INTEREST ARBITRATION

ILLINOIS STATE LABOR RELATIONS BOARD

DOLTON PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 3766, IAFF

and

VILLAGE OF DOLTON

ILRB No. S-MA-15-287

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
February 14, 2016

I. Procedural Background:

This matter comes as an interest arbitration between the Village of Dolton ("the Employer" or "the Village") and Dolton Professional Firefighters Association, Local 3766, IAFF ("the Union"), held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The hearing was before the undersigned, as the sole arbitrator, on September 22, 2015. The Union was represented at the hearing by:

Lisa B. Moss, Esq.
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Counsel for the Village was:

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The Arbitrator exchanged post-hearing briefs on November 24, 2015. The record was closed on that date.

II. Factual Background

The Village is a suburb of Chicago, located in southern Cook County. Its fiscal year runs from the first of each May through the following thirtieth of April. It has a population of around 25,000. The Village of Dolton Fire Department ("the Department") employs 19 bargaining unit employees, including 5 firefighters, 11 engineers, and 3 lieutenants. Paramedic services are contracted out to a private firm.

The parties' are bargaining for a collective bargaining agreement covering the period May 1, 2011 through April 30, 2017, succeeding their current labor agreement, which had an expiration date of April 30, 2011. The parties reached agreement on 11 issues, the terms of which will be incorporated into this Award. The only remaining issues involve the employees' contribution rates for health and dental coverage, respectively.

The employees have a choice of health insurance coverage at levels of Employee, Employee and Spouse, Employee and Children, and Family. They also have a choice of three plans, all through Blue Cross/Blue Shield, including PPO, HMO-Illinois, and Blue Advantage HMO. Currently, they contribute 15% toward premium at all levels of coverage. The evidence shows that premiums under all three plans peaked in 2012, and have decreased each year thereafter. For example,

the total monthly premium for Family coverage under the PPO was around $1,180 in 2012, and fell each year thereafter, to around $870 in 2015. The Village anticipates another decrease in premium for 2016, somewhere between 10% and 14%.

The employees currently contribute nothing for dental coverage. Details of the dental rates, currently or historically, were not included in the exhibits. Counsel for the Village represented during the hearing, without challenge, that current total monthly rates are $117.56 for Family, $65.52 for Employee plus One, and $32.44 for Employee.

The parties have included healthcare and dental coverage in each of their labor agreements since the Union was certified, in 1992. A historical perspective of the employees' contribution requirement is shown in the following table:

Fiscal Year(s)	Health	Dental
1992-2001	$35.00	$25.00
2002-2005	$75.00	$0.00
2006-2011	15%	0%

III. Statutory Authority and the Nature of Interest Arbitration

The relevant statutory provisions governing the issues in this case are found in Section 14 of the Labor Act.

The parties agreed, and the Arbitrator finds, that the issues submitted for resolution here are economic in nature and that the Arbitrator's job, therefore, is to

select from the parties' respective offers, on each issue, that offer which most nearly "complies" with the Section 14(h) factors.

IV. THE PARTIES' STIPULATIONS

The pertinent stipulations are as follows:

1. The tri-partite panel of arbitrators provided for in Section 14 of the Act has been waived, and the parties have vested sole decision-making authority in Arbitrator Fletcher.
2. The Arbitrator shall incorporate into his award, the tentative agreements previously reached by the parties. The tentative agreements to be incorporated into the award are as follows:
    - Section 3.9 Activity During Working Hours
    - Section 10.1 Wage Increases
    - Section 10.8 Back Pay and Benefits
    - Section 10.10 Overtime Procedure
    - Section 10.13 Clothing Allowance
    - Section 15.5 Sick Leave
    - Section 17.3 Staffing
    - Section 19.3 Eligibility
    - Section 19.5 Rating Factors and Weights
    - Section 19.6 Test Components
    - Article XX TERM OF AGREEMENT
3. The parties have agreed to eight (8) comparable communities including: Blue Island, Country Club Hills, Hazel Crest, Homewood, Markham, Midlothian, Park Forest, and South Holland.
4. The Village is not asserting an inability to pay within the meaning of the Act.

V. OUTSTANDING ISSUES

1. Article XIV - Insurance, Section 14.2 – Cost (Healthcare)
2. Article XIV - Insurance, Section 14.2 – Cost (Dental)

VI. – EXTERNAL COMPARABLES

The parties agreed to the following list of comparable municipalities:

- Blue Island
- Country Club Hills
- Hazel Crest
- Homewood
- Markham
- Midlothian
- Park Forest
- South Holland

VII. – INTERNAL COMPARABLES

The Village's sworn police officers are represented by the Illinois Fraternal Order of Police Labor Council ("FOP"). Its Sergeants and Lieutenants are also represented by FOP, in a separate bargaining unit. These are the closest and most important internal comparable, the Arbitrator finds. The evidence shows that each of these groups agreed to contribute, beginning May 1, 2016, 20% to premium, at all levels of coverage, for both health and dental insurance. The evidence also establishes that each of these groups have contributed at a rate of 15% toward premiums for both health and dental insurance since 2006.

The Village's public works employees are represented by the American Federation of State, County and Municipal Employees ("AFSCME"), which also represent one of two units of the Village's clerical employees, the other being represented by the FOP. These groups have also each agreed to pay 20% of premium for health and dental insurance, effective May 1, 2016.

VIII. OTHER STATUTORY CRITERIA

The Village does not claim an inability to pay relative to either of the Union's proposals here. The Village nevertheless suggests that is presently engaged in a "war for economic survival," which it has been fighting since the onset of the Great Recession, and which is made all the more difficult by the Village's reliance on property taxes for roughly one-third of its revenues. Since 2009, EAV for the Village has declined, in rounded figures, from $315 million to $190, a drop of 40%. Tax collections have also become a problem, as owners and lenders have allowed properties to go into default on property tax payments, and investors have not stepped up to buy up the delinquent taxes. As a result, in 2014, for example, while the Village's tax levy was $10 million, actual tax collections totaled only $7.5 million, a shortfall of 25%. A financial consultant for the Village testified that the Village has been operating in the red since at least 2014, meaning that it spends more that its income.

The Union points out that the only evidence in the record that tends to support the Village's claims of economic distress is the history of declining EAV. The Village offered none of its financial statements. In fact, the Village did not submit a Comprehensive Annual Financial Report ("CAFR") for either of the last two fiscal years. Moreover, its own financial consultant, who testified, in part, as to the Village's 2013 CAFR, suggested that the report showed that the Village operated with a surplus for the year. The Village Administrator added, "We are on

the road to recovery. . . Things are a thousand times better than what they were two years ago."

IX. THE ISSUES

Article XIV - Insurance, Section 14.2

Cost (Health)

The Union's Final Proposal

Status Quo

The Village's Final Proposal

Add:

> "Effective May 1, 2016, Employees shall pay TWENTY (20%) PERCENT of the premium cost for Employee, Employee + Spouse, Employee + Children, and Family Coverage, whichever is applicable. The Village shall pay for the balance of the plans"

Position of the Union:

The Union reminds the Arbitrator that interest arbitration is a fundamentally conservative process, one which aims to put the parties in the place they would have been, vis-à-vis each, had they negotiated their own terms. Village of Broadview and Illinois Fraternal Order of Police Labor Council, S-MA-13-173 (Fletcher, 2015) at 25; City of Evanston and Local 742, IAFF, FMCS No. 95-11910 (Grenig, 1995) at 20. Where one party seeks to change the status quo through interest arbitration, it bears the burden of proving that its proposal should be adopted. The Union excerpts from this Arbitrator's discussion, in Village of Broadview, S-MA-13-173, at pp. 25-26, the following:

> The parties may themselves agree to whatever changes they wish regarding the terms of their contract, and may anticipate and provide for potential changes in the market, or, as this Arbitrator has seen much of late, anticipated effects of looming regulatory problems, i.e. the "Cadillac Tax" under the Affordable Care Act, as they see fit, without regard to whether the present circumstance suggest a present factual basis for the change. Such arrangements and rearrangements of existing contract provisions are part and parcel of the give and take of collective bargaining. ***An arbitrator, on the other hand, should impose changes in the parties' contract only where there exists a real and present, or at least probable and imminent, reason for doing so***. (Emphasis supplied).

The Village's own evidence establishes that the Village's insurance costs have plummeted in recent years, and are expected to drop another 10% to 14% this year. The Union again quotes this Arbitrator's discussion in Village of Broadview, S-MA-13-173, at pp. 24-25, as follows:

> The Village has taken on a difficult burden here, it seems to this Arbitrator. It seeks to change the structure of the premium contribution requirement, in order to shift more of the risk of increased costs to the employees, at a time when its own costs have gone down and the employees have already agreed to accept a higher percentage of the burden. The circumstances bring to mind Arbitrator Benn's decision in Village of Oak Brook and IBT, Local 714, S-MA-96-73 (Benn, 1996), where the employer sought to impose a contribution requirement on employees, where previously there had been none, at the levels Single Plus One and Family coverage. The employer argued that by doing so, it was proposing to give the employee an "ownership interest" in their coverage, which would incentivize the employees to make prudent judgments in how they utilized their benefits. Arbitrator Benn agreed with the employer's arguments, as a conceptual matter, and he added that imposing some premium cost on employees "takes these public sector employees into the 'real world' where the notion of fully paid insurance benefits by an employer is on the wane." Village of Oak Brook, S-MA-96-73, at p. 7. Moreover, he found that employer's proposal was modest in terms of the burden it would place on employees. Arbitrator Benn nevertheless rejected the proposal. In doing so, he put aside the Union's 13 arguments regarding changes

> to the status quo and the attendant burdens placed on parties seeking such changes. Instead, he reasoned that ***because the employer had not shown that it had suffered any adverse claims experience, and no incidental increase in its costs, its arguments were essentially theoretical***. He found that "ultimately, the [employer's] proposal to change the insurance provision does not have a rational factual basis and, hence, is not reasonable," within the meaning of Section 14(h) of the Act. (Emphasis supplied).

The Village's proposal in this is unreasonable for the same reasons that the respective employer offers were found unreasonable, by this Arbitrator, in Village of Broadview, and Arbitrator Benn, in Village of Oak Brook.

The Union adds that the Village's suggestion that internal comparability supports its proposal should be rejected. In terms of overall compensation, the Village's most relevant internal comparables, the two police units, are not closely comparable to these employees because their wages are much higher. In fact, wage for patrol officers exceed those of firefighters across the board, ranging from $5,000 to $13,000, annually. Comparing engineers to sergeants, the gap is $10,000 to $12,000, annually, in the sergeants' favor.

Moreover, the evidence does not suggest that the fire and police units have been in anything approaching lock step in terms of insurance contributions. Indeed, the police units have been contributing 15% toward dental premium since 2006, while fire employees have not contributed anything for dental since 2001. Additionally, the Village offered the police units an option to reopen negotiations to propose changes to the health insurance plans to reduce premium cost. The Village did not make a similar offer to this unit. The circumstances are similar to

what was presented to this Arbitrator in Village of Broadview, S-MA-13-173, wherein it was written, at pp. 26-27:

> Internal comparability does not save the Village's proposal. To begin, a majority of arbitrators, including this one, give more weight to internal comparability in insurance matters where benefits are at issue, than they do as to issues of employee contributions. See, City of Carlinville and PBLC, S-MA-11- 307 (Goldstein, 2012). It also appears from the evidence in this record that the other bargaining units in this Village, most notably the firefighters and the Sergeants, voluntarily gave up whatever contribution caps they had, as a matter of arms-length bargaining. This is an important distinction, as the Arbitrator previously discussed. Finally, the record shows that the Village has already entered into agreements with the other unions, which contain contribution requirements that differ not only with what is proposed here, but also differ vis-à- vis each other. It appears that internal consistency, as the Union termed it, is not exceedingly important to the Village, at least as to the employees' costs for the insurance provided

The Union further points out that its members accepted 2.0% wage increases, each year of this Agreement, beginning May 1, 2011. The impact of the Village's proposal here would be the immediate elimination of the wage increases that any member enrolled in Family coverage under the PPO received in 2015 and 2016, combined – in fact, the member would lose $162.80 off of base pay. Member enrolled in Family coverage under the Blue Advantage HMO would receive a total increase for 2015 and 2016, combined, of $162.80. These figures take into account only the cost of health insurance. This effect of the Village's proposal, the fact that it would "swallow-up most of all of the employees' annual wage increases," is yet another reason to reject it. See, County of Jefferson, S-MA-06-030 (Meyers, 2006), at pp. 16-17.

The Union adds that its agreed-to wage increases are already below the averages received by fire units among the comparables, on a percentage-to-percentage basis. Those averages were 3.23% for 2011, 2.62% for 2012, 2.39% for 2013, 2.05% for 2014, 2.44% for 2015, and 2.25% for 2016. Clearly, the effect of the Village's proposal would be to drop the actual increases received by this unit even farther behind those of the comparables.

Position of the Village:

The Village concedes that the Union's position is likely to prevail if the Arbitrator views insurance as a stand-alone issue. If, on the other hand, he considers the economic context, the economic war for survival (previously discussed above), then internal comparability will be revealed as singularly dispositive of the issue.

The Village again states that it does not raise a defense of inability to pay with respect to either of the issues presented here. However, it is in a financial crisis that must be met by concerted response from the Village and each of the various groups of its employees. For its part, the Village has done much to drive down the overall cost of insurance, to the extent that, for example, the employee's annual contribution for Family coverage under the PPO plan went from $5,910, in 2013, to $4,478, in 2015, effectively a wage increase of 2.15% for a firefighter at top pay. These savings are not enough to turn things around for the Village,

financially. The Village now needs for the employees to step up and bear more of financial burden.

The Village Administrator, Stan Urban, appealed to all of the unions during the last round of negotiation to accept that "we are in this together." Many of the Village's labor contracts were then in a "multi-year gridlock" and the Village needed "a bone" from the unions, solidifying the "employer-employee partnership," in order for the Village to address the unions' demands for wage increases. Urban emphasized during negotiations that the Village's proposed increase to employee contributions to insurance was intended as a "buy-in into the new partnership; let's help build Dolton together." All of the other unionized employee groups have now agreed to increase their contributions to 20% of premium, effective May 1, 2016.

The question before the Arbitrator is, in essence, whether the Village's economic crisis, combined with the fact that all other employee groups have agreed to shoulder a greater burden for their insurance, albeit in order to obtain market-comparable wage increases, are enough to distinguish the circumstances of this case from those found by this Arbitrator in Village of Broadview, S-MA-13-173. The Village contends that given the context a consideration of various Section 14(h) factors, including the "interest and welfare of the public," "overall compensation," and "such other factors" as arbitrators typically consider in arbitration, should lead the Arbitrator to distinguish this case from Village of

Broadview and to decide this case with an eye to maintaining parity among the employee groups as to insurance contributions. Indeed, the undisputed record shows, again in contrast to what the Arbitrator found in Village of Broadview, S-MA-13-173, at p. 27 ("It appears that internal consistency, as the Union termed it, is not exceedingly important to the Village, at least as to the employees' costs for the insurance provided"), that maintaining this internal parity is exceedingly important in the view of this Village.

Discussion:

The parties are correct, in this Arbitrator's view, the discussion in Village of Broadview, S-MA-13-173, is fairly on point for purposes of this case. There, the employer proposed to eliminate a long-standing cap on employee premium contributions, under circumstances that included recent declines in overall premium costs. There appears to be good reason for this Arbitrator to again view Arbitrator Edwin Benn's decision, in Village of Oak Brook and IBT, Local 714, S-MA-96-73 (Benn, 1996) (finding that the employer's proposal to implement a new employee contribution requirement for insurance was not supported by evidence of any adverse claims experience or increased premium costs and, therefore, lacked "a rational factual basis), as persuasive.

There are also circumstances here that distinguish this case, factually, from both Village of Broadview and Village of Oak Brook. The Arbitrator notes that the proposals in those other cases were designed to meet any immediate need of the

employer. In Village of Oak Brook, S-MA-96-73, the employer's proposed a very modest employee contribution requirement, not for purposes of shifting the financial burden from the Village but, rather, in order to give the employees an "ownership interest" in their coverage, which, the employer suggested, would lead the employees to be prudent in deciding how they utilized those benefits. In Village of Broadview, S-MA-13-173, the employer proposed to eliminate the employees' long-standing cap on contributions, not because raising the cap was necessary due to increased premiums – in fact, premiums were decreasing and this Arbitrator was persuaded that the existing cap would not likely have an effect on contributions during the term of the agreement – but, rather, simply to bring the employees' contribution requirement more in line with what the employer's other unionized employees had agreed to. Here, in contrast, the Village proposes to raise the employees' contributions because it believes that a further shifting of the cost of insurance to the employees is warranted in the face of the Village's war for economic survival. The Arbitrator thus appreciates that this Village has a more practical and immediate basis for its proposal than did the employers in the other cases. However, the Arbitrator does not consider this distinction to be enough to save the Village's proposal.

This Arbitrator again notes, as he has on many occasions, that interest arbitration is essentially a conservative process. In Village of Broadview, S-MA-13-173, at pp. 25-26, he reasoned:

> . . . The parties may themselves agree to whatever changes they wish regarding the terms of their contract, and may anticipate and provide for potential changes in the market, or, as this Arbitrator has seen much of late, anticipated effects of looming regulatory problems, i.e. the "Cadillac Tax" under the Affordable Care Act, as they see fit, without regard to whether the present circumstance suggest a present factual basis for the change. Such arrangements and rearrangements of existing contract provisions are part and parcel of the give and take of collective bargaining. An arbitrator, on the other hand, should impose changes in the parties' contract only where there exists a real and present, or at least probable and imminent, reason for doing so. . . .

While the Arbitrator appreciates the Village's economic difficulties coming out of the Great Recession, he can ignore neither the evidence of recent, and continuing, declines in the Village's overall costs for insurance, nor the lack of evidence that a continuation of the employees' existing contribution rates will pose a real and present danger to the Village's financial condition or, conversely, that increasing those contribution rates will significantly improve that condition.

On the other hand, the Union wisely points out that the 2.0% increases that these employees have been receiving since 2011 have been behind the average among the comparables each of those years. It seems to the Arbitrator that Arbitrator Peter Meyer's consideration of the effect of the employer's proposal to increase employee healthcare contribution rates on "overall compensation," in County of Jefferson and Illinois FOP Labor Council, S-MA-06-030 (Meyers, 2006), and his stated concern in that case that the effect might be to "swallow up most or all of the employees' annual wage increases," carries some persuasive weight in the circumstance of this case. It seems to this Arbitrator that the Village,

having effectively made economic gains by a period of relatively low wage increases for its firefighters and declining healthcare costs, should be required to bargain with the Union for further gains, for the reasons that the Arbitrator previously discussed. The evidence in this record regarding the Village's financial condition simply does not suggest that the Village will be unduly burdened by the instrumentalism of the bargaining table.

Internal comparability does not really help the Village's position. Although the Arbitrator finds that parity has existed as to contributions for health insurance since 2006, the same is not true for all insurance. The record does not suggest that maintaining a lock-step relationship between all employees of the Village as to insurance contributions, or contribution rates, has been a paramount goal of the Village, or one that has been fully accepted by the Union. Moreover, the evidence in this record shows that the other bargaining units in this Village, most notably the police and the sergeants, voluntarily agreed to increase their contribution rates, as a matter of arms-length bargaining. This is an important distinction, as the Arbitrator previously discussed. The parties will be returning to the bargaining table shortly, which is an important consideration in this Arbitrator's view.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the Village's with respect to the issue of employee contributions to health insurance. Accordingly,

the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article XIV – Insurance, Section 14.2 – Cost (Healthcare) is adopted. It is so ordered.

Article XIV - Insurance, Section 14.2
Cost (Dental)

The Union's Final Proposal

Status Quo

The Village's Final Proposal

Add:

> "Effective May 1, 2016, Employees shall pay TWENTY (20%) PERCENT of the premium cost for dental insurance."

Position of the Union:

The parties' respective arguments regarding the dental component of the Village's proposals are largely based on the arguments stated above relating to the healthcare component. The Union adds, specifically as to dental coverage, that the Village's proposal is, "without question, a breakthrough item," as these employees have not contributed anything to dental coverage since 2001. The Union quotes from Arbitrator Robert Perkovich's award, in Village of LaGrange and Illinois

Fraternal Order of Police Labor Council, S-MA-11-248 (Perkovich, 2012) at 4, as follows:

> The "breakthrough" analysis requires that I determine whether there is a substantial and compelling need for the change, whether the *status quo* has failed, whether the *status quo* has caused inequities, whether the party opposing the change has resisted without justification, and whether the proponent of the change has offered a sufficient *quid pro quo*.

The Union suggest that the Village has not shown a compelling need for the change it seeks, i.e. that the status quo has failed, or that the Union has, without reasonable justification, stonewalled its effort to bargain for the change. In fact, the Village has not even shown that the contribution requirement that it seeks is supported by any of the external comparables.

The Union also points out that while its members have not contributed to dental insurance coverage since 2001, the police and Sergeants units have been contributing to dental since 2006. It thus "appears that internal consistency, as the Union termed it, is not exceedingly important to the Village, at least as to the employees' costs for the insurance provided." Village of Broadview, S-MA-13-173, at p. 27.

Position of the Village:

The Village adds, with respect to its proposal to implement a contribution requirement for dental insurance for these employees, that the status quo, by which these employees contribute nothing to dental coverage while all other Village employees will contribute at the rate 20%, is simply inequitable. Had the Union

proposed some contribution requirement for its members, this might have been a much closer case. However, the choice for the Arbitrator is between some contribution requirement and no contribution requirement. The proposal for some contribution requirement is the more fair and reasonable one.

Discussion:

The Arbitrator will award the Union's proposal on this issue for substantially the same reasons he awarded the Union's proposal regarding the healthcare issue. Additionally, this Arbitrator finds that the lack of parity between the bargaining units on this issue is the product of arms-length bargaining. It may be true that revisiting the issue and closing the existing contribution gap, or eliminating it altogether, is a good idea. However, the fact that a proposal may embody a good idea is not a sufficient basis for drastically changing the status quo through the interest arbitration process. See, City of Highland Park, S-MA-09-273 (Benn, 2013), at p. 5. The Arbitrator again suggests that the Village can revisit the issue when the parties return to the bargaining table.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the Village's with respect to the issue of employee contributions to dental insurance. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article XIV – Insurance, Section 14.2 – Cost (Dental) is adopted. It is so ordered.

X. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

John C. Fletcher, Arbitrator

Poplar Grove, Illinois, February 14, 2016