

ILLINOIS LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an

Interest Arbitration between

Itasca Fire Protection District)	
and)	#S-MA-13-130
Itasca Professional Firefighters Association,)	
Local 3461, IAFF)	

INTEREST ARBITRATION OPINION AND AWARD

On June 7, 2013, in Itasca, Illinois an arbitration was conducted before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, Itasca Fire Protection District ("Employer"), and the Itasca Professional Firefighters Association, Local 3461, IAFF ("Union"). The Employer was represented by its counsel, Karl Ottosen, and the Union was represented by its counsel, Lisa Moss. Both parties presented their evidence and proofs in narrative fashion and filed timely post-hearing briefs that were received on July 30, 2013.

ISSUES PRESENTED

The issues presented for resolution are as follows:

1. The External Comparables
2. Layoffs
3. Scheduling of Personal Leave Days
4. Wages
5. Certification Pay
6. Health Insurance

BACKGROUND

The Employer is an independent unit of government that is responsible for fire protection in a 6.5 square mile area including the Chicago suburbs of Itasca, Addison, and Wood Dale, and unincorporated areas adjoining these communities. The Employer consists of a Board of Trustees, a Board of Fire Commissioners, a Fire Chief, an assistant Fire Chief, and full-time staff of lieutenants, firefighters and paramedics.

Those firefighters and paramedics comprise the bargaining unit represented by the Union herein. More particularly, there are six firefighters, thirteen firefighter/paramedics, and three lieutenants, with seniority dates ranging from 1989 to 2012. Bargaining unit employees work twenty-four hour shifts followed by forty-eight hours off duty spread over three shifts, black red and gold, each

day. Moreover, those employees work on the Employer's equipment that includes one fire engine, an advanced life support (ALS) ambulance, and one aerial truck or tower. In addition, the Employer maintains a reserve rescue squad, a reserve fire engine, and a reserve ALS ambulance. All of these employees and the equipment described herein are housed in one fire station maintained by the Employer.

The Employer and the Union have been parties to six collective bargaining agreements between 1994 and 2011, with the most current expiring on May 31, 2011. The instant proceeding is the first time they have resorted to interest arbitration.

THE EXTERNAL COMPARABLES

The parties have agreed to use the following fire protection districts as external comparables: Bensenville, Glenside, Northlake, North Maine, Palos, and Norwood Park. The Employer seeks to include, over the Union's objection, to that list the fire protection districts of North Aurora and Plainfield Rural. The Union seeks to add, over the Employer's objection, the fire protection district of Palos Heights.

With regard to the Union's proposed additional external comparable, the Palos Heights Fire Protection District, the evidence shows that on six of ten suggested measures (property tax revenue, total revenue, total expenses, per capita income, median household income, and median home value) it compares favorably with the Employer. It is only with regard to population, the number of pensionable employees and distance that it is either larger, smaller, or far away, respectively. Thus, when compared to traditional benchmarks for determining external comparability, the Palos Heights Fire Protection District would appear to be appropriate for inclusion among the comparables.

At the hearing the Employer's only asserted objection to including Palos Heights Fire Protection District was that its most current collective bargaining agreement was still outstanding and was pending an interest arbitration award. However, the Union has since pointed out that the award in that matter issued in June and the Union has supplemented its evidence with that data.

In its post-hearing brief the Employer relies on the finding of Arbitrator Daniel Nielsen in that matter that Palos Heights Fire Protection District and the Employer are not comparable communities. I am afraid that a close reading of Arbitrator Nielsen's finding that the Employer and the Palos Heights Fire Protection District is not particularly helpful. First, he stated that the Employer, along with the other fire protection districts that the Union proposed to him are "within the 50% plus or minus standard in all or almost all of the criteria commonly used for determining comparability." Second, he found that all, including the Employer, are similar, and substantial, distances from the Chicago metropolitan area. Finally, he found that the Union's proposed external comparables, which included the Employer herein "are, indeed, statistically similar to the Palos Heights FPD." At that point, one would predict that Arbitrator Nielsen would find the Employer and Palos Heights Fire Protection District to be comparable.

I do not explicate Arbitrator Nielsen's findings in such detail only to point out that it seems his finding on the comparability between the Palos Heights Fire Protection District and the Employer herein was less a rejection of the Employer as a comparable, but rather an acceptance or preference of a different proposed external comparable. I on the other hand am not faced with such a choice. As noted above, and as Arbitrator Nielsen conceded, the Employer and the Palos Heights Fire Protection District are, as he put it, "statistically similar" and are similarly distant from the Chicago metropolitan area. Under those circumstances, combined with the fact the two are similar on other measures as noted

above, I am compelled to find that the Palos Heights Fire Protection District is properly included among the external comparable.

I therefore turn to examine the Employer's proposed additional external comparables, the North Aurora Fire Protection District and the Palatine Rural Fire Protection District. In support of those proposed comparables the Employer relies upon some of the same benchmarks used by the Union, but also relies upon others. For example, number of fire stations in each District, their relative budgets, the number of calls in each District and the number of full-time and part-time firefighters in each District. When it does so, both North Aurora and Palatine Rural measure up closely with the Employer. Moreover, even when the Union's benchmarks are used North Aurora compares favorably with the Employer on four of ten measures (EAV, property tax revenues, per capita income, median household income). However, it is significantly higher on five of its ten measures (number of pensionable employees, total revenue, total expenses, median home value, and population). More importantly however, the Union objects to inclusion of North Aurora because it is a "meet and confer" jurisdiction and as such is not subject to the same bargaining obligations and, more importantly, dispute resolution mechanisms as is the Employer and the other agreed upon external communities.

In my view this factor, combined with a favorable comparison between the North Aurora Fire Protection District and the Employer on only a few measures, compels the conclusion that it should not be included among the communities for external comparability analysis.

I then turn to the Palatine Rural Fire Protection District. Again, using the benchmarks the Employer utilizes but that the Union does not, it, as was true with regard to the North Aurora Fire Protection District, compares quite favorably with the Employer. However, using the Union's proposed benchmarks the Palatine Fire Protection District compares favorably with the Employer again on only four of ten of those benchmarks. Moreover, unlike North Aurora the Palatine Rural Fire Protection District is significantly larger than the Employer with respect to population, per capita income, median household income, and median home value¹. In light of those disparities I find that it should not be included among the external comparables.

I therefore find that the external comparables are the following fire protection districts: Northlake, Wood Dale, Bensenville, Glenside, North Maine, Palos, Palos Heights, Roberts Park, and Norwood Park.

THE ISSUES

A. The Appropriate Standards

As set forth in Section 14(h) of the Illinois Public Labor Relations Act arbitrator are to consider the following factors in resolving interests disputes:

1. the lawful authority of the employer;
2. the stipulations of the parties;

¹ The Employer urges that these disparities be ignored because Palatine Rural includes parts of the community of Inverness "which has very high home values and median incomes" and therefore Palatine Rural should not be excluded "simply because a wealthy portion (attributable to Inverness) skews the numbers." I however cannot accept that argument because it undermines the very essence of external comparability. In other words, if a proposed external comparable can be included despite significant disparities then there would be nothing left of external comparability.

3. the interests and welfare of the public and the financial ability of the employer;
4. a comparison of the wages, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;
5. the cost of living;
6. the overall compensation of the employees;
7. changes in any of the foregoing during the pendency of the proceedings;
8. such other factors which are normally or traditionally taken into consideration.

Applying those factors, as described below, I now turn to the issues presented for resolution.

B. Layoff Language

On this issue the parties agree that Section 5.04 of their agreement should be amended to add the following language: "Prior to any layoff, the District shall provide the Union with at least 30 days' notice of the proposed layoff, and prior to any layoff the Union will be given the opportunity to meet and discuss with the District alternatives to the layoffs." They differ however as to how their current language elsewhere in that Section should be changed. The Employer offers that the current language, "(t)he District in its discretion, shall determine whether layoffs are necessary" should be qualified with the additional language "for business reasons" while the Union offers that the qualifier should read "for legitimate business reasons."

The parties first disagree whether this issue is or is not economic for if it is not economic then under the applicable statute I may craft a solution to the issue of my own and decline to accept the final offer of either party. On this point the Union argues that because layoffs impact the number of employees it is by definition economic. On the other hand the Employer contends that the issue is non-economic because it "has no effect on the wages, compensation, or any other economic benefit to employees.." Fortunately I have faced the question before whether it is wise to exercise the power granted to me by law to devise a solution of my own and have chosen to decline to do so when "the solution crafted is without a factual foundation (such that it may be) unwise or harmful to the parties, their bargaining process, and potentially to the public." See, *City of Decatur*, #S-MA-93-212 (1994). My review of the record herein leads me to believe that such a humble approach is in order. Moreover, as described below, there are factors that lead to a clear resolution when the matter is perceived as economic.

When one examines language on this issue among the external comparables there are six of eight that have no limitations on an employer's layoff decisions. Thus, the Union's successful effort so far to gain any limitation at all is a significant departure from the external comparables and seems to justify adopting the Employer's final offer on this issue. Moreover, in two of the three contracts where there are limitations none of them are particularly helpful. For example, in Glenside the parties agreed to "bona fide economic reasons..," in Northlake they agreed to "only...economic reasons..," and in Norwood the parties agreed to comply with applicable Illinois statutes. Thus, in none of those three have the parties expanded any limitations on an employer's layoff decisions other than strictly explicated conditions.

In addition, the Employer opposes the Union's final offer arguing that it will do nothing more than lead to litigation over what is or is not "legitimate" and, although it does not use this label, it appears to characterize the Union's final offer as a "breakthrough" and contends that the Union has failed to meet its heightened burden of proof in that case.

At the hearing the Union argued that its final offer should be adopted because without that language the Employer "could walk in one day and say that it doesn't like personally...people...and it wants to lay them off" and in its brief it characterizes that concern as meeting the statutory standard of the "interest and welfare of the public."

In my view I need not accept either argument. Rather it seems clear to me that any such scenario as that portrayed by the Union would run afoul of even the Employer's proposed language because it would not be a "business" reason and, as noted above, the record does not justify adopting the Union's final offer under a traditional quantum of proof.

I therefore adopt the Employer's final offer on this issue.

C. Scheduling of Personal Leave Days

On this issue the Employer proposes to modify the Guidelines governing this issue that appear in Section 10.05 of their Agreement in three ways. The first is to provide that personal leave that causes overtime, but is not used for an emergency, will be granted only with permission of a chief officer. The second is to provide that once personal leave is approved in advance it will not be cancelled even if requests for other types of leave were to cause overtime. And finally, it proposes that advanced scheduled personal leave cannot be scheduled until the annual vacation selection process is completed.

The Union on the other hand proposes the status quo.

Again, the parties first disagree whether this issue is or is not economic. The Employer argues that it is not, asserting that "it has no effect on the amount or value of personal leave available to employees,.." The Union on the other hand contends that personal leave, no different than vacation leave or holidays, accounts for a portion of the employees' total compensation and thus is an economic issue. Oddly enough, I agree with both parties. On the one hand the Union is correct personal leave is a form of paid time off, similar to vacations and holidays, but on the other the Employer is correct that the issue as framed herein does not deal with the level or amount of paid time off, but rather only as to the scheduling thereof. Under those circumstances I believe, as I did on the issue of layoff language, that to treat the issue as non-economic and insert myself into the drafting of the parties' language would be unwise. Thus, I will treat the matter as though it were economic.

The Employer explained at the hearing that during the term of the parties' last Agreement the parties found themselves facing the issue of approving personal leave when it caused overtime. The record evidence shows that although there was an informal practice of denying such requests, the Agreement was silent and thus one employee took the position that any such request must be approved. Rather than arbitrate the matter, the Employer chose to approve and schedule personal leave whether or not it caused overtime. Similarly, another incident arose when an employee who could not be off on Christmas Eve and Christmas using vacation time instead used personal leave for those days again causing overtime. Thus, the Employer asserts in its brief, its final offer does nothing more than "correspond with the original intentions of the contract" and that the parties "never anticipated that advanced scheduling of personal (leave) would cause additional overtime, bump other employees from their vacation days, and cause force backs on holidays..."

In reply, the Union asserts the examples relied upon by the Employer are nothing more than vague and anecdotal assertions insufficient to find that the system is broken and in need of repair and that the external comparables are silent on the issue and thus do not support the Employer's final offer. The Union also urges that maintaining the status quo is consistent with the parties' course of bargaining over time on this issue. Accordingly, the Union urges that I reject the Employer's final offer.

I first deal with the adequacy of the Employer's evidence in support of its final offer and in doing so I concede that in *Village of LaGrange*, #S-MA-11-248, as the Union points out, I held that vague and anecdotal assertions are insufficient. However, I did so in the context of applying the heightened burden of proof that is required when one proposes a "breakthrough" or "game changing alteration" to an existing agreement. The Union has not asserted that the Employer's final offer is of that import and I fail to see any basis for so finding.

That being said however does not mean that the Employer's final offer must be adopted. First, the external comparables do not support it. Second, and more importantly, it is difficult for me to agree with the Employer that the "parties never anticipated" that advanced scheduling of personal leave days would cause additional overtime, bump other employees, and/or cause forcebacks on holiday. It is difficult because there is no record evidence regarding the parties' intent and because their current agreement is silent on those issues as they relate to the issue of scheduling personal leave days. Conversely, as the Union points out, the parties' prior bargaining history as well as their past practice supports the conclusion that the Employer's final offer is one that seeks to change that course of bargaining and practice and in my view would be best achieved at the bargaining table.

Thus, in light of the external comparables and the parties' course of bargaining and past practice I reject the Employer's final offer.

D. Wages

On this issue the Employer's final offer is for a wage increase of 1% in the first year of the parties' Agreement and wage increases of 1.5% in the second and third year for a total of 4%. The Union on the other hand proposes wage increases of 2%, 2%, and 2.5% in each of the three years of the Agreement for a total of 6.5%.

With regard to external comparability, I observed at the hearing, and the parties confirmed, that no matter which final offer is adopted there would be little difference in terms of the instant bargaining unit's placement among the external comparables². Thus, I must look to other relevant factors in order to choose between the two final offers.

When I do so I find that the most relevant factors, as more fully explained below, are the cost of living, the Employer's fiscal condition, and the interests and welfare of the public.

In terms of the cost of living again, sadly, it is of little help in that both of the final offers exceed the cost of living for the first two years of the Agreement. However, in third year of the Agreement the Employer's final offer is below the cost of living and as such would cause a diminishment of employees' purchasing power. (See e.g., Union Exhibit 1, Tabs 44 and 45)

² Or as I put it, the two competing final offers are, in terms of relative ranking among the comparables, "within spitting distance of one another." (Tr. 54)

Thus, when viewing the proverbial "bottom line," it appears I face the same dilemma that I faced in *Village of La Grange*, S-MA-11-248 (2013) where, as here, both of the parties' final offers were reasonable, but I adopted one final offer over the other, the more generous of the two, in light of the fact that it would serve the interests and welfare of the public because it would "lead to a greater level of morale and productivity and contribute to a lower rate of turnover." It seems that the same approach herein is in order.

Similarly, in *City of Canton*, S-MA-10-316 (2013), I held that when both parties' final offers exceeded the cost of living an employer's "general fiscal health" would be determinative and I agree with the Union that "the same is true here." Thus, in light of the fact that the Employer's general fiscal health is quite sound, it trends in favor of the Union's final offer.

In light of the foregoing I hereby adopt the Union's final offer on wages.

E. Paramedic Certification Pay

On this issue the status quo is that the Employer's pays its certified paramedics a yearly stipend of \$3,750. The Employer proposes that the stipend remain unchanged in the first two years of the parties' Agreement and that in the third year it be increased to \$3,900. The Union on the other hand proposes that the status quo remain in place in the first year of the Agreement, but that in the second and third years it be increased, respectively, to \$3,850 and \$4,000³.

This issue is susceptible to the same analysis set forth above on the issue of wages. That is, again in terms of relative ranking among the external comparables the two final offers are "within spitting distance" of one another. Thus, I must again look to the interests and welfare of the public in terms of firefighter morale, productivity, and retention, *City of La Grange, supra*, and the Employer's general fiscal health, *City of Canton, supra*, and in doing so I conclude, that the Union's final offer should be adopted.

There is however on this issue another fact that leads to the same conclusion. The record shows that the parties' bargaining history over a long period has always led to agreements on paramedic certification pay for increases between \$250 and \$500 per year. Clearly, the Union's final offer more closely resembles that bargaining history while the Employer's is quite disparate. Therefore absent a showing by the Employer of some justification to deviate from this bargaining history, and the record contains no such showing, bargaining history provides another reason for adopting the Union's final offer and I so find.

F. Insurance

Under the parties' most recent Agreement bargaining unit employees made a flat amount contribution towards health insurance premiums and the amount related to the type of coverage. For example, employees with Single coverage paid \$33 each month, employees with Employee + 1 coverage paid \$86 each month, and employees with Family coverage paid \$137 each month. Moreover, each employee paid an additional \$43 each month.

The Union's final offer is to maintain the status quo with the payment of the additional \$43 each month to continue until the Employer "withdraws from the Illinois Fire District Employee Benefit Co-

³ Both the Union and the Employer agree however that "paramedic" should be moved into the "All Members" category of their Agreement.

Operative." The Employer on the other hand proposes to change employee contributions so that in each of the three years of the new Agreement employees will pay 10% of the contribution. In addition, it proposes that in the first year of the new Agreement there would be no cap for employees with Single coverage and a cap of \$135 each month and \$200 each month for employees with, respectively, Employee + 1 coverage and Family coverage. In the second year of the new Agreement the Employer proposes that the caps for Employee + 1 and Family coverage increase to \$160 and \$250 respectively and that in the third year there be no caps at all.

The threshold dispute on this issue is the Employer's argument that the Union's final offer is permissive and therefore not properly before me. In support of its argument it relies on the Union's conditional language relating to the \$43 monthly payment. The Union disagrees and asserts that if the Employer wished to contest this point it should have availed itself of the declaratory ruling process of the Illinois Labor Relations Board. Thus, the Union asserts, because the Employer failed to pursue this course of action it waived the argument that the Union's final offer must be rejected as permissive. In addition, it relies on the fact that the parties in their ground rules stipulated that health insurance was a mandatory subject of bargaining.

There is no question that the Illinois Labor Relations Board makes available to parties a mechanism for determining whether a subject of bargaining is permissive or mandatory and that the Employer did not avail itself of this mechanism. That however does not inexorably lead to the conclusion the Union urges for those provisions of the Board's rule relating to the declaratory ruling process are replete with permissive language (i.e., "may" rather than "shall").

Nevertheless, I agree with the Union that its final offer is properly before me for consideration. First, I agree with it that the parties in their ground rules agreed that health insurance is a mandatory subject of bargaining and thus, at least at that point, the Employer had no quarrel with an arbitrator examining the Union's final offer. In addition, I am unsure exactly what it is about the Union's conditional final offer makes it, in the Employer's eyes, permissive. In other words, it is indeed conditional, but the Employer offers no argument why that makes the offer permissive.

Accordingly, I find that the Union's final offer is properly before me for consideration and turn then to weighing that final offer against that of the Employer.

Looking first to the external comparables at first blush they would appear to favor the Employer's final offer because, as it points out, in six of those communities employees pay a percentage, rather than a fixed amount, of the health insurance contribution. However, it seems, as the Union argues, that the better comparison is not to look simply whether employees in these communities pay a percentage amount, but rather to look to the amount that they pay as that better reflects the impact of the Employer's final offer on the bargaining unit. Interestingly, when one does so it is clear that the under the Union's final offer the bargaining unit will remain ranked between the sixth and ninth relative to the amount paid for health insurance among the comparables, but that under the Employer's final offer they rise to either second or third in rankings. Thus, when measured in this fashion, the impact of the Employer's final offer is significant.

Moreover, this point is important for another reason. The Union argues that the Employer's final offer is a "breakthrough" and thus must be measured against the requirement of a heightened quantum of proof. In light of the impact described above, because the Employer's final offer eliminates caps in the last year of the Agreement, and because the parties' long standing bargaining history has allowed only for flat amount contributions by employees, I agree with the Union. Thus, the Employer, in

order to prevail on this issue, must show that bargaining on this issue has been impeded by the Union, that the status quo has failed, and that there is a compelling need to change it. As described below, I agree with the Union that the Employer has failed to carry the day.

It is clear that not only in this dispute, but in some many interests disputes, health care costs have been an issue of serious consideration. That fact is borne out herein in light of the fact that the Employer's health care costs have increased on or about 60% over time. However, that fact alone does not warrant adopting the Employer's final offer especially where, as here, other factors weigh against doing so.

For example, as the Union points out, the parties current Agreement, and its next one, provides that the Employer can implement cost savings so long as benefits remain the same. In addition, the parties have agreed to a Health Insurance Committee to explore these very issues and it appears that the Committee has been earnest in its efforts. Finally, it appears that one reason, and perhaps a substantial reason, for the Employer's burden has been the fact that it belongs to a health insurance co-operative. However, because it does so, it can also choose to leave the co-operative if it must. Thus, the Employer is not without options that, if it were, might compel adopting its final offer. (See e.g., *County of Jefferson, S-MA-06-030* (Meyers, 2006) where Arbitrator Meyers rejected an employer's final offer because it was "not in the helpless position of having to 'take or leave' whatever premium increases are imposed...(but that)...employees would be placed in just such a helpless position in that they would have no control over the amount of money they would be required to contribute toward their premiums.")⁴

In light of the evidence regarding the relative amounts paid by employees in this bargaining unit as compared to those in the external comparables and the fact that the Employer has not met the heightened quantum of proof for its "breakthrough" final offer, I must adopt the Union's final offer on health insurance.

AWARD

I hereby award as follows:

1. The parties tentative agreements are hereby adopted.
2. The Employer's final offer on Layoff language is hereby adopted.
3. The Union's final offer on Scheduling of Personal Leave Days is hereby adopted.
4. The Union's final offer on wages is hereby adopted.
5. The Union's final offer on paramedic certification pay is hereby adopted.

⁴ I am mindful, as the Employer points out, that it is not certain whether the Employer could withdraw from the Co-operative and that if it could any savings would be speculative. However, it conceded at hearing that the Co-operative will likely dissolve by the end of 2014 and any speculation as to the savings from such an event does not eliminate the fact that the Employer, as noted above, has options available to it to deal with the issue of rising health care costs.

6. The Union's final offer on health insurance is hereby adopted.

DATED: August 15, 2013

Robert Perkovich, Arbitrator