STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
GENERAL COUNSEL

City of Litchfield, Employer/Petitioner, and Illinois Fraternal Order of Police Labor Council, Labor Organization.	))))))))))	Case No. S-DR-19-002

DECLARATORY RULING

On June 18, 2019, the City of Litchfield (City or Employer) unilaterally filed a Petition for Declaratory Ruling pursuant to Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board. 80 Ill. Admin. Code 1200.143. The Petition seeks a determination as to whether the Union's proposal to change the recognition clause and to maintain certain language contained in the work day clause of the expired contract covering peace officers represented by the Illinois Fraternal Order of Police Labor Council (Union) concern permissive or mandatory subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), *as amended* (Act). Both parties filed briefs.

I. Background

The Employer and the Union were parties to a collective bargaining agreement that was effective May 1, 2015 through April 30, 2019. On January 3, 2019, the Union filed a formal notice of demand to bargain with the Employer. On June 12, 2019, the Employer filed its Demand for Compulsory Interest Arbitration. The parties' expired contract contains the following provisions:

Section 1.1 – Unit Description

The Employer hereby recognizes the Union as the sole and exclusive collective bargaining representative for the purpose of collective bargaining on all matters relating to wages, hours and all other terms and conditions of employment for all employees in the bargaining unit as follows:

Included: All sworn officers in the City of Litchfield's Police Department below the rank of Lieutenant.

Excluded: [T]he Chief of Police, Lieutenant and all managerial, supervisory and confidential Employees and all other Employees of the City, in accordance with the Illinois State Labor Relations Board Case number S-RC-03-048.

Section 2.1 – Management Rights

The Employer possesses the sole right to operate its offices and departments and all management rights repose in it. Except as specifically amended, changed modified or limited by this agreement, these rights include, but are not limited to, the following:

….
(b) to establish work rules and schedules of work;
(c) to hire, promote, transfer, schedule, and assign Employees in positions….

Section 11.2 Work Day and Work Period and Pay Period

The work day shall consist of twelve (12) consecutive hours as follows:

	Regular Shift	Short Shift
A Shift	6:00 a.m. to 6 a.m.	10: a.m. to 6:00 p.m.
C Shift	6:00 p.m. to 6:00 a.m.	10:00 p.m. to 6:00 a.m.
B "Power" Shift	3:00 p.m. to 3:00 a.m.	3:00 p.m. to 11:00 p.m.

The work cycle shall consist of twelve (12) ("Regular Shift") scheduled twelve (12) hour work days and two (2) eight-hour days ("Short Shifts") (one per pay period), in one of the following configurations:

…

The Detective Sergeant shall be scheduled from 9:00 a.m. to 5:00 p.m., Monday through Friday, a forty (40) hour work week.

On March 26, 2019, the Union submitted to the Employer a document entitled "List of Proposals." The document's subheading stated, "the Union makes the following opening package proposal, reserving the right to amend or modify the same during negotiations." The document

contained 15 enumerated points. The 14th point stated the following: "The Patrol Officers recommend the inclusion of the Patrol Dispatcher in the recognition clause of this collective bargaining agreement, and reserve the right to add proposals subsequent to the submission of this proposal list to bargain wages, working conditions and benefits in conjunction with said inclusion." During the parties' negotiations, the Union also sought to maintain reference to the word "sergeant" in the work day provision set forth in Section 11.2 of the expired contract. The Employer rejected the Union's position on both issues. On May 28, 2019, the parties engaged in mediation and the Employer presented its proposals on all open issues. It rejected the Union's recommendation to change the unit's description and it rejected the Union's proposal to maintain reference to the rank of sergeant when describing the hours of a detective. The Employer contends that both proposals address permissive subjects of bargaining.

On June 12, 2019, the Employer asked the Union to confirm that it was no longer pursuing the issue regarding a change to the unit's description. It also asked the Union whether it intended to submit to the interest arbitrator the proposals/positions discussed herein. There is no indication from the parties' submissions that the Union provided the Employer with an unequivocal response.

II. Relevant Statutory Provisions

The duty to bargain is defined in Section 7 of the Act which provides in relevant part:

> A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.
>
> For the purpose of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract

> incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
>
> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

5 ILCS 315/7 (2014).

Section 17 of the Act preserves the right to strike for most employees, but not for security employees, firefighters, paramedics, and, relevant here, peace officers. 5 ILCS 315/17 (2016). Section 2 requires an alternate means of dispute resolution for those precluded from striking, 5 ILCS 315/2 (2016), and Section 14 provides the procedures for such alternative dispute resolution: binding arbitration, 5 ILCS 315/14 (2016).

Subsection 14(i) lists subjects on which arbitrators are precluded from issuing awards, including the following with respect to peace officers:

> In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment, other than uniforms, issued or used; iii) manning; iv) the total number of employees employed by the department; v) mutual aid and assistance agreements to other units of government; and vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

5 ILCS 315/14(i) (2016) (emphasis added).

III. Issues

The issue is whether the Union's recommended change to the unit's description and its work day proposal are permissive or mandatory subjects of bargaining.

The Union contends that questions concerning the unit's description are not properly before me because the Union never proposed to change the description of the unit and instead merely "recommended" the inclusion of the title Patrol Dispatcher to the recognition clause. It further asserts that it never proposed to change the unit certification and that no such proposal is the subject of negotiations in the parties' contract impasse.

The Employer counters that the Union's designation of the unit-description issue as a "recommendation" is irrelevant to the propriety of the declaratory ruling where the subject remained on the table at mediation, despite the Employer's repeated objections to it. On the merits, the Employer argues that the Union's proposal is a permissive subject of bargaining because only the Board may change the scope of a certified unit, and parties may not add positions to a unit without the Board's involvement. For this reason, too, the Employer notes that an interest arbitrator cannot resolve the issue.

The Union asserts that the second issue is likewise not a proper subject of this declaratory ruling because the Employer sought to change the status quo, not the Union. On the merits, the Union asserts that its proposal to maintain reference to the word "sergeant" in the work day proposal is a mandatory subject of bargaining because it concerns the position holder's hours of work. It contends that there is only one individual, a sergeant, who serves as a detective, and that removal of the word "sergeant" from the work day proposal would create ambiguity in the contract as to that individual's work hours. It emphasizes that the Employer's proposal does not expressly

grant the Employer the authority to assign officers of any rank to the position of detective, and that I should therefore decline to address this issue.

The Employer contends that the Union's proposal to maintain the designation of sergeant in the work day proposal is a permissive subject of bargaining under the Central City test. According to the Employer, the proposal does not concern the patrol officers' terms and conditions of employment, and it would not affect the sergeant, provided he retained the detective assignment. The Employer further argues that the Union's proposal impermissibly restricts the Employer's inherent managerial authority to assign employees of other ranks to detective work, such that application of the balancing test would favor the Employer. The Employer also observes that its agreed inclusion of the Union's proposed language in the expired contract does not convert it into a mandatory subject of bargaining.

IV. Discussion and Analysis

1. Both Issues are a Proper Subject of this Declaratory Ruling

A declaratory ruling is appropriate as to both issues presented by the Employer.

Section 1200.143(b) provides that in a protective service bargaining unit such as the one at issue here, a declaratory ruling may be requested where the parties have a good faith disagreement over whether the Act requires bargaining over a particular subject or particular subjects." 80 Ill. Admin. Code 1200.143(b). A declaratory ruling is inappropriate in cases where the parties agree that there is no dispute over the characterization of a subject as mandatory or permissive. City of Danville, 32 PERI ¶ 115 (IL LRB-SP 2015). It is also inappropriate to resolve issues beyond that of whether the Act requires bargaining over the subjects in question. Vill. of Streamwood, 2 PERI ¶ 2011 (IL SLRB 1986).

The parties have a good faith disagreement over whether the Union's recommendation to modify the contract's recognition clause is a mandatory or permissive subject of bargaining. The Union placed this subject matter in dispute when it made a recommendation to add the position of dispatcher to the contract's unit description, tendered that recommendation to the Employer in a document entitled "list of proposals," and described the document as a "package proposal." Moreover, there remains a good faith disagreement on this matter that is appropriate for resolution through a declaratory ruling because the Union has not expressly agreed with the Employer's position that the subject is permissive. Cf. City of Danville, 32 PERI ¶ 115 (IL LRB-SP 2015) (general counsel had no authority to rule on issue where both parties agreed that subject was mandatorily negotiable).

The declaratory ruling petition is also appropriate with respect to the Union's work day proposal. The Union's assertion to the contrary rests solely on the observation that the Employer sought to change the status quo language, not the Union. However, the propriety of a declaratory ruling turns on the existence of a good faith disagreement as to whether the Act requires bargaining over a subject and not the identity of the party seeking a change from the status quo. 80 Ill. Admin. Code 1200.143(b). Here, the existence of a good faith disagreement is clear because the Union contends that its proposal is a mandatory subject of bargaining whereas the Employer contends that it is permissive.

2. The Union's Recommended Change to the Recognition Clause

The Union's recommended change to the recognition clause is a permissive subject of bargaining.

The Board has recognized three broad categories of non-mandatory subjects. The first concerns matters within the exclusive discretion of the Employer, over which the Employer cannot be required to bargain. Cook County, 3 PERI ¶ ¶ 3013 (IL LLRB 1987). These include matters removed from the scope of subjects declared bargainable under statute by a management rights provision or another limiting provision, and matters that do not affect employees in the unit. Cook County, 3 PERI ¶ ¶ 3013. The second category concerns matters that are within the exclusive discretion of the Union, over which the Union cannot be required to bargain, such as internal union matters. Id. The third category concerns matters that can only be implemented upon the mutual agreement of the parties. Id.

Here, the Union's recommendation to change the recognition clause falls into both the first and the third categories of permissive subjects. Its recommendation to add dispatchers to the recognition clause and its stated intent to bargain over their terms and conditions of employment represents the Union's attempt to bargain over employees outside the bargaining unit. Dispatchers are not covered under the Board's certification and are therefore not members of the bargaining unit. County of Boone and Sheriff of Boone County, 19 PERI 74 (IL LRB-SP 2003); Chief Judge of the 13th Judicial Circuit,15 PERI ¶2006 (IL SLRB 1999). However, the terms and conditions of employment for non-unit employees are non-mandatory subjects of bargaining unless it is shown that those terms and conditions "'vitally affect' the terms and conditions of employment for the unit employees." Village of Westchester, 7 PERI ¶ 2028 (IL SLRB G.C. 1991)(citing Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971)). The Union has made no such showing here.

In addition, the Union's recommendation may also be viewed as a proposal to change the scope of the bargaining unit, which is a permissive subject under the third category discussed

above. Inland Tugs v. NLRB, 918 F.2d 1299, 1309 (7th Cir. 1990); Cook County, 3 PERI ¶ ¶ 3013 (noting that an example of a permissive subject is a proposal to alter the scope of a bargaining unit). It undoubtedly pertains to the unit's scope as defined by the parties' contract. The Union seeks to draw a distinction between proposals that seek to change the contractually-defined scope of the unit and proposals that seek to change the Board-certified unit. However, it offers no support for the contention that either subject is mandatorily negotiable.

3. Union's Proposal to Maintain Certain Language in the Work Day Clause

The Union's proposal to maintain reference to the word "sergeant" in the work day clause is a mandatory subject of bargaining.

Pursuant to Section 7 of the IPLRA, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment — the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed'n of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353 (1988); Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000); City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). Moreover, Section 4 of the IPLRA provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy." 5 ILCS 315/4 (2014).

To resolve the tension between Section 7 and Section 4, the Illinois Supreme Court has established the three-part Central City test. Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 523 (1992). This test applies to determine whether a topic is a mandatory subject of bargaining, unless the topic is specifically excluded from interest arbitration under

Section 14(i) of the Act.[1] Vill. of Oak Lawn v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (1st) 103417 ¶ 23.

Here, the Union's proposal, on its face, concerns employees' hours, and the duty to bargain hours is well-established. City of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988). The proposal sets the hours of one of the Employer's sergeants, who is the only individual serving as a detective, by specifying that "[t]he detective sergeant" works from 9 a.m. to 5 p.m.. The Union's proposal thereby ensures that the sergeant who currently serves as a detective will enjoy the same hours under the parties' successor contract, provided that the Employer retains that sergeant in the detective assignment. It also ensures that the remaining employees who are not sergeants performing detective duties will work alternating long and short shifts, as specified by the remainder of the Union's proposal.

There is insufficient support for the Employer's claim that the Union's proposal in fact addresses assignment of work or that it impermissibly limits the Employer's inherent managerial authority to assign work to its employees. Matters that directly affect an employer's right to direct its personnel are matters of inherent managerial authority. Vill. of Wilmette, 18 PERI ¶ 2045 (IL LRB-SP GC 2002); City of Hickory Hills, 18 PERI ¶ 2044 (IL LRB-SP GC 2002); County of Lake and Sheriff of Lake County, 31 PERI ¶ 177 (IL LRB-SP GC 2014). Moreover, proposals that significantly constrain an employer's ability to manage its operations have been deemed permissive subjects of bargaining, even where they also affect employees' hours. County of Lake and Sheriff of Lake County, 31 PERI ¶ 177 (IL LRB-SP GC 2014) (union's shift preference proposal removed employer's discretion to ensure that shift-staffing met its operational needs);

[1] Where Section 14(i) specifically excludes a topic from interest arbitration, application of the Central City test is unnecessary because such specifically excluded topics cannot be mandatory bargaining subjects. Vill. of Oak Lawn v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (1st) 103417 ¶ 23; see also Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel,347 Ill. App. 3d 538, 545 (1st Dist. 2004).

Vill. of Wilmette, 18 PERI ¶ 2045 (IL LRB-SP GC 2002) (union's proposal eliminated employer's authority to assign committee work by rendering it optional); City of Hickory Hills, 18 PERI ¶ 2044 (IL LRB-SP GC 2002) (union's proposal limited employer's ability to make changes in shift assignments necessitated by training needs).

Here, however, the disputed part of the Union's proposal does not preclude the Employer from assigning lower-ranked officers to detective work. It simply links the detective assignment to particular hours, and notes that such work is currently performed by an employee who holds the rank of sergeant.

The proposal also does not seek a waiver of the Employer's inherent managerial authority, under Section 4 of the Act, to change employees' assignments. A proposal seeking the waiver of a statutory right is a permissive subject of bargaining, and any waiver of statutory rights must be clear and unmistakable. Am. Fed'n of State, Cnty. & Mun. Empl. v . Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989); Vill. of Midlothian, 29 PERI ¶125 (IL LRB-SP 2013); Vill. of Wheeling, 17 PERI ¶2018 (IL LRB-SP 2001). Assuming that the Employer's right to assign work to employees within the scope of their functions is a matter of pure inherent managerial authority over which it has no obligation to bargain,[2] an arbitrator's adoption of the Union's proposal would not force a waiver of that right. The management rights clause contained in the expired contract, which the parties intend to maintain, gives the Employer broad authority to "assign employees," and the Union's work day proposal does not expressly limit that authority.

[2] As a general matter, an employer's right to assign work to employees within the scope of their functions is a matter of inherent managerial authority, but the benefits of bargaining may outweigh an employer's managerial interest where a proposal is closely connected to a substantial employee interest. Vill. of Lombard, 15 PERI ¶ 2007 (IL LRB GC 1999); Village of Bensenville, 14 PERI ¶ 2042 (IL SLRB 1998); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1999).

The Employer contends that the Union affirmed, during bargaining, that its proposal aimed to limit the Employer's authority to assign detective work, but declaratory rulings do not resolve such issues of fact, which are implicitly disputed here. 80 Ill Admin. Code 1200.143.

Finally, the parties' arguments regarding the interpretation of their respective proposals on the disputed clause weigh in favor of finding that the interest arbitrator should consider the Union's proposal alongside the Employer's. The Employer contends that the Union's proposed reference to the word "sergeant" in the work day proposal would permit an arbitrator to interpret the contract as disallowing the Employer from assigning lower-ranked employees to detective work. The Union, in turn, contends that removal of the word "sergeant" would leave a gap in the contract regarding the current detective sergeant's hours, which would contractually permit the Employer to change his hours by altering his assignment. The merits of the parties' respective arguments pertain to future contract interpretation and are therefore more appropriately presented to the interest arbitrator responsible for setting the contract's terms, given that the Union's proposal on its face pertains to hours. City of Danville, 32 PERI ¶ 115 (IL LRB-SP GC 2015) (parties' respective work assignment proposals were both mandatory subjects of bargaining where there were ambiguities in their interpretation).

V. Conclusion

For the above reasons, I find the Union's proposal/recommendation to change the recognition clause is a permissive subject of bargaining, but that the Union's proposal to maintain the status quo of the work day proposal is a mandatory subject of bargaining. These statements represent the extent of my findings on the questions presented by the Employer. I note the declaratory ruling process is limited to determinations regarding parties' good faith disputes

regarding their bargaining obligations over particular subjects as specified in Section 1200.143 of the Board's Rules. 80 Ill. Admin. Code §1200.143. Accordingly, parties should consult that rule before filing a petition.

Issued in Chicago, Illinois, this 24th day of July, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

/s/ Helen J. Kim

Helen J. Kim
General Counsel