STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Mattoon Firefighters Association, Local 691,	)	
Charging Party,	)	
and	)	Case No. S-CA-18-138
City of Mattoon (Fire Department),	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On October 30, 2019, Administrative Law Judge (ALJ) Matthew Nagy issued his Recommended Decision and Order (RDO) recommending dismissal of the complaint for hearing issued by the Executive Director in this case. The allegations in the complaint for hearing were based on an unfair labor practice charge filed by Charging Party Mattoon Firefighters Association, Local 691 (Union) against Respondent City of Mattoon (City), claiming the City failed to bargain the impact of its decision to eliminate City-operated ambulance services in violation of Section 10(a)(4) and derivatively, Section 10(a)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq*., as amended (2016).

Charging Party filed timely exceptions and Respondent filed its response. Both parties requested oral argument before the Board pursuant to Section 1200.135(c) of the Board's rules. 80 Ill. Adm. Code 1200.135.(c). After a review of the RDO, the exceptions and responses thereto, the parties' oral argument, and the record, we reject the ALJ's determinations and conclusions as discussed below:

I. DISCUSSION

A. Background

The ALJ rendered detailed findings of fact and a comprehensive recitation of the parties' stipulations. The following background is provided for context:

This case stems from the City's adoption of Resolution No. 2017-2997 on July 18, 2017 (July 2017 Resolution), eliminating City-operated ambulance services effective May 1, 2018. Prior to the elimination of City-operated ambulance services, ambulance services for the City were provided using a three-week rotation whereby City-operated ambulance services and two other private ambulance companies would rotate service as the primary, secondary, and tertiary responder. City-operated ambulance services were performed by the Union's bargaining unit members employed by the City's Fire Department. After the adoption of the July 2017 Resolution, ambulance services continued to be provided by both the City and the private ambulance companies until July 25, 2018.

One day after the adoption of the July 2017 Resolution, the Union filed a grievance alleging the City's adoption of the resolution violated the parties' collective bargaining agreement. The grievance was arbitrated before Arbitrator George L. Fitzsimmons who issued an award on April 18, 2018, finding the City was permitted to eliminate ambulance services under the terms of the parties' collective bargaining agreement (Fitzsimmons Award). Because

provisions of the agreement at issue included compliance with the Substitutes Act, [1] Arbitrator Fitzsimmons reviewed and determined the Substitutes Act did not preclude the City from eliminating City-operated ambulance services.

The Union also filed an unfair labor practice charge in Case No. S-CA-18-084, alleging the City "unilaterally eliminated paramedic services effective May 1, 2018 without notice or bargaining with the Union." The Executive Director, finding that the charge in Case No. S-CA-18-084 involved an interpretation of the parties' collective bargaining agreement, deferred the charge to the Fitzsimmons Award under the Spielberg doctrine.[2] The Union appealed, but we denied the appeal and affirmed the dismissal. Shortly after the deferral in Case No. S-CA-18-084, the Union filed the instant charge[3] and the Executive Director issued the instant complaint for hearing.

In his RDO, ALJ Nagy considered two broad issues: whether to amend the complaint to include additional allegations, and whether the City failed to bargain the impact of its decision to eliminate City-operated ambulance services in violation of Sections 10(a)(4) and 10(a)(1).

ALJ Nagy found the Union sought to amend the complaint for hearing to include allegations that: (1) the City's decision to eliminate City-operated ambulance services involved

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[1] Section 10-2.1-4 of the Illinois Municipal Code (Substitutes Act), provides the following in relevant part:

> In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 2.1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining.

65 ILCS 5/10-2.1-4 (2016).

[2] The Spielberg doctrine is derived from a National Labor Relations Board case, Spielberg Manufacturing Co., 112 NLRB 1080 (1955), and concerns deferring resolution of an unfair labor practice charge to an existing arbitration award or settlement agreement.

[3] The Union filed its charge on May 5, 2018, and subsequently amended its charge on June 25, 2018.

the Union's rights under the Substitutes Act and thus, concerned a permissive subject of bargaining over which the Union cannot be compelled to bargain to impasse; (2) in the alternative, the decision to eliminate City-operated ambulance services was a unilateral change to a mandatory subject of bargaining; and (3) the City's actions changed the status quo after the Union invoked interest arbitration procedures in violation of Section 14(l) of the Act. He declined to amend the complaint to include the first two allegations because he determined those issues had been litigated in Case No. S-CA-18-084. ALJ Nagy, however, amended the complaint to include the allegations relating to whether the City failed to maintain the status quo during pendency of interest arbitration proceedings. He then determined that the status quo was not altered because the findings of the Fitzsimmons Award were binding on the parties. Finally, the ALJ determined the City was not obligated to bargain the impact of its decision to eliminate ambulance services.

B. Union's Exceptions and City's Response

The Union filed multiple exceptions challenging the ALJ's determinations and conclusions resulting in the recommendation to dismiss the complaint for hearing. The Union contends: (1) the ALJ erred in declining to amend the complaint to include the allegation that the Union was being compelled to bargain a permissive subject to impasse or in the alternative, the allegation that the City unilaterally changed a mandatory subject of bargaining. The Union asserts the ALJ failed to consider that the transfer of bargaining unit work to non-bargaining unit members was not litigated in Case No. S-CA-18-084 and claims the transfer of bargaining unit work to non-qualified substitutes strikes at the heart of the Substitutes Act. The Union also advances this argument as the basis for its challenge to the ALJ's findings and conclusions that the City did not alter the status quo and the impact bargaining issue. Furthermore, the Union

relies on several General Counsel Declaratory Rulings issued by the undersigned, one involving these same parties, which applied the Substitutes Act to determine whether certain proposals were mandatory or permissive subjects of bargaining.

At oral argument, the Union reasserted its position that the Board's decision in Case No. S-CA-18-084 and Fitzsimmons Award should not be determinative in the instant case because the operative facts, the use of unqualified individuals as substitutes for full-time firefighters was not considered in either the Fitzsimmons Award or the prior Board case. The Union explained that the determinative issue in this case—whether an employer can use unqualified individuals as substitutes for full-time firefighters without consent of the union—is one of first impression and involves an examination of the Substitutes Act. The Union argues the Substitutes Act is determinative because the Substitutes Act grants the Union the right to agree to the use of substitutes and declares any agreement to do so as a permissive subject of bargaining. Thus, the Union asserts that it cannot be forced to waive, *i.e.*, bargain away, that right. Regarding impact bargaining, the Union claims it needed to know how the City proposed to continue to operate with current staff under the terms of the parties' current agreement and further claims the City confuses impact bargaining under the current agreement with negotiating over a successor agreement.

In its response to the Union's exceptions, the City asserts that the ALJ correctly analyzed and resolved all issues. It argues that Case No. S-CA-18-084 was not only correctly decided but also precludes litigation of the issues in the instant case. The City asserts that contrary to the General Counsel's Declaratory Rulings, the Substitutes Act is ambiguous and thus, the Board should review the legislative history to determine the General Assembly intended the Substitutes Act to apply only in the hiring of firefighters.

Reaffirming at oral argument the position it took in its response to the Union's exceptions, the City maintains that the instant case involves the same issues presented in the prior Board case and thus, should not be re-litigated in this case. The City also highlighted its disagreement with the Union's interpretation of the Substitutes Act and argued that the Substitutes Act is applicable only to the *hiring* of unqualified individuals rather than the *use* of unqualified substitutes for qualified full-time firefighters, pointing to the legislative history of the Substitutes Act in support. The City asserts that it did not *hire* or bring in anyone to provide ambulance services, it merely decided to cease providing those services.

C. Analysis

We find the Union's exceptions persuasive. As discussed further below, we modify the ALJ's recommendations regarding the amendment of the complaint for hearing and reject his determinations and conclusions in support of dismissal of the complaint.

Amendment of the Complaint

The ALJ found the Board's deferral to the Fitzsimmons Award in Case No. S-CA-18-138 to be controlling in denying the Union's request to amend the complaint for hearing to include the allegations regarding the elimination of City-operated ambulance services and transfer of bargaining unit work. It is clear from the award and prior Board case, however, that the only issue considered was the adoption of the resolution to eliminate City-operated ambulance services. Indeed, the parties stipulated that the issue before the arbitrator was: "Did the Employer violate the Contract when it adopted Resolution No. 2017-2997 on July 18, 2017 eliminating paramedic services Effective May 1, 2018? If so, what shall be the remedy?"

In contrast, the facts in this case involve the effects of the City's cessation of City-operated ambulance services, namely the use of two private ambulance companies[4] that used unqualified individuals as defined by the Substitutes Act to perform the work in place of the City's full-time firefighters. Accordingly, we modify the ALJ's recommendations regarding the amendment of the complaint to also amend the complaint to include all of the Union's additional allegations.

City's Duty to Bargain the Transfer of Bargaining Unit Work

The City's elimination of ambulance services may not have run afoul of the parties' collective bargaining agreement or the Act, but the same cannot be said of the resultant transfer of the full-time firefighters' bargaining unit work. When the City provided City-operated ambulance services, part of the duties of the City's full-time firefighters was devoted to responding to emergency medical services. Indeed, the record indicates a significant portion of their duties, approximately 76 percent of calls received, was devoted to responding to emergency medical calls. Moreover, the parties' collective bargaining agreement provided that at least two bargaining unit members be assigned to any given Fire Department apparatus, including ambulances. Thus, when the City ceased its City-operated ambulance services, that significant portion of the City's firefighters' work was ostensibly being performed outside the bargaining unit, *i.e.*, by the private ambulance companies.

This transfer of bargaining unit work required the City to bargain with Union because (1) the Substitutes Act required the City to obtain the Union's consent when using substitutes for full-time firefighters and (2) notwithstanding the requirements of the Substitutes Act, the transfer of bargaining unit work is a mandatory subject of bargaining.

[4] At the time of the oral argument, the parties clarified that it was now only one private ambulance company.

Substitutes Act

The parties' agreement expressly recognizes the Substitutes Act pertains to the use of substitutes and provides that the parties agreed to follow it. The Substitutes Act prohibits a municipal fire department with full-time, unionized firefighters from substituting classified members of its fire department with individuals who are not qualified for regular appointment as firefighters, unless the union agrees. 65 ILCS 5/10-2.1-4. A union is free to agree to the use of such individuals, but the Substitutes Act also makes such an agreement a permissive subject of bargaining thus, a union cannot be forced to continue to agree, *i.e.*, waive its statutory right. See Wheaton Firefighters, Local 3706 v. Ill. Labor Relations Bd., 2016 IL App (2d) 160105 ¶ 17 (2d Dist. 2016) aff'ing City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015).

Thus, *before* using substitutes, the City was obligated by the Substitutes Act to seek an agreement from the Union to use unqualified individuals as substitutes for the City's full-time firefighters who had previously performed that work. In other words, this requirement necessitated bargaining with the Union to obtain such an agreement. But the City did not obtain such an agreement from the Union, and there is no evidence indicating it attempted to reach one before using unqualified substitutes. The evidence indicates the City ceased City-operated ambulance services by dropping out of the existing rotation and allowing the private ambulance companies to respond to emergency medical calls in place of the City's firefighters. Although there may be no affirmative action taken by the City, its inaction did result in the use of unqualified individuals to perform at least a significant portion of the full-time firefighters' duties, and also resulted in forcing the Union to agree. Moreover, even if there was evidence the City offered to bargain with the Union to obtain the needed agreement, the City was not privileged to impose the use of substitutes on the Union absent the Union's agreement. As noted

above, the Substitutes Act not only grants a union the right to agree to the use of substitutes, it also provides that such agreement is a permissive subject of bargaining. In other words, the Union cannot be forced through impasse procedures to continue to agree to the use of substitutes. Thus, the imposition of City's use of substitutes without the Union's consent constituted a forced waiver of the Union's statutory rights and as such, constitutes bad faith bargaining. See Wheaton, 2016 IL App (2d) 160105 ¶ 17 (2d Dist. 2016) aff'ing City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015; see also Skokie Firefighters).

The City, however, asserts that the Substitutes Act does not bar it from using a third-party contractor to provide paramedic services because it pertains only to a municipal employer's hiring practices. The City asserts that it is appropriate to rely on legislative history in support of this claim because the Substitutes Act is ambiguous absent an express prohibition on the use of private ambulance services.

As the Union points out, the Board's General Counsel in several Declaratory Rulings examined the Substitutes Act and its application to submitted bargaining proposals and came to the opposite conclusion. Notably, the ruling in S-DR-18-005 involving these same two parties and a proposal relating to the circumstances of this case rejected the City's argument regarding the same alleged ambiguity in the Substitutes Act. The Union urges the Board to adopt the reasoning set forth in those rulings, and we see no reason to depart from the General Counsel's rulings.

As the General Counsel found in her ruling in S-DR-18-005, we find no merit to the City's assertion that the Substitutes Act applies only to hiring practices and not to the City's use of unqualified individuals as substitutes for full-time firefighters. Principles of statutory construction do not support the City's argument. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. Gaffney v. Board of Trustees of the Orland Fire

Protection District, 2012 IL 110012, ¶ 56. The most reliable indicator of that intent is the language of the statute itself. Id. If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. Id. The provisions of a statute must be viewed as a whole and its words and phrases must be interpreted considering other relevant provisions. Raintree Homes, Inc. v. Vill. of Long Grove, 209 Ill. 2d 248, 256 (2004). The statute must be construed so that each word, clause, or sentence is given reasonable meaning and not deemed superfluous or void. Raintree Homes, Inc. 209 Ill. 2d at 256.

Here, we find the Substitutes Act to be unambiguous because it utilizes the word "use" rather than the word "hire" when it places restrictions on who may perform work as a substitute for a full-time firefighter employed by a municipal fire department. 65 ILCS 5/10-2.1-4. The plain meaning of the word "use" denotes the means of accomplishing a certain result and is broader than the word "hire," which refers to an employment relationship. Furthermore, the legislature's selection of the word "use" rather than "hire" must be deemed intentional because the Substitutes Act employs the word "hire" in another instance. "When the legislature uses certain words in one instance and different words in another, different results are intended." Jackim v. CC-Lake, Inc., 363 Ill. App. 3d 759, 768 (1st Dist. 2005).

Notwithstanding the application of the Substitutes Act, the transfer of bargaining unit work outside the bargaining unit also constitutes a change to the firefighters' terms and conditions of employment, and as such, the City was obligated to bargain over those changes to impasse, and in the event of impasse, to submit those issues to binding interest arbitration. That was not the case here. The City implemented the change in the firefighters' working conditions under the parties' current agreement without bargaining to impasse or submitting the matter to interest arbitration. Even if, as the ALJ found, the City engaged in impact bargaining, simply engaging

in bargaining is not sufficient in this case for impact bargaining remains a mandatory subject, and the obligation to bargain also requires bargaining to impasse before implementation. Moreover, the fact that not all of the emergency medical response duties were transferred out of the unit, as the ALJ found, does not remove the City's obligation to bargain to impasse over the transfer of the remaining work.

Accordingly, we reject the ALJ's analysis and recommendations regarding the City's bargaining obligations and find the City violated Sections 10(a)(4) and, derivatively, Section 10(a)(4) and 10(a)(1).

Change in Status Quo Pending Interest Arbitration

Although the ALJ was correct in amending the complaint to include allegations regarding the Section 14(l) violations, we reject his conclusions that the Employer's conduct in that regard did not alter the status quo in violation of Section 10(a)(4) and 10(a)(1).

The ALJ reasoned the Fitzsimmons Award determined the status quo because the terms of the award became part of the contract. That determination is correct but only as to the elimination of ambulance services. As discussed above, the Fitzsimmons Award only considered the issue of whether the proposed elimination of ambulance services was permitted by the parties' collective bargaining agreement and did not consider the transfer of work to unqualified substitutes.

Section 14(l) of the Act requires parties to maintain "existing wages, hours, and other conditions of employment" during the pendency of interest arbitration proceedings. 5 ILCS 315/14(l). Here, interest arbitration procedures were invoked in February 2018, several months before the City eliminated City-operated ambulance services and then transferred the firefighters' emergency medical response duties outside the bargaining unit. Because the parties' collective

bargaining agreement requires the parties to provide ambulance services, the cessation of City-operated ambulance services and the resultant transfer of the firefighters' work responding to emergency medical calls changed the existing conditions of employment for the firefighters. Accordingly, the status quo was not maintained as required by Section 14(l), resulting in a violation of Section 10(a)(4) and, derivatively, Section 10(a)(1).

As discussed above, we adopt the ALJ's factual findings, modify his findings regarding the amendment of the complaint, but reject the ALJ's determinations and conclusions of law in support of dismissal of the complaint for hearing. For all the above reasons, we find that the City of Mattoon violated Section 10(a)(4) and derivatively, Section 10(a)(1) of the Act.

IT IS HEREBY ORDERED THAT Respondent, City of Mattoon (Fire Department), its officers and agents, shall:

1) Cease and desist from:
    a) Failing to bargain collectively and in good faith with Charging Party with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.
    b) Unilaterally altering matters affecting the wages, hours, or terms and conditions of employment of Charging Party's bargaining unit members during the pendency of interest arbitration.
    c) In any like or related manner, interfering with, restraining or coercing Charging Party's bargaining unit member employees in the exercise of the rights guaranteed them in the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a) Restore the status quo ante as it existed before July 25, 2018 with respect to City-operated ambulance service.
    b) Make whole any employees in the bargaining unit represented by Charging Party for all losses incurred as a result of the City's decision to unilaterally eliminate City-operated ambulance service, if any, including back pay with interest as allowed by the Act, at seven percent per annum.
    c) Upon request, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the Union's bargaining unit, including City-operated ambulance service.

d) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of the attached Notice. The Respondent shall take reasonable efforts to ensure that the Notice is not altered, defaced or covered by any other material.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on July 9, 2020 (via videoconference), written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on August 13, 2020, and issued on August 18, 2020.

This Decision and Order is a final order of the Illinois Labor Relations Board. Aggrieved parties may seek judicial review of this Decision and Order in accordance with the provisions of Section 11(e) of the Act and the Administrative Review Law. Petitions for review of this Decision and Order must be filed within 35 days from the date the Decision and Order is served upon the party affected by the decision. 5 ILCS 315/11(e) (2018).

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-18-138
Mattoon Firefighters Association, Local 691/City of Mattoon (Fire Department)

IT IS HEREBY ORDERED that the Respondent, City of Mattoon (Fire Department), its officers and agents shall:

1) Cease and desist from:

   a) Failing to bargain collectively and in good faith with the Charging Party, Mattoon Firefighters Association, Local 691, with respect to wages, hours, and other terms and conditions of employment of members of its bargaining unit.

   b) Unilaterally altering matters affecting the wages, hours, or terms and conditions of employment of Charging Party's bargaining unit members during the pendency of interest arbitration.

   c) In any like or related manner, interfering with, restraining or coercing Charging Party's bargaining unit members employees in the exercise of the rights guaranteed them in the Act.

2) Take the following affirmative action necessary to effectuate the policies of the Act:

   a) Restore the *status quo ante* as it existed before July 25, 2018 with respect to City-operated ambulance service.

   b) Make whole any employees in the bargaining unit represented by Charging Party for all losses incurred as a result of the City's decision to unilaterally eliminate City-operated ambulance service, if any, including back pay with interest as allowed by the Act, at seven percent *per annum*.

   c) Upon request, resume bargaining in good faith over all items which relate to the wages, hours, or terms and conditions of employment of the members of the Union's bargaining unit, including City-operated ambulance service.

   d) Post, for 60 consecutive days, at all places where notices to employees are normally posted, signed copies of this Notice. The Respondent shall take reasonable efforts to ensure that this Notice is not altered, defaced or covered by any other material.

Date: August 13, 2020

_____
City of Mattoon (Fire Department) (Employer)

This notice shall remain posted for 60 consecutive days at all places where notices to our bargaining unit members are regularly posted.

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, IL 62703
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Mattoon Firefighters Association, Local 691,	)	
Charging Party	)	
and	)	Case No. S-CA-18-138
City of Mattoon (Fire Department),	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 8, 2018, Mattoon Firefighters Association, Local 691 (Charging Party or Union) filed an unfair labor practice charge with the Illinois Labor Relations Board (Board) alleging that City of Mattoon Fire Department (Respondent or City) violated Sections 10(a)(4), 10(a)(1), and 14(l) of the of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended. The charge was investigated in accordance with Section 11 of the Act, and on November 1, 2018, the Board's Executive Director issued a Complaint for Hearing, alleging that the Respondent violated of Section 10(a)(4) and 10(a)(1) of the Act by failing to bargain the impact of its decision to eliminate City-operated ambulance service with the Union.

A hearing was held on May 30, 2019 in Springfield, Illinois, before the undersigned Administrative Law Judge, at which time all parties were given an opportunity to call, examine, and cross-examine witnesses; introduce documentary evidence[1]; and present arguments. Both parties filed post-hearing briefs in lieu of closing arguments. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find, that:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.

[1] At hearing, both parties objected to the relevancy of certain of the Joint Exhibits submitted in this case. I noted I would provisionally accept the exhibits and rule on their admissibility in this decision. Having reviewed the documents, I find each of the parties' Joint Exhibits facially relevant and admit the entirety of the parties Joint Exhibits into evidence.

2. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

3. At all times material, Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.

4. The City is an Illinois municipal corporation organized and existing under the Constitution and laws of the State of Illinois, having as its principal place of business in Coles County, Illinois.

5. At all times material, the Union has been the exclusive representative of a bargaining unit composed of the City's employees in the job titles or classifications of Battalion Chief, Captain, Engineer, and Firefighter as certified by the Board on May 21, 1986, in Case No. S-VR-32.

6. The Union and the City are parties to a collective bargaining agreement (CBA) with a regular term of May 1, 2014 through April 30, 2018.

7. The parties' most recent CBA remains in full force and effect.

8. At all times material, the bargaining unit represented by the Union has been a "firefighter or paramedic" unit within the meaning of Section 14 of the Act.

9. Beginning in 2010, the City began providing emergency ambulance services, which were performed by bargaining unit members of the City's Fire Department represented by the Union.

10. Prior to 2010, private ambulance companies, including but not limited to Mitchell-Jerdan and Dunn's, had historically provided ambulance services in the Mattoon service area.

11. From 2010 until July 25, 2018, the City's emergency ambulance services operated on a three-week rotation:
    a. In the first week of rotation, the City's ambulance service was the primary responder; one private ambulance company was the secondary responder; and a second private ambulance company was the tertiary responder.

b. In the second week of rotation, one private ambulance company was the primary responder; the City's ambulance service was the secondary responder; and a second private ambulance company was the tertiary responder.
c. In the third week of rotation, one private ambulance company was the primary responder; a second private ambulance company was the secondary responder; and the City's ambulance service was the tertiary responder.

12. On July 18, 2017, the Mattoon City Council adopted Resolution No. 2017-2997, which provided in relevant part that the City "approves the elimination of the City-operated ambulance service effective May 1, 2018."

13. After the adoption of Resolution No. 2017-2997 on July 18, 2017, ambulances services continued to be provided by the City and two (2) private companies until July 25, 2018.

14. On July 19, 2017, the Union filed a grievance contesting Resolution Number 2017-2997, alleging that the adoption of this resolution violated Article 14, Sections 1 and 2 of the CBA.

15. On August 3, 2017, the City denied the Union's grievance, and the Union advanced the grievance to arbitration.

16. December 5, 2017, City Administrator Kyle Gill emailed the Union's representatives, acknowledging the City's obligation to bargain prior to the elimination of the ambulance service and stating that it was the City intention to do so prior to the implementation of Resolution 2017-2997.

17. On December 29, 2017, the City sent the Union proposed changes to the CBA that reflected the elimination of ambulance services and stated: "The City hereby offers to meet and confer with the Union in order to and for the purpose of negotiating a new contract and to address and bargain the impact of the proposed modifications."

18. On December 29, 2017, the Union responded with an initial proposal for the successor contract which, *inter alia,* proposed that the Union be the primary dispatched agent for all 9-1-1 calls, daily shift minimum manning be increased from eight to ten, and department minimum staffing be increased from 30 to 36.

19. On January 16, 2018, the arbitration hearing before Arbitrator George L. Fitzsimmons regarding the grievance filed over Resolution 2017-2997 was held.

20. On January 16, 2018, the Union filed an unfair labor practice charge in Case No. S-CA-18-084 with the Board alleging that City violated Sections 10(a)(4) and (1) of the Act when it adopted Resolution 2017-2997 without notice or bargaining to the Union.

21. On January 24, 2018, the parties met and discussed the expenses incurred and revenues generated by the ambulance services.

22. On February 9, 2018, the City filed a Notice of No Agreement with the Board.

23. On February 19, 2018, the parties met, and the City counter-proposed, *inter alia*, that ambulance services be eliminated, no member of the bargaining Unit be laid off or suffer a diminution of hours, daily minimum manning be reduced from eight to four, and department minimum staffing be reduced from 30 to 18.

24. On February 28, 2018, the parties invoked the interest arbitration procedures under Section 14 of the Act by submitting a request for mediation.

25. On April 18, 2018, Arbitrator Fitzsimmons issued his Award, denying the Union's grievance regarding Resolution 2017-2997.

26. On April 26, 2018, the parties met to discuss the City's April 23, 2018, proposal, but the parties did not reach an agreement.

27. On April 30, 2018, the Executive Director of the Board issued a dismissal in Case No. S-CA-18-084, deferring to the April 19, 2018, arbitration award.

28. On May 18, 2018, the City filed a Petition to Confirm Arbitrator Fitzsimmons's Arbitration Award pursuant to the Illinois Uniform Arbitration Act.

29. On June 7, 2018, the City sent the Union a proposal that proposed, *inter alia,* that ambulance services be eliminated, daily minimum manning be reduced from eight to five, and minimum department staffing be reduced from 30 to 22.

30. On June 26, 2018, the Union filed an Answer to the City's Petition to Confirm Arbitrator Fitzsimmons's Arbitration Award, along with a Counterclaim, requesting that the Court vacate or, alternatively, order the clarification of the Arbitration Award.

31. On July 25, 2018, the City discontinued its participation in the ambulance service rotation.

32. On September 12, 2018, the Board issued a decision upholding the dismissal in Case No. S-CA-18-084.

33. On March 12, 2019, the Circuit Court for Coles County entered an order granting summary judgment in favor of the City and confirming the arbitration award of George Fitzsimmons in City of Mattoon v. Mattoon Firefighters Association, Local 691, Case No. 2018MR176.

34. As of the date of this stipulation, the parties have not entered into a successor contract. The parties have scheduled an interest arbitration hearing for the successor contract on September 5 and 6, 2019.

II. FINDINGS OF FACT

Dustin Rhoads, Bart Owen, and Margaret Angelucci testified for the Union. Kyle Gill testified for the City.

Kyle Gill (Gill) is the City Administrator for the City of Mattoon, a position he has held for approximately six years. In his capacity as City Administrator, Gill oversees the City's various departments, including the Fire Department. Gill is also the City's chief financial officer, which includes responsibility for City's budget, recommending policy changes to the City Council, and engaging in collective bargaining negotiations on behalf of the City with various employee unions.

Bart Owen (Owen) is currently employed by the City's Fire Department in the rank of Engineer. In addition, Owen is the current President of the Union, a position he has held for approximately three-and-a-half years. In his capacity as Union President, Owen is involved in contract negotiations between the City and the Union and is the Union's lead negotiator.

Dustin Rhoads (Rhoads) is employed by the City's Fire Department in the rank of Engineer. In addition, Rhoads is the current Secretary of the Union, a position he has held for approximately three-and-a-half years. In his capacity as Union Secretary, Rhoads is involved in contract negotiations between the City and the Union, including drafting proposals and attending and taking notes at negotiations.

Margaret Angelucci (Angelucci) is counsel for the Union. In her capacity as counsel for the Union, she is involved in grievance arbitrations and has reviewed or discussed contract

proposals with the Union. However, Angelucci was not at the bargaining table for negotiations between the City and the Union for a successor agreement.

a. <u>The City's Fire Department</u>

The City's Fire Department operates two fire stations. Owen testified that he and each member of the Union's bargaining unit holds a paramedic license issued by the State of Illinois. There are three different levels of paramedic license issued by the State: the lowest level is EMT-Basic, followed by EMT-Intermediate, followed by the highest level, EMT-Paramedic. Owen testified that the City only uses two of these license levels, EMT-Basic and EMT-Paramedic. Twenty-six members of the Union are currently, at minimum, EMT-Basics, with fifteen, including Owen, currently EMT-Paramedic. There is no member of the Union's bargaining unit that does not hold some level of EMT license.

Owen stated that prior to July of 2018, the City's Fire Department provided emergency ambulance services, and the parties stipulate that the City provided this service since 2010. This service involved responding to 9-1-1 calls, providing transfers between hospitals, or providing transport from a hospital to a nursing home. Prior to July 2018, the City had three ambulances in service. Two served on the front line and one served as a backup. Prior to July 2018, there were three providers of emergency ambulance services in the City. One was the City's Fire Department, and the other two were private companies: Mitchell-Jerdan and Dunn's. The three services worked on a weekly rotation, where one service would be the main provider for a given week, another would be the backup provider, and the third would be the tertiary provider.

Owen estimated that, prior to July 2018, approximately seventy-six percent of all calls that the Fire Department responded to were medical calls. Approximately twenty-four percent of calls were fire-related calls. For each of the medical calls, the Fire Department dispatched an ambulance. On occasion, a call may require both fire and medical services, such as a house fire or a vehicle accident. For these scenarios, the Fire Department dispatched an ambulance and a fire suppression vehicle.

The terms of the parties' now-expired CBA, which are still in effect, provide that the City will staff a certain number of bargaining unit employees in the Fire Department (Department Manning) and a certain number of bargaining unit employees per shift (Daily Manning). Specifically, the CBA provides that Department Manning be set at 30, and Daily Manning be set at 8. In addition, Gill testified that the CBA provides that at least two bargaining unit members are to be assigned to a Fire Department apparatus, i.e., to an ambulance or to a fire suppression vehicle.

b. The City's July 18 Resolution

As the parties have stipulated, the Mattoon City Council adopted a resolution on July 18, 2017, which approved the elimination of City-operated ambulance service effective May 1, 2018

(July 18 Resolution). Gill testified that, prior to the July 18 Resolution, he reached out to the Union in order to discuss the City's financial issues and the option of doing away with City-operated ambulance service. Owen conceded that the Union had discussions with the City about the City's fiscal difficulties and the possibility of eliminating City-operated ambulance service starting in or about May of 2017. These discussions continued to occur at least once a month during the course of bargaining. However, Gill testified that the Union was unwilling to agree to the elimination of City-operated ambulance service, and instead told the City that it needed to honor the parties' CBA. Subsequently, the City passed the July 18 Resolution, the intent of which, Gill stated, was to help alleviate the City's financial issues. The Union filed a grievance over the resolution the next day, July 19, 2017 (July 19 Grievance), arguing that the resolution was in violation of the parties' CBA. The grievance was subsequently advanced to arbitration in August of 2017.

Gill testified that the City asked the Union to discuss the July 18 Resolution after it was adopted but that the Union's response was again that the City needed to honor the CBA. Gill said that he reached out to the Union approximately once per month both before and after the adoption of the July 18 Resolution with the desire of bringing the parties together to bargain the issue. Owen conceded that after the resolution was adopted, he had frequent conversations with Gill about the elimination of City-operated ambulance service.

c. Bargaining after the July 18 Resolution

Owen sent an email to Gill on November 22, 2017 asking that the parties postpone negations for a successor agreement until certain grievances filed by the Union were resolved. Owen testified that the Union believed it would be easier to bargain a successor agreement after certain grievances filed by the Union were resolved. Gill responded on December 5, 2017, noting that "bargaining on a successor contract (particularly one where the City will need to address the impact of a modification of services to residents) is of critical importance" before asserting that the City "remains ready, willing and able to bargain."

On December 29, 2017, the City submitted to the Union certain proposed modifications to the successor contract. The City noted that these modifications were derived from the July 18 Resolution approving the elimination of City-operated ambulance service. In that correspondence, the City offered "to meet and confer with the Union in order to and for the purpose of negotiating a new contract and to address and bargain the impact of the proposed modifications." Owen testified that the Union believed this proposal was for the successor contract and were not related to impact bargaining. Gill testified that the City's goal was to combine both impact and successor bargaining in an attempt to help alleviate the City's financial issues. On that same date, the Union provided its initial successor contract proposal to the City. Therein, the Union proposed to keep

City-operated ambulance service, increase Department Manning from 30 to 36, and Daily Manning from 8 to 10.

The City provided its counter to the Union's initial proposal on or about February 19, 2018. Therein, the City again noted its position that revisions to the successor contract must be made with respect to City-operated ambulance service being discontinued, but that if the service could be made financially feasible, the City would be willing to explore keeping the service. It went on to propose Department Manning at 18 and Daily Manning at 8. Owen testified the Union believed the proposal was for a successor contract and not for impact bargaining.

As the parties have stipulated, and as Owen testified, on February 28, 2018, the parties invoked the interest arbitration procedures under Section 14 of the Act by submitting a request for mediation.

d. The Fitzsimmons Arbitration Award

On April 18, 2018, Arbitrator George Fitzsimmons issued a decision and award on the July 19 Grievance (Fitzsimmons Award). Therein, Arbitrator Fitzsimmons denied the grievance and concluded that the City did not violate the parties' CBA when it adopted the July 18 Resolution approving the elimination of City-operated ambulance service. Specifically, Arbitrator Fitzsimmons noted that the City was empowered, under the Management Rights provision of the parties' CBA, to "eliminate, relocate, transfer, or subcontract work," and found that the decision to eliminate City-operated ambulance service was an extension of that authority. Further, Arbitrator Fitzsimmons stated that the Substitutes Act was incorporated into the parties' CBA.[2] He noted that the Substitutes Act provides, in relevant part:

> "In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining."

Arbitrator Fitzsimmons determined that "the plain meaning of the language in the Substitutes Act does not prevent the Employer from eliminating City-operated ambulance

[2] Arbitrator Fitzsimmons determined that the Substitutes Act was incorporated into the CBA in Article 14, Section 1, entitled "Subcontracting."

service," nor did it prevent private ambulance companies from providing ambulance services to municipalities. Rather, Arbitrator Fitzsimmons concluded that the Substitutes Act "only prevents municipal fire departments from hiring persons 'not qualified' for regular appointment . . . to be used as a temporary or permanent substitute for a municipality's fire department." Explaining that because the City was not hiring unqualified or uncertified firefighters to staff ambulance service, but rather simply eliminating its own role in ambulance service, Arbitrator Fitzsimmons concluded that the City did not violate the Substitutes Act or the parties' CBA by so eliminating its role. The City subsequently filed a motion in circuit court seeking to confirm Arbitrator's Fitzsimons's award, and the court granted the City's motion on March 12, 2019.

e. Bargaining After the Fitzsimmons Award

Subsequent to the Fitzsimmons Award, the Union submitted a proposal to the City on April 19, 2018, in which it proposed keeping City-operated ambulance service, setting Department Manning at 27, and setting Daily Manning at 8. In addition, it proposed to agree that no remedy would be necessary for a grievance filed previously relating to manning, and proposed certain remodeling or improvement work to be done in or around the Fire Department's facilities. Owen testified that the Union's proposal was for a successor contract.

Later that day, the City made a verbal proposal to the Union, which, among other things, proposed eliminating City-operated ambulance service, setting Department Manning at 21, and setting Daily Manning at 5. It also agreed to make certain remodeling or improvement work to the Fire Department's facilities in exchange for a remedy on the manning grievance and proposed that the Union withdraw a grievance relating to promotions. The City memorialized its proposal in a letter to the Union dated the next day, April 20, 2018. Owen testified he believed this proposal was for a successor contract.

The parties met for bargaining on April 23, 2018. The City submitted two proposal options, both of which impacted City-operated ambulance service. Option 1 proposed eliminating the service and setting Department Manning at 21 and Daily Manning at 5. Option 2 proposed keeping the service and setting Department Manning at 24 and Daily Manning at 6, except when the City is first on ambulance rotation, at which time Daily Manning would rise to 8. Both options proposed certain improvements to the Fire Department facilities in exchange for a remedy on the manning grievance, and proposed the Union withdraw the promotions grievance. Owen testified he believed the proposal was for a successor contract. The Union rejected both proposal options.

After the parties' CBA expired on April 30, 2018, the parties met for bargaining on May 4, 2018. The Union submitted two proposal options, both of which sought to keep City-operated ambulance service and both of which proposed setting Department Manning at 27 and Daily Manning at 8. Additionally, both options proposed that the Union would withdraw the promotions grievance in exchange for the City agreeing to promote four bargaining unit members. Further,

both options proposed no remedy would be necessary for the manning grievance. Owen testified that these proposals were for a successor contract. Owen testified that the parties discussed the proposal options, but that the City did not accept either option.

At the May 4 meeting, the City informed the Union that it would be eliminating City-operated ambulance service in approximately sixty to ninety days. Owen testified this was the first time the Union had heard of such a timeline. A few days later, on May 7, 2018, the Union sent a letter to the City demanding that it cease and desist any plan to end City-operated ambulance service and use unqualified substitutes to provide that service, asserting that the City lacked the authority to do so. Further, the Union insisted that, even if the City had such authority, it could not implement such a plan until impact bargaining over the decision was exhausted. Owen testified that this cease and desist letter was in direct response to the City's moving forward with the elimination of City-operated ambulance service. Owen stated that the Union was willing to bargain the impact of the decision and conceded that he understood that the City wished to discuss the impact of the decision. The Union requested the City reach out to Angelucci to schedule a time to impact bargain. The City, through its counsel, Carlos Arévalo (Arévalo) responded to the Union later on May 7, 2018. Therein, Arévalo asserted that the City's authority over the decision to eliminate ambulance service had already been addressed by the Fitzsimmons award. Arévalo further noted that the City had been informally seeking to bargain the impact of the decision for well over a year, and formally, it had been willing to bargain impact since December 2017. The City proposed several dates on which it was available to meet to impact bargain. Angelucci testified that the Union rejected those proposed dates in part because it had not yet received an operational plan as to how the Fire Department would operate under the terms of the now-expired CBA when City-operated ambulance service was eliminated, and in part because Angelucci was unavailable on those dates. Angelucci conceded the City's May 7 email was an effort by the City to impact bargain. The parties subsequently agreed on a date of June 12, 2018 to impact bargain.

In advance of the scheduled June 12 meeting, the City, on June 7, 2018, submitted a proposal to the Union labeled "Proposed Modifications following Fitzsimmons Award." In that document, the City again asserted that the Fitzsimmons Award made clear that the Substitutes Act did not prevent the City from eliminating City-operated ambulance service. In addition, the City proposed setting Department Manning at 22 and Daily Manning at 5, with certain exceptions. Owen testified that he understood these to be proposed modifications for the successor agreement. Gill testified that this proposal was for both impact bargaining and bargaining a successor agreement.

The parties subsequently met on June 12, 2018 for the purpose of bargaining the impact of eliminating City-operated ambulance service. During the meeting, Angelucci stated that the Union's stance on impact bargaining was that the parties needed to discuss how to function

operationally under the terms of the expired contract, which remained in effect. She testified that the Union informed the City that it expected to bargain certain topics such as how the removal of ambulances would affect the apparatus assignment of bargaining unit members. With two ambulances removed from service, the Union did not know how the members who manned those ambulances during shift would be staffed. Further, the Union wanted to bargain whether the fire engines would be equipped with advanced life support (ALS) or basic life support (BLS) equipment. Gill likewise testified that, at some point, the Union conveyed to him its desire that ALS equipment be put on fire engines. Finally, the Union wanted to discuss what efforts the City would undertake to ensure compliance with the Substitutes Act. Angelucci informed the City that she believed the its June 7 proposal was not an impact bargaining proposal, but instead, a proposal for a successor contract. Angelucci testified that she believed that the Union had no way to engage in meaningful impact bargaining without an operational plan. Gill testified that the City did not, at any point, provide an operational plan to the Union of how the Fire Department would function without ambulances under the terms of the now-expired CBA.

The parties scheduled another meeting for June 22 to further discuss impact bargaining, but before that date, Angelucci testified both sides agreed a meeting would not be fruitful because both sides' positions with respect to impact bargaining had not changed in the interim.

Owen testified that, throughout successor contract negotiations, the Union never made a proposal which involved eliminating City-operated ambulance service. Owen stated that the Union' stance throughout successor bargaining has been that the City is precluded by the Substitutes Act from transferring ambulance work to unqualified personnel under the Substitutes Act.

Angelucci testified that the Union, on several occasions, asked the City to provide it an operational plan of how the Fire Department would function under the terms of the parties' CBA if City-operated ambulance service was eliminated. Specifically, the Union first requested such a plan on January 16, 2018. In late February 2018, the Union again inquired about an operational plan. Angelucci testified that the City did not provide the Union such a plan on either of those dates. Angelucci testified the document the Union received from the City on June 7, in advance of the June 12, 2018 bargaining meeting, was the first time the Union was presented with a document from the City purporting to be an operational plan on what would happen under the CBA if City-operated ambulance service was eliminated. However, she asserted that the document was not, in fact, an operational plan under the effective CBA terms still because the City was seeking to reduce staffing to levels lower than the levels provided for in the CBA.

f. Elimination of City-Operated Ambulance Service

On June 21, 2018, Fire Chief Tony Nichols (Nichols) sent an email to Assistant Fire Chief Sean Junge (Junge) which explained that City-operated ambulance service would cease on the

morning of July 25, 2018. On Nichols's request, Junge to forward the email to each of the City's firemen, including Owen and the other members of the Union's Executive Board. Owen stated that he had not been give any notice from the City before that email that City-operated ambulance service would cease on July 25.

A few days later, on June 25, 2018, the Union requested that the City provide it with certain information relating to the decision to eliminate City-operated ambulance services. Specifically, the Union asked the City to describe "any circumstances in which members of the Mattoon Fire Department will be expected, required, or allowed to provide emergency medical services after the planned elimination of ambulance services" and to "identify any rules, regulations, contract language, or other document which will provide any guidance regarding when and to what extent members of the Fire Department will perform this work in the future." In that information request, the Union did not explicitly ask the City for an operational plan for how the Fire Department will operate under the terms of the CBA when City-operated ambulance service was eliminated.

Approximately one month later, on August 29, 2018, the City responded to the Union's information request. Among its responses, the City noted that the City's fire engines had been equipped with ALS equipment in order to enable the Fire Department to perform certain emergency medical service until a more formal procedure was adopted.

City-operated ambulance service in fact ceased on July 25, 2018, and the two private companies already in rotation, Mitchell-Jerdan and Dunn's, became the sole providers of ambulance services to the City's residents.[3] The ambulances operated by the City were taken out of service, and Owen testified that from July 25, 2018 to present, the Union's bargaining unit members have not operated ambulances in response to 9-1-1 calls. However, bargaining unit members still provide emergency medical services in certain situations. One such situation involves the operation of fire engines that are equipped with ALS equipment. The other involves situations where private ambulance services respond to a 9-1-1 call but do not have the manpower to provide best care for a patient, such as the scene of a traffic accident. In this situation, bargaining unit members may provide emergency medical services as paramedics. Owen testified that bargaining unit members have provided emergency medical services approximately two or three times a month since July 25, 2018 and, further, that no bargaining unit member has dropped his or her EMT license.

After the elimination of City-operated ambulance service, Gill testified the City continued to staff at least two bargaining unit members on every apparatus that was in service, as per the terms of the parties' CBA. Gill clarified that firefighters that would otherwise be staffed to

[3] Owen testified that, subsequent to July 25, 2018, Dunn's went out of business, making Mitchell-Jerdan the sole provider of ambulance services.

ambulances are not sent home, and no firefighter has had their compensation or benefits diminished as a result of the elimination of City-operated ambulance service. Gill further noted that since the elimination, overtime opportunities for the current staff have not been reduced, and that overtime generally only comprises a very small portion of the cost of City-operated ambulance service. Owen likewise testified that since the elimination of City-operated ambulance service, the Union's bargaining unit members have not seen a reduction in wages or benefits provided under the CBA.

III. ISSUES AND CONTENTIONS

There are two issues in this case.[4] The first issue is whether the Union's Motion to Amend the Complaint should be granted. The Union contends that it has consistently alleged throughout these proceedings that the City's decision to eliminate City-operated ambulance service violates Section 10(a)(4) of the Act as it is a unilateral change, and, relatedly, that the City's decision concerns a permissive subject of bargaining over which it is not obligated to bargain. It also contends it has consistently alleged that the elimination of City-operated ambulance service constitutes a change to the status quo during the pendency of interest arbitration, in violation of Section 14(l) of the Act. It seeks to amend the Complaint in this matter to include these allegations. The City argues that the Union's 14(l) allegation does not provide a stand-alone violation, and further, that the Board should defer to the Fitzsimmons Award.

The second issue is whether the City violated Section 10(a)(4) and 10(a)(1) of the Act by eliminating City-operated ambulance service without first bargaining the impact of the decision with the Union. The Union argues that the City's failure to provide the Union certain information it had requested prohibited the Union from engaging in meaningful impact bargaining over the decision and that, instead, the City only made proposals relating to successor contract negotiations and not relating to impact bargaining. The City argues it has offered to bargain the impact of the decision since December of 2017, and that the Union has refused to do so.

IV. DISCUSSION AND ANALYSIS

a. The Union's Motion to Amend Complaint

The Union's Motion to Amend the Complaint is denied with respect to the allegation that the decision to eliminate City-operated ambulance service violated the Act. However, the Union's Motion to Amend the Complaint is granted with respect to its 14(l) allegation.

Section 11(a) of the Act provides, in relevant part, that a complaint issued by the Board "may be amended by the member or hearing officer conducting the hearing for the Board in his

[4] The City also filed a Motion to Defer, which for the reasons explained herein does not require me to rule upon.

discretion at any time prior to the issuance of an order based thereon." 5 ILCS 315/11(a). Section 1220.50(f) of the Board's Rules provide that an "Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform it to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order." 80 Ill. Admin. Code 1220.50(f).

Board precedent provides that the presiding Administrative Law Judge may amend the complaint in two distinct instances: 1) where, after the hearing's conclusion, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and 2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. Forest Pres. Dist. of Cook Cnty v. ILRB, 369 Ill. App. 3d 733, 746-747 (1st Dist. 2006); County of DuPage and DuPage County Sheriff, 30 PERI 115 (IL LRB-SP 2013); Chicago Park District, 15 PERI 3017 (IL LLRB 1999).

Here, the Union seeks to amend the Complaint to include three separate theories of a violation of the Act. First, it argues that the City's decision to eliminate ambulance service involved the Union's rights under the Substitutes Act, rendering the issue a permissive subject of bargaining, to which the City cannot compel the Union to bargain over or make a unilateral change to. Second, it argues, in the alternative, that the City's decision to eliminate City-operated ambulance service was a unilateral change to a mandatory subject of bargaining in violation of Section 10(a)(4) and 10(a)(1) of the Act, and was done without reaching agreement or impasse. Finally, it argues that the City violated Section 14(l) of the Act by failing to maintain the status quo after the parties had invoked the Board's interest arbitration procedures. I will address the first two together, and the last separately.

i. Permissive Subject/Unilateral Change

First, with respect to the Union's allegations that 1) the decision to eliminate City-operated ambulance service involved a permissive subject of bargaining, or, alternatively; 2) that it was a unilateral change over a mandatory subject of bargaining, the Board has already adjudicated these issues. On September 12, 2018, the Board issued its Decision and Order in case number S-CA-18-084, filed by the Union against the City. City of Mattoon (Fire Department), 25 PERI 48 (ILRB-SP 2018). In that case, the Union made the same allegations as it does in its Motion to Amend: that the decision to eliminate City-operated ambulance service involves a permissive subject of bargaining or alternatively was a unilateral change to a mandatory subject in violation of the Act. The Executive Director deferred to the Fitzsimmons Award under the Spielberg doctrine and dismissed the charge. The Union appealed the Executive Director's dismissal, and the Board affirmed for the reasons stated in the dismissal order. The Union did not appeal the Board's decision.

The Union correctly points out that after the Board's decision in S-CA-18-084, the Board's General Counsel issued a Declaratory Ruling in Case Number S-DR-18-005, in which she determined that the City's proposed removal of contract language pertaining to firefighter paramedic functions is a permissive subject of bargaining where the Employer also proposed to reserve its authority to subcontract all paramedic work. City of Mattoon (Fire Department), 35 PERI 81 (ILRB GC 2018). Initially, I note that the Board's Rules provide that General Counsel declaratory rulings are considered "non-binding advisory opinions" and for that reason are not subject to appeal. 80. Ill. Admin. Code 1200.143. Conversely, Board decisions, such as the one in S-CA-18-084 which addressed both allegations the Union now seeks to include in the Complaint, are considered enforceable final orders, and may be appealed to the Illinois Appellate Court. 5 ILCS 315/11(e). Thus, to the extent a declaratory ruling conflicts with a final order of the Board, final orders would prevail.

Additionally, while the General Counsel determined, as a general matter, that a proposal like the City's was a permissive rather than mandatory subject of bargaining, her Declaratory Ruling was centered on the impact of that designation on the parties' pending interest arbitration and future bargaining. She noted that a should the City's proposal be submitted to interest arbitration to determine the terms of a successor contract, "an interest arbitrator's award of the [City's] proposal would force the Union to waive its right[s]" under the Substitutes Act. Her focus on future bargaining is also evident by her noting the fact that a simply because a party agreed in the past to bargain over a permissive subject does not compel it to bargain over that subject in the future. City of Mattoon (Fire Department), 35 PERI 81. In contrast, the issue in S-CA-18-084 was interpretation of the terms of the parties' most recent contract: the Board upheld the Executive Director's deferral to the Fitzsimmons Award, which determined that the City's decision to end its role in ambulance service was permitted under the terms of the parties' contract. It is well-settled that an arbitrator's interpretation of contractual provisions becomes a binding part of the parties' agreement. County of Lake, 28 PERI 67 (IL LRB-SP 2011) (citing The Motor Convoy, Inc., 303 NLRB 135 (1991)). This is because parties who have agreed to have their disputes settled by an arbitrator have contracted to accept the arbitrator's construction of the terms of their agreement. AFSCME v. Department of Central Management Servs., 173 Ill. 2d 299, 305 (Ill. 1996). Accordingly, if an arbitrator determines that the contract permitted an employer's course of action, there can be no basis for finding a violation of Section 10(a)(4) of the Act because the employer could not have made an unlawful unilateral change. State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Public Aid), 10 PERI 2006 (ISLRB 1993); Village of Midlothian (Police Department), 34 PERI 145 (ILRB-SP 2018). The Union raised the same argument it raises now to the Board in its exceptions to the Executive Director's dismissal, and the Board nonetheless affirmed the Executive Director's dismissal without modification.

I note that the Board, in S-CA-18-084, not only upheld deferral to the Fitzsimmons Award, it also adopted the Executive Director's determination that there was no evidence to suggest the proceedings before Arbitrator Fitzsimmons were not fair and regular, and further—and perhaps more importantly—that Arbitrator Fitzsimmons's findings were not clearly repugnant to the purposes and policies of the Act. I see no compelling reason to re-litigate the issue of whether the decision to eliminate City-operated ambulance service involved a permissive subject of bargaining, or was a unilateral change under the Act, and I deny the Union's Motion to Amend the Complaint to include such allegations.

ii. Section 14(l)

The Union's Motion to Amend also seeks to include an allegation that the City violated Section 14(l) of the Act by failing to maintain the status quo during the pendency of interest arbitration. Section 14(l) of the Act expressly provides that "[d]uring the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act." 5 ILCS 315/14(l). Here, the parties do not dispute that Section 14 interest arbitration was invoked in February of 2018, and that the elimination of City-operated ambulance service occurred subsequently, in July of 2018.

Initially, I note that the City is correct that there is no stand-alone unfair labor practice under Section 14(l) of the Act. Rather, an allegation that an employer has failed to maintain the status quo during the pendency of interest arbitration—that is, that an employer has violated Section 14(l)—is properly pled as a violation of Section 10(a)(4) and 10(a)(1) of the Act and not as a violation of Section 14(l) itself, as the Union asserts. See Village of North Riverside v. ILRB, 2017 IL App (1st) 162251 ("To alter the terms and conditions of employment [after interest arbitration has been invoked] violates section 10(a)(4)."); see also Village of Oak Park, 25 PERI 169 (ILRB-SP 2009); East St. Louis Fire Department, 30 PERI 67 (ILRB-SP 2013). In other words, when Section 14(l) is violated, such a violation is encompassed under Section 10(a)(4) and 10(a)(1) of the Act.

As noted above, one basis for amending a complaint is to include allegations not listed in the underlying charge. However, the Union, in its charge, did in fact allege that the City's conduct violated Section 14(l) of the Act. For reasons unclear, this charged allegation was not explicitly pled in the Complaint, nor was it dismissed by the Executive Director.[5] However, the Board may properly decide allegations which have been litigated by the parties, even if those allegations were never specifically pled in a complaint, as long as the respondent has had notice and an adequate

[5] Although Paragraph 36 of the Complaint does allege that the City "failed to maintain existing terms and conditions of employment pursuant to the Act," this is a reference to the alleged failure to impact bargain. The Complaint does not refer to the City's obligations to maintain the status quo under Section 14(l).

opportunity to prepare and present a defense. County of Cook, 5 PERI 3002 (ILLRB 1988). Here, the City was aware of the Union's Motion to Amend well in advance of the hearing. The Board has held that amending a complaint is appropriate in cases where an employer had notice of a union's motion to amend and an opportunity to prepare a defense. See Chicago Park District, 15 PERI 3017 (ILLRB 1999). Further, there is no additional evidence that needs to be adduced in order to determine this matter; it is more a legal question than a factual one. Given all this, I find that amending the Complaint to include this allegation will not unfairly prejudice the City. Accordingly, the Union's Motion to Amend the Complaint to include an allegation that the City violated Section 10(a)(4) and 10(a)(1) by failing to maintain the status quo during the pendency of interest arbitration as required by Section 14(l), is granted.

b. Failure to Maintain Status Quo During Pendency of Interest Arbitration

The City did not violate Section 14(l) of the Act when it eliminated City-operated ambulance service after the parties invoked interest arbitration.

As the Union correctly notes in its brief, the rationale behind the Act's prohibition against altering the status quo during the pendency of interest arbitration is the same as the rationale prohibiting unilateral changes generally: such changes deprive employees of their right to bargain over those issues. While technically correct, it glosses over a critical condition precedent: that the issue be one which the employees, through their union, have a right to bargain over in the first place. Certain issues, such as an employer's inherent management rights, are expressly removed from the bargaining table by statute, and a union cannot compel the employer to bargain over those issues. 5 ILCS 315/4 ("[e]mployers shall not be required to bargain over mattes of inherent managerial policy . . . .").

The Board has addressed the clash between an employer's management rights and the requirements of Section 14(l) before. In City of Chicago (Department of Police), 15 PERI 3010 (IL LRB 1999) (City of Chicago), the Board upheld the Executive Director's dismissal of an unfair labor practice charge alleging that the employer violated its obligations under Section 14(l) by unilaterally changing certain promotion criteria after the union had invoked Section 14 interest arbitration. Id. In the dismissal, the Executive Director noted that the promotion criteria at issue fell under the employer's inherent managerial authority, which rendered them non-mandatory subjects of bargaining, over which the employer had "no bargaining duty," irrespective of whether Section 14 interest arbitration had been invoked. Id.

In this case, the authority under which the City acted in eliminating ambulance service is arguably stronger than the authority invoked by the employer in City of Chicago; unlike in City of Chicago, which dealt with an employer's *inherent* managerial authority, this case deals with the City's *contractual* management rights. Unlike inherent managerial authority, which exists with or without a union's consent, the City's authority to end its role in ambulance services was expressly

authorized by a contractual provision which was acquiesced to by the Union: the Management Rights provision under Article 3. Arbitrator Fitzsimmons, relying on both the Management Rights provision and the Substitutes Act—which he found incorporated into the contract by reference—determined the City's decision to cease its role in ambulance service was permitted under the terms of the parties' bargained-for agreement.

Viewed in this light, the Union's contention that the City failed to maintain the status quo during the pendency of interest arbitration must fail as the arbitrator determined that the Union agreed, by the terms of the Management Rights provision, to give the City the contractual management right to cease its role in providing ambulance service. Stated differently, the status quo since the contract's inception has been that the City is empowered to end its role in ambulance service as a part of its contractual management rights. Moreover, nothing in the language of Section 14(l), nor in the case law interpreting it, suggests it is intended to be a backstop designed as insurance against a pending unfavorable arbitration award. To hold that the mere invocation of the Board's Section 14 interest arbitration procedures can somehow serve to trump a pending arbitration award would usurp the reliance the Board, the Act, and the parties place on the grievance arbitration process to resolve disputes. For these reasons, I find that the City did not violate Section 10(a)(4) or Section 10(a)(1) of the Act by eliminating City-operated ambulance service during the pendency of interest arbitration.

c. Impact Bargaining

The City did not violate Section 10(a)(4) and 10(a)(1) by failing to bargain the impact of its decision to eliminate City-operated ambulance service.

Section 4 of the Act provides that an employer must "bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment *as well as the impact thereon* upon request by employee representatives." 5 ILCS 315/4 (emphasis added). Thus, where a decision of managerial prerogative impacts employees' terms and conditions of employment, an employer cannot, as a general matter, implement the decision without first bargaining the effects of that decision. Chief Judge of the Circuit Court of Cook County, 31 PERI 114 (IL LRB-SP 2014) (Chief Judge); County of Cook (Juvenile Temporary Detention Center), 14 PERI 3008 (IL LLRB 1998). An implementation of a change without first bargaining over its effects is an unfair labor practice even absent other indicia of bad faith bargaining. Village of Glenwood, 32 PERI 159 (ILRB-SP 2016).

However, not every impact of a managerial prerogative decision requires bargaining. Chief Judge, 31 PERI 114; Decatur Bd. of Educ., Dist. No. 61 v. IELRB, 180 Ill. App. 3d, 770, 781 (4th Dist. 1989). The employer must bargain over the impact of a change only where the effects are not an inevitable consequence of the decision itself. Chief Judge, 31 PERI 114; Community College District 508 (City Colleges of Chicago), 13 PERI 1045 (IL ELRB 1997). This requirement helps

to ensure that impact bargaining does not inevitably lead to questioning of the underlying decision. Id.

As a starting point, I rely on the issues outlined by the Union that it believed the City was obligated to impact bargain. The Union notes in its brief that it expected to discuss several issues during impact bargaining, and Angelucci likewise testified to those issues at hearing. The first of those issues was how the removal of ambulances would affect the assignment of bargaining unit members to Fire Department apparatuses. However, an inevitable consequence of the City's decision to end its role in ambulance service was that bargaining unit members would not be manning ambulances going forward, as those ambulances would be taken out of service. Gill confirmed that ambulances were in fact taken out of service. The City, then, would be under no obligation to impact bargain apparatus assignment for ambulances, because there were no ambulances to man. Moreover, Gill's testimony makes clear that the City maintained fire suppression apparatus manning consistent with the terms of the parties' CBA both before and after City-operated ambulance service ceased. Given that the City was not obligated to impact bargain ambulance assignment and given that fire suppression assignment was not affected by the City ceasing its role in ambulance service, it is unclear how the City would be expected to impact bargain apparatus assignment with the Union at all.

Moreover, Angelucci testified that the Union expected to discuss, as part of impact bargaining, whether the fire engines would be equipped with advanced life support (ALS) or basic life support (BLS) equipment. However, the City, at some point, in fact equipped its fire engines with ALS equipment.[6] Given that Gill testified this was an outcome the Union wanted, it is unclear what exactly can be further bargained between the parties with respect to this issue.

Finally, Angelucci testified that the Union expected to impact bargain how the City would satisfy its obligations under the Substitutes Act. Although it is not clear exactly what this broad statement was intended to mean, the issue of whether the Substitutes Act prevented the City from ceasing its role in City-operated ambulance service was addressed by the Fitzsimmons Award. As noted, *supra*, the Board has deferred to this decision, and to the extent this is an approach by the Union to question the City's underlying decision to end its role in ambulance service, the City is not required to bargain its obligations under the Substitutes Act as a part of impact bargaining.

The Union's core argument is that it was not able to meaningfully impact bargain with the City because it did not have an operational plan from the City outlining how the Fire Department would operate under the terms of the CBA after City-operated ambulance service was eliminated. Initially, I note that I am unable to uncover anything in the Act or the Board's case law which

[6] It is unclear whether the City took this action before or after it ended its role in ambulance service on July 25, 2018. The City's August 29, 2018 correspondence, responsive to the Union's June 25, 2018 information request, noted that the ALS equipment was moved to fire trucks. However, it did not specify when that change took place.

requires such an operational plan to be furnished in order for an employer to satisfy its impact bargaining obligations. However, even if the Union had been given such an operational plan, it is unclear how that plan would have affected the issues the Union outlined as proper subjects of impact bargaining, for the reasons explained above. Furthermore, no bargaining unit members have been laid off, sent home, furloughed, or have had their pay or benefits reduced as a result of the City's decision to end its role in ambulance service. What is more, although bargaining unit members no longer perform emergency medical services using ambulances, they still perform emergency medical services in certain situations, and still have the credentials to do so. Given this, I am not sure what other issues needed to be bargained in order to exhaust impact bargaining, other than the issues outlined by the Union.

Moreover, the Union's contention that the City was unwilling to impact bargain and was only willing to bargain a successor contract is not supported by the record. The City communicated its willingness and desire to impact bargain to the Union in December of 2017, which Owen acknowledged, and it repeated this willingness throughout bargaining. Further, the City's proposals throughout bargaining make clear that it was willing to negotiate on various issues outside of the four corners of the successor agreement, including resolving grievances and making certain improvements to Fire Department facilities. This is consistent with Gill's testimony that the City did not intend bargaining to be confined solely to the parties' successor agreement. What is more, the Union likewise returned serve and also made proposals during bargaining on issues unrelated to the language of the successor agreement, including grievance resolution, facility improvements, and promotion of bargaining unit members. The Union itself notes in its brief that a key rationale behind impact bargaining is to allow a Union the opportunity to "achieve valuable concessions from an employer . . . ." (quoting First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981). Here, there was space for the Union to make proposals on matters unrelated to the successor contract, and it in fact did so. It was in this space that the Union could have secured concessions and reduced whatever disruptive effect the City's decision had on its bargaining unit. It chose not to.

For the foregoing reasons, I find that the City did not violate Section 10(a)(4) and 10(a)(1) of the Act by failing to bargain the impact of the decision to eliminate City-operated ambulance service with the Union.

V. CONCLUSIONS OF LAW

1. The Respondent did not violate Section 10(a)(4) and 10(a)(1) of the Act when it eliminated City-operated ambulance service after the parties had invoked interest arbitration.

2. The Respondent did not violate Section 10(a)(4) and 10(a)(1) by failing to bargain the impact of its decision to eliminate City-operated ambulance service.

VI. RECOMMENDED ORDER

The complaint for hearing is dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of this decision. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. All filing must be served on all other parties.

Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Dated: **October 30, 2019**
Issued: Springfield, Illinois

/s/ *Matthew S. Nagy*
Matthew S. Nagy
Administrative Law Judge

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