

**ILLINOIS LABOR RELATIONS BOARD  
INTEREST ARBITRATION  
LISA SALKOVITZ KOHN,  
ARBITRATOR**

**Northlake Fire Protection District,  
Employer,**

**and**

**Northlake Professional Firefighters,  
IAFF Local 3863,  
Union.**

**Case No. S-MA-03-074**

Hearing Held: March 11, 2003

Hearing Closed: May 14, 2003

**Appearances:**

For the City: Robert J. Smith, Jr., Seyfarth Shaw  
James J. Powers, Seyfarth Shaw

For the Union: Lisa B. Moss, Carmell Charone Widmer  
Mathews & Moss

**ARBITRATION AWARD**

## **I. INTRODUCTION**

This is a impasse arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.*. The parties selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, and at the hearing waived their respective rights to appoint an Employer and Union delegate to the panel. The parties have stipulated that there are no procedural matters at issue, and that the Arbitration Panel has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. At the hearing, held March 11, 2003, both parties were given the opportunity to present such evidence and argument as they desired, including an examination and cross-examination of all witnesses. The parties have directed that their tentative agreements on other matters, as set forth in Joint Exhibits 3a and 3b, shall be incorporated into the Arbitration Panel's award in this matter.

## **II. ISSUES**

The parties submitted a single issue, Disciplinary Action, to the Arbitrator for determination. The parties have stipulated that the issue is non-economic. The relevant language of the parties' current agreement effective April 25, 1995 through May 31, 2001 ("the Agreement," Jt. Ex. 1), is in Section 5.1 of Article V, Discipline:

**Section 5.1, Employment Suspension and Termination** – All hiring, suspensions and terminations of employees shall be in accordance with the Rules and Regulations, Policies and Procedures of the District and governed by applicable State Statutes including the Firemen's Disciplinary Act (Chapter 50 ILCS 745/1 *et seq.*) which is hereby incorporated into this Agreement.

### **III. FINAL OFFERS**

The parties' final offers on the issue are:

**The City's Final Offer:** The City's Final Offer (Jt. 5) is

No change to the *status quo*, as reflected in the most recent collective bargaining agreement, *i.e.*, that discipline of non-probationary employees shall be in accordance with the Illinois Fire Protection District Act, 70 ILCS 705/16.13b, and not subject to arbitration.

**The Union's Final Offer:** The Union proposes to modify the language to replace

Section 5.1 with the following (Jt. Ex. 6, as modified March 25, 2003):

**Sec. \_\_\_\_1 Employee Discipline**

Employees may be subject to discipline including discharge for just cause, probationary employees with or without cause. Disciplinary actions generally shall be taken in accordance with tenets of progressive discipline, including oral reprimand, written reprimand, suspension, and discharge. Nothing herein shall preclude the District from imposing any level of discipline, including discharge for any particular situation.

The parties recognize that the Board of Fire Commissioners of the District has certain statutory authority over employees covered by this Agreement. Nothing in this Agreement is intended in any way to replace or diminish the authority of the Board of Fire Commissioners. Nothing contained in this article shall conflict with the Firemen's Disciplinary Act, which is hereby incorporated into this Agreement.

**Sec. \_\_\_\_2 Disciplinary Action – Greater than Five (5) days Suspension or Discharge**

If the District initiates disciplinary action involving a suspension of greater than five (5) days or discharge, the following procedures shall apply:

The District shall serve written notice of the charges and proposed penalty upon the employee involved within 30 days of the alleged violation or awareness of the District of the alleged violation. Within ten (10) calendar days of receipt of the notice, the employee must elect the forum for the hearing of the proposed disciplinary action either before the Board of Commissioners of the Fire District (Commission) or through the grievance /arbitration procedure of this Agreement.

**Sec. \_\_\_\_3 Disciplinary Action or Suspension of Five (5) days or less**

If the District initiates disciplinary action involving a suspension of five (5) days or less, the following procedures shall apply:

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The District shall serve written notice of the charges and proposed penalty upon the employee involved within thirty days of the alleged violation or awareness of the District of the alleged violation. Within ten (10) calendar days of receipt of the notice, the employee must elect the forum for any appeal of the proposed disciplinary action either to the Board of Commissioners of the Fire District (Commission) or through the grievance /arbitration procedure of this Agreement.

**Sec. \_\_\_\_4 Reprimands**

Employees may appeal oral and written reprimands only through the grievance procedure set forth in this Agreement to the Board of Trustees and no further. However, in the event the employee arbitrates subsequent disciplinary action involving suspension or discharge which relies upon a previous oral and /or written reprimand for the imposition of the more serious discipline, then the merits of the prior oral and /or written reprimand may be heard by the arbitrator.

**Sec. \_\_\_\_5 Board of Commissioners Option**

If the employee notifies the District of a desire to have the charges heard before the Commission, the District may proceed with the proposed disciplinary action in accordance with the procedures set forth in 70 ILCS 705/16.3a subject to the employee's rights to appeal and hearing described therein. The District shall not file any formal charges with the Commission before the employee has had an opportunity to exercise his/her election of forum within the ten (10) calendar day period. The time period may be extended beyond the ten (10) calendar days by the mutual written agreement of both parties.

**Sec. \_\_\_\_6 Finality of Arbitrator's Decision**

If the grievance is sustained by an Arbitrator, the District shall be bound by the Arbitrator's decision and shall not file charges as to the incident with the Commission. If the Arbitrator finds just cause for the discipline, the District may immediately implement the penalty sustained by the Arbitrator's decision and the employee and/or Union shall not have any further right to contest such charges and penalty before the Commission.

**IV. STATUTORY FRAMEWORK**

Section 14(h) of the Act, 5 ILCS 315/14(h), provides that:

[T]he 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

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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, and 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 the 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.

In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, all the statutory factors, including all of the parties' stipulations, have been considered in reaching this decision and Award.

## **V. FACTUAL BACKGROUND**

### **Introduction**

From approximately the mid-1970s until August 1999, the fire fighters, lieutenants and captains of the Northlake Fire Protection District were represented by the Association of Independent Municipal Employees, United Fire Fighters of Illinois, commonly known as AIME. In August 1999, the Union, the Northlake Professional Fire Fighters Association, IAFF Local 1841, was certified to replace AIME as the historical unit's collective representative and assumed the collective bargaining agreement then in effect, with a term

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of April 25, 1995 through May 1, 2001. At this point, the Union represents a bargaining unit of nine fire fighters and three lieutenants. Captains are also part of the bargaining unit, but there are no employees in that classification.

**History of Bargaining over the Disciplinary Review Process**

For some time prior to 1993, the collective bargaining agreement between the District and the AIME, reserved to the District the management right to “suspend” and “discipline” “within the purview of the Fire Protection District Act.” However, they agreed to add to their contract, beginning with the 1993 - 1997 agreement, and continuing with the 1995 - 2001 agreement, the provision that now appears as Section 5.1. Until the present negotiations, the bargaining unit had never proposed the addition of arbitral review of disciplinary actions. According to the uncontroverted testimony of the District’s witness, during the present negotiations, the Union never offered a *quid pro quo* or other concession to the District in exchange for adopting the option of arbitral review of discipline.

**Comparability**

The parties do not agree on the appropriate group of comparable entities to examine pursuant to Section 14(h)(4) of the Act. They agree that comparisons should be restricted to fire protection districts, rather than any other form of municipality or administrative entity, because of their unique structure and statutory rights and obligations.

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However, they differ as to which fire protection districts should be considered.<sup>1</sup>

The Union proposes a group of twenty-one fire protection districts in the Northern Illinois Alliance of Fire Protection Districts, a professional organization of the trustees of fire protection districts in Northern Illinois. According to the organization's website, the Alliance had 58 members as of March 2003, including Northlake. Of those 58 members, 20 in addition to Northlake have firefighters represented by unions. The Union proposes that these union-organized districts be used as the comparison group.

Their characteristics, in terms of size of bargaining unit, and whether or not they provide the option of arbitration of disciplinary actions is as follows:

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<sup>1</sup>In addition, the parties have stipulated that "The external comparable evidence submitted in this proceeding pertains solely to the non-economic issue of discipline," and "reserve the right to submit additional or different external comparability evidence in future negotiations or a future interest arbitration proceeding under the Act." Jt. Ex. 4.

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Fire Protection District	Arbitration of Discipline	Total Barg. Unit Employees	Firefighters	Lieutenants	Other Bargaining Unit Employees
Algonquin/Lake in the Hills	Yes	30	24	6	
Bartlett	Yes	18	15	3	
Bloomingtondale	Yes	38	31	7	
Carol Stream	Yes	42	32	10	
Darien- Woodridge	Yes	27	18	8	1 (Captain)
Glenside	Yes	13	10	3	
Homer Township	Neg'g first contract	5	4	1	
Huntley	Yes	25	19	6	
Itasca	Yes	15	12	3	
Lemont	Yes, in TAs	48	39	9	
Lisle-Woodridge	Yes	99	84	14	
Lockport	Yes	47	36	11	
North Maine	Yes	18	15	3	
<b>Northlake</b>	<b>Yes</b>	<b>12</b>	<b>9</b>	<b>3</b>	
Orland	Yes	106	75	31	
Palatine Rural	Yes	21	18	3	
Pleasantview	NO	37	31	7	
Roberts Park	Yes	9	9	0	
Tri-State	Yes	45	29	13	3 Battalion Chiefs
West Chicago	Yes	24	18	6	
Wood Dale	Yes	21	18	3	

Thus, despite wide variations in size of the bargaining unit, all but four fire protection districts in the NIAFPD offer arbitration of discipline actions to their employees at the time of the hearing in this dispute. Those that do not are Northlake; Homer, which was in negotiations for an initial contract; Lemont, which had tentatively agreed to allow arbitration in their negotiations; and Pleasantview.

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The District proposes a set of external comparable communities that do not strongly favor either arbitration or Board review. Because a fire protection district's resources, its ability to offer concessions and make trade-offs in negotiations, and to bear the costs of arbitration, are determined primarily by property tax revenues, the District has selected comparable fire protection districts based on their population and equalized assessed valuation (EAV). The five districts within plus or minus 50 percent of Northlake's population and EAV are Elk Grove Rural, Leyden, North Aurora, Palatine Rural and Roberts Park, the last two in the Union's group as well. Of the three of these districts with unionized workforces, one, the Leyden Fire Protection District, provides disciplinary review by the Board of Fire Commissioners only, while Palatine Rural and Roberts Park provide arbitral review. The District therefore concludes that its comparability data is "mixed."

In fact, the District's comparison group is too small to be of much use. The non-unionized districts are not comparable to the district on this issue, because arbitration of disciplinary actions is so much a creature of the collective bargaining relationship. Only since the Supreme Court's decision (*Gilmore v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)) has there been any move by employers to unilaterally adopt arbitration systems for their non-unionized employees. A group of three fire protection districts, or even the group of five that would include the District's non-union comparables, is simply too small to provide useful comparisons on an issue.

The Union's comparability group of 20 unionized NIAFPD fire protection districts does not suffer from that weakness. This group demonstrates overwhelmingly that the

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norm in the region, among districts with union-represented employees, is to offer bargaining unit employees the opportunity to appeal disciplinary actions to arbitration.

**The Interest and Welfare of the Public**

The Union contends that there is a strong public policy and statutory preference for arbitration as a method for resolving labor disputes, citing *City of Decatur v. AFSCME Local 268*, 522 N.E. 2d 1219, 1224-5 (1988) and the *Steelworkers Trilogy* (*Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960), *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), and *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960)). However, regardless of the preference for arbitration in other industries, the Illinois General Assembly has taken a different approach for the employees of fire protection districts, and has not demonstrated a clear preference for either arbitration or Board review: The Fire Protection District Act states that the Board review process must be used unless a District and a union have agreed to final and binding arbitration. Therefore, for the employees of a fire protection district, the General Assembly has left the use of arbitration up to the voluntary agreement of the District and their Union.

**Other relevant factors**

The parties have offered no evidence as to several statutory factors, including internal comparability, cost-of-living, and overall compensation. I find that these factors would not weigh for or against either side's final offer. There is no question that the District

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has the authority to enter into either of the parties' proposed agreements. All stipulations by the parties made in the course of these proceedings have been duly considered. While the District asserts that the Union's proposal is unreasonable because of the added costs that would result from employees' use of arbitration, there is no evidence as to the magnitude of the costs nor the District's inability to undertake them if required to do so. These factors also favor neither party's proposal.

The Union asserts that its final offer is the more reasonable because the present arrangement has been unfair, as demonstrated by the instances of discipline imposed on bargaining-unit employees since August 1999. In most cases, the employee was not questioned by any representative of the District prior to receiving from the Fire Chief notice of proposed discipline. In addition, Union Vice President (and former President) Joseph Johnson testified that he did not appeal an August 2000 suspension to the Board of Fire Commissioners because he feared that the discipline would be increased to termination.

However, as the District points out, whenever an employee received a notice of proposed discipline from the Fire Chief, the employee was invited to respond to the charges before the discipline was imposed, and in one instance, when the employee did respond, the proposed discipline of a five day suspension was reduced to a three day suspension. Lt. Johnson's concerns about appealing to the Board of Fire Commissioners were based on pure hearsay, a rumor about the Chief's animosity, not about the Board itself. In any case, as the District contends, the Fire Chief's pre-disciplinary actions are not probative of the fairness or effectiveness of the review by the Board of Fire

Commissioners. The Board of Fire Commissioners must adhere to the statutory process prescribed in the Firemen's Disciplinary Act, which contains a variety of procedural protections for the employee. Although the appeal to the Board of Fire Commissioners may not appear to insure the degree of independence offered by an arbitration alternative, there is no probative evidence here that the District's Board of Fire Commissioners has been or would be unfair. Compare., e.g., *City of Calumet City*, Case No. S-MA-99-128 (Oct. 12, 2000)(Briggs, Arb.) and *Village of Oak Brook*, Case No. S-MA-96-242 (Jan. 22, 1998)(Kossoff, Arb.), where decisions by the board of fire and police commissioners had been overturned by reviewing courts.

On the other hand, the District asserts that the Union's proposal should be rejected because it contains a number of provisions that are impractical and unworkable, citing, among other things, the 30-day time limit for the initiation of disciplinary action, the absence of explanation of what happens if an employee fails to elect between the grievance process or the statutory process within the proposed 10-day time limit for the employee's election, the possibility that a Union would refuse to arbitrate a grievance that the employee had elected to arbitrate, and the proposal's erroneous reference to a non-existent 70 ILCS 705/16.3a. However, these problems generally appear to reflect drafting choices that an arbitrator could correct in the course of resolving this non-economic issue.

## **VI. ANALYSIS AND CONCLUSIONS**

Interest arbitration is generally a conservative process. In order to avoid usurping the collective bargaining relationship, interest arbitrators generally attempt to approximate

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what reasonable and sophisticated bargainers in the parties' circumstances would or should have agreed to through negotiations. See, *Village of Arlington Heights*, No. S-MA-88-89 (1991)(Briggs, Arb.); *Will County Board*, No. S-MA-88-9 (1988) (Nathan, Arb.) Arbitration should not become an attractive substitute for collective bargaining – the outcome of an interest arbitration should not be so far from the expected outcome of rational bargaining that the parties cease to negotiate effectively, and instead prematurely seek recourse from the arbitration process. To this end, arbitrators have placed the burden on a party seeking to change the *status quo* to demonstrate strong reasons for doing so. As Arbitrator McAlpin has stated:

When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such a showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo.

*City of Hickory Hills*, Case No. S-MA-01-256 (Sept. 9,2002)(McAlpin, Arb.)

The District and the union representing its firefighters, lieutenants and captions, first AIME and now Local 3863 by voluntary agreement have used the statutory disciplinary review system for over 10 years. Section 5.1 first appeared in its present form in the 1993 - 1997 agreement, and was retained in the 1995 -2001 agreement. Prior to that, Section 9.1 of the parties' agreement stated, "The Firemen's Disciplinary Act Ch. 85 § 2501 et seq. is hereby incorporated into this Agreement." Thus, the Union's final offer amounts to an effort to change the parties' negotiated *status quo* by permitting employees to choose

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between arbitration and Board review of discipline.<sup>2</sup>

The type of evidence that might demonstrate the need for a change has been described as follows:

In changing the benefit balance or in altering a previously negotiated labor relations scheme, the neutral must consider the factors which went into that previously agreed to contract. The parties may have traded dearly to secure the benefit now being challenged. It may have been part of a larger bargain or an integral portion of an overall settlement scheme. The arbitrator must examine how the old system operated, whether there were administrative problems, whether inequities were created, or unforeseen dilemmas. In each instance, the burden is on the party seeking the change to demonstrate, at a minimum: (1) that the old system or procedure has not worked as anticipated when originally agreed to or (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

*Will County Board, Case No. S-MA-88-09 (1988)(Nathan, Arb.)*

In this case, however, there is no evidence that the employees' bargaining representative has ever sought to add the option of arbitral review of discipline to the collective bargaining agreement. Although the Union objects to the operation of the present statutory system, the evidence reflects possible weaknesses in only the Chief's pre-discipline investigations, not in any review by the Board of Fire Commissioners. There is no evidence that appeal to the Board would not correct such errors, nor is there evidence that there have been administrative problems, inequities or "unforeseen dilemmas" in the review process. The Union's examples simply do not rise to the level of equitable or due

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<sup>2</sup>It should be noted that the Union does not suggest that its replacement of AIME in 1999 as collective bargaining representative means that the provisions of the 1995-2001 contract negotiated by AIME should not be considered to be the *status quo*. Accord, *Village of Lisle*, Case No. S-MA-02-199 (2002)(Benn, Arb.); *Village of Elk Grove Village*, Case No. S-MA-95-11 (1996)(Goldstein, Arb.) (changes in collective bargaining representatives did not negate prior bargaining history)

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process problems that would justify an arbitrator unilaterally inserting the arbitration process into the parties' agreement, particularly where the Union has offered no *quid pro quo* for the District's acquiescence to this change.

It is true that among the organized fire protection districts in the Northern Illinois Alliance of Fire Protection Districts, the availability of arbitral review of discipline is clearly the norm. But the comparison with other communities is but one of the factors to be considered under Section 14(h) of the Illinois Public Labor Relations Act. In this case, the parties' consistent bargaining history and their voluntary operation under the present arrangement for over ten years without any of the factors that would justify upsetting that *status quo*, outweighs the comparisons with other communities. Although bargaining unit employees may dislike and mistrust the system that permits appeals of disciplinary action only to the Board of Fire Commissioners, they have failed to demonstrate that an imposed (rather than negotiated) change in that system is required.

For these reasons, my award is as follows:

**AWARD**

The City's final offer on the issue of Disciplinary Action is adopted. No change to Article V shall be made in the parties' collective bargaining agreement. However, the parties' tentative agreements set forth in Joint Exhibits 3a and 3b, together with the provisions of the prior agreement not expressly modified by the tentative agreements, shall become part of the parties' collective bargaining agreement effective June 1, 2001 through May 31, 2004.

Respectfully submitted,

Lisa Salkovitz Kohn  
Arbitrator

Dated: June 1, 2003