

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

CITY OF CHICAGO HEIGHTS

AND

CASE S-MA-08-243

POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION,
UNIT #64

APPEARANCES:

Sean Smoot on behalf of the Union

Mark Bennett and Antonio Caldarone 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 April 27, 2009, 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 July 13, 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 approximately 61 patrol officers, all of who are in the bargaining unit affected by this proceeding.

The parties' prior agreement ran from 2004 through 2008.

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

Wages

The parties agree that the duration of the agreement and wages should be treated as a single economic issue for the purpose of this proceeding.

The City proposes a three year agreement, with no wage increase effective 5/1/08 (but adding training, range and deadly force pay (each of which reflects a 4 %

premium on base pay) to the base for purposes of calculating OT pay), 3% effective 5/1/09, and 3% effective 5/1/10.

The Union proposes a four year agreement, 3% effective 5/1/08, 3.25% effective 5/1/09, 3% effective 5/1/10, and 3.5% effective 5/1/11.

Both parties characterize residency as a non economic issue. The Union proposes a 60 mile radius of the City's Police Department HQ, while the City proposes continuation of its present policy, which requires residency within the City within 12 months of employment.

The parties agree on seven external comparables: Blue Island, Burbank, Calumet, Evergreen Park, Harvey, Lansing, and South Holland.

As to internal comparables, there are three other bargaining units in the City: the Fire Department, a Police Dispatch unit, and a unit in the Public Works Department.

The City's Fire Department agreement provides for a 3% increase in '08, 3.25% in '09, 3% in '10, and 3.5% in '11—a four year agreement. The Police Dispatch unit received a 3% increase in '08 and a 3.25% increase in '09, and the Public Works unit received a 3% increase in '08, 3% in '09, and 3% in '10.

The average increases received by police units in the external comparables was 3.95% in '08 (based upon 5 settlements), 3.94% in '09 (based upon 4 settlements), 3.98% in '10 (based upon three settlements), and 3.95% in '11 (based upon a single settlement).

The parties' prior agreement reflected an agreement to defer negotiations on the residency issue, and accepting the City's ordinance requiring employees to live within the City limits.

Residency requirements in the external comparables vary significantly, ranging from city limits, specific boundaries, 3, 10, 15, 20, and 22 mile radiuses.

Positions of the Parties

Union—

There is absolutely no evidence in the record supporting the City's proposed 0% increase in '08. In contrast, the Union proposes exactly what the City agreed to with its firefighters. Furthermore, the Union's wage proposal is closer to the external comparable pattern of settlements. In fact, the Union's proposed wage package maintains the City's current ranking among its external comparables.

The Union's wage proposal also closely resembles relevant annual cost of living increases.

The Union's wage proposal also maintains wage relationships between the police and firefighter units, which approximates what would and should have occurred in collective bargaining, and which has mustered the support of a considerable number of arbitrators in proceedings such as this. (Citations omitted)

In the prior round of negotiations, the City bought the Union's deferral of the residency issue with the very pay incentives and supplements it now hopes will buy a wage freeze. It should not now be allowed to recycle this previously bargained for exchange as a new quid pro quo for a '08 wage freeze.

The City's proposal to roll in stipend pay merely codifies the practical effect of the stipends as they currently occur. It does nothing to increase the wages or total compensation of unit employees over those received in '07.

Though the City asserts that it is experiencing difficult financial times, it has failed to demonstrate inability to pay, the only relevant statutory criteria in that regard. Indeed, the City has carried forward a \$10,000,000 fund balance for several years. Furthermore, it is hiring new employees even though it claims to be engaged in deficit spending and, as of the date of the hearing in this matter, has no 2009 fiscal year budget.

The City and Firefighters Union have deferred the residency issue ultimately to this proceeding since their agreement contains a me too clause. However, their agreement does not contain a wage freeze similar to what the City proposes here. Therefore, should the Union prevail on residency in this proceeding, the Firefighters will have avoided a wage freeze and achieved residency relaxation.

Furthermore, the Union's proposed four year agreement is consistent with the duration of all of the City's other collective bargaining agreements. In contrast, the City's three year proposal would put the parties back at the bargaining table within 12 months of receipt of this Award.

With respect to the residency issue, this is not a changing of the status quo situation since it is the first time the issue has been negotiated since the public sector bargaining statute mandated bargaining on the issue. Here, the parties have bargained very deliberately so as to defer negotiations on the residency issue without prejudicing the Union in an impasse proceeding. Thus, the residency issue should be treated as a matter of first impression. This approach is consistent with a number of interest arbitration awards. (Citations omitted)

Relatedly, there is no evidence in this record indicating that the residency requirement in the City's ordinances was the result of any tradeoffs between the parties. It is also clear that the City would not accept any offer from the Union in exchange for expanded residency.

With respect to the interest and welfare of the public statutory criterion, it is well recognized that public employees have a significant interest in their choice of residency. (Citations omitted)

In this matter there are a number of legitimate considerations relevant to that choice: the safety of officers and their families, the quality of the City's schools, and the impact of residency on recruitment applicant quality. In contrast to these legitimate considerations, the City relies on public perception, which factor is totally unsupported by record evidence.

There is no evidence in the record indicating that the residency requirement has any relationship to operational need.

With respect to the comparability criterion, arbitrators have been universally reluctant to place much weight on internal comparability arguments in residency disputes, particularly in police bargaining units. (Citations omitted) Internal comparability is particularly irrelevant here since the City has already agreed with the Firefighters that if it does not prevail on the residency issue in this proceeding, the Firefighter agreement will be reopened on that issue.

Furthermore, all of the external comparables allow for some form of expanded residency for their police officers.

To the Union's knowledge, there have been 26 interest arbitration awards since the Act mandated bargaining on residency. Of these, 20 expanded residency beyond city limits. The cases wherein residency requirements have been upheld are distinguishable from the circumstances present herein in the following ways:

In one case an arbitrator found that a change in the residency requirement would adversely affect the racial fabric of the village and impact a federal consent decree in place on race. (Citation omitted) Clearly, no such issue has been raised in this matter.

In another case an arbitrator deemed evidence of officer safety issues to be non persuasive. (Citation omitted)

Another arbitrator found no guidance in the interest and welfare of the public criterion, and no persuasive external comparability pattern. (Citation omitted)

In one case an arbitrator relied, at least in part, on operational necessity. (Citation omitted)

In contrast, in the vast majority of awards that addressed residency as a new issue of first impression, arbitrators have almost unanimously awarded expansion of residency beyond City limits. (Citations omitted)

City Position

The City ranks at or near the bottom among comparable communities in all revenue generating categories. It is also near the middle among comparables when comparing police officer wages, except in entry level wages, which reflects past choices of the parties to focus on the wages for experienced officers.

The City's wage proposal maintains its status/ranking among the external comparables. On the other hand, the Union's wage proposal will raise the City's ranking on wages when compared with comparable communities. Furthermore it would not address any disparity in wages at the lower end of the wage scale.

The stipends referred to in the City's offer constitute a 12% premium over an officer's base, and they are received by all officers in the unit. Rolling these stipends into o/t calculations amounts to an additional 1% (actually .9%) increase for each officer each year of the proposed agreement. Such universal stipends are not received by officers in the comparable units.

The City's proposed wage package is also more reasonable in light of the economic hardships facing the City, including a significant budget deficit.

Agreements with other organized employees of the City were negotiated before the City's financial condition deteriorated in late 2007. The City negotiated only one new agreement since that occurred. The firefighters wage agreement in 2008 was accompanied by a status quo agreement on the residency issue, and furthermore, the firefighter wages were lower than they should have been.

The City's proposed three year duration also is more appropriate in light of the budgetary uncertainties facing the City.

On the residency issue, while the Union does not have the burden of persuasion that exists for breakthrough changes, it still has the burden of persuasion for its proposed change utilizing the applicable statutory factors. (Citation omitted) In that regard it has failed to meet that burden.

The Union failed to persuasively demonstrate that officers and/or their families were victims of crime because of the residency requirement.

Nor did it establish that the residency requirement limited the City's ability to recruit police officers. Indeed, the City has never had a problem filling vacant police officer positions with qualified applicants. The Union presented no evidence that the City's applicant pool has been narrowed due to the City's residency requirement. Nor is there any evidence that the Department has lost officers due to the requirement, except for one individual, who moved to care for his mother.

The record does not establish that the schools in the City are inadequate, particularly when compared with comparable communities. Furthermore, there are affordable housing options available in the City near the better performing schools. Indeed, some of the schools in the District are performing quite competitively with good performing schools in the State. There is also no evidence in the record that the perception of inadequate schools has affected anyone's decision to join or leave the Department.

The record also does not support a finding that the residency requirement imposes an undue burden on the liberty of police officers. All officers are told about the requirement early in the hiring process. As other arbitrators have pointed out, liberalization of residency requirements must be supported by unanticipated inequities other than the claim of liberty infringement. (Citation omitted)

The requirement makes officers stakeholders in the community, and no persuasive reasons (supported by evidence) have been presented justifying a change.

Although a majority of the comparables have more relaxed residency requirements than the City, none have limitations further than 22 miles—which in itself indicates the unreasonableness of the Union's proposal.

Discussion

On the issues of wages and duration, internal comparability and the timing of this award in the context of the duration of the agreement at issue herein clearly support the desirability and reasonableness of a four year agreement. While there is some merit to the City's contention that the parties should not be compelled to make long term financial commitments in these uncertain and difficult financial times, there is little reason to believe that in that regard things are going to significantly change in the short term foreseeable future, and, at the least, a four year agreement will provide some financial predictability for the City in determining what it is going to cost to run the Department for the next two fiscal years.

Of course, in a proceeding such as this, the agreement's duration cannot be determined independent of wages—so the foregoing considerations are necessarily only part of the decision making process.

On the wage issue, a number of factors merit consideration and discussion.

The value of wage settlements among the external comparables generally support the Union's position, on its' face; however a number of factors qualify that conclusion somewhat. One, a majority of the external comparables do not have agreements for 2010 and 2011. Two, a considerable number of the comparable settlements were negotiated and/or arbitrated at other times, some in different economic environments. And three, if the City's proposed roll in of stipends for purposes of overtime calculation were accepted, the City's wage proposal would be

somewhat closer to external comparable average increases, particularly in '10, and '11.

However, in the undersigned's opinion, the City's proposed roll in of stipends for the purpose of overtime calculation, though representing an approximate one percent increase in compensation each year, doesn't fairly represent an increase in wages, but instead represents an increase in the value of one of many (and a variety of) benefits officers in this and comparable units enjoy. To begin to compare increases in the value of such benefits when determining the comparability of wages would create an unmanageable and innumerable number of comparisons that, at least in this arbitrator's opinion, would be unacceptably burdensome and confusing for everyone. If the stipends had been folded into the wage schedule, the value of such a change would, in all likelihood, have become a legitimate factor for consideration in this wage dispute. Increasing the value of the benefit, however, is not.

The City's proposed 0% wage increase in '08 is not supported by either external or internal comparables, or by the City's financial difficulties, particularly when viewed in the context of internal comparable settlements, and the lack of any persuasive evidence of inability to pay. While the Firefighters did provide sort of a quid pro quo in their residency agreement, the "me too" clause that exists in that agreement is not in actuality the quid pro quo the City asserts it achieved for the 3% it granted the firefighters in 08.

A couple of additional factors affect the reasonableness of the parties' wage proposals. Cost of living increases support the Union's position in '08 and '09. More troubling are the difficult economic times confronting the City, and indeed, most if not all of its comparables, at the time of this proceeding, and the relevance of such conditions in proceedings such as this. Clearly, such conditions affect the interests and welfare of the public, as the recipients, and funders of government service. They also relate to what's happening in collective bargaining in public and private employment in comparable communities, and lastly, at least in the undersigned's opinion, they constitute factors traditionally taken into consideration in the determination of wages in the collective bargaining process. While alleged inability to pay is not at issue in this matter, what constitutes a reasonable wage settlement in light of the economic environment in which such a settlement occurs is a legitimate consideration. In that regard, the undersigned believes that absent a clear pattern of timely and comparable wage settlements, modest wage settlements that do not fly in the face of comparability and cost of living considerations are justifiable.

In this matter, but for the City's proposed 0% increase in '08, which is not supported by internal or external comparability, or cost of living considerations, the City's wage proposal for '10 and '11 is reasonable based upon the above mentioned considerations. However, the lack of evidentiary and/or persuasive support for the City's '08 proposal negates the reasonableness of that conclusion, and accordingly,

the undersigned will award the Union's wage/duration proposal in this proceeding.

Regarding residency, the undersigned is persuaded by the arbitral precedent that supports the relaxation of residency requirements in police units based upon the unique nature of the services that officers provide in a community and the impact that such duties have on the safety and welfare of the officers and their families. Also, supportive of a finding that the residency requirement should be reasonably relaxed is the fact that no case has been made that operational efficiency would necessarily in any way be jeopardized by the relaxation of said requirement. While a persuasive case has not been made that quality schools are not available in the City, or that the quality of applicants and/or the retention of officers has been adversely affected by the residency requirement, the City's current restriction on the liberty interests of officers in choosing where they wish to live, particularly as law enforcement officers, is not justified, particularly since this is a case of first impression, and the comparability factor clearly supports some relaxation of the current requirement for this bargaining unit.

The undersigned however is also of the opinion that, if at all possible, the parties, rather than an arbitrator, can best configure residency restrictions that address their legitimate, and sometimes competing concerns and interests. Accordingly, the undersigned is going to reserve jurisdiction on this issue and return the issue to the parties for 60 days from the date of this award to permit them to negotiate a relaxed residency requirement that generally comports with external comparable arrangements. If no agreement on said issue is reached in that period of time, the undersigned will issue an award determining what the relaxed residency requirement should be, without further argument. If agreement on this issue is reached within the 60 day period, the undersigned should be so advised, in which case, jurisdiction over the issue will be relinquished.

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

INTEREST ARBITRATION AWARD

The tentative agreements of the parties shall be incorporated into their successor collective bargaining agreement.

The Union's duration and wage proposal shall be incorporated into the agreement.

The residency issue is remanded to the parties for sixty (60) days from the date of this award to permit the negotiation of a relaxed residency requirement, after which, if no agreement is reached on this issue, an award will be issued resolving the matter.

Dated this 4 day of August 2009 at Chicago, IL 60660


Byron Yaffe
Arbitrator