

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

**Minutes of the State Panel Meeting
Held on November 15, 2016**

I. OPENING OF MEETING 1:00 P.M.— at 160 N LaSalle Street, 6th Floor, Chicago, IL

II. PRESENT

John Hartnett, Chairman; Michael Coli, Member of the Board; John Samolis, Member of the Board; Keith Snyder, Member of the Board; Albert Washington, Member of the Board; Melissa Mlynski, Executive Director; Helen J. Kim, General Counsel; Anna Hamburg-Gal, Associate General Counsel; and staff members.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD October 4, 2016

Chairman Hartnett called for approval of the minutes of the October 4, 2016, meeting. Member Washington moved to approve the minutes. Member Samolis seconded. The Board passed the motion unanimously, by a voice vote.

IV. ADMINISTRATIVE MATTERS

Chairman Hartnett asked Executive Director Mlynski to present the Executive Director's reports. She presented the report and summarized the highlights.

V. BOARD ACTIONS

**1. Case Nos. S-CB-16-017 and S-CA-16-087
American Federation of State, County and Municipal Employees, Council 31/State of Illinois,
Department of Central Management Services**

Chairman Hartnett asked Acting General Counsel Mlynski to call and present the case. After Acting General Counsel Mlynski made her detailed presentation to the Board, and after the Board's lengthy discussions, the Board made the following motions:

Member Coli moved to affirm the propriety of the ALJ's decision to allow the State to present witnesses in its case in chief and on rebuttal through affidavits. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Washington moved to accept the Acting General Counsel's recommendation to decline to find that the Union waived certain arguments in its written exceptions by failing to comply with the requirements of the Board's rules and case law. Member Samolis seconded the motion, and a majority of the Board passed it by a voice vote. Member Snyder and Coli voted nay on the motion.

Member Washington moved to accept the Acting General Counsel's recommendation to find that the Union waived its right to except to the ALJ's failure to find that the State committed an independent violation of Section 10(a)(1) of the Act by threatening to impose waivers of the Union's right to be the employee's exclusive representative with respect to wages and benefits if the parties reach an impasse in bargaining. Member Snyder seconded the motion, and the Board passed it unanimously by a voice vote.

Member Washington moved to affirm the ALJ's conclusion that AFSCME did not repudiate the Tolling Agreement in violation of Section 10(b)(4) of the Act and dismissed the State's charge in S-CB-16-017. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Snyder moved to adopt the NLRB's approach to single critical issue impasse and found that the parties reached single issue impasse on the critical issue of subcontracting because all three prongs of the NLRB test are met. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Coli moved to decline to follow the ALJ's five-factor analysis, package-by-package approach. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Coli moved to affirm the ALJ's finding that the State did not refuse to bargain over Parking and Records/Forms. Member Washington seconded the motion, and the Board passed it unanimously by a voice vote.

Member Coli moved to affirm the ALJ's finding that the inclusion of permissive subjects of bargaining in the State's last, best, final offer did not constitute an unfair labor practice. Members Washington and Samolis seconded the

motion, and the Board passed it unanimously by a voice vote. Member Samolis moved to affirm the ALJ's findings that the merit pay, gainsharing, and healthcare proposals in the State's last, best, final offer did not contain unlawful waiver. Member Snyder seconded the motion, and the Board passed it unanimously by a voice vote. There was some further discussion between the Acting General Counsel and the Board members on the ALJ's findings with respect to the alleged permissive subjects of bargaining and the Board members reiterated that they were affirming the ALJ's findings.

Member Coli moved to affirm the ALJ's findings that AFSCME failed to prove that the State exhibited overall bad faith either by engaging in surface bargaining or bargaining in bad faith. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Coli voted to affirm the ALJ's conclusion that any false statements made by the State with respect to the Teamsters Contract were not indicative of bad faith. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Samolis moved to affirm the ALJ's findings on the alleged instances of direct dealing and adopt her rationale on the "away from the table communications made public" and the employee engagement survey. Member Samolis seconded the motion, and the Board passed it unanimously by a voice vote.

Member Coli moved to affirm the ALJ's findings that the State violated the Act by refusing to provide the Union with the information it requested before the State declared impasse, but that it had no impact on the question of impasse. Member Washington seconded the motion and the Board passed it unanimously by a voice vote.

Member Coli moved to affirm the ALJ's findings that the State violated the Act by refusing to provide the Union with the information it requested *after* the State declared impasse, but that it had no impact on the question of impasse. Member Washington seconded the motion and a majority of the Board passed it by a voice vote. Member Snyder and Chairman Hartnett voted nay on the motion.

Member Coli moved to decline to address whether health insurance is a mandatory subject of bargaining. Member Washington seconded the motion and the Board unanimously passed it by a voice vote.

The Board declined to make a determination as to whether the State is entitled to implement the permissive aspects of its last best final offer.

Member Coli moved to find that AFSCME's conduct following the State's declaration of impasse on January 8, 2016 failed to break the impasse. Member Samolis seconded the motion and the Board unanimously passed it by a voice vote.

Member Coli moved to ALJ's evidentiary ruling to exclude the letters proffered by AFSCME with respect to the Union's willingness to continue bargaining after the State's declaration of impasse. Member Washington seconded the motion and the Board unanimously passed it by a voice vote.

VI. EXECUTIVE SESSION

After a short discussion regarding whether there was a need for executive session, the Board concluded it was unnecessary.

VII. PUBLIC COMMENT

No members of the public sought to make comments.

VIII. ADJOURNMENT

Chairman Hartnett called for a motion to adjourn. Member Coli moved to adjourn the meeting, and the Board passed it unanimously, by a voice vote.

Adopted and approved by the Chairman and Members of the State Panel of the Illinois Labor Relations Board, in Chicago, Illinois, this 13th day of December, 2016.