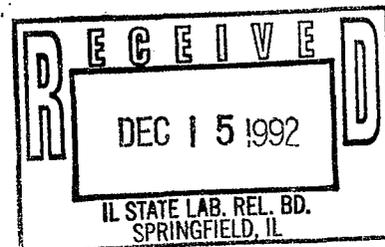


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AWARD OF ARBITRATOR



In the Matter of Interest Arbitration
between the
Village of Barrington
and the
Illinois Fraternal Order of Police
Labor Council

Findings of Fact
and
Decision
by
Arbitrator
Peter Feuille
in
ISLRB No. S-MA-91-006

Date of Award: December 14, 1992

APPEARANCES

For the Employer:

Mr. James Baird, Attorney

For the Union:

Mr. Thomas F. Sonneborn, Attorney

BACKGROUND

The Village of Barrington ("Village" or "Employer") operates the Barrington Police Department ("Department"). About 23 of the Department's sworn police officers (those in the ranks of patrol officers and corporals) are in the collective bargaining unit that is exclusively represented by the Illinois Fraternal Order of Police Labor Council ("Union").

During the period from August 11, 1987 through November 30, 1990 this unit was covered by a collective bargaining agreement negotiated by the parties, and this was the first contract in this unit. During the period from October 1990 through May 1992

the parties negotiated diligently for a successor contract, and they reached agreement on several issues. However, the parties also reached impasse on several other issues. As a result, the parties took this impasse to interest arbitration as provided in Section 14 in the Illinois Public Labor Relations Act ("Act"). Specifically, the parties selected, and on May 20, 1992 the Illinois State Labor Relations Board ("ISLRB") appointed, the undersigned as the Arbitrator in this impasse. In addition, the parties elected not to appoint their own delegates to a tripartite arbitration panel, thereby giving the Arbitrator the authority to rule as an individual arbitrator, and the parties also waived the requirement that any hearing in this matter commence within 15 days of the Arbitrator's appointment.

By mutual agreement, the parties and the Arbitrator agreed to hold an informal pre-hearing conference on June 18, 1992 in Barrington for the purpose of exploring the unresolved issues. This conference was held on that date beginning at 11:00 a.m. and it concluded at about 4:00 a.m. on the next day (June 19). During this conference the remaining unresolved issues were explored and the parties reached a "Tentative Agreement" which specified the negotiated resolutions they reached on all of the unresolved issues. This Tentative Agreement ("TA") was expressed in writing as drafted by the Arbitrator, and it was signed by the parties' representatives. One of the items in this TA was health insurance (specifically, "Section 18.2 - Cost of Insurance", which specifies how the health insurance premiums will be paid).

As discussed more fully below, the parties agreed in this TA that Section 18.2 would be modified. This TA was then ratified by both parties with the exception of this health insurance item.

During the contract drafting process disagreements arose on selected items, including the health insurance item. However, these disagreements were resolved by August 24, 1992 except for the disagreement on the health insurance item. As a result, the parties agreed to implement their new 1992-94 collective bargaining agreement (covering the period from August 24, 1992 through April 30, 1994) except for Section 18.2 in this new contract, which remains in dispute. In other words, the parties have not been able to agree on the new language that will be added to Section 18.2.

As a result, the parties agreed to submit for arbitral resolution their dispute on this issue, as framed below. Consistent with the authority given to the parties by Section 14(p) of the Act, the parties stipulated that this matter will be presented to the Arbitrator by submission rather than through a face-to-face hearing. As a result, the parties have submitted to me (1) a "Stipulated Submission of the Parties' Dispute Regarding Health Insurance Costs" ("Stipulation") containing various stipulated facts and procedures, (2) the Tentative Agreement reached on June 18-19, 1992, (3) the predecessor contract, (4) the new contract with Section 18.2 left blank, (5) the final offers of the parties, and (6) a brief containing the supporting arguments of each party. These documents constitute the record

used in this arbitration proceeding. In their Stipulation, and consistent with the authority given to the parties by Section 14(p) of the Act, the parties also agreed:

(13) That the Arbitrator's ruling shall be based upon the following:

- (a) the written terms of the "Tentative Agreement" executed on June 19, 1992, . . . ;
- (b) the provisions of the predecessor labor agreement, . . . ;
- (c) the provisions [of] the labor agreement, . . . ;
- (d) the Arbitrator's personal recollections of the negotiations which occurred on June 18 and 19, 1992 and his understanding of the meaning, interpretation and application of the Tentative Agreement [reached] on that date pertaining to Section 18.2;
- (e) the terms of this Stipulation and the mediator's own knowledge of the matter;
- (f) the final offers concerning appropriate language for Section 18.2, Cost of Insurance, as submitted by each side to the other and to the Arbitrator by postmark dated no later than five (5) days after the signing of this Stipulation by both parties; (Stipulation, pp. 4-5).

In addition, the parties also stipulated that this is an economic issue and therefore I must select either the final offer of the Union or the final offer of the Employer. The parties reiterated their waiver of the tripartite arbitration panel format, and they further agreed that the decision in this matter must be postmarked no later than 60 days from October 19, 1992, or by December 18, 1992.

STATEMENT OF IMPASSE ITEM

The parties have stipulated that the only issue to be decided by the Arbitrator is the health insurance issue, as expressed in these two paragraphs:

(10) That Section 18.2, Cost of Insurance, of the new labor agreement does not include any language but, rather, it is agreed that the Tentative Agreement reached between the parties on June 18-19, 1992 will be submitted to Arbitrator Peter Feuille for a decision as to which party's final offer most closely reflects the meaning, interpretation and application of the matters agreed to on June 18-19, 1992 pertaining to Section 18.2, Cost of Insurance;

(11) That the parties' dispute regarding Section 18.2, Cost of Insurance, centers on the following issue: Whether the employee portions of the costs of health insurance for the entire period of the successor labor agreement are capped at the specific dollar amount in effect on the date the rest of the contract was signed by the parties (August 24, 1992), as claimed by the Union, or whether such costs are capped only by the existing formula contained in the successor labor agreement, Section 18.2, as contended by the Village; (Stipulation, pp. 3-4).

FINAL OFFER AND POSITION OF THE UNION

The Union's final offer is framed as follows:

Section 18.2. Cost. The Village shall continue to pay the lesser of one hundred percent (100%) or \$72.50 per month for single coverage and one hundred percent (100%) or \$225.70 per month for employee and dependent coverage for Village provided insurance coverage or health maintenance organization (HMO) coverage. Any increase in the cost of such insurance beyond those amounts shall be paid eighty percent (80%) by the Village and twenty percent (20%) by the employee.

Employees will pay toward their health insurance premiums the lesser of their current premium contributions or the amount of premium contributions paid by other Village employees. (emphasis added).

The Union emphasizes that the instant dispute has its origins in the negotiations for the 1987-90 contract. At that time the Union agreed to the Village's demand for the 80-20 cost

sharing formula contained in the second sentence of Section 18.2 on the grounds that this same formula would be applied to other Village employees. However, during the life of the predecessor contract this cost-sharing arrangement was not extended to other Village employees, leaving the members of the instant unit noticeably worse off on the health insurance premium contribution dimension. Accordingly, in the instant negotiations the Union adamantly insisted upon the elimination of this invidious treatment on the health insurance issue, no ifs, ands, or buts.

At the June 18-19 mediation the Employer proposed that the Village would pay the same for health insurance for this unit's members "as is done for all other Village employees." Eventually, at the conclusion of the mediation the parties agreed to the following item 17 in the Tentative Agreement:

17. Section 18.2 Cost of Insurance

Contract will be changed to say that employees will pay toward their health insurance premiums the lesser of their current premium contributions or the amount of premium contributions paid by other Village employees. (TA, p. 5).

The Union insists that its offer seeks only to implement in the contract the bargain the parties made in their June 18-19 mediation. The Tentative Agreement expresses rather explicitly the terms the parties agreed to during this lengthy mediation, and the Union's offer also is explicitly based on this Tentative Agreement language. This TA places a cap on the amount that employees in this unit will pay for health insurance, and it also says that unit members will pay less than that amount if other

Village employees pay less. Simply put, in their mediated negotiations the parties agreed that the employees would pay the lesser of their current contributions or what other Village employees were paying, and that is all the Union's offer seeks to include in the new contract. Nothing more, nothing less.

The Union says that the parties included in their new 1992-94 contract the exact language that was written up in the Tentative Agreement on almost all the other issues contained in the TA. The Union insists that this same deference to the TA language should apply here. Using this criterion, the Union says that its offer faithfully reflects the parties' bargain as expressed in the TA, but that the Employer's final offer is hopelessly misplaced. The Employer's offer contains language that strays far afield from the TA language, and thus there is no basis for its adoption.

The Union agrees with the Employer that the 80-20 cost sharing formula contained in the last sentence of Section 18.2 in the predecessor contract was not discussed during the negotiations, and the Union agrees with the Employer that the TA (in item 26) specifies "that items unchanged in the 1987-90 contract will be carried forward unchanged into the new contract." However, the Union says that it is not necessary to eliminate the 80-20 formula from the contract in order for its offer to be implemented. In their mediated negotiations the parties agreed to a cap on the employee's contributions for

health insurance, and the Union's offer seeks only to implement that bargained-for cap.

In sum, the Union says that the parties made a deal in their mediated negotiations. This deal included a cap on the amount that employees would be required to pay toward their health insurance for the period that this new contract is in effect. The Union says that the best indicator of the parties' intent when they negotiated this deal is the language in item 17 of the TA. The Union's offer is explicitly and expressly faithful to this TA language, and as such the Union seeks to have Section 18.2 in the new contract be faithful to the terms bargained last June. In contrast, the Village's offer departs significantly from what was bargained. As a result, the Union's offer should be selected and the Village's offer rejected.

FINAL OFFER AND POSITION OF THE EMPLOYER

The Employer's final offer is framed as follows:

Section 18.2. Cost. The Village shall continue to pay the lesser of one hundred percent (100%) or seventy-two dollars fifty cents (\$72.50) per month for single coverage and one hundred percent (100%) or two hundred twenty-five dollars seventy cents (\$225.70) per month for employee and dependent coverage for Village-provided insurance coverage or health maintenance organization (HMO) coverage. Any increase in the cost of such insurance beyond those amounts shall be paid eighty percent (80%) by the Village and twenty percent (20%) by the employee. However, if other Village employees are given the opportunity to pay a lesser amount of monthly insurance premiums for such insurance than those stated above, then such lesser amounts shall likewise be charged to bargaining unit members under this Article and Agreement. (emphasis added).

The Employer first argues that the Union's final offer was untimely submitted and thus cannot be considered or selected by

the Arbitrator. Specifically, the Employer notes that Paragraph 13(f) of the Stipulation requires that each party's final offer must be submitted by postmark dated no later than five days after the signing of the Stipulation. The Stipulation's signing was completed on October 19, 1992, and the Union's final offer was postmarked on October 27. The Employer insists that this untimely submission renders the Union's final offer beyond the reach of the Arbitrator's authority. As a result, the Employer's offer is the only valid offer which can be selected to resolve this dispute.

If the Arbitrator considers both offers on their merits, the Employer insists that the evidence supporting the selection of its offer is overwhelming. During the lengthy June 18-19 mediation session, the Employer notes that it agreed early on to the principle being adamantly sought by the Union, namely, that unit members would no longer be paying more for health insurance than other Village employees. Indeed, health insurance was not one of the issues that stretched out this mediation session until the early morning hours of June 19.

The Employer insists that it agreed only to a "me-too" health insurance provision for this unit to insure that this unit's members would no longer be required to pay more for health insurance than other Village employees. At no time was there any proposal or discussion with the Village to eliminate the 80-20 cost sharing formula in Section 18.2, nor was there any proposal or discussion with the Village to include a fixed-dollar cap on

the employees' health insurance contributions. Indeed, the parties included language in the TA (item 26) that explicitly calls for carrying forward unchanged into the new contract all unchanged language from the old contract--such as the second sentence of Section 18.2, and the parties stipulated that during the mediation the Union never discussed or proposed the elimination of the 80-20 formula from Section 18.2 (Stipulation, Paragraph 12).

However, the Employer says that the Union now seeks through arbitration that which it was unable to obtain in bargaining, namely, the elimination of the 80-20 formula. The Employer says that it bargained hard for that formula language in the negotiations for the predecessor contract, that there was never any discussion in the instant negotiations or mediation of the elimination of this 80-20 formula, and thus there is absolutely no basis for the selection of any offer that would achieve a Union objective that was never bargained for. The Employer says that it is well settled in interest arbitration that the burden of persuasion is on the party that seeks a new benefit that departs from the existing array of benefits that the parties have previously negotiated. The Employer insists that in this set of circumstances it is impossible for the Union to satisfy its burden of persuasion.

In addition to the fact that there was never any discussion of the elimination of Section 18.2, the language of item 17 in the TA clearly was not intended to be the literal language

adopted in the new contract. This intent can be seen in the wording of TA item 17 dealing with the cost of insurance, which in turn is reinforced by TA item 28's reference to "the completion of the ratification and contract drafting processes." The Employer further supports this claim by noting the reference in TA item 24 to the establishment for unit members of the same type of Section 125 plan (to pay insurance premiums with pre-tax dollars) as is being established for other Village employees. The Employer says that the wording of TA item 24 allowed it to avoid the adoption of a Section 125 plan for this unit by simply not adopting such a plan for any other Village employees. Instead, the Employer followed through with the parties' clear intent of TA item 24 and adopted such a plan via a newly-worded contractual Section 18.7 that contains language regarding a Section 125 plan that appears nowhere in the TA. The Employer says that its Section 18.2 offer seeks to do the same thing, namely, implement the parties' intent to have unit members pay no more for their health insurance than other Village employees pay.

The Employer also argues that if the parties had mutually intended to adopt the Union's sought-after fixed-dollar cap on the employees' health insurance contributions, the parties never would have allowed the 80-20 cost sharing formula to remain in the contract. These two concepts have an extremely difficult time coexisting cheek-by-jowl in the same paragraph.

In sum, the Employer says that its final offer seeks to implement the clear intent of the bargain that was reached on

June 18-19 and then drafted in sketchy language in a complicated document by the Arbitrator in the early morning hours at the conclusion of a very lengthy mediation session. In contrast, the Union's untimely submitted final offer seeks a health insurance benefit that goes well beyond the parties' bargain. As a result, the Employer's offer should be selected and the Union's offer rejected.

ANALYSIS, OPINION, AND FINDINGS OF FACT

This is a very unusual Section 14 interest arbitration proceeding. As noted, both parties thought they had reached a negotiated resolution of their impasse. However, it became apparent during the contract drafting process that the parties had not reached agreement on the wording of Section 18.2 regarding how the health insurance premiums would be paid. Accordingly, the parties have submitted this dispute to me for an arbitrated resolution pursuant to Section 14 of the Act, as modified by the parties in their Stipulation. Among other things, the parties have waived a tripartite interest arbitration panel, the parties have agreed that the dispute issue is an economic issue within the meaning of Section 14(g) of the Act and therefore I am limited to selecting the final offer of one party or the other, and the parties have specified the decision factors or criteria that I must use.

It is necessary to first address the untimely submission issue raised by the Employer. The evidence does not support the

Employer's claim that the Union's final offer is invalid because it was not submitted within the five day period specified in Paragraph 13(f) of the Stipulation. First, it is readily apparent that the parties have adopted what may charitably be described as an unhurried timetable regarding the resolution of this health insurance dispute. For instance, I note that the parties' new contract was not executed until August 24, more than two months after the June 18-19 mediation session. Then, although the parties were well aware of their dispute on this issue long before August 24, they did not complete their Stipulation for submission of this dispute to the Arbitrator until October 19, or four months after the mediation. Next, the final brief did not arrive at the Arbitrator until November 23, more than five months after the mediation session. To top it off, these post-mediation events occurred as the conclusion of negotiations that began in October 1990! Is there anything in this timetable to support a conclusion that the parties intended that they would follow a tight-and-strictly-enforced timeline in the submission of this dispute to the Arbitrator? No.

Second, there was no harmful error or disadvantage of any kind suffered by the Employer as a result of the fact that the Union's final offer was submitted a few days beyond the date called for in Paragraph 13(f) of the Stipulation. Third, there is no evidence of any kind that the parties intended that the untimely submission of a final offer in this proceeding would suffer the same shall-be-considered-waived fate as an untimely

filed grievance pursuant to the explicit language in Section 6.5 of their contract. When all these dimensions are considered, there is no persuasive basis for disqualifying the Union's offer from consideration on its merits. Accordingly, we proceed to the merits.

As can be seen in the framing of the parties' final offers, neither party is proposing to delete any existing language from Section 18.2. Expressed another way, the first two sentences of Section 18.2 in both offers simply carry forward the existing Section 18.2 language (with modest grammatical changes adopted in the Employer's offer, none of which have any impact on the substance of that part of its offer). However, the parties have proposed different third sentences for Section 18.2 (expressed in boldface above), which may have quite different impacts. The resolution of this dispute, then, comes down to which party's proposed third sentence "most closely reflects the meaning, interpretation and application of the matters agreed to on June 18-19, 1992 pertaining to Section 18.2, Cost of Insurance" (Stipulation, Paragraph 10).

Pursuant to the parties' Stipulation, I find that there are four critical facts upon which the decision in this matter must be based. The first of these is TA item 17 which addresses Section 18.2. As the drafter of that language, I can state unequivocally that TA item 17 was never intended to be, and was never, ever portrayed to the parties as, the literal language that would be adopted in the new contract. Similarly, there was

never any expression to me by any of the parties' negotiating representatives during the June 18-19 mediation session that they understood TA item 17 to be the actual language that would be adopted into the next contract. Moreover, this interpretation of TA item 17 is quite consistent with several other TA items, namely, that these TA items were not drafted as the actual language that would be adopted into the parties' new contract, and the parties clearly understood that several of these TA items did not represent actual contract language. Indeed, TA item 28 clearly contemplates contract drafting work that needed to be done after the June 19 signing of the TA.

This conclusion is reinforced by the second critical fact, namely, my recollections of what occurred during the June 18-19 mediation session. It was readily apparent at that session that the Union's objective was to eliminate the invidious treatment unit members had experienced relative to other Village employees on the health insurance contribution issue. It also was readily apparent that the Employer was prepared to agree to the Union's objective, and indeed the Employer extended such an offer during the Employer's opening statement at the beginning of this mediation session. As a result, there was only modest discussion of this issue during the balance of the 17-hour session. In particular, the final and most intense rounds of offers and counteroffers during the mediation session focussed heavily on wages and wage-related issues, and health insurance was barely mentioned. In addition, there was never any discussion at any

time in my presence of the adoption of any sort of fixed-dollar cap on the employees' health insurance contributions. Instead, it was readily apparent on June 18-19 that the parties mutually understood that they had agreed that unit members would no longer pay more for their health insurance than other Village employees paid. To the extent that the parties intended to place a cap on unit members' health insurance contributions, that cap would be the amount that other Village employees paid. Expressed another way, TA item 17 was drafted to give the unit members the intended more employee-favorable health insurance contribution arrangement to the same extent that other Village employees enjoyed a more favorable contribution arrangement.

But what about the "lesser of their current premium contributions or the amount of premium contributions paid by other Village employees" wording of TA item 17? Does that terminology require the selection of the employee contribution cap sought by the Union in its offer? There is no question that the Union's offer can be read as being consistent with TA item 17, standing alone. However, that conclusion cannot be reached here because TA item 17 does not stand alone. In particular, the third critical fact is that the parties never discussed the elimination of the 80-20 cost sharing formula in Section 18.2, as they have stipulated. However, the selection of the Union's final offer would clearly have the effect of reading that 80-20 formula out of the contract. Given the importance of that formula to how the health insurance premiums would be paid, there

is no persuasive basis for the adoption of a final offer that would have the effect of nullifying a key element of the parties' already-existing health insurance bargain that was never, ever discussed in the instant mediation. Expressed another way, sentences as vital to the distribution of health insurance premiums as the second sentence in Section 18.2 can be stricken from a contract, but such elimination must be done directly by an affirmative decision (i.e., through the front door) rather than indirectly by negotiating silence (i.e., through the back door).

This conclusion also is reinforced by the fourth critical fact, namely, that the parties explicitly agreed in TA item 26 that items unchanged in the old contract would be carried forward unchanged into the new contract. One item that was unchanged (as noted, it was never even discussed) was the 80-20 formula in Section 18.2. As a result, that 80-20 cost sharing formula must be carried forward into the new contract and given effect.

As a result, the wording of TA item 17, which was drafted near the 4:00 a.m. conclusion of a 17 hour mediation session, does not express with pinpoint clarity the intent of the bargain the parties reached on the health insurance contribution issue on June 18-19. However, as noted above this TA item 17 was never intended to serve as the actual contract language in Section 18.2 of the new contract. Consequently, there is no persuasive basis for using the literal language of TA item 17 as the exclusive basis for the selection decision reached here.

When all of these facts are considered together, they provide strong support for the selection of the Employer's offer and modest support for the Union's offer. These facts indicate that the Employer's offer is more faithful to the intent of the parties' health insurance bargain that was reached on June 18-19 than is the Union's offer. The Employer's offer does what the parties agreed to do at their June 18-19 session, namely, give the unit members the "me-too" protection that the Union sought while at the same time giving effect to the 80-20 formula that the parties retained in Section 18.2. The Employer's offer accomplishes both of these objectives, but the Union's offer does not. As noted, there simply is no persuasive evidence that the parties intended to eliminate the 80-20 formula. As a result, there is no persuasive basis for the adoption of the Union's offer.

The adoption of the Employer's offer means that the unit members will share in the future increases in health insurance premiums on an 80-20 basis as required by Section 18.2--provided that other Village employees also share in these premium increases by the same amounts. If other Village employees are not required to share in future premium increases, or are required to share but at a lesser amount, then that same more employee-favorable arrangement must be made immediately available to this unit's members. In other words, the Employer's proposal guarantees that unit members will no longer be invidiously

treated relative to other Village employees on the health insurance contribution issue.

Therefore, using the decision criteria that the parties have instructed me to use, I find that the Employer's offer is the offer that should be selected to resolve this dispute.

AWARD

Using the authority vested in me by Section 14 of the Act and by the parties' Stipulation, and based on the foregoing findings of fact, I find that the Employer's offer on Section 18.2, Cost of Insurance is more strongly supported by the applicable decision factors that is the Union's final offer. Therefore, the Employer's final offer is selected to resolve this dispute.

Respectfully submitted,



Peter Feuille
Arbitrator

Champaign, Illinois
December 14, 1992