

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

TOWN OF CICERO

AND

CASE S-MA-07-022

IL FRATERNAL ORDER OF POLICE
LABOR COUNCIL—POLICE PATROL UNIT

APPEARANCES:

Gary Bailey on behalf of the Union
Holley Tomchey on behalf of the Town

This is an interest arbitration award under Section 14 of the IL Public Labor Relations Act. Pursuant to Section 14 (c) of the Act, the parties selected the undersigned to serve as a single arbitrator in the matter, waiving their right to a three-person panel. Pursuant thereto, a hearing in the matter was conducted on December 11, 2008, during the course of which the parties presented evidence and arguments in support of their respective positions. Post-hearing stipulations, briefs and exhibits were filed thereafter and the record was closed on May 9, 2009. Based upon a review of the record the undersigned renders the following award based upon consideration of the factors set forth in Section 14 (h) of the Act.

The parties reached tentative agreements concerning a number of issues during negotiations, which continued throughout the course of this proceeding. It is the undersigned's understanding that those agreements shall be incorporated into the parties' successor agreement.

The Town's Police Department consists of between 115 and 120 patrol officers, all of who are in the bargaining unit affected by this proceeding. The Union also represents a separate unit of sixteen sergeants.

The parties' prior agreement, which was their eighth, ran from 1/1/04 through 12/31/06. The parties stipulated that the agreement, the terms of which are at issue herein, will run from 1/1/07 through 12/31/09.

The economic and non-economic issues in dispute can be summarized as follows:

Wages

The parties agree that the three-year wage package is a single economic issue for the purpose of this proceeding.

The Town proposes a 3.5% base wage increase in each of the three years of the proposed agreement.

The Union proposes a 4% increase each year.

Longevity Pay

Town Position—Status quo, 2% for officers with ten or more years of service

Union Position—2.5% for officers with ten or more years of service

Conference Attendance

Town Position—Status quo, a maximum of four officers chosen by the Council as delegates to the FOP State or National Conference shall be granted, with proper notice, use of time off options for the period of time required to attend such conference, not to exceed four days. Officers are permitted to switch days off to accommodate such attendance. A maximum of one day per person will be paid time off.

Union Position—Increase the number of paid days off to 2 per person per year.

The parties agree that the conference attendance proviso awarded herein shall become effective in 09.

Educational Incentives

Town—Status quo, \$750/year for Associate Degree and \$1000/year for Bachelor Degree

Union--\$1000/year for Associate Degree, \$1200/year for Bachelor Degree, \$1500/year for Masters Degree

Vacations

Union Position—8 through 14 years, 160 hours, 15 through 21 years, 200 hours, 22 years, 240 hours

Town Position—8 through 15 years, 160 hours (Status quo), 16 through 24 years, 200 hours, 25 years, 240 hours

Both parties agree that the vacation proviso awarded herein will become effective in 09.

Uniforms (Allowance vs. Quartermaster System)

Union Position—Increase allowance for uniforms in 08 from \$900 to \$950, and increase allowances for plain-clothes officer from \$1000 to \$1050 in 08 and \$1100 in 09.

Town Position—A quartermaster system for uniformed officers with a maintenance allowance of \$150/year. No change to allowance for plain-clothes detectives, \$75/month upon submission of receipts.

Non-Economic Issues

Drug and Alcohol Policy

Town Position—Permit random and hair follicle testing. In addition, a first offense under the policy would subject an officer to discipline up to and including termination.

Union Position—Status Quo, current policy should remain in effect, setting forth specific disciplines for the first two offenses and termination for a third. First offense calls for a maximum of a five-day suspension, second offense allows for the possibility of termination.

Discipline

Town Position—Status Quo, disputes over suspensions of five or less days go to the Board of Police and Fire Commissioners. Only the first five suspension days served in any rolling eighteen (18) month period would be exempt from arbitration.

The Union proposes that an officer should have the right to choose arbitration rather than the Board of Police and Fire Commissioners to contest suspensions of five days or less.

Also, the Town proposes the status quo with respect to arbitral make whole powers, wherein the prior Agreement provided that any monetary award (back pay, etc) must be offset by all other income from any source.

Lastly, the Town proposes that in termination grievances the Town President shall provide a written response to a grievance within 10 days of meeting with the Grievant. On this sub issue, the Union proposes that a written response shall be provided within 7 days of such a meeting, and/or if the President fails to meet said deadline, or fails to meet with the officer within 15 days of the officer's termination notice, the officer will be deemed suspended with pay pending the arbitration hearing.

The Union proposes that an arbitrator should have the right to assess the legitimacy/and applicability of offsets in a back pay award.

Arbitration Cost Containment Procedures

The Town proposes that it should be able to unilaterally implement cost containment procedures, e.g., expedited hearings.

The Union proposes that such decisions must be made by an agreement between the parties.

Day Off Group Assignments

Union Position—officers bid on day-off groups and assignments, which are to be awarded on basis of seniority.

Town Position—Status Quo, composition of day off groups decided by management.

The parties also disagree on what external comparables should be utilized in this proceeding.

Both parties agree that Berwyn, Oak Lawn, and Waukegan should be so utilized.

The City also proposes that Calumet City and North Chicago be utilized.

The Union proposes Aurora, Elgin, Evanston, Joliet, and Oak Park.

There are no interest arbitration awards involving the Town and its' employees that have been cited to provide guidance with respect to this issue.

Though the Union relies heavily on home values and household income as criteria to determine comparability, the Town notes that it ranks last among the Union's proposed comparables utilizing these criteria.

The Town also submits that Aurora is significantly larger than Cicero, its police force and crime index are twice as large; its EAV is over 5.25 times that of Cicero's, its revenues are over 2.3 times that of Cicero's; its sales tax is over four times greater than Cicero's, its property tax is over three times greater than Cicero's, and its expenditures are only about 2.2 times greater than Cicero's.

The Town also notes that the Union failed to give any consideration to the fact that Aurora, Elgin and Joliet have gaming tax revenue, which helps explain why their EAVs and fund balances are not comparable to Cicero's.

The Town also points out that Evanston's median home value and household income is much higher than Cicero's, as are its EAV, per capita income, and revenues. As for Oak Park, it contends that it is smaller, richer, spends less, and has a significantly lower crime index.

When selecting comparables, the Town argues that it is relatively unique in that it is one of the largest communities in the area, but also very poor. In selecting its proposed comparables, it utilized nine traditionally utilized criteria: number of police officers, median home value, median household income, per capita income, EAV per capita, sales tax per capita, general fund revenues per capita, general fund balance per capita, and number of individuals below poverty level. Applying these criteria, the most comparable communities were Waukegan, North Chicago, Berwyn, Calumet City, and Oak Lawn. Joliet and Elgin were also comparable based upon these criteria, but were excluded from the list of proposed comparables because they had significant revenues obtained through gaming resources.

The Union submits that the most unique characteristic that the Town possesses is its population.

Among similarly sized communities, both parties agree that Naperville is not comparable.

The Union argues that among these similar sized communities in the Chicago metropolitan area, Aurora, Joliet, Elgin, and Waukegan demonstrate no major variations.

In contrast to its proposed comparable list of communities, the Union argues that the City's use of arbitrary criteria, such as 60% of population, and/or 50% of the size of the police department, are just that—arbitrary.

In response to the Town's argument that communities with gaming revenues should not be utilized as comparables, the Union argues that such communities do not use gaming revenues to fund salaries or other benefits, all of which are paid out of general revenue funds.

In support of the legitimacy of comparing communities with and without gaming revenues, the Union cites several interest arbitration awards that have utilized such comparisons. (Citations omitted)

The Union further submits that its proposed list of comparables includes communities that are both larger and smaller than the Town, unlike the Town's proposed comparables, which are, by and large, smaller than the Town.

Union contention--The smaller communities the Union proposes all border on the City of Chicago, with not terribly significant differences in the criteria that traditionally are utilized in proceedings such as this to determine comparability.

Discussion

Though the undersigned agrees that external comparables are an important factor to consider in determining the reasonableness of offers, in this case, for a number of reasons, a fixed and clearly defined set of comparables will not be utilized. This is so because a considerable number of proposed comparables do not have agreements for 09, a critical year to consider in this dispute, the data on several proposed comparables is based upon estimates and/or projections that are not reliable, a number of the proposed comparables are not geographically proximate in the Chicago metropolitan area, putting into question the reliability of the comparability of their labor markets, the relative wealth of a number of the proposed comparables is quite disparate, and neither the parties, nor arbitrators have utilized a defined set of comparables in the past.

Based upon these considerations, the undersigned will utilize whatever data, not projections or estimates, has been provided for all of the comparables that have been proposed in determining the relative comparability of the proposals at issue herein. It should be noted that the consideration given to comparability data also gives recognition to the fact that the offered comparability data comes from geographically dispersed and economic disparate communities, few of which are very similar to the Town in many of the categories/criteria traditionally utilized when developing lists of comparables.

Wages

The Town asserts that its' wage proposal is the same as that agreed to by the Sergeants, Firefighters, and unionized Public Works employees in 07 and 08, and is higher than the wages given to its non union employees in those years. In 09 it the Town's proposal is admittedly .5% lower than what the Firefighters received; however, that difference resulted from the fact that the Firefighters agreed to a reopener on Drug Testing, pending the outcome of this proceeding.

The Town submits that its wage offer would improve the Town's ranking among its proposed comparables in most cases, conceding that in a few cases, the Town's calculations had to be made based upon estimated comparable increases. Relatedly, the Town's proposed increases would result in higher wages than the average wage rates in comparable communities for similarly situated officers.

The Town also notes that its proposed wage package should be viewed in the context of a total benefit package, which includes, rather uniquely these days, a health insurance plan to which the employees do not contribute. In addition, with

the step increases that are incorporated into the wage schedule, officers, would, in general, receive just less than 5% a year over the contract term.

Also noted by the Town is the fact that amongst its proposed comparables, the Town has a much lower fund balance as a percentage of revenues and as a percentage of expenditures on a per capita basis.

Utilizing the Union's proposed comparables, the Union asserts that the officers' salaries are generally in the bottom third of the comparables, except with regard to starting pay and top pay. In 2006, the Town ranked second among 9 proposed comparables, and at the top it ranked 5th among 9.

The Union contends that its wage proposal approximates the average increase among the Union's proposed comparables in the first two years of the Agreement. In contrast, the Town's proposal is approximately 1% below the comparable average, which would thus widen existing disparities.

In 07 and 08, under the Union's proposal, the Town's ranking among comparables remains relatively the same, though at three points in the schedule the Town moves up one in the rankings.

In 08, under the Town's proposal, the Town's ranking among the comparables falls by one position at two points in the wage schedule.

The Union notes that since the expiration date of the parties' last Agreement, the rise in the cost of living closely approximates the Union's wage proposal.

Discussion

The record demonstrates that amongst the smaller, poorer comparable communities for which there is data in this record, the Town's wages are quite comparable, generally being, with a few exception, near the comparable average.

Among the larger, wealthier, more geographically dispersed proposed comparables, the Town's wages are within the range of the comparables, but at the lower end of that range.

The record also demonstrates that in 07 and 08, plausible arguments could be made that both parties' wage proposals are relatively comparable to the increases that were granted in comparable communities, and that neither proposal would significantly alter the relative ranking of the Town's wages amongst its comparables.

Unfortunately, this dispute did not reach its conclusion until 09, where there is not much reliable comparable data, and when financial/economic circumstances, affecting both parties, are significantly different. This fact poses a couple of

problems for the arbitrator, and the parties. In 09 it would appear that the Town's wealth has significantly diminished, and what might have been reasonable for it to pay in 07 and perhaps 08, might not be now. On the other hand, had the Agreement been concluded in a timely fashion, the terms of the Agreement might have been more advantageous, from the officers' perspective—thus creating a situation in which they might be penalized by virtue of the fact that the negotiations process was not concluded until 09, which is in fact the last year of the Agreement.

The wage issue is further complicated by the fact that it in actuality, it consists of two distinct economic issues: across the board increases and the structure of the longevity schedule.

The undersigned, in all candor, based upon the foregoing considerations, some of which favor the Town and some of which favor the officers, cannot comfortably conclude that either party's three year wage offer, including both of the above elements, is significantly more reasonable or comparable than the other, since both have components that maintain the Town's current comparability profile.

Based upon all of these considerations, cost of living considerations, the actual size of increases officers will receive over the term of the Agreement when built in increases are folded into the equation, and the fact that a new Agreement is about to be negotiated, the undersigned will herein award the Town's across the board wage proposal and the Union's longevity proposal. (See the Town's arguments on the longevity issue below).

Longevity

The Town argues that the Union's proposal would result in an additional .5% wage increase for over one half of the bargaining unit by the end of 2009.

It also argues that the Union's proposal is a significant change from the status quo, not supported by any persuasive justification.

Conference Attendance

The Town argues that Conference attendance is not a condition of employment, and there has been no reason presented for the Town to contribute more to this benefit. Even the Union's proposed comparables do not uniformly grant paid time off for attendance at such conferences. Indeed, some do not even contractually provide the benefit.

The Union submits that there is no reasonable explanation for limiting the number of leave days an officer could use from his/her accumulated bank. The parties need

to clarify this provision in future negotiations. Until then, the caps on the use of accumulated leave for such purposes should be liberalized.

Discussion

In view of the fact that the Union's proposal does not affect or in any way adversely affect, from the Town's perspective, the number of people that may attend such conferences or the number of days they may take to do so (staffing issues), and in view of the fact that the issues only involves the use of earned paid time off, which officers may use for a variety of unspecified purposes, the undersigned finds no legitimate basis for the Town's objection to the Union's proposal, which is herein awarded.

Vacations

The Town contends that its' fourth and fifth week vacation benefits are already more generous than it's comparables. Indeed, no proposed comparable has agreed to a sixth week benefit that is included in both parties' proposals.

The Union's proposal seeks consistency with the Sergeants Agreement, who, as of 2004, earned their fifth week of vacation in their fifteenth year of service.

Also, it notes that regarding the 6th week, only two officers would be eligible during the term of the Agreement, whereas under the Town's proposal, none would be.

Discussion

No persuasive argument has been presented supporting the need for or reasonableness of the Union's proposal, based upon comparability or any other statutory criterion, particularly in these difficult economic times. Accordingly, the Town's proposal, which reflects the status quo plus an additional vacation benefit for long-term employees in the future, is hereby awarded.

Educational Stipends (Incentives)

The Town submits that the two existing stipends are reasonable and comparable to benefits provided in many comparable communities. The benefit is also identical to the benefit offered in the Sergeants Unit.

The cost of the benefit to the Town is even greater because it is added to the employee's base pay after three years.

Also, the Town argues that there is no persuasive evidence that the additional degree provides the Town with a compensable benefit.

The Union notes that the last time educational incentives were increased was 1999.

Furthermore, it argues inasmuch as officers already receive financial assistance from the Town for a master's degree, it is reasonable that they be compensated for such educational attainment.

Discussion

Although the Union makes a persuasive argument that officers who have earned a relevant masters degree merit compensation for that achievement, there is no clear comparable pattern justifying the increase in benefits in this regard at this time, particularly in these economic times. The undersigned, though awarding the Town's proposal on this issue, suggests that the issue of compensation for those who have earned a masters degree be revisited by the parties in the next round of negotiations.

Uniform Allowance vs. Quartermaster System

The Town asserts that the money allotted to Patrol Officers for uniforms is not being spent on uniforms or the upkeep thereof.

Other Town arguments--

\$150 for uniform cleaning/washing should be sufficient, and under the Town's proposed system officers would have no other uniform related expenses.

The City's proposal is the same as the system in place for the firefighters and public works employees, neither of which have a maintenance allowance.

In addition, allowances in the comparables do not support the Union's proposal.

The Union, on the other hand argues that the cost of purchasing uniforms and equipment has increased since 2006 when officers last received an increase.

In addition, it argues that its' proposal is consistent with the comparables. The Union further argues that the Town's proposal should be rejected for a number of reasons, an important one being that it does not contain an agreed list of uniform items such as that found in the Firefighters' Agreement. If the Town had the unilateral right to determine what is mandatory, there is no question that the cost of paying for a number of important/necessary items would shift to the officers.

The Town's cost savings motives are demonstrated, according to the Union, by the fact that under a quartermaster system that was in effect under the 01-03 Agreement, the uniform maintenance allowance for officers was \$300 and for detectives, \$750. Now the Town is proposing a \$150 maintenance allowance, which

hardly covers the detectives' costs ' of purchasing and maintaining their civilian wardrobes (the undersigned's interpretation of the Town's proposal for detectives is a \$75/month allowance with receipts)

The Union also notes that the Town's proposal is retroactive to 1/1/09, which would be chaotic and unfair since officers have already received their 09 clothing allowance.

Discussion

Although the Union's proposal on this issue is not really supported by a clear comparable pattern, the Town's proposal is less reasonable in that it doesn't address the Union's reasonable concern regarding what constitutes uniforms and equipment that will be covered by the proviso, as is the case in the firefighters agreement.

Furthermore, the Town could have address some of its concerns (how the allowance was being utilized by officers) by proposing a reimbursement for receipts proviso similar to what it proposed for detectives.

Lastly, the issue regarding officers working in unkempt uniforms could easily be addressed by the establishment of reasonable work rules setting forth the Department's expectations regarding uniform maintenance, cleanliness, and repair.

The Union's uniform allowance proposal is therefore awarded.

Drug and Alcohol Testing

Town Arguments—

Under the prior agreement, hair follicle testing is not permitted, random testing is not permitted, and officers who violate the drug and alcohol policy for the first time may only be disciplined up to five calendar days.

Because of the widespread use of drugs and alcohol in the area the Town President declared a zero tolerance policy regarding the use or abuse of alcohol and/or drugs among the Town's employees. Consistent with this objective, the Town implemented a zero tolerance policy for all unrepresented employees, including management. Under said policy, employees are subject to random testing, hair follicle testing, and immediate termination for even a first offense. The policy was also accepted by the Union that represents the Public Works employees. The Firefighters Union also has agreed to a reopener clause concerning this issue until the issue is resolved in the Town's other bargaining units. The Sergeants' Agreement also allows for random testing and hair follicle testing.

Many of the Union's proposed comparables have contractual provisos that either allow for discipline up to discharge for a first offense and/or random testing.

The Town has recently dealt with five instances of employee substance abuse, one of which was in the police department.

A reflection of the fact that the current policy needs revision is the fact that when a Commander in the Department was arrested for possession, he sought to be demoted to a union position because of the leniency of the bargaining unit's drug policy.

The Town's proposal ensures that officers are free from any adverse employment action while awaiting test results, assures privacy rights relative to test results and treatment programs, and although the proposed minimum standard for establishing that an employee test for alcohol is positive is slightly increased, it mirrors the standard applicable to drivers who are covered by Department of Transportation regulations, and it provides that the Town must prove that officers are under the influence. Lastly, the practices under the proposed policy are subject to the grievance/arbitration/discipline procedures, and other contractual protections provided under the current policy are preserved.

The Union asserts that no problems have arisen under this proviso of the parties' Agreement, and thus, there is no need for change. The Town has not demonstrated that the current policy is any way not working or that it's inherently unfair.

Regarding random testing, the Union asserts that the Town's proposal does not define what common selection pools would be, who would be in them, and what the consequences would be if the terms and meaning of the Town's proposal in this regard were disputed and/or misapplied. Relatedly, under the Employer's proposal, how would the Union know how the random testing was being administered and applied? These are issues that need to be resolved in bargaining.

Discussion

The Town's proposal, though understandable from a number of legitimate perspectives, is not supported by the factual circumstances present herein.

One, it doesn't set forth how the sampling process will be monitored and enforced.

Secondly, and most importantly, no factual deficiencies or problems have been manifested in the bargaining unit affected by the proposal. Although the policy in effect in the Department may have caused difficulties elsewhere among the Town's other employees, such difficulties need to be addressed in the employee groups where problems exist. While what the undersigned suggests may be easier said than done, where, as here, a complex policy has been negotiated and accepted by

both parties, changes need to be supported by need, and that need, with respect to this bargaining unit, has not been demonstrated in this case.

In so ruling, the undersigned also acknowledges that there may be a need for more stringent regulations among certain employee groups than others, and that uniformity need not govern in all cases for all employee groups. However, where, as here, no evidence exists that a mutually agreed upon policy is causing problems, a significant burden exists for the party seeking to change the policy in proceedings such as this, to prove that the policy needs changing, and that burden has not been met herein.

Accordingly, the Union's status quo proposal on this issue is awarded.

Discipline

Town contentions--

In discipline matters, an employee's ability to choose to have a grievance heard by the Board of Fire and Police Commissioners or an arbitrator is limited by Article 11 (Discipline) of the Agreement. Said article provides that only discharges and suspensions of more than five days may be heard by an arbitrator.

The Union has presented no compelling reason to change the contractual arrangement currently in place, including the set off provision pertaining to monetary back pay awards.

The Union asserts that the appointees of the Fire and Police Commission are not neutral professionals, but appointees of the Village's elected officials.

In addition, the Village's attorney costs would be reduced since it wouldn't have to pay for an attorney to represent the Fire and Police Commission.

The Board also has the power, independently to punish (suspend) officers and thus cannot be perceived as a fair arbiter in these matters. The Board also has the statutory authority to refuse to consider disparate treatment evidence. It also has the right to switch the burden of proof in minor disciplinary matters to police officers. And lastly, it can decide not to hold an evidentiary hearing in a discipline case.

The Sergeants' Agreement, as well as the Firefighters Agreement, are consistent with and support the Union's proposal. The same may be said for the agreements in Aurora, Elgin, Evanston, Joliet, and Berwyn.

Both parties propose similar but not identical time limits for the Superintendent of Police to respond to grievances. The Union argues that there should be a stipulated remedy if the Superintendent does not so respond.

The Union submits that there is no external comparable support for the Town's position that all offsets should be automatic in back pay remedies.

The Union submits that at most, the agreement might encourage the parties to jointly agree to cost saving measures in the arbitration process.

Discussion

There are four sub issues that need to be addressed.

One—whether suspensions of five or less days should subject to arbitration, at the Grievant's choice. Both internal and external comparables support the reasonableness of the Union's proposal on this issue, and it is therefore awarded, although it should be noted that all provisions of the parties' Agreement need to be reviewed and modified to comport with this change.

Secondly, whether the Agreement should contain a specified remedy in the event the Superintendent of Police fails to respond to a grievance in a timely manner. On this issue, the comparables, though far from uniform, generally support the Town's approach to this issue. The undersigned will however award a compromise on this issue that will require the Superintendent to respond, in writing, to a grievance within 10 days, which period shall include a meeting with the Grievant. If a meeting and a written response are not provided within 10 days, the grievance will be deemed ripe for arbitration, at the Union's request, immediately thereafter.

Third, whether the Agreement should permit the Employer to unilaterally decide upon cost containment procedures in the arbitration process. Comparables clearly do not support the Town's proposal in this regard and the Union's proposal rejecting the Employer's proposal is therefore awarded.

And lastly, whether back pay/make whole remedies require the deduction of all income offsets, or whether instead, this should be addressed on a case-by-case basis by the parties and arbitrators. While mandatory offsets constitute the status quo, a persuasive case has been made that this should be a discretionary matter since some income may be totally unrelated to employment status. The Union's position on this issue is thus awarded.

Day Off Group Assignments

The Town argues that it has some unique policing issues, such as its need for Spanish speaking and women officers on each shift, which the Union proposal would undermine.

The Union notes that its' proposal is similar to provisos in the Aurora and Waukegan agreements.

It further submits that if the Town's concerns regarding this matter are deemed to be meritorious, the arbitrator has the power to insert a bona fide operational need exception to the proviso.

Discussion

Again, there is no clear comparable pattern supporting either party's proposal on this issue. Both parties proposals raise legitimate concerns, and accordingly, the undersigned will award a compromise, which essentially is the Union's proposal, with a caveat that the Department, in constituting day off groups, may make exceptions to the exclusive use of seniority for legitimate staffing reasons, e.g., to assure diversity in gender and second language competencies.

Based upon all of the foregoing the undersigned hereby renders the following:

INTEREST ARBITRATION AWARD

The parties' successor collective bargaining agreement ('07-'09) shall contain all agreements reached by the parties prior to and during the course of this proceeding, and the terms and conditions of employment awarded in the discussion portions of this document as set forth above.

Dated this  day of May 2009 at Chicago, IL 60660.


Byron Yaffe
Arbitrator