IN THE MATTER OF ARBITRATION	
BETWEEN City of Marion	ARBITRATION AWARD: ILLINOIS STATE LABOR RELATIONS BOARD CASE NO. S-MA-09-175 City of Marion Police Department
AND ILLINOIS FRATERNAL ORDER OF POLICE - LABOR COUNCIL	Before Raymond E. McAlpin, Neutral Arbitrator

APPEARANCES

For the Union: Richard Stewart, Attorney
Bill Martens, FOP Field Representative

For the Employer: John Huffman, Attorney
Rhet Barke, Attorney
Gail West, City Administrator
Steve Hale, City Treasurer

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the period May 1, 2009 - April 30, 2011 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 Marion, Illinois on March 16, 2010. 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. Briefs were received on June 8, 2010.

ISSUES

At the hearing it was determined that each Party had proposed wage increases of 40 cents per hour effective and retroactive to May 1, 2009, May 1, 2010 and May 1, 2011; therefore, the only issue before the Arbitrator is that of longevity.

Union Position	City Position
Eff. May 1, 2010: Longevity increased from $10 per month per year of service to $20 per month per year of service.	Longevity: 26 yrs. of service-add $10 per mo.; 27 yrs. of service add $10 add'l per mo.; 28 yrs. of service add $10 add'l per mo.; 29 yrs. of service add $10 add'l per mo; 30 yrs. of service add $10 per mo. per year of service for a total of $290.

	Add steps 26-30; increase the educational pay as follows: **40 hrs. from $30 per mo. to $40 per mo.;** **80 hrs. from $50 per mo. to $60 per mo.;** **120 hrs. from $70 per mo. to $100 per mo.;** **160 hrs. - $120 per mo.**

STATUTORY CRITERIA

(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).

THE PRE-HEARING STIPULATIONS

The parties entered into several pre-hearing stipulations that are provided in relevant part below:[1]

1) The Arbitrator in this matter would be Raymond E. McAlpin. The parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative.

2) The parties stipulated that the procedural prerequisites for convening the

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arbitration hearing had been met, and that the Arbitrator had jurisdiction and authority to rule on the issues submitted. The parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3) The Parties agreed that the Arbitrator had the authority to award wage increases and any other forms of compensation fully retroactive to May 1, 2009, May 1, 2010 and May 1, 2011 on all hours paid. Both parties waived any defense, claim or right to challenge the arbitrator's authority to make the award retroactive.

4) The hearing would be transcribed by a court reporter whose attendance was to be secured by the employer for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the parties.

5) The parties agreed that all tentative agreements would be incorporated in the Award.

6) Final offers would be simultaneously exchanged at the beginning of the hearing. Thereafter, such final offers could not be changed except by mutual agreement of the parties. The Parties agreed that the Arbitrator would adopt either the final offer of the Union or Employer as to each of the economic issues.

7) The parties stipulated that the Arbitrator shall adopt either the final offer of the FOP or Employer as to each economic issue in dispute.

8) The Arbitrator was to base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator was to issue

his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.

UNION POSITION

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

Of the statutory criteria, there are three consistently identified as being most critical to interest arbitration - pay and benefits received by other comparables; impact of inflation on the employees' purchasing power; and whether or not the Employer has the ability to pay the wages or other benefits the Arbitrator deems appropriate.

COMPARABLES

The City offered the following as external comparables: Carbondale, Effingham and Mount Vernon.

The Union agreed with those three comparables and offered additional comparables: Centralia, Harrisburg, Herrin, Murphysboro and West Frankfort.

The dispute is over what number of comparables should be utilized. The question before the Arbitrator is whether or not a small comparable pool is more appropriate than a larger one.

The FOP comparables are all within the local labor market and are far closer to Marion than Mount Vernon and Effingham. The Union's comparables, when considering population, median home values, median household, median family income, per capita income, number of housing units and equalized assessed evaluation, show that the Union's comparables should be used. In addition, the Union looked at crime statistics which showed that Marion police officers handled approximately 36% more serious crimes in 2008 than the average. The City competes with all of these comparables for qualified police applicants. It appears that the City did not do any analysis and picked three cities out of a hat.

With respect to wages the Parties' final offers are identical. Admittedly, this is how negotiations should work and it shows that interest arbitration is a valuable tool.

Since longevity is an economic issue, the Arbitrator can only choose either the City's offer or the Union's offer. The City's offer is reproduced above with respect to longevity. It is the Union's position that educational incentive pay is not an issue before the Arbitrator. Educational incentives are in a completely different provision of the Collective Bargaining Agreement. The issues are what longevity increases will the employees receive, if any, on May 1, 2009, 2010 and 2011. Therefore, the Arbitrator lacks the authority to rule on educational

incentives. The Arbitrator only has the authority to choose between the two final offers on longevity and, therefore, the Arbitrator has no choice but to reject the City's offer. Even if the Arbitrator were to consider the City's offer, the FOP's offer is clearly more appropriate. The Union has proposed to add $40 per month for the years of service 5 through 25. The Party seeking the change must show that the old system has not worked or is not equitable or that the Party seeking to maintain the status quo has resisted attempts to address the issue. The burden of proof is inappropriate. Two years ago longevity payments became annualized. The FOP's offer is not a change in the status quo but an increase in the current benefit. Based on the comparables, cost of living and the City's financial condition, it is clear that the FOP's final offer is more reasonable and is the Arbitrator's only real choice.

Cost of living is not really an issue here, however, it is a statutory factor. It is the Union's position that both offers meet the cost of living criterion.

With respect to longevity for comparable departments, patrol officers clearly began falling below their comparables at 5 years. When looking at the City's proposal, the situation becomes much worse. The FOP would note that during 2008 the dispatchers are ahead of comparable communities. The FOP's offer will not put these officers ahead of their comparables. It will not eliminate the difference in pay between Marion and the comparables. It merely moves the officers in the right direction; however, the City's offer has the opposite effect.

The City claims that it cannot afford the Union's final offers. Even if this were true, there is a difference between an inability to pay and a hardship in paying. The City's evidence is clearly not sufficient to establish a genuine inability to pay. The City only provided unaudited financial information. The audited financial statements provided by the FOP painted a completely different picture. The City's fund balance is growing. Revenue exceeded expenses. The City has extensive cash in investments compared to small current liabilities. The FOP would note that the liquidity of the City is not affected by long-term debt.

The City's own exhibits show that it has the ability to pay. It has nine sources of revenue providing income of over $100,000 each. The City has eleven expenditure categories that are over $100,000 each. The record shows that revenues will most likely exceed expenses. The City's own numbers show that actual and percentage increases in expenditures will have decreased from fiscal year 2009 to fiscal year 2010. The General Fund is in the black, therefore, there is no inability to pay defense that is appropriate to this matter.

Based on the above, the Union's final offers are clearly the most reasonable, yet the City wants the Arbitrator to ignore the evidence. The Arbitrator can cause employees to lose ground to their comparables or award the FOP's wage offer.

CITY POSITION

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

The City of Marion has a population of approximately 17,200 people. It has a commission form of government with approximately 75% of its revenue being derived from sales tax. The Police Department consists of three detectives, six sergeants, twenty patrol officers and seven dispatchers and also the Chief and Assistant Chief of Police. All except the Chief and the Assistant Chief are covered under a Collective Bargaining Agreement. The current contract expired on April 30, 2009. The Parties agreed that any changes would be made retroactive to May 1, 2009.

On the day of the arbitration the Union agreed to a 40 cent per hour increase for each year of the contract. This left only the issue of longevity pay as the sole issue to be arbitrated. The impact of the Union's longevity proposal would be to increase the rate by more than 100% over the City's proposal. The City also offered increases in the educational/certification rates in the Collective Bargaining Agreement.

Of the statutory factors those that are at issue in these proceedings are the interest and welfare of the public and the financial ability of the unit of government to meet the costs. With respect to the financial ability, the City is not insolvent, but its financial status is not nearly as good as the Union represented in its case. As noted above, the City's primary source of income

is sales tax. The City's General Fund does not represent only cash but it also represents current assets. The City at the time of its testimony had roughly $4.8 million in reserves set aside for contingencies and emergency purchases. The City is on the lower end of the recommended reserve. Marion has the highest sales tax rate of comparable cities. In addition the City has a high long-term debt to CAP/EAV ratio (See City Exhibit #8). In addition, the City may experience a reduction in its share of the sales tax due to the State of Illinois budget shortfall. The City's economic situation does not support or stand for the proposition that the Union should receive the exorbitant longevity increases requested.

The City does not believe that the adoption of the Union's proposal would be in the best interest and welfare of the public. The Marion Police Force has been a stable department with very little turnover. The implicit claims of the Union that its requested increases are necessary is wholly unsupported. The Police Department employees are among the highest paid employees in Williamson County when considering either the private or public sector employees. The Union's proposal would increase this disparity.

The comparables show that the City is primarily relying on internal comparisons because of historical practice. The Union has listed eight comparable communities and, while the City feels that some of these communities are not truly comparable, for the sake of argument it will treat the communities as such. The City has offered increases to the education/certification pay which will substantially increase the overall rate of pay. In addition, the City has offered to extend the longevity schedule by five years with a

proportionate increase in rates. The Union's exhibit ignores the essential fact that the Marion bargaining unit contains four detectives and six sergeants who would benefit from the longevity proposal. The evidence shows that, for ten members of the bargaining unit, they are already above the top pay reported by Union exhibits. The total bargaining unit would benefit from the Union's longevity proposal. In addition to the above, the City has a higher level of retiree health insurance payment by the City as compared to the comparables.

The City believes that it is important to look internally at all the collective bargaining units and the benefits they receive. Laborers Local 773 has historically maintained that all of the City's represented employees should be treated in a like and similar manner. Even if this were not considered by the Arbitrator, the Firefighters and Police, both public safety bargaining units, the internal comparisons on the two contracts are essential. The City was unwilling to make any changes in longevity, but in an effort to obtain a contract, the City agreed to increase the education/certification pay of the Firefighters and also to extend the longevity provisions by five years. This was accepted by the Firefighter unit. The City's proposal was to give the Police unit the same as the Fire Department received. If the Union was allowed to create a disparity between internal comparables, this would destroy the internal comparability.

With respect to comparables in private employment, this is a difficult statistic to assess, but based on the information available, the Police unit here has higher wage and benefit levels.

Regarding the cost of living factor, both the Police and Dispatcher groups are ahead of the consumer price index.

The overall compensation presently received by this bargaining unit, particularly when including retiree insurance, shows that the City has met its obligation to employees of this unit.

The City is very proud and appreciative of the Police Department work force. They are long-term and competent employees with a very low turnover rate. The City does not claim a fiscal crisis as a defense to the Union's request. The City has made a conscious effort to set aside sufficient reserves. Arbitrators have found that, when one side or the other wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. The City offered significant improvements to the longevity provision and the education/certification provision of the Collective Bargaining Agreement, therefore, the Union has not met its burden to deviate from the status quo.

Based on the above, the City asked the Arbitrator to adopt its proposal as the proposal that meets the statutory criteria.

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 interest arbitration for a potential strike involving public employees. 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 choose the last best offer of one side over the other. The Arbitrator must find for each final offer 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.

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.

Prior to deciding the outcome of this case, the Arbitrator would like to state for the record that both Parties worked very hard to negotiate numerous tentative agreements in this matter including, even though at the last minute, wages. It is clear that the Union achieved a significant amount of progress in this labor agreement.

This Arbitrator has always considered both internal and external comparables to be of significant benefit in determining which side's proposal should be accepted. In this matter each side has proposed comparables which, based on the record, seems to be the first decision for comparables for this particular bargaining unit. The City has proposed three external comparables, noted above, and the Union has proposed, in addition to the three of the City, five additional external comparables. Both sets of external comparables meet the tests of proximity, population, labor market, economic indices, and crime statistics, which this Arbitrator has found to be appropriate for consideration of comparables for Police units. This Arbitrator believes that a wider range of comparables, unless it is shown that they should not be considered, is the appropriate way to approach this situation and, therefore, will find that the Union's proposed external comparables more nearly meet the external comparable criteria as contained in the statute. Therefore, Carbondale, Centralia, Effingham, Harrisburg, Herrin, Mount Vernon, Murphysboro and West Frankfort will be the comparables for this interest arbitration.

When looking at the external comparables and isolating the longevity benefit, it does appear that, when comparing the Union's and the City's proposals, the Union's proposal has

some advantage. However, this Arbitrator has always considered overall compensation, not just an isolated item, is the appropriate way to determine the appropriateness of one proposal over another. When considering that factor, the record is not quite as clear.

The City relies to a great extent on its internal pattern. This Arbitrator has found in a number of arbitrations that internal comparables are generally not directly comparable to Police units with the exception of Firefighters. These two units are involved in public safety. They are often put at great risk in carrying out their assigned duties. The overwhelming population of this unit is in public safety and, while the Dispatchers do not share in this part of the job, they are essential to the public safety mission.

With respect to other internal bargaining units, Police units do not have enough in common to be in any way directly comparable. The Arbitrator notes, however, that the Firefighters have accepted the same longevity and education/certification offer as is offered here by the City. This strongly supports the City's position.

The criteria of interest and welfare of the public and the financial ability of the unit of government to meet those costs basically do not particularly support either side's position. While the City is currently and relatively fiscally solvent, there are certainly dark clouds on the horizon. The interest and welfare of the public has to do with the stability of the bargaining unit, which is of particular importance in Police and Firefighter units. The record for both sides shows that this is a very stable unit. Officers generally leave because of

retirement or disciplinary situations. There is no showing that officers are leaving the Department because of terms and conditions of the Collective Bargaining Agreement. The overall compensation of the Department, while there is some scarcity of documentation, seems to be within a range of what is being paid by the external and internal comparables.

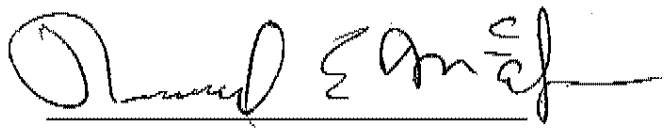
The proposals made by the Union and the Employer represent significant efforts to make improvements in the longevity pay proposals. The Arbitrator notes the following - the Bargaining Unit has proposed a significant change in longevity payments, while the City's offer only affects the most senior employees and those with lesser seniority will fall somewhat behind external comparables. In this Arbitrator's experience many officers retire before the 25th year of service. Certainly some increase in the current steps is justified. However, there is no evidence of overall compensation for the external comparables. The educational/certification incentives represent real additional dollars in the pockets of bargaining unit members who qualify and will offset the Longevity steps somewhat. That is an appropriate proposal by the Employer and the Arbitrator has the authority to rule on this particularly since the result will cause no harm but only the potential for additional dollars to the Unit.

This was a very difficult decision. The key element for this Arbitrator was the agreement of the Firefighter unit to accept the same proposal that the City is making in this interest arbitration even though the External Comparables somewhat favor the Union's position. Therefore, the Arbitrator will find that the City has prevailed.

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 7th DAY of July, 2010.



Raymond E. McAlpin, Arbitrator