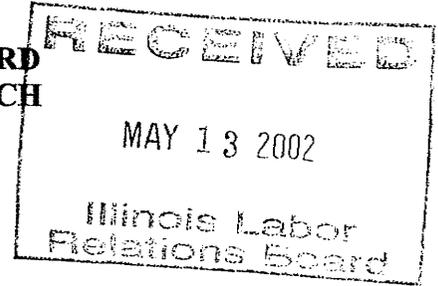


**ILLINOIS STATE LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH**



**In the Matter of an
Interest Arbitration
Between**

University of Illinois at Springfield)
)
 and)
)
 Illinois Fraternal Order of Police,)
 Labor Council)

Case #S-MA-00-282

OPINION AND AWARD

A hearing was held in Springfield, Illinois on December 12, 2001 before Arbitrator Robert Perkovich, having been jointly selected by the parties, University of Illinois at Springfield ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Jill Leka. The Union was represented by its counsel, Gary Bailey. Both parties presented their evidence in narrative fashion and timely post-hearing briefs were received on March 14, 2002.

STATEMENT OF THE ISSUES

The parties stipulated that the issues presented for resolution are as follows:

1. Wage increases effective August 21, 2001, August 20, 2002, and September 2, 2002.
2. The language of the agreement governing holidays.
3. The language of the agreement governing hours of work¹.

BACKGROUND

The Employer was first created by an act of the Illinois General Assembly as Sangamon State University (hereinafter SSU) in 1969 and saw its first graduating class in 1971. The Employer's early substantive focus was on the study of public administration, concentrating on undergraduate students, although it did not admit freshman and sophomores, and emphasizing "experiential" learning. Thus, its student body tended to be older and internship programs were the norm. In 1980 SSU dedicated its first on-campus housing and by 1990 its enrollment was approximately 4,000 while, at the same time, it began to resemble a more conventional institution of higher education. That evolution toward a more conventional institution continued when, in 1995, SSU joined the University of Illinois system, joining other campuses of the University at Champaign-Urbana and Chicago, Illinois. In that same year enrollment grew to slightly more than

¹ The parties disagree however whether this last issue is economic or non-economic in nature.

4,700 and, in 1999, the Employer was admitted its first freshman class effective with the 2001/02 academic year.

The Employer did not utilize its own police department until 1994 when the current department was formed. At that time the department consisted of eight sworn officers (three sergeants, five patrolmen, and the chief), two civilian staff personnel, and four telecommunicators. The Department's mission was to provide around the clock law enforcement services and to train and educate the campus community in sound crime prevention practices. In 1996 the Department grew to include three additional police officers and it assumed law enforcement services to nearby Lincoln Land Community College². Currently in addition to the Chief, one lieutenant, two clerical employees, the patrol staff consists of five patrolmen, three sergeants and five dispatchers all of whom are spread over three shifts operating between 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. The record reflects that of the five patrolmen and the three sergeants, six have seniority of at least six years with the other three having seniority of one to two years.

The bargaining unit involved in the instant dispute consists of the five patrolmen and the three sergeants. The unit was first represented by a Teamsters Local, but the Union assumed exclusive bargaining representative status in 1995. The parties then negotiated an agreement for the period 1995 through 1996 and another for the period 1996 through 1997, with the most recent agreement beginning in 1997 and ending in 2000. Although their negotiations, including mediation, yielded a number of tentative agreements, the parties were unable to agree on a comprehensive contract and find themselves in this interest arbitration.

THE COMPARABLES

The threshold issue in all interest arbitrations is of course, to determine the comparable entities appropriate for resolution of the dispute at hand. On this issue not only do the parties disagree which are the comparable entities, but they also disagree whether external comparables should be used at all.

The Employer first argues that because it is not a "community" external comparables may not be used in any way, shape or form because the Illinois Public Relations Act refers only to "comparable communities." In support of its argument it not only points to that statutory language, but it also infers from the Legislature's use of that language that it must have therefore intended to exclude the use of external comparables when non-municipal employers are engaged in interest arbitration. I however do not share this view. First, it cannot be questioned now after a number of years of interest arbitration in Illinois and many, many years of interest arbitration in other jurisdictions that external comparability is a crucial factor for the resolution of interests disputes. Thus, if the Legislature truly intended to eliminate the use of such a tool it surely would have done so explicitly and provided its view of the alternatives. Second, when the

² That responsibility terminated however when Lincoln Land created its own police department. Thus, any interrelationship between the Employer and Lincoln Land is through a mutual governmental aid agreement.

IPLRA was first adopted, university police officers were not covered by the Act because they were “educational employees” under the Illinois Educational Labor Relations Act. Thus, police employees of such institutions were not even under consideration when the IPLRA was passed and comparability was adopted as a standard in interest arbitration cases. It is true of course that in 1995 when the Legislature placed such employees under the IPLRA, despite the fact that they were employed by educational employers within the meaning of the IERLA, it continued to use the term “comparable communities.” However, absent some express legislative reference, or at least some legislative history, that the Legislature intended to eliminate the use of such entities to resolve interests disputes between universities and university police departments I decline to make that determination for the Legislature.

The next issue with regard to comparability is whether comparable entities must be limited to other Illinois universities or whether they can include municipalities. The Union urges that the choice of external comparables be limited to universities while the Employer contends that the distinctions between universities, and especially this university, are so drastic that any reliance on a comparability analysis using universities is flawed. Thus, it contends, contrary to the Union, municipalities can and should be used.

Fortunately I am not the first arbitrator to face this question because Arbitrators Berman and Briggs have also faced this issue. Arbitrator Berman in *Chicago State University* S-MA-96-148 (1997) conceded that the choice between universities was fraught with uncertainty, but because the parties stipulated to the universities to be utilized, he felt compelled to use their choices. Similarly, Arbitrator Briggs in *University of Illinois at Chicago* S-MA-96-240 (1998) viewed the choice in a similar fashion and made a comparability determination, but concluded that in light of the limited utility of such an analysis, he would instead rely heavily on internal comparability. However, they both shared the view that universities differed as to mission, funding, structure, and policing and that municipalities were not to be used or were to be given little weight³. Upon reflection I find that the teachings of my two colleagues are sound and are to be followed. Thus, I find that municipalities are not the appropriate benchmark and that only universities should be utilized.

Having determined that the scope of comparables should be limited to universities, the parties do not totally agree which universities are comparable. The parties do agree that among Illinois universities the following are comparable: Eastern Illinois, Illinois State, Southern Illinois at Edwardsville, Western Illinois and the University of Illinois at Champaign-Urbana. However, the Union, unlike the Employer, seeks to add to the list of comparables Chicago State University, Governor’s State University, Northeastern Illinois University, Northern Illinois University, and Southern Illinois University at Carbondale.

³ Arbitrator Briggs’ limited use of municipalities is distinguishable because in that case, unlike the instant case, there was a mutual aid pact between the employer/university and a nearby municipality.

Upon careful analysis I find that I cannot sanction the Union's proposed additional comparable universities. First, although even the agreed upon comparables are somewhat geographically distinct from the Employer, the universities proposed by the Union are more geographically distinct than some of those on which the parties agree. Thus, the relevant labor market should be, for comparability purposes, narrower rather than expansive. Next, appropriate analysis points show that the Employer pales in comparison to the Union's proposed comparable universities. For example, the total enrollment of each of the Union's proposed university comparables dwarfs that of the Employer, the crime index of the Employer, which stands at 11, is closest only to that of Governor's State University at 22, a difference on 100%, the department budget of the Employer stands at approximately \$775,000 compared to the lowest of the Union's proposed university comparables at 1.115 million dollars, and the Employer utilizes ten department personnel compared to Illinois State University, again the lowest of the Union's proposed university comparables, at 17. Finally, calls for service at the Employer were at almost 3,000 with the lowest of the Union's proposed university comparables at more than twice that amount.

In light of the foregoing I conclude that to the extent that external comparability is useful at all in this dispute, the external comparables are as follows: Eastern Illinois University, Illinois State University, Southern Illinois University at Edwardsville, Western Illinois University, and the University of Illinois at Champaign-Urbana.

THE ISSUES

Wages

The Union's final offer on the issues of wages is for wage increases of 6%, 5.5% and 5% in each of the three years of the agreement in issues. The Employer on the other hand offers 3% plus an equity adjustment of .5% in the first and second years of the agreement and 3% or whatever percentage is appropriated by the Legislature for wage increases, whichever is greater.

The Union's primary argument in favor of its final offer is that such wage increases are necessary to enable the bargaining unit to compensate for prior wage agreements that left them far behind the external comparables with regard to salaries. In reply however, the Employer argues that such "catch-up" final offers are disfavored in interest arbitration because arbitration is intended to replicate the agreement that the parties might have made and should not disturb or correct the real or perceived misgivings about prior bilateral agreements.

I have already considered the question of "catch-up" final offers in *City of North Chicago*. There I held that such offers should be looked upon with suspicion because if a party wishes to "right a wrong" it should do so in the same fashion in which the "wrong" was created, i.e., at the bargaining table. The Union however argues that the wage depression was also the result of the Employer's unilateral change to the work schedule, described *infra* at page 7. In doing so the Union ignores the fact that when the Employer

changed the work schedule it did so in accordance with the collective bargaining agreement it had reached with the Union. Moreover, in the absence of any evidence of bad faith bargaining the only conclusion is that the Union either failed to offer a *quid pro quo* for twelve hour shifts that the Employer deemed attractive or decided that other gains at the bargaining table were more important. Thus, the wage depression was not necessarily some sort of pernicious act, but rather the implementation of the parties' bilateral agreement. In that respect therefore the current situation is not unlike that in *North Chicago*.

Alternatively, the Union cites to decisions of other interest arbitrators where "catch-up" final offers were adopted. In my view however, those cases are distinguishable. For example, in *County of St. Clair*, S-MA-91-047 the arbitration panel adopted the union's final offer noting that bargaining unit employees had suffered a loss of buying power over a period and that the union's final offer was also supported by internal comparables. In the *County of Cook* cases, the union's "catch-up" offers were adopted, but only because the employer's final offer would have exacerbated the wage disparity, because in two prior arbitrations "catch-up" was deemed necessary, and because external and internal comparability favored the union's final offer. To the contrary, there is in the instant case neither a history of "catch-up," either through bargaining or arbitration, nor support for the Union's final offer in terms of external or internal comparability. For example, the Employer's final offer, unlike that in *County of Cook*, places the bargaining unit in no worse position that it has been and is consistent with wage increases for its other bargaining units of between 3 and 3.6% for the period 1999 through 2002. Finally, the Employer's wage offer comports much more closely to the cost of living between 1996 and 1999 and with most projections for the future. Thus, bargaining unit employees have neither faced a loss of purchasing power, unlike the bargaining unit in *St. Clair County*, nor will they face such a prospect if the Employer's final offer is adopted.

In light of the foregoing the Employer's final offer on wages is hereby adopted.

Holidays

The most recent collective bargaining agreement between the parties provides that bargaining unit employees will receive seven designated holidays, one holiday designated by the Chancellor, and one or two days designated by the Chancellor as closure days. In addition, the agreement provides that if a holiday falls on a Saturday or Sunday it will be observed on Friday or Monday and that if a unit employee works the calendar holiday, he or she does not receive holiday pay unless he or she works on the Friday or Monday observance.

In their final offers the Union wishes to designate the day after Thanksgiving and Christmas as enumerated holidays, to provide that holiday pay will be paid if an employee works on a closure day, and that holidays will be observed on the day on which the holiday is observed according to the calendar. On the contrary, the Employer opposes adding Thanksgiving and Christmas day to the enumerated holidays, and rather proposes

that employees receive two additional floating holidays designated by the employee and four additional holidays the Chancellor may designate with two of those designated as floating holidays at the employees' discretion. With regard to holiday observance, the Employer proposes no change except that if an employee begins work on a day that is not a calendar holiday, but his or her workday extends into the calendar holiday, that employee will be considered as having worked on the day that his or her shift started.

On this issue neither of the parties argues comparability, but instead they argue the soundness and reasonableness of their competing proposals. When the final offers are measured against those standards, I find that the Union's final offer should be adopted. First, it mirrors in large fashion the 2000/01 holiday schedule and, unlike the Employer's final offer, provides some measure of certainty with respect to floating holidays and the manner in which closure days, an apparent regular occurrence, are handled. In addition, the Union's final offer comports better with the fact that this bargaining unit, unlike other bargaining or employee units of the Employer, works seven days each week and 24 hours each day and works on closure days. Thus, the Union's final offer avoids a rather anomalous result, unlike the Employer's. That is, under the Employer's proposal a bargaining unit employee who started working at 11:00 p.m. on a calendar holiday that might fall on a Saturday or Sunday would not receive holiday pay because he started working on a day not observed as a holiday, although he or she worked seven hours on the observed holiday⁴.

In light of the foregoing I find that the Union's final offer is the more reasonable of the two and it is hereby adopted.

Hours of Work

In essence⁵ the parties disagree whether bargaining unit employees should work eight hour shifts or twelve hours shifts with the Union advocating a twelve hour shift and the Employer arguing that employees should continue to work eight hour shifts. As a threshold matter however the parties disagree whether or not this issue is economic in nature, requiring that I choose only between the two final offers. The Union contends the issue is non-economic in nature, analogizing it to issues such as residency that are not economic on their face, but have an economic impact. The Employer on the other hand argues that the economic impact of the Union's final offer on this issue is so substantial that the issue must be deemed economic in nature.

In my view, although the Union is correct that not all issues that have some economic impact are economic for purposes of interest arbitration, with residency as a fine example of that position, to say that an issue is non-economic simply because it does not deal with financial remuneration is not realistic. Rather, I believe that Arbitrator Nathan explicated a sound test when he held in *Village of Elk Grove Village S-MA-93-164* (1993) "any issue the outcome of which has a *measurable impact* on the costs of

⁴ The Union's final offer also avoids the anomaly of paying holiday pay to an employee who might start work at 11:00 p.m. on the observed holiday but who actually works seven hours on the calendar holiday.

⁵ The competing final offers are described more fully below.

funding the unit is an economic issue.” Thus, the issue is whether the Union’s final offer will have some measurable impact on funding the unit. Once this test is applied it is easy to see how the Union’s analogy to residency fails. Simply put, the economic impact of residency is somewhat speculative in that if limits on residency were to be relaxed, the position ordinarily sought by labor organizations, costs to the employer will rise only *if* response time increases such that overtime is required that would not be otherwise required. On the other hand, the Union’s final offer on the issue of the work schedule in the instant matter *will* increase the cost of funding the unit because, as the Employer points out, under the Union’s final offer the average work week of each bargaining unit officer will increase from 40 hours per week to 42. Thus, I find that the issue is economic in nature and compels a choice between the two final offers.

The parties next disagree whether the Union is attempting to change the status quo and therefore, if it must meet the traditional tests for justifying a “breakthrough.” The record reflects that when the Union replaced the Teamsters as the exclusive bargaining representative it followed the practice that employees would work eight hour shifts, agreeing that a twelve hour shift would only be implemented as a “pilot program,” subject to continuing review. In their next contract, another one year agreement, the parties made no change to the schedule provisions in the prior contract. However, in their next contract, and the last one between the parties prior to this arbitration, the parties deleted the reference to the “pilot program” and adopted a twelve hour schedule, but they further agreed that in the event the Employer found it necessary to make a change from the twelve hour schedule it would “meet and discuss” the issue.

In 1999, while operating under that agreement, the Employer apparently decided that the twelve hour schedule was improvident and returned to the eight hour schedule⁶. In accordance with the contract it not only met and discussed the matter with the Union, but it also engaged in impact bargaining. Those negotiations did not result in an agreement and because negotiations for a successor agreement, the one before me, were imminent, the Union did not pursue the matter until those negotiations commenced.

It is from this history that I must first determine what was the “status quo” so that I can ascertain whether the Union is attempting to achieve a “breakthrough.” Bargaining between the Employer and various labor organizations commenced in 1994 and for the first year, by agreement with the Teamsters, employees worked eight hour shifts. Then, with the onset of bargaining with the Union, employees continued to work eight hour shifts with a “pilot program” providing for twelve hour shifts for the next two years. Following that, and for the next three years the parties utilized twelve hour shifts with the proviso that if the Employer returned to eight hour shifts it would “meet and discuss” the issue. Thus, at best, for only three of the six years was a twelve hour shift schedule something other than a desire or a “pilot program,” and even then it was subject to the caveat that the Employer could return to eight hour shifts so long as it met and discussed the issue with the Union. In my view this is an insufficiently strong and fixed history of twelve hour shifts such that twelve hour shifts are the “status quo” for the purposes of this

⁶ In so doing bargaining unit employees’ yearly hours decreased from 2,184 to 2,080.

interest arbitration⁷. Rather, the record shows that to the extent that scheduling has been unencumbered by other provisions, it has consisted of eight hour shifts. Moreover, the parties' bargaining history on the subject of twelve hour shifts has included conditions such as pilot programs and reservations of rights to return to eight hour shifts. Finally, to the extent that the Union was able to secure any limitations on the Employer's reservation to return to eight hour shifts, even then it secured only the agreement to "meet and discuss" and not to bargain. Thus, in order to conclude that the "status quo" consisted of twelve hour shifts I must ignore these conditions and limitations, agreed upon by the parties through bilateral bargaining. I do not believe that I can, nor should I, do so⁸.

Having decided that the status quo consists of eight hour shifts I then am compelled to conclude that the Union's final offer is an attempt to achieve a "breakthrough." Thus, the tests for determining whether the Union's final offer can be adopted are whether there is a substantial and compelling need for the proposed change, whether the Union has demonstrated that the status quo has failed to work, whether the status quo has operated in such a way that it has caused inequities for the bargaining unit, whether the Employer has resisted attempts to bargain changes to the status quo, and whether the Union has offered a *quid pro quo* for the proposed change. (See e.g., *City of Burbank*, S-MA-97-56 (Goldstein, 1998). In light of these tests I find that the Union has not carried the day.

First, on the issue of whether there is a substantial and compelling need for the proposed change, both parties have essentially engaged in a debate with legitimate inferences that can be drawn about eight versus twelve hour schedules, but with little factual basis. For example, the Employer contends that the eight hour schedule will reduce overtime and sick leave and overall leave usage because employees will be less fatigued. However, the Union has pointed out that under the eight hour schedule the use of comp time has increased. Similarly, the Employer has cited to literature in support of the eight hour schedule and the Union has relied upon increased turnover since the eight hour schedule was imposed, but neither cites any facts upon which their assertions are based. However, as noted above, the burden is on the Union thus, to the extent that assertions may be speculative, the burden must applied against the Union⁹.

With regard to the tests of possible inequity and the willingness of the Employer to bargain a change to the status quo, again the Union does not meet it's burden to justify

⁷ The "strong and fixed" measure was first utilized by me in *City of Waterloo* S-MA-97-198 (1999) with relation to bargaining history for the purposes of internal comparability analysis. However, I believe that is equally useful in this context and I therefore look to the length of time involved, the parties' concessions with relation to the issue of twelve hour shifts, and the parties' bargaining history generally. See, *City of Waterloo*, at page 7.

⁸ See e.g., *Will County Board* S-MA-88-09 (Arbitrator Nathan) at pages 49-50 where he held that if interest arbitration is to work "...it must not substantially yield different results than could be obtained by the parties through bargaining...(thus)...the neutral cannot impose...contractual procedures he or she knows the parties themselves would never agree to."

⁹ The Union did provide facts to show that under its final offer there will be greater shift coverage. However, under the "breakthrough" analysis it is not the Union's task to show that its final offer might be better, but it must show a "substantial and compelling" need for a change to the status quo.

adoption of its final offer. For example, the Union apparently contends that inequity has been caused because employees earn less by working fewer hours under the eight hour schedule. However, to a large extent that asserted inequity is a product of the bilateral agreements that preceded this round of negotiations when the Union either agreed to the eight hour schedule or succeeded only in securing a twelve hour schedule coupled with the Employer's right, subject to "meet and discuss" limitations, to reinstate the eight hour schedule¹⁰. Similarly, the record shows that not only did the Employer meet its obligation to meet and discuss the schedule issue, but that it also engaged in impact bargaining when it reinstated the eight hour schedule and also bargained about the matter in negotiations preceding this arbitration¹¹.

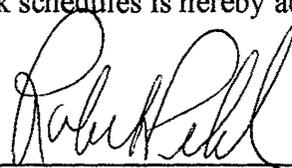
Assuming *arguendo* that the status quo is not that of eight hour shifts, and therefore that the Union's final offer does not constitute a "breakthrough," traditional standards for choosing between final offers in interest arbitration still compel adoption of the Employer's final offer. For example, no other bargaining unit of the Employer works any such schedule and three of the five external university comparables Eastern Illinois, Illinois State, and Western Illinois, work their police departments on eight hour shifts¹².

In light of the foregoing the Employer's final offer on the issue of work schedule is adopted.

AWARD

1. The parties' tentative agreements are hereby adopted.
1. The Employer's final offer on wages is hereby adopted.
2. The Union's final offer on holidays is hereby adopted.
3. The Employer's final offer on work schedules is hereby adopted.

DATED: May 9, 2002



 Robert Perkovich, Arbitrator

¹⁰ At hearing the Union argued that the imposition of the twelve hour schedule was in retaliation for two no-confidence votes by the bargaining unit against the Chief who was in office at the time. However, it provided no evidence in support of that claim other than the timing of the those events and did not renew the argument in its post-hearing brief.

¹¹ As noted above, another test for determining whether a "breakthrough" should be adopted is whether the proponent of the "breakthrough" has offered an adequate *quid pro quo* in return. On this point the Employer argues that the Union has simply failed to meet this test in any way, shape, or form. Interestingly, at the hearing both parties appeared to concede that if the eight hour schedule had been adopted in conjunction with a shift differential, there might have been an agreement. However, that apparent solution was either not offered or considered.

¹² In addition a fourth external comparable, Southern Illinois University at Edwardsville, permits twelve hour shifts, but limits the number of hours worked per year by each officer to 2,080, unlike the Union's final offer which would allow 2,184 annual hours per employee.

