

#388

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

CITY OF DARIEN

AND

CASE S-MA-07-139

METROPOLITAN ALLIANCE OF POLICE,
DARIEN POLICE CHAPTER 48

APPEARANCES:

JOHN MURPHEY ON BEHALF OF THE CITY
STEVE CALCATERRA ON BEHALF OF THE UNION

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 September 8, 2008, during the course of which the parties presented evidence and arguments in support of their respective positions. Post-hearing briefs and exhibits were filed thereafter and the record was closed on December 1, 2008. 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 bargaining unit affected by the proceeding consists of the police officers and sergeants of the City of Darien, who have been represented by this Union since late 1989. This is the first interest arbitration award involving these parties. The last agreement between the parties expired on 11/30/07. The successor agreement at issue herein is a three-year agreement beginning 5/1/07 through 4/30/10. At the time of the hearing the unit consisted of 27 patrol officers and 8 sergeants. About half of the unit have twelve or more years of service, and the remaining half have 10 or less years of service.

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

This dispute is over the unresolved terms of a three-year agreement, covering 2007 through 2009. Retroactivity is not in dispute. The parties have not agreed as to whether the undersigned may issue a wage award on a year-by-year basis.

The parties have agreed to nine comparables. An additional two are in dispute.

COMPARABILITY:

The parties agree on the following nine comparables: Bolingbrook, Downers Grove, Lisle, Lombard, Oak Brook, Villa Park, Westmont, Willowbrook, and Woodridge. The Employer proposes two additional comparables, Lemont and Clarendon Hills. The Union objects to these comparables based upon the fact that they have not been utilized by the parties historically, and the fact that the Union requested the data supporting their alleged comparability, and it was never provided.

Discussion

Historically recognized comparables have not been established in this matter.

The undersigned is going to permit the parties to utilize all of the comparability data they have submitted, without determining whether the two disputed comparables are legitimate and relevant. This conclusion is based upon the fact that City's relative position among its comparables on wages is relatively clear, and not really disputed. In addition, on most other issues in dispute the parties have not relied heavily on comparability arguments and/or evidence, and where they have, comparability evidence has not been deemed to be determinative since, generally speaking, the data on comparable benefits has often been ambiguous at best, and of equal importance, in order to fairly assess the comparability of benefits, one must evaluate the value of a total package of benefits, and this is, in most cases of this sort, practically impossible to do, either by the parties or an arbitrator. Therefore, except on the wage dispute, comparability evidence, though often relevant, cannot be given significant weight by this arbitrator based upon the evidentiary record that exists in this proceeding.

ISSUES:

1. Roll Call Preparation Time

Union Position

Currently, Patrol Sergeants report for work 15 minutes before their shift, submit overtime sheets for the 15-minute block of time, and are paid for said periods of time.

The Union proposes that the Sergeants would instead automatically receive a bi weekly stipend for two and one half hours pay. It argues that the new stipend would allow the Pension Board to calculate the additional two and a half hours as part of the Sergeants' retirement package. It notes that the IL Department of Insurance (IL Dept. of Professional Regulations) has promulgated regulations that "salary" for pension purposes, includes overtime pay, if it is compensation for time worked beyond regular work hours. "Salary", under the IL Pension Code, has been defined by the courts as "a fixed, annual, periodical amount payable for services rendered" as contrasted to "money given in addition to the usual compensation; a

premium or extra or, irregular remuneration in consideration of offices performed or to encourage their performance or, an addition to salary or wages normally paid.” (Citation omitted)

The Union proposal seeks to clarify, in the party’s Agreement, that the compensation in question constitutes fixed, annual, periodic payments for services depending upon the time of employment.

Furthermore, a steady calculation of such a stipend will reduce clerical difficulties and add consistency to what is already occurring.

City Position

Status Quo

The Union has failed to provide any documentation for its contention that its proposed stipend would be part of a retiring sergeant’s pension package pursuant to a Department of Insurance regulation. Police officer pensions are not regulated by the IL Department of Insurance.

In reality, the Union’s proposal is an attempt to achieve a hidden 3% salary increase for sergeants under the guise of simply helping them out at retirement.

Furthermore, it needs to be noted that the City would have to make increased employer contributions into the police pension fund for the enhanced artificial salary increase.

Discussion

The status quo on this issue will be awarded based upon a number of factors: The record does not support a finding that such a practice generally exists, or even that such a stipend has been defined as “salary” in similar circumstances. Secondly, the record does not demonstrate that such a stipend would necessarily relate to duties actually assigned/performed, or amounts of time actually worked by sergeants. Thirdly, the proposal could result in additional pension costs for the City, as well as additional possible “salary” costs, the amount of which is not ascertainable based upon this record.

2. Personal Days

Union Position

The current use of two sick days a year as personal days would not be deducted from the officers’ sick leave accumulation.

Currently officers are given 12 sick days a year, of which they must use two as personal days.

The City is the only municipality within its comparable group that charges officers sick days when they use a personal day. In addition, once the two days are subtracted from the sick day benefit, the City is on the lowest end of the comparables. The City also ranks at the bottom of the comparables when it comes to maximum sick day accumulation.

In response to the City's contention that the proposal would result in a significant and costly increase in overtime, since the Agreement provides that personal leave must be approved at least 48 hours in advance and must not conflict with the manpower requirements of the Department.

City Position

Status Quo

There has been no bargaining over this proposal, which is, in effect, a demand for two additional paid days off. Such changes should at least be preceded by bargaining.

In response to the contention that comparability data supports the Union's position, one must compare the value of total benefit packages, and the record does not support such an assertion.

Discussion

Comparability, on an individual benefit basis, supports the Union's proposal; however, as indicated above, reliable evidence of the comparable value of benefit packages is not available for the undersigned's consideration.

Secondly, it is apparent, but not defined, that the economic value of such a benefit is significant, and, if awarded herein, the benefit needs to be considered as a significant part of the value of the package of economic benefits granted by the award.

Thirdly, the record does not support a finding that there has been insufficient bargaining on this, or any other issue in dispute, and/or, if it has not been fully discussed, which party is responsible for that fact. Therefore, the disposition of the dispute on this, and other issues where the failure to bargain issue has been raised, will be based upon other statutory considerations.

Based upon these considerations, the undersigned believes that the Union's proposal is meritorious and that it should be incorporated into the parties' Agreement.

3. Sick Leave Accrual and Usage

Union Position

The Union proposes that officers, upon retirement, may, at their discretion, have the value of their sick day payout deposited into an account to pay for City health insurance on a pre taxed status.

There are only three comparables that do not have a post retirement health insurance program. The proposal would not impose any costs upon the City.

The City already works with a company, ICMA, that has available a managed pre-tax retirement account plan. The Union is not proposing that specific plan be utilized, but instead is proposing that the City can enter into any arrangement it desires to establish such a program.

City Position

Status Quo

The Union never proposed during bargaining how such a proposal would be set up, including issues such as who would administer the program, what the administrative costs to the City might be, whether such a program could be set up for some, but not all City employees, and the mechanics of administration. In short, the Union's proposal is not specific enough to be deemed meritorious.

Discussion

The parties do not agree as to whether this issue is or is not an economic one. Although it would appear that the issue in dispute does not have significant economic consequences, it likely will have some, at least with respect to the costs of administration, and therefore, it can fairly be defined as an economic issue.

The Union's proposal is deemed to be meritorious based upon the fact that the majority of the City's comparables have some sort of arrangement to provide for such a benefit, the proposal is sufficiently flexible to permit the City to fashion a program that meets its circumstances and needs, and the cost consequences for the City are not likely to be substantial. Because the program would be a new one, the undersigned anticipates that the Union will not demand that the City implement such a program immediately, and that the City will act with all due diligence and in good faith in getting such a program in place as soon as practicable and possible, certainly no later than the third year of the agreement.

4. Assigned Vehicles

Union Position

The Union proposes new language that allows officers assigned to the investigations unit to use City owned vehicles for official and personal use within the State of IL.

This has been the practice for decades until recently when the City changed its policy to only allow use of City owned vehicles within a 40-mile radius.

In support of this proposal is the maintenance of economic benefits provision in the Agreement.

The City never proposed for negotiations any change to its policy on assigned vehicles, and the Union never waived its right to negotiate the change in question, which it had the right to negotiate since the practice constituted a major condition of employment.

Indeed, the Union's proposal represents the status quo.

City Position

Status Quo

The Union again did not advance this proposal during bargaining.

If the Union believes the policy change in question violates the parties' agreement, it has the grievance arbitration forum to challenge the City's decision. It is clear, based upon the Union's reliance on the maintenance of benefits proviso in the Agreement, that this is not a legitimate interest arbitration issue.

Discussion

There is an appropriate issue for disposition in this proceeding since, even if it was a condition of employment established by past practice, the City has the right, in this round of negotiations, to notify the Union that it intends to change the practice, and that the Union has the right to negotiate and arbitrate such a proposed change in an interest arbitration proceeding.

Although the City makes a persuasive argument that it is not reasonable, financially, for it to continue permitting the personal use of City owned vehicles by officers in the investigations unit anywhere in the State of IL, it has not made such a case regarding the legitimate business use of such vehicles.

Therefore, for the purpose of this proceeding, the Union's proposal is rejected. However, in the undersigned's opinion at least, the past practice pertaining to the

personal use of City owned vehicles need not be continued, but the practice pertaining to the legitimate business use of such vehicles should be. It needs to be noted however that this conclusion is based upon fairness/equitable considerations, and is not meant to be a binding legal decision pertaining to the parties bargaining obligations and rights.

5. Uniform Allowance

Agreed to that the allowance shall be \$650/year for the duration of the agreement

Union Position

The Union seeks a proviso permitting officers to use their uniform allowance to purchase authorized equipment from approved vendors without advance permission from the City.

This language is necessary because the City has indicated that the allowance may only be utilized to purchase two weapons throughout an officer's career. This proposal is consistent with a prior grievance arbitration award.

City Position

Status Quo

The issue was resolved by the award in a grievance arbitration, which the City will abide by. No additional language is needed in the Agreement.

The City has reason to believe that officers have or are utilizing their uniform allowance to purchase weapons over and above the number of duty weapons assigned to, or authorized for an officer to carry. In order to address this issue, the Department has issued a policy regarding the number of duty weapons that may be purchased by officers with their uniform allowance. This policy has been grieved and is working its way through the grievance procedure. That is how the issue should be addressed/resolved.

Discussion

Neither the arbitration award that was issued pertaining to this issue, nor the Union's proposal herein, really addresses the issue at hand, namely, whether the City, by unilaterally established policy, can limit the number of weapons an officer can purchase with his/her uniform allowance. There is no question in the undersigned's mind that the City can limit the number of weapons an officer may carry while on duty.

The City has expressed a legitimate concern it has about the identity and location of weapons bought (and perhaps sold) by officers with their uniform allowance. In order to address that concern, in the undersigned's opinion, the City has the right to require officers who purchase weapons with their uniform allowance, and or sell such weapons, to report such transactions to the Department. However, the right to prohibit the purchasing of more than two authorized weapons during an officer's tenure in the Department with uniform allowance funds has not been persuasively justified.

With that consideration in mind, the Union's proposal, which, in effect reflects the contractual status quo, is adopted

6. Wages

Union Position

5/1/07 -- 4.13% across the board

11/1/07 -- .75% for patrol officers

5/1/08 -- 4.2% across the board

11/1/08 -- .75% for patrol officers

5/1/09 -- 3.94% across the board

11/1/09 -- .75% for patrol officers

Historically (in 2001), at the 8th year step of the salary schedule, the top step without longevity increases, officers wages were tied with Downers Grove in ranking sixth among the City's comparables.

The parties have never before utilized longevity steps in ranking itself among its comparables.

Over time the City has lost ground in its comparable rankings.

The Union's proposal will move the City's officers closer to the pay structure in comparable communities. Indeed, the Union's proposal for 2007 only maintains the City's current rankings. For example, under the Union's proposal, at the starting wage the City would remain in last place. At the top step, under the Union's proposal, the City would only rank 7th. In 2008, under the Union's proposal, the City would rank 9th at the starting wage, and tie with two other communities in 5th place at the top step. At this step, the City's proposal would leave it in last place.

Furthermore, the City's wage proposal is significantly below the relevant CPI, which exceeds 4.5% in the Chicago area. Even the Union's wage proposal is below the relevant CPI.

The Union's wage proposal will in fact prevent further erosion of the City's relative rankings, and more closely represents the status quo than does the City's proposal.

City Position

3.4% per year across the board

The parties have repeatedly established wage structures that value seniority, with longevity increases at year 11 (2%) and year 19 (4%). Concededly, the City's officers start at or near of bottom of the comparables. As officers reach the 5-year benchmark, their wage ranking moves toward the middle of the pack. At the 10-year benchmark, they slip back to a ranking of 8 out of 12. However, at year 15 the City moves into 6th place, and at the 20th year the City moves into second place in the rankings.

The Union understates the City's true position among the comparables by failing to acknowledge the effect of the City's longevity steps. When they are factored into consideration, the Union's wage proposal far exceeds the increases among the comparables. Indeed, when longevity steps are considered, the Union's proposal results in multi step jumps in the City's ranking at three benchmarks.

By and large the City's wage proposal maintains the City's position among the comparables in 07-08.

The City also provides a tax deferred salary enhancement match of up to \$1200/year. All of the officers take advantage of this benefit. This \$1200 salary match should therefore be viewed as a wage element in examining where the City places in relation to its comparables.

It is reasonable and fair to view the Union's wage proposal, with its' multiple increase, as generating an unreasonably generous 15.3% increase over three years, as contrasted with the City's reasonable proposal of 10.55% over the same period.

The City's proposal is also the more reasonable of the two based upon cost of living considerations, which have been hovering above the 4% level during the past year. Relatedly, the majority of officers in the unit are moving through the salary steps, so that in fact they are receiving substantial increases well above the cost of living.

In addition, recently, sales tax revenues are plummeting, which also supports the reasonableness of the City's offer.

With respect to the issue of wages for Sergeants, their salary tops out at a rate that is 18% higher than a patrol officer's rate, which is a reasonable spread. The City's maintains this spread, as well as the City's ranking among the comparables. With the ICMA contribution, the City's Sergeants remain solidly in third place among the comparables.

Discussion

The record supports the following:

Over a substantial number of years the parties developed a wage schedule that rewarded senior officers/sergeants and that left less senior officers at the low end (some at the very low end) of the rankings among the City's comparables. The more senior officers in the unit rank quite high among the comparables, particularly when longevity and salary match are taken into consideration, and when total compensation is compared – an imprecise but legitimate basis for comparison in units such as this.

Based upon cost of living considerations and the general percentage value of increases that have been granted in comparable units the City's proposal is the more competitive of the two.

The City's wages for less senior officers justifiably should become more competitive, but via a salary structure modification that does not affect the wages of the more senior officers in the unit.

The sergeants in the unit are fairly compensated based upon comparability data.

And wage agreements in these recessionary times need to give recognition to the problems in employment and sales tax revenues confronting municipalities and their constituents.

Based upon a combination of these considerations and the equities related thereto, and the fact that no reason or precedent has been presented by the parties that prevents the undersigned from awarding wages in this matter on a year by year basis, each year constituting a single economic issue, the undersigned award the City's wage proposal for the first two years of the Agreement, and the Union's proposal for the third.

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

INTEREST ARBITRATION AWARD

The parties' successor agreement shall incorporate the terms and conditions of employment selected and set forth in the discussion above.

Dated this 10th day of December 2008 at Chicago, IL 60660.


Byron Yaffe
Arbitrator

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