BEFORE
EDWIN H. BENN
Arbitrator

In the Matter of the Arbitration **between** **VILLAGE OF RICHTON PARK** **and** **ILLINOIS FOP LABOR COUNCIL**	**CASE NOS.:** S-MA-16-012 Arb. Ref.: 17.318 (Interest Arbitration)

AWARD

Upon presentation of the parties' evidence and arguments, it is hereby ordered that the terms of the parties' collective bargaining agreement shall be as follows:

1. Duration:

Four years: May 1, 2016 to April 30, 2020.

The Village is a municipality governed by the Illinois Municipal Code. This award establishes a multi-year agreement.

Section 14(h)(1) of the Act addresses the factor of "[t[he lawful authority of the employer" and needs to be briefly addressed.[1]

[1] Typically, arbitrators do not consider external law. *See Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 53, 57 (1974) ("'[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement' … the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land .... the resolution of statutory or constitutional issues is a primary responsibility of courts ...."). However, Section 14(h)(1) of the Act requires that as an arbitrator I

[footnote continued on next page]

Prior to the passage of the Illinois Public Labor Relations Act ("Act"), multi-year collective bargaining agreements were deemed void and unenforceable because Sections 8-1-7 and 8-2-9 of the Municipal Code as then written required prior appropriations and municipalities generally could only appropriate on a one-year basis. *Ligenza v. Village of Round Lake Beach*, 133 Ill.App.3d 286, 478 N.E.2d 1187, 88 Ill.Dec. 579 (2nd Dist. 1985). According to the court in *Ligenza*, "Section 8-1-7 (and its statutory predecessors) has consistently been construed as denying a municipality the power to contract, and thereby incur indebtedness, for a period longer than one year …." 478 N.E.2d at 1190.

Multi-year collective bargaining agreements allowed employers to plan and budget and use those mult-year agreements as internal comparables for other bargaining units negotiating contracts with those employees. The decision in *Ligenza* severely hindered that ability.

After *Ligenza* and with the passage of the Act, Section 21 of the Act provided that "[s]ubject to the appropriation power of the employer, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this Act." While that language may not have specifically cured the problem caused by *Ligenza*, nevertheless, from 1986 until 2011, thousands of multi-year collective bargaining agreements were negotiated throughout the state without challenge to the employers' ability to enter into such agreements.

[continuation of footnote]
consider "[t[he lawful authority of the employer", which necessitates that for this case I examine external law.

In *State of Illinois v. American Federation of State, County & Municipal Employees, Council 31*, 2016 IL 118422 (2016), the Illinois Supreme Court found that I correctly ruled under the State's contract with AFSCME that the State was obligated to pay a wage increase it had previously agreed to as part of a concession package ("Based on our review of the arbitration award, we conclude that the arbitrator acted within the scope of his authority and that his award was guided by contract principles and not his own notions of fairness and justice. Accordingly, we reject the State's initial challenge to the arbitration award and hold, as a matter of law, that the award 'drew its essence' from the CBA."). *Id*. at par. 38. However, the Supreme Court vacated the award on the basis of public policy finding (*id*. at par. 56):

> … [W]e hold that section 21 of the Act, when considered in light of the appropriations clause, evinces a well-defined and dominant public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. We further hold that the arbitrator's award, which ordered immediate payment of the 2% wage increase without regard to the existence of corresponding appropriations by the General Assembly, violated this public policy. Accordingly, we reverse the judgments of the appellate court and circuit court and vacate the arbitration award.

The appropriations clause of the Illinois Constitution provides that "The General Assembly by law shall make appropriations for all expenditures of public funds *by the State*" Ill. Const. 1970, art. VIII, § 2(b) [emphasis added]. The clause in the Municipal Code that caused the Second District in *Ligenza* in 1985 – the former Section 8-1-7 – has changed. That section of the Municipal Code now provides (65 ILCS 5/8-1-7):

Sec. 8-1-7.

(a) Except as provided otherwise in this Section, no contract shall be made by the corporate authorities, or by any committee or member thereof, and no expense shall be incurred by any of the officers or departments of any municipality, whether the object of the expenditure has been ordered by the corporate authorities or not, unless an appropriation has been previously made concerning that contract or expense. Any contract made, or any expense otherwise incurred, in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof.

* * *

(d) In order to promote orderly collective bargaining relationships, to prevent labor strife and to protect the interests of the public and the health and safety of the citizens of Illinois, this Section shall not apply to multi-year collective bargaining agreements between public employers and exclusive representatives governed by the provisions of the Illinois Public Labor Relations Act.

Notwithstanding any provision of this Code to the contrary, the corporate authorities of any municipality may enter into multi-year collective bargaining agreements with exclusive representatives under the provisions of the Illinois Public Labor Relations Act.

Because the appropriations clause of the Illinois Constitution only applies to "the state" and Village is governed by the present version of the Municipal Code which specifically authorizes municipalities to enter into multi-year collective bargaining agreements, the Supreme Court's decision in *State v. AFSCME* does not apply to municipalities. Under the present version of Section 8-1-7(d), the prohibition against multi-year collective bargaining agreements which existed in 1985 in *Ligenza* no longer applies to municipalities and municipalities have the explicit authority to "… enter into multi-year collective bargaining agreements with exclusive representatives …."

That being the case, and because *State v. AFSCME* does not apply to municipalities but only applies to the State of Illinois, under Section 14(h)(1) of the Act – "[t]he lawful authority of the employer" – the Village as a municipality can enter into a valid multi-year collective bargaining agreement.

2. Wages:

Effective May 1, 2016: 2.75% increase
Effective May 1, 2017: 2.75% increase
Effective May 1, 2018: 2.75% increase
Effective May 1, 2019: 2.50% increase

3. Use of Part-Time Officers

The Village has the right to use part-time officers. However, part-time officers shall only be used to supplement and not to supplant the use of regularly assigned bargaining unit officers or to erode the bargaining unit. The right to determine levels of police staffing remains with the Chief of Police (or the Chief's duly-delegated designee(s)) per policy set by the Police Department.

This provision shall be effective for the duration of the 2016-2020 Agreement and shall not be considered as a *status quo* for subsequent contract negotiations or interest arbitration proceedings.

4. Sick Leave Use Per 820 ILCS 191/1 *et. seq.* and Impact of Officer Involved Shooting Statute, 50 ILCS 727-1, *et seq.*

These issues are remanded to the parties for a period of two weeks from the date of this award (or to a date mutually agreed upon by the parties).

5. Prior Tentative Agreements

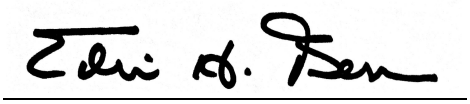
Prior tentative agreements reached by the parties during negotiations are incorporated into this award.

6. Retroactivity

The monetary provisions of this award are retroactive to May 1, 2016 for bargaining unit employees employed as of that date (including those who have retired since, if any) on all compensated hours, but shall not be applicable to employees who have quit or were discharged for cause.

7. Retention of Jurisdiction

The undersigned will retain jurisdiction to resolve disputes, if any, which may arise out of the drafting of language consistent with this award and for disputes which may arise under paragraph 3 of this award addressing the use of part-time officers.



Edwin H. Benn
Arbitrator

Dated: January 3, 2018