

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

THE CITY OF CHICAGO, ILLINOIS

and

**FRATERNAL ORDER OF POLICE,
CHICAGO LODGE No. 7**

CASE NOS.: Grv. 129-05-024/403
Arb. Ref. 05.397
(Vision Benefit
Supplemental Award)

SUPPLEMENTAL OPINION AND AWARD

APPEARANCES:

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Date of Award: May 22, 2006

Dates Briefs Received: October 4, 2006

Date of Supplemental Award: October 9, 2006

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I. BACKGROUND

Following my February 28, 2005 Interest Award ("Interest Award") establishing the terms of the 2003-2007 Agreement ("Agreement"), a dispute arose concerning the City's unilateral implementation of a Vision Plan called for in the Interest Award. By Award dated May 22, 2006 ("Vision Award"), I found that because of the language "[s]ubject to further review and development ..." found in the Wellness Benefit established for the Agreement by the Interest Award, the City's unilateral implementation of a Vision Plan violated the Agreement:¹

... As far as I am concerned, the language "[s]ubject to further review and development ..." is clear and contains a bargaining obligation — an obligation which did not play out. Because the language is clear, my inquiry can go no further than the plain language of the Agreement.

I therefore find that the City's unilateral implementation of the terms of the Vision Plan violated the Agreement.

The remedy in the Vision Award required the City to bargain with the

¹ Vision Award at 6. The specific language establishing the vision benefit is found in the Interest Award at 98 ("Subject to further review and development, the Wellness Benefit will cover, outside of deductibles: ... (4) vision exams, lenses, frames, and contacts.").

Lodge over the terms of the Vision Plan and, if impasse occurred, the parties could return to me for formulation of a more comprehensive remedy concerning the substantive terms of the Vision Plan.²

Pursuant to that remedy, the parties stipulated that they met for purposes of bargaining and reached a bona fide impasse over the terms of the Vision Plan.³ The parties also submitted offers concerning the benefits and costs they contend should be in the Vision Plan.⁴ The parties further stipulated that I "... shall have the authority to accept or reject either side's offer in full or in part or to formulate his own remedy, but in no event may the Arbitrator reject or modify any item upon which the parties have reached an agreement."⁵

Because of the upcoming open enrollment period — and as requested by the parties — this matter has been handled on an expedited basis.

² Vision Award at 7-8.

³ September 20, 2006 Stipulation at II.

⁴ *Id.* at III(1); City and Lodge Final Offers.

⁵ September 20, 2006 Stipulation at III(5).

II. DISCUSSION

A. Putting This Dispute In Perspective

The process leading up to this point has taken years — from the lengthy negotiations attempting to resolve the 2003-2007 Agreement short of interest arbitration; through the proceedings leading to the Interest Award; the subsequent Vision Award; and the negotiations following the remedy imposed by the Vision Award. After all of this, the parties — through tremendous time, effort and expense — still have not been able to agree upon a Vision Plan.

The Interest Award is a 145-page decision resolving 24 disputed issues (some issues having multiple sub-issues), specifically:⁶

1. Duration
2. Wages
3. Salary schedule compression
4. Duty availability allowance
5. Uniform allowance
6. Health care (plan design, employee premium contributions, co-pays, deductibles, out-of-pocket expenditures, etc., dental and vision plans)
7. Wellness plan and health care screenings
8. Exchange of compensatory time for cash or health care payments

9. Competitive bidding for health care
10. Health care for retirees
11. Interest on retroactive payments
12. Injury on duty procedures and benefits
13. Vocational retraining for duty or occupational disability
14. Management of the medical roll
15. Financial incentives for not using the medical roll
16. Processing of medical grievances
17. Special employment disqualification due to medical roll usage
18. I.O.D. recurrence physician referrals
19. Arbitrator remedies for violations of Appendix N
20. Holiday pay eligibility requirements
21. Special detail plan for overtime for paid details
22. \$75 fee for promotional exams
23. Bargaining over BIS D-2A exam
24. Random alcohol testing

Appendix D of the Interest Award also sets forth 39 pages of additional “uncontested items”, too numerous to detail.⁷

The vision benefit established by the Interest Award briefly appears at page 98 of that 145-page decision and contains 20 total and very general words — “[s]ubject to further review and development, the Wellness Benefit will cover, outside of deductibles: ... vision exams, lenses, frames, and contacts.”

Putting aside what little was said about the vision benefit in the Interest Award, in the overall context of

⁶ Interest Award at 5-6.

⁷ Interest Award at 101-140.

the multitude of disputed issues that were presented to me which were resolved by the Interest Award, the vision benefit was not the brightest of flashpoints between the parties. The real fights were in the areas of wages, health care premium contributions and other income related items.

But from those 20 brief and very general words concerning the vision benefit which were not deserving of much attention at the time the issue was presented and the decision was written, the dispute over those words has now blossomed into significant proportion. The City correctly characterizes the result of the present dispute: "[i]n response to this simple and almost perfunctory directive, the ... [parties] have conjured an elaborate, layered web of benefits"⁸ It is that "elaborate, layered web of benefits" upon which the parties could not agree that I must now impose a remedy as a result of the City's violation of the Agreement through its unilateral implementation of the Vision Plan.

⁸ City Brief at 9.

B. The Structure Of The Remedy

In the Vision Award, I strongly suggested that the parties opt to use "... microscopic surgery to remedy this case ..." rather than have me impose the remedy "... with a sledge hammer."⁹

If, after all the work the parties put into the 2003-2007 Agreement and this particular dispute (*i.e.*, the lengthy negotiations before the interest arbitration; the proceedings leading to the Interest Award; the subsequent Vision Award; and the negotiations following the remedy imposed by the Vision Award), the parties could not come to an agreement on the terms of the Vision Plan, it would be presumptuous of me to think for even a moment that I have the insight or knowledge to structure something that these sophisticated negotiators could not agree to, but which should have been the product of the negotiations

⁹ Vision Award at 8. With the dangling "sledge hammer", the purpose of the structure of the remedy was to force the parties to reach agreement by getting them sufficiently close knowing that if they were both not reasonable in their offers, one side's offer may be selected by me. However, because total agreement was not reached, that approach obviously did not work to break the stalemate on the remedy.

and arbitration procedures they have been through.

As contemplated by the Vision Award, the parties have submitted final offers on the remedy for the Vision Plan.¹⁰ Given all that has occurred and the inability of the parties to work this out, in this case I do not believe it should be my role to perform “microscopic surgery” where the parties tried in good faith and could not do so. With respect to the substance of the Vision Plan — *i.e.*, the “... elaborate, layered web of benefits ...” the parties seek — because the parties could not agree on the substance of the Vision Plan, I have no choice but to “... choose a sledge hammer” and limit my remedial options in this case to only selecting the substantive terms of one of the offers “... I feel is the more reasonable” and to do so without modification.¹¹

However, as discussed below at II(D) and consistent with an arbitrator’s broad remedial authority in general and that authority specifically granted to me by the parties, there will be one exception to that

choice of remedies — the implementation date with retroactivity.¹²

C. The More Reasonable Offer For The Substance Of The Vision Plan

1. The City’s Proposed Remedy

The City states that its proposed remedy is one which offers a “stand alone” Vision Plan which is not part of the Wellness Benefit plan; which has certain continued coverage for retirees 50-59; which is consistent with the plan agreed to between the City and Firefighters Local 2; and which has in-network integral benefits covering yearly vision exams and yearly provision of frames, lenses, contact lenses, detailed optional benefits (coating, tinting, types of lenses and glasses, etc.) with no charge to the \$600 Wellness Benefit and various charges to the members ranging from \$0 and specified amounts (between \$18 and \$80).¹³

¹⁰ *Id.* at 7-8.

¹¹ *Id.*

¹² See Vision Award at 6, note 12 (citing authority concerning arbitrators’ authority and discretion to formulate remedies) and the September 20, 2006 Stipulation at III(5) (“The Arbitrator shall have the authority to ... formulate his own remedy”).

¹³ The Wellness Benefit was established in the Interest Award at 98 as “\$600 per year (effective 1/1/06)”. Although an issue in the past, at present there is no dispute that
[footnote continued]

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For out-of-network benefits for eye exams, frames, lenses and contact lenses, the City proposes no charges to the Wellness Benefit, but yearly "balance over" charges, for exams, frames, lenses and contacts ranging with set rates from \$35 to \$105.¹⁴

The City's proposed remedy is to take effect January 1, 2007.¹⁵

The City characterizes its proposed remedy as "... a high quality, multiple optioned plan"¹⁶

In opposing the City's proposed remedy, the Lodge focuses on what it sees as the City's improper seeking of co-payments for the vision aspect of the Wellness Benefit set in the Interest Award.¹⁷ According to the Lodge, "[t]he very nature of a 'wellness' benefit is to encourage plan participants to utilize the benefit so as to provide for their own well-being by discovering health problems early before they become more serious ... [which] will encour-

age lifestyle changes to avoided health problems."¹⁸ The Lodge characterizes the City's proposed remedy as one which "... seriously disturbs these principles by proposing to exclude the vision component from the Wellness Benefit and to charge co-payments for optional eye glass services" which would make the vision component "... the only one of the four original Wellness Benefit services [(1) routine exams, (2) immunizations, (3) mammograms, and (4) vision exams, lenses, frames, and contacts] that would be subject to co-payments."¹⁹

The Lodge further argues that "[a] serious deficiency of the employer's stand alone proposal is the exclusion of HMO eligible employees from the new benefit ... [because a]s proposed by the employer, this stand alone vision benefit will be limited to those officers and eligible dependents enrolled in the PPO or the PPO/HRA ... [and c]urrently, HMO vision benefits are substantially inferior to those imposed by the employer in the free standing plan."²⁰

[continuation of footnote]
the in-network provider can be Davis Vision ("Davis"). See Lodge Brief at 14.

¹⁴ City Final Offer; City Brief at 3-5.

¹⁵ City Final Offer at 1 ("The City shall make the following modifications to the current Collective Bargaining Agreement, effective January 1, 2007.")

¹⁶ City Brief at 9.

¹⁷ Lodge Brief at 5.

¹⁸ *Id.*

¹⁹ *Id.* See also, Interest Award at 98.

²⁰ Lodge Brief at 19-20.

2. The Lodge's Proposed Remedy

The Lodge's proposed remedy focuses on its view of the Wellness Benefit as one originally calling for "\$600 accounts, no deductibles and no co-payments."²¹

The Lodge proposes (without co-payments), eye exams, frames, lenses and contact lenses without charge to the members, but various yearly charges to the Wellness Account (ranging from \$35 to \$105).²² For optional items (such as coatings and various types of lenses), the Lodge again proposes, without co-payments, various yearly charges to the Wellness Account (ranging from \$20 to \$200). For out-of-network services, average retail costs are utilized by the Lodge with 60% applied to the Wellness Account and 40% paid by the member.²³ The Lodge notes that in order to secure vision benefits without co-payments it now agrees that the \$600 Wellness Benefit is subject to a schedule of limitations for any in-network and out-of-network services, lenses and frames and further agrees that

²¹ *Id.* at 3.

²² *Id.* at 6-7.

²³ *Id.* at 12-13.

Davis can be the Vision Plan provider.²⁴ Emphasizing the underlying premise of a wellness benefit, the Lodge states that its proposed remedy excluding co-payments is "... more reasonable because it would encourage employees to use the vision benefits by creating a monetary incentive"²⁵

The Lodge's proposed remedy is made retroactive to take effect January 1, 2006.²⁶

In opposing the Lodge's proposed remedy, the City characterizes the Lodge's proposed remedy as one which "... insists upon complete coverage of optional vision benefits that are fundamentally inconsistent with an insurance plan and wellness benefit ... [with] an unfettered entitlement to unnecessary and cosmetic vision benefits and no out-of-pocket cost to Lodge members ... [which is] nothing more than a demand that the health insurance

²⁴ *Id.* at 14. The Lodge states that it makes this concession notwithstanding the evidence it produced at the Vision Award hearing that in negotiations with the Building Trades Coalition no limitations were imposed by the City in its offers concerning use of the \$600 Wellness Benefit. *Id.* at 15-17.

²⁵ *Id.* at 5.

²⁶ Lodge Final Offer at p. 2, par. 1 ("Effective January 1, 2006 ...").

plan cover medically unnecessary optional benefits ... [which] completely contradicts the nature and purpose of wellness benefits and employer health plans."²⁷

3. Terms Of The Selected Remedy

The Vision Award makes clear that this dispute is not a further proceeding under the interest arbitration process which resulted in the Interest Award, but is a grievance dispute under the terms of the 2003-2007 Agreement set by the Interest Award.²⁸

This is a somewhat curious proceeding. My Interest Award established the contract language under which this dispute arises. The City correctly observes:

... The parties thus present the Arbitrator with the facially anomalous task of interpreting the language of his own Interest Arbitration Award as part of this grievance arbitration. ...

Therefore, it must be clear that this proceeding is *not* a further proceeding under the prior interest arbitration process. This dispute concerns an alleged violation of the Agreement which came out of the interest arbitration proceedings. This is a grievance arbitration attempting to determine if the terms of the Agreement have been violated. This pro-

²⁷ City Brief at 9.

²⁸ Vision Award at 4 [footnote omitted, emphasis in original].

ceeding is *not* about establishing the terms of the Agreement as an interest arbitration.

However, while this dispute is a grievance arbitration, in their Stipulation concerning this matter, the parties have given me the specific authority to utilize "... the applicable statutory factors" — *i.e.*, those for interest arbitration proceedings — for formulating the remedy in this grievance arbitration.²⁹ It is that authority which resolves this dispute and dictates the choice of the proposed remedies.

Section 14(h) of the IPLRA contains the "... applicable statutory factors" governing interest arbitrations for police bargaining units.³⁰ Section 14(h)(6) provides:³¹

²⁹ September 20, 2006 Stipulation at III(4). In their arguments, the parties also refer to concepts taken from interest arbitration proceedings. See City Brief at 7-8; Lodge Brief at 1, 17-19.

³⁰ 5 ILCS 315/14(h).

³¹ While in Section 28.3(B)(11) of the Agreement which establishes the parties' impasse resolution procedure, the parties did not incorporate the final offer aspect of the IPLRA found in Section 14(g) of the IPLRA, the parties *did* incorporate the statutory factors found in Section 14(h) of the IPLRA. See Section 28.3(B)(11) of the Agreement ("... the impasse resolution procedure set forth herein shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following provisions of said 315/14 shall nevertheless apply; Subsections (h), (i), (k) and (m)" [emphasis added]). See also, [footnote continued]

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(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

* * *

(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.

* * *

Section 14(h)(6) is the "whole package" factor. In this case, this factor dictates selection of the City's proposed remedy concerning the substance of the terms of the Vision Plan.

First, the Interest Award was very favorable to the officers in the bargaining unit with respect to wage and income related increases and delayed imposition of increased health care costs to allow the built up income increases to serve as a substantial buffer against the in-

[continuation of footnote]
Interest Award at 24-25 and footnote 47 therein. Under the Agreement, Section 14(h)(6) of the IPLRA is therefore an "... applicable statutory factor ..." which I can use.

creased health care costs found necessary in the Interest Award:³²

... The economics portion of this award imposes wage increases of 15.5% and increases in the other allowances which, over the life of the four year Agreement, will cost the City approximately \$356 million. That awarded amount translates into significant wage and other income related increases for the officers — increases they clearly deserve. As large as those increases are, however, the increased costs are structured in a way so as to minimize harm to the City's present financial condition because those increases take effect more towards the end of the Agreement.

* * *

The overall structure of this award has been to incrementally increase the wage rates so as not to harm the City's present financial situation, allow for future revenue flows and to ultimately permit any increased costs paid by officers for health care to occur after the wage rates have sufficiently built up, thereby making those increased costs into reasonable offsets against wages. To be consistent with that approach, the increased premium contributions made by officers shall not take effect until July 1, 2006. As of that time, the wage rates will have built up by 13.5% (more when compounding and movement through the steps are factored in) and the officers will have received the largest wage rate increases called for by this award (the 3.5% increase resulting from the January 1, 2006 increase and similar approximate percentage increase as a result of the implementation of compression). Therefore, *status quo* on the officers' premium

³² Interest Award at 144-145, 51.

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contributions will be maintained until July 1, 2006.

Thus, while increased premium contributions for the bargaining unit were ordered in the Interest Award, those increases were delayed until July 1, 2006, but wage increases were made retroactive to July 1, 2003. With that buffer, the increased health care premiums therefore had "minimal" real dollars impact on the bargaining unit.³³

Second, while the simple percentage wage increase in the Interest Award was 15.5%, the compounding effects of that wage increase and resultant real dollar increases for officers who moved through the various steps in the salary schedule or benefited from the awarded salary compression were, in cases, *much higher*.³⁴

³³ *Id.* at 51-55.

³⁴ See Interest Award at 30-37, where examples were given of officers who, due to movements in the salary schedule or obtained awarded salary compression, benefited in terms of real compounded increases of 16.6% to 28.5% over the life of the Agreement. Depending on years of service and placement on the schedule, increases for specific officers of greater amounts could probably be found.

In the Interest Award, the Lodge successfully obtained a compression of steps at the top of the salary schedule of the prior Agreement. Interest Award at 29:

As requested by the Lodge, Step 11 of the prior Agreement is com-

[footnote continued]

In short, from an economic perspective, the monetary successes achieved by the Lodge in the Interest Award resulted in an overall *very* favorable award for the bargaining unit.

Turning to the present dispute, while the City's proposed remedy may not be as beneficial to the bargaining unit as the one proposed by the Lodge, nevertheless, the terms of the Vision Plan contained in the City's proposed remedy result in another overall increased benefit for the officers. The Lodge observes that prior to the Interest Award:³⁵

... Eye exams, eye glasses and contact lenses were not covered by the PPO, and employees, pursuant to Section 25.3 of the collective bargaining agreement, had a schedule of payments for standard frames, lenses and examinations. The purpose of the Wellness Benefit as ordered by the arbitrator was to bring within a single insurance service (i.e., the Wellness Benefit) services that had previously *not* been covered
....

[continuation of footnote]

pressed; Step 10 (25 years) becomes the maximum rate of pay; and Steps 7-10 move up a step on the existing scale. Those officers on Step 11 and on Steps 2 through 6, who are not affected by that compression schedule in 2006, will receive the 3.5% wage increases for that year.

³⁵ Lodge Brief at 4 [emphasis added].

While not measuring up to the Lodge's desires or expectations on behalf of the covered officers, the City's proposed remedy provides an increase over what existed prior to the 2003-2007 Agreement concerning a vision benefit. A very favorable award for the officers imposed through the Lodge's efforts in the Interest Award has therefore been further enhanced by the City's proposed remedy. In my opinion, the "whole package" factor found in Section 14(h)(6) of the IPLRA therefore determines this dispute. Even with the City's proposed remedy for the Vision Award, a very favorable award of wages and benefits to the officers from the Interest Award got better.

The substantive terms of the City's proposed offer for the Vision Plan is therefore selected as the remedy.³⁶

D. The Implementation Date

The parties differ on the effective date for implementation of the Vision Plan. The City seeks a January 1, 2007 implementation date, while

³⁶ Local 2's vision benefit agreed to with the City as an internal comparable is therefore irrelevant for determining this dispute. See City Brief at 5.

the Lodge seeks a retroactive January 1, 2006 implementation date.³⁷

I agree with the Lodge that the effective implementation date of the Vision Plan should be made retroactive to January 1, 2006.

First, the Interest Award issued February 28, 2005 containing the provisions for a vision benefit "effective 1/1/06".³⁸ The January 1, 2007 implementation date suggested by the City conflicts with that January 1, 2006 effective date contemplated by the Interest Award. A January 1, 2007 implementation date for this benefit would amount to finally resolving the parties' differences over this benefit for the 2003-2007 Agreement six months before the Agreement is set to expire on June 30, 2007.³⁹ The kind of delay is not justified.

Second, although the terms of vision benefit were "[s]ubject to further review and development", from the issuance of the Interest Award

³⁷ City's Final Offer at 1 ("The City shall make the following modifications to the current Collective Bargaining Agreement, effective January 1, 2007."); Lodge Final Offer at p. 2, par. 1 ("Effective January 1, 2006"). See also, Lodge Brief at 24-27.

³⁸ Interest Award at 98.

³⁹ Agreement at Section 28.1.

the parties had 10 months prior to that January 1, 2006 effective date to come to agreement on the terms of the Vision Plan. The City's unilateral implementation of the Vision Plan frustrated the ability of the parties to come to terms prior to the January 1, 2006 effective date contemplated by the Interest Award.

Third, rather than following the mandate of "[s]ubject to further review and development" and although there were meetings between the City and the Lodge in the fall of 2005, the City nevertheless unilaterally implemented its prior version of the Vision Plan, which caused this proceeding and the ultimate determination that the City violated the bargaining obligation as found by the Vision Award. The Vision Award issued May 22, 2006 and the dispute over the remedy was not finally presented to me for decision until briefs were filed on the remedy on October 4, 2006 — more than nine months after the targeted effective date specified in the Interest Award.

The fault and consequences for delay in getting the Vision Plan in place must be placed at the City's doorstep. Had the City not unilaterally implemented the terms of the

prior version of the Vision Plan with the resultant litigation over the propriety of that action, but instead followed the mandate to bargain over the substantive terms of the Vision Plan as plainly required in the Interest Award and found by the Vision Award, it is fair to conclude that the benefits of that plan would have been in place long before the January 1, 2007 implementation date urged by the City.

In their Stipulation, the parties agreed that "[t]he Arbitrator shall have the authority to accept or reject either side's offer in full or in part or to formulate his own remedy ..."⁴⁰ While I have selected the substantive terms of the City's proposed remedy for the Vision Plan and made no modifications to the various benefits and costs, for reasons stated above, I choose to exercise that granted authority with respect to the implementation date. Therefore, because the City violated the Agreement and caused the delay, the terms of the City's version of the Vision Plan shall be retroactive to January 1, 2006. Covered officers adversely affected as a result of

⁴⁰ September 20, 2006 Stipulation at III(5).

differences in the City's Vision Plan now adopted but made retroactive to January 1, 2006 shall be made whole.

III. CONCLUSION

In the scope of things, when the parties entered into negotiations for the 2003-2007 Agreement, they were at significant odds over many other items than a vision benefit. Because of that, the Interest Award setting the terms of the 2003-2007 Agreement briefly addressed the vision benefit. Given what occurred in this case, in hindsight, more attention should have been devoted to that topic. But the current Agreement expires in less than nine months. With respect to the vision benefit and as the City correctly observes, "[a]ny further enhancements should be bargained at the negotiating table."⁴¹ That time when the parties again get to face each other across the table is fast approaching. But for now, with respect to the terms of the 2003-2007 Agreement, it is time to move on.

⁴¹ City Brief at 16.

IV. SUPPLEMENTAL AWARD

The City's offer concerning the substantive terms of the Vision Plan is selected as the remedy for the Vision Award. However, as requested by the Lodge, the terms of that Vision Plan shall be retroactive to January 1, 2006. Covered officers adversely affected as a result of differences in the City's Vision Plan now adopted but made retroactive to January 1, 2006 shall be made whole.⁴²



Edwin H. Benn
Arbitrator

Dated: October 9, 2006

⁴² Neither side has fully prevailed. Arbitral fees shall be shared. See Section 9.8 of the Agreement.