

# In a Dramatic Turn, an Arbitrator Finds that the Substitutes Act Does Not Prohibit Municipality from Shutting Down Ambulance Services

## Labor & Employment Law Update

By Julie Proscia on May 25, 2018

In an unprecedented fashion, an arbitrator recently issued an award limiting the scope of Public Act 095-0490, otherwise known as the Substitutes Act. In doing so, the City of Mattoon successfully fought, through Amundsen Davis attorneys Julie Proscia and Carlos Arévalo, and won the right to close their ambulance service. So why is this award important? This award now serves as a basis for municipalities to be able to have the autonomy to review their scope of services and determine which services are best for their community as opposed to the scope of services being dictated by the union.

The case, involving the City of Mattoon and the IAFF, started in July 2017 when after a months' long internal and comparative evaluation, the city determined that due to rising operational, personnel and pension related costs, its ambulance service was no longer sustainable. Accordingly, the city adopted a resolution seeking the future elimination of its ambulance service effective May 1, 2018, the expiration of the current contract. Once implemented, ambulance services would be solely performed by area private ambulance companies. Not surprisingly, the union filed a grievance attacking the city's resolution primarily basing its challenge on the Substitutes Act, which was specifically incorporated into the contract. The city denied the grievance and, to no avail, sought to bargain the impact of its decision with the union.

During arbitration, the union argued that the Substitutes Act specifically prohibited the city from replacing qualified firefighters or paramedics with unqualified persons, and that only those who have gone through the appointment process before the City of Mattoon's Fire and Police Commissioners are properly qualified. As a result, the union claimed, the ambulance service could only be performed by full-time firefighters belonging to the union. The Substitutes Act has been used as both a veritable sword and a shield by unions attesting that no non-bargaining unit members can ever be

given work that is currently or previously performed by the unit. If successful, the union would have made it virtually impossible to ever eliminate a service.

The arbitrator rejected the union's arguments and found that the "Substitutes Act imposes no limitation on the elimination of ambulance services in any municipality... [but] 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." Further, the arbitrator continued, "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...There is no language in the Substitutes Act preventing private ambulance companies from providing ambulance services to municipalities."

In rejecting the union's arguments, the arbitrator weakened unions' typical stance that they need not engage in bargaining pursuant to the Substitutes Act. This award establishes that municipalities are not as hamstrung by the act as unions suggest, and may pursue discontinuing services if doing so presents a more viable alternative to facing a financial crisis. While impact bargaining and other procedural hurdles associated with discontinuing services will still have to be addressed, municipalities now have the latitude to determine the scope of services that are most appropriate for their community.

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