

SKOKIE FIREFIGHTERS WIN APPELLATE COURT VICTORY

The Illinois Appellate Court, 1st District, recently overturned an Illinois Labor Relations Board decision and held that the Village of Skokie committed an unfair labor practice when they submitted a permissive subject of bargaining to interest arbitration that resulted in prejudice to the vested rights of Skokie Firefighters IAFF 3033 members. 2016 IL APP (1st) 152478, December 5, 2016.

In a previous collective bargaining agreement, the Union and the Village agreed to different terms for promotions than the minimum statutory standards in the Fire Department Promotion Act, 50 ILCS 742. When the parties were at impasse negotiating a successor agreement, the Union sought to return to the minimum standards in the statute, while the Village submitted a proposal to the arbitrator to keep the previously negotiated waivers of the Act's standards as the status quo. The Arbitrator ruled for the Village, finding no compelling reason to change the promotional language waivers already in place. The Court made several determinations of the issues in this case.

First, the Court reaffirmed that "the standards for promotion to the rank of lieutenant are a permissive subject of bargaining." As with any permissive subject of bargaining under the Illinois Labor Relations Act, parties are not required to negotiate, but can voluntarily bargain if the other side makes a proposal on a permissive subject. However, absent an agreement between the parties, permissive subjects are not to be decided by an arbitrator at impasse. Here, the Court called the provisions of the Promotion Act the "default" standards, but noted that parties are free to bargain a waiver of the standards by agreement, as the Union and the Village had done previously. Nonetheless, with each new collective bargaining agreement, the Court said the "Union is free to take the position that the slate is wiped clean" and insist on returning to the "default" minimum standards under the Promotion Act.

Second, the Court distinguished this case from two previous Illinois Labor Relations Board decisions that found mere submission of a permissive subject of bargaining to interest arbitration was not a breach of the duty to bargain in good faith. *Village of Bensenville*, 14 PERI ¶ 2042 (ISLRB 1998); *Wheaton Firefighters Union, Local 3706*, 31 PERI ¶131 (ILRB State Panel 2015). Unlike those case, where the arbitrator refused to consider permissive subjects after objection by one party, here the Court noted the arbitrator considered the Village's status quo promotion proposal over the Union's objection and found for the Village. Since the arbitrator decided the issue on the merits and the Village did not move to vacate or modify the arbitrator's award, or otherwise accede to the Union members' "clear statutory rights," the Court held the Village committed an unfair labor practice.

Finally, the Court addressed the Village's contention that the Union did not submit its promotion proposal in a timely fashion. The Court observed that the Union tendered its proposal to return to the statutory standards of the Promotion Act before the deadline for final prehearing offers and the arbitrator made no evidentiary finding that the Union failed to adequately bargain the issue. As a result, the parties were at impasse on promotions at the time of the hearing, therefore a decision on the merits compelling the Union to accept the status quo exceeded the arbitrator's authority.

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