation for the adoption of Rule 4.3 was an economic one, evidenced by Zerkle's email to Stone in which he highlighted a loss of jobs and population, as well as increased unfunded pension liabilities. However, the City does not explicitly argue that the specific issue of residency preference points is a matter of either its, or its Civil Service Commission's, inherent managerial authority under Section 4 of the Act. The City simply argues that its Civil Service Commission was not obligated to bargain the decision to change Rule 4.3 with either Charging Party, asserting that no case has held that a public employer must bargain before its civil service commission adopts a rule. It cites two cases in support of that proposition: City of Decatur v. AFSCME, Local 268, 122 Ill. 2d 353 (1988) (City of Decatur) and AFSCME, Council 31 v. County of Cook, 145 Ill. 2d 475 (1991) (County of Cook) in support.

In City of Decatur, a union sought to bargain a proposal which would have included disciplinary disputes under a contractual grievance arbitration clause. City of Decatur, 122 Ill. 2d at 357. The city refused to bargain the proposal, arguing disciplinary disputes were the exclusive province of its civil service commission. Id. Here, the City, in its brief, excerpts a single line of dicta from the Illinois Supreme Court's decision in City of Decatur, that "a municipality that has adopted [the civil service system] may unilaterally alter or amend one of its terms," (City of Decatur, 122 Ill. 2d at 365), as the sole basis for its argument that it its Civil Service Commission was free to adopt Rule 4.3. However, this quote must be put in full context; the City of Decatur court weighed three separate considerations to determine whether the issue in that case was subject to mandatory bargaining: 1) the policy of the Act; 2) the legislature's preference for arbitration as a means of dispute resolution; and 3) the optional, rather than mandatory, nature of the civil service system adopted by the city, including its authority to unilaterally alter, amend or eliminate any term of such a system. City of Decatur, 122 Ill. 2d at 366. After weighing these considerations, the court determined city was required to bargain over the proposal,

irrespective of the fact that it touched on the authority of its civil service commission to consider disciplinary matters. Specifically, the court held:

> Given the purpose of the Act, the nature of that part of the civil service system at issue here, and the legislature's express preference for arbitration as a method for resolving disputes during the life of a labor contract, unless mutually agreed otherwise, we conclude that the State Board was correct in ordering the city to bargain over the union's proposal. In these circumstances, we construe the union's proposal as pertaining to a matter not specifically provided for or in violation of another law, and as supplementing, implementing, or relating to the provisions of the civil service scheme adopted by the city. ***We do not believe that the legislature would have intended that the civil service system it made available, as an optional matter, to municipalities in the Municipal Code would eliminate the duty to bargain over the union's proposal here***.
>
> City of Decatur, 122 Ill. 2d at 366–67 (emphasis added).

Thus, the City's selected quote is not a blanket grant of authority to civil service commissions to unilaterally promulgate rules bearing on wages, hours, or terms and conditions of employment of bargaining unit members without first bargaining, but rather, is a factor considered by courts in determining whether an issue is indeed subject to bargaining. This distinction becomes clearer in the next case cited by the City, County of Cook, where the Illinois Supreme Court explained that:

> [t]he [City of Decatur] court so held in reliance upon: (1) the public policy of the State to grant public employees full freedom of association, self-organization, and designation of representatives for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection; (2) the optional, rather than mandatory, nature of the civil service system adopted by the city and the city's power, as a home rule authority, to unilaterally alter, amend or eliminate any of the terms of that system; and (3) the legislature's preference for arbitration as a means of dispute resolution, as expressed in section 8 of the Act.

County of Cook, 145 Ill. 2d at 482 (internal citations omitted).

Moreover, the County of Cook court explicitly emphasized the importance of the optional nature of a civil service system, explaining that "[b]ecause . . . [civil service] system[s] and the rules promulgated thereunder are optional and, thus, can be altered, amended or even abandoned at any time, ***they cannot be held to prevail over the rights of public employees, who . . . have become members of a collective-bargaining unit duly authorized by the employees and recognized by the employer***." Id. at 487 (emphasis added). Therefore, not only does the City's isolated quotation not dispose of the issue in this case, it actually works against its argument; in cases like the instant one, where a municipality like the City has chosen to exercise its optional authority to establish a civil service system, and is free to unilaterally alter its terms, the Illinois Supreme Court has twice held that factor to favor bargaining because that municipality has the authority to change those terms. See County of Williamson, 15 PERI 2003 (ISLRB 1999).

Appellate courts have followed this reasoning in subsequent cases. For example, in Illinois FOP Labor Council v. Town of Cicero, 301 Ill. App. 3d 323 (1st Dist. 1998), a city refused a union's demand to arbitrate police officer dismissals on the basis that its board of police, fire, and public safety commissioners had sole authority to determine cause for dismissal. Id. at 324-235. In holding that the issue was proper for arbitration, the court, following City of Decatur, highlighted the optional nature of the city's board in that case, noting that it was "an important consideration, for it would not make sense to require the city to bargain over matters it had no authority to change." Id. at 329. The court determined that the fact the city exercised its optional authority to create the board weighed in favor of submitting the issue to arbitration. Id. at 331.

Conversely, in City of Markham v. State and Municipal Teamsters, Chauffeurs and Helpers, Local 726, 299 Ill. App. 3d 615 (1st Dist. 1998), the court held an issue to be non-bargainable due to the lack of control the city exercised over that issue. In that case, the city challenged an arbitrator's ruling which determined that final disciplinary decisions of its board of fire and police commissioners could be submitted to arbitration as grievances. Id. at 615-616. The court determined that the arbitrator exceeded his authority in so determining because the city was required to follow the mandates of the Illinois Municipal Code and could not unilaterally alter or amend those terms. Id. at 617. The court distinguished the City of Decatur rationale, noting that "the civil service commission in [City of Decatur] was optional; the Code in this case is a mandatory civil code." The court went to conclude that "the City of Decatur, unlike the City here, had the sole and exclusive ability to control which parts of its optional civil service code it would adopt, alter, amend or abolish." Id. at 618.

In light of the case law above, it is plain that it is not within the inherent managerial authority of the City or its Civil Service Commission to unilaterally adopt rules which bear on wages, hours, or terms and conditions of employment for represented employees. The City's civil service system was not foisted on the City by mandate, but rather was an optional scheme that the City elected to adopt and one whose terms the City is free to unilaterally alter. To allow for it to unilaterally adopt rules affecting mandatory subjects of bargaining is to allow for an end-around of the Act's duty to bargain. As such, I would find that City's Civil Service Commission does not have the inherent managerial authority to unilaterally adopt rules which bear upon mandatory subjects of bargaining. Accordingly, I would find that the Central City analysis ends here, and the issue is subject to bargaining. See City of Chicago 31 PERI 3 (noting that if the answer to the second question in the Central City test is " no" , the analysis stops, and the issue is a mandatory subject of bargaining). For the sake of completeness, however, I will analyze the third step of the Central City test.

C. Central City Step Three: Balancing Benefits against Burdens

Even assuming, *arguendo*, that adopting a provision on residency preference points is within the inherent managerial authority of either the City or its Civil Service Commission, the third prong of the Central City test requires me to balance the benefits that bargaining over the issue will have on the decision-making process against the burdens that bargaining imposes on the employer's inherent managerial control. The balance favors bargaining where the issues are amenable to resolution through the negotiation process. Chief Judge of the Cir. Ct. of Cook Cnty., 31 PERI 114 (IL LRB-SP 2014). Essentially, the union must be capable of offering proposals that adequately address the employer's stated concerns for modifying the existing policies. Cnty. of Cook and Sheriff of Cook Cnty., 32 PERI 70; see Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI 18 (IL LRB-SP 2011). The Board and courts have consistently held that there are significant benefits to bargaining where the employer's decision is economically motivated because a union can provide helpful suggestions to reduce labor costs. Chicago Park Dist. v. ILRB, 354 Ill. App. 3d at 603; Vill. of Ford Heights, 26 PERI 145 (IL LRB-SP 2010); City of Peoria, 3 PERI ¶2025 (ISLRB 1987).

Conversely, the Board has found that the balance favors an employer's unilateral authority when the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Chief Judge, 31 PERI 114; City of Springfield, 9 PERI 2024 (IL SLRB 1993) (citing Peerless Pub., Inc., 283 NLRB 334 (1987)). The employer's statutory mission and the nature of the public service it provides

are relevant considerations when applying the balancing step of the Central City analysis. Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992).

Here, the City does not present an argument as to how residency preference points are intimately connected to its governmental mission nor how bargaining such points with the Charging Parties would diminish its ability to effectively provide the services it is obligated to provide. However, to the extent that the City's concerns are financial in nature, both Charging Parties are well-suited to provide revenue-generating or cost-saving proposals during bargaining to address those concerns. As such, I would find the benefits of bargaining the issue of residency preference points outweigh any burden on the City's inherent managerial authority—if such authority even exists—and conclude that, under the Central City test, the issue of residency preference points in promotional examinations is a mandatory subject of bargaining.

It is clear from the record evidence that the City did not provide notice or an opportunity to bargain the decision to change Rule 4.3 to either of the Charging Parties before adopting the rule. Although the PBPA and the City exchanged proposals during bargaining relating to residency requirements, there is no evidence the parties exchanged proposals, or even discussed, issue of residency preference points in promotional examinations before Rule 4.3 was adopted. With respect to Local 37, the City stipulates that it did not discuss residency preference points with the union during bargaining. Moreover, both Barksdale and Self learned of the change to Rule 4.3 only after the change was adopted by the Civil Service Commission. The fact that no bargaining unit member has yet suffered an impact because of the adoption of Rule 4.3 is irrelevant, as an unfair labor practice can occur before the consequences of an action become painful for the employees involved. See County of Cook (Forest Preserve District), 4 PERI 3012 (IL LLRB 1988); County of Cook (Sherriff), 2 PERI 3030 (IL LLRB 1986). Stated differently, the unfair labor practice here is the unilateral change to Rule 4.3, and not its application to particular individuals. See Village of River Forest, 22 PERI 55 (ILRB-SP 2006); Chicago Transit Authority, 19 PERI 12 (ILRB-LP 2003); Wapella Education Association, IEA-NEA v. IELRB, 177 Ill. App. 3d. 153, 168 (4th Dist. 1988).

I must clarify what type of bargaining needs to take place. The City argues that it is only obligated to bargain the impact of Rule 4.3 with the Charging Parties and acknowledges it must do so before it may apply Rule 4.3 to any bargaining unit members. Not only does this ignore the obligation of an employer to engage in decisional bargaining before a decision involving a mandatory subject is adopted, it also improperly frames the authority of the Civil Service Commission. Impact bargaining typically applies in situations where an employer has made a decision pursuant to its inherent managerial authority. See Chief Judge of the Circuit Court of Cook Cnty., 31 PERI ¶ 114 (IL LRB-

SP 2014) (decision to unilaterally remove a vacancy in accordance with a reorganization plan within employer's managerial authority); County of Cook (Juvenile Temporary Detention Center), 14 PERI ¶ 3008 (IL LLRB 1998) (decision to adopt drug testing policy within employer's inherent managerial policy). For the reasons explained *supra*, the City's Civil Service Commission does not have the inherent managerial authority to adopt rules bearing on the wages, hours, or terms and conditions of employment of bargaining unit members. What is more, during impact bargaining, an employer is only obligated to bargain the impact of a decision which is *not* an inevitable consequence of the decision itself. Chief Judge, 31 PERI 114; Community College District 508 (City Colleges of Chicago), 13 PERI 1045 (IL ELRB 1997). This requirement exists to ensure that impact bargaining does not inevitably lead to questioning of the underlying decision. Id. Unless the City is suggesting that awarding three residency preference points is somehow not an inevitable consequence of a rule designed to award three residence preference points, impact bargaining would not suffice here, as it would still allow the city to unilaterally adopt, and refuse to bargain over, a rule which bears on wages, hours, and terms which is not part of its inherent managerial authority. As such, I find that impact bargaining alone is an insufficient remedy for the Charging Parties in this case.

However, I must also note the limits of this decision. First, this decision extends only to the adoption of Rule 4.3 as it relates to employees represented by the Charging Parties, and even then, there are limitations. The City is not obligated to bargain with the PBPA over promotional criteria for promotions to positions outside of its bargaining unit. See Village of Franklin Park, 8 PERI 2039 (IL SLRB 1992), *aff'd* Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st 1994); City of Chicago, 15 PERI 3010 (ILLRB 1999). The City must bargain with Local 37 over promotional criteria for promotions to positions within its bargaining unit, as well as to the rank immediately above and outside the bargaining unit, but not for any positions above that first outside rank. See Village of Libertyville, 21 PERI 211 (ILRB-SP 2005).

Aside from these limitations, the City's Civil Service Commission is free to adopt any rule and apply that rule to *unrepresented* employees, as the duty to bargain does not apply to those employees. Here, the plain language of Rule 4.3 suggests the rule extends beyond just fire and police promotions. Therefore, rather than ordering a wholesale recession of Rule 4.3, I believe it is sufficient to order the City rescind the rule as it relates to police and fire or, at the very least, refrain from applying Rule 4.3 to police candidates seeking promotion to a bargaining unit position, and for fire candidates seeking a promotion to a bargaining unit position or the first position outside of the unit, until the issue is fully bargained with the Charging Parties.

c. Waiver

Neither Charging Party has waived its right to bargain over residency preference points.

The City argues in its Answers to both Complaints that the CBAs between it and the Charging Parties waived any duty to bargain Civil Service Commission rule changes. In its brief, it suggests that the CBAs expressly acknowledge the authority of the Civil Service Commission to make and amend rules. A party to a collective bargaining agreement may waive its rights to bargain under the Act where the contractual language evinces an unequivocal intent to relinquish such rights. Forest Pres. Dist. of Cook Cnty. v. ILRB, 369 Ill. App. 3d 733, 754, (1st Dist. 2006). The language sustaining waiver must be specific and is never presumed. Id. As such, evidence that a party to a labor agreement intended to waive a statutory right must be clear, unequivocal, and unmistakable. AFSCME v. ISLRB, 274 Ill. App. 3d 327, 334 (1st Dist. 1995); County of Cook v. ILLRB, 214 Ill. App. 3d 979 (1st Dist. 1991); Chicago Park District, 18 PERI ¶ 3036 (IL LLRB 2002).

Here, although the City argues waiver, it does not make clear what specific language in the CBA evinces wavier. However, both CBAs do contain identical language, highlighted by the City in its stipulations, which provides that "[n]othing in this Agreement shall be construed as improperly delegating to others the authority conferred by law on the Employer, or in any way improperly abridging or reducing such authority, and further, nothing herein shall improperly supplant the lawful authority of the Springfield Civil Service Commission." First, I note that this provision requires that such authority to be lawful. As discussed *supra*, the City's Civil Service Commission does not have the lawful authority under the Act to unilaterally promulgate rules which impact mandatory subjects of bargaining without first bargaining those subjects with its employee's exclusive representatives. Second, this contract language makes no reference the issue of residency preference points in promotions, nor promotional criteria generally, and therefore is not specific enough to demonstrate that the Charging Parties waived their right to bargain over the issue. See Forest Pres. Dist. of Cook Cnty. v. ILRB, 369 Ill. App. 3d at 754 (holding that the Union did not waive its right to bargain over implemented layoffs when the CBA did not contain language related to layoffs or reductions in force). Furthermore, if the City's argument that the contract language it cites permits its Civil Service Commission to adopt any rule bearing on wages, hours, and terms and conditions of members of the Charging Parties' bargaining units, it would mean that the Charging Parties effectively decided to waive away their Section 7 rights in their entirety. Surely, neither has agreed to do so.

For these reasons, I find that neither Charging Party waived its right to bargain over residency preference points as a criterion in the promotional process.

d. Failure to Maintain Status Quo During Pendency of Interest Arbitration (S-CA-19-046)

The City violated Section 10(a)(4) and 10(a)(1) by failing to maintain the status quo during the pendency of interest arbitration with both PBPA and Local 37.

It is well-settled that failing to maintain the status quo during the pendency of the Act's interest arbitration procedures violates Section 10(a)(4) and 10(a)(1) of the Act. See Village of North Riverside v. ILRB, 2017 IL App (1st) 162251 ("[t]o alter the terms and conditions of employment [after interest arbitration has been invoked] violates section 10(a)(4)."); see also Village of Oak Park, 25 PERI 169 (ILRB-SP 2009); East St. Louis Fire Department, 30 PERI 67 (ILRB-SP 2013). Here, the parties stipulate that Local 37 invoked interest arbitration on January 27, 2016, and that PBPA invoked interest arbitration on January 12, 2018. The parties further stipulate that the change to Rule 4.3 occurred on September 5, 2018. On this date, interest arbitration was still pending for both Charging Parties and the City. For the reasons discussed *supra*, the change to Rule 4.3 was an alteration of the status quo as it existed on January 27, 2016 as it departed from previous promotional criteria. The fact that the City and Local 37 subsequently entered into a successor agreement in February of 2019 does not make this issue moot, because Rule 4.3, which is the basis for the unfair labor practice charge, is still in effect. In other words, the City's alteration of the status quo exists to this day. The record evidence demonstrates that the topic of residency preference points in promotions was never discussed between the City and Local 37 during successor bargaining. Moreover, the Board has held that a respondent's subsequent compliance with its duty to bargain in good faith does not render moot an earlier violation to bargain in good faith. City of Ottawa, 27 PERI 6 (IL LRB-SP 2011); see also County of Cook (Health and Hospital System), 33 PERI 39 (ILRB G.C. 2016). Accordingly, I find that the City violated Section 10(a)(4) and 10(a)(1) of the Act when it unilaterally altered the status quo by implementing residency preference points during the pendency of Section 14 interest arbitration.

V. CONCLUSIONS OF LAW

1. The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act in Case No. S-CA-19-046 when its Civil Service Commission unilaterally altered Rule 4.3 to provide for residency preference points in the promotional process for members of Local 37's bargaining unit without first providing Local 37 notice and an opportunity to bargain.
2. The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act in Case No. S-CA-19-066 when its Civil Service Commission unilaterally altered Rule 4.3 to provide for residency preference points in the promotional process for members

of PBPA's bargaining unit without first providing PBPA notice and an opportunity to bargain.

3. The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act in Case No. S-CA-19-046 by failing to maintain the status quo during the pendency of interest arbitration with Local 37, as required under Section 14(l) of the Act.
4. The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act in Case No. S-CA-19-066 by failing to maintain the status quo during the pendency of interest arbitration with PBPA, as required under Section 14(l) of the Act.

VI. RECOMMENDED ORDER

a. With respect to Case No. S-CA-19-046, IT IS HEREBY ORDERED that the Respondent, City of Springfield, and its officers and agents, shall:
    i. Cease and desist from:
        A. Refusing to bargain collectively and in good faith with Local 37 concerning wages, hours, and other terms and conditions of employment of Local 37's bargaining unit members.
        B. In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
    ii. Take the following affirmative action designed to effectuate the policies of the Act:
        A. Restore the status quo by rescinding Rule 4.3 as it applies to members of Local 37.
        B. On request, bargain collectively and in good faith with Local 37 concerning the issue of residency preference points in the promotional process.
        C. Post, at all places where notices to bargaining unit members are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.
    iii. Notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.
b. With respect to Case No. S-CA-19-066, IT IS HEREBY ORDERED that the Respondent, City of Springfield, and its officers and agents, shall:

i. Cease and desist from:
   A. Refusing to bargain collectively in good faith with PBPA concerning wages, hours, and other terms and conditions of employment of PBPA's bargaining unit members.
   B. In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.

ii. Take the following affirmative action designed to effectuate the policies of the Act:
   A. Restore the status quo by rescinding Rule 4.3 as it applies to members of PBPA.
   B. Refrain from altering the status quo between the City and PBPA during the pendency of interest arbitration.
   C. On request, bargain collectively and in good faith with PBPA concerning the issue of residency preference points in the promotional process.
   D. Post, at all places where notices to bargaining unit members are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

iii. Notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.

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 in 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 this decision. 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 General Counsel of the Illinois Labor Relations Board, Helen Kim, 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 in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. 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 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.

Dated: **October 24, 2019**
Issued: Springfield, Illinois

/s/ *Matthew S. Nagy*
Matthew S. Nagy
Administrative Law Judge

Illinois Labor Relations Board
801 S. 7th Street, Suite 1200A
Springfield, Illinois 62703
Tel. (217) 785-3155 / Facsimile (217) 785-4146

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-19-046 (Springfield Firefighters, International Association of Firefighters, Local 37/City of Springfield)

The Respondent, City of Springfield (City), violated Section 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act) when its Civil Service Commission unilaterally altered Rule 4.3 to provide for residency preference points in the promotional process for members of the bargaining unit of Charging Party, Springfield Firefighters, International Association of Firefighters, Local 37, without first providing Local 37 notice and an opportunity to bargain.

The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act by failing to maintain the status quo during the pendency of interest arbitration with Local 37, as required under Section 14(l) of the Act.

I. The Respondent, and its officers and agents, shall:
   a. Cease and desist from:
      i. Refusing to bargain collectively and in good faith with Local 37 concerning wages, hours, and other terms and conditions of employment of Local 37's bargaining unit members.
      ii. In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
   b. Take the following affirmative action designed to effectuate the policies of the Act:
      i. Restore the status quo by rescinding Rule 4.3 as it applies to members of Local 37.
      ii. On request, bargain collectively and in good faith with Local 37 concerning the issue of residency preference points in the promotional process.
      iii. Post, at all places where notices to bargaining unit members are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.
   c. Notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.

Date: _____ _____ City of Springfield _____
(Employer)

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-19-066 (Policemen's Benevolent and Protective Assocation, Unit #5/City of Springfield)

The Respondent, City of Springfield (City), violated Section 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act (Act) when its Civil Service Commission unilaterally altered Rule 4.3 to provide for residency preference points in the promotional process for members of the bargaining unit of Charging Party, Policement's Benevolent and Protective Assocation, Unit #5 (PBPA), without first providing PBPA notice and an opportunity to bargain.

The Respondent violated Section 10(a)(4) and 10(a)(1) of the Act in Case No. S-CA-19-066 by failing to maintain the status quo during the pendency of interest arbitration with PBPA, as required under Section 14(l) of the Act.

I. The Respondent, and its officers and agents, shall:
   a. Cease and desist from:
      i. Refusing to bargain collectively in good faith with PBPA concerning wages, hours, and other terms and conditions of employment of PBPA's bargaining unit members.
      ii. In any like or related manner, interfering with, restraining or coercing their employees in the exercise of the rights guaranteed them in the Act.
   b. Take the following affirmative action designed to effectuate the policies of the Act:
      i. Restore the status quo by rescinding Rule 4.3 as it applies to members of PBPA.
      ii. Refrain from altering the status quo between the City and PBPA during the pendency of interest arbitration.
      iii. On request, bargain collectively and in good faith with PBPA concerning the issue of residency preference points in the promotional process.
      iv. Post, at all places where notices to bargaining unit members are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.
   c. Notify the Board within 20 days from the date of this decision of the steps the Respondent has taken to comply herewith.

Date: _____ City of Springfield
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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