

**ILLINOIS LABOR RELATIONS BOARD  
BEFORE ARBITRATOR ROBERT PERKOVICH**

**In the Matter of an Interest  
Arbitration between**

The Board of Trustees of the University of Illinois at Urbana-Champaign	)	
	)	
and	)	#S-MA-10-075
	)	
Illinois Fraternal Order of Police Labor Council	)	

**INTEREST ARBITATION OPINION AND AWARD**

A hearing was held on August 26, 2010 in Champaign, Illinois before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, the Board of Trustees of the University of Illinois at Urbana-Champaign (“Employer”) and the Illinois Fraternal Order of Police Labor Council (“Union”). The Employer was represented by its counsel, Shig Yasunaga and testifying for the Employer were Mike Andrechak and Corbin Smith. The Union was represented by its counsel, Richard Stewart, and testifying for the Union was Barbara O’Connor. The parties filed timely post-hearing briefs that were received on October 22, 2010.

**ISSUES PRESENTED**

The sole issue presented for resolution is what wage increases will the employees receive, if any, on 8/23/09?

**BACKGROUND**

The Employer is engaged in providing higher education to students. It is located in the twin cities of Champaign and Urbana, Illinois, both of which are approximately 140 miles south of Chicago, Illinois. The Employer consists of seventeen colleges and instructional units and enrolls approximately 42,000 undergraduate students and 11,000 graduate and professional students. In addition, it employs approximately 3,000 faculty and approximately 8,700 administrative and academic professional and support staff employees.

Of particular interest to this dispute is the Employer’s Campus Police Department. The Department provides patrol, investigation, specialized and emergency response, crime prevention and educational services to the University community. In so doing it operates 24 hours each day, seven days each week, and 365 days each year. At all material times herein the Department has been overseen by the Chief, her Deputy, an Administrative Services Supervisor and two lieutenants. The patrol division has at all

material times herein consisted of seven sergeants, one crime prevention officer, four detectives, one property and evidence officer, and thirty-three patrol officers.

Of those categories of employees the Union herein is the exclusive bargaining representative of the Department's sergeants and as such it has been a signatory to collective bargaining agreements with the Employer<sup>1</sup>. The record reflects that the wage increases effective 8/06 and 8/07 were determined in a stipulated interest arbitration award issued by Arbitrator Brian Claus. In that Award Arbitrator Claus found that the external comparables to be used would be the City of Champaign Police Department, the City of Urbana Police Department, and the Champaign County Sheriff's Office and he held that the wage increases in the two years at issue, 2006 and 2007, would be, respectively, 3% and 2.5%. In their next agreement, for the period 8/2008 through 8/2012 the parties negotiated first year wage increases for the bargaining unit that were in excess of 16%<sup>2</sup>. For each of the three remaining years of the agreement the parties agreed that "...wages will be adjusted by the percentage increase determined by the Provost Office...to be the general wage increase for civil service employees provided that if the wage increase is less than 2.5%, then the Union may request to negotiate wages solely."

When the Provost Office announced on August 27, 2009 that civil service employees would receive no wage increase for 2009, the Union invoked its right, as set forth above, to negotiate the issue of wages and the parties commenced bargaining. In so doing the parties first met on October 26, 2009 at which time the Union proposed that wages be increased effective 8/2009 by 3.75%. In reply the Employer said that it would take the Union's offer under advisement which in turn led to another bargaining session on November 17, 2009 at which time the Employer counter-offered with a 0% wage increase<sup>3</sup>. The parties next met in mediation with this Arbitrator but, after neither party altered their original offers, the matter was set for arbitration.

WHAT WAGE INCREASE SHALL EMPLOYEES RECEIVE, IF ANY, EFFECTIVE 8/09?

A. The Applicable Standard of Review

Under Section 14(g) of the Illinois Labor Relations Act I am to resolve the issue presented herein based on the following benchmarks:

1. the lawful authority of the Employer
2. stipulations of the parties

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<sup>1</sup> The Union also represents, in a separate bargaining agreement, the Employer's patrol officers and detectives.

<sup>2</sup> There is no dispute that the parties agreed to such increases in an effort to "to get (the employees) more in line with the local community; what other officers around were here were being paid." Tr. 13. To that end, in that first year of the agreement the officers herein are paid less than only similarly situated employees in the City of Champaign and less than starting officers in the Champaign County Sheriff's Office.

<sup>3</sup> That same day the Employer agreed to a contract with the Union representing its graduate assistants after those employees went on strike for a single day. That agreement is discussed more fully *infra*.

3. the interests and welfare of the public and the financial ability of the unit of government to meet those costs
4. comparison of wages, hours and conditions of employment of other employees performing similar services and with other employee generally in public and private employment in comparable communities
5. the average consumer prices for goods and services
6. the overall compensation presently received by the employees in question
7. any changes in any of the foregoing during the pendency of the arbitration,
8. such other factors which are normally or traditionally taken into consideration in the determination of wages through collective bargaining, mediation, fact-finding, arbitration in public and private employment.

In resolving this dispute I have considered each and every one of these facts, as is more fully described below.

Moreover, historically interest arbitrators in Illinois have primarily relied on the Section 14(g) factors of comparability, the cost of living and the ability to pay of the governmental unit involved. However, with the deteriorating economic conditions of the country today, at least one interest arbitrator has opined that perhaps the benchmark of comparability, particularly external comparability, is not as great an influence as it once was<sup>4</sup>.

#### B. The Final Offers

In order to resolve the instant dispute the Union has proposed a final offer that effective August of 2009 employees' wages should increase by 2.5%.

The Employer on the other hand proposes that the employees' wages should not be increased at all.

#### C. The Cost of Living

On this issue despite the statistical evidence and the thicket of different cost-of-living measures one thing is clear, the cost of living was more than 0%. Thus on this measure I am forced to conclude that the Union's final offer is the more reasonable of the two<sup>5</sup>.

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<sup>4</sup> As he noted "...prior to 2009, few...could have foreseen the drastic economic downturn...and then try to reconcile those conditions with the way...neutrals decide...cases based...on...comparability...That became readily apparent...when I was asked to use comparable communities as a driving factor...where the contracts in the comparable communities had been negotiated prior to the crash... I found that I just could not give the same weight to comparables as I had in the past (because after)...the drastic change in the economy, looking at those comparable communities became 'apples to oranges' comparisons." *The City of Chicago and the Illinois Fraternal Order of Police Labor Council*, (Benn, 2010).

<sup>5</sup> I note however that the difference between the cost of living and the employees' wages has led to a loss in relatively small terms. For example, in two of five reporting periods there was no loss of purchasing power and in three of the other reporting periods the loss was at or less than 1%.

#### D. The Employer's Financial Condition

On this issue the parties cross swords not over the data, but as to how one should view the data. For example, the Employer relies on the fact that appropriated funds from the State of Illinois are not only less over prior years but also that the payment of those funds has been and seemingly will be delayed. The Union on the other hand argues that the Employer has revenues from a myriad of other sources, including the police department that charges University units for their services, that its total revenues are in fact increasing, and that the Employer has seen fit to spend for certain expenditures (e.g.s, patrol officer promotions and hiring and the search and hiring of a University president) that belie its claim of financial stress.

In my view this debate must be resolved in favor of the Employer. First, I am persuaded that simply looking at total revenue, as the Union does, paints a misleading picture because the record reflects that much of the revenue sources the Union looks to are what is known as "restricted" funds, i.e., funds the purpose for which are limited and do not include day-to-day operations such as the police function. In fact, the record reflects that the State appropriated funds, which are not "restricted," comprise approximately fifty percent of the total operating budget. Second, the record reflects that these funds have been and will be delayed. Third, the Union's argument, that I should disregard the Employer's financial plight because the Employer's police department is actually producing revenues for it, is not persuasive. The fact of the matter is that those revenues are nothing more than expenditures from other portions of the Employer's operating budget and moreover, as the Employer points out, the services provided by the Department to generate those revenues often require overtime payments to the officers from the Department. There remains then the Union's reliance on the fact that the Employer has hired new officers and promoted others and that it spent substantial sums on a presidential search and, once a president was selected, the substantial compensation and benefits that it has extended to him. With regard to the former, I point out that the record contains no evidence that these expenditures were improvident and/or unnecessary. With regard to the latter, it seems to me that some other forum is better suited to debate the wisdom of executive compensation vis-à-vis that of rank and file employees.

In sum, I find that I cannot ignore the Employer's financial condition and rely upon it, as described more fully below, not necessarily as an independent factor in resolving the instant dispute but rather as a context for my consideration of the two remaining factors, internal and external comparability<sup>6</sup>.

#### E. Internal Comparability

On this issue again the parties do not dispute the facts, but argue the conclusions to be drawn from those facts. For example, the Employer argues that no other bargaining unit received across the board wage increases and that a substantial number received no wage increase at all. The Union on the other hand argues that even in those units where there was no across the board wage increase (e.g.s, AFSCME and GESO) some members

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<sup>6</sup> See e.g., *City of Belleville*, #S-MA-08-157 (Goldstein, 2010).

of the bargaining unit did in fact enjoy a wage increase favorably comparable to the Union's final offer herein, that one bargaining unit is arbitrating in rights arbitration the Employer's power to give no wage increase, and that internal comparables are of limited value when dealing with law enforcement personnel because they are unique.

I find however, that none of the Union's arguments are persuasive.

First, with regard to the view of at least one arbitrator that internal comparables are of limited value because of the unique nature of law enforcement I am afraid that I simply cannot agree. The fact of the matter is that for decades interest arbitrators have been using internal comparables in law enforcement and I see no reason now to refrain from continuing to do so. Also, the fact that one bargaining unit is arbitrating the Employer's contractual power to grant no wage increase when their agreement, like the one herein, provides for a wage increase is simply distinguishable because, should that union prevail it will be a determination of contractual rights rather than, as in the instant case, a matter of interests satisfied either in arbitration or by mutual agreement.

On the third Union argument however I not only reject the argument but find that it cuts in favor of the Employer's final offer. The simple fact of the matter is that although some members of some bargaining units (and in the case of the graduate students a significant number of employees) may have received wage increases there is no dispute that no bargaining unit received, as the Union seeks herein, an across the board general wage increase.

Finally, the record reflects that in all of the agreements the Employer has struck with unions since the 2009 collapse of the economy, all have provided for the general wage increase at the University, i.e., no wage increase at all.

Thus, I find that the internal comparables trend in favor of the Employer's final offer<sup>7</sup>.

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<sup>7</sup> After the close of the hearing the Union offered into evidence a recent award of Arbitrator McAlpin over the parties' wage reopener involving the Employer's patrol officers where he awarded the Union's final offer, again a 2.5% wage increase, over the Employer's offer of a wage freeze and the Employer objected. I grant the Union's motion to include the award into the record as it is, clearly in my view, warranted by Section 14(g)7 of the Act that allows for evidence of "any changes in any of the foregoing (factors) during the pendency of the arbitration." Having done so however I believe that Arbitrator McAlpin's award is easily distinguishable or that I am otherwise unable to follow his reasoning. First, Arbitrator McAlpin, at page 15 of his award, declares that the Employer's final offer of no wage increase must be analyzed as a deviation from the status quo, apparently some type of wage increase, and as such the Employer faced a higher burden of proof. I cannot however follow that rationale for two reasons. First, the status quo analysis is ordinarily used by interest arbitrators when a party is attempting to achieve a "breakthrough" and I simply do not see that an employer who seeks to reduce its wage expenditures is attempting to achieve a "breakthrough." Second, Arbitrator McAlpin decided, again using a status quo analysis, that he would not use the external comparable of the City of Champaign because in his interest award for the parties' original agreement he decided that other external comparables were appropriate. Finally, in analyzing the internal comparables Arbitrator McAlpin relied on the fact that "there are exceptions to the 0% wage pattern," but he did not apparently consider the weight or import of those exceptions as have I as described above.

#### F. External Comparability

That leaves then the issue of external comparability and when that factor is applied as it historically has been it favors the Union's final offer. In the first year of the parties' agreement their agreed upon wage increases placed the bargaining unit first among the external comparables at the starting rate and the pay rate at one year, four years, and ten years, of service and in the second rank at the pay rate for twenty years and top rate. For the year in dispute the Union's final offer places the unit at either the first or second rank in all of those years once again. Thus, this would seem to favor the Union's final offer.

However, the Employer's final offer also places the unit in either rank for all of those years but for the pay rate for fifteen years of service. Thus, the distinction between the two is not significant.

More importantly, this insubstantial distinction also leads me to conclude that I need not address the arguments of the parties as to the weight to be accorded external comparables that were negotiated before the country's economic collapse. Rather, in light of the fact that the difference between the two final offers in terms of external comparability is small, that the internal comparables strongly favor the Employer, that the Employer's financial condition is of relevance, and the fact that the loss of purchasing power when the employees' wages are compared to the cost of living is not substantial all lead me to conclude that the Employer's wage offer is the more reasonable of the two.

#### G. Conclusion

It is important to recall that this interest dispute is over only one year. In other words, although yearly wage reopeners are not the most sought after course of bargaining because they have the potential to disrupt labor peace and stability, the fact of the matter is that the parties will revisit this issue in one short year and, hopefully, under better circumstances that might lead them to a bilateral, rather than arbitrated, agreement.

#### AWARD

The Employer's final offer is hereby adopted.

**DATED: December 13, 2010**

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**Robert Perkovich, Arbitrator**

