

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

International Union of Operating Engineers,)	
Local 150,)	
)	
Charging Party)	
)	Case No. S-CA-13-197
and)	
)	
City of Park Ridge,)	
)	
Respondent)	

City of Park Ridge,)	
)	
Charging Party)	
)	Case No. S-CB-13-047
and)	
)	

International Union of Operating Engineers,)
Local 150,)
)
Respondent)

ORDER DENYING MOTION TO REVOKE SUBPOENAS

On May 28, 2013, the International Union of Operating Engineers, Local 150 (Union) filed charges with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1300, alleging that the City of Park Ridge (City) violated Sections 10(a)(1), 10(a)(4), and 10(a)(7) of the Act. On June 7, 2013, the City filed charges with the Board's State Panel pursuant to Section 11 of the Act alleging instead that, by its conduct in the same course of bargaining, the Union had violated Sections 10(b)(4) and 10(b)(8) of the Act. Both charges were investigated in accordance with Section 11 of the Act and on September 20, 2013, the Board's Executive Director issued Complaints for Hearing in both matters. Both parties filed timely Answers and the charges were scheduled for a consolidated hearing to commence on March 26, 2014.

On March 3, 2014, the Union requested subpoenas *ad testificandum* for the following witnesses: David Schmidt, Mayor of Park Ridge; Joseph Sweeney, First Ward Alderman; Nicolas Milissis, Second Ward Alderman; Jim Smith, Third Ward Alderman; Roger Schubert, Fourth Ward Alderman; Daniel J. Knight, Fifth Ward Alderman; Marc Mazzuca, Sixth Ward Alderman; Marty Maloney, Seventh Ward Alderman; John Dacquisto; and David Yost. These subpoenas were issued by the undersigned on March 3, 2014. On March 12, 2014, after continuing the hearing to May 6, 2014, at the parties request, I issued an order continuing these subpoenas. On March 19, 2014, the City filed a motion to revoke the subpoenas issued for Mayor Schmidt and the seven Aldermen; the Union filed a timely response to this motion on April 11, 2014.¹ For the reasons that follow, the City's motion is denied.

I. INVESTIGATORY FACTS

The Union is the exclusive representative of a bargaining unit of city employees. Following the expiration of a collective bargaining agreement covering the bargaining unit, the parties began negotiations on a successor agreement in May 2012. The Union alleges that the parties reached a tentative agreement on a successor agreement, including health insurance premiums and caps and a choice of three options for a wage increase, on November 28, 2012; the City denies that any tentative agreement was reached on that date. Instead, the City alleges that the parties reached a tentative agreement on January 21, 2013. The parties both state that, following their January 21, 2013, meeting, they agreed the City would draft the parties' agreement. Both parties also agree that the Union contacted the City on February 20, 2013, and stated that the drafted agreement prepared by the City "looked good." The Union now states that it was mistaken in doing so. On April 1, 2013, the City voted to ratify an agreement covering the bargaining unit; the Union denies that this agreement reflected the agreement reached by the parties and ratified by the Union.² On April 5, 2013, the Union contacted the City and stated that the insurance caps in the drafted agreement were incorrect. Sometime after April 1, 2013, Mayor Schmidt vetoed the contract ratified by the Park Ridge City Council. In his veto message, Mayor Schmidt stressed his admiration for the employees that comprise the bargaining unit, but also

¹ By agreement of the parties, the Union's five-day time period in which to file a response under Rule 1200.45(c) was extended to April 11, 2014.

² The Union states that its membership chose one of the wage options agreed to on November 28, 2012, by vote of December 4, 2012. The City states that it does not have sufficient information to confirm whether the Unit members chose a wage option on that date, and further denies that the parties had even reached a tentative agreement that included three wage options at that point.

expressed his concern over escalating property taxes and the state of City finances. Mayor Schmidt explained that he was exercising his power to veto the contract because the wage increases contained therein were not offset by other cost savings; he specifically cited instructions given to the City's bargaining team during a closed City Council session regarding the need for an expense neutral contract.

On May 1, 2013, the Park Ridge City Council voted to override Mayor Schmidt's veto. In its charge, the City alleges that the Union has subsequently failed to sign an agreement that reflects the terms of the parties' agreement. The Union denies that the contract ratified by the City Council reflects the parties' agreement and alleges instead, in its charge, that the City has failed to draft and sign an agreement that reflects the terms of the parties' agreement. In its response to the City's motion, the Union also questions whether the contract ratified by the City Council is the same draft that the City provided to the Union. The Union further alleges that the City unilaterally implemented changes to health insurance premiums and caps and has failed or refused to implement the parties' agreed-upon wage increase.

II. ISSUES AND CONTENTIONS

The City argues that the subpoenas for the Mayor and Aldermen should be revoked because: (1) the prospective witnesses were not present at any bargaining sessions, and thus have no first-hand knowledge of any of the key factual events described in the Complaints for Hearing; (2) their testimony would be unnecessarily cumulative and duplicative of that of the City's bargaining team; and (3) the subpoenas place an undue burden on Mayor Schmidt and Alderman Maloney, both of whom had previously scheduled business trips on the May 6 and 7, 2014, hearing dates.

In response to the City's argument that the subpoenas place an undue burden on Mayor Schmidt and Alderman Maloney, the Union voluntarily released the subpoena issued to Alderman Maloney and agreed to reschedule the hearing to accommodate Mayor Schmidt's schedule. The Union also released the subpoenas issued to Aldermen Sweeney, Milissis, Smith, and Schubert. As to the remaining issues, the Union argues that the testimony of Mayor Schmidt and Aldermen Knight and Mazzuca is relevant because they have first-hand knowledge of the instructions given to the bargaining team during closed sessions of City Council meetings, as referenced both by Mayor Schmidt in his veto message and Alderman Knight in commentary he made during open session. Further, the Union alleges that it is unclear which version of the

contract the City Council ratified on April 1, 2013. The Union states that the testimony of Alderman Mazzuca, who voted in favor of the contract, Alderman Knight, who voted against the contract, and Mayor Schmidt, who vetoed the contract, is relevant to this issue.

III. DISCUSSION AND ANALYSIS

The Board's Rules state that grounds for the revocation of a subpoena shall include irrelevance, undue burden, and privilege. 80 Ill. Admin. Code 1200.90(c). The City does not argue that the testimony sought by the Union is privileged, and the Union's agreement to release the subpoena for Alderman Maloney and to reschedule the hearing to accommodate Mayor Schmidt has addressed the City's arguments that these subpoenas create an undue burden. The remaining issues are the City's contention that the testimony of the subpoenaed witnesses is irrelevant because: (1) they have no first-hand knowledge of the key factual events described in the Complaints for Hearing; and (2) their testimony would be needlessly duplicative of that of the City's bargaining team.

Generally, relevant evidence is evidence that is probative, i.e., evidence having any tendency to make the existence of any fact of consequence to the determination of an action more probable or less probable. Ill. R. Evid. 401. Given the competing allegations that both parties have failed to execute a contract reflecting the agreement reached by the parties, one of the issues for hearing is whether the parties in fact reached an agreement and, if so, what the terms of that agreement were. As the City notes in its motion, this will likely require the Board to determine whether the parties reached a "meeting of the minds" during their bargaining sessions, and the testimony of the bargaining team will certainly be probative of that issue.³ However, I cannot determine that the testimony of Mayor Schmidt and Aldermen Knight and Mazzuca will not also be probative of that issue, particularly where there is an indication that these potential witnesses instructed the bargaining team on their bargaining authority and the course of negotiations during closed City Council sessions.

³ Though the Union takes issue with the City's characterization of these matters as solely a question of whether the parties reached a meeting of the minds, the City did not characterize this as the sole issue, but rather correctly noted that it is an important question that must be answered in order to resolve these charges. However, the Union states further that these charges involve more than a mere "garden variety" misunderstanding at the bargaining table. After reviewing the Complaints for Hearing and the Answers filed by the parties, I agree that the competing allegations, admissions, and denials suggest a degree of complexity to these issues. As such, the resolution of these matters may require the Board to more deeply understand the intricacies of the parties' course of bargaining than would generally be necessary in a "garden variety" misunderstanding case.

Furthermore, the Aldermen, who voted on the contract, and the Mayor, who vetoed the contract, may be able to shed light on what version of the contract was ratified by the City Council. The Union alleges that the City submitted two drafts of the contract in February 2013, both stamped with different file numbers. Further, the Union states that the version it believes was ratified by the City Council on April 1, 2013, was stamped with a third file number and contained key differences in terms. Having presumably reviewed the contract prior to the City Council's vote, the testimony of these witnesses may aid the Board in determining what terms were ratified by the City.

Finally, as to the City's argument that the testimony of Mayor Schmidt and the two Aldermen will be needlessly duplicative and cumulative of the testimony of the bargaining team, I note that this is not a question of the relevance of their testimony. The Rules of Evidence clearly contemplate that evidence that is needlessly cumulative may nonetheless be relevant. Ill. R. Evid. 403. Furthermore, the testimony of these witnesses is unlikely to be cumulative on the issue of what terms were ratified by the City Council, as the bargaining team did not vote on ratification. Lastly, having received no evidence, I cannot at this time determine that the testimony sought from Mayor Schmidt and Aldermen Knight and Mazzuca is duplicative of any other potential testimony such that it should be excluded under Rule 403 of the Illinois Rules of Evidence.

In sum, there appear to be many questions of fact surrounding the parties' course of bargaining in 2012 and 2013. As the Administrative Law Judge assigned to this matter, I have the duty to ensure the development of a clear and complete record. To accomplish this task, I must allow the parties to cast a wide net, where appropriate and permissible, as to the development and submission of relevant evidence. With these considerations in mind, I believe that the testimony of Mayor Schmidt and Alderman Knight and Mazzuca may be relevant to issues before the Board in these proceedings.⁴

⁴ The City also suggests that the Union requested these subpoenas for the purpose of harassing the Mayor and Aldermen. This allegation was tied largely to the City's conclusion that the testimony of these witnesses was not relevant, and, having concluded that their testimony may be relevant, I will not address this issue. However, I will state my expectation that all witnesses called in the hearing in these matters will be treated with respect by both parties and that their examination will be confined to questions that may be probative of the issues before the Board in relation to these charges.

IV. CONCLUSIONS OF LAW

Because the testimony of Mayor David Schmidt, Alderman Daniel J. Knight, and Alderman Marc Mazzuca is not irrelevant to issues before the Board in these matters, revocation of the subpoenas issued on March 3, 2014, by the undersigned is not appropriate.

V. ORDER

IT IS HEREBY ORDERED that the City's motion to revoke the subpoenas issued in this matter be denied.

VI. EXCEPTIONS

Pursuant to 80 Ill. Admin. Code §1200.45, this ruling is not appealable at this juncture.⁵

Issued at Chicago, Illinois, this 14th day of May, 2014

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

/s/ Heather R. Sidwell

**Heather R. Sidwell
Administrative Law Judge**

⁵ Under 80 Ill. Admin. Code §1200.135 the parties will have an opportunity to file exceptions once a Recommended Decision and Order is issued in this case.