

AWARD OF ARBITRATOR

In the Matter of Interest Arbitration
between the
City of Belleville ("City")
and the
Illinois Fraternal Order of Police
Labor Council ("Union")

Findings of Fact
and
Decision
by
Arbitrator
Peter Feuille
in
ISLRB No. S-MA-92-54

Date of Award: June 17, 1992

APPEARANCES

For the City:

Mr. Ivan L. Schraeder, Attorney

For the Union:

Mr. Thomas F. Sonneborn, Attorney

BACKGROUND

The City of Belleville ("City" or "Employer") operates the Belleville Police Department ("Department"). About 60 of the Department's sworn police officers (those in the ranks of patrol officer and sergeant) are in the collective bargaining unit which is exclusively represented by the Union.

During the period from May 1, 1988 through April 30, 1991 this unit was covered by a collective bargaining agreement negotiated between the City and another labor organization. This 1988-91 contract contained a health insurance article (Article XVI) which provided for health insurance coverage for

"commissioned police officers and their dependents," and also for health insurance coverage for retirees and their widows, with these two groups addressed in separate sections of this article.

During April-May-June 1991 this other labor organization was decertified, and the Union was certified, as this unit's exclusive bargaining representative. During the remainder of 1991 and early 1992 the City and the Union negotiated for a successor contract, and they reached agreement on several issues. However, the parties also reached impasse on several other issues. As a result, they took their impasse to interest arbitration as provided in Section 14 of the Illinois Public Labor Relations Act ("Act"). Specifically, the parties selected, and on January 31, 1992 the Illinois State Labor Relations Board ("ISLRB") appointed, the undersigned as the Arbitrator in this interest negotiation 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 all requirements 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 April 16, 1992 in Belleville for the purpose of exploring the unresolved issues. This conference was held on that date, the remaining unresolved issues were explored and discussed, and the parties reached a "Tentative Agreement" which specified the negotiated resolutions

they reached on all of the unresolved issues. This "Tentative Agreement" was expressed in writing as drafted by the Arbitrator, and it was signed by the parties' negotiating representatives. One of the items in this Tentative Agreement was health insurance.

The parties agreed in their April 16 negotiations that the cost of health insurance coverage for employees would be paid by the City, and they also agreed that the health insurance premium cost increases for dependent coverage scheduled to take effect on May 1, 1992 would be absorbed on a 50-50 basis by the City and "each employee with such coverage" (i.e., under the 1988-91 contract the City paid 100 percent of the premiums for employee and dependent coverage). The amount of premium contribution that each employee with such coverage would be required to pay was \$27.49 per month (Tentative Agreement, item 7, p. 4). The parties also agreed in these April 16 negotiations that "all items unchanged in these negotiations from the 1988-91 contract shall be continued unchanged in the 1991-93 contract" (Tentative Agreement, item 14, p. 9).

On April 17, 1992 the members of the bargaining unit voted to ratify this Tentative Agreement, and sometime thereafter the City formally ratified this Tentative Agreement. Sometime after the ratification process was completed the parties' representatives began the process of preparing the precise contract language that would appear in the final draft of the parties' new contract, which new contract would run from May 1, 1991 through April 30, 1993. During this contract language drafting process a dispute

arose over an aspect of health insurance. Specifically, and as indicated below in the stipulated impasse issue, the parties found that they did not agree on whether the terms of their agreement on health insurance would be extended to those individuals who had previously retired from the Belleville Police Department prior to April 16, 1992.

To resolve this health insurance dispute, the parties have submitted their impasse on this issue to this Arbitrator for resolution. Consistent with the authority given to the parties by Section 14(p) of the Act, the parties agreed 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 Retirees' Health Insurance Costs" ("Stipulation," "Stip") containing various stipulated facts and procedures, (2) the Tentative Agreement reached on April 16, 1992, (3) the predecessor contract, and (4) the final offers and supporting arguments of the parties. These four documents constitute the entire 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:

(7) That the parties agree that the Arbitrator's ruling shall be based upon the following:

(a) The written terms of the "Tentative Agreement" executed on April 16, 1992, . . . ;

(b) The provisions of the predecessor labor agreement, . . . ;

(c) The Arbitrator's personal recollections of the negotiations which occurred on April 16, 1992, and his understanding of the meaning, interpretation and application of the terms of the Tentative Agreement reached on that date;

(d) The position statements of the parties,
(Stip, pp. 4-5).

STATEMENT OF IMPASSE ITEMS

The parties have stipulated that the only issue to be decided by the Arbitrator is:

Whether the terms of the "Tentative Agreement" regarding the increased costs of the health insurance for the term of the new agreement are applicable to those persons who have previously retired from employment with the City of Belleville Police Department? (Stip, p. 2).

The parties also have stipulated that this matter is properly before the Arbitrator.

FINAL OFFER AND POSITION OF THE CITY

The City's final offer is that the premium cost-sharing language applies to all employees regardless of active or retired status, and thus this language requires all employees regardless of their active or retired status to pay their share of the dependent coverage premium as of May 1, 1992. The City says that it was the moving party on this issue, that it always intended that this premium cost-sharing would apply to all persons receiving such coverage, that it never differentiated during the negotiations between active employees and retired members, and that the Union similarly never differentiated between active employees and retirees either. It was always clear to the City

that the premium cost-sharing arrangement would apply to all insureds, not just to active employees. The fact that retired insureds were not differentiated from employees means that they should be covered by the new premium cost-sharing language on the same basis as active employees.

The City also points to Section II of Article XVIII of the predecessor contract. In that section the parties agreed that "[t]he terms "policeman," "officer," "employee," and "member" where ever used herein, are synonymous." The City says that this contract provision provides strong support for its final offer. The Tentative Agreement refers to "employee" in its health insurance item, and the predecessor contract refers to "member" in Section III of Article XVI dealing with health insurance coverage for those who have retired. The City argues that this contract language means that the term "employee" in the Tentative Agreement includes the retirees specified in Article XVI, and that this language also means that there was no need for the City to differentiate between the two terms in the negotiations because by definition the two terms are synonymous.

The City also argues that Illinois contract law is clear regarding how contracts should be interpreted when there is a latent ambiguity in the contract. The City says that the Illinois courts have consistently ruled that contracts are to be interpreted according to the intentions of the parties at the time they entered into the contract. Applying that contract construction principle here provides additional support for the

City's final offer, for the intent was that the health insurance premium cost-sharing would apply to all insureds and not be limited to active employees.

For these reasons, the City asks that its final offer on health insurance be selected.

FINAL OFFER AND POSITION OF THE UNION

The Union's final offer is that the health insurance premium cost-sharing language applies only to active employees and not to those previously retired members of the Department, and thus the already retired members are not required to pay these premiums.

The Union says that before and during the April 16 negotiations the City never once raised the subject of premiums to be paid by retirees. Indeed, the parties have stipulated to this fact in their Stipulation (Stip, item 5(c), p. 3). The focus in the negotiations always was upon current employees, and this focus was reduced to writing in the health insurance item (item 7) of the parties' Tentative Agreement. In that document the parties agreed that employees with dependent coverage would pay half of the premium cost increase scheduled to take effect on May 1, 1992, which amount for each such employee was \$27.49 per month. As noted, not one word was ever said about applying this same premium cost-sharing agreement to those persons who already had retired from the Department. In their predecessor contract the parties clearly differentiated between health insurance coverage for current employees and for retirees by using two different sections

of Article XVI to address these two groups, but in their instant negotiations the parties only discussed premium cost-sharing for employees. Accordingly, this cost-sharing agreement was meant to apply only to employees. If the parties had mutually intended that this cost-sharing agreement would apply to retirees, they would have said so, both in the negotiations and in the Tentative Agreement. They did not, so it does not.

The Union also points out that the City was the moving party on the health insurance premium cost-sharing issue, in that it was the party seeking a change in the contract language and the then-health insurance status quo. In that regard, the City bore the burden and the obligation to make clear its intent regarding the reach of this new cost-sharing arrangement. The City did not do so, as the parties have stipulated. In other words, if the City intended that this new cost-sharing provision would apply to those members who had already retired, it had the burden of specifically indicating that intention during the negotiations. It never did so, and it is egregiously untimely to raise such a claim during the contract drafting process after the substantive terms of the parties' negotiated agreement have been ratified by both sides.

For these reasons, the Union asks that its final offer on health insurance be selected.

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, and they held this belief until they attempted to draft the final contract language on health insurance. However, it became apparent during this contract drafting process that the parties had not reached agreement on their new health insurance premium cost-sharing arrangement, and an impasse developed on this single issue. Accordingly, the parties have submitted this impasse to me for an arbitrated resolution, and I find that this proceeding is an interest arbitration proceeding pursuant to Section 14 of the Act. Further, the parties have stipulated that I will serve as an individual Arbitrator in this proceeding, which is consistent with the authority granted to the parties by Section 14(p) of the Act, and thus there will be no tripartite arbitration panel.

I also find that this disputed issue is an economic issue within the meaning of Section 14(g) of the Act. As a result, I am to adopt the final offer (or the "last offer of settlement" within the meaning of Section 14(g)) of one party or the other. The parties also have stipulated that I must use a list of decision criteria or factors (specified above) which are different than the list of decision factors specified in Section 14(h) of the Act. I find that this decision criteria stipulation not only is consistent with the authority given to the parties by Section 14(p), it also is consistent with the second arbitral decision criterion listed in Section 14(h) of the Act ("Stipulations of the parties").

Pursuant to this stipulation and its decision criteria, I find that there are four critical facts upon which the decision in this matter must be based. The first is the parties' stipulation that "the costs of health insurance for persons who have previously retired from employment with the City of Belleville Police Department was not raised or discussed specifically during the negotiations which occurred prior to or on April 16, 1992" (Stip, p. 3). The second is that the parties agreed in their Tentative Agreement to a health insurance item which reads in its entirety as follows:

- a. Contract will state that the cost of employee coverage is fully paid by Employer.
- b. Contract will state that the dependent coverage premium cost increases effective May 1, 1992 will be absorbed on a 50-50 basis by the Employer and each employee with such coverage (i.e., which amount will be \$27.29 per month for the employee's premium contribution) (Tentative Agreement, item 7, p. 4).

The third fact is that the parties also agreed in the Tentative Agreement that "all items unchanged in these negotiations from the 1988-91 contract will continue unchanged in the 1991-93 contract" (Tentative Agreement, item 14, p. 9). The fourth fact is that Section III(d) of Article XVI of the 1988-91 contract says:

The Employer agrees that the price of insurance for the retired or disabled members or widows shall never be higher than when the employee's job terminated. This will be in effect for the first seven (7) years of the employee's retirement, or until the employee or his widow reaches the age of sixty-five (65), whichever comes first.

Looking at these facts, it is apparent that the parties never mutually intended that the new premium cost-sharing arrangement

for dependent coverage would be applied to those members of the Department who had already retired. It certainly may be the case that the City intended that this arrangement would apply to the already retired, but unilateral intent is not sufficient to carry the day in negotiations for a new bilateral contract. This is particularly true in this matter, for the City was the moving party seeking a change in an existing contract term. In that role of the moving party, the City bore the burden of proposing and explaining the full reach of the contract change that it was seeking. As the parties have stipulated, the City never said a word about this changed language applying to the already retired members of the Department.

Can the terms of the negotiated settlement, when combined with the unchanged terms of the 1988-91 contract which have been carried forward into the 1991-93 contract, be read to convey the meaning argued by the City? The answer is a resounding "no." As seen above, in their Tentative Agreement the parties agreed that the premium cost-sharing arrangement would apply to "each employee" with dependent coverage, and this document says nothing about this arrangement being applied to retirees. Equally important, the parties were not negotiating in a vacuum but instead were negotiating changes in the existing 1988-91 contract. In Article XVI of that 1988-91 contract, the parties differentiated between current employees in Section I of that article and retirees in Section III of that article. Accordingly, I find most unpersuasive the City's claim that the cost-sharing

arrangement agreed to for employees in the instant negotiations somehow should be automatically extended to retirees. The language of Article XVI shows that in the negotiations for the 1988-91 contract the parties clearly were able to differentiate between health insurance coverage for current employees and health insurance coverage for retirees, and thus there is no persuasive reason why such differentiation could not have occurred in the instant negotiations if the parties mutually intended to change the health insurance arrangements for retirees.

This City's claim becomes even less tenable when we examine item 14 in the Tentative Agreement in conjunction with Section III(d) of Article XVI of the 1988-91 contract. Item 14 of the Tentative Agreement says that items in the 1988-91 contract which have not been changed in the negotiations will be continued unchanged in the new 1991-93 contract. Section III(d) of Article XVI provides that the price of health insurance for retirees and disableds will never be higher than when the employee's job was terminated. In other words, in their Tentative Agreement the parties explicitly agreed that this Section III(d) provision, which regulates the price of the retirees' insurance, would carry forward unchanged. If the parties intended that already retired insureds with dependent coverage would be subject to the same cost-sharing arrangement as active employees, it would have been necessary to change Section III(d). It is noteworthy that the parties did not do so. Indeed, by their own admission they never even discussed doing so.

But what about the language in Section II of Article XVIII in the 1988-91 that the City relies on? This language says that the terms policeman, officer, employee, and member are synonymous, and thus the City argues that this section renders unnecessary any need to differentiate between employees and retirees in the new health insurance language. However, this Section II of Article XVIII is a general term of the former contract. In contrast, in their negotiations for their new contract the parties agreed to very specific changes in their health insurance arrangements for "each employee with such [dependent] coverage," and they specifically agreed to carry forward into the new contract the unchanged contract provisions from the former contract, including the separate section of Article XVI which addresses health insurance for retirees. In such a situation, the general language relied upon by the City must yield to the specific health insurance changes adopted by the parties in their negotiations, and to the parties' specific agreement in these negotiations that they would carry forward into the new contract the unchanged portions of the old contract.

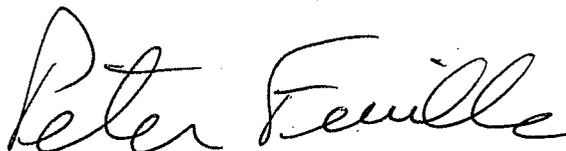
When all of these factors are weighed together, I find that there is no persuasive evidence in support of the City's final offer on health insurance. In contrast, I find that there is very persuasive evidence in support of the Union's final offer on health insurance. Therefore, using the decision criteria that the parties have instructed me to use, I find that the Union's offer is the offer that should be selected to resolve this impasse.

That means that the health insurance dependent coverage cost-sharing arrangement agreed to for active employees shall not be applied to those employees who have already retired from the Department prior to April 16, 1992.

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 Union's final offer on health insurance is more strongly supported by the applicable decision factors than is the City's final offer. Therefore, the Union's final offer is selected to resolve this impasse.

Respectfully submitted,



Peter Feuille
Arbitrator

Champaign, Illinois
June 17, 1992