

ILLINOIS LABOR RELATIONS BOARD
BEFORE
BRIAN E. REYNOLDS
ARBITRATOR

In the matter of the Interest Arbitration
between

COUNTY OF DeWITT and the
DeWITT COUNTY SHERIFF,

Employer

and

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL,

Union

ILRB Case No. S-MA-09-093
Hearing: November 4, 2010
Award: November 30, 2010

OPINION AND AWARD

APPEARANCES:

For the Union:

Richard V. Stewart, Attorney
IFOP Labor Council
974 Clocktower Drive
Springfield, IL 62704

For the Employer:

Nick A. Cetwinski
Attorney at Law
9032 Northfield Road
Woodridge, IL 60517

PROCEEDINGS

This is an interest arbitration under Section 14 of the Illinois Public Relations Act (Act) to resolve a dispute arising under the terms of the collective bargaining agreements (Agreement) between the County of DeWitt and the DeWitt County Sheriff (Employer) and the Illinois Fraternal Order of Police Labor Council (FOP or Union) for the following bargaining units of the Employer's employees: Sworn Officers (Unit A),

Telecommunications (Unit B), and Corrections (Unit C).¹ The three Agreements all have an expiration date of November 30, 2010.² The current interest arbitration is the result of a mid-term impact bargaining impasse over contract provisions involving health insurance and holidays.

The parties selected the undersigned to serve as the neutral arbitrator for the interest arbitration through the procedures administered by the Illinois Labor Relations Board (ILRB). The parties waived the requirement of a tri-partite panel and stipulated that the proceeding would be governed by the provisions of the Act. A hearing was held on November 4, 2010 at the Employer's offices at which time the parties were afforded an opportunity to present testimony, exhibits, and other evidence relevant to the dispute. During the hearing, the parties submitted stipulations on the disputed issues. The parties waived the filing of briefs.

RELEVANT CONTRACT PROVISIONS

Section 13.1 Insurance

The Employer shall provide group health benefits to all full-time employees, with the benefits to be provided under the same terms and conditions and in the same amounts and manner as applicable to all non-represented County employees. In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented employees. The County expressly reserves the right to modify, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary.

The extent of coverage under the insurance policies or programs referred to in this article shall be resolved in accordance with the terms and conditions of said policies, rules and guidelines (including provisions governing self-insurance) and shall not be subject to the grievance procedures.

¹ Collectively, I will refer to all three bargaining units as either "Units" or "Unit"

² The Agreements for Unit A and Unit C commenced on December 1, 2009, while the Agreement for Unit B commenced on December 1, 2007.

In the event the County finds it necessary to change any of the terms and conditions regarding insurance coverage, benefit levels, cost and cost containment, it will notify the Lodge and the County shall impact bargain any significant or substantial cost increases.

* * *

Section 10.1 Holidays Amounts

The following are regularly paid holidays for all non-probationary employees, with probationary employees eligible after six(6) months of employment ***shall be observed on the same dates as is observed by the DeWitt County Sheriff's Office within the other certified bargaining units therein:***³

Holiday

New Year's Day
Lincoln's Birthday
Washington's Birthday
Good Friday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Friday after Thanksgiving
Christmas Eve
Christmas Day

ISSUES

The parties stipulated to the following issues:

Health Insurance: *What portion of the monthly health insurance premium cost should the Employer be responsible and what portion should the employee be responsible?*

Holidays: *Shall bargaining unit employees experience a reduction of three (3) Holidays as follows: Christmas Eve; Columbus Day; and Lincoln's Birthday?*

³ The italicized language is contained only in the Agreement for Unit B, the Telecommunications Unit.

FINAL OFFERS

The FOP's Final Offers:

Health Insurance: Add the following underlined language and remove the italicized language in the first paragraph of Section 13.1:

The Employer shall provide group health benefits to all full-time employees, with the benefits to be provided under the same terms and conditions and in the same amounts and manner as applicable to all non-represented County employees. The Employer shall pay the amount equivalent to 80% of the monthly premium for the Single (CCP/HMO) Health Insurance plan. Employees shall be responsible for the remaining 20% of the monthly premium and the remaining cost of the coverage for any Employee + 1 Plan or Family Plan. *In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented employees.* The County expressly reserves the right to modify, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary.

Holidays: Maintain the status quo of 13 holidays.

The Employer's Final Offers:

Health Insurance: Add the following underlined language to Section 13.1:

The Employer shall provide group health benefits to all full-time employees, with the benefits to be provided under the same terms and conditions and in the same amounts and manner as applicable to all non-represented County employees. In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented employees. The County expressly reserves the right to modify, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary.

However, any other provision to the contrary notwithstanding, the County shall be responsible for the payment of \$365 monthly towards employee health insurance coverage with the employee maintaining responsibility for the remainder monthly premium cost.

The extent of coverage under the insurance policies or programs referred to in this article shall be resolved in accordance with the terms and conditions of said policies,

rules and guidelines (including provisions governing self-insurance) and shall not be subject to the grievance procedures.

In the event the County finds it necessary to change any of the terms and conditions regarding insurance coverage, benefit levels, cost and cost containment, it will notify the Lodge and the County shall impact bargain any significant or substantial cost increases.

Holidays: In return for raising its contribution to health insurance premiums from \$300 to \$365, or a 21% increase, the Employer proposes to delete three of the current thirteen holidays, specifically: **Lincoln's Birthday, Columbus Day, Christmas Eve;** leaving the Unit employees with 10 holidays.

STATUTORY FACTORS

Section 14 (h) of the Act sets forth the following factors upon which the Arbitrator is to base his findings, opinions and order:

Where there is no agreement between the parties, or where there is an agreement, but the parties have begun negotiations for a new agreement or amendment of the existing agreement, and wage rates other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion and order upon the following factors, as applicable:

- (1) The lawful authority of the Employer;
- (2) Stipulations of the parties;
- (3) The interest 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 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, 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 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 private employment.

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

...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 on the applicable factors presented in subsection (h).

In this case, the issues of health insurance and holidays are both economic and, thus, I am restricted to adopting a final offer from one of the parties.

EXTERNAL COMPARABLES

The parties stipulated to the following Illinois counties as the comparable communities: Ford, Mason, Menard, Moultrie and Piatt.

POSITION OF THE PARTIES

Union Position

The Union maintains that its offer on health insurance is clearly more reasonable than the Employer's. While the overall cost increase for health insurance is 35%, some employees, including those with dependant coverage, will be faced with payments that have more than doubled. Previously, the Employer's contribution of \$300 was approximately 76% of the individual PPO coverage. Since this cost increase, the Employer's monthly cost for the Units has actually decreased by \$1200 a month, since 4 Unit employees dropped insurance coverage.

Under the Union's offer, the employees would still be paying more for their single coverage than any of the comparables. The Union's offer, though, is at least closer to any of the comparables than the Employer's offer.

The external comparables also show that the Union's proposal on holidays is more reasonable. Three of the 5 comparable communities provide 14 holidays, one provides 13 holidays and one provides 10 holidays.

A goal of interest arbitration is to try and award what the parties would have negotiated. The Union would never have agreed to give up 3 holidays for all their employees in return for a benefit only half the Units employees receive. The Union would never have agreed to double its members' health insurance costs and lose three holidays for it.

There is no issue of inability to pay or cost of living. Under the external comparables, the Union's final offers are clearly more reasonable.

Employer Position

The Employer maintains that its offer on both issues are more reasonable based on the past practice of the parties. In the past, the Employer paid \$300 per month towards the employee's insurance costs and the employee paid the rest. That is what the Employer provided to all its other employees. It's been the prior practice and procedure for the Units to follow what all the other County employees get. In all prior agreements for the Units, there has never been a specific dollar or percentage amount negotiated into the collective bargaining agreement.

The County faced a 35% premium increase on July 1, 2010. The Employer provided all non-represented employees with a \$365 rather than \$300 contribution, which is a 21% increase in costs for the County.

The Employer's offer is what has been done all these years under the Agreements; that the Unit employees receive the same Employer contributions as the non-represented employees. Though the Union's proposal, which would result in a \$389 Employer contribution this year, is more reasonable in view of the external comparables, the Employer's offer is more consistent with the parties' Agreements and past practice. While the Employer agreed to amend the Agreement's language to bargain over the impact of any change, it has so bargained. Impact bargaining does not require the parties to change their long-standing practice of determining the Employer's contributions to health insurance.

In return for increasing its contribution to health insurance by 21%, the Employer also reduced the number of holidays for non-represented employees from 13 to 10. Thus, since the Units would also be receiving this 21% increase, they should also have their holidays reduced from 13 to 10.

BACKGROUND

The Union has represented the Unit employees for over 20 years.⁴ Currently there are 37 Unit employees.⁵ Nineteen of these employees currently opt to receive health insurance through the Employer. All but one of these 19 Unit employees have single coverage under one of the three offered options. Prior to July 1, 2010, 23 of the Unit employees opted for health insurance through the Employer.

Since the initial collective bargaining agreements for these employees over 20 years ago, the Unit employees have received the same health benefits and Employer contributions as all other Employer employees, including non-represented employees. In the most recent Agreements, the parties agreed to add the impact bargaining language to the Agreement's Health Insurance provisions.⁶

The Employer contracts with Health Alliance to provide health insurance coverage for its employees, through Health Alliance's Local Government Health Plan. In

⁴ This is according to oral testimony provided at the hearing. The Demand for Compulsory Interest Arbitration contained in the FOP's documentary evidence indicates that Unit A was certified in 1991; Unit B in 2005; and Unit C in 1995. However, the certifications referred to are all unit clarification petitions, which indicates that the bargaining units were actually first certified prior to these dates.

⁵ The Union's exhibits show 12 employees in the Sworn Officers Unit, 9 employees in the Telecommunications Unit and 16 employees in the Corrections Unit

⁶ The Employer' testimony is that it agreed to the impact bargaining in return for unspecified take backs in another area.

the past few years, Health Alliance's costs have exceeded its premiums for providing health insurance for the Employer's employees.

On March 20, 2010, Nick Cetwinski sent a letter to Jerry Lieb, FOP's representative for the Units, informing him that the health insurance premiums for the coverage period of July 1, 2010 to June 30, 2011, would increase by 35%.⁷ The letter also informed Mr. Lieb that the Employer requested a Labor Management Conference on April 5th. On April 6th, following this meeting, Lieb sent e-mails to Cetwinski stating that the increases in health insurance constituted a significant and substantive change and that the Union was requesting impact bargaining over the changes.⁸ Lieb requested that the issue be added to a previously scheduled mediation agenda on May 13. On June 3rd, Lieb sent an e-mail to Cetwinski stating that the Union was waiving mediation and would file for interest arbitration. On June 28th, Cetwinski e-mailed Lieb asking if the Union wished to accept the County's offer to increase its insurance contribution by 20% (from \$300 to \$360) in return for the loss of three specified holidays.

On July 22, 2010, the Union filed a Demand for Compulsory Interest Arbitration with the Illinois Labor Relations Board.

Effective July 1, 2010, the Employer increased its contribution to its non-represented employees from \$300 to \$365, while also decreasing their holidays from 13 to 10. The following is a chart of the Employer(Er) and Employee(Ee) contribution levels

⁷ Health Alliance was increasing its rates effective July 1, 2010

⁸ Lieb also stated that he would take the Employer's offer that the Employer would pay 75% of the individual premium in exchange for three holidays, back to the Unit.

under the old and new health insurance costs and under the Union and Employer Final Offers (FO):⁹

Covrge. Type	Prior Cost	Er Contr.	Ee Contr.	New Cost	Employer FO		Union FO	
					Er FO Contr.	Ee Contr.	Er Contr.	Ee Contr.
Single (HMO)	\$360	\$300	\$60	\$486	\$365	\$121	\$389	\$97
Single (PPO)	\$428	\$300	\$120	\$578	\$365	\$213	\$389	\$189
Single+1(HMO)	\$718	\$300	\$418	\$969	\$365	\$604	\$389	\$580
Family(HMO)	\$907	\$300	\$607	\$1,224	\$365	\$859	\$389	\$835
Single+1(PPO)	\$853	\$300	\$553	\$1,152	\$365	\$787	\$389	\$763
Family(PPO)	\$1,078	\$300	\$778	\$1,455	\$365	\$1,090	\$389	\$1,066
Single(QCCP) ¹⁰	N/A			\$417	\$365	\$52	\$389	\$28
Single+1(QCCP)	N/A			\$932	\$365	\$567	\$389	\$543
Family(QCCP)	N/A			\$1,051	\$365	\$696	\$389	\$672

The external comparable evidence indicates that Ford, Mason, Menard and Moultrie counties provide 100% contribution toward single coverage, while Piatt County provides a \$495 contribution and 50% of any cost increase. Currently, all of the comparable communities provide dollar amounts larger than the Employer as their health insurance contribution for their represented Sheriff department employees.

⁹ The chart reflects data contained in the parties' stipulations, with some changes to reflect the existence of a Family(PPO) plan rather than two Single+1(PPO) plans. This is consistent with information contained in the Cetwinski letter of March 20th.

¹⁰ The QCCP is a new plan offered by Health Alliance for the current fiscal year. Seven of the Unit employees switched to the Single (QCCP) plan and the two Unit employees who added insurance chose the Single(QCCP) plan. Six Unit employees dropped health insurance coverage this year.

DISCUSSION AND ANALYSIS

Health Insurance

This interest arbitration is not the result of a bargaining impasse for a collective bargaining agreement under Section 14 of the Act. Instead, this arbitration is the result of an impasse in the impact bargaining over the increased insurance costs effective on July 1, 2010. Specifically, the arbitration is the result of the requirement in Section 13.1 of the Agreements that if the Employer makes changes in health insurance coverage, it "will notify the Lodge and the County shall impact bargain any significant or substantial cost increases." The parties agree that the July 1st cost increases are "significant and substantial" as specified in this Section.

The parties engaged in negotiations on the impact of these cost increases, and then went to interest arbitration to resolve the bargaining impasse.

While this is an impasse over impact bargaining and not an impasse over a new or amended Agreement, in evaluating the parties' final offers to resolve the impasse, I will still take into account the standards contained in Section 14 of the Act, along with the provisions of the existing Agreement.

The parties agree that both offers are consistent with the cost of living and ability to pay criteria. As to external comparables, the Employer ranks last under all the comparable communities in its level of health insurance contributions. Under the Union's proposal, the Unit employees would be closer to the comparables than under the Employer's offer, but would still rank last. The Employer agrees that the Union's proposal is more consistent with the external comparables.

If this were an interest arbitration to resolve an impasse in the negotiation of a new Agreement, the Union might very well succeed in its internal comparable argument. However, I find that, in this case, it is the existing Agreement and the internal comparables that are most important for determining the health insurance contribution level.

The Employer's final offer reflects what it ultimately decided to grant all non-represented employees. The second sentence of Section 13.1 of the Agreement specifically provides: "In the event the employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees." Thus the Employer's offer to grant Unit employees the same contribution level as non-represented employees is consistent with the internal comparables and this language, while the Union's offer is not.

Of course, one could argue that if the above contractual language is strictly applied, the Employer would never have to impact bargain cost increases in health insurance: the Employer would only need to decide what it wanted to provide the non-represented employees and provide the same to the Unit employees.

However, this would result in the impact bargaining language being superfluous. A general rule of contract interpretation is to find a purpose to any contractual language. Perhaps the above provision provides for what happens when the Employer requires "additional payments" that are not so "significant and substantial" as to require the

Employer to impact bargaining with the Union. Or perhaps the second sentence applies only after impact bargaining has failed to reach an agreement.¹¹

In any event, I interpret the Agreement not to require me to adopt a contribution level that is the same as the non-represented employees. However, while there may be no requirement, there is a clear preference in the Agreement for the Employer to provide the same coverage and contribution level to Unit employees as provided to non-represented employees. In addition to the language of the second sentence, the first sentence of Section 13.1 of the Agreement also states that health insurance benefits are to be provided "under the same terms and conditions and in the same amounts and manner as applicable to all non-represented employees."

The Union's offer would require that the second sentence of Section 13.1 be deleted from the Agreement, along with adding a provision requiring a percentage contribution by the Employer, a change in the existing method of determining the Employer's contribution level.¹² While the Employer's offer also adds a specific Employer contribution amount to the Agreement, this specific amount dollar amount is consistent with the existing provisions of the Agreement and consistent with the method of determining the Employer's contribution level used by the parties for the past twenty years.

¹¹ The parties presented no evidence on the intent of these contractual provisions, only that the Union desired the impact bargaining language to replace ineffective existing "meet and confer" language.

¹² I realize the Employer, at one time during the impact bargaining, also offered a percentage contribution amount rather than a fixed contribution amount, which may have resulted in the Union's final offer being in the form of a percentage contribution. However, the previous practice of the parties has been to set a fixed amount for the Employer's contribution level. A distinct advantage of using a percentage amount rather than a fixed amount is that it avoids the need to bargain every time there is a cost increase.

Holidays

The Employer's offer to reduce the Unit members holidays from 13 to 10 would reduce the Employer's rank to last place in the external comparables, the position it currently ranks with health insurance contributions. The only reason this issue is before the arbitrator is that, during negotiations, the Employer tied any increase in its health insurance contributions to a reduction in holidays. When the Employer raised its contribution level for non-represented employees to \$365, it also reduced their holidays from 13 to 10. It seeks to do the same with the Unit employees.

There is no provision in the Agreement allowing a change in holidays for the Unit employees or mandating bargaining mid-term over the issue. I understand, though, that the parties have raised the issue in this hearing because of the negotiations over health insurance. However, unlike with health insurance, there is nothing in the Agreement connecting Unit employees' holidays with those of non-represented employees.¹³ Thus, besides being more consistent with the external comparables, the Union's offer to maintain the status quo is more consistent with the language of the current Agreement.

Conclusion

The Union's final offer on health insurance seeks to delete a provision of Section 13.1 of the Agreement, and also change the methodology used for years to determine the Employer's contribution amounts. The Employer's offer on holidays seeks to delete three of the holidays currently provided in Section 10.1 of the Agreement. Both parties may appropriately seek such changes in any negotiations for successor Agreements for

¹³ Even prior to the reduction of non-represented employees' holidays, the Unit employees did not observe all the same holidays as non-represented employees.

the Units, which are scheduled to expire today. However, in the context of this hearing to resolve an impasse over impact bargaining involving the application of the current Agreement, I find that the Employer's final offer on health insurance and the Union's final offer on holidays are more consistent with the current Agreement and the standards of Section 14 of the Act.

AWARD

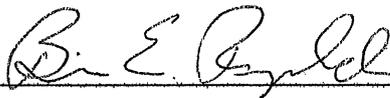
I hereby find that on the issues in this matter:

***Health Insurance:* The Employer's' final offer is adopted**

***Holidays:* The Union's final offer is adopted**

These adopted offers are to be effective retroactively to July 1, 2010.

Issued: November 30, 2010 at Springfield, Illinois



**Brian E. Reynolds,
Arbitrator**