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Public Employer Bulletin

A review and analysis of emerging developments affecting public sector employees

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"Manning" Levels for Firefighters and Paramedics Not Arbitrable

As municipal bargaining across Illinois reaches the "critical" end of the fiscal year, it may be time to take stock in your pending negotiations. Has your firefighters' union negotiator demanded changes in the number of suppression personnel assigned to each rig? Has the firefighters' union sought to bargain the issue of minimum manning for safety reasons? Before you agree to bargain over such demands, first consider how arbitrators have ruled in recent interest arbitration decisions.

The subject of firefighter and paramedic "manning" (*i.e.*, the minimum number of employees a municipality must staff on a particular shift) may not be submitted to interest arbitration, according to three recent interest arbitration decisions interpreting Section 315/14(i) of the Illinois Public Relations Act (the "Act"). See *Village of Elk Grove Village and Village of Elk Grove Village Firefighters Ass'n Local 3398*, No. S-MA-93-164 (Nathan, 1994), *City of Blue Island and Blue Island Professional Firefighters Ass'n*, No. S-MA-93-109 (Koszowski-Burns, 1993), and *City of Canton and Canton Fire Fighters Union, Local 1897*, No. S-MA-90-142 (O'Reilly, 1991).

The holdings in these decisions center on the language in Section 315/14(i) that prohibits interest arbitrators from issuing decisions establishing "the total number of employees employed by the department." In accordance with this language, the interest arbitrators in these decisions concluded that they were without jurisdiction to entertain union proposals to set manning levels because it would be tantamount to establishing the minimum number of employees employed by the respective departments. In response to the union's argument in *Village of Elk Grove Village* that its proposal was not excluded by the Act

because it sought to better ensure firefighter safety rather than set a minimum employee requirement, Arbitrator Harvey Nathan stated:

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Vedder, Price, Kaufman & Kammholz, is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

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Vedder Price represents a considerable number of public bodies, including counties, cities, villages, school districts and townships, with respect to the myriad day-to-day problems they face. Firm attorneys also work with elected officials and administrators in preparing and presenting in-house workshops tailored to the needs of the individual public body. The firm keeps its public sector clients abreast of breaking developments through frequent newsletters, bulletins and firm-sponsored seminars.

While it is true that how many employees are on duty at any one time indirectly affects the safety of those employees when called upon to suppress a fire, that argument can be made with any safety proposal. If there are too few employees on duty, their safety may be in jeopardy. Nonetheless, the legislature determined that this was a decision for management, and a resolution could not be required. . . . Inasmuch as any proposal regulating the minimum number of employees working at any one time establishes a floor for the total number of employees to be employed by the Village, such proposal is outside of our jurisdiction.

The determination that manning proposals from firefighters and paramedics cannot be submitted to interest arbitration means that manning is a permissive, rather than mandatory, subject of bargaining. Arbitrator Nathan recognized this in *Village of Elk Grove Village*, where he stated, "[T]he Village may bargain over [manning], but if it is non-mandatory, [the Village] cannot be required to submit the issue to a determination by an outside party. It is the Village's issue to do with as it wishes."

Of course, the conduct of the parties can also have a bearing on the arbitrator's decision on whether or not to resolve an issue at hearing. For example, if your jurisdiction historically has bargained minimum manning issues, this topic is subject to arbitration. However, if you have not historically bargained the issue, but, rather, you voluntarily included a minimum manning clause in the collective bargaining agreement, the question remains whether you must continue to bargain the issue in negotiations for a successor Agreement. Arguably, the parties may not convert a permissive subject of bargaining into a mandatory one, and the employer may legitimately decline to bargain this issue to impasse.

In sum, absent historical bargaining on the subject or acquiescence by the employer to submit the issue to

arbitration, interest arbitrators likely will not consider union proposals relating to manning of firefighters and paramedics.

Clients and friends will recall that Vedder Price has established a computer-managed database consisting of the entire body of Illinois interest arbitration decisions. We have the capacity to pinpoint the entire range of relevant decisions on issues presented in your negotiations. For complex and evolving issues, we advise our clients to carefully consider trends in relevant decisions. This work ideally should be completed before bargaining a given issue.

If you have any questions regarding this or related issues, please feel free to contact [James Spizzo](mailto:James.Spizzo@vedderprice.com) (312/609-7705) or any other Vedder Price attorney with whom you have worked.

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