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ILLINOIS LABOR
RELATIONS BOARD

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION
BETWEEN

CITY OF EAST ST. LOUIS

And

LOCAL UNION NO. 23
INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS

APPEARANCES:

Ivan L. Schraeder on behalf of the City
J. Dale Berry on behalf of the Union

The Union is the bargaining representative of a unit of firefighter personnel employed by the City.

Pursuant to the request of the parties, on January 7, 2000 the undersigned was designated by the Illinois State and Local Labor Relations Board to serve as chair of an interest arbitration panel to determine unresolved terms and conditions of employment to be included in the parties collective bargaining agreement covering the period July 1, 1999 through June 30, 2002. The parties subsequently waived their statutory right to designate representatives to serve as arbitration panel members in this proceeding.

A hearing was conducted in the matter on October 25, 2000 during the course of which the parties reached agreement on a number of issues in dispute and presented evidence and arguments on those issues which remained in dispute. Post hearing exhibits were submitted by the parties and the record was closed on November 15, 2000. Based upon a review of the record and applying the statutory factors set forth in Section 14 h of the Illinois Public Labor Relations Act, the undersigned renders the following arbitration award.

ECONOMIC ISSUES:

WAGES:

UNION PROPOSAL:

A three (3) % general wage increase effective July 1, 1999, July 1, 2000, and July 1, 2001, and an additional .5% equity increase effective on the same dates.

CITY PROPOSAL:

3% general wage increases effective the same dates as the Union proposal.

UNION POSITION:

In terms of wages, the City's firefighters are last among the external comparables. In addition, they are significantly below (about 19%) the external comparable average. Their wages are also disproportionably below police wages relative to other comparable communities.

Though the City concededly has fiscal problems, it is not the poorest amongst its' comparables when one looks at available revenue.

Even if one were to acknowledge the City's financial problems, the Union's wage proposal will barely maintain the wage relationship firefighters have with firefighters in external comparable communities, which have achieved agreements averaging slightly above 3.5% per year over a comparable period of time. Based upon this settlement pattern, the City's wage proposal would result in the City's firefighters losing ground in this regard.

CITY POSITION:

Because the City is financially distressed, external comparability evidence should not be given significant weight. Even though the City's revenues might be comparable with some of the Union's proposed external comparables, the City has extraordinary expenses as a result of the significant financial difficulties it experienced in the 70's and 80's that it is still dealing with.

The City's wage proposal is also close to the settlement pattern, and more in line with what the City can afford than is the Union's proposal on this issue. Even the City's proposal of 3% increases each year will result in deficits. If the Union's wage proposal is granted, it is probable that staffing reductions in the Department will occur.

Furthermore, because of the decrease in the City's population, City revenues have and will continue to decrease.

DISCUSSION:

The Union's proposal is supported by external comparable considerations in that it appears to be slightly less than the

settlement pattern, which would result in the City's firefighters barely maintaining their wage relationship with external comparables, which will in turn continue to leave them significantly behind in this regard.

The proposal is also supported by record evidence indicating that the disparity between the pay between the City's firefighters and police force is greater than is the case amongst the City's external comparables.

While the record supports a conclusion that the City is financially distressed because of its unusual debt, that fact is given recognition by the fact that the City's firefighters are paid significantly less than firefighters in otherwise comparable communities. The record does not provide a reasonable basis for exacerbating that disparity, even though the one half percent equity adjustment per year proposed by the Union may exacerbate already existing staffing problems in the Department, particularly at the managerial level.

The Union's wage proposal is also consistent with cost of living considerations, and the comparability of overall compensation received by the Unit employees.

AWARD:

The Union's wage proposal shall be incorporated into the parties' successor Agreement.

DURATION

UNION PROPOSAL:

The Agreement is to continue in effect from year to year after its expiration unless either party notifies the other in writing not later than ninety (90) days prior to January 1 of the fiscal year in which the contract terminates that it desires to modify and/or amend the Agreement. The Parties recognize that the term of the Agreement is one which does not coincide with the currently established fiscal year of the City and accordingly agree that for the purpose of the mandatory mediation provided for in ¶ 14(a) of the IPLRA only, the month of December occurring after notice is given under this section shall be deemed to be the last month of the Agreement in which mediation shall be commenced.

CITY PROPOSAL:

Status quo. Current Agreement provides for sixty (60) day notice prior to anniversary date of Contract of intent to modify and/or amend Agreement.

UNION POSITION:

The City's fiscal year is January 1 through December 31. 14 j of the IPLRA provides that unless arbitration is invoked prior to the start of the fiscal year, an arbitrator doesn't have authority to award retroactive pay unless the parties agree to permit the arbitrator to do so. Under the parties' current agreement, the soonest the parties can reopen the Agreement is May 1 of any contract termination year. Accordingly, in the future, under the terms of the current Agreement, the City is in complete control over employee entitlement to retroactive wage benefits, which is inconsistent with the statutory scheme under 14 j. The Union's proposal on this

issue will correct that problem, enabling the parties to bring their Agreement into compliance with the intent of 14 j. This arrangement will also provide the City with timely information regarding potential costs the Department might incur before it adopts its fiscal year budget.

CITY POSITION:

Retroactivity should be negotiable, which is the case under the parties' current Agreement, not mandatory, which is the case under the statutory scheme and the Union's proposal. The City was successful in achieving this end, and the current arrangement should not be removed from the parties' Agreement as a result of this proceeding.

DISCUSSION:

The preponderance of evidence in the record indicates that the duration and expiration date of the parties' current Agreement were not awarded by the arbitrator in a prior interest arbitration proceeding because of their impact on retroactivity rights under 14 j of the IPLRA, but instead were based upon other considerations. Indeed, no reference is made either by the parties or the arbitrator in said award about the issue raised herein. Thus, it does not appear that the City "won" the retroactivity issue in that arbitration proceeding.

In the undersigned's opinion, on this issue the Union has raised legitimate concerns and interests in that the parties' current Agreement denies the Union and the employees it represents the rights afforded a vast majority of represented employees covered by the IPLRA, in effect, denying it a meaningful opportunity to negotiate retroactivity in the next round of negotiations if the City does not agree to offer it. The Union's proposed solution to this problem simply brings the parties future negotiations timetable into

compliance with the statutory scheme. Moreover, it is consistent with external and internal comparables, and it will provide the City with advance notice of potential liability in advance of its budget deliberation process. In contrast, the City's position on this issue is not consistent with the statutory scheme, which is intended to encourage timely negotiations sufficiently in advance of the budget making process to afford public employers a reasonable opportunity to make informed decisions in this regard.

AWARD:

The Union's proposal in this regard shall be incorporated into the parties' next Agreement.

EDUCATIONAL INCENTIVE

UNION PROPOSAL:

(New) In the event the City fails to pay qualified employees the educational incentives provided for in this Article on the dates specified, the City shall incur the additional obligation of paying the amount plus interest calculated at the then applicable rate set by the Internal Revenue Service for large corporate underpayments.

CITY PROPOSAL:

Status quo. The parties' current Agreement does not provide for any interest or other penalty for late payment of educational incentive benefits.

UNION POSITION:

Based upon the City's repeated failure to pay firefighters economic incentive benefits to which they are contractually entitled, there needs to be an incentive for the City to make such payments in a timely manner. The Union's proposal accomplishes that end, and will not cost the City anything provided it meets its' contractual obligations in this regard.

CITY POSITION:

If there are problems in this regard they should be addressed through the grievance procedure. They have not been so raised

DISCUSSION:

In the undersigned's opinion, on an issue like this, in order for a party to be successful in changing the status quo, it must demonstrate first, that a serious, legitimate problem exists, two, that it has been unsuccessful in getting the other party to reasonably address the problem in the negotiations process, and three, that it has proposed a solution to the problem that is reasonable and that does not pose serious, legitimate problems for the other party.

In this case the Union has met that burden. The record contains unrefuted evidence that education benefits have not been paid to unit personnel in a timely manner on a recurring basis. The City's suggestion that this problem should be addressed through the parties' grievance procedure is not persuasive. The Union should not have to utilize its resources, experience the delays, and incur the expenses associated with utilization of the parties' grievance procedure in order to get the City to meet its contractual

obligations in this regard. Lastly, the Union's proposed solution to the problem is fair and reasonable. If the City meets its obligations under the parties' Agreement in this regard, it will incur no penalties or costs.

AWARD:

The Union's proposal on this issue shall be incorporated into the parties' Agreement.

SICK LEAVE

UNION PROPOSAL:

(New) Upon retirement, employees shall be compensated for twenty percent (20%) of the accumulated unused sick leave at their regular straight time rate of pay.

CITY PROPOSAL:

Status quo. The parties' current Agreement does not provide for payment of any accumulated sick leave to retirees.

UNION POSITION:

The City's police have a more generous benefit in this regard than the one the Union is proposing.

In addition, all firefighters in comparable communities have some form of sick leave buy back, either annually or upon retirement.

The Unit is composed of relatively young firefighters, and therefore, there would not be much of an economic impact on the City in the near future if the Union's proposal is awarded.

CITY POSITION:

The Union's proposal on this issue would create a significant liability for the City which it should not be required to take on at this time.

DISCUSSION:

The Union's proposal on this issue is modest when compared with the benefit the City provides its police force in this regard. It is also relatively modest when compared with similar/related benefits firefights receive in comparable communities. In view of these comparisons, the City's reliance on its financially distressed conditions is not persuasive, particularly since the financial impact of the Union's proposal is unlikely to be of much consequence in the foreseeable future, particularly considering the relative youth of the bargaining unit's members.

AWARD:

The Union's proposal on this issue shall be incorporated into the parties' Agreement.

NON-ECONOMIC ISSUES

DRUG AND ALCOHOL TESTING

CITY PROPOSAL:

Employer may administer random drug testing of employees provided such testing complies with the requirements of random selection and testing associated with the Omnibus Transportation

Employee Testing Act of 1991 (Pub. Law 102-143) and its implementing rules and regulations, as amended from time to time.

UNION PROPOSAL:

Status Quo. The parties' current Agreement does not provide for random drug testing.

CITY POSITION:

The contract between the City and the Police provides for random drug testing. Also, the reasonable suspicion standard in place requires a command staff to observe employee behavior. The Department does not have such staff, since the Unit includes all firefighting personnel below the Chief.

UNION POSITION:

Comparable fire department contracts do not provide for random drug testing. Instead, firefighters have testing programs in place similar to the comparables, which allow for testing when reasonable suspicion exists.

There is also no evidence in the record indicating that there is a problem in the Department in this regard.

There is more reason for random drug testing in police settings than is the case here. Police enforce drug laws. It is noteworthy also that the City's Police Contract only allows for two random testings per year, while the City's proposal in this proceeding is unlimited.

DISCUSSION:

Based upon the same considerations set forth in the discussion above regarding the Education Incentive issue, the record doesn't support modification of the parties' current Agreement regarding this issue. Particularly, in this regard, the City has failed to demonstrate that significant, legitimate problems exist as a result of the terms of the current Agreement. Though monitoring employee behavior may be difficult because of insufficient managerial staffing in the Department, that problem is a distinct problem more properly addressed by giving attention to the managerial staffing issue than by granting the City random testing rights, particularly when there is no evidence in the record that there are any problems related to drug and/or alcohol use in the Department. Furthermore, external comparability evidence clearly supports the Union's position on this issue.

AWARD:

The Union's position on this issue, namely, the status quo, shall be continued in the parties' successor Agreement.

Dated this 6th day of December, 2000 at Chicago, IL 60640

Byron Yaffe
Arbitrator