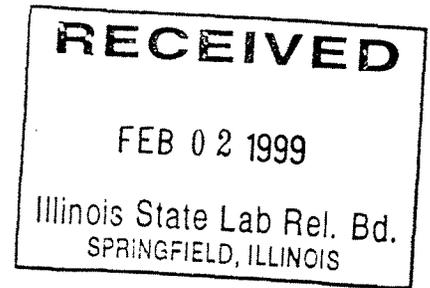


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INTEREST ARBITRATION
OPINION AND AWARD



In the Matter of Interest Arbitration

between

VILLAGE OF WILLOWBROOK

and

METROPOLITAN ALLIANCE OF
POLICE, CHAPTER #231

(Case No. S-MA-98-243)

Hearing Held

January 27, 1999

Willowbrook Village Hall
7760 Quincy Street
Willowbrook, Illinois

Appearances

For the Union:

Thomas P. Polacek, Esq.
Schenk, Duffy, et al.
58 North Chicago Street
Joliet, IL 60432-4439

Arbitrator

Steven Briggs

For the Village:

Bruce C. Mackey, Esq.
Franczek Sullivan P.C.
300 South Wacker Drive, Suite 3400
Chicago, IL 60606

BACKGROUND

In an August 21, 1998 letter, Attorney Thomas P. Polacek notified the undersigned of his selection as Arbitrator in an interest dispute between the Village of Willowbrook (the Village) and the Metropolitan Alliance of Police Chapter #231 (the Union).¹ An interest arbitration hearing was scheduled for January 27, 1999. By that date the parties had reached agreement on all outstanding issues in negotiations, with the exception of the "Union Solicitation" issue.

Among the provisions adopted voluntarily by the parties prior to the interest arbitration hearing was the following:

ARTICLE XX - SOLICITATION

The parties agree that the issues related to union solicitation of funds remain unresolved and shall be submitted to Arbitrator Briggs. Both parties expressly retain the ability to pursue any other legal and/or administrative means of resolving these issues.

Pursuant to the above provision, and at the Arbitrator's direction, the parties exchanged the following final offers on January 15, 1999:

Union's Final Offer

Union Solicitation.

While the Village acknowledges that bargaining unit employees may conduct solicitation of Willowbrook merchants, residents or citizens, the Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions on behalf of the Willowbrook Police Department or the Village of Willowbrook.

Bargaining unit members agree that the Village name, shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit employees may not be done on work time or in a work uniform. The bargaining unit employees agree that they will not use the words "Willowbrook Police Department" in their name or describe themselves as the "Village of

¹ The parties did not provide the Arbitrator with information as to the time period covered by the relevant collective bargaining agreement. Moreover, neither party mentioned the formation of an interest arbitration panel or suggested that such a panel must be assembled for these proceedings.

Willowbrook." Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol-rank police officers employed by the Village.

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public. Each party hereto agrees that they will comply with all applicable laws regarding solicitation.

This Agreement does not apply to the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees.

Village Final Offer

Neither the Union nor its agents, officers or members shall solicit any contributions or donations to the Union or any affiliate thereof from a person who resides in or engages in business (sic) when (1) the Village name, shield, insignia, facilities or when any references to "Willowbrook" are used in making the solicitation, (2) the solicitation is conducted by a Village employee while on work time, or (3) the solicitation is conducted by a Patrol Officer in uniform.

A stenographic reporter made a verbatim record of the January 19, 1999 interest arbitration hearing. At the hearing the parties summarized their respective positions orally, chose not to file post-hearing briefs, and asked the Arbitrator to render this Opinion and Award as soon as possible.

THE PARTIES' POSITIONS

Union Position

The Union asserts that the Arbitrator has no authority to adopt the Village's final offer, and accordingly, that its own final offer should be selected. The Union's arguments in support of that position may be summarized as follows:

1. Section 14(i) of the Illinois Public Labor Relations Act provides that, in the case of peace officers, an arbitrator's decision "shall be limited to wages, hours and conditions of employment . . ." In referencing the solicitation activities of the Union itself and of its agents, the Village's final offer goes beyond the scope of that statutory directive.
2. The above argument is supported by the decision of the Illinois State Labor Relations Board (the Board) in Village of Bensenville, 14 PERI 2042 (ISLRB 1998). In that decision, the Board determined that solicitation restrictions on persons or organizations not employed by the municipality did not constitute a mandatory subject of bargaining, while those applied to municipal employees did.
3. The Illinois Administrative Code requires that whenever one party has objected in good faith to the presence of an issue before an interest arbitration panel on the ground that it does not involve a mandatory subject of bargaining, the panel's award shall not consider that issue. The Code also states that the panel may consider and decide any issue declared by the Board or its General Counsel to be a subject over which the parties are required to bargain.
4. Throughout the negotiation process in Willowbrook, the Union has maintained its objection to negotiating and arbitrating solicitation restrictions on the Union and its agents.
5. Because solicitation restrictions on non-Village employees or organizations is a permissive subject of bargaining, the Village may not insist upon the arbitration of that issue. Thus, as a matter of administrative law, the Arbitrator must reject the Village's final offer in this proceeding.
6. The Union's final offer on the solicitation issue should be adopted.
7. Illinois Supreme Court Rule 137 provides a trial court with the discretion to order sanctions (including reasonable expenses and attorneys' fees) against a party which presents any pleading, motion or other signed paper which is interposed to harass or cause unnecessary delay or needless increase in the cost of litigation. Since the Arbitrator presides over this quasi-judicial interest arbitration proceeding, he

has the discretion and authority to order sanctions pursuant to Rule 137.

8. The Village's final offer is frivolous, made with full knowledge of the Board's decision in Village of Bensenville. Therefore, the Arbitrator should order the Village to pay the Union for all reasonable costs and attorney's fees it incurred in preparation for these proceedings.

Village Position

The Village's main arguments are summarized below:

1. The Union's interpretation of the Board's decision in Village of Bensenville is correct. That is, the Board ruled that a collective bargaining proposal which limits the solicitation activities of a union itself or its agents is a permissive subject of bargaining.
2. While the Village's final offer constitutes a permissive subject, that does not mean it is illegal.
3. Illinois Supreme Court Rule 137 applies to trial courts, not to arbitrations. Moreover, 5 ILCS 315/14(d), which the Union cites as authority for sanctions, contains no reference thereto.
4. The Board's decision in Village of Bensenville makes it clear that the mere submission of a permissive subject of bargaining to an interest arbitrator is not improper, and does not violate the statutory duty to bargain in good faith.
5. The Village disagrees with the Board's decision in Village of Bensenville. The only way it can appeal that decision is to submit its final offer on solicitation to the Arbitrator and file an unfair labor practice charge against the Union for refusing to negotiate and arbitrate what the Village believes is a mandatory subject of bargaining. Accordingly, the Village is not acting frivolously and is not attempting to impose delay or needless increase to the cost of litigation.
6. The Arbitrator should deny the Union's request for sanctions.

OPINION

In this somewhat unusual interest arbitration proceeding the parties agree that under the reasoning outlined in Village of Bensenville, the Village's final offer here constitutes a permissive subject of bargaining. There is also no dispute between them about the Union's good faith objection to the presence of the Village's final offer in these proceedings. The Union believes it does not involve a subject over which the parties are required to bargain, and it has maintained that position during the negotiations and interest arbitration processes.

Given the above circumstances, the Arbitrator concludes that consideration of the Village's final offer here would be repugnant to the following provision of the Illinois Administrative Code:

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue.²

In concert with the reasoning employed by the Board in Village of Bensenville, the Arbitrator believes that the Union's final offer constitutes a mandatory subject of bargaining. It appears to be reasonable. Indeed, the Village did not argue that it was not, or that it was in any way repugnant to the interest arbitration criteria provided in 5 ILCS 315/14(h). Having examined those criteria as they apply to this matter, the Arbitrator concludes that the Union's final offer should be adopted.

Turning to the question of the sanctions requested by the Union, neither party was able to provide a case citation from any forum as to whether the Arbitrator has the authority under 5 ILCS 315/14(h) to award them or not. Even if it had been clearly established that such authority exists, however, sanctions would not be awarded in this case. The Arbitrator is convinced from the record that in bringing its final offer to the interest arbitration forum the Village was merely doing what it thought was necessary to achieve a legal objective. Such activity does not appear frivolous, nor does it seem to have been interposed to harass the Union or to cause unnecessary delay or needless increases to the cost of litigation.

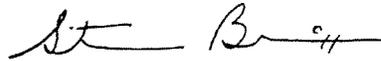
² 80 Illinois Administrative Code, Subtitle C, Chapter IV, Section 1230.90(k).

AWARD

Based upon full consideration of the interest arbitration record, and having applied the statutory criteria to the issues as appropriate, whether discussed in this Opinion and Award or not, the Arbitrator has decided as follows:

- (1) The Union's final offer on the solicitation issue is adopted.
- (2) The Union's request for sanctions is denied.

Signed by me at Chicago, Illinois this 27th day of January, 1999.



Steven Briggs

