

In the Matter of the Interest Arbitration Between

: City of Paris :
: :
: -- and -- : OPINION AND
: : AWARD
: Policemen's Benevolent :
: Labor Committee :
: ISLRB Case No. S-MA-05-193 :
: _____ :

Before Matthew W. Finkin, Arbitrator.

The undersigned was designated by the parties pursuant to Section 14 of the Illinois Public Employee Labor Relations Act, 5 ILCS 315/14 (2006 Supp.), as the interest arbitrator to resolve an economic issue in dispute between them. The City is represented by Lorna K. Geiler, Esq. The Union by Teresa B. Phillips, Esq. A tripartite panel was waived by the parties. The parties agreed to submit the sole issue outstanding between them via stipulated facts and exhibits and by written briefs. The joint factual stipulations were submitted under date of October 17, 2006. The Union's and the City's written arguments were submitted under date of October 26 and 27 respectively. All procedural prerequisites have been completed. The matter is ready for disposition.

The Issue

The outstanding issue in dispute is over longevity pay. The final offers of the parties are, respectively, these.

The Union

For each full year of continuous service as an employee of the Employer, an employee shall be entitled to a longevity increase each year, for the first five (5) years of his/her employment, of one and one half percent (1½%) of his/her base

rate as established by this Agreement. For each full year of continuous service as an employee of the Employer, an employee shall be entitled to a longevity increase each year during his/her sixth (6th) through his/her twenty-fifth (25th) year of employment, of one percent (1%) of his/her base rate as established by this Agreement. Longevity increases under this Section shall cease after twenty-five (25) years of continuous employment by the Employer. An employee whose continuous service with the Employer is broken, must perform an additional five (5) continuous years of service with the Employer in order to have his/her prior service considered in calculating longevity increases.

This provision would carry over treatment of longevity in the parties' prior collective agreement which provision, in turn, has been continued from prior agreements.

The City

In addition to the base pay outlined in Appendix A of this Agreement, employees will receive additional longevity pay added to their base pay and subject to pension contribution as indicated below.

Years 1-5	1 & ½% per year of employment
Years 6-25	1% per year of employment

Employees will continue to accrue longevity increases through 12/31/2007, at which time there will be no further increases to employee compensation for longevity.

The Statutory Criteria

The statute provides a set of criteria to govern decision; but, of these, only subsection (h)(4) is relevant and it is only to this that the parties argue, as will appear presently. It provides that the Arbitrator is to consider the

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. . . .

* * *

Apropos subsection (h)(4), the parties have stipulated to a set of statutorily comparable communities. *Viz.*:

Chillicothe
Clinton
Harrisburg
Litchfield
Mt. Carmel
Metropolis
Murphysboro
Olney
Robinson
Salem
Silvis
Taylorville
Watseka

The Facts

The parties initial collective agreement incorporated the City's ordinance of 1991 providing for longevity pay and that provision has been maintained in every succeeding collective agreement, five in number, until this dispute. The City has successfully eliminated longevity pay for every other group of City employees—by collective bargaining for those who are represented—except for the employees represented here. In seeking to eliminate the instant policy the City offered no *quid pro quo* in exchange.

Twelve of the thirteen stipulated comparable municipalities maintain longevity pay for their police departments. Only Taylorville does not. The City argues that Taylorville did so in 1987, to “wrap . . . existing longevity . . . [pay] into their base pay and eliminatc future longevity increases” which is what the City now seeks to do. Brief of the City at 1–2. The Union concurs in these facts. Brief of the Union at 4.

Position of the Parties

The City makes three arguments: (1) that consistency of treatment with other City employees is recognized as a factor under subsection (h)(4); (2) that the longevity increases almost universally afforded by comparable municipalities is substantially exceeded by what the

Union's last offer requires; and, closely related, (3) that it need not offer a *quid pro quo* to eliminate this provision.

The Union argues that the justification for so drastic a change in longstanding practice, which it terms a “ ‘breakthrough’ ” proposal, rests upon the proponent. Brief of the Union at 7, citing *Will County Board*, ISLRB Case No. S-MA-88-9 (Nathan, 1988). It argues that none of the criteria for the satisfaction of that burden outlined by Arbitrator Nathan are satisfied here; most important, there has been no showing of hardship or defect in the operation of the longevity pay policy, nor has the City offered a *quid pro quo* for the abandonment of it. On consistency with the City's treatment of its other employees, the Union points out that the City has not put in evidence what was conceded to the other represented City employees in return for their relinquishment of longevity pay, *i.e.*, whether there was and, if so, what the *quid pro quo* was in these cases. In contrast, the Union emphasizes the role of comparable community comparisons in which only Taylorville supports the City's argument and which, on closer inspection, the Union takes actually to bolster its position:

Elimination of longevity notwithstanding, Taylorville continues to provide a salary increase after three years of service. One cannot speculate as to whether the Union in this case would have been receptive to a proposal rolling longevity pay into the current base salary because said proposal was never made by the City.

Brief of the Union at 12.

Analysis

The Arbitrator is guided by close attention to the statutory criteria that govern decision. In this case, comparability of treatment is the only relevant statutory factor. In that, the Union's argument, to the burden of persuasion in the face of longstanding practice, is irrefutable. *Village of University Park*, ISLRB Case No. S-MA-99-123 (Finkin, 1999). In a dispute over longevity

pay policy where, contrary to the instant case, the Union was seeking to change an established practice the undersigned observed,

“The weight of arbitral authority . . . is that the proponent of change bears the burden of persuasion on the need for the change. . . . [T]he burden is assumed because of the longstanding nature of the prior policy and the expectations concomitantly founded on it.” . . .

[T]he Union has not shown that the system has created operational problems for the employer or has ceased to serve its operational end.

St. Clair County, ISLRB Case No. S-MA-99-60 (Finkin, 2000) (reference omitted).

The same reasoning applies here albeit that the parties’ positions are the reverse of that in the above. The City has made a straightforward appeal to its desire to effect consistent treatment of all its employees. That is a valid statutory interest. But the Union has argued more powerfully that to change so longstanding and near universal a practice among comparable police departments more needs be shown than that the City prefers its position as a matter of consistent labor relations policy. As one of the most prominent arbitrators in the State and a leading commentator on the process has observed,

Arbitrators are called upon to write the contract for the parties because of the parties’ negotiation process has broken down. The arbitrator’s function in these circumstances is to devise a contract that the parties likely would have reached had the process not broken down. To do this, arbitrators rely primarily on two factors: what the parties have done in the past and what other parties have done recently.

Comparability is an important factor that arbitrators rely on, particularly with respect to wages and other economic issues. This is understandable in light of the arbitrator’s function. In deciding what agreement the parties would have reached had the process not broken down, the most logical proxies are the agreements reached by other parties in comparable communities.

Martin Malin, *Public Employees’ Right to Strike: Law and Experience*, 20 U. MICH. J.L. REFORM 313, 333 (1993) (reference omitted). On balance, the Union’s last offer better comports with the standards set out in subsection h(4) in terms of the longevity of treatment of the

employees in this department, the obvious want of any demonstrable defect in the operation of that policy, and, critically, the treatment accorded comparable employees elsewhere.

AWARD

On the respective last offers on longevity pay, the Union's last offer is awarded.



Matthew W. Finkin
Arbitrator

17 Nov. 2006

Date