

#397

**INTEREST ARBITRATION
OPINION AND AWARD**

In the matter of Interest
Arbitration

Between

THE FOREST PRESERVE
DISTRICT OF COOK COUNTY

And

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL

Case No. L-MA-05-010

Hearing Held

August 29, 2008

Cook County Forest Preserve
District Headquarters
536 North Harlem Ave.
River Forest, Illinois 60305

Arbitrator

Steven Briggs

Appearances

For the Union:

Gary Bailey, Esq.
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Illinois FOP Labor Council
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For the Employer:

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BACKGROUND

The Forest Preserve District of Cook County (the District) is responsible for maintaining and administering approximately 68,000 acres of recreationally-designated land. Over 40 million citizens have access to the land, which is divided into various preserves across a broad swath of the greater Chicago area. Included in the District's geographical coverage and responsibility are the Brookfield Zoo and the Chicago Botanic Gardens, both of which are world-class public attractions. There are also bicycle, hiking and cross-country ski trails, picnic areas, and bodies of water suitable for boating and fishing. Given their large size, parts of certain preserves are somewhat isolated, even considering the urban context in which they exist, so the District's Police Officers are called upon to monitor both high-traffic and remote areas.

The District employs 82 sworn Police Officers, all of whom are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union; the FOP). Though the District is a distinct governmental entity, it is an extension of Cook County government in many ways. For example, the District's Police Officers are part of the Cook County health insurance plan. In addition, Cook County Commissioners also serve as the District's Commissioners.

There are also significant differences between the two entities. Cook County is a Home Rule governmental body with certain taxing authorities, the District is not. That is, it is constrained by tax caps.

Another difference relates to the volume of collective bargaining activity each experiences. The District's unionized employees are situated into two bargaining units: (1) the Police Officer's group, as noted; and (2) a group of non-law enforcement employees, represented by Teamsters Local 746. In contrast, Cook County unionized employees are clustered into approximately 90 bargaining units, several of which are composed of law enforcement employees.

The District and the Union are currently signatory to a January 1, 2002 to December 31, 2004 Collective Bargaining Agreement, the seventh in a series they have negotiated over the course of the formal collective bargaining relationship they established in May, 1986. About four months prior to its expiration the Union submitted a demand to bargain for its successor. Those negotiations ultimately proved to be successful on all but one issue --- wages. The Union appealed that issue to compulsory interest arbitration on October 31, 2006. Through the Illinois Labor Relations Board the parties selected Steven Briggs to serve as their Arbitrator. Notification of that appointment was made to the undersigned on July 18, 2007. In an April 23, 2008 meeting with the Arbitrator, the parties discussed and agreed to various logistical and procedural issues connected to these proceedings.

An interest arbitration hearing was held on August 29, 2008, and the parties exchanged final offers that very morning. They also entered into several stipulations, including one confirming their mutual waiver of

the tri-partite arbitration panel provision of the Illinois Public Labor Relations Act. The parties stipulated as well that their tentative agreements on all of the other issues shall be incorporated into their four-year January 1, 2005 – December 31, 2008 successor Agreement. The interest arbitration hearing was transcribed. The parties' timely post-hearing briefs were ultimately received by the Arbitrator on December 1, 2008.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Illinois Public Labor Relations Act (the Act) provides in pertinent part:

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 findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interest 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.

THE COMPARABLES¹

District Position

In constructing its comparability pool, the District cites what it characterizes as the “County pattern” of salary increases, arguing that the wage boosts of its Police Officers should be juxtaposed against those received by “employees generally” within Cook County and the District. The District also asserts that a relatively small unit, like the 82-person Police Officers Unit, actually benefits economically from being placed in a comparability pool with many of the much larger Cook County units.

Mr. Jonathan Rothstein, Acting Chief of the Cook County Bureau of Human Resources,² explained that during the last round of contract talks the County negotiated agreements with the American Federation of State, County and Municipal Employees (AFSCME) on behalf of approximately 14 bargaining units, with the Service Employees International Union (SEIU) Local 20 on behalf of certain Hospital and Health System employees, and with SEIU Local 73 for certain employees

¹ Given the somewhat ambiguous relationship between the District Police Officers unit and Cook County employee bargaining units, whether the latter should be considered external or internal comparables could be debated at length. The parties here have not engaged themselves in that debate, as both simply cite various Cook County bargaining units as being “comparable.”

² Mr. Rothstein has been in Cook County’s employ since January, 2003, when he became Deputy Chief for Labor and Employee Relations for its Bureau of Human Resources. Prior to that he was in the private practice of law, with one of his clients being the Forest Preserve District of Cook County. In that capacity Mr. Rothstein served as chief spokesperson for negotiations leading to one, perhaps two of the District’s labor agreements with the FOP on behalf of the bargaining unit at issue in these interest arbitration proceedings.

in offices of the various joint employers in the County.³ Once a negotiated wage increase pattern has been established across the County's larger bargaining units, Rothstein explained, that same pattern of increases is offered to the smaller ones.

Furthermore, the District argues, in a bureaucratic structure as diverse as Cook County, constituent groups can always identify a claimed comparable and seek "catch up" wage increases. Thus, they can push for interest arbitration on that basis, knowing that even if they do not prevail, the pattern of increases the County has already offered to the other groups will become theirs by default. The County asserts that the interest arbitration process should not be used as such a partisan tool.

Union Position

The Union notes that wages in the current Agreement were determined through interest arbitration, and that Arbitrator Lamont Stallworth identified the following Cook County entities as the appropriate comparables:

Sheriff's Police Officers
Sheriff's Corrections Officers
Sheriff's Court Deputies
Sheriff's Civil Process Deputies
Sheriff's DCSI Fugitive Unit Investigators
Sheriff's DCSI Day Reporting Investigators
Sheriff's DCSI Electronic Monitoring Investigators
Sheriff's Internal Affairs Division Investigators
State's Attorney's Investigators

³ A "joint employer" in Cook County consists of the County itself and of an elected official (e.g., the County Sheriff) who heads a particular County entity.

The Union notes that Cook County Stroger Hospital Police Officers are not included in Arbitrator Stallworth's grouping, even though it had argued for their inclusion. Now, the Union points out, the District seeks to add those Stroger Hospital police officers to the comparability pool, as well as those at the Cook County Oak Forest Hospital --- a configuration the District opposed before Arbitrator Stallworth. And the Union believes the District's motive to include them here is related to the fact that their wages are lower than those earned by the Forest Preserve Police Officers. The Union further argues that since the foregoing comparability pool was determined after careful and thoughtful analysis by Arbitrator Stallworth just one contract ago, it should be left undisturbed.

Discussion

Both parties have raised valid points about the philosophical approaches generally associated with constructing comparability groups for wage determination purposes. The District claims that an internal wage increase pattern has been established across several bargaining units, and argues that it should be followed with respect to the Forest Preserve Police Officers. The Union believes that since Arbitrator Stallworth identified a specific comparability pool for the current District Police Officer Agreement, that exact group of entities should be used for comparability purposes here.

But the comparability issue in this case is infinitely more complicated than that. The District focuses on percentage increases, attempting to maintain a consistent balance across numerous employee groups. In addition to the perceived fairness of that approach, it also minimizes "whipsawing" among internal bargaining units --- the phenomenon where each tries to outdo the other with respect to wages, creating orbits of coercive comparison that put severe upward pressure on the labor costs associated with administering a governmental entity as large as Cook County. The Union is less concerned with percentage wage increase parity than it is with moving Forest Preserve Police Officers up from their current ranking near the bottom of the Stallworth comparables list. And, consistent with the composition of that list, the Union does not believe it is appropriate to compare District Police Officers with those who work in County medical facilities.

Another factor here relates to the notion that absent special circumstances, interest arbitrators generally do not wish to "undo" comparability groupings established in previous interest arbitration proceedings. But that general principle is commonly associated with external jurisdictions. Here, given that the Forest Preserve District is more or less joined at the hip with Cook County, the Arbitrator has concluded that all of the comparables cited by both parties are essentially internal. I am also mindful of the fact that §14(h) of the Act mandates consideration of wages, hours and employment conditions

associated with “other employees performing similar services” (as the Union sees this case) and with “other employees generally” (more akin to the way the District views the matter).

Both parties’ suggested comparability groupings have merit, and neither should be rejected completely. Accordingly, I will consider both the District’s “pattern of increases” perspective and the Union’s “job content” approach as I determine which of the parties’ final wage offers is the more appropriate.

THE WAGE ISSUE

District Position

The District proposes the following across-the-board wage increases over the period of the January 1, 2005 – December 31, 2008 collective bargaining agreement:

<u>Effective Date</u>	<u>Increase</u>
1-1-05	1%
1-1-06	1%
7-1-06	2%
1/1/07	1.5%
7-1-07	2.5%
1-1-08	2%
7-1-08	2.75%

In addition, the District's final offer includes a \$500 cash bonus for all employees in pay status on the date of the Award. In truncated form, the District's proposal represents annual increases of 1% the first year, slightly less than 3% the second year, just less than 4% the third year, and just under 4.75% the fourth year, plus a \$500 cash bonus upon the issuance of the following Award.⁴ On average, the District's final offer appears to be equivalent of slightly over 3% per year.

As noted, the District believes its wage offer is preferable to the Union's, because it follows the "County pattern," and it maintains the differential salary relationships established through many years of negotiations with a multitude of bargaining units County-wide.

Union Position

The Union underscores the fact that for the last year of the existing contract (i.e., 2008) District Police Officers were near the bottom of the comparability pool defined by Arbitrator Stallworth at every level except starting pay, where they were absolutely last. Thus, the Union argues, some "catch up" is justified.

The Union also points to other arbitration decisions, which indicate that catch up wage increases larger than the County's so-called "pattern" have been awarded to the DCSI Fugitive Unit Investigators and

⁴ The annual totals for the second through fourth years are somewhat less than the percentage totals of the two percentage increases for each year in the District's final offer, because the second ones are delayed until the middle of the respective contract years.

the Sheriff's Civil Process Deputies and Court Deputies.⁵ That history, posits the Union, should serve as a guide to constructing a similar "catch up" scenario for the District Police Officers.

The Union's final wage offer is designed to bring District Police Officer wages up to the average across the Stallworth comparables at each step. It consists of a 5.5% increase for the first year (i.e., effective 1/1/05), then, for each of the next three years, either a 5.5% increase or the percentage increase that will bring District Police Officers to the average at that particular step, whichever is smaller. Thus, the Union asserts, the size of the increase to each step depends upon the size of the deficiency that exists.

Finally, the Union notes that since its proposed increases are effective January 1 of each year, when officers in most of the comparable units receive mid-year increases, the parity progress made by District Police Officers at the beginning of the year will be diminished. The Union therefore maintains that even if its final offer is accepted in these proceedings, at the end of the four-year contract at issue they will be behind the average comparable salary by 2.75%.

⁵ *County of Cook and the Illinois FOP Labor Council*, L-MA-05-007 (Fletcher, 2007); and *County of Cook and the Illinois FOP Labor Council*, L-MA-04-001 (Hill, 2004), respectively. For other "catch up" awards in Cook County, see, *County of Cook and the Illinois FOP Labor Council*, L-MA-97-001 (Benn, 1997); and *County of Cook and the Illinois FOP Labor Council*, L-MA-01-001 (Meyers, 2002).

Discussion

Focusing initially on the Stallworth comparables, it is clear from the record that as of January 1, 2004 District Police Officers were indeed next to last across all conventional seniority benchmarks (i.e., 5 yrs, 10 yrs, 15 yrs and 20 yrs) except the entry level. And, as the Union notes, adoption of the District's wage offer would essentially leave them in that same position.⁶ To determine whether District Police Officers should advance to a higher ranking among the Stallworth comparables, or whether they should remain at the same relative level, there are two important factors to consider.

First, how did the District Police Officers become situated near the lower end of the salary range in the first place? The existing 2002-2004 Agreement is the parties' seventh in a 22-year series, beginning in 1986 with the establishment of their formal collective bargaining relationship. Through all of those rounds of bargaining, and within economic, political, statutory and comparability contexts known to the parties' negotiators, wage relationships among the relevant Cook County law enforcement agencies were established. In some of those agencies, including the District (a quasi-Cook County law enforcement agency), input from various interest arbitrators went into the mix as well. The overall result by 2004 was that District Police Officers had been relegated to a position

⁶ On page 14 of its post hearing brief the Union stated, "The Arbitrator's choice is this: the Union's final wage offer leaves the District Police Officers' salaries behind the average comparable salary by approximately 2.75% at the end of the contract; or the District's final wage offer leaves the District Police Officers behind the average comparable salary by the same amount as when this contract began."

near the bottom of the comparability pool. Now, the Union seeks to have them placed near the middle, with “catch up” increases designed to bring them to parity with the average salary across the Stallworth grouping. The undersigned Arbitrator is reluctant to disturb the salary relationships established by the parties themselves, unless there is justification for doing so.

In any comparability grouping, salary rankings become established over time. One group will rise to the top, another will gravitate toward the bottom, and the remainder will be stacked in between. None of those groups have an inherent right to be paid at the average salary rate. There are relevant differences between the groups, and the parties’ bargaining agents take them into consideration when they agree to complex compensation packages. Thus, a plea from a group near the bottom of a comparability pool to be elevated to the average salary across that grouping must be accompanied by compelling justification to do so.

On the other hand, under the mantle of police interest arbitration in Illinois, District Police Officers have a statutory right to have their wages, hours and employment conditions compared with those of “other employees performing similar services ...” That is the second factor the undersigned Arbitrator will consider in deciding whether District Police Officers should be advanced among the comparability rankings.

As the Union argues, District Police Officers are engaged in a dangerous occupation. But how dangerous is their job vis-à-vis that of a

Corrections Officer, a Sheriff's Police Officer, or a DCSI Fugitive Investigator? Those questions are highly relevant to the salary ranking issue. Unfortunately, the record before me does not contain sufficient information to answer them.

The Union provided selected data from the District's 2008 Annual Appropriation Ordinance, which show that in 2006 there were 413 criminal arrests by Forest Preserve Police Officers. But that figure equates to about five arrests per District Police Officer over the year, which was apparently the latest for which such data were available. The record does not contain comparable figures for the Stallworth comparables, nor does it reveal the exact nature of those arrests. Were they for shoplifting at the Brookfield Zoo gift shop? Did they involve armed suspected rapists in the dark depths of an isolated forest? Without such data, it is impossible to make an informed decision about the relative danger associated with being a sworn officer in each of the comparable jurisdictions.

In his comprehensive case presentation, Union Attorney Bailey described some of the duties associated with being a sworn officer in the various Stallworth comparables. Mr. Bailey is an experienced bargaining agent for police officers, and his solid credibility has been well-established in the Illinois arbitration community. But more than a generic description of duties is necessary to justify moving District Police

Officers from their current salary ranking to a point about midway up in the comparability pool.

The Arbitrator is also aware of the fact that the parties' "existing" collective bargaining agreement expired on December 31, 2008. They are undoubtedly poised to receive the following Award, which will likely affect the positions they take in negotiations for its successor. Thus, if the Union can produce detailed job-content justification for its quest to move up in the salary rankings, the bargaining table would be a logical place to present it initially. Should those talks not achieve the Union's desired result, it will have another opportunity in the very near future to test its job-content theory in the interest arbitration arena.

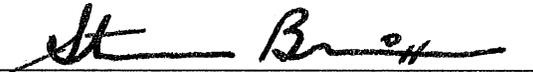
Interest arbitration is not meant to make drastic changes to salary rankings established by the parties themselves. Rather, it is designed to move them along together at the same pace, absent compelling reasons to do otherwise. If interest arbitrators were to grant salary ranking upgrades simply because employees wanted them, the result would be chaotic. Every bargaining unit at or near the bottom would move to the middle or higher, then the cycle would begin all over again. A game of "musical salary ranking chairs" would take place repeatedly, with the taxpayer bearing the financial burden. Obviously, such an outcome would not be in the public interest.

AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has adopted the final offer of the District on the wage issue, with the understanding that it is fully retroactive to January 1, 2004.

The provisions reflected in the District's final offer shall be incorporated into the parties' January 1, 2004 - December 31, 2008 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 9th day of February, 2009.

A handwritten signature in black ink, appearing to read "St Briggs", written over a horizontal line.

Steven Briggs