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Supplemental

IN THE MATTER OF THE INTEREST ARBITRATION
BETWEEN

CITY OF COUNTRY CLUB HILLS

-and-

LOCAL NO. 726, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

ILLINOIS LABOR RELATIONS BOARD; CASE NO. S-MA-02-245

SUPPLEMENTAL PROCEEDING

1. The Arbitrator, Aaron S. Wolff, was designated by the parties pursuant to their Agreement and the procedures of the Illinois Labor Relations Board.
2. On June 9, 2003, the City filed a notice of "Reasons for Rejection" of the Arbitrator's Award entered on April 28, 2003.

Appearances for the City were:

Mr. John B. Murphey, Esq.

Rosenthal, Murphey & Coblentz,
Attorney

Appearances for the Union were:

Mr. James W. Green, Jr., Esq.

Attorney

3. The parties, by their attorneys, met and conferred with the Arbitrator on August 22, 2003, but no "hearing" was held and no additional evidence was presented. On September 23, 2003, the Union filed a response to CCH's Reasons for Rejection.
4. Summary of Supplemental Proceeding Award: The prior Award entered on April 28, 2003 is reaffirmed in toto.

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

CITY OF COUNTRY CLUB HILLS

-and-

LOCAL NO. 726, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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SUPPLEMENTAL PROCEEDING

OPINION AND AWARD

Preliminary Statement

On April 28, 2003 the undersigned, as sole Arbitrator, issued an Award pursuant to the Illinois Public Labor Relations Act [5 ILCS 315 et seq.; the "Act" or "IPLRA"], which the City of Country Club Hills [the "City," "Employer" or "CCH"], acting under §14(n) of the Act,¹ rejected

¹Sections 14 (n) of the Act provides: (n) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means.

The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, or in the case of firefighters employed by a state university, at the next regularly scheduled meeting of the governing body after issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

insofar as wage issues were concerned.

The Award provided in pertinent part on page 33, ¶2 that the wages for Patrol Officers² for the new 2001-03 Contract should be as follows:

	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
<u>Patrol Officers</u>			
Start	\$37,308	\$38,800	\$40,003
1 year's service	\$42,734	\$44,443	\$45,510
2 year's service	\$47,568	\$49,470	\$50,558
3 year's service	\$51,082	\$53,125	\$54,188

In its "Reasons for Rejection," filed on June 9, 2003, CCH stated as follows [RR 1-4]:

A. The Arbitrator's Award Results In An Excessive And Unreasonable Increase For The Entire Bargaining Unit.

The Award results in an unreasonable and excessive increase for members of the bargaining unit. As the Award notes at (29), the cost of living during relevant years has been hovering at less than 2%. The Award considered the Union's proposal to be unreasonably high, but the Arbitrator concluded he had no alternative because of the "breakthrough nature" of the City's offer and because the City's offer would result in some officers receiving no increase (29-30).

These conclusions are erroneous. A large majority of the bargaining unit members have more than three years experience. Under the City's proposal, each of those bargaining unit members would receive a 3-1/2% increase for year 1, and 3% for years 2 and 3 of the contract. Therefore, the majority of the bargaining unit members would receive three year increases of 3½%-3 %-3 % during the course of the contract year. As this Arbitrator's Award indicates, for the majority of the members of the bargaining unit, this increase is much more reasonable than the 12% three year increase proposed by the Union.

Indeed, the Award makes it clear that had the City simply maintained the existing structure and offered a 3.5-3-3 increase, the City's offer would be accepted over the Union's. The relative unreasonableness of the Union's proposal as to the large majority of bargaining unit members does not become less so because of the impact of that proposal on a relatively small number of bargaining unit members. Because the Arbitrator's Award is unreasonable in terms of the market conditions and internally inconsistent, the City must respectfully reject it.

²No wage issue is raised here with respect to detectives and sergeants, who are also in the bargaining unit, but whose wage scale, by undisputed past practice, is determined by whatever wage increase is afforded to patrol officers' top rate. Further, CCH did not propose to change the number of steps for detectives and sergeants, but did propose to increase the number of steps for patrol officers to attain top rate from three to four years. See Award, pp. 18-19.

**B. The City's Proposal Does Not Represent A "Breakthrough"
For Purposes Of Determining Reasonableness.**

Section 14 (h) requires an arbitrator to particularly compare the bargaining unit's wages to those of public employees in comparable communities, as well as the cost of living. The parties and the Arbitrator have focused primarily on these two factors.

The City's proposal does not represent a "breakthrough" and should not be scrutinized as such. The City's proposal is to maintain the existing salary structure with an additional step for the first two years of the contract. The eight members of the bargaining unit not yet at the top step would each receive substantial wage increases, leaving them at or near the top of the comparable communities.[Fn. 1] As set forth on Exhibit 21, four members of the bargaining unit were hired during the 00-01 fiscal year (E. Anderson, Richmond, Tories and Walker). These officers started at \$35,873. On the first year anniversary they would be moved to \$41,090 (a 14-1/2% increase). At their next anniversary date they would move to \$45,738 (11.3% increase). At their third year anniversary during the 02-03 year, they would move to \$50,117 (9.5% increase). The total increase under the City's proposal is 40% over three years.

[Fn. 1. Footnote 27 [of the Award] and its preceding text crystallize where we think the Award's analysis is flawed. A freeze of a wage schedule is not a wage freeze. The City's offer does not freeze wages of those officers beyond three years service (all but 8). These officers get 3.5-3.0-3.0. As we discuss below, the wages of those officers with fewer than 3 years service still increase significantly. The Award's allusion to Romeo and Juliet, Act II, Scene 2 ("What's in a name? That which we call a rose by any other name would smell as sweet.") is not apt.]

Those officers hired during the 01-02 year, (A. Anderson, Gavin, Hon and Pitman) these officers would start at \$35,873, have a first year anniversary increase to \$41,090 and a second year anniversary increase to \$46,738. The overall increase for these four bargaining unit members would be 30.28%.

Under the Arbitrator's Award (which is essentially a 4-4-3 across the board award), those officers hired during the 00-01 year will move from a starting salary of \$35,873 to a three year anniversary date salary of approximately \$54,188. This represents a 52% increase. For those officers hired during the 01-02 year, these officers (who have been placed at the \$35,873 start pay pending the resolution of this Arbitration), would be making \$50,558 on their second anniversary date. This amounts to a 41% increase in two years. The Award increases the City of Country Hills' pay scale for these inexperienced police officers far beyond that paid by any of the comparable communities.

That is wrong. Tempering these increases as the City proposes is not a breakthrough. It is reasonable. It is more faithful to the 14 (h) criteria. The City does not believe the Arbitrator intended to approve a proposal which would skew the salaries of first and second year patrol officers far above the salaries of comparable communities. For the foregoing reason, the City has rejected the Arbitrator's Award.

Pursuant to §14(o) of the Act,³ the parties, by their respective attorneys, met with the

³§14(o) provides: If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

Arbitrator on August 22, 2003 at which time it was agreed that no further hearings would be necessary and no further evidence was offered by the parties. It was also agreed that the International Brotherhood of Teamsters, Local 726 [the "Union"] could file a response, and on September 23, 2003 it did file a "Supplemental-Hearing Brief." In its SUB,⁴ the Union cited three awards involving supplemental proceedings: Teamsters Local 714 vs. The County of Cook and sheriff of Cook County, L-MA-01-001 (Meyers, 2002); Teamsters Local No. 714 and County of Cook and Sheriff of Cook County, L-MA-95-001 (Goldstein, 1996); and Peoria County and AFSCME Council 31, Case No. S-MA-86-10 (Sinicropi, 1986). The Union submitted copies of Arbitrator Meyers' and Sinicropi's Awards, but not that of Arbitrator Goldstein. This Arbitrator then asked Union counsel to supply a copy of the latter Award, but counsel advised that he tried but couldn't obtain one and that even the Labor Board did not have a copy. Thereafter, efforts to obtain a copy from other sources were successful and the Arbitrator received one on October 31, 2003.

A Procedural Issue--The Nature of a Supplemental Proceeding

Perhaps the earliest and leading case on this issue is that of Arbitrator Anthony V. Sinicropi in Peoria County (1986), supra, where he concluded at p. 9:

While there is no legal or arbitral precedent and little relevant material in the legislative history which provides guidance on the nature of a "supplemental proceeding" under the statute, this much is clear: the initial award must be entitled to "great weight" and should not be changed in a second proceeding absent "extraordinary hardship" or evidence that a significant error was made by the

⁴ The Supplemental-Hearing Brief of the Union will be cited as "SUB" and the City's Reasons for Rejection will be cited herein as "RR."

Arbitrator in his first award.***Absent a showing of significant hardship or manifest error (or other extraordinary circumstances), to allow a party to assert completely new positions or additional arguments on issues raised in the first proceeding will effectively make the first arbitration comparable to an advisory factfinding.⁵

This standard of review in supplemental proceedings has been followed consistently by interest arbitrators as shown by the analysis of Arbitrator Elliott Goldstein in the Sheriff of Cook County case, supra, wherein he reviewed many cases and observed [pp. 28-29]:

Section 14 (n) must be narrowly construed. [I]nterest arbitrators***have consistently held that §14 (n) was intended as a narrow outlet against substantial error on the part of the arbitrators and a protection against awards which might cause extreme hardship for the public,***.

Discussion

In the instant case, CCH does not suggest a different standard of review and offered no new evidence. The core of CCH's reargument is that the Arbitrator erred in concluding that CCH's wage proposal constituted a "breakthrough." [RR 1-4, supra, pp. 2-3] However, CCH has not persuaded me that its wage proposal was not a "breakthrough." CCH does not dispute that its wage proposal would have extended the "top out" rate, i.e., the number of years it takes for an officer to achieve the highest rate of pay, would be stretched from three to four years. Nor does it dispute that the "top rate is *** the most important rate for comparison because the greatest concentration of employees is at the top, and in the normal course all employees will***reach the top." [See Award, p. 27, quoting

⁵Arbitrator Sinicropi was a highly respected arbitrator and a former president of the National Academy of Arbitrators who died too young in July 2003.

from Arbitrator Kossoff in Village of Westchester⁶ Accordingly, I must still [Award, p. 25]:

disagree with the City that its attempt to stretch the schedule for topping out from three to four years does not constitute a breakthrough. As the City itself observed: "What is really important is how fast one moves and how many years it takes to move to the top of the schedule." [CB 5-6] It appears that from the initial collective bargaining agreement, the top out salary at CCH has always been achieved after three years. Two other CC's [comparable communities] have bargained for top out base salaries after three years, while others top out after 5, 6, 7 or 9 years of service. [UX 3, 4 & 5] All of those CC's have collective bargaining agreements and the years for topping out, as here, have been bargained out. The time frame to top out is clearly a significant benefit and ought to be altered, if at all, by the parties themselves and not by an arbitrator.⁷

Perhaps another way to illustrate the "breakthrough nature" of CCH's wage proposal is to put the shoe on the other foot. Suppose the Union, without ever having sought to do so in collective bargaining, submitted a Last Offer in this arbitration proceeding which would reduce the time it

⁶CCH states that a "large majority of the bargaining unit members have more than three years experience," i.e., were already at the top out rate. [RR 1, supra, p. 2] However, by my recount of Patrol Officers on CCH's Ex. 1 [CX 1] at the end of the last contract on April 30, 2001, 11 of 18 or 61% of them had not attained top rate; and under CCH's wage proposal those officers who did not achieve top rate within the first two years of the new contract would not receive a wage increase across the board. They would only receive step increases based on length of service: i.e. an officer hired in year one would receive an increase on his anniversary date one year later.

⁷As Arbitrator Goldstein said in City of Burbank (ISLRB Case No. S-MA-97-56; 1998), pp. 9-11: "At its core, interest arbitration is a conservative mechanism of dispute resolution*** intended to resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship. The traditional way of conceptualizing interest arbitration is that the parties should not be able to obtain in interest arbitration any result which they could not get in a traditional bargaining situation. Otherwise, the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort***. [T]here should not be any substantial 'breakthroughs' in the interest arbitration process. If the arbitrator awards either party a wage package which is *significantly* superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining." See also the cases cited therein in support of those views.

would take for patrol officers to achieve top rate from three to two years. Would CCH claim that that was an impermissible breakthrough? I have no doubt that it would and that its position would be upheld.

CCH is correct, however, that footnote 27 on page 27 of the Award overstates that the “City’s last offer does not provide for any wage increase for patrol officers in the first and second years of the new contract.” It does provide an increase for those at the top rate; but the Award otherwise makes clear that it is only those not at top rate who would have their across the board wages frozen during the first two years of the new contract under CCH’s wage proposal. As CCH observes at RR 1, supra, p. 2, “the Arbitrator concluded***the City’s offer would result in some officers receiving no increase.” [Emphasis added] Further, the fact that officers below the top rate will be entitled to “step increases” on their anniversary dates does not detract from the fact that the City offered no across the board wage increase during the first two years of its proposed contract for officers with less than four years of service. The City did not propose eliminating step increases and, therefore, it was always understood that officers below top rate would receive a pay increase on their anniversary dates.

The City states incorrectly that the Arbitrator’s Award “is essentially a 4-4-3 across the board award.” [RR 3, supra, p. 3] In fact it was 4-4-2.2%. See the computations and discussion at page 30 and fn. 32 of the Award. Thus, the prior Award provides a total increase of 10.2% over three years, which is quite close to CCH’s proposal of 9.5% over three years and substantially less than the

Union's 12% proposal. In its Reasons for Rejection, the City argues, as it did with respect to and in advance of the first Award, that an officer hired in the first year of its proposed contract would receive a 52% increase after his three year anniversary date. [RR 3, supra, p. 3] Such argument was duly considered in the Award and found wanting. As stated in the Award at p. 26:

The main thrust of CCH's case is that under the Union's proposal, an officer hired on January 1, 2001 will achieve a 54% salary increase by January 1, 2004. But such large percentage increases are the natural consequences of a compressed wage schedule and that compression has always existed under the parties' contracts. Thus, under the old contract, 1999-2001, an officer hired on January 1, 1999 would [and did] garner a 51% salary increase by January 1, 2001. Further, the City has not suggested that it cannot afford to maintain a 3-year top out schedule. Three-year top out schedules are not unusual or unheard of; two of the CC's have them. Considering all of the other pertinent factors under the IPLRA, I can find no basis to support CCH's position on this economic issue.

Having considered all of the arguments advanced by CCH, and having found no significant error in the Award and no evidence of any significant hardship for CCH, the Arbitrator concludes that CCH has not established any basis for altering the prior Award.

Finally, it should be noted that the prior contract expired on April 30, 2001 and that the new three year Contract, which is the subject of this Award, will expire in about four months, April 30, 2004; and therefore, there is substantial back pay due under the 2001-04 Contract. These facts will be taken into account in the remedy provided in this Supplemental Proceeding.

Award

For the reasons set forth in this Opinion, which Opinion is incorporated by reference in this Award:

[1] The Award entered on April 28, 2003 is reaffirmed in toto.

[2] The City shall make all payments due to employees under the 2001-04 Contract on or before December 31, 2003, provided however, that such payment may be deferred as to any employee who requests in writing that such payment be made in January 2004. If no such request is made and CCH does not make the payments due to any employee by December 31, 2003, then CCH shall also pay interest on the amount due to such employee at the rate of five percent [5%] per annum from the date of the prior Award, April 28, 2003, until paid. Such interest shall also be paid if an employee requests deferral to January 2004 and the City does not make payment within such time.

[3] Pursuant to §14 (o) of the IPLRA, 5 ILCS 315/14(o), the City is required to pay all reasonable costs of this supplemental proceeding, including the Union's reasonable attorney's fees, as established by the Board.

The Arbitrator will retain jurisdiction for sixty (60) days to resolve any dispute, now unforeseen, as to the remedy.



Aaron S. Wolff, Arbitrator

Entered at Chicago, Illinois
this 21st day of November, 2003.