2012 IL App (1st) 110284-U

SIXTH DIVISION
April 20, 2012

No. 1-11-0284

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF FORD HEIGHTS, an Illinois municipal corporation, Petitioner-Appellant, v. ILLINOIS LABOR RELATIONS BOARD, State Panel, and METROPOLITAN ALLIANCE OF POLICE, FORD HEIGHTS CHAPTER #243, Respondents-Appellees.	)	Petition for Review from the Illinois Labor Relations Board, State Panel No. S-CA-09-055

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R. Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* The Board did not clearly err in finding that an intergovernmental agreement between petitioner Village of Ford Heights and Cook County Sheriff's Department for policing services that resulted in the dissolution of the Ford Heights Police Department, was a mandatory subject of collective bargaining with respondent Metropolitan Alliance of Police, Ford Heights Chapter #243, under the three-part test adopted by the Illinois Supreme Court.

¶ 2 Petitioner Village of Ford Heights (Village) entered into a two-year intergovernmental agreement (IGA) with the County of Cook and the Cook County Sheriff's Department (collectively, Cook County) without bargaining over that decision with the collective bargaining representative, respondent Metropolitan Alliance of Police, Ford Heights Chapter #243 (Union). The net effect of the IGA was dissolution of the Ford Heights Police Department and termination of four members of the bargaining unit. Under the IGA, Cook County assumed all law enforcement duties formerly conducted by the Village's police department in exchange for a $3,000 monthly stipend. The respondent Illinois Labor Relations Board (Board) found the Village committed an unfair labor practice by unilaterally entering into the IGA agreement because the IGA was a mandatory subject of bargaining. The Board ordered the Village to rescind the IGA and to make whole the members of the bargaining unit. The Village claims the Board committed clear error by determining that the benefits of bargaining outweighed the burdens that bargaining would impose on the Village's inherent managerial authority. We confirm the Board.

¶ 3 BACKGROUND

¶ 4 On July 1, 2008, the Village executed the two-year IGA with Cook County, effective July 15, 2008, the terms of which included that Cook County would assume all law enforcement duties formerly conducted by the Village's police department in exchange for a $3,000 monthly stipend. The IGA provided that no non-Cook County personnel shall perform policing duties or conduct policing activities.

¶ 5 Ford Heights Police Sergeant Willie Robinson originated this case by filing an unfair

labor practice charge against the Village on September 16, 2008. Sergeant Robinson alleged that the Village committed an unfair labor practice by investigating, disciplining, and terminating him because of his activity on behalf of the Union. On September 17, 2008, the Board's executive director requested the Village respond in writing to the unfair labor practice charge. The Village did not respond. With no response from the Village, the Board designated an agent to conduct an investigation pursuant to section 11 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/11 (West 2008)). Following that investigation, the Board's executive director issued a complaint for hearing on February 19, 2009.

¶ 6 The complaint alleged the Village discriminated against Sergeant Robinson in order to discourage membership in the Union, in violation of sections 10(a)(1) and (2) of the Act (5 ILCS 315/10(a)(1), (2) (West 2008)). In its answer, the Village contended that Sergeant Robinson was placed on paid administrative leave based on "an accumulation of incidents that in the Police Chief's opinion made it necessary to remove [Sergeant Robinson] from his position pending further action[,] which occurred on or about September 11, 2008, when [the Village] filed charges with the Ford Heights Fire & Police Commission." The Village asserted it terminated four Village police officers on November 13, 2008, because "the Cook County Sheriff's Police had assumed all police department activities and the need for the Village to employ Police Officers was not necessary."

¶ 7 On April 8, 2009, the Union sought leave to substitute itself for Sergeant Robinson as the charging party and moved to amend the charges against the Village. The proposed amended charges alleged three unfair labor practices: (1) Sergeant Robinson was unfairly terminated due

to his activity on behalf of the Union; (2) Officer Gerald Jackson was denied a position as a dispatcher "once it was realized that a position would also need to be created for [Sergeant] Robinson," at which point Officer Jackson was told "he needed to be discharged to avoid bringing [Sergeant] Robinson back in any position, whatsoever"; and (3) the Village failed to bargain collectively prior to entering into the IGA. On May 6, 2009, the administrative law judge (ALJ) granted leave to the Union to substitute as the charging party and permitted the filing of an amended complaint.

¶ 8 In its answer to the amended complaint, the Village maintained that it was necessary to dissolve the police department pursuant to the IGA because "[r]epresentatives of the Cook County Sheriff's Police stated they required total control of all police-related activities and that they were unwilling to share responsibility with any other personnel, including, but not limited to, Ford Heights Police Officers." The Village argued its "action to enter into an agreement with the Cook County Sheriff's Department was out of necessity," and that the cost of policing under the IGA was substantially less than the cost of paying "union wages."

¶ 9 On July 21, 2009, the ALJ conducted a hearing at which the parties had the opportunity to call, examine and cross-examine witnesses, introduce documentary evidence, and present argument. Earl Bridges, the former chief of police, testified on behalf of the Union that he is employed by the Village as a code enforcement officer. He provided background testimony regarding the historical relationship between the Village and Cook County. According to Bridges, in 1997, he and five other Village police officers were indicted. From June to December of that year, the Cook County Sheriff's Department and the Illinois State Police

provided police services for the Village. Prior to the IGA, the Village and Cook County had a two-thirds, one-third policing arrangement whereby Bridges as chief and three other Village police officers policed during one eight-hour shift and Cook County provided police services during the other two shifts. According to Bridges, with only four officers employed, the Village was not adequately protected or served under the single eight-hour shift because the officers had trouble performing routine matters such as code enforcement.

¶ 10 Angelia Smith, the Village's finance officer, testified that under the IGA, Cook County provided 24-hour police services at a monthly cost of $3,000. Smith testified that she was present at a meeting between the Village administration and Cook County Sheriff's officials "to plan the strategies for the reconstitution of the police department and to find out the way that Cook County police could help the Village with that effort." It was Smith's understanding that the IGA was a temporary agreement. According to Smith, "the Ford Heights Police Department could not function as police while the Cook County police department was providing 24-hour services to the community because *** it was hard to define the current lines of who was in charge if our police officers were having people come up to them and they were still functioning as police officers." Since this meeting on September 24, 2008, the Cook County Sheriff's Department has had exclusive control of the Village's police services.

¶ 11 Smith estimated the costs to "operate a fully manned, 24-hour, 7-day-a-week department" at $585,450 annually. According to Smith, the Village was in serious debt, with outstanding obligations of $3.3 million, including $36,000 to the Cook County Sheriff's Department for police services.

¶ 12 In correspondence dated November 13, 2008, from the Village's mayor, Saul Beck, to Sergeant Robinson, admitted into evidence without objection, the mayor referenced a recently passed village ordinance, which required individuals currently serving as law enforcement officers to be relieved of their duties in order to comply with the IGA. According to a conversation Sergeant Robinson had with a Village trustee following his receipt of the mayor's letter, the Village trustee stated the Village could not afford to pay for police services under the contract with the Union.

¶ 13 On November 18, 2009, the ALJ issued her proposed decision and order, recommending that the Village be found to have violated section 10(a)(4) (5 ILCS 315/10(a)(4) (West 2008)) of the Act by failing to bargain with the Union over the IGA. The parties do not dispute that no bargaining occurred prior to the signing of the IGA. The ALJ's decision considered the issue of whether the IGA was a mandatory subject of bargaining to be dispositive.

¶ 14 The ALJ examined this issue under the three-part test identified and applied in *Central City Education Association v. Illinois Educational Labor Relations Board*, 149 Ill. 2d 496 (1992) and in *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191 (1998). Step one of the test requires the Board to answer whether the issue concerns "one of wages, hours and terms and conditions of employment," a question "the [governing Board is] uniquely qualified to answer." *Central City*, 149 Ill. 2d at 523. With an affirmative answer, the second step requires the Board to determine whether the question impinges upon the "inherent managerial authority" of the employer. *Id*. If inherent managerial authority is not involved, the matter is subject to mandatory bargaining.

¶ 15 If under the second-step inherent managerial authority is involved, the third and final step requires the Board to balance "the benefits that bargaining will have on the decision making process with the burdens that bargaining process imposes on the employer's authority." *Id.* If the benefits outweigh the imposition on the employer's authority, then the matter is subject to mandatory bargaining.

¶ 16 The Village does not question the finding that the first part of the test was satisfied. As to the second step, the ALJ found the Village failed to "offer any argument that its decision to enter into the IGA concerns a matter of inherent managerial authority." Accordingly, the ALJ ruled the IGA was a matter subject to mandatory bargaining when the Village failed to assert a contrary argument. In the absence of such an argument, the ALJ ruled the Village forfeited any challenge to the determination that the IGA was subject to mandatory bargaining.

¶ 17 Alternatively, the ALJ concluded that if the IGA fell within the category of inherent managerial authority, "the matter at issue is clearly amenable to bargaining." The ALJ noted that had bargaining occurred, the "the Union would be in a position to offer concessions" to address the financial needs driving the Village's decision to enter into the IGA. In the absence of any persuasive argument by the Village to the contrary, the ALJ concluded that "the benefits of bargaining the decision-making process outweigh any burdens imposed on the Village's authority."

¶ 18 The ALJ recommended the Village be found to have violated section 10(a)(4) of the Act "when it failed to bargain with [the Union] by unilaterally deciding to subcontract to the County all law enforcement services previously performed by [Village] police officers." The ALJ also

recommended that a cease and desist order issue directing the Village not to enforce or give effect to the IGA. The ALJ recommended the IGA be ordered rescinded, which would "[m]ake whole any employees who have been adversely affected by the subcontracting of law enforcement services."

¶ 19 The Village filed exceptions with the Board. The Village claimed that contrary to the ALJ's determination, it did claim that its decision to enter into the IGA concerned a matter of inherent managerial authority and that bargaining over the IGA would unduly burden its inherent authority. Moreover, there would be little benefit from bargaining because the Union would not be in a position to offer concessions. According to the Village, "One must conclude that the County knew the Village had the authority to enter [into] the agreement or why would they have made such a large commitment of time and resources to such an endeavor if it thought the agreement was beyond the scope of what the Village could lawfully do." The Village took exception to the remedial order to rescind the IGA.

¶ 20 On December 29, 2010, the Board adopted the ALJ's proposed decision and order with only a minor modification. The Board agreed that the subject of the IGA concerned the Union members' wages, hours, and conditions of employment under step one of the test. The Board declined to apply forfeiture under the second step. Under an affirmative conclusion that the IGA impinged upon the Village's inherent managerial authority, Board examined the third consideration of whether the benefits of bargaining outweighed the burdens. The Board noted that the Village offered "no argument concerning the degree of burden bargaining would impose on its managerial authority." The Village "merely points out that it had the legal authority to

enter the IGA, and that it saved money by doing so. Neither of these points addresses the relevant issue." The Board ruled the Village "has failed to show that bargaining would have caused any diminution of its inherent managerial authority, and so we find that the benefits bargaining would provide to the decision-making process do outweigh the burdens bargaining would impose on the Village's authority."

¶ 21 The Board also affirmed the remedy the ALJ recommended. The Board explained that "the standard remedy" in unfair labor practice cases is "a make-whole order and restoration of the status quo ante, that is, to place the parties in the same position they would have been in had the unfair labor practice not been committed." The Board expressed its expectation that "the Village will take steps to comply with this portion of the order in a manner that maintains the safety of its citizens." The Village timely filed its petition for direct administrative review.

¶ 22 ANALYSIS

¶ 23 The Village generally contends the Board erred by adopting the decision of the ALJ. The respondents assert that the real issue before this court is whether Board clearly erred in finding that the benefits to bargaining over the IGA exceed any burden such an obligation would impose on the Village. The respondents contend that we should decline to fully address the Village's general claim of error when it failed to address the three-step test set forth in *Central City*. As a consequence, the respondents urge that we find this issue forfeited.

¶ 24 Administrative review proceedings present three types of questions: those of fact, those of law, and mixed questions of fact and law. *Cook County Board of Review v. Property Tax Appeal Board*, 395 Ill. App. 3d 776, 784 (2009) (citing *Cook County Republican Party v. Illinois State*

Board of Elections, 232 Ill. 2d 231, 243 (2009)). In reviewing the decision of an administrative agency, this court will review the agency's factual findings to ascertain whether such findings are against the manifest weight of the evidence, review its decisions on questions of law *de novo*, and review its decisions on mixed questions of law and fact for clear error. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209-10 (2008). Neither party disputes that the issue before us concerns a mixed question of law and fact and that we review decision for clear error. "The issue of whether a public employer is required to bargain over a specific subject generally involves a mixed question of law and fact, and the applicable standard of review is 'clearly erroneous.' " *Forest Preserve District of Cook County v. Illinois Labor Relations Board*, 369 Ill. App. 3d 733, 751 (2006) (citing *City of Belvidere*, 181 Ill. 2d at 205). Under the clearly erroneous standard of review, an agency's decision will be reversed only where the reviewing court, on the entire record, is " 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 25 The Act imposes a duty on the Village, as a public employer, to engage in good-faith collective bargaining with its employees' representative when circumstances mandate bargaining. It is an unfair labor practice for a public employer to interfere with, restrain, or coerce its employees in the exercise of their rights guaranteed by the Act (5 ILCS 315/10(a)(1) (West 2008)) or to refuse to bargain collectively with their exclusive representative (5 ILCS 315/10(a)(4) (West 2008)). An employer's refusal to negotiate over a mandatory subject of

bargaining constitutes an unfair labor practice. *Forest Preserve District of Cook County*, 369 Ill. App. 3d at 754. In general, courts apply the balancing test set forth by our supreme court in *Central City* to determine whether a matter is a mandatory subject of bargaining. *County of Cook v. Illinois Labor Relations Board Local Panel*, 347 Ill. App. 3d 538, 545 (2004).

¶ 26 The Village's opening and reply briefs offer little guidance to this court on its claim of clear error by the Board. The Village asserts a general, blanket challenge to the findings of the ALJ, which the Board essentially adopted. We agree with the Board that the issue presented by this appeal turns on the application of the three-part test in *Central City* to the administrative findings below. The Village presents little challenge to the first two steps of the *Central City* test. We likewise focus on the balancing process in the third step of the test. See *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 143 n. 2 (2006) (plaintiffs forfeited issue where they failed to raise it in their brief before the court).

¶ 27 We begin with the premise that the matter of the IGA concerns "one of inherent managerial authority." *Central City*, 149 Ill. 2d at 523. It is undisputed that the Village's decision to enter into the IGA led directly to the dissolution of its police department. The Village notes the importance of a police department in its opening brief: "Maintaining a police department is one of *** [the] most important [obligations a Village has to its residents]." Apparently to reinforce this observation and in support of its argument that the IGA was a matter within its inherent managerial authority, the Village quotes from *Peoria Firefighters Association, Local 544 v. City of Peoria*, 3 PERI ¶ 2025 (IL SLRB 1994):

> "In cases where the employer has transferred work of a bargaining unit the

> critical factor in determining whether the decision is subject to mandatory bargaining is the essence of the decision itself, that is, whether it turns on a change in the nature or direction of the employer's operation, or turns on labor costs. *State of Illinois, Department of Central Management Services*, 1 PERI ¶ 2016 (Ill. SLRB 1985) (employer's decision to change job classifications was a matter of inherent managerial policy within the meaning of Section 4 of the Act, but holding was expressly limited to cases where the employer's decision was based solely on organizational structure rather than labor costs)."

¶ 28 However, the Village fails to explain the value of this quote in the context of its claim of clear error by the Board. Nor does the Village provide us with additional authority to support its contention of clear error. Indeed, the Village's opening brief mostly restates the ALJ's findings followed by hypothetical questions. We nonetheless focus on the third step of the *Central City* test.

¶ 29 The third part of the test requires the Board to weigh "the benefits that bargaining will have on the decision making process [against] the burdens that bargaining imposes on the employer's authority." *Central City*, 149 Ill. 2d at 523. The Village restates this part of the test to involve "the Board balancing the benefits that bargaining will have on the decision making process" with the "burden placed on the conduct of business," citing *First National Maintenance Corp. v. National Labor Relations Board*, 452 U.S. 666 (1981). The Village reads Bridges' testimony as supporting a conclusion that the driving force behind the IGA was the Village's inability to provide manpower and protection to its residents. Thus, according to the Village, the

decision to enter the IGA was not driven by its "labor costs," as *Local 544* explains, it evolved from "inadequate police protection." The Village contends that "had adequate police protection been in place, this situation would have never occurred. Simply put, protection first, finances second." The Village argues it exercised its fiduciary duty to its residents and to all those persons inside its boundaries by entering into the IGA, which permitted the Village to provide adequate police services. In support of its argument, the Village cites *City of Hickory Hills,* 18 PERI ¶ 2044 (ILRB State Panel 2002) and *Community College District 508 (City Colleges of Chicago),* 13 PERI ¶ 1045 (IELRB 1997).

¶ 30 The response from the respondents is that this court does not function as a second hearing opportunity for the Village to present its dire financial claims. The respondents correctly argue that the dispositive issue in this case is whether the Board clearly erred when it determined that the benefits of bargaining exceeded the burden on the Village's managerial authority. According to the respondents, the Act contemplates "issues that impact an employer's budget are amenable to bargaining. Indeed, most topics concerning 'wages, hours and terms and conditions of employment' impact the employer's budget." The respondents assert that because "the issue was primarily about cost, and there were no quality concerns that were not intimately related to cost, the Union could bargain about benefits and wages and make concessions to address the Village's economic concerns." The respondents aver the Village "saw an opportunity for cost savings by eliminating its police department and instead paying the County a flat monthly fee. This is precisely the type of decision that the labor boards and this Court has found amenable to bargaining."

¶ 31 The respondents point to the Board's decision to assert that the Village forfeited its claim that bargaining over the IGA would have unduly burdened its inherent managerial authority. The Board specifically found "the Village offers no argument concerning the degree of burden bargaining would impose on its managerial authority." The Village offers little in its reply brief to undercut the observations by the Board.

¶ 32 Illinois courts have consistently held "arguments or objections that are not made during the course of the administrative hearing process but instead are raised for the first time on review are deemed waived." *Cook County Board of Review*, 395 Ill. App. 3d at 786. See also *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 289 Ill. App. 3d 1019, 1021 (1997); *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill. App. 3d 79, 82 (1996); *Moore v. Illinois State Labor Relations Board*, 206 Ill. App. 3d 327, 338-39 (1990). While respondents strenuously argue that the Village forfeited any argument as to the degree to which its inherent managerial authority would be burdened by engaging in mandatory bargaining over the IGA, we follow the lead of the Board and address the Village's claims on the merits in the interest of effective administration of justice.

¶ 33 We first reject the Village's contention that the focus of the balancing analysis of the third step should concern the "burden placed on the [employer's] conduct of business" rather than the "burdens that bargaining imposes on the employer's authority." *First National Maintenance*, upon which the Village relies for its contention, is distinguishable from the context in which this case comes before us. *First National Maintenance* involved a private company's decision to end its contract with one of its customers; the United States Supreme Court ruled the company had no

duty to bargain with the union over a purely business decision, though the effects of the business decision would be subject to mandatory bargaining. *First National Maintenance*, 452 U.S. at 686. That is not the situation before us. Here, the decision concerned the dissolution of the police department arising from the Village's decision to enter into the IGA, under terms different than the Village and Cook County had previously agreed upon under a two-thirds, one-third arrangement.

¶ 34 Similarly, the Village's reliance upon *City of Hickory Hills* and *Community College District 508* is misplaced because each is factually inapposite. In *Community College District 508*, the union and employer had a meeting at which the union was able to present its proposals to the employer, a sort of quasi-bargaining session. On the record before us, the Village executed the IGA without any opportunity for the Union to respond. Our deference to the Board's decision flowed in the opposite direction in *Community College District 508*. There, the Board found in favor of the employer based on the burden bargaining would impose given the time constraints on its class site consolidation decision. *Community College District 508*, 13 PERI ¶ 1045. Nor did the Village act under time constraints similar to those in *Community College District 508*. There, the record established that District 508's decision to consolidate or close class sites with 25 or fewer students was not economic in nature and "was not motivated in part by a desire to reduce costs or by budgetary constraints." *Id*.

¶ 35 *City of Hickory Hills* shares with *Community College District 508* the decision of the Board in favor of the employer. In *City of Hickory Hills*, the Board found the issue of police officer shift scheduling was not a mandatory subject of bargaining. The Board determined

"[b]argaining over a seniority-based shift assignment proposal that expressly preserves management's right to act unilaterally when necessary outweighs the burdens that bargaining would otherwise impose on an employer's authority." *City of Hickory Hills*, 18 PERI ¶ 2044. According to the Board, to be mandatorily negotiable, "the seniority-based proposal must accommodate the employer's discretion and latitude to assign employees when special qualifications are needed for particular tasks, minimum staffing levels must be met, training is required or emergencies occur." *Id*. The Board in *City of Hickory Hills* based its conclusion on whether seniority was the sole criterion in determining shift assignments. In contrast, the record in this case makes clear that budgetary concerns were the driving force of the Village's decision to enter into the IGA, in accordance with Smith's testimony regarding the Village's dire financial straits. We are unpersuaded that the record supports, as the Village suggests before us, that it acted solely out of its concern over the protection of its residents.

¶ 36 The Act contemplates that issues which impact an employer's budget are amenable to bargaining. We find *AFSCME* to be more like the case before us. In *AFSCME*, this court recognized that the employer's decision to lay off employees was inextricably connected with the terms and conditions of employment, but also involved a matter of inherent managerial authority. The court noted that the reduction in force was motivated primarily, if not exclusively, by economic constraints resulting from a shortfall in the employer's budget and that matters relating to overall budget are within the scope of managerial policy. The court explained:

> "[A]fter weighing the benefits and burdens, it becomes clear that a decision to layoff employees due to a decrease in State funding truly invites the

> use of the collective bargaining process. *** [A] bargaining representative is frequently in the best position to provide alternatives which may alleviate economic conditions and avoid employee layoffs. Not only is the representative authorized to negotiate on behalf of the employees, but he or she often possesses information which may not be available to management and which could influence management's decision to reduce its force." *AFSCME*, 274 Ill. App. 3d at 333.

The court affirmed the finding that the Illinois Department of Public Aid's decision to lay off employees was a mandatory subject of bargaining. *Id*. at 334.

¶ 37 In this case, the Board's decision was that the IGA was clearly amenable to bargaining. As the ALJ noted, "Since the need to reduce expenses and cut costs motivated the decision to subcontract, the Union would be in a position to offer concessions to address this need. Thus, the benefits of bargaining the decision-making process outweigh any burdens imposed on the Village's authority." To this observation the Board added, "The bargaining process provides the union an opportunity to offer money-saving suggestions or concessions in other areas to achieve the necessary financial savings."

¶ 38 The Village has failed to persuade us that the Board clearly erred in its decision. The record evidence supports the Board's conclusion that the benefits bargaining would provide to the decision-making process outweigh the burdens bargaining would impose on the Village's authority. *AFSCME*, 274 Ill. App. 3d at 333-34; see also *Forest Preserve District of Cook County*, 369 Ill. App. 3d at 753-54. Nothing in the evidence the Village submitted below or in its

arguments before this court supports its claim that bargaining with the Union over the IGA would have diminished its managerial authority. The Board did not clearly err in finding the Village's decision to enter to the IGA was a mandatory subject of bargaining. We note that the Village committed an unfair labor practice in failing to bargain over its decision to execute the IGA. We do not question that the Village's financial straits compel action; we simply agree with Board that the action subject to mandatory bargaining cannot be unilateral.

¶ 39 CONCLUSION

¶ 40 We confirm the Board's determination that the Village's decision to enter into the IGA with Cook County was a mandatory subject of bargaining and that the Village's failure to bargain collectively with the Union prior to entering into said IGA constituted an unfair labor practice.

¶ 41 Confirmed.