

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

**CITY OF CHICAGO HEIGHTS
(Employer)**

and

**ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL,
(TELECOMMUNICATORS UNIT)
(Union)**

FMCS No. 140613-02560-6
ILRB No. S-MA-13-133

BEFORE: ANN S. KENIS, ARBITRATOR
Arb. No. 14/047

OPINION AND AWARD

APPEARANCES:

On Behalf of the Employer:

Holly Tomchey
Andrew Robustelli

Attorney
Administrative Commander

On Behalf of the Union:

Jeffery Burke
Maria Reyes
Lainie Disney

Attorney
Telecommunicator (Retired)
Telecommunicator

Place of Hearing: Chicago Heights, Illinois

Date of Hearing: April 28, 2015

Briefs Exchanged: August 18, 2015

Date of Award: October 15, 2015

I. RELEVANT CONTRACT LANGUAGE

ARTICLE XIII NO STRIKE – NO LOCKOUT

Section 13.1: No Strike

During the term of this Agreement, neither Council nor any employees, or agents of employees will instigate promote, sponsor, engage in or condone any strike, sympathy strike, slowdown, sit-down, concerted work stoppage, mass absenteeism or any other intentional interruption or disruption of the operations of the city, regardless of the reason for doing so. Any or all employees who violate any of the provisions of this Article may be discharged or otherwise disciplined by the city. In the event of a violation of this section of this Article, the Council agrees to inform the members of their obligation under this Agreement and to direct them to return to work.

ARTICLE XIV GRIEVANCE PROCEDURE

Sections 14.1 through 14.9.

ARTICLE XIX RESOLUTION OF IMPASSE

The resolution of any bargaining impasse shall be in accordance with the Illinois Public Relations Act, 5 ILCS 315/14, as amended.

ARTICLE XXVII DURATION

Section 27.2: Continuing Effect

Notwithstanding any provisions of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after any expiration date while negotiations or Resolution of Impasse procedures are continuing for a new Agreement or part thereof between the parties.

II. PERTINENT PROVISIONS OF THE ILLINOIS PUBLIC LABOR RELATIONS ACT (5 ILCS 315)(hereinafter “Act”)

Sec. 2...To prevent labor strife and to protect the public health and safety of the citizens of Illinois, all collective bargaining disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees shall be submitted to impartial arbitrators, who shall be authorized to issue awards in order to resolve such disputes. It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be

liberally construed...

Sec. 7. Duty to bargain. A public employer and the exclusive representative have the authority and the duty to bargain collectively set forth in this Section....

Notwithstanding any other provision of this Section, whenever collective bargaining is for the purpose of establishing an initial agreement following original certification of units with fewer than 35 employees, with respect to public employees other than peace officers, fire fighters, and security employees, the following apply:

(3)...Upon submission of the request for arbitration, the parties shall be required to participate in the impasse arbitration procedures set forth in Section 14 of this Act, except the right to strike shall not be considered waived pursuant to Section 17 of this Act, until the actual convening of the arbitration hearing.

Sec. 8. Grievance Procedure. The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement...

Sec. 14. Security employee, peace officer and fire fighter disputes.

(a) In the case of collective bargaining agreements involving units of security employees of a public employer, Peace Officer Units, or units of fire fighters or paramedics, and in the case of disputes under Section 18, unless the parties mutually agree to some other time limit, mediation shall commence 30 days prior to the expiration date of such agreement or at such later time as the mediation services chosen under subsection (b) of Section 12 can be provided to the parties....If any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties, either the exclusive representative or employer may request of the other, in writing, arbitration, and shall submit a copy of the request to the Board...

(p) Notwithstanding the provisions of this Section the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.

III. BACKGROUND

The parties to this impasse dispute are the City of Chicago Heights (hereinafter “City” or “Employer”) and the Illinois Fraternal Order of Police Labor Council (hereinafter “Union”). The Union represents a bargaining unit that includes telecommunicators working for the City of Chicago Heights Police Department. There are approximately 15 bargaining unit members. Their duties include providing emergency telecommunications services. The Union has represented the bargaining unit since 1997. The parties have had a series of collective bargaining agreements since that time.

The current collective bargaining agreement expired on April 30, 2013. After rounds of negotiation and mediation, the parties reached impasse. On April 28, 2015, a hearing was held before this Arbitrator to resolve the open issues that are mandatory subjects of bargaining. The tripartite panel was waived for purposes of this proceeding, and thus, the undersigned neutral has been appointed as sole member, vested with authority to address threshold matters of jurisdiction, and subsequently, if appropriate, to render a binding decision on all outstanding impasse issues as they have been presented in the parties’ respective last best offers. Joint stipulations were not made a part of this interest arbitration record.

As a preliminary matter, the Employer contends that the bargaining unit has no right to interest arbitration because it is a unit of non-sworn civilian personnel negotiating a successor collective bargaining agreement and the collective bargaining agreement contains no voluntary interest arbitration agreement. The Employer explained that, “[R]ather than be subject to an Unfair Labor Practice Charge, it has preserved the issue

and gone to interest arbitration with the FOP and asks the Arbitrator to decide whether the Telecommunicator Union has the right to go to interest arbitration on a successor contract.”¹

After carefully scrutinizing applicable provisions in the Act and studying the cited authority, the Arbitrator is convinced that this threshold issue is dispositive. For reasons which follow, the Arbitrator concludes that the bargaining unit does not fall within the enumerated categories of employees to whom section 14(a) of the Act made available interest arbitration. Moreover, the parties have not effectively negotiated for interest arbitration in their collectively bargained agreement. The Arbitrator’s reasons for so finding are set forth below.

III. CONTENTIONS OF THE PARTIES

A. THE UNION

The Union contends that the bargaining unit is entitled to interest arbitration. It states as follows:

As a threshold matter, the Employer has claimed that the unit does not have the right to have interest arbitration. It is wrong. The parties’ most recent contract, Ux 1, includes a provision on ‘resolution of impasse’ providing that ‘resolution of any bargaining impasse shall be in accordance with the Illinois Public Relations Act, 5 ILCS 315/14...’ That is the section of the Act providing for interest arbitration. The contract also includes a ‘continuing effect’ clause. (Ux. 1, p. 29). The Employer is obligated to resolve the impasse over this contract primarily because it has contracted with the Union to do so. Whether or not that resolution of impasse agreement continues to the next contract is a separate issue. The Employer has promised to arbitrate this impasse, and so now it must. See, Illinois FOP Labor Council and City of DuQuoin, FMCS No. 061115-51225-A (Reynolds, 2006). Additionally, the contract includes a ‘no strike’ provision, (Ux. 1, p. 19), which is the quid pro quo for an agreement to arbitrate. See, International Association of Firefighters, Local 413 and City of Rockford, 14 PERI Para. 2030 (1998).

¹ Employer brief at page 3.

B. THE EMPLOYER

The Employer asserts that the Arbitrator lacks authority to decide the open impasse issues under the Act for three reasons: 1) The composition of this particular bargaining unit renders it, by statutory definition, expressly excluded from mandatory interest arbitration provisions in the Act relative to negotiations for a successor contract; 2) the provisions of Article XIX in the collective bargaining agreement, upon which the Union has relied, do not establish a mutual intent by the parties to submit to interest arbitration; and 3) the Union failed to show that the “no-strike” language in Article XIII of the collective bargaining agreement was the *quid pro quo* for access to interest arbitration for a successor contract.

IV. FINDINGS AND DISCUSSION

Illinois unionized public-sector employees only have the right to seek interest arbitration for a collective bargaining agreement in three situations. Employees who meet the statutory definition of a fire fighter (including paramedics), peace officer or security employee are “protective service employees” (“PSEs”) and thus statutorily entitled to mandatory interest arbitration. 5 ILCS 315/3(g-1), (k), (p), 14(a). Alternatively, those public sector employees who are not PSE’s can gain access to interest arbitration for the purpose of achieving an initial contract. Finally, non-PSE’s have the right to interest arbitration if their prior collective bargaining agreement (“CBA”) contained an unambiguous voluntary interest arbitration provision as authorized under the Act. None of these paths are available to the bargaining unit represented by the Union.

The telecommunicators are not PSEs with a statutory right to mandatory interest arbitration under the Act. There appears to be no dispute about that basic proposition.

Telecommunicators are not included either as “essential services employees” or “security employees” under the Act. 5 ILCS/3(e), (p). They do not fall within any one of the categories enumerated in 5 ILCS/14(a). In fact, fire and police department “clerks and dispatchers” are specifically excluded from references in the Act concerning “essential services employees” if they are not full-time employees with firefighter, paramedic, and/or peace officer duties. 5 ILCS/3(g-1),(k).

By the same token, “security employees,” the only other employee group embraced in the “essential service employee” category under the Act, are defined in Section 3 as “*employee[s] who [are] responsible for the supervision and control of inmates at correctional facilities... or other non-security employees in bargaining units having the majority of employees being responsible for the supervision and control of inmates at correctional facilities.*” 5 ILCS/3(p). Clearly, within the intent and meaning of Section 3 definitions, telecommunicators are not considered “essential services” personnel with a statutory right to utilize the mandatory interest arbitration provisions under the Act because they do not work at correctional facilities.

Similarly, this case does not involve the exception under Section 7 of the Act which provides for non-PSE interest arbitration in the following circumstance:

Notwithstanding any other provision of this Section, whenever collective bargaining is for the purpose of establishing an initial agreement following original certification of units with fewer than 35 employees, with respect to public employees other than peace officers, fire fighters, and security employees, the following apply:

... Upon submission of the request for arbitration, the parties shall be required to participate in the impasse arbitrations set forth in Section 14 of this Act, except the right to strike shall not be considered waived pursuant to Section 17 of this Act, until the actual convening of the arbitration hearing... (Emphasis added.) 5 ILCS 315/7.

Section 7 allows non-PSEs access to mandatory interest arbitration proceedings under the Act, but only for the purpose of achieving an initial contract. That is not the case here. The Employer and the Union have successfully negotiated at least two prior contracts to completion. Thus, the mandatory interest arbitration exception for a first contract, as set forth in Section 7, does not apply in the instant matter.

The Union does not claim that the telecommunicators' primary daily responsibilities qualify them as firefighters, paramedics, security employees, peace officers or essential services employees entitled to interest arbitration. The Union also does not dispute the fact that this case involves a successor contract. Instead, the Union cites two cases which, in the Arbitrator's view, serve to confirm that this bargaining unit is not entitled by statute to mandatory interest arbitration.

The first case relied upon by the Union is *City of Rockford*, 14 PERI par. 2030 (ILRB 1998). There the Board held that Rockford violated the Act by refusing to participate in interest arbitration for civilian telecommunicators in a unit consisting largely of firefighters. The Board interpreted Section 14 of the Act to require mixed units of peace officers and non-peace officers to use interest arbitration procedures to resolve impasse issues. Applying the Act, the City was required to proceed to interest arbitration for the entire unit, including telecommunicators.

The same conclusion was reached in *Illinois Fraternal Order of Police Labor Council and City of DuQuoin*, FMCS No. 061115-51225-A (Reynolds, 2006), also cited by the Union. In *DuQuoin*, the FOP represented a "mixed" bargaining unit of five patrolmen, three dispatchers, and one secretary under a four-year contract that provided for wage reopeners in the final two years of the agreement for the dispatchers and the

secretary. When impasse occurred during reopener negotiations for those two employee groups, the FOP submitted a request to the employer for mandatory interest arbitration under Section 14 of the Act. The City of DuQuoin denied the Union's request for interest arbitration under the Act on two grounds: first, that the dispatchers and secretaries were not "essential services employees" within the intent and meaning of the Act and thus had no automatic right to mandatory interest arbitration as a means of resolving impasse in wage negotiations; and second, that the collective bargaining agreement did not contain unambiguous language providing for interest arbitration to resolve impasses.

Arbitrator Reynolds ultimately rejected both arguments by the employer. We will consider the second basis for his award momentarily, but, for now, it is instructive to point out that he relied on the *Rockford* case, holding in pertinent part that Section 14 of the Act provides for interest arbitration for all units where the majority of employees are protective service employees. Since the majority of employees in the unit in *DuQuoin* were patrolmen -- peace officers and protective service employees under the Act -- arbitrator Reynolds concluded that all unit employees, including the dispatchers, should be subject to interest arbitration for the resolution of bargaining impasses.

The Union's reliance on these two cases is misplaced, in my view. From a factual standpoint, the instant case is readily distinguishable from *Rockford* and *Duquoin*. This is a unit of telecommunicators only. There are no "essential services" employees in the bargaining unit. Thus, there is no basis for a finding that the telecommunicators are entitled to resolve their collective bargaining disputes through interest arbitration based on the fact that they are part of a bargaining unit where the majority of employees have access to interest arbitration.

Having concluded that the Union cannot successfully argue that the telecommunicators have a statutory right to interest arbitration for a successor agreement because they do not fall within the categories of employees under the Act to whom interest arbitration is made available, we come to the remaining issue in this matter. Did the parties voluntarily agree to interest arbitration? The 2013 collective bargaining agreement (“CBA”) must contain an explicit voluntary interest arbitration provision in order for the telecommunicators to utilize interest arbitration.

The Union relies on Article XIX of the 2013 CBA, which states: “The resolution of any bargaining impasse shall be in accordance with the Illinois Public Labor Relations Act, 5 ILCS 315/14, as amended.” The Union contends that Article XIX plainly evidences the parties’ intent to provide the bargaining unit access to interest arbitration. The Employer disagrees. It argues that the language of Article XIX is ambiguous and cannot reasonably be construed to mean that the parties intended to submit impasse disputes to interest arbitration.

In attempting to resolve this issue, it must be pointed out that the fundamental objective for the Arbitrator is to determine the intent of the parties. Indeed, it is the obligation of arbitrators to construe agreements so that the parties’ intent is enforced. In the instant case, if the Employer and the Union mutually intended for voluntary interest arbitration as a means of resolving bargaining impasses, then their intent must govern.

To determine what the parties intended, it is first necessary to look to the language of the contract itself and decide whether it is clear and unambiguous. Where contract language is not clear, arbitrators can consider extrinsic evidence, including past practice and bargaining history, to clarify meaning. There is no ambiguity if the

agreement is so plain on its face that the intention of the parties can be determined using no other guide than the agreement itself. If a single, obvious, and reasonable meaning appears from a reading of the language in the context of the rest of the contract, that meaning is to be applied.

In the instant case, no such clear language exists. There is nothing in the CBA which states, to the effect, that the parties “shall employ the interest arbitration process set out in Section 1614 of the Act in all future successor negotiations should impasse arise.” If that kind of language existed, the Union would prevail. Instead, it is evident to me that the language of Article XIX of the CBA is ambiguous because it is subject to differing interpretations. Section 14 of the Act provides for various methods of resolving bargaining impasses. To be sure, interest arbitration is one of those methods. It is not the only method, however. Section 14 of the Act also recognizes that the parties may agree upon alternative methods to resolve impasses. Section 14(p) of the Act provides:

“Notwithstanding the provisions of this Section the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.” Thus, Article XIX of the CBA is not clear on its face since it fails to specify which method of impasse resolution was intended by the parties.

In *DuQoin*, arbitrator Reynolds was presented with contract language identical to Article XIX in the CBA here. He, too, concluded that the language was ambiguous, stating: “The parties could have agreed to language that more clearly stated their intent to use the interest arbitration procedures contained in Section 14 of the Act to resolve impasses for all Unit employees.” In that case, however, the bargaining history

demonstrated that the parties specifically intended to bargain away the right to strike as a *quid pro quo* for mandatory interest arbitration. Thus, in addition to concluding that the civilian telecommunicators were entitled to interest arbitration under the Act because they were part of a “mixed” unit which included protective service employees, arbitrator Reynolds also held that the parties intended under the provisions of their CBA to provide for voluntary interest arbitration to be used to resolve bargaining impasse disputes involving the telecommunicators.

The instant case presents a much different picture. There is no evidence of bargaining history. Moreover, the parties have never been to interest arbitration before, so the Union cannot claim that past practice supports its interpretation of XIX of the CBA. Thus, while bargaining history and past practice are often two important tools for interpreting ambiguous contract language, the record lacks either form of extrinsic evidence.

Taking a different tack, the Union argues that the inclusion of a “no-strike” provision in the CBA is sufficient to demonstrate that the parties intended to provide for voluntary interest arbitration as the *quid pro quo* for relinquishing the right to strike. That same argument was before the court in *Policemen’s Benevolent Labor Committee v. County of Kane*, 2012 Il App (2d) 110993 (2015). There, a bargaining unit of court security officers (CSOs) sought access to interest arbitration under the Act. The trial court’s finding in favor of the CSOs, much like the Union’s contention here, was that although the CSOs did not fall within any of the categories of employees listed in Section 14(a) of the Act, the union and the employer had effectively bargained for interest arbitration by agreeing to a no-strike provision in their expired collective bargaining

agreement, which remained in effect by agreement of the parties until a successor agreement was reached.

In reversing the trial court, the Appellate Court issued findings that are instructive in this case:

We agree with defendants' position. Section 8 of the Act, entitled 'Grievance Procedure,' provides that, unless mutually agreed otherwise, every collective bargaining agreement shall contain a grievance resolution procedure that provides for final and binding arbitration of disputes concerning the interpretation or application of the agreement. 5 ILCS 315/8...Section 8 further provides that '[a]ny agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement.' 5 ILCS 315/8...Were we to conclude that every unit of public employees that bargained away its right to strike must also be entitled to interest arbitration, we would alter the exchange that is the *quid pro quo* the legislature provided for in section 8 of the Act...

Under the clear and unambiguous language of the Act, public employees, other than those who fall under section 14(a), are not automatically entitled to interest arbitration, but may submit a dispute to interest arbitration upon reaching an agreement with their employer to do so. 5 ILCS 315/17(a)(3). In other words, compliance with section 8's no-strike requirement does not automatically trigger section 14(a)'s right to interest arbitration...(Emphasis added) ²

The union in that case emphasized that, under the terms of the parties' memorandum of understanding, the collective bargaining agreement, including its no-strike provision, remained in full force and effect until a new collective bargaining agreement was reached. The Union in the instant case makes the same argument. Rejecting that contention, the Court stated:

As our discussion above suggests, however, these contentions are irrelevant to our determination of whether the CSOs are entitled to interest arbitration. The expiration of the collective bargaining agreement and the signing of the memorandum of understanding are relevant to determining only whether the

² As in that case, the parties' CBA contains the very *quid pro quo* that section 8 contemplates. Article XIV of the CBA defines a "grievance" as a "meritorious dispute between the Employer and an employee or the Council regarding an alleged violation or misapplication of an express provision of this Agreement." It contains a four-step grievance process that culminates in arbitration and provides that the arbitrator's decision is final and binding.

CSOs were prohibited by their own voluntary agreement from striking; at no point before or after the collective bargaining agreement expired, or before or after the memorandum of understanding was executed, were the CSOs prohibited by law from striking. Furthermore, the collective bargaining agreement contains a termination provision, which, arguably, is still available to the CSOs, since the memorandum of understanding provided that all terms of the collective bargaining agreement would remain in full force and effect until a successor agreement was reached.

For all the above stated reasons, the Arbitrator is not vested with authority to resolve the impasse issues presented. It has not been established that the telecommunicators have a right to mandatory interest arbitration for a successor agreement. They do not fall within any of the enumerated categories of employees listed in the Act and there is insufficient evidence on this record that the parties negotiated for interest arbitration in their collective bargaining agreement. The fact that the parties included a no-strike clause in their CBA which remains in full force and effect after contract expiration does not change the result.

V. AWARD

The bargaining unit represented by the Union does not have the right to interest arbitration at negotiation impasse of this successor collective bargaining agreement of non-sworn police personnel. The matter is remanded back to the parties for further negotiation and/or the declaration of impasse.

Ann S. Kenis

ANN S. KENIS, Arbitrator

Dated: October 15, 2015

