

INTEREST ARBITRATION BEFORE  
JOHN P. MCGURY  
ARBITRATOR

IN RE: the Arbitration Between )  
 )  
 VILLAGE OF HILLSIDE, )  
 Employer, )  
 )  
 and ) Interest Arbitration  
 )  
 LOCAL 1, SERVICE EMPLOYEES INTERNATIONAL )  
 UNION, HILLSIDE FIREFIGHTERS. )

STATEMENT

The parties submitted this matter to the Arbitrator for interest arbitration pursuant to the Illinois Public Labor Relations Act. Hearing was completed on January 8, 1996, and the parties submitted post-hearing briefs. Pursuant to the IPLRA, the parties have proposed last settlement offers.

ISSUE:

The Arbitrator's task is to choose either the Union's or Employer's last settlement offer, and to adopt it without modification.

APPEARANCES:

For the Employer

Arthur B. Muchin, Attorney  
John Flood, Treasurer/Comptroller  
Russell Wajda, Administrator  
Michael Kuryla, Fire Chief

For the Union

Ken Munz, Business Representative  
Joseph Pellicori, Firefighter  
Jeff Pilz, Firefighter  
Eleanor Prouty, Senior Research Analyst  
Lorne Saeks, Attorney

DISCUSSION:

The Village of Hillside ("Employer") operates the Hillside Fire Department, which employs 10 full-time firefighters supplemented by some 13 part-time, "paid-on-call" firefighters. Firefighters work on three 4-person shifts, with full-time firefighters working 24-hours on duty followed by 48 consecutive hours off-duty. On June 24, 1994, the Service Employees International Union, Local No. 1 ("Union") became collective bargaining agent for the full-time firefighters. The Employer and Union formed a collective bargaining agreement effective from May 1, 1994 through April 30, 1997. However, they did not reach agreement on the sole issue before the Arbitrator, and pursuant to the IPLRA submitted that issue for binding interest arbitration.

The Arbitrator must choose between the following last settlement offers:

Union

"Bargaining Unit Work.

Work which has been historically performed by bargaining unit firefighters shall not be performed by other than bargaining unit members, except when bargaining unit personnel are not available."

Employer

"Work Scheduling

Under Illinois Statutes, 5 ILCS 315/14 sub.par.14 an arbitration decision shall not include 'the total number of employees employed by the department.' It is the position of the Village that it has the right to determine the number of full-time, part-time and paid-on-call ("POC") personnel and any attempt to mandate that only full-time firefighters must be scheduled to perform all regular firefighter functions violates this statute. The Union disagrees with the Village's interpretation.

The Village currently has serious economic difficulties which, even if it desired to do so, preclude it from being able to comply with the Union's contract demand to schedule only full-time firefighters to regular shift schedules.

However, in order to provide the current full-time firefighters with job security while maintaining the financial integrity of the Village, the Village would agree for the remainder of the current contract as follows:

1. The Village will not lay off any of the current full-time bargaining unit firefighters, and will maintain a total of ten full-time bargaining unit firefighters.

2. All full-time bargaining unit firefighters will be scheduled for full regular straight-time work before part-time or POC firefighters are offered full or partial shift schedules.

The foregoing commitments shall apply only through the expiration date of the current contract, and shall not establish a precedent of any kind."

The Union argues that part-time firefighters are bad for public safety, and that the Employer's use of these "paid-on-call" firefighters violates the spirit of Illinois law. Specifically, it asserts that the Employer has increased its reliance upon "paid-on-call" firefighters in retaliation for unionization and the valid exercise of employee rights under the IPLRA. Further, the Union argues that the Board of Police and Fire Commissioners Act (65 ILCS 5/10-2.1-1) was meant to professionalize fire departments by ensuring that only qualified candidates were hired and employed. The "paid-on-call" candidates are hired without meaningful training or experience, in circumvention of that Act, the Union asserts.

The Employer argues that the Arbitrator has no authority under the IPLRA to adopt the Union's last settlement offer. Specifically, Section 14(i) provides that the arbitration decision shall not

include "...iii) the total number of employees employed by the department." It argues that the Union, through its last settlement offer, is trying to force the Employer to hire 12 full-time firefighters, which cannot be done in interest arbitration. By default, the Arbitrator must adopt the Employer's offer, it argues.

In the alternative, if the Arbitrator does not find that the Union is impermissibly seeking to fix "the total number of employees employed by the department," then the Employer's position should be adopted because the Employer faces economic hardship and could not afford to hire two additional full-time firefighters, the Employer adds.

The threshold question is whether the Arbitrator has authority to consider the Union's last settlement offer. The legislature clearly denied authority to order the total number of employees employed by the department; that decision is reserved to the Employer by statute. In this case, the Employer cites three arbitral decisions refusing to order employers to maintain a minimum level of staffing, and argues that the Union, obliquely, is attempting to force the Employer to maintain the minimum staffing of 12 full-time firefighters. If so, the Employer argues, the Arbitrator has no statutory discretion and must adopt the Employer's position.

However, the disputes that led to interest arbitration in Elk Grove Village, Blue Island and Canton, Illinois were different factually. In those cases, unions asked the Arbitrator to order a minimum level of staffing per shift. The rest is mathematics: a

minimum level of staffing, multiplied by the fixed number of workshifts, equals the minimum "total number of employees" that must be employed. Those unions asked the arbitrators to fix the "total number of employees." The IPLRA makes that result taboo.

In this case, the Union asks the Arbitrator to establish that full-time firefighters will do the work, unless unavailable. This result would not fix the number of firefighters, but rather would establish a right of first refusal of work for full-time staffers. The Employer would retain discretion to staff as it pleases, with full-time firefighters -- of whatever number deemed appropriate by the Employer -- having priority when workshifts are filled over "paid-on-call" or part-time employees. This appears to the Arbitrator to be a question of "manning." The IPLRA's legislative history indicates that "manning" is a proper subject of interest arbitration for firefighters (H.B. 1529, October 30, 1985).

Granted, the Union's position, while not technically requiring additional hiring, may allow slim choice for the Employer. This assumes that the question will be determined solely upon cost. This further assumes that the Employer cannot stretch 10 firefighters to fill 12 full-time equivalent positions without sustaining unbearable overtime costs. The assumption would not be true if full-timers declined overtime frequently. In either case, the Employer might choose to stand pat, or might choose to hire one or two additional firefighters, after weighing projections of relative costs, flexibility and efficiency of the department at different staffing levels. But the discretion to do so would remain with the

Employer, using its own criteria and timetable for decisionmaking.

The Arbitrator finds that he has authority to consider the Union's last settlement offer and need not default to the Employer's last settlement offer.

The Arbitrator therefore must choose between the parties' last settlement offers. Section 14(h) of the IPLRA sets forth the factors to be considered in deciding an interest arbitration about "conditions of employment" for firefighters; the Arbitrator has considered each of the factors, but will highlight the factors argued by the parties.

The parties emphasized the third statutory factor, the "interests and welfare of the public and the financial ability of the unit of government to meet those costs."

The Arbitrator accepts that public welfare is promoted by having the best possible firefighting force, and that full-time firefighters generally are better trained, more experienced, and better able to work as a team than "paid-on-call" firefighters. However, the Union presented no credible evidence that "paid-on-call" firefighters, filling in with full-timers, present an imminent threat to public safety or a substantial detriment to staff efficiency. The Union attempted to stereotype these "paid-on-call" firefighters as unsafe, but did not support that claim except with subjective opinion and what appear to be isolated anecdotes. The public certainly has an interest in improving its public services, including its fire department, but that interest must be balanced against its interest in saving money.

That leads to the second part of this statutory factor -- "the financial ability of the unit of government to meet those costs." The Employer asserts "dire financial straits," while the Union characterizes this poormouthing by Village witnesses as "smoke and mirrors" and "doom and gloom." The Arbitrator agrees with the Union that the Employer's outlook is not "dire." However, the Employer has cut back its police and public services departments, has experienced declining tax revenue and escalating costs, and appears not to have an immediate expectation of relief from its current doldrums.

The threshold question is, how expensive is the Union's settlement offer?

The Union projected additional costs between \$4,536.10 and \$65,311.38; the lower costs assumed the Employer would hire two rookie firefighters, and that the Employer, if it relied upon "paid-on-call" firefighters, would still need full-timers on time-and-a-half overtime to supplement the \$9.50-an-hour fill-ins on 25 percent of the workshifts. The upper range assumed the Employer would hire two top-scale firefighters, and, by comparison, if the Employer continued to employ only 10 full-timers, that the cheaper, "paid-on-call" firefighters would be available to fill all vacancies.

The Employer set the range at \$26,922.66 to \$86,230.66, using substantially the same assumptions.

The Arbitrator finds it more reasonable to use projections for the rookie hires, considering the Employer's current financial

status and the apparent availability of applicants. About \$22,500.00 separates the parties' projections. However, the Arbitrator finds that the Employer's figures are inflated by the costs of vacation days, sick days, personal days and holidays, totaling roughly \$6,500.00. The Employer included those figures on the theory that the cost for a starting firefighter should include the cost of paid time away from work, because the Employer has to pay someone to cover the open shift. However, Fire Chief Kuryla testified that, at least for regularly scheduled time off, the Employer incurs no extra cost. The Union figures also appear to be discounted, by understated pension costs of roughly \$4,500.00 and by overstated hourly rate for "paid-on-call" firefighters that amounts to about \$3,000.00.

The Arbitrator therefore adjusts the Employer's figures downward by \$4,500.00 (the projected cost of vacation and holidays), and the Union's figures upward by \$7,500.00. The result is a range of additional cost for hiring two rookie firefighters of roughly \$12,000.00 to \$22,400.00.

Finally, to tighten the analysis one last notch, this statutory factor joins the "interests and welfare of the public" to the "financial ability of the unit of government to meet those costs." The Arbitrator agrees with the Union that the relatively small cost of staffing two more fulltime firefighters is approaching equilibrium with the cost of continuing with "paid-on-

call" firefighters -- that if the Employer is financially unable to staff two more full-timers, then it also is financially unable to continue with "paid-on-call" firefighters. However, part of the high cost of continuing with the current staffing level is that full-time firefighters on overtime pay frequently are used to fill the gaps. That tends to dilute the Union's argument that safety and efficiency are suffering.

The Arbitrator also must consider the first statutory factor: "the lawful authority of the employer." That includes the authority, protected under the IPLRA, to decide the number of employees. Although the Union settlement offer does not fix that number, it surely would influence it by manipulating costs. Traditionally, that lawful authority to hire, and to set qualifications for employment, is reserved in the management rights clause unless bargained away, which has not happened here.

The Employer's settlement offer would guarantee at least 10 full-time firefighters for the life of the contract, meaning that "paid-on-call" or even regular part-time staffers would remain in the minority on all workshifts. That substantially undercuts the Union's "safety" argument, and promotes the interest and welfare of the public.

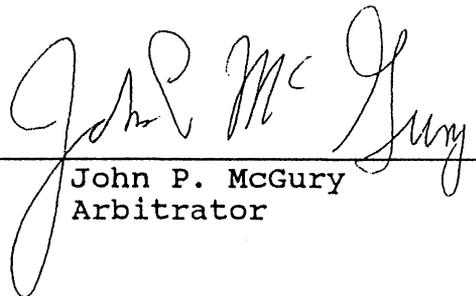
Also, the Employer requests time to consider cost savings and

efficiency that might be promoted by hiring part-time, regularly scheduled firefighters to fill open shifts. The Union raises valid questions regarding this proposal, its practicality and its timing. However, in the absence of stronger evidence that public interest and welfare require the change immediately, the Arbitrator finds it reasonable to allow the Employer to experiment with different options during the remaining year of the collective bargaining agreement, providing the parties with a year of experience and perhaps promoting agreement upon new evidence or circumstances.

Finally, the Arbitrator finds insufficient evidence that the Employer sought to violate the spirit of the IPLRA, retaliating against the Union by deciding to maintain only 10 full-time positions. This claim, too, might be reconsidered in a year in light of the Employer's experience with non-Union costs.

AWARD:

The Arbitrator finds for the Employer, and the Employer's last settlement offer is hereby adopted through April 30, 1997.

  
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John P. McGury  
Arbitrator

April 15, 1996