ARBITRATOR'S DECISION AND AWARD

In the Matter of Arbitration Between: CITY OF MATTOON, Employer, and MATTOON FIREFIGHTERS ASSOCIATION, LOCAL 691, Union.	Grievant: Bargaining Unit

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DATE OF GRIEVANCE:	July 19, 2017
DATE OF HEARING:	January 16, 2018
DATE OF CLOSING OF THE RECORD:	March 24, 2018
DATE OF DECISION:	April 18, 2018
APPEARANCES:	
EMPLOYER:	Julie Proscia Carlos S. Arevalo Smith Amundsen, LLC 2460 Lake Shore Drive Woodstock, IL 60098
UNION:	Margaret A. Angelucci Asher, Gittler 200 W. Jackson Boulevard Chicago, IL 60606
ARBITRATOR:	George L. Fitzsimmons, J.D., NAA 123 W. Bodley Avenue, Suite 203 St. Louis, MO 63122

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I. BACKGROUND

Mattoon is a City in Coles County, Illinois (hereinafter "Employer") and provides municipal services including emergency ambulance services to its residents. These ambulance services have historically been provided by the City of Mattoon Fire Department. The Mattoon Firefighters Association, Local 691, (hereinafter "Union") represents bargaining unit members including the Grievants herein. The Employer and Union entered into a Collective Bargaining Agreement (hereinafter "Contract") which was in full force and effect at all relevant times herein. (Jt.Ex.1). This dispute involves the Union's contention that the Employer violated the Contract when it unilaterally eliminated ambulance services effective May 1, 2018 without notice of bargaining with the Union when the Mattoon City Council adopted Resolution No. 2017-2997 on July 18, 2017. The parties stipulated that there were no procedural questions and the grievance was properly before Arbitrator Fitzsimmons for decision.

II. ISSUES

Was the Grievance timely filed?

Did the Employer violate the Contract when it adopted Resolution No. 2017-2997 on July 18, 2017 eliminating ambulance services effective May 1, 2018? If so, what shall be the remedy?

III. RELEVANT CONTRACT PROVISIONS

ARTICLE 3
MANAGEMENT RIGHTS

Subject to the provisions of this Agreement the management of the operations of the Employer, the determination of its policies, budget, and operations, the manner of exercise of its statutory functions and the direction of its work force, including, but not limited to, the right to hire, promote, transfer, allocate, assign and direct employees; to discipline, suspend and discharge for just cause; to relieve employees from duty as outlined in accordance with this Agreement, to make and enforce reasonable rules of conduct and regulations; to determine department, divisions, and sections and work to be performed therein; to determine quality; to determine the number of hours of work and shifts per work week, if any, not in conflict with this Agreement, to establish and change work schedules and assignment, the right to introduce new methods of operations, to eliminate, relocate, transfer or subcontract work, to maintain efficiency in the department and to take such action as are necessary in any emergency, is vested exclusively in the Employer, provided the exercise of such rights by the Employer shall not conflict with any provisions of this Agreement or the Employer's authority under applicable statutes, including the Illinois Labor Relations Act.

ARTICLE 12
GRIEVANCE PROCEDURE

Any grievance or dispute, which may arise between the parties, including the application, meaning or interpretation of this Agreement, shall be settled in the manner prescribed by this Article.

*** * ***

Step 3. If the grievance is not settled at Step 2, the grievance shall be submitted in writing within three (3) days to the City Administrator who shall render a written decision within fourteen (14) days after the receipt of the grievance.

Step 5. If the grievance is not settled at Step 3 or Step 4, as applicable, the grievance shall be submitted to arbitration by either party upon written notice, within fifteen (15) calendar days to the other party.

Step 6. Arbitration

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C. The findings of the arbitrator shall be final and binding on both parties.

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E. The arbitration shall consider and decide only the issue or issues of contract interpretation or application raised by the grievance and appealed to arbitration. The parties shall endeavor in good faith to stipulate to the grievance issue(s) in dispute but if they are unable to do so, the Arbitrator shall frame the issue. The arbitration shall have no authority to make a decision on any issue not raised by the grievance appealed to arbitration. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this agreement.

ARTICLE 13
RULES, REGULATIONS AND POLICIES

Section 2

Final authority for proposed changes to "SOGs" and "Ordinance Rules is vested in the Board of Fire and Police Commissions or the City Council, as applicable, provided that:

A. No change shall be effective which is in conflict with the terms of this Agreement; and

B. If a proposed change affects a benefit or condition of employment not covered by an express term of this Agreement and which is mandatory subject of collective bargaining under §7 of the ILRA, it shall not be unilaterally implemented, but upon the request of the Union shall be subject to negotiation between the Parties.

ARTICLE 14
WORK PRESERVATION

Section 1 Subcontracting

The parties agree that Public Act 095-0490 (SB834) (the "Act"), which governs the circumstances relating to the use of subcontracting or substitutes, and became applicable to the City of Mattoon June (sic) 1, 2008. Both parties agree to follow the "Act".

Section 2 Bargaining Unit Integrity

Notwithstanding Section 1 of this Article, if the Employer wishes to transfer work done Bargaining Unit Members to persons outside the Bargaining Unit, it must first bargain the transfer with the Union. In accordance with past practice temporary help may be used to perform work which cannot be performed by regular employees for reasons of employee availability or excessive workflow.

The Employer shall retain the right to use temporary and part time employee availability in accordance with past practices.

ARTICLE 24
LEGAL EFFECT AND SEVERABILITY

Section 2 City of Mattoon Code of Ordinances

This Agreement incorporates by reference the City of Mattoon Code of Ordinances and all special ordinances now in effect. To the extent that this agreement is inconsistent with any ordinance of the City of Mattoon, the terms of this agreement shall control. It is the intention of the City to repeal any provision of the Code of Ordinances or special ordinances to the extent that they are in conflict herewith. (Jt. Ex.1).

In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining. Municipal fire departments covered by the changes made by this amendatory Act of the 95th General Assembly that are using non-certificated employees as substitutes immediately prior to the effective date of this amendatory Act of the 95th General Assembly may, by mutual agreement with the certified bargaining agent, continue the existing practice or a modified practice and that agreement shall be considered a permissive subject of bargaining. A home rule unit may not regulate the hiring of temporary or substitute members of the municipality's fire department in a manner that is inconsistent with this Section. This Section is a limitation under subsection (1) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State. (Sources: P.A. 95-0490) (Ex.#10)

IV. SUMMARY POSITION OF THE PARTIES

A. UNION

That the Grievance was timely filed.

That the Employer violated the Contract, Article 13, Section 2 when it adopted

Resolution No. 2017-2997 on July 18, 2017 eliminating paramedic services effective May 1, 2018 without first bargaining with the Union.

B. EMPLOYER

That the Grievance was filed prematurely as the Resolution is not an Ordinance and the Employer has not eliminated City-operated ambulance service.

That the Employer did not violate Article 13, Section 2 of the Contract when it passed Resolution No. 2017-2997 as this Resolution provided for the future elimination of paramedic services on May 1, 2018.

That the City of Mattoon has offered to meet and bargain with the Union regarding this issue and the impact therefrom.

V. SUMMARY OF THE EVIDENCE

Neither the Employer nor the Union produced testimony in this dispute. The Parties stipulated that the issue to be decided by the Arbitrator is:

> "Did the Employer violate the Contract when it adopted Resolution No. 2017-2997 on July 18, 2017 eliminating paramedic services Effective May 1, 2018? If so, what shall be the remedy?"

The parties stipulated that the Arbitrator should decide this dispute based on stipulated documents and Post-Hearing briefs. Stipulated documents were provided to the Arbitrator at the Hearing and Post-Hearing briefs were submitted to the Arbitrator on March 24, 2018.

VI. DISCUSSION AND DECISION

This is contract interpretation case and as such the Union must bear the burden of proof as its grievance seeks to interpret the Contract. International Minerals & Chemical Corporation67-1 ARB 8284 (1962). The Union must therefore prove that the Employer violated a specific provision of the Contract. The Arbitrator may not add or modify the terms of the Contract. The Arbitrator should seek to interpret the Contract to reflect the intent of the parties. If the disputed language in the Contract is clear and unequivocal the Arbitrator should enforce the contract as written. The Arbitrator should examine not merely the disputed contractual language but the Contract as a whole and the disputed language must be read in the light of the entire agreement. Hemlock Corporation, 83 LA 74.

The facts in this case are not in dispute. The Fire Department employees of the City of Mattoon have provided emergency ambulance services for residents for many years. Prior to the adoption of Resolution No. 2017-2997 the emergency ambulance service operated on a three week rotation. The Fire Department was the primary responder to all emergency call outs during the first week. A private ambulance company #2 was primary responder for emergency call outs in the second week, with the Fire Department serving as backup responder. Private ambulance company #2 was the primary responder for emergency call outs in the third week with the Fire Department acting as secondary backup.

Then, at a Mattoon City Council meeting held on July 18, 2017 the City Council voted to adopt Resolution No. 2017-2997 entitled: "A Resolution Eliminating the City Operated Ambulance Service effective May 1, 2018." (Jt.Ex.4). The Parties herein stipulated that the

City of Mattoon did not provide notice to the Union nor did the City request bargaining before approving Resolution 2017-2997. The Union filed the grievance on July 19, 2017 on behalf of all members of the bargaining unit. In that grievance the Union claimed the Employer violated the Contract and demanded that the Employer cease and desist substituting persons outside the bargaining unit for Fire Department Personnel. (Jt.Ex.2). The Employer admitted that it was required under the Substitutes Act, Public Act 095-0490 to bargain with the Union before transferring work to persons outside the bargaining unit when it denied the grievance. (Jt. Ex.3). The Employer, on August 3, 2017, asserted that it intended to bargain with the Union before May 1, 2018 which is the effective date of Resolution No. 2017-2997 on the issue terminating the City operated ambulance service. Kyle Gill, City Administrator, emailed the Union on December 5, 2017 and stated:

> "Bargaining on a successor Contract (particularly one where the City will need to address the impact of modification of services to its residents is of critical importance. The City's decision on the elimination of ambulance services will result in a transfer of work to persons outside the Union. Before such transfer it is the City's obligation to first bargain with the Union. Bargaining is exactly what the City intends to do prior to implementation of the Resolution the City adopted a few months back." (Union Ex.5).

City Administrator Gill reaffirmed that the Employer's proposal for the successor Contract would seek the elimination of the City operated ambulance service. On December 29, 2017 the Employer sent the Union a "Notice of Proposed Modification to the Collective Bargaining Agreement." (Jt.Ex.5). Contained in that document were Employer proposals designed to eliminate Contract provisions relating to ambulance services and paramedics. The Employer agreed to "bargain the impact" of the transfer of paramedic work which could reduce the staffing size of the Fire Department from thirty firefighters to eighteen firefighters. The

Union has not agreed to bargain over the Employer's unilateral decision to pass Resolution 2017-2997 eliminate the ambulance service and substitute persons outside the bargaining unit for bargaining unit firefighters.

The first issue for me to decide is whether the filing of the Grievance was premature. The Employer passed Resolution 2017-2997 on July 18, 1997 and the Union filed its Grievance on July 19, 2017. The Employer argues that the Resolution was not a legislative act and was merely a declaration of future intent to eliminate the City-operated ambulance service on May 1, 2018. The parties stipulated that the Employer has taken no action to date to eliminate ambulance services and the status quo remains. The Employer contends that until it takes action by enacting an ordinance eliminating the ambulance service there is no contract violation and the Grievance is premature and not arbitrable. In reviewing the Contract the relevant language states:

> "Any grievance or dispute, which may arise between the parties, including the application, meaning or interpretation of this Agreement, shall be settled in the manner prescribed by this Article." (Jt.Ex.1, Art.12)

This Grievance involves a dispute between the Employer and the Union regarding the application, meaning or interpretation of Article 14 of the Contract. The Employer's actions following the adoption of Resolution 2017-2997 provide actual notice to the Union of the Employer's unilateral change of working conditions. I find in favor of the Union that the Grievance is arbitrable.

The second issue for me to decide is whether the Union has proved that the Employer violated a specific provision of the Contract by the steps it has taken not only by Resolution 2017-2997 but also by the "Notice of Proposed Modifications" of the Contract to eliminate the

City-operated ambulance service effective May 1, 2018.

In reviewing the current Contract the Management Rights Clause authorizes the Employer as follows:

> ". . . to eliminate, relocate, transfer or subcontract work . . . provided the exercise of such rights by the Employer shall not conflict with any provisions of this Agreement or the Employer's authority under applicable statutes, including the Illinois Labor Relations Act." (Jt.Ex.1,Art.3).

The plain meaning of this Contractual language means the Employer has the right to eliminate certain services so long as the elimination of that service does not conflict with the Contract, statutes or the Illinois Labor Relations Act. The Employer is required by the Illinois Labor Relations Act and the terms of this Contract to bargain with the Union on the elimination of the City-operated ambulance service. (Public Act 095-0490; Jt.Ex.1, Art.13, Sec.2). The Parties stipulated that the Employer has offered to bargain with the Union on this issue but the Union has refused to bargain.

The question then for me to decide in resolving this dispute is whether the Substitutes Act which is incorporated into the Contract herein prevents the Employer from eliminating the City-operated ambulance service. (Jt.Ex.1,Art.14,Sec.1). The Relevant provision of the Substitutes Act states:

> "In any municipal fire department that employs full-time firefighters and is subject to a collective bargaining agreement, a person who has not qualified for regular appointment under the provisions of this Division 1 shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department or for regular appointment as a classified member of a municipality's fire department unless mutually agreed to by the employee's certified bargaining agent. Such agreement shall be considered a permissive subject of bargaining." (Public Act 95-0490).

In reviewing the Substitutes Act I find that the plain meaning of the Act does not prevent the Employer from eliminating the City-operated ambulance service. The applicable language states that: "In any municipal fire department that employs full time firefighters . . . a person who has not qualified for regular appointment . . . shall not be used as a temporary or permanent substitute for classified members of a municipality's fire department, or for regular appointment as a classified member of a municipality's fire department . . . ". The Substitutes Act imposes no limitations on the elimination of ambulance services in any municipality. The Substitutes Act only prevents municipal fire departments from hiring persons "not qualified" for regular appointment . . . to be used as a temporary or permanent substitute for a municipality's fire department. The Employer is not planning to hire unqualified or uncertified firefighters to staff the ambulance service. The Employer seeks to completely eliminate the City-operated ambulance service. Ambulance service in the City will be provided by private ambulance service companies. There is no language in the Substitutes Act preventing private ambulance companies from providing ambulance services to municipalities.

In conclusion the Contract herein authorizes the Employer "to eliminate, relocate, transfer or subcontract work." (Jt.Ex.1,Art.3). The Employer plans to eliminate the City-provided ambulance service. The Employer has offered to bargain this issue but the Union has refused to bargain. That section of the Contract also requires the Employer, in eliminating ambulance services, to comply with the Substitutes Act. I find that the plain meaning of the language in the Substitutes Act does not prevent the Employer from eliminating ambulance service. The Substitutes Act only prevents Employers from using unqualified personnel outside

the bargaining unit as temporary or permanent substitutes for bargaining unit firefighters. The Union has failed to prove that the Employer violated a specific provision of the Contract.

VII. AWARD

The Grievance filed herein is hereby denied.

April 18, 2018

George L. Fitzsimmons, J.D., NAA
Arbitrator