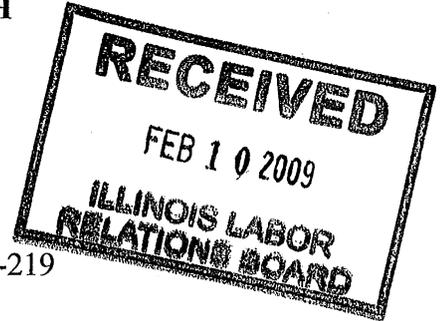


ILLINOIS PUBLIC LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an Interest
Arbitration between

Village of Bellwood)
)
and)
)
Illinois Fraternal Order of Police)
Labor Council)

S-MA-06-219



INTEREST ARBITRATION OPINION AND AWARD

A hearing was held in Brookfield, Illinois on August 13, 2008 before Arbitrator Robert Perkovich who was jointly selected to serve as such by the parties, Village of Bellwood ("Employer") and Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Margaret Kostopulos and Tiffany Nelson, and presented its evidence in narrative fashion. The Union was represented by its counsel, Gary Bailey, and it too presented its evidence in narrative fashion. The parties filed timely post-hearing briefs that were received on December 5, 2008.

STATEMENT OF THE ISSUES

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

1. The Comparable Communities
2. Wages
3. Retroactivity
4. Lateral Transfers

BACKGROUND

The Employer is a suburb located just west of the city of Chicago. It has a mayoral form of government and it is comprised of six departments, five of which have bargaining units (full-time police, part-time police, firefighters, public works, and various administrative employees).

The Employer's sworn patrol officers under the rank of sergeant have been represented by a union since 1993. Between that year and 1995 there were represented by a union, but in 1996, and through 2002, they were represented by the Union herein. In 2003 the Union was replaced by a vote of the bargaining unit, but in February of 2006 the Union herein was again certified to serve as the exclusive bargaining representative of the Employer's sworn police officers under the rank of sergeant. During the period between 1993 and 2005 the Employer and the employees' certified bargaining representatives

negotiated four collective bargaining agreements, three of which were for a duration of three years. The last of those agreements expired in December of 2005 and the parties have been engaged in negotiations for a successor agreement. Because those negotiations did not produce an agreement, the parties have found themselves in this arbitration.

THE ISSUES

THE COMPARABLE COMMUNITIES

The parties agree that for purposes of external comparability they will use Broadview, Westchester, and Maywood. They disagree however with regard to the communities of Hillside, Elmwood Park, Franklin Park, Northlake (all of which the Union proposes as comparable communities) Melrose Park, Forest Park, Berkeley, Stone Park, and Brookfield (all of which are proposed by the Employer).

The selection of comparable communities, whether by the parties or an arbitrator is, in my view, a less than precise science despite the reliance on objective, statistical measures. I believe this to be the case because the process is subject to selective use of those objective measures, the use of different source data even when parties use the same objective measures, and the difference between arbitrators in giving weight to those measures. This case, in my estimation, is no different because, for example, the parties use different source material for median home value, disagree as to the correct number to be used for the size of the police department, use measures that the other does not, and both do not give the statistics for all of the comparable communities in dispute.

Despite the misgivings that I may have, the use of external comparability is an important consideration in the resolution of interest disputes and thus, I undertake that task¹.

With regard to the measure of population, the population of the Employer is either 20,535 or 19,754. However, when either number is used it places the Employer at the third rank among the disputed comparables and it falls squarely into a reasonable range of 15,251 to 25,4502 (represented by the communities of, in descending order, Elmwood Park, Melrose Park, Franklin Part, Brookfield, and Forest Park). The remaining communities (Northlake, Hillside, Berkeley, and Stone Park) representing a range between 11,878 and either 5,127 or 4,455 are, in my estimation, too small too be used for a meaningful comparison. Thus, the measure of population favors inclusion of Elmwood Park, Melrose Park, Franklin Park, and Forest Park.

On the measure of per capita income a slightly different result is compelled. That is, the communities of Forest Park, Berkeley, and Brookfield, with per capita income levels between \$26,405 and \$24,307 are too high relative to that of the Employer (\$19,420), but the communities of Elmwood Park, Hillside, Northlake, Franklin Park, and

¹ In those cases where the record evidence falls into the categories I have described above with respect to their reliability I have used, where possible, both sets of numbers provided by the parties when they have not substantially changed the comparability analysis.

Melrose Park represent a range of per capita incomes between \$21,635 and \$16,206, which places the Employer at the third rank of those six when it is included. Thus, the measure of per capita income favors the inclusion of those communities.

With regard to equalized annual valuation (EAV) Berkeley and Stone Park are again too small (with an EAV respectively of 101,805,695 and 56,000,000) when compared with the EAV of the Employer (311,800,851). Conversely, the EAV of Franklin Park and Melrose Park are, in my view, too high at, respectively, 831,081,698 and 691,706,301. On the other hand when the remaining proposed comparables are compared to that of the Employer, the Employer falls in the third rank of the remaining comparables which create a range of 452,467,383 to 263,737,103. Thus, the measure of relative EAV favors the inclusion of Elmwood Park, Brookfield, Forest Park, Northlake, and Hillside.

Using these three measures of comparability the results are as follows:

Elmwood Park	3 Factors for Inclusion
Northlake	2 Factors for Inclusion
Hillside	2 Factors for Inclusion
Franklin Park	2 Factors for Inclusion
Melrose Park	2 Factors for Inclusion
Brookfield	2 Factors for Inclusion
Forest Park	2 Factors for Inclusion

On the other hand the remaining proposed comparable communities (Berkeley and Stone Park) have no factors favoring inclusion.

In addition, although the parties disagree whether a five mile radius or more should be used for determining the relevant labor market, there can be no dispute that all of the communities listed above fall within that radius.

Finally, although in the last arbitration used to resolve the parties' interest dispute the arbitrator in that proceeding, although he did thoroughly explicate his rationale chose Elmwood Park, Hillside, Maywood, Westchester, Brookfield, and Broadview. Thus, there is perhaps now developing a pattern that might be useful to the parties in future negotiations². I therefore find that the comparable communities are Elmwood Park, Northlake, Hillside, Franklin Park, Melrose Park, Brookfield, Forest Park, Broadview, Westchester, and Maywood.

WAGES

On the issue of wages the parties agree that in the last two years of their agreement, 2009 and 2010, the wage increase should be 4%. Thus, the only dispute between the parties is with regard to the wage increases for 2006, 2007 and 2008, with

² It appears that the arbitration in that matter was not faced with the choice of Northlake, Franklin Park, and/or Melrose Park.

the Union proposing 4% wage increases in each of those years and the Employer proposing wages increases of, respectively, 3.5%, 3.25%, and 3.25%.

To assist in choosing between the final offers for those three years the parties have urged the consideration of cost of living, internal comparability and external comparability and I shall use of those factors as described below³.

First, the cost of living. The parties offer different measures of the consumer price index with the Employer's choice yielding a cost of living index of 3.3% in 2006 and 2007 and 4.5% in 2008 and the Union's choices yielding a range, commencing in May of 2007, between 3.97 and 4.58%. Despite those conflicting measures the conclusion is clear, i.e., that the Employer's final offer would yield a wage increase that exceeds the cost of living only in 2006 and that is below the cost of living for the next two years while the Union's final offer narrows the gap between the employees' wage increases and the increase to the cost of living more than that of the Employer. In my view the factor relating to the cost of living tends in favor of choosing the Union's final offer.

With regard to external comparability, although the analysis tends in favor of the Union's final offer, because the parties use different measures and because their different measures are not applied to all of the comparable communities deemed appropriate by me, the analysis is not particularly helpful⁴.

For example, the Union uses the percentage wage increases in Elmwood Park, Northlake, Hillside and Franklin Park as well as the agreed upon comparables and that evidence shows that in the years 2006, 2007, and 2008 the range of wage increases in those communities is between 3% and 5%. Thus, the Union's final offer compares more favorably than that of the Employer. On the other hand the Employer uses the actual net wage (salary minus insurance contributions) paid by the communities of Melrose Park, Forest Park, Brookfield and the agreed upon comparables with the evidence showing that, using this measure, whether its final offer on wages or that of the Union is chosen the bargaining unit members herein would be ranked second among those four communities in 2006 and 2007 and first among the four in 2008. Moreover, even if gross salary is used rather than net pay, and whether the Union's or the Employer's final offer is accepted, there is no change to the relative ranking of the bargaining unit versus that of Brookfield, Northlake, Hillside, Franklin Park, Melrose Park, Forest Park, and Elmwood Park. (See Employer Brief at pages 21-25.)

In sum, I find that the use of external comparables is less than helpful in choosing between the two final offers.

³ The Union urges initially that I should choose its final offer because the Employer's police officers "are lagging behind their counterparts" in the comparable communities in terms of annual salary. However, as pointed out by the Employer, arbitrators tend to hold that passing or "catching up" to the wages of others communities is not the goal of arbitration.

⁴ The Employer also uses the relative median salaries paid to police officers in the comparable communities as compared to the median salary paid to the bargaining unit herein. I find however that such a measure, not ordinarily the measured used by parties in bargaining, is less than helpful and decline to consider it.

The last factor proffered by the parties is the issue of internal comparability. The Employer argues, for the reasons set forth below, that internal comparability favors its final offer while the Union did not address the factor in its post-hearing brief.

The evidence on this issue shows that in the years 2003, 2004, and 2005 police percentage wage increases and fire fighter percentage wage increases were the same, either 3% or 3.25%. In 2006, 2007, and 2008 the Employer's firefighters received percentage wage increases in the amount of, respectively, 3.5, 3.5, and 3.25 and it's part-time officer and public works employees received wage increases of 3.25, 3.25, 3.5, and 3.5%. As noted above, the Union's wage increase is for a 4% wage increase in 2006, 2007 and 2008 while the Employer proposes percentage wage increases of 3.5%, 3.25%, and 3.25%. Thus, although neither final offer mirrors the percentage wage increases of all of the internal comparables it is that of the Employer that is closer.

In the final analysis I am left then with an external comparability analysis that is not particularly helpful, two final offers that do not keep pace with the cost of living (though that of the Union is closer) and an internal comparability analysis that favors the Employer's final offer. In light of the importance that interest arbitrators place on internal comparability⁵ and because neither final offer keeps pace with the cost of living, I find that the Employer's final offer must be adopted.

RETROACTIVITY

The parties agree that their collective bargaining agreement should provide for retroactivity however, the Union proposes full retroactivity to the effective date of the agreement, January 1, 2006, while the Employer proposes full retroactivity to September 1, 2006.

The Union points out that in those instances where Illinois interest arbitrators have considered the issue of retroactivity to some date other than the effective date of the parties' agreement they have overwhelmingly favored Union final offers on this issue. It acknowledges however, as the Employer argues, that in those cases where there is clear proof that the union has caused protracted negotiations the issue can go the other way.

To this end the Employer points out that although the Union was certified on February 8, 2006 negotiations did not commence until August 22 of that same year and it asserts that the Union was "unprepared to commence bargaining" until that time. The Union on the other hand asserts only that before the beginning of negotiations "it took awhile for the Union to assemble a new team..." and that once bargaining commenced it moved "at a rather brisk...pace and continued to reach the resolution of outstanding

⁵ See e.g., *Village of Arlington Heights*, S-MA-88-89 (1991) where Arbitrator Briggs opined that "...interest arbitrators attempt to avoid rendering awards which would result in the creation of orbs of coercive comparison between and among bargaining units within a particular...jurisdiction...especially...regarding firefighter and police units,..."

issues right up to...the...hearing.” Finally, it relies on the fact both internal and external comparables favor retroactivity to the effective date of the parties’ agreement.

The record evidence shows that the parties first met on August 22, 2006 and on four more occasions between then and November 1, 2006, a period of approximately six weeks. Moreover, they met again on four other occasions, including meetings with a mediator, between February 9 and June 19, 2007 and in August of 2007 the Union filed for interest arbitration. Even once that demand was filed, the parties met again in November and December in mediation and in May, 2008, at the first day of hearing in this dispute the parties reached a tentative agreement.

In my view, this course of bargaining, albeit less than expeditious, does not compel a conclusion that full retroactivity must be curtailed as a result of the course of bargaining, especially when one considers that the Union supplanted another bargaining representative. Moreover, the internal comparables provide a clear history of retroactivity consistent with the Union’s final offer, as well as the external comparables, and in light of such a history more evidence than mere delay is needed to justify adoption of the Employer’s final offer.

Thus, I find that the Union’s final offer on retroactivity must be adopted.

LATERAL TRANSFERS

On this issue the Employer proposes that the parties’ new collective bargaining agreement contain language that will allow it, when it hires a new employee with three consecutive years of full-time active service in another Illinois jurisdiction and who has maintained all relevant training and certification requirements, to provide to that newly hired officer one year of credit on the pay scale for every two years of qualifying service, not to exceed the third step salary. The Union disagrees and contends that the Employer has not met its burden of proof to justify selection of it’s final offer.

The Employer concedes that the proposal constitutes a “breakthrough” and that under well-established arbitral precedent it must show a “clear cut justification.” In attempting to meet this burden the Employer asserts that “all too often” a newly hired officer does not successfully complete his or her probation period and thus the Employer finds that it terminates the employee and must hire another. Thus, the Employer asserts, the proposed language “allows (it) to increases (sic) its ability to attract and hire already trained and experienced...officers.” Finally, it argues that the Union’s objections to the proposal are without merit.

I find that the Employer has failed to meet its burden of proof on this issue. While it may be that “all too often” it has faced the predicament that it portrays, the fact of the matter is that there is no record evidence as to the number of times it has happened, the costs, both economic and non-economic, of any such circumstances, and/or what efforts the Employer might have employed to remedy these situations and the success, or lack thereof, of any such efforts.

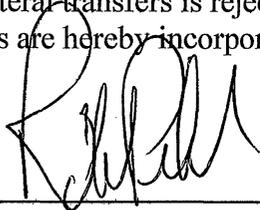
Finally, as pointed out by the Union, neither the internal nor external comparables favor adoption of the Employer's proposal.

Thus, the Employer's proposed language on lateral transfers is rejected.

AWARD

1. The Employer's final offer on wages is adopted.
2. The Union's final offer on retroactivity is adopted.
3. The Employer's final offer on lateral transfers is rejected.
4. The parties' tentative agreements are hereby incorporated into this Award.

DATED: February 2, 2009



Robert Perkovich, Arbitrator