

#400

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**ARBITRATION**

**AWARD:**

**ILLINOIS STATE LABOR  
City of Effingham**

**RELATIONS BOARD**

**CASE NO.**

**S-MA-07-151**

**City of**

**Effingham Police Department**

**AND**

**ILLINOIS FRATERNAL ORDER OF  
POLICE - LABOR COUNCIL**

**Before Raymond E. McAlpin,  
Neutral Arbitrator**

**APPEARANCES**

**For the Union:**

**John Roche, Jr. Attorney  
Becky Drago, Field Supervisor**

**For the Employer:**

**R. Michael Lowenbaum, Attorney  
Cory Franklin, Attorney**

**PROCEEDINGS**

The Parties were unable to reach a mutually satisfactory settlement of their negotiations and, therefore, submitted the matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The Parties did not request mediation services. The hearing was held in Effingham, Illinois on December 11, 2008. At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Final briefs were received on February 14, 2009.

#### STATUTORY CRITERIA

- (g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, with 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
- (h) Where there is no agreement between the Parties, or where there is an agreement but the Parties have begun negotiations or discussions looking to a new agreement

**or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:**

1. The lawful authority of the Employer.
  2. Stipulations of the Parties.
  3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
  4. 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.
    - B. In private employment in comparable communities.
  5. The average consumer prices for goods and services, commonly known as the cost of living.
  6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
  7. Changes in any of the foregoing circumstances during the pendency of the Arbitration proceedings.
  8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, Arbitration or otherwise between the Parties, in the public service or in private employment.
- (I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (I) residency requirements; (ii) the type of equipment, other than uniforms, issued or used; (iii) manning; (iv) the total number of employees employed by the department; (v) mutual aid and assistance agreements to other units of government; and (vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h)

ISSUES

What should the wage increases be for the bargaining unit employees for the term of the contract?

ARTICLE 21.1 - Wages

	<u>Union Position</u>	<u>Employer Position</u>
5/01/07	3.5%	3%
5/01/08	3.75%	3.25%
5/01/09	3.75%	3.5%

The Parties have agreed that whichever wage increases are chosen would be retroactive to the particular date associated with that wage increase.

## UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Union represents all sworn police officers in the ranks of patrolman, corporal and sergeant employed by the City of Effingham. Effingham has always been a crossroads city and it is now at the intersection of I-57 and I-70 which are main east/west north/south interstate highways. Thirty-six thousand vehicles pass daily through Effingham and there has been an explosion of new businesses around the city. Among other things the city government has stated as a goal to "work to increase the pay scale of our capable work force."

The Department has 21 sworn officers and approximately 16 civilian employees. It is committed to providing professional, high-quality and effective police service. The City also operates a Fire Department with 17 full-time employees and 35 part-time employees. Effingham claims that out of 59 peer cities in Illinois it has the eighth lowest tax rate. The City has an extraordinarily large trade area along with very high transient business and sales activities. It also has a high per household business volume with a strong retail sector. The City operates a sophisticated network of tax credits and loan offerings designed to attract jobs and sustain business. The City also is the recipient of a large grant from the Federal Government. The City was issued 162 building permits in the past year with a construction cost of \$40,000,000. In addition the City has many major manufacturing and distribution employers operating currently.

During bargaining the Parties reached certain tentative agreements. The Union in fact conceded to the Employer's proposal on insurance. This was a significant concession to the Employer's economic demands. The Union took the position at the bargaining table that this concession was a quid pro quo for the Employer's acceptance of the Union's final offer on wages. Based on this the Union's offer on wages is more equitable when considering this significant concession.

The Employer placed a strong emphasis on obtaining uniformity in its Collective Bargaining Agreement particularly in the area of health insurance. Thus, the Union ultimately conceded to the Employer's demand. Taking into account the insurance concession, the dollar value of the difference in the Parties' wage proposals is minimal over the three years of the agreement. This concession makes the Union's offer on wages more equitable.

Internal comparability is one of the statutory factors for this Arbitrator to consider. The Public Works employees and the Water Department employees represented by the Teamsters and the Laborers, respectively, agreed to wage increases of 3%, 3.25% and 3.5% including the insurance proposal. The Employer and the FOP Labor Council representing telecommunicators is still in negotiations. As this Arbitrator knows, public safety units are very hard to compare with non-public safety units and are, therefore, not helpful in resolving the instant case.

With respect to the Firefighter unit, they did accept wage increases of 3%, 3.25% and 3.5%, however, it made significant gains in other areas that tipped the scale for it in reaching its

agreement. The firefighters extracted their quid pro quo for their acceptance of the Employer's insurance proposal through minor adjustments to their agreement and their significant improvement in longevity and concessions regarding firefighters being called to back up another jurisdiction on overtime pay. Therefore, the police proposals and the fire proposals are equitable and reasonable when compared to the entire bargain.

Arbitrators are also charged with utilizing external comparables. The Parties in this matter proceeded to interest arbitration before Arbitrator Matthew Finkin. That arbitrator determined a comparables pool which was not challenged by either Party.

The Union noted that Effingham officers prior to the expiration of this contract were at or near the top of the comparable pool. The Union's offer only seeks to maintain this position. Considering the Union's final offer, the Effingham officers rank remained essentially the same. It is reasonable for the Parties to seek to maintain their ranking with the external comparables. While the Employer's offer does not significantly change the comparable ranking, the Union's final offer more closely tracks the wage rankings with the comparable jurisdictions.

This Arbitrator has indicated that cost of living, while a statutory criterion, can be difficult to apply in the Collective Bargaining context. This Arbitrator has noted that the more accurate method of establishing cost of living is by measuring the external comparables. The Union, however, does submit that the widely ranging cost of goods in the last two years, while perhaps not controlling before this Arbitrator, cannot be entirely disregarded. Since May, 2006

the bargaining unit has lost around 6.5% to inflation.

When reviewing the external comparables comparing wage increases to the Union's proposed wage increase, it might seem that the Employer's proposal might be more equitable; however, when factoring in the insurance contribution, the Union's offer is clearly more equitable.

With respect to the City's fiscal condition and its ability to pay, the Union recognizes that it cannot use this factor to support pay increases simply because the Employer has the ability to pay. What it is, however, is an Employer shield to an otherwise appropriate pay increase which is supported by the comparables or other statutory factors but simply claimed to be beyond the jurisdiction's means to pay. Not once during the negotiations and mediation sessions which covered a significant period of time did the City claim an inability to pay. There must then be a genuine fiscal crisis of some intervening event between the impasse and the date of the hearing for the City to use this defense. Since it is the City that raised this argument, it has launched itself into a higher burden of proof in defense of what only can be described as a reasonable salary increase. The Union would note that in over 20 years of the Illinois Public Labor Relations Act arbitrators have found an inability to pay as appropriate in only two instances - the City of Venice and the City of East St. Louis. This no doubt stems from the wording of the statute wherein arbitrators must determine whether or not an employer has the ability to pay the differential in the proposals. If so, then the remainder of the statutory factors apply. The Employer must prove that it cannot pay the award.

Police, fire and corrections employees were given special status by the legislature in 1986, i.e. providing an equitable and effective means of resolving labor disputes without a strike.

The test of wills as a method of dispute resolution is not available in police or fire units, therefore, the interest arbitration must be an effective substitute for that process. In this matter the City of Effingham can pay the award, it just does not want to. The record shows that the ending general fund balances have grown considerably over recent years. The City has routinely and grossly overestimated revenue and expenditures since 2003. The Human Resources Director stated that the difference between the two proposals is that the City does not have the ability to pay, yet he does not know the specific dollar amount. The record in this matter shows that the City is in sound financial condition. The Union would also note that the ending general fund balances are largely unrestricted and non-designated, thus representing resources available to the City and yet another indicator that the City has more than an ability to meet the cost of the Union's proposal. Even the Employer's own witnesses admitted that they agreed with the audited financial statements of the City.

The City of Effingham cannot have it both ways. If the very documents it prepares and submits to auditors for scrutiny and review and further submits to all interested parties are to be given any credibility whatsoever, the City does have the ability to pay.

The Union would also note that this factor also includes an equally important and often overlooked component, i.e. the interest and welfare of the public, particularly those involved in

public safety service. Those interests are best served by a highly trained and appropriately compensated and motivated police department. This is the last stop for the police officers in Effingham to find equity and fundamental fairness. That fairness can only come through a finding that the City's claims of an inability to pay are simply unfounded and untrue and, therefore, it is the Union's wage proposal that is more equitable.

The difference between the Parties wage proposal by itself are 1.25% over the term of the agreement. When including the insurance concessions, it is the Union's proposal that is more equitable and should adopted.

#### EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The City's general fund serves as the primary source of revenue for the Police Department. Sales tax receipts provide the primary source of revenue for the general fund. There are secondary sources but these are limited by state budget allocations. The City levies a maximum amount allowed by statute to fund police services.

The City's location at the convergence of two interstate highways drives the majority of the City's economic activity. The City's reliance upon sales tax revenue from fuel purchases negatively impacted the City's financial condition for the current fiscal year. Sales tax generated

in the TIF district must be spent on projects or expenditures related to that district unless the amount of sales tax available for general fund expenditures is less than the total. In recent years the City has experienced sales tax revenue increases in the 8-9% range. In 2008 that was reduced to one-half of 1%.

In addition to the above several of the truck stops in the city have switched from petroleum based diesel to bio-diesel fuel. Bio-diesel fuel does not generate sales tax. The City has lost hundreds of thousands of dollars in sales tax revenue due to the conversion to bio-diesel fuel. With respect to petroleum based diesel and gasoline, the City has lost hundreds of thousands of dollars of sales tax revenue as the result of the declining gas prices. The City also expects to receive less money from the State of Illinois in the coming year. In addition other distributions are projected to be lower through 2009. There is pending legislation that would allow the state to tap into municipal budgets to address its own budgetary shortfall.

The City is experiencing budget shortfalls and revenue transfers which have caused it to eliminate Public Works projects, discontinue public services and reduce a number of City employees. The City's general fund balance is in peril. The City is diverting money from the utility tax fund and the water and sewer fund to cover general fund expenditures. The City has had to borrow from other funds in order to meet its obligations. In addition to the above even though the funds may appear in the general fund, they are already allocated for things like IMRF contributions, social security payments and medical plan obligations. In addition the City reclassified the TIF sales tax revenue in the general fund which makes it appear that the general fund has more money than it really does. The City's financial condition as of December 11,

2008 shows a balance significantly lower than what the City had budgeted for at this point in the fiscal year, even though the fund balance actually artificially inflates the available resources.

Over the years the City has attempted to standardize its labor agreements with the various bargaining units. For many years the City's group health plan has covered all City employees, both union and non-union. Individuals employed at each of the City's five union bargaining units have always made the same contributions to their health insurance premiums. The Joint Labor/Management Health Care Committee has made recommendations to the City regarding the health plan which have never been rejected.

In addition to standardized health insurance contributions, bargaining units received identical wage increases on a percentage basis, i.e. a 3%, 3.25% and a 3.5% for 2007, 2008 and 2009, respectively. The City argued that it finds itself in a much more precarious economic condition than it was in when the negotiations with the FOP commenced. Had these negotiations occurred currently, the City could not afford to offer the wage increases reflected in the contracts already settled. The City did not reduce its final wage offer to the FOP even though the rapidly deteriorating economic condition would certainly justified doing so.

The Parties have enjoyed a long and positive relationship. There have been very few disputes of any significance and only one interest arbitration. In that interest arbitration the Arbitrator had identified the external comparables. The Effingham Police Department received the highest wages compared to officers employed by comparable communities and its current

proposed three-year wage increase has preserved this status. During negotiations the City made only one proposal other than wages and health insurance benefits contributions. That was rejected and the City gained nothing. The City would note that for its part it agreed to four of the Union's proposals.

None of the relevant statutory factors supports the selection of the Union's wage proposal. Instead, each of the relevant factors strongly favors adopting the City's position. The record shows that over the past ten years annual payroll has increased and sales tax has also increased but at a lesser rate and, as of 2008, there is a great disparity between expenditures and revenues. This combined with the nation's declining economy has put the City in an extremely difficult position. The Union exhibits presented a distorted picture of the City's financial condition. The facts are that there is a significant difference between the City's revenues and expenditures from 2003 to 2007.

The Union has argued that the insurance costs justify the wage increases that the Union is asking for. The facts are that the bargaining unit will be paying the additional insurance costs for approximately one out of the three years of the Collective Bargaining Agreement. The Union's argument regarding anticipated increases to health insurance contributions in the future lacks merit since two of the three categories for insurance coverage have been in past years under the cap. In addition the cost of coverage for fiscal year 2009 has not been established. Several members of the bargaining unit effective January 1, 2009 have modified their insurance coverage designations making them eligible for a \$1,000 bonus.

The wage and benefit package including longevity incentives and medical insurance places the City's police officers in the very top tier among comparable jurisdictions. All City employees receive excellent benefits and share costs with the City in a responsible manner.

With respect to the firefighters 25-year longevity step, this does not take place until 25 years of service. This is not a major concession. In addition the City successfully bargained for a number of important new provisions. Firefighters also accepted the same wage and insurance offer that the City made to the police. Both parties successfully addressed issues of concern during the bargaining process. Unlike the City negotiations with the FOP, the City's lone proposal was rejected.

The record in this matter shows that the City's offer provides for both internal and external comparability. City police officers receive the same percentage wage offer as all of the other bargaining units. A well established internal pattern is generally given greater consideration by arbitrators than external patterns. Arbitrators have consistently found that deviations from the internal pattern would place the City in a very difficult position in future negotiations.

Finally, regarding the cost of living the Union asserted that overall cost of living increases justify its final wage proposal. In fact increases in the cost of living have declined dramatically, in particular, recently.

The Effingham Police Department employees are among the best paid officers employed in comparable jurisdictions. They receive excellent medical benefits and pay no more and no less than any of the City's other employees. Overall compensation received by FOP members of the Police Department shows that officers in other jurisdictions do not receive better wages and benefits.

Finally, the changes in any of the foregoing circumstances during the pendency of the arbitration can be simply put that the economy is going through what could be described as an economic collapse. The City is in a position where it must borrow from other areas to cover general fund expenses. The facts are that the City could not have afforded to make this wage proposal it offered in June, 2008. However, the City did not reduce its final offer prior to arbitration in the interest of good faith bargaining. Imposing additional and unnecessary financial burdens on the City under such adverse economic circumstances is not reasonable since it would destroy the stability and continuity that the City has achieved during the course of negotiations with other bargaining units.

The Union's proposal would unreasonably expand the disparity between Effingham and its comparables. It would destroy internal comparability. It would hamper the potential for effective bargaining with other bargaining units and weakens the City's already precarious financial condition. Therefore, the factors set forth in the Act support the selection of the City's final proposal.

## DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute compulsory interest arbitration for a potential strike involving security officers. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in each area of disagreement the last best offer of one side over the other. The Arbitrator must find for each open issue which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the

concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

The Arbitrator would, however, say to the bargaining unit that interest arbitration is an essentially conservative process. The Arbitrator is bound by the criteria placed upon him by the State of Illinois and the Parties respective positions. The criteria for change, as noted in the above paragraphs, are difficult to achieve. Quantum leaps in interest arbitration are, therefore, difficult to attain. The Collective Bargaining/Interest Arbitration process in the public sector is generally one of small steps over a period of time to achieve an overall goal except under the most extraordinary circumstances.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of

living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

This Arbitrator has consistently found that police units are significantly different than other public sector bargaining units except possibly firefighters, although it is somewhat difficult to compare police and firefighter units because of the differences in their schedules of work and other on-the-job activities. Clearly, both of those units are absolutely critical to the safety and welfare of the public. This leads us to the external and internal comparables. When separating all of the arguments made by the respective Parties and getting down to the bottom line, the facts are that neither offer would significantly affect this unit's ranking with respect to the external comparables which were selected by a previous interest arbitrator and not challenged at all by either side in this matter.

With respect to the internal comparables, they certainly favor the Employer's position in this matter since the Employer is asking this bargaining to accept the same percentage wage increase and insurance contributions as all other internal comparables. Therefore, the comparables strongly favor the Employer's position in this matter.

The third factor is the "interest and welfare of the public and the financial ability of the unit of government to meet these costs." The Employer made a number of compelling arguments with respect to the financial impact of both final offers on the City budget. In addition, the Employer did plead an inability to pay and bears a strong burden to prove this, there was strong evidence that if the Arbitrator were to choose the Union's offer, it would place some hardship on the City and subsequently affect the interest and welfare of the public since the monies would have to be taken from other areas of the budget due to the state mandated balanced budget requirement. This would undoubtedly have some impact on the citizens of Effingham. The Arbitrator finds that an inability to pay was not conclusively proven by the Employer nor by stipulation brought up during negotiations. This is a small unit and the differences between the final offers are not great. The Union countered that it would impact the interests of the citizens of Effingham if the City was unable to attract and keep competent employees. This is an excellent argument, however, there was no showing at the hearing that unusual turnover was being experienced within this bargaining unit or that the City was unable to hire those with sufficient skills to perform these jobs. Certainly, this could become a factor sometime in the future. The Arbitrator finds that the above factor is determinative in this matter, it certainly mitigates in favor of the Employer's position and it must be given substantial weight in the final

decision.

Like many things in life timing is everything. When the facts are that despite whatever disputes have arisen over the City's figures, we are all in a very difficult economic circumstance, one which certainly will last at least through the end of this contract cycle. Not in dispute is that the economy was much better for approximately the first half of the contract as it is and will be for the second half. As with many things in life, timing is critical. There is certainly no dispute that a major part of the City's revenue involves taxes on gasoline and petroleum based diesel. In recent memory the price of gas certainly went to extraordinary high levels and more recently went to relatively low levels and are somewhat higher in the most recent past. How this is going to play out in the near future through 2009/2010 is, of course, difficult to predict with any certainty. All in all this is a very difficult case to decide, particularly since this is a relatively small unit and the bargaining unit is not asking for a huge differential over the Employer's offer. However, based on the interest and welfare of the public and in particular the internal comparables, the Arbitrator finds that it is the Employer's offer, despite the agreement on the insurance issues, that best meets the criteria noted in the applicable statute.

AWARD

Under the authority vested in the Arbitration Panel by Section XIV of the Illinois Public Employees Labor Relations Act the Arbitrator finds that the wage proposal which most nearly complies with Sub-Section XIV(h) is the Employer's offer.

Dated at Chicago, Illinois this 28<sup>th</sup> Day of February, 2009

Raymond E. McAlpin,

Arbitrator

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