Arbitration Award

In re
Village of Shorewood
and
Illinois Fraternal Order of Police Labor Council

125 LA (BNA) 1427
Illinois Labor Relations Board Case No. S-MA-07-199
September 30, 2008

Aaron S. Wolff, Arbitrator

Background Facts

This is an interest arbitration pursuant to the Illinois Public Labor Relations Act [the "Act" or "IPLRA"]. The parties to this proceeding are the Village of Shorewood [the "Village," "Shorewood" or the "Employer"] and the Illinois Fraternal Order of Police Labor Council [the "FOP" or "Union"] who have had a collective bargaining relationship since 1995. The bargaining unit consists of between twenty and twenty-seven [20-27] full-time sworn peace officers in the rank of patrol officers. The parties' last collective bargaining agreement [the "CBA"] was for three years, April 1, 2004 to March 31, 2007.

By December 2007, the parties had reached tentative agreement on all but one issue for a new three-year contract. 1 The remaining issue is before the Arbitrator and is non-economic:

"Whether the bargaining unit employees should be allowed to have their disciplinary suspensions and terminations reviewed, at their election, through the collective bargaining agreement's grievance arbitration procedure or the Board of Fire and Police Commission, but not both."

The Village is a non-home rule jurisdiction. It is governed by an elected Village President and Board of Trustees and its current population is 12,114. Its day to day operations are directed by a Village Administrator. Its Police Department is administered by a Chief of Police.

Currently, by law and the CBA, the Department operates in part under the Illinois Board of Fire and Police Commissioners Act [the "BFPCA"] which requires establishment of a Board of Fire and Police Commissioners to, among other things, hear disciplinary charges for the suspension or discharge of police officers. 65 ILCS 5/10-2.1-1 et seq. Under the BFPCA, suspensions for periods of five (5) days or less can be issued by the

Chief of Police and are appealable by the officer to the Board of Fire and Police Commissioners. 65 ILCS 5/10-2.1-17. Suspensions of more than five (5) days or terminations can only be granted by the Board of Fire and Police Commissioners. 65 ILCS 5/10-2.1-17. As such, the Chief has no statutory authority for his own power to discharge or discipline any employee for more than five days. Article VI of the CBA contains a typical grievance/arbitration procedure that would include disciplinary actions not involving suspensions or terminations.

Under the case law that developed since enactment of the IPLRA in 1985, home rule municipalities have a mandatory duty to bargain over the right to submit disciplinary actions to a grievance procedure ending with arbitration, but non-home rule municipalities were not so bound. 2 For these reasons, the 2004-2007 CBA here contains various provisions, in accord with the BFPCA, as noted above, that place suspensions and discharges under the BFPC's exclusive jurisdiction. 3

However, in August 2007, while negotiations were on-going between the parties, the BFPCA was amended to also permit non-home rule units of government to engage in collective bargaining over an "alternative or supplemental form of due process based upon impartial arbitration" with respect to the disciplinary procedures that otherwise would go before the Board. The amendment further states that "Such bargaining shall be mandatory unless the parties mutually agree otherwise." 4

The Union's original proposal for a new contract offered this "New Section:" "All disciplinary suspensions at the election of the employee, can be appealed through the Agreement's grievance procedure or the Board of Fire and Police Commissioners." The Village rejected that proposal and offered to "maintain the status quo of Section 2.2."

After the August 2007 amendment to the BFPCA, the Union made this "Final Offer" which was amended during and, with permission, after the Arbitration hearing: 5

The Union proposes that all disciplinary suspensions, at the election of the employee, can be appealed through the Agreement's Grievance Procedure or the Board of Fire and Police Commissioners, but not both. To effectuate this, the following contract articles must be changed in the following manner:

Section 2.2 Authority of the Board of Fire and Police Commissioners.

This agreement is not intended and shall not be construed in any manner to diminish or modify the statutory authority of the board of Fire and Police Commissioners (the "Board"), Shorewood Illinois, and the parties hereto expressly recognize the sole authority of the Board with respect to hiring, promoting, demoting, suspending, hearing appeals of Chief's suspensions, and' discharging of employees and such actions are not subject to the grievance procedure of this Agreement. The parties agree that all newly employed employees are required to serve a probationary period of twelve months from the date of hire. During the probationary period, the officer is an employee-at-will and may be disciplined or discharged without notice and without cause, and without recourse

to the grievance procedure.

Section 6.5 No Application to Suspensions or Terminations

Matters involving the suspension or termination of employees are within the exclusive jurisdiction of the Board of Fire and Police Commissioners. Said matters are not subject to this Grievance Procedure and no arbitrator shall have jurisdiction over said matters.

Section 9.1 Discipline

The Village agrees with the tenets of progressive and corrective discipline where appropriate. If discipline is imposed it shall be imposed in a manner that will not embarrass the employee before other employees or the public. Discipline may be imposed upon a post-probationary employee only for just cause (probationary employees without cause) and may include any of the following:

A. Oral reprimand
B. Written reprimand
C. Suspension
D. Discharge

For post-probationary employees, oral reprimands and written reprimands are subject to review through the grievance procedure. Suspensions and discharges are within the sole jurisdiction of the Board of Fire and Police Commissioners and are not subject to the Grievance procedure.

For post-probationary employees, disciplinary suspensions and terminations, at the election of the employee, can be appealed through the Agreement's Grievance Procedure or the Board of Fire and Police Commissioners, but not both. In cases involving suspensions and terminations, the employee shall elect the method of appeal (i.e. through the Grievance Procedure or through the Board of Fire and Police Commissioners) within ten (10) calendar days of the employee's receipt of notice of the discipline or termination. The employee's Grievance contesting the suspension or termination or the appeal to the Board of Fire and Police Commissioners shall be deemed proper notice of his/her election. The election of one method of review excludes the other. If an employee elects to have his/her termination reviewed through the Grievance Procedure, the Chief shall have the authority to immediately issue and impose the contemplated discipline including suspensions of five days or more and termination.

The Village's Final Offer is as follows:

> Section 2.2. This agreement is not intended and shall not be construed in any manner to diminish or modify the statutory authority of the Board of Fire and Police Commissioners (the "Board"), Shorewood, Illinois, and the parties hereto expressly recognize the sole authority of the Board with respect to hiring, promoting, demoting, suspending, hearing appeals of Chief's suspensions, and

> discharging of employees, and that such actions are not subject to the grievance procedure of this Agreement. The parties agree that all newly employed employees are required to serve a probationary period of twelve months from the date of hire. During the probationary period, the officer is an employee-at-will and may be disciplined or discharged without notice and without cause, and without resource to the grievance procedure.

The parties agree that the only issue here is non-economic and that most of the statutory factors normally considered in interest arbitrations are not applicable here. The statutory factors are set forth below, but only numbers 4 and 8 appear relevant or are relied on here. The IPLRA [5 ILCS 315 et seq.] provides in §14(g) that "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." The "applicable factors" set forth in §14(h) are as follows:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Contentions of the Parties

The Union first contends that this is not a status quo issue and, therefore, it does not have to prove the need for a breakthrough. It reasons that since the issue of disciplinary proceeding was not a subject of mandatory bargaining until 2007, it cannot be considered as a status quo issue and argues:

> " 'when the parties faced the issuebefore it became a mandatory subject of bargaining and, ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties… [t]hus they did not create a base from which to consider subsequent bargaining.' City of Lincoln, S-MA-99-140 (Perkovich 2000) Arbitrator Perkovich also stated that 'when a matter is first before the parties after a history of tacit approval, rather than bilateral agreement, there is no status quo such that the issue can be characterized as a breakthrough.' City of Blue Island, S-MA-00-138 (Perkovich 2001) Like the issue of residency which was made bargainable in 1997, and at issue in those two cases, this was the parties' first opportunity to bargain over this disciplinary issue; accordingly, itis not a status quo or breakthrough issue."

Next, the FOP argues at length why it "wants the choice of grieving discipline." It acknowledges that for many years, under the still current Chief of Police, discipline has not been an issue in the Department. However, eventually personnel will change; but the CBA will survive and protect employees' rights under it. The Union lists reasons why it believes the Board is not a substitute for arbitration. First, it observes that the Board's three members are appointed by the Village president with the consent of the trustees. This is "no different," the Union says, "than granting the prosecution in a criminal case the unilateral right to select and appoint the judge and jury in a criminal prosecution. It is aphoristic that a unilaterally appointed body is less likely to have a neutral perspective than onemutually selected." 6

The Union also states that:

> Unlike the professional experience of labor arbitrators bilaterally selected by the parties, there is no requirement under the [BFPCA] that the appointed Board members have any training in labor relations, evidentiary standards, due process, or just cause analysis. In fact, there is no requirement that they have any training whatsoever in any area. Yet, such unilaterally appointed board members are currently charged with adjudicating disciplinary matters and can determine the future of a police officer's career.

The Union also points out that under the BFPCA, §10-2.1-17, as well as the Shorewood Fire & Police Commissioner Rules, the Board can increase a suspension of five days or less to a suspension of up to thirty [30] days or even discharge an officer "depending upon the facts presented." This is one example of how the BFPCA "significantly deviates from the concept of just cause." Another example, the Union holds, is that the BFPC does

not consider evidence of "disparate treatment" in cases before it; but arbitrators consider such treatment as a denial of just cause. 7

The Union also asserts as another basis for wanting arbitration as an alternative to the Board is that in arbitration the employer has the burden of proof in all disciplinary actions, 8 while in suspensions of five days or less appealed to the Board, the employee has the burden of proof. 9

The Union also suggests the "possibility" that an employee suspended for 5 days or less may not even be entitled to an evidentiary hearing before the Board. Further, if a police chief files charges before a Board and the officer claims discriminatory treatment/civil rights violations, the latter could be barred in subsequent litigation by res judicata even though the Board is not required to consider such inquiries; whereas this would not be true under a grievance/arbitration proceeding. In sum, because of the alleged unfairness of Board procedures, the Union wants the protection of just cause and due process that would be afforded under an alternative grievance/arbitration contract provision.

Finally, the Union advances the argument that §8 of the IPLRA, 5 ILCS 315 /8, "requires that discipline be subject to the Collective Bargaining Agreement's grievance arbitration procedure." That section provides in pertinent part:

> §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.

In support of this contention, the Union cites numerous arbitration decisions which, will be considered as necessary in the "Discussion" that follows.

The Village's arguments may be summed up in brief compass. [1] reconciliation of the IPLRA, §8 and the 2007 amendment to §2.1-17 of the BFPCA, do not mandate imposition of grievance arbitration into the CBA; [2] this is a status quo issue and the Union has not proven the need for a breakthrough.

More specifically, the Village advances these arguments. In the Markham case, supra, fn. 2, at 617- 619, "the Appellate court found that a non-home rule municipality did not have the authority to bargain over disciplinary procedures because it could not bypass the mandatory procedures of the BFPCA." On the other hand, the Village observes that in The Town of Cicero, supra, fn. 2 at 331:

> "the Appellate court reached the conclusion that because Cicero was a home rule municipality and could, through its home-rule powers, adopt alternatives to the BFPCA, it was therefore not subject to the same constraints of §7 of the [IPLRA] and allowed for negotiation on the interest arbitration over submitting disciplinary

matters to grievance arbitration."

In 1999, subsequent to Markham and Cicero, the Illinois legislature amended §10-2.1-17 of the BFPCA to include the following [emphasis added in VB 7-8]:

The hearing shall be as hereinafter provided, unless the employer and the labor organization representing the person have negotiated an alternative or supplemental form of due process based upon impartial arbitration as a term of a collective bargaining agreement. In non-home rule units of government, such bargaining shall be permissive rather than mandatory unless such contract term was negotiated by the employer and the labor organization prior to or at the time of the effective date of this amendatory Act, in which case such bargaining shall be considered mandatory.

Although there are no judicial interpretations as to the effect of the BFPCA's 1999 amendment, light on it is shed by arbitral and Illinois Labor Relations Board [the ILRB] decisions which hold that "after [that] amendment * * *, collective bargaining agreements in non-home rule units of government had to have previously contained clauses regarding the grievability of discipline in order for this issue to be a mandatory subject of bargaining." 10

Further, the Village disagrees with the Union's view that "the 2007 amendment requires not only bargaining over the topic, but also the imposition of grievance arbitration in accordance with Section 8 of the Illinois Public Labor Relations Act." In this respect, under ordinary rules of statutory construction, "to ascertain and give effect to the intention of the legislature" the Village says:

> the plain language of the statute simply requires that a non-home rule municipality like the Village engage in bargaining over the disciplinary hearing process for its police officers, nothing more, nothing less. On its face it certainly does not mandate, as the Union would have it, the inclusion of a grievance arbitration simply because bargaining is necessary.

In further support of its "plain meaning" interpretation, the Village observes that in those jurisdictions, home rule or non-home rule where bargaining on this topic was mandatory under the 1999 amendment to the BFPCA, 11 "a standard interest arbitration analysis was applied." 12 Accordingly, the Village holds that:

Given the plain meaning of the 2007 amendment which now requires mandatory bargaining and the prior treatment by arbitrators under similar circumstances, it is clear the instant arbitrator has the authority to decide the impasse using a traditional interest arbitration analysis, and would not be required to impose grievance arbitration simply due to the existence of Section 8 of the IPLRA.

The Village recognizes that there is one arbitration decision that reached a different conclusion, Village of Lansing, Case No. S-MA-04-240 [July 19, 2007] by Arbitrator Edwin Benn. In Lansing, which was decided less than a month before the August 2007

amendment to the BFPCA, the arbitrator granted the Union's request to have disciplinary matters resolved under grievance arbitration provisions, holding that he was compelled to do so by virtue of §8 of the IPLRA. Thus, he stated; "The language in Section 8 of the Act that '[t]he collective bargaining agreement. . . shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise' [emphasis in original] leaves little to the imagination and, most important, that language leaves me with no discretion."

The Village contends that Lansing was decided incorrectly and that §8 does not "require" inclusion of grievance arbitration in the contract. Apart from Lansing allegedly being in the minority of arbitral decisions, the Village asserts that statutory amendments by "implication" are not favored under Illinois law or the Illinois Constitution. The IPLRA has never been amended and the 2007 amendment to the BFPCA was "specific" and did not refer to other provisions or acts like the IPLRA. 13

Continuing, the Village argues:

> if the legislature had wanted automatic arbitration if elected by the Union, it would have said so. Instead the legislature simply told employers and employees that they must bargain over it. Moreover, to give the reading to Section 8 of the IPLRA as been done by Arbitrator Benn, would essentially render Section 2.1-17 of the BFPCA and Section 7 of the IPLRA meaningless. In affording the language of a statute its plain and ordinary meaning, words and phrases are not viewed in isolation but considered in light of other relevant provisions of statute. People v. Maggette, 195 Ill.2d 336, 348, 254 Ill. Dec. 299, 747 N.E.2d 339 (2001). Under this principle, to give the meaning to Section 8 which has been given it by Arbitrator Benn would mean to ignore Section 2.1-17 of the BFPCA which mandates bargaining over the issue. Stated simply, if Section 8 of the IPLRA requires the imposition of grievance arbitration and leaves the arbitrator with no discretion, then there would be no duty to bargain under the 2007 amendment to the BFPCA, as grievance arbitration would simply be a requirement. And again, if the legislature wanted automatic arbitration if elected by the Union, it would have said so. Instead, the legislature simply said you must bargain over it. Second, to read Section 8 as mandating contractual grievance arbitration would render Section 7 of the IPLRA meaningless. Section 7 states: for purposes of this Act, to bargain collectively means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees… to negotiate in good faith with respect to wages, hours, and other conditions of employment… but such obligation does not compel either party to agree to a proposal or require the making of a concession. 5 ILCS 5/315-7.

In simple terms, to require grievance arbitration where bargaining over the topic is mandatory, would put the employer in the position of being compelled to agree to a proposal in contravention to Section 7 of the IPLRA. As such, the 2007 amendment must be afforded its plain meaning, that the only obligation imposed by the amendment is to

require bargaining over grievance arbitration and not its automatic imposition.

Finally, the Village contends that its proposal must be adopted because the Union is proposing a "breakthrough" even though the bargaining history here has been to exclude suspensions and discharges from grievance arbitration. "The well accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing the existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change." 14

The Village rejects the Union's argument that there is no status quo or breakthrough because the Union has not been allowed to bargain over the issue previously. For reasons it articulated above, the Village holds that "such an analysis would render not only the duty to bargain in the BFPCA meaningless, but also the ability of the employer to say no to a proposal as contemplated by Section 7 of the IPLRA."

The Village contends that the Arbitrator should consider factors besides bargaining history. In this respect it notes that the parties have had no past problems in hearing discipline cases before the BFPC and the BFPCA provides for fair and equitable due process. Finally, comparable villages in Will County [Mokena, Lemont and Lockport] handle discipline before a BFPC.

Discussion

The Arbitrator finds that:

1. This is not a status quo issue and the Union does not have the heavier burden of proving the need for a breakthrough;

2. Under §8 of the IPLRA, since the parties have not mutually agreed otherwise, their CBA is required to have an alternative provision for grievance arbitration of disciplinary matters; and

3. Even if such provision were not required by §8, an analysis of pertinent factors would still result in adopting the Union's amended final offer, supra, pp. 3-4.

My reasoning follows.

Under statutory and case law prior to August 2007, the Employer was not required to bargain over the subject of including suspensions and discharges in the grievance/arbitration provision of the CBA. Counsel for both parties acknowledged that the Union's current proposal was not permitted before 2007. I simply do not perceive how a subject for bargaining that did not become mandatory for all non-home rule municipalities until 2007 can be treated as a status quo issue since the give and take of bargaining could not previously be exercised. This is the first time the Employer was required to bargain over this issue. Under such circumstances, I don't believe that the

Employer can now assert this is a status quo situation and a breakthrough with a heavier burden on the Union to prove the need for a change. City of Lincoln, S-MA-99-140 (Perkovich, 2000) ["* * * when the parties faced the [residency] issue before it became a mandatory subject of bargaining and, ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties. Thus, they did not create a base from which to consider subsequent bargaining."] 15

The Village argues that its position that this is a status quo issue is supported by Arbitrator Nathan's award in City of Rock Island, S-MA-03-211 (2004) which, it says, is "factually similar to [this] one." That reliance is misplaced and Rock Island has support for the Union here. The expired contract there was from 2000 to 2003 and it and prior contracts mandated that appeals from disciplinary actions be taken to the Rock Island Board of Fire and Police Commissioners. Having bargained for a Commission for many years, the union's attempt in Rock Island to have disciplinary appeals go to arbitration was deemed a status quo issue and the union was required, but failed to prove the need for a change in a new contract. As Arbitrator Nathan properly held on a status quo issue, and the Village here quotes: "Whatever the facts, it is for the union to develop a record. When a party wants an arbitrator to make a change in contract language it must demonstrate the need." But that is not the case here where the parties never before had the right or duty to bargain over the discipline issue. Hence there is no status quo issue here.

I turn next to the interpretation and application of IPLRA §8. A number of interest arbitration awards have held that where, as here, the subject of bargaining is mandatory and "just cause" is included in the collective bargaining agreement [as it is here; §9.1, supra], then §8 of the IPLRA [supra] requires that disciplinary issues be included in a grievance/arbitration provision in the collective bargaining agreement as an alternative to proceeding before a board of fire and police commissioners, unless the parties have mutually agreed otherwise. Will County & AFSCME, Local 2691, (Nathan, 1988); City of Springfield & Policemen's B & P Assoc., S-MA-89-74 (Benn, 1990); City of Highland Park & Teamsters Local 714, S-MA-98-219 (Benn, 1999); Calumet City & FOP, S-MA-99-128 (Briggs, 2000); Village of Elk Grove & Firefighters Assoc., Local 3398, S-MA-93-164 (Nathan, 1994); City of Markham Police Dept. & Teamsters Local 726, S-MA-01-232 (Meyers, 2003); and Village of Lansing & FOP Lodge 218, S-MA-04-240 (Benn, 2007).

I believe that the interpretation of §8 of the IPLRA in the above cited cases is sound and reasonable and concur in it. It reflects the "plain meaning" of §8. Since the parties here have bargained to impasse on this issue and not reached mutual agreement on it, the Union's proposed language must be adopted.

I cannot accept the Village's arguments that Lansing was decided "incorrectly," or that the BFPCA and the IPLRA do not require this result. First, Lansing is not in the "minority" of decisions on this point. The Village has not cited any case that takes a view contrary to Lansing and listed above are six cases that take the same view as Lansing. Second, the Village's reliance on the 2007 amendment to the BFPCA is misplaced. That

amendment struck the limitations on non-home rule jurisdictions bargaining on this issue and said: "Such bargaining shall be mandatory unless the parties mutually agree otherwise. Any such alternative agreement shall be permissive." [65 ILCS 5/10-2.1-17] Here the parties did not agree to make the discipline issue permissive instead of mandatory and the Union's amended final offer provides that arbitration is an "alternative" to the BFPC, either route is available to the Union and its members and is therefore in compliance with the amended statute.

As for §8 of the IPLRA, the Village ignores the use of the word "shall" three times in that section, as well as the last four words therein: "The * * * 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." The word "shall" is a command: "2. will have to or is determined to: You shall do it * * * 3. (In laws, directives, etc. must; is or are obliged to: Council meetings shall be public. * * *") 16 The only escape from this command is to mutually agree otherwise; and there is no such agreement.

Even if the plain meaning of §8 did not require this result, I would reach the same conclusion on other grounds. The Union's amended final offer more nearly complies with the applicable factors, is fair, reasonable and more attuned to the real world of private and public collective bargaining.

Assuming arguendo that §8 did not require arbitration of disciplinary issues, it is obvious that §8 favors it. The United States Supreme Court has made clear repeatedly the importance of a grievance arbitration provision in collective bargaining agreements. Textile Workers v. Lincoln Mills, 353 U.S. 448 [40 LRRM 2113] (1957); United Steelworkers of America v. Warrior & Gulf Navigation Company, 363 U.S. 574 [34 LA 561] (1960). In the latter case, the Court observed 363 U.S. 581-82:

> "The labor arbitrator performs functions which are not normal to the courts; 17 the considerations which help him fashion judgments may indeed be foreign to the competence of courts.
>
> 'A proper conception of the arbitrator's function is basic. He is not a public tribunal imposed upon the parties by superior authority which the parties are obliged to accept. * * *
>
> "* * * The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgment whether tensions will be heightened or diminished. For the parties objective in using the

22 §3 of the affidavit states the date as "October 26, 2008," an obvious typo; but the jurat is dated February 27, 2008.

23 With respect to Manhattan, the Employer offered "one small objection" because the negotiations were still pending and there was only a tentative agreement, even though, as noted above, the Employer itself offered New Lennox as a comparable with only a "TA."

24 City of Rock Island & IAFF, Local 26, S-MA-06-142 (Kossoff, Feb. 2007).

25 Other arbitrators have commented on how arbitration offers these beneficial aspects over BFPCs: Briggs in Calumet City, supra; and Kossoff in Village of Oak Brook, infra, fn. 27.

26 Village of Skokie & Skokie Firefighters, S-MA-92-179 (Gunderman, 1993); Village of Oak Brook & Teamsters [Police], S-MA-96-242 (Kossoff, 1998); Village of Arlington Heights & IAFF, S-MA-88-89 (Briggs, 1991); City of Markham & Teamsters, Local 726 [Police], S-MA-89-39 (Larney, 1989); and County and Sheriff of Rock Island & FOP, S-MA-94-6 (Fisher, 1995).

27 Arbitrator Kossoff in City of Rock Island & IAFF, Local 26, S-MA-06-142 (Feb. 2007); and Arbitrator Nathan in the Rock Island case [supra].

28 City of Rockford & IAFF, Local 413, S-MA-97-199 (1998).