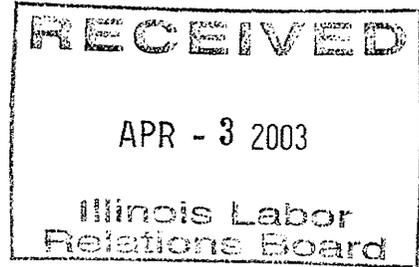


**ILRB
#260**



**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

CITY OF SPRINGFIELD

and

**INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 37**

CASE NO.: S-MA-01-209
Arb. Ref. 02.247
(Insurance Interest
Arbitration)

OPINION AND AWARD

APPEARANCES:

For the City:	Jill D. Leka, Esq. James J. Powers, Esq.
For the Union:	Donald M. Craven, Esq.

Date of Award: April 1, 2003

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I. BACKGROUND

This is an interest arbitration under the Illinois Public Labor Relations Act (the "Act").¹ The parties in this case are the City of Springfield ("City") and IAFF Local 37 ("Union").

The Union represents employees in various fire fighter classifications in the City's Fire Department. Joint Exh. 3 at Article 1.1. The predecessor contract between the parties was in effect from February 29, 1996 through February 29, 2000. Joint Exh. 3.

The dispute in this case concerns the insurance provisions for the parties' March 1, 2000 through February 28, 2003 Agreement.² There is also a jurisdictional issue raised by the Union.

II. DISCUSSION

A. Jurisdiction

As a threshold matter, the Union argues (Union Brief at 2) that I do not have jurisdiction to decide this dispute. According to the Union, af-

¹ The parties waived the Act's requirement in Section 14(b) and (c) for a tri-partite arbitration panel. Joint Exh. 2 at ¶1.

² All other terms for the 2000-2003 Agreement have been agreed to. See Joint Exh. 1; Union Exh. 1.

ter bargaining for the Agreement in dispute, the parties executed a tentative agreement on the issue of health insurance which, along with all of the other contract terms agreed upon by the parties, was ratified by the City when the City adopted Ordinance 160.3.00.

The tentative agreement dated February 10, 2000 between the parties provided for bargaining over health insurance issues with an "Insurance Coalition" (Joint Exh. 1)³:

IAFF Local 37 agrees to remand the bargaining of Health Insurance to the Insurance Coalition. The current agreement (in which some employees pay \$50.00 towards dependant [sic] health care) will stay in effect until agreement is reached between the City and the Insurance Coalition.

³ The Insurance Coalition (which was agreed to by four unions) was established by the parties in an agreement signed July 10, 1997 (City Exh. 12 at ¶13):

13. An insurance committee shall be established which shall be composed of representatives from each bargaining unit, non-represented employees, management and retirees. The committee shall review proposed changes in insurance benefits or coverage, discuss the changes and recommend to the Mayor the consensus of the committee regarding any proposed changes in benefit or coverage prior to a final decision being made on said changes in benefits and/or coverages.

Ordinance 160.3.00 states, in pertinent part (Union Exh. 1):

* * *

The City Council hereby approves the Collective Bargaining Agreement between the City of Springfield - Fire Department and the International Association of Firefighters (IAFF) #37 on behalf [of] Springfield Firefighters which agreement is effective from March 1, 2000 through February 28, 2003.

* * *

The Union thus contends that as a result of the tentative agreement to remand the health insurance question to the Insurance Coalition bargaining process, and by virtue of the ordinance adopting the tentative agreements including the one concerning health insurance, the parties have agreed upon terms for the 2000-2003 Agreement; there is no impasse that has to be resolved through the interest arbitration process; and interest arbitration is therefore not appropriate.

I disagree.

First, the City's right to resolve disputes concerning terms for collective bargaining agreements for fire fighters through the interest arbitration process is a statutory one. See Section 14(a) of the Act ("In case of collective bargaining agreements involving units of ... fire fighters or

paramedics ... either the exclusive representative or employer may request ... arbitration"). See also, Section 14 of the Act generally for the procedures for interest arbitration and the factors for determining the selection of final offers for the terms of an unresolved contract.

Second, waivers of statutory rights must be "explicitly stated" ... the waiver must be clear and unmistakable."⁴

Third, it is not contested that the remand of the insurance question to the Insurance Coalition did not resolve the dispute on this issue. The Insurance Coalition and the City did not reach an agreement on insurance for the employees involved in this dispute.⁵

So the question becomes, what then? Have the parties left themselves in limbo, potentially forever, until the City and the Insurance

⁴ *Metropolitan Edison Co. v. National Labor Relations Board*, 460 U.S. 693, 708 (1983). See also, *Illinois Department of Military Affairs*, 16 PERI ¶2014 (2000) cited by the City (City Brief at 21-22) where the ILRB stated that a waiver must be "clear, unequivocal and unmistakable."

⁵ Contrary to the Union's assertion (Union Brief at 17) that "these parties did not reach impasse", I am satisfied that on the issue in this case, they did. Years of discussion have not yielded a resolution. They are at impasse on this dispute.

Coalition come to terms? Taken to its logical extent, the Union's literal interpretation could work to its extreme detriment. The literal language of the tentative agreement states that "[t]he current agreement (in which some employees pay \$50.00 towards dependant [sic] health care) will stay in effect until agreement is reached between the City and the Insurance Coalition." Does that mean that the *entire* "current agreement" including wages "will stay in effect" until at some point — potentially years away — "... agreement is reached between the City and the Insurance Coalition" on the insurance question in dispute in this case? What if the Insurance Coalition bargaining process *never* yields an agreement on this issue. Would wages of the employees be locked in at the present rate forever? I hope not. But, if read as literally as the Union argues, the City could indefinitely hold up agreement on the insurance issue and lock in current wage rates for years, thereby effectively holding the employees and the Union hostage.

The point is that there is a latent ambiguity in the language of the tentative agreement on insurance

— and that is, what happens (as it did here) if the Insurance Coalition and the City cannot come to terms on the insurance question?⁶

Ambiguous contract terms should be construed to avoid unreasonable or illogical results.⁷ The Union's interpretation taken to its logical extent places the parties in a state of limbo. To give the strict interpretation to the language sought by the Union would be contrary to this rule of construction.

Fourth, while this is not a dispute arising under the terms a collective bargaining agreement (*i.e.*, a grievance), but is an interest arbitration dispute concerning what the terms of a collective bargaining agreement should be, I must still be guided by the long-accepted doctrine in labor relations law that a party seeking resolution of a dispute through arbitration has a presump-

⁶ "... [L]anguage which appears on the surface to be clear sometimes will prove to have a latent or hidden ambiguity." Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 484.

⁷ See *How Arbitration Works*, *supra* at 495: When one interpretation of an ambiguous contract would lead to harsh, absurd, or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used.

tion in its favor that the dispute is arbitrable and the arbitrator therefore has jurisdiction to resolve the dispute. In those kinds of cases, the party contesting arbitrability must show "with positive assurance" that the dispute is not arbitrable.⁸ Given the ambiguity of the language of the tentative agreement discussed

⁸ As a general rule, disputes brought to arbitration are presumptively arbitrable. *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960):

... [t]o be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration ... [a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

See also, *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368, 377 (1974) ("In the *Steelworkers* trilogy, this Court enunciated the now well-known presumption of arbitrability of labor disputes"); *Wright v. Universal Maritime Service Corp., et al.*, 525 U.S. 70, 77 (1998) (referring to "the presumption of arbitrability this Court has found ..."). Further, see *Fairweather's Practice And Procedure In Labor Arbitration* (BNA, 3rd ed.), 105 ("... [T]here is no dispute that there is a presumption of arbitrability in disputes between a union and an employer ..."); Hill and Sinicropi, *Evidence In Arbitration* (BNA, 2nd ed.), 27 ("Since well-established federal labor policy favors arbitration as the means of resolving disagreements under a collective bargaining agreement, arbitrators, when confronted with challenges to their jurisdiction, have adopted the stance that disputes are presumptively arbitrable").

above, this presumption of arbitrability favors the City's position that I have jurisdiction to resolve this dispute. The Union has not shown "with positive assurance" that I lack jurisdiction to resolve this dispute.

Fifth, but all this must return to the concept that waivers of statutory rights must be clear and unmistakable. Based on the above — *i.e.*, the City's statutory right to have these kinds of disputes resolved through interest arbitration; the ambiguous nature of language concerning what happens if the Insurance Coalition bargaining process does not resolve the insurance dispute remand (which process did not resolve the dispute); the unreasonable and illogical results that flow from the Union's proposed literal reading of the language of the tentative agreement; and the overall presumption of arbitrability, I find that the language of the tentative agreement relied upon by the Union does not constitute an "explicitly stated" ... clear and unmistakable" waiver of the City's statutory right to have this dispute decided in interest arbitration pursuant to Section 14 of the Act.

I therefore have jurisdiction to resolve this dispute.

**B. The Merits Of The
Dispute**

**1. The Current Insurance
Language**

Article XI of the 1996-2000 Agreement provides (Joint Exh. 3):

**ARTICLE XI
GROUP HEALTH INSURANCE**

11.1 Group Health Insurance:

Bargaining Unit Employees shall be provided the same group health insurance benefits as all other Employees of the City of Springfield at the same premium rate. The benefits provided herein shall be provided through a self-insured plan or under group insurance policy or policies selected by the Employer. In the event that the Employer desires or determines to change or modify the existing health insurance program with regard to premiums or coverage, the Employer shall provide the Union with reasonable advance notice of any such change and shall consult with its representatives prior to the change. The City shall also make available to Unit Employees the Medical Foundation Central Illinois or equivalent HMO plan; however, the Union Employee shall pay any additional premium cost of such plan as compare to the group health insurance provided all City Employees.

11.2 Non-Duplication of Benefits:

* * *

11.3 Miscellaneous:

* * *

**2. The Parties' Final
Offers**

The City seeks to retain the language of Article XI, but seeks to add the following provision (City Exh. 82; City Brief at 19):

11.4 Retroactive Payments:

For the 2000 Labor Agreement, employee payments for retroactive premium contributions and/or adjudication of benefits, may be by lump sum payment or through regular uniform payroll deduction. Arrangements for payment must be made prior to January 1, 2003 with the final payment made prior to the end of the 2003 calendar year.

The Union seeks to maintain what it considers the *status quo* as follows (Union Brief at 6-7):

The final offer of the Union is to maintain the status quo, represented by the 1997 agreement negotiated with the Insurance Coalition and reaffirmed in the February 10, 2000 Tentative Agreement with Local 37. It is the unions position that this status quo will remain in effect until March 2003, or earlier agreement between the City and the Coalition.

* * *

The Union's position has no retroactivity component.

3. The Statuary Factors

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

4. Resolution Of The Dispute

a. The Burden And Identification Of The Status Quo

In terms of a burden of persuasion in these cases, if there is a *status quo* then the party seeking to change the *status quo* has the burden to demonstrate why that change is necessary.⁹ To determine which party has the burden, the question now is what is the *status quo* with respect to insurance and which party is trying to change it?

The City argues (City Brief at 30) that the *status quo* is "parity" as stated in Article 11.1 of the 1996-2000 Agreement ("Bargaining Unit

⁹ See e.g., my awards in *Winnebago County and FOP*, S-MA-00-285 (2002) at 18 ("The FOP seeks to change the *status quo*. The burden is therefore on the FOP to justify that change."); *Village of Lisle and PB&PA*, S-MA-02-199 (2002) at 11 ("By seeking to eliminate the merit system, the PB&PA seeks to change the *status quo*. The PB&PA therefore has the burden to show, as it states, that the merit system is "truly broken."); *Village of Libertyville and FOP*, S-MA-93-148 (1995) at 43 ("Stripped to its essence, the FOP's argument is that it is not satisfied with the operation of Article 16 in that the Village exercised prerogatives under that language which had an increased cost impact on the officers concerning insurance. The FOP is therefore seeking a change in previously negotiated language. As such, it is the FOP's burden to justify that change.").

Employees shall be provided the same group health insurance benefits as all other Employees of the City of Springfield at the same premium rate ... In the event that the Employer desires or determines to change or modify the existing health insurance program with regard to premiums or coverage, the Employer shall provide the Union with reasonable advance notice of any such change and shall consult with its representatives prior the change.”).

The Union argues (Union Brief at 6) that “... the status quo ... [is] represented by the 1997 agreement negotiated with the Insurance Coalition and reaffirmed in the February 10, 2000 Tentative Agreement with Local 37.”).

I agree with the City. The *status quo* must be the governing provisions found in Article 11.1 of the 1996-2000 Agreement. That is what the parties negotiated for the 1996-2000 Agreement. Those are the existing terms governing health insurance.

As the Union seeks to use it, the July, 1997 Agreement (City Exh. 12) cannot be the *status quo*. That agreement which was signed by the Union, AFSCME, IBEW and PB&PA establishes plans, premium levels,

levels of benefits, etc. and also establishes the insurance committee as set forth in note 3, *supra*. But the governing contract language is the parity concept and the methodology for changes in coverage as established by Article 11.1 of the 1996-2000 Agreement. Thus, no matter what may (or may not) have come out of the July, 1997 Agreement, Article 11.1 requires that “[b]argaining Unit Employees shall be provided the same group health insurance benefits as all other Employees of the City of Springfield at the same premium rate” and that “[i]n the event that the Employer desires or determines to change or modify the existing health insurance program with regard to premiums or coverage, the Employer shall provide the Union with reasonable advance notice of any such change and shall consult with its representatives prior the change.” Again, in short, the *status quo* is parity with other City employees with the City retaining the right to make certain changes.

To allow the Union’s argument to prevail would force me to ignore the plain language of Article 11.1 of the 1996-2000 Agreement as negotiated by the parties. Further, to accept

the Union's argument would be tantamount to finding that because of the tentative agreement which remanded the issue to the Insurance Coalition, negotiations with the Insurance Coalition are to determine the outcome of this dispute. But, that is just another way of arguing that I do not have jurisdiction to determine the outcome of this dispute. For reasons discussed *supra* at II(A), that position is not persuasive.

The *status quo* is the plain language of Article 11.1 of the 1996-2000 Agreement. The Union therefore has the burden to demonstrate why that *status quo* should be changed.

**b. Application Of The
Statutory Factors**

The task now is to apply the relevant statutory factors to see if the Union has demonstrated why the *status quo* should be changed.¹⁰

**(1). Internal
Comparability**

Internal comparability weighs heavily in the City's favor. Why

¹⁰ As now discussed, three of the statutory factors are relevant in this case — internal comparability, external comparability and cost of living. The other factors are just not helpful for resolving this particular dispute.

should this group of employees have health insurance benefits (and obligations) different from other groups of employees, particularly when the parties agreed to a parity concept in Article 11.1? The City argues (City Brief at 43) that this parity arrangement has existed for over 10 years. But I really need go no further than what the parties negotiated in Article 11.1 of the 1996-2000 Agreement. To adopt the Union's offer would amount to allowing these employees to have a better benefit than the other groups of employees when the parties agreed to parity. There is no stated reason why that should be allowed to happen. Internal comparability therefore favors the City's position.

**(2). External
Comparability**

With respect to external comparability, the parties agreed that Bloomington, Champaign, Decatur, Normal, Peoria, Rockford and Urbana are comparable communities to Springfield. Joint Exh. 2 at ¶6. According to the Union (Union Brief at 15-17):

The external comparables, with the agreed set of communities, reveals that Local 37 fits in the middle of the pack on most elements of com-

parison; higher on some, lower on some, but generally in the middle.

* * *

The parties have submitted detailed comparisons of those plans, maximum out of pocket costs, benefits, dental, vision, hospital, maximum lifetime benefits, etc. As examination will find that Springfield, like on wages, is high in spots, low in spots, in the middle in spots.

According to the City (City Brief at 46):

... [T]he City's final offer will maintain the IAFF's relative ranking among the comparables in terms of (1) health insurance benefits and contributions; and (2) total compensation.

Therefore, with respect to external comparability, there is really no material dispute. The bargaining unit employees are, according to the Union, "in the middle of the pack on most elements of comparison" and, according to the City, the City's proposal "will maintain ... relative ranking among the comparables" But the burden is on the Union to demonstrate that this factor weighs towards changing the *status quo*. Remaining "in the middle of the pack" of comparables as the Union concedes cannot weight this factor in the Union's favor for changing the *status quo*.

(3). Cost Of Living

With respect to the cost of living, it is undisputed that these are non-inflationary times. The wage increases granted to the Union (3.5% for 2000 and 2001) exceeded the CPI-U's annual increases for those years. Compare Joint Exh. 1 and City Exh. 72.¹¹ This factor also favors the City's position.

(4). Conclusion On The Statutory Factors

Based on the above, the relevant statutory factors (internal comparability, external comparability and cost of living) all favor the City's position.¹²

c. Retroactivity

The final aspect of the dispute concerns the retroactivity request by the City. This request seeks payment by the bargaining unit employees for increased premium contributions and the readjudication of

¹¹ As presented by the City, the percentage changes in the CPI-U for 2000 and 2001 were 3.44% and 2.67%. City Exh. 72. The bargaining unit employees received 3.5% wage increases for those years. Joint Exh. 1.

¹² During the hearing and in argument (see e.g., Union Brief at 14), the Union asserted that the City mismanagement is the cause of the insurance predicament. Those kinds of allegations are not for me to decide.

benefits resulting from implemented changes.

Because this award resolves a benefit for the 2000-2003 Agreement, retroactive effect must be given as requested by the City. If this dispute concerned a wage increase or other increases to the employees' benefit, the employees would have been entitled to retroactive application. There is no reason why the same should not apply to this insurance dispute which may require increased retroactive insurance premiums instituted by the City and readjudication of benefits.¹³

Therefore, as requested by the City, "employee payments for retroactive premium contributions and/or adjudication of benefits, may be by lump sum payment or through regular uniform payroll deduction." Because of the parties' efforts to resolve this matter and the length of these proceedings have extended

¹³ Article 11.1 of the Agreement allows the City to make certain changes ("In the event that the Employer desires or determines to change or modify the existing health insurance program with regard to premiums or coverage, the Employer shall provide the Union with reasonable advance notice of any such change and shall consult with its representatives prior the change.").

past the January 1, 2003 date requested by the City, and absent agreement by the parties to alter the schedule (either for the entire unit of employees or on an individual basis), arrangements for payment by the affected employees must be made prior to June 15, 2003 with the final payment to be made prior to the end of the 2003 calendar year. With consent of the parties, I will retain jurisdiction to resolve disputes or problems arising out of individual circumstances (*e.g.*, demonstrated substantial hardships) resulting from the requirement for retroactive premium contributions or readjudication of benefits by the end of 2003 or any other disputes which may arise as a result of implementation of this award.¹⁴

C. Conclusion

In terms of bargaining issues, employee health insurance is now one of the most difficult topics facing employers and unions. Skyrocketing insurance costs and a faltering economy make the parties' job at the bargaining table im-

¹⁴ The parties are obviously free to construct some other method of resolution to this retroactivity requirement.

mensely more difficult than in prior years. The parties toiled long and hard to resolve this dispute — but, unfortunately, they were unable to do so.

I played different roles in this dispute. At the parties' request, I attempted to mediate, without success. I was then required to assume to role of interest arbitrator. By statute, in that capacity as an interest arbitrator and because the dispute is an economic one, I can only pick one party's offer.¹⁵ Therefore, the parties' efforts to compromise become irrelevant and I am left with the parties' final offers as articulated in this proceeding. As discussed in this award, the relevant statutory factors line up squarely in favor of the City's position. I therefore have no choice. The City's final offer (with the modified timetable for repayment) must therefore be adopted.

III. AWARD

1. I have jurisdiction to decide this dispute.
2. The City's offer on insurance (with the modified timetable for repayment) is adopted.



Edwin H. Benn
Arbitrator

Dated: April 1, 2003

¹⁵ See Section 14(g) of the Act ("As to each economic issue, the arbitration panel shall adopt the *last offer* of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors presented in subsection (h)" [emphasis added]).

**BEFORE
EDWIN H. BENN
ARBITRATOR**

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Illinois Labor
Relations Board

In the Matter of the Arbitration

between

CITY OF SPRINGFIELD

and

**INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 37**

CASE NO.: S-MA-01-209
Arb. Ref. 02.247
(Insurance Interest
Arbitration)

SUPPLEMENTAL OPINION AND AWARD

APPEARANCES:

For the City: Jill D. Leka, Esq.
James J. Powers, Esq.

For the Union: Donald M. Craven, Esq.

Date of Award: April 1, 2003

Date of Request for
Clarification: April 16, 2003

Date of Supplemental
Opinion and Award: April 28, 2003

I. BACKGROUND

By Award dated April 1, 2003, I found that I had jurisdiction to resolve the interest arbitration insurance dispute between the Union and the City concerning the terms of the insurance provisions for the parties' 2000-2003 Agreement; I adopted the City's insurance proposal with retroactive application to the beginning of that Agreement (with a modified timetable for required repayments by employees resulting from increased premium contributions and readjudication of benefits — specifically, arrangements for payments to be made prior to June 15, 2003 and final payment to be made by the end of 2003); and, with consent of the parties, I retained jurisdiction to resolve disputes or problems arising out of individual circumstances (*e.g.*, demonstrated substantial hardships) resulting from the requirement for retroactive premium contributions or readjudication of benefits by the end of 2003 or any other disputes which may arise as a result of implementation of the award.

By letter dated April 16, 2003, the Union requested clarification of the Award on two points — (1) the

application of Section 14(j) the IPLRA and Rule 1230.100(e) of the ILRB's Rules and Regulations to the retroactivity requirement of my award; and (2) how retroactive application should be administered.

The Union advised me in its April 16, 2003 letter that the City would have 10 days to reply to the Union's request for clarification. The City replied by letter dated April 25, 2003. The matter is now before me on the Union's requested clarification.¹

II. DISCUSSION

A. Retroactivity

With respect to retroactivity, I held (Award at 11-12 [footnote omitted]):

The final aspect of the dispute concerns the retroactivity request by the City. This request seeks payment by the bargaining unit employees for increased premium contributions and the readjudication of benefits resulting from implemented changes.

Because this award resolves a benefit for the 2000-2003 Agreement, retroactive effect must be given as requested by the City. If this dispute concerned a wage increase or other increases to the employees' benefit, the employees would have been entitled to retroactive application.

¹ Because of the timetable for implementation set forth in the Award, this matter had to be expedited.

There is no reason why the same should not apply to this insurance dispute which may require increased retroactive insurance premiums instituted by the City and readjudication of benefits.

By requiring retroactive application of the City's offer, I rejected the Union's argument that there should be no retroactive application. See Union Arbitration Brief at 7-8. The Union now seeks clarification citing Section 14(j) of the Act and Rule 1230.100(e) of the ILRB's Rules and Regulations.

Section 14(j) and Rule 1230.100(e) do not apply to this situation. Those sections provide:

Section 14. Security Employee, Peace Officer and Fire Fighter Disputes

* * *

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbi-

tration procedures under this Act or since any mutually agreed extension of the statutorily required period for mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

* * *

Section 1230.100 The Arbitration Award

* * *

(e) The commencement of a new municipal fiscal year after the initiation of arbitration procedures (Section 14(j) of the Act) shall not render the proceeding moot. Awards of wage increases may be effective only at the start of the fiscal year beginning after the date of the award; however, if a new fiscal year began after the initiation of arbitration proceedings, an award of wage increases may be retroactive to the beginning of that fiscal year.

The dispute in this case was about insurance and, because of the adoption of the City's offer, increased retroactive insurance premiums instituted by the City and readjudication of benefits were ordered. Section 14(j) of the Act addresses retroactivity for "[i]ncreases in rates of compensation" and

Section 1230.100(e) of the Rules and Regulations addresses “[a]wards of wage increases” This case was not about wages. Those sections therefore do not apply.

B. Administration Of The Retroactivity Requirements

The Union also seeks clarification on “... how the retroactive application should be administered.”

In the Award I held (Award at 12):

Therefore, as requested by the City, “employee payments for retroactive premium contributions and/or adjudication of benefits, may be by lump sum payment or through regular uniform payroll deduction.” Because of the parties’ efforts to resolve this matter and the length of these proceedings have extended past the January 1, 2003 date requested by the City, and absent agreement by the parties to alter the schedule (either for the entire unit of employees or on an individual basis), arrangements for payment by the affected employees must be made prior to June 15, 2003 with the final payment to be made prior to the end of the 2003 calendar year. With consent of the parties, I will retain jurisdiction to resolve disputes or problems arising out of individual circumstances (*e.g.*, demonstrated substantial hardships) resulting from the requirement for retroactive premium contributions or readjudication of benefits by the end of 2003 or any other disputes which may arise as a result of implementation of this award.

I also held in the Award (*id.* at note 14):

The parties are obviously free to construct some other method of resolu-

tion to this retroactivity requirement.

The Union’s request at this point is premature. The parties are sophisticated negotiators and, knowing that there are specific deadlines imposed by the Award (arrangements for payments to be made prior to June 15, 2003 and final payment to be made by the end of 2003), there are many routes that can be taken on a group or individual basis, some combination thereof, or agreement on some other kind of resolution. At this point, the parties should follow the requirements of the Award and, if specific problems arise and if the parties agree, I will again get involved in the dispute. At this point, the problems raised by the Union are not ripe for my intervention.

III. SUPPLEMENTAL AWARD

The Union’s request for clarification is denied.



Edwin H. Benn
Arbitrator

Dated: April 28, 2003

