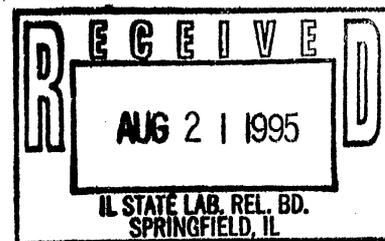


Before
PETER R. MEYERS
Neutral Chairman



S-MA-94-226

**In the Matter of the Arbitration
between:**

THE CITY OF EDWARDSVILLE

and

**EDWARDSVILLE FIRE FIGHTERS
ASSOCIATION, IAFF, LOCAL NO.
1700**

INTEREST ARBITRATION PANEL:

Peter R. Meyers
Neutral Chairman

R. Michael Lowenbaum
Employer Representative

Glenn Walters, Sr.
Union Representative

DECISION AND AWARD

Appearances for the Employer

John L. Gilbert--Attorney
Gary Niebur--Mayor
Dennis Henson--Fire Chief

Appearances for the Union

Ronald McDonald--Southern District Vice President
Michael Picchioldi--Fire Fighter/Paramedic
Ronald Schrage--Fire Fighter/Paramedic
Raymond M. Hogan, Jr.--Edwardsville Fire Department

This matter came to be heard before Neutral Chairman Peter R. Meyers on the 9th day of March 1995 in the Community Room of the Mark Twain Building in Edwardsville, Illinois. Mr. John L. Gilbert presented for the Employer, and Mr. Ronald McDonald presented for the Union.

Introduction

This is an interest arbitration proceeding between the City of Edwardsville, Illinois (hereinafter "the City"), and the Edwardsville Fire Fighters Association, IAFF Local No. 1700 (hereinafter "the Union"). The parties' previous collective bargaining agreement was in effect from November 1, 1991, through October 31, 1994. Negotiations on a successor contract began during February 1994, and by March 1995, the parties had reached agreement on all but two issues, which remain in dispute and are to be resolved here.

Issues in Dispute and the Parties' Final Offers

The following issues are in dispute, and the parties' respective final offers are incorporated:

1. Discretionary Components of Promotional Testing: Whether promotional applicants will be notified of all discretionary component scores prior to any written examination?

Union's Final Offer: Promotional applicants will be so notified.

City's Final Offer: This issue is not a mandatory subject of bargaining, so therefore it is not arbitrable. If this issue is deemed arbitrable, there is no basis to change the current promotional system.

2. Weighting of Seniority and Oral Examination Results in the Promotional Process: What percentage of the total promotional testing score should be based on seniority and what percentage of the total score should be based on oral examination?

Union's Final Offer: Seniority, 15%; Oral Examination, 20%

City's Final Offer: Seniority, 5%; Oral Examination, 30%

The parties have agreed that the written examination score shall constitute 65% of the total promotional score.

Discussion

A. Relevant Statutes

The following sections of the Illinois Municipal Code, found in Chapter 65, Act 5, Article 2.1 of the Illinois Compiled Statutes, relate to promotions in police and fire departments:

Sec. 10-2.1-11. Promotional examinations--Credits to veterans. The board of fire and police commissioners shall give preference for promotional appointment to persons designated in Section 10-2.1-10 whose names appear on promotional eligibility registers by adding to the final grade average which they will receive as a result of any promotional examination 7/10 of one point for each 6 months or fraction thereof of military or naval service not exceeding 30 months. The numerical result thus attained shall be applied by the board of fire and police commissioners in determining the position of such persons on any eligibility list as the result of any promotional examination held for purposes of preference in certification and appointment from such eligibility list.

No person shall receive the preference for a promotional appointment granted by this Division 2.1 after he has received one promotion from an eligibility list on which he was allowed such preference.

Sec. 10-2.1-12. Preference--Time for allowance. No person entitled to preference or credit for military or naval service shall be required to claim military credit for service in the armed forces before any examination held under the provisions of this Division 2.1 but such preference shall be given after the posting or publication of the eligibility list or register at the request of such person before any certification or appointments are made from the eligibility register, upon the furnishing of evidence of an honorable discharge from and proof of such service.

Sec. 10-2.1-15. Promotions--Merit--Seniority. The board, by its rules,

shall provide for promotion in the fire and police departments on the basis of ascertained merit and seniority in service and examination, and shall provide in all cases, where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank as desire to submit themselves to examination. All promotions shall be made from the 3 having the highest rating, and where there are less than 3 names on the promotional eligible register, as originally posted, or remaining thereon after appointments have been made therefrom, appointments to fill existing vacancies shall be made from those names or name remaining on the promotional register except that promotions made in any municipality with more than 130,000 but less than 2,000,000 population may be made from the 7 members having the highest rating. The method of examination and the rules governing examinations for promotion shall be the same as provided for applicants for original appointment, except that original appointments only shall be on probation, as provided by the rules. The board shall strike off the names of candidates for promotional appointment after they have remained thereon for more than 3 years, provided there is no vacancy existing which can be filled from the promotional register.

B. The Comparables

The Union proposed Jacksonville, Illinois, as a comparable for this case. The City has not proposed any comparables.

The Union points out that the City of Jacksonville has a population within twenty-five percent of Edwardsville's current population of around 12,000; in addition, neither Jacksonville nor Edwardsville is a home-rule city. Neither party has offered any additional evidence that either supports or opposes the application of Jacksonville as a comparable.

C. Determination of the Issues in Dispute

1. Discretionary Components of Promotional Testing

The City's assertion that this issue is not arbitrable, because it contends that the order of the promotional examination is not a mandatory subject of bargaining, must be addressed first. Both sides refer to the decision issued in Village of Franklin Park v. Illinois State Labor Relations Board, 638 N.E.2d 1144 (1st Dist. 1994), as setting forth the parameters for distinguishing between mandatory and permissive subjects of bargaining.

The Franklin Park decision definitely supports a finding that the Union's proposal, that either the components or the results of the discretionary portion of the promotional examination process be posted before the written portion of the exam is conducted, is a mandatory subject of bargaining. Franklin Park specifically found that criteria for promotions, weighting criteria, and posting of exam scores all are mandatory subjects of bargaining. The Union's proposal in the instant matter falls within all three of these areas, particularly, of course, the posting of exam scores.

There can be no doubt that the subject matter of the Union's proposal is one that directly affects wages, hours, and terms and conditions of employment; there also can be no doubt that it is within management's inherent rights. As described in Franklin Park, where an issue is included within both of these categories, it is necessary to balance the benefits that bargaining will have on the decision-making process against the burdens that bargaining will impose on the employer's managerial authority. As applied in Franklin Park, this typically will mean balancing a union's interest in having a voice in the matter

with the burdens that this will create as to an employer's administrative procedures.

The importance of fairness and neutrality in the promotion process is, as the court in Franklin Park points out, strong enough to outweigh any burdens to the City that might accrue from posting this data prior to the written examination. It must be noted that in its arguments, the City has not established the existence of any burdens that would be associated with such posting. Although the City argued that there is no reason for it to change the promotional process, that does not establish that doing so would be a burden. The City also alluded to the danger of a chilling effect on those individuals who are responsible for the scoring of the discretionary portion if the scores are posted, but the Union's proposal will not produce such an effect because the individual scorers' tabulations will not be revealed. Moreover, such posting will not necessarily require the City to conduct and complete the discretionary portion before the written examination is administered. As explained during the hearing, the Union's proposal presents alternatives; it seeks either the posting of scores from the discretionary portion of the promotional testing prior to the administration of the written examination or the posting of a description of the components, along with the point values assigned to them, prior to the written examination. Under the Union's proposal, it may be sufficient for the City to give notice, prior to the written examination, of the components of the discretionary portion, including information on how these components will be tabulated and weighted and what portion of the total score that the discretionary portion represents, without

necessarily having to actually complete the discretionary component first.

In addition, the question of fairness and neutrality is directly affected by this issue. Although the record may not contain any definitive evidence that the City might alter its manner of evaluating and weighting the oral component in the middle of the promotional process, the possibility that this could happen is very real; if such an alteration happens, even for the best of motives, the entire promotional process will be corrupted, and its integrity and fairness undermined.

The Union's strong interest in the fairness of the promotional process, and the lack of any real burden to the City, requires a finding that the posting of either the components or the results of the discretionary portion of the promotional examination process before administration of the written portion of the process is a mandatory subject of bargaining. As further support for this finding, the decision in Franklin Park establishes that the weighting of the different components and the manner in which each component is evaluated also would be mandatory subjects of bargaining, in addition to the issue of the posting of scores; the Union's proposal therefore must be the subject of bargaining, and the issue is properly raised in this proceeding.

Turning to the substantive merits of this issue, it is evident that some of the arguments that support the arbitrability of this issue also favor the Union's proposal. There can be no argument that both parties have an interest in maintaining the integrity and fairness of the promotional process. The goal of promoting those who most merit it

can be reached only if the promotional process offers a fair and open opportunity to all candidates competing for promotion. By establishing in advance and with certainty the components of the discretionary portion of the examination and how they will be weighted and scored, the City can demonstrate the integrity of its examination and promotional process, establish that the process is fair and open to all candidates, and further both parties' interest in identifying and promoting the most qualified personnel.

The record establishes that adoption of the Union's proposal will provide these and other benefits to both parties. Moreover, the City has failed to show any actual burden to itself or detriment to the promotional process that would accrue from the application of the Union's proposal. Under the Union's proposal, the City retains all of its authority to administer its promotional system in accordance with both the governing statutes and the applicable Commission rules and regulations. Without any evidence that adoption of the proposal would create any burdens for it, the City's assertion that it sees no need to change the system is insufficient to overcome the Union's position.

In support of its proposal, the Union indicated that in previous promotional examinations, certain discretionary components may have been incorrectly scored or weighted; without access to the information to which the Union's proposal refers, it is nearly impossible for the City or the Union to establish the integrity of the promotional process. It must be emphasized that adoption of the Union's proposal actually will improve the system by creating a stronger and more solid foundation for the discretionary

portions of the examination process, one that is less subject to outside variables or influence and that focuses more directly on the merit of the candidates.

The Union's proposal, that promotional applicants be notified of either their scores on discretionary components of the examination process or of the nature of those components, including the method of scoring and weighting, prior to the administration of any written examination, therefore is adopted.

2. Weighting of Seniority and Oral Examination Results

The total weight to be accorded seniority in the promotional process is not prescribed in either a governing statute or in Police Commission rules and regulations. Section 5/10-2.1-15 of the Municipal Code specifies only that ascertained merit and seniority shall be the basis for promotion. The Union proposes that a maximum of 15% of the promotional testing process as the proper weighting for seniority, while the City proposes that seniority account for 5% of the total. Because the parties' have agreed that the written examination shall account for 65% of the total, with seniority and the discretionary portion of the examination accounting for the remaining 35%, any weighting assigned to seniority necessarily decreases the overall impact of the discretionary portion on the overall promotional process.

The importance of seniority to any promotional process cannot be denied. Time spent on the job absolutely is associated with greater experience and knowledge that make an applicant for promotion a more skilled candidate. The skills, experience, and

knowledge that a more senior applicant generally possesses, however, also is measured, in some fashion, and accorded weight through the other components of the testing procedure; a more senior applicant's skills and experience should be demonstrated in the written and discretionary portions of the examination process. In addition, although it is important, time spent on the job does not absolutely guarantee that an individual applicant actually will possess the heightened skill, experience, and knowledge that would be expected in a more senior applicant. For this reason, it is difficult to justify assigning seniority, by itself, a weighting so great as 15% of the total promotional process.

The City's proposal that seniority account for 5% of the process, with the discretionary portion of the examination accounting for 30%, is reasonable and appropriate. The discretionary portion of the examination will, by its nature, give an edge to those more senior applicants whose time spent on the job has given them the greater skill, knowledge, and experience that make them more attractive candidates for promotion; the skilled, more senior applicant also may have an edge in connection with the written examination. If seniority accounted for 15% of the total, it would constitute a disproportionately large part of the promotional process. For seniority and ascertained merit to occupy their proper places in connection with promotions, the City's proposal that seniority account for 5% of the total is more appropriate.

The City's proposal that seniority account for 5% and the discretionary portion of the examination account for 30% of the total scoring in the promotional process therefore

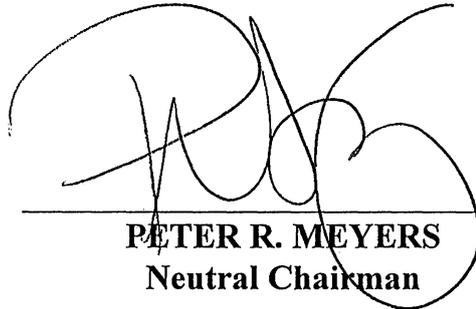
is adopted.

Conclusion

Based on all the preceding discussion and the record compiled in this matter; the following offers are adopted:

1. As to the issue of whether promotional applicants will be notified of all discretionary component scores prior to any written examination, promotional applicants will be notified of either their scores on discretionary components of the examination process or of the nature of those components, including the method of scoring and weighting, prior to the administration of any written examination; and

2. As to the issue of the weight to be given to seniority and to the discretionary components of the promotional process, seniority shall account for 5% and the discretionary portion of the examination shall account for 30% of the total scoring in the promotional process.



PETER R. MEYERS
Neutral Chairman

FOR THE UNION:

FOR THE EMPLOYER:

GLENN WALTERS, SR.

R. MICHAEL LOWENBAUM

DATED: _____

DATED: _____