

ARBITRATOR'S AWARD

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In the Matter of the Interest Arbitration
Between

International Association of Firefighters Local Union 473

and

The City of Waukegan, Illinois

April 20, 2008

David A. Dilts
Neutral Arbitrator
and Chair of the Tripartite Board of Arbitration

WAUKEGAN
SSTS

APPEARANCES:

For the Union:

J. Dale Berry, Attorney, and Union's Member of the Tripartite Board

For the City:

James Baird, Attorney, and City's Member of the Tripartite Board

This matter is before a tripartite panel, with a neutral chair, and one member representing the Union and one member representing the City. Hearings in the above cited matter were conducted on Monday October 29, 2007; Tuesday, December 4, 2007 at the City Hall in Waukegan, Illinois; and a teleconference on Tuesday April 8, 2008. The record in this matter was closed upon completion of the April 8 teleconference.

ISSUES AT IMPASSE

The parties were able to resolve all issues for their 2008-2011 Collective Bargaining Agreement except for the following two issues:

1. Article XVII Insurance, Section 17.4.
2. Article XIII Sick Leave, Section 13.3.

POSITIONS OF THE PARTIES

The parties' position on each of the issues at impasses will be presented, in turn, in the following paragraphs of this award.

Article XVII, Section 17.4

Union's Position

The Union proposes the following language be included in the parties successor agreement concerning the issue of Insurance for Fire Lieutenants:

Section 17.4. Premium Allocation. (B) Fire Lieutenants shall contribute toward the cost of health insurance premiums by paying the same percentage of required health insurance premium costs as is paid by the sworn managerial employees of the Fire Department, with the City pay the remaining percentage, provided such employees' percentage shall not exceed ten percent (10%).

The Union's position is that the Fire Lieutenants have been added to the bargaining unit and are employees now represented by the Union. Historically, the City has paid one-hundred percent (100%) of bargaining unit health care insurance premiums the bargaining unit ranks. However, it is recognized that the non-bargaining managerial employees have historically paid a portion of their health care insurance premiums. What the Union proposes is to limit the amount that may be required of Fire Lieutenants to a maximum of ten percent of the total premium paid for health insurance.

This was a hotly contested issue during negotiations and the City has consistently proposed that Lieutenants be treated the same as other managerial employees. The City's position is an extreme, and fails to recognize that the Fire Lieutenants are now part of a bargaining unit whose members pay none of the premiums their health insurance. What the Union proposes is a compromise position concerning this issue, where Fire Lieutenants' premiums are capped at ten percent. This compromise is the mid-point between what the bargaining unit members had always paid of their health insurance premiums and what is required of the non-union managerial employees of the City's fire service.

City's Position

The City proposes that the following language be included in the successor agreement as Section 17.4:

Section 17.4. Premium Allocation. (B) Fire Lieutenants shall contribute toward the cost of health insurance premiums by paying the same percentage of required

health insurance premium costs as is paid by the sworn managerial employees of the Fire Department, with the City pay the remaining percentage.

The City's position with respect to Fire Lieutenant's health care insurance premiums is basically the maintenance of the *status quo*. Managerial employees have historically paid up to twenty percent of their insurance premiums. The history of these premiums weigh heavily in favor the City in this matter. Without a showing by the Union of compelling reasons for a change from the *status quo* the Arbitrator should award the City's proposal. The Union has offered no such compelling reason for their proposed change.

The Union's contentions are without merit. Fire Lieutenants have recently opted to join the bargaining unit. There simply is no documented reason for these new entrants into the bargaining unit to be treated preferentially to the other sworn managerial employees. The City's position is for simply continuing what had been the parties' historical practices with respect to this benefit for these employees.

Article 13.3

Union's Position

The Union's position with respect to this issue is to remove the language in Section 13.3 which states that the City may require an authorized practitioner's report "before compensating an employee for requested sick leave." This language is going to be the basis for the City to change its practices with respect to requiring medical documentation. That basis was not communicated

to the Union across the bargaining table, but rather, from management in comments away from the table. The Union's position is that certain managerial employees have made intemperate comments concerning their intent with respect to paying employees' sick leave benefits. These comments have all occurred after the parties tentatively agreed to this language causing substantial concern among the Union's leadership and the bargaining unit members. It is the Union's position the offending language of Section 13.3 of the parties' tentative agreement should be removed from the tentative agreement because of management's stated intent to abuse their authority under this language.

City's Position

The City acknowledges that certain comments were made by a specific individual. That individual does not speak for the City and those comments were little more than rhetoric. The Union agreed to the language in Section 13.3 and that bargain was in the interests of both parties. There is simply no evidence in this record that management intends to do anything save what was communicated across the bargaining table and memorialized in the language of Section 13.3. The Union's concerns are therefore without merit.

Further, the Union itself has made public demonstrations and comments that gave the City reason to suspect their motivations, however, this is part of public sector collective bargaining and should not cause a negotiated agreement to be set aside under these facts and circumstances. The City proposes that the Union's position be rejected, and that the tentative agreement be sustained.

ARBITRATOR'S OPINION

The Neutral Arbitrator's opinion, in support of each of the awards, on each issue are presented, in turn, in the following paragraphs.

ARTICLE XVII Section 17.4, Insurance Premiums for Fire Lieutenants

Award

With respect to this issue, this Arbitrator is persuaded that the Union's position should be awarded, to wit:

Section 17.4. Premium Allocation. (B) Fire Lieutenants shall contribute toward the cost of health insurance premiums by paying the same percentage of required health insurance premium costs as is paid by the sworn managerial employees of the Fire Department, with the City pay the remaining percentage, provided such employees' percentage shall not exceed ten percent (10%).

Opinion

Both parties presented cogent, well reasoned positions concerning this issue. The City's position that Fire Lieutenants have historically paid insurance premiums consistent with other sworn officers (management personnel) was a persuasive and logic argument. The record of

evidence also supports the City's contentions in this matter. However, the simple and plain truth of the matter is that Fire Lieutenants are now part of the bargaining unit. The Union's contention that this change in status mitigates against the value of the history of the Fire Lieutenants paying the same amount as other managerial employees in the Fire Service.

The Union has offered a compromise. The language offered by both the City and the Union is exactly the same, except that the Union placed a cap on the percentage that the Lieutenants would have to pay of their health insurance premium. The cap proposed by the Union essentially offers the Lieutenants a mid-point between what the previous bargaining unit (excluding the Lieutenants) received as health care premiums, and what the managerial employees received. It is recognition that the Lieutenants are now members of the bargaining unit, but also that they are new entrants to the bargaining unit, having come from the managerial, non-union ranks.

Rarely is the splitting of an issue an appropriate settlement point for an interest arbitrator. In this case, however, the compromise offered by the Union has roots in both the history of the bargaining unit's treatment concerning this issue, and the non-union management personnel in the fire service. As such, this Arbitrator is persuaded that the Union's position with respect to this issue is most consistent with the record in this case, and best serves the mutual interests of the City and the Union. Therefore, it is the Union's position on this issue that is awarded by the Arbitrator.

There is no issue of the ability to pay, comparability with similarly situated jurisdictions were not argued, and this issue was decided purely on the evidence and arguments presented by the respective parties at hearing.

ARTICLE XIII
Section 13.3

Award

The City's position that the language tentatively agreed-to in Section 13.3 of the Draft Agreement (herein attach) shall remain in the parties' 2008-2011 successor agreement without amendment (as was proposed by the Union).

Opinion

The parties had arrived at an agreement concerning the language of Article XIII in its entirety. A problem arose between the City and the Union concerning certain remarks made by a member of the management of the City's fire service, to which the Union took exception. The Union alleged, at hearing, that this member of management indicated that employees would routinely not be paid for sick leave should there be any reason to believe that there was anything amiss about their applications for benefits. This created, in the Union's view, a management position far different than what was intended for the first sentence of Section 13.3. Further, the Union was distraught over what it believed were attempts by this member of management to undermine the Union's leadership (particularly with comments concerning other issues, i.e., the wage settlement).

Management countered with arguments concerning the Union's public demonstrations and what could just as easily be viewed as offensive remarks made by Union officials.

Management also argued that the tentative agreements were made in good-faith, and the Union should now have to live by the agreements it made across the table.

In this Arbitrator's considered opinion, there have mistakes made by individuals on both sides with respect to comments, demonstrations, and expressions of what the contract may or may not mean. With the maturity of a bargaining relations these sorts of errors in judgment generally become less onerous and less common. This bargaining relation is sufficiently mature that such remarks ought not be evidence, however, these were heated and prolonged negotiations. The negotiations took months, and undoubtedly tried the patience of persons on both sides of the bargaining table. As such, it is understandable that such comments might surface – more as a reflection of the anxiety associated with prolonged and heated negotiations. The sociology of these negotiations are beyond the Neutral Arbitrator's jurisdiction, but the parties would be well advised to return to their more amicable view of each other, and strive to maintain their historic cooperative working relationship.

With respect to the issue of the Union's proposed amendment to the tentative agreement contained in Section 13.3 of the successor agreement – the equities weigh heavily in favor of the City. The Union did agree to the language now appearing in the draft of the 2008-2011 Collective Bargaining Agreement (herein attached). This Arbitrator is persuaded that the City has conceded that the individual who spoke, spoke as an individual and did not express the official position of the City or the intent understood by those who negotiated this 2008-2011 Collective Bargaining Agreement. As such, the Union's complaints here, are not sufficient cause for this Arbitrator to set aside the agreed-upon language memorialized in Section 13.3 tentative agreement.

Further, should the remarks to which the Union takes exception find their way into managerial action, the proper course of action for the Union is to grieve the actions. There was apparently a meeting of the minds, and that mutual intent is contained in the language of Section 13.3 and those words are enforceable through the parties' negotiated grievance process. It is there that any salvation from arbitrary or capricious managerial action is to be found and not through the auspices of these impasse procedures.

This Arbitrator is persuaded that this issue must be resolved on the basis of the City's proposal.

CONCLUSION

The foregoing is the reasoning and opinion of the neutral member of the Board of Arbitration empowered to resolve these bargaining impasses. Attached to this award, is the draft copy of the tentative agreements entered into by the parties to these negotiations. The parties represented and concurred that the attached draft Agreement represents final settlement of all other issues for the 2008-2011 Agreement.

SUMMARY OF AWARDS

Article 17

The Union's position is awarded:

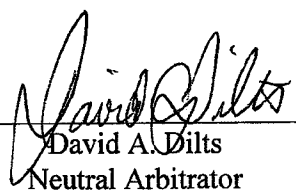
Section 17.4. Premium Allocation. (B) Fire Lieutenants shall contribute toward the cost of

health insurance premiums by paying the same percentage of required health insurance premium costs as is paid by the sworn managerial employees of the Fire Department, with the City pay the remaining percentage, provided such employees' percentage shall not exceed ten percent (10%).

Article 13

The City's position that the language tentatively agreed-to in Section 13.3 of the Draft Agreement shall remain in the parties' 2008-2011 successor agreement without amendment (as was proposed by the Union).

At Fort Wayne, Indiana
April 20, 2008:



David A. Dilts
Neutral Arbitrator

Concurring:

James Baird
City's Arbitrator

Date _____

J. Dale Berry
Union's Arbitrator

Date _____