STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (State Police),	)	
Charging Party,	)	
and	)	Case No. S-CB-16-023
Troopers Lodge #41, Fraternal Order of Police,	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On March 11, 2016, Charging Party, State of Illinois, Department of Central Management Services (State Police), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, Troopers Lodge #41, Fraternal Order of Police, violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), *as amended* (Act). This unfair labor practice charge concerns the obligation to bargain the subject of employee health insurance and the Charging Party's contention that Respondent violated the Act by demanding to bargain over this subject.

On June 6, 2016, Executive Director Melissa Mlynski issued an order dismissing the above-captioned charge, concluding that the charge failed to raise an issue of law or fact sufficient to warrant a hearing. Charging Party filed a timely appeal of the Dismissal and Respondent filed a response. After having reviewed the charge, Dismissal, appeal and response, we disagree with the Executive Director's conclusion. This charge presents a case of first impression for this Board, raising the question of the impact of the 2004 Amendments to the Act on the obligation to bargain health insurance. We believe that a matter of such significance and broad application across State government warrants the full vetting that will be achieved by a hearing on the merits before an Administrative Law Judge, followed by the opportunity for the parties to file exceptions/responses before the matter is place before the Board for final review and decision. Accordingly, we reverse the Executive Director's dismissal and remand the matter for the issuance of a complaint and assignment to an Administrative Law Judge in an expeditious manner.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting held in Chicago, Illinois, on July 12, 2016; written decision issued in Chicago, Illinois, August 5, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (State Police) Charging Party and Troopers Lodge #41, Fraternal Order of Police, Respondent	)	Case No. S-CB-16-023

DISMISSAL

On March 11, 2016, Charging Party, State of Illinois, Department of Central Management Services (State Police), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-referenced case, alleging that Respondent, Troopers Lodge #41, Fraternal Order of Police (FOP or Union) violated Section 10(b) of the Illinois Public Labor Relations Act (Labor Act), 5 ILCS 315 (2014), *as amended*. After an investigation conducted in accordance with Section 11 of the Labor Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATION

Charging Party is a public employer within the meaning of Section 3(o) of the Labor Act and subject to the jurisdiction of the State Panel of the Board pursuant to Sections 5(a-5) of the Labor Act. Respondent is a labor organization within the meaning of Section 3(i) of the Labor Act, and the exclusive bargaining representative of a bargaining unit (Unit) of State Police Officers, below the rank of Master Sergeant, employed jointly by the Illinois State Police and the

Illinois Department of Central Management Services (Employer or State). The Employer and the Union are currently in negotiations for a successor to their July 1, 2012 – June 30, 2015 collective bargaining agreement (2012-2015 CBA) for the Unit. Under the 2012-2015 CBA, Unit employees are eligible to participate in the State's Group Insurance Plan.

This unfair labor practice charge concerns the obligation to bargain the subject of employee health insurance. The Employer contends the Union violated the Labor Act by demanding to bargain over health insurance. The Employer contends it has no obligation to bargain health insurance for two reasons. First, the Employer asserts that the State's Group Health Insurance Plan was made a non-mandatory bargaining subject of bargaining by Public Act (PA) 93-839, which amended the Labor Act, the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et. seq.* (Group Insurance Act) and the Illinois Procurement Code, 30 ILCS 500/20-1 *et. seq.* (Procurement Code), referred to collectively herein as the "2004 Amendments." Second, the Employer asserts that under the balancing test set forth by the Illinois Supreme Court in Central City Education Association v. the Illinois Educational Labor Relations Board, 149 Ill.2d 496 (1992) (Central City), the subject matter of health insurance is not a mandatory subject of bargaining.

The 2004 Amendments

The 2004 Amendments amended Section 15(a) of the Labor Act as follows:

> § 15. Act Takes Precedence. (a) In case of any conflict between the provisions of this Act and any other law ***(other than Section 5 of the State Employees Group Insurance Act of 1971),*** executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. Nothing in this Act shall be construed to replace or diminish the rights of employees established by Sections 28 and 28a of the Metropolitan Transit Authority Act, Sections 2.15 through 2.19 of the Regional Transportation Authority Act. ***The provisions of this Act are subject to Section 5 of the State Employees Group Insurance Act of 1971.***
> 5 ILCS 315/15(a) (Emphasis on language added by 2004 Amendments.)

The Employer asserts that these amendments expressly exempt the Group Insurance Act from the supremacy clause of the Labor Act, and specifically make the provisions of the Labor Act subject to Section 5 of the Group Insurance Act. The Employer asserts that these two changes result in Section 5 of the Group Insurance Act being exempt from any bargaining obligation found in the Labor Act.

The Employer cites various provisions within Section 5 of the Group Insurance Act that establish the authority of the Director of the Illinois Department of Central Management Services to implement health insurance plans for employees and their dependents, subject to certain statutory limitations. The Employer argues that prior to the 2004 Amendments, the Director's power was restricted by Section 15(a) of the Labor Act, which gave the Labor Act precedence over the Group Insurance Act and, presumably, conferred an obligation to bargain over health insurance. As noted above, the Employer asserts that this obligation was eliminated by the 2004 Amendments. The Employer explains that the 2004 Amendments created "new and different checks and balances on the power of the Director to provide health insurance..." including a new State policy that the Director must follow.[1] The 2004 Amendments also create reporting oversight by the Commission on Government Forecasting and Accountability (COGFA) and reporting oversight by the Illinois Procurement Policy Board. The State asserts that these new

[1] The new state policy set forth in the 2004 Amendments is found in Section 5 of the Group Insurance Act and provides as follows:

> Sec. 5. Employee benefits; declaration of State policy. The General Assembly declares that it is the policy of the State and in the best interest of the State to assure quality benefits to members and their dependents under this Act. The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members and their dependents. Specifically, but without limitation, members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers. All contracts for provision of employee benefits, including those portions of any proposed collective bargaining agreement that would require implementation through contracts entered into under this Act, are subject to the following requirements...

checks and balances do not require or even contemplate collective bargaining. Finally, the State asserts that although the Board has previously found health insurance to be a mandatory subject of bargaining, the Board has never ruled on the impact of the 2004 amendments. As such, this is a matter of first impression before the Board.[2]

Central City test

The State notes that the Illinois Supreme Court has never addressed whether the test set forth in Central City should be used to determine whether an issue is a mandatory subject of bargaining under the Labor Act. The State further notes that the Central City test predates the 2004 Amendments by 12 years. Finally, the State asserts that the Central City test is inapplicable in this case because the General Assembly exempted the issue of health insurance from collective bargaining via the 2004 Amendments. However, the State asserts that should the Board determine that an analysis under the Central City test is appropriate in this case, the benefits of bargaining health insurance are far outweighed by the burden such bargaining would impose on the Employer. The Employer notes that it bargains collective bargaining agreements with 34 different labor organizations, including the FOP. The Employer asserts that the 2004 Amendments impose onerous procurement deadlines and that the process of procuring health insurance plans is document intensive, time consuming and involves extensive interactions between State employees, consultants, insurance carriers and providers. The Employer asserts that it would be unduly burdensome if the State had the additional requirement to bargain with each of the 34 labor unions over health insurance.

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[2] This is not the first time that the Employer asserted it had no obligation to bargain employee health insurance with the FOP. During bargaining for the 2012-2015 CBA, and while interest arbitration for that contract was pending, the FOP filed a Unilateral Petition for Declaratory Ruling in Case No. S-DR-14-004 on or about April 14, 2014. The FOP sought a determination as to whether health care premiums and related costs are mandatory subjects of bargaining under the Labor Act. In those proceedings, the Employer advanced the same or very similar arguments that are advanced in the instant unfair labor practice charge. That is, the Employer argued it had no obligation to bargain employee health insurance with the FOP. The former General Counsel rejected those arguments. Illinois Department of State Police, 31 PERI ¶ 176 (IL LRB-SP G.C. 2014). Nonetheless, the Employer is correct that its arguments raised in this unfair labor practice charge have never been squarely addressed by the Board.

Negotiations between the parties for a successor to the 2012-2015 CBA

On or about May 11, 2015, the parties commenced negotiations for a successor to the 2012-2015 CBA. The parties were unable to agree to the terms of a successor agreement, and on or about August 20, 2015, the FOP filed a Demand for Compulsory Interest Arbitration. The parties selected Daniel Nielsen to serve as their neutral interest arbitrator. The first day of Interest Arbitration was held on or about December 23, 2015, and the last day of hearing was held on April 8, 2016. The parties have submitted, or are in the process of submitting, their post-hearing briefs to Arbitrator Nielsen.

It is undisputed that both parties exchanged proposals on health insurance during these negotiations. It is also undisputed that both parties submitted proposals on health insurance to Arbitrator Nielsen as part of their final offers. It is undisputed that the State never took the position, during negotiations or when submitting final offers to the interest arbitrator, that the subject of health insurance is not a mandatory subject of bargaining. The State did not object to the Union's final offer on health insurance as being a permissive subject of bargaining. In contrast, the Union objected to the Employer's final offer and revised final offer on health insurance claiming that it was a waiver of the Union's right to midterm bargaining and therefore a permissive subject of bargaining.

On January 13, 2016, the State filed a unilateral Petition for Declaratory Ruling with the Board's General Counsel. The State sought a ruling on whether the State's proposal on health insurance is a permissive or mandatory subject of bargaining. The General Counsel issued her Declaratory Ruling on March 1, 2016. Troopers Lodge #41, Fraternal Order of Police and Illinois State Police, 32 PERI ¶ 162 (IL LRB-SP G.C. 2016).

In its filings for the Declaratory Ruling Proceedings, the Employer asserted, apparently for the first time since negotiations for a successor to the 2012-2015 CBA had begun, that it was

not required to bargain over health insurance based on the Labor Act and the Group Insurance Act. The Employer further argued that health insurance plan design and cost was a permissive subject of bargaining under the Central City test. In the alternative, the Employer argued that the specific proposal at issue was a *mandatory subject* of bargaining because it did not seek a waiver of the Union's right to midterm bargaining and it did not reserve to the Employer unfettered discretion to determine premium contributions and salary tiers. The Union argued in the Declaratory Ruling proceedings that the Employer is obligated to bargain health insurance, but that the proposal at issue was permissive because it required the Union to waive its right to midterm bargaining over changes in health insurance.

In her Declaratory Ruling, the General Counsel first acknowledged the prior case law finding employee health insurance to be a mandatory subject of bargaining, including the 2014 Declaratory Ruling on this topic involving the same parties. However, the General Counsel went on to note:

> Nevertheless, I acknowledge that the Employer raises some salient considerations with respect to its managerial authority to provide a plan to employees, and burdens of bargaining over health care plan design it provides. While I am cognizant of my role in the Declaratory Ruling process to resolve the parties' obligation to bargain over particular subjects, I am also mindful of its limitations. The Central City balancing test can be most completely performed following a full factual inquiry before a Board ALJ, whereas I am precluded from resolving factual disputes raised by the parties in a declaratory ruling. Moreover, the Board is at liberty to reexamine its case law and interpretations of the [Labor Act], whereas I am guided by the Board's prior case law and I am also informed by prior Declaratory Rulings, in the interests of maintaining consistency. Accordingly, if either party wishes to develop a full factual record or advocate for a change in established case law, they should employ the unfair labor practice procedures set forth in the [Labor Act] and the Board rules. Id.(Internal citations omitted.)

Turning to the specific Employer proposal on health insurance that was at issue, the General Counsel agreed with the Employer that the proposal involved a mandatory subject of

bargaining because it did not amount to a waiver of the FOP's right to midterm bargaining over changes in employee health insurance.

II. DISCUSSION AND ANALYSIS

The Board has previously held that employee health insurance is a mandatory subject of bargaining. City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991). Of course, this does not preclude an employer from arguing that under its unique factual situation, the burden of bargaining health insurance outweighs the benefit of such bargaining and that the topic is therefore permissive under Central City. Similarly, the prior case law does not preclude an employer from arguing that subsequent statutory changes have eliminated the obligation to bargain over health insurance. The Employer in this case is making both of these arguments.

The problem with this charge is that, even if I assume for the purpose of this investigation that the Employer is correct that it has no obligation to bargain health insurance, the charge still does not raise a question of law or fact for hearing. This is because parties can *choose* to bargain over permissive subjects of bargaining. Similarly, the Board has recently held that submitting a permissive subject of bargaining to an interest arbitrator does not violate the Labor Act. Wheaton Firefighters Union, Local 3706, IAFF and City of Wheaton, 31 PERI ¶ 131 (ILRB-SP 2015). This means that even if the Employer is correct (under either one or both of its theories) that it has no obligation to bargain over health insurance, the undisputed available evidence indicates that it willingly engaged in such bargaining with the FOP. As noted above, both parties exchanged proposals on health insurance and both parties submitted health insurance proposals to the interest arbitrator. Under the facts presented in this case, I cannot find that the Union engaged in any conduct that would raise a question for hearing under the Labor Act.

I am mindful of the fact that the General Counsel, in her Declaratory Ruling, noted that a Central City analysis involving a detailed factual inquiry must be addressed by the Board in the context of an unfair labor practice charge. I certainly do not disagree with that concept. However, under the facts presented in this particular charge, where both parties willingly engaged in bargaining over health insurance, there is no basis for the issuance of a Complaint for Hearing.

In order to issue a Complaint for Hearing, I must find that the charge raises a question of law or fact for hearing. Inherent in that standard is a burden on the Charging Party to show some evidence that the Respondent engaged in conduct that *may have* violated the Labor Act. Here, in bargaining over employee health insurance, the FOP engaged in the exact same conduct as the Employer. Indeed, it was not until the interest arbitration proceedings were underway that the Employer first asserted that it had no obligation to bargain health insurance, and then only in the context of the Declaratory Ruling proceedings. Under such circumstances, I find it to be procedurally inappropriate for me to issue a Complaint for Hearing.[3]

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a

[3] As such, the State's Motion to Bifurcate Ruling on the Two Issues Raised in the State's Unfair Labor Practice Charge is denied.

statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 6th day of June, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Melissa Mlynski
Executive Director