

IN THE MATTER OF ARBITRATION

BETWEEN
AWARD:
STATE LABOR
The Board of Trustees of the
NO. University of Illinois
of Illinois Urbana-Champaign

ARBITRATION
ILLINOIS
RELATIONS BOARD CASE
S-MA-10-076
University

AND
ILLINOIS FRATERNAL ORDER OF
POLICE - LABOR COUNCIL

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

APPEARANCES

For the Union:
Supervisor

John R. Roach Jr., Attorney
Becky Dragoo, FOP Field

For the Employer:
& Labor Relations

Shig Yasunaga, Associate University Counsel
Corbin Smith, Manager Employee

ISSUES

What shall be the wage increases for year three of the current Collective Bargaining

Agreement effective August 23, 2009?

PERTINENT CONTRACT PROVISIONS

ARTICLE IV - WAGES

Section 2. Effective Date of Wages

c) **Year 3 - Effective August 23, 2009**

All members of the bargaining unit in employment as UIUC Police Officers on August 23, 2009 shall receive the across the board increase equivalent to the campus wage program general percentage wage increase for UIUC civil service employees as established by the Office of the Provost, unless the same is less than 2.5%, in which case the Union shall have the right to open the agreement for negotiations on wages.

RESPECTIVE POSITIONS

<u>Union:</u>	Effective August 23, 2009	2.5%
<u>Employer:</u>	Effective August 23, 2009	0%

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the Re-opener for year three - August 23, 2009 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 Urbana, Illinois on September 1, 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 November 11, 2010.

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.

STIPULATION OF THE PARTIES

The parties agree the following shall govern their Section 14 impasse resolution proceedings:

A) Arbitrator's Authority: *The parties stipulate the procedural prerequisites for convening the hearing have been met and that the Arbitrator Raymond E. McAlpin has jurisdiction and authority to rule on the issue set forth below including the express authority and jurisdiction to make adjustments to wages retroactively effective to August 23, 2009. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such adjustments retroactively to August 23, 2009.*

B) The Hearing: *The hearing will be convened on September 1, 2010, at 9:00 a.m. in Room 350A at the Edward R. Madigan Lab, 1201 West Gregory Drive, Urbana, Illinois 61801. Section 14(d), requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment and IPLRA Section 14(b) of the IPLRA requiring the appointment of panel delegates have been waived by the parties. Arbitrator McAlpin shall be the sole arbitrator in this matter. The hearing will be transcribed by a reporter which the Employer will secure, and the cost of the reporter's appearance and the Arbitrator's transcript copy shared equally by the parties. Should either party desire a copy of the transcript, it shall bear those costs.*

C) Impasse Issues: *The parties agree there is one economic issue in this case and that issue is:*

1) *What should the wage increases be for the bargaining unit employees effective August 23, 2009?*

D) Tentative Agreements and Final Offers: *Final offers on the remaining issue in dispute shall be exchanged by the parties at the start of the hearing. Once exchanged, final offers may not be changed except by mutual agreement, absent approval by the Arbitrator.*

E) Evidence: Each party shall be free to present its evidence in narrative and/or through witnesses, with advocates presenting evidence to be sworn on oath and subject to examination. The Union shall proceed first with its case-in-chief, followed by the Employer. Each party may present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.

F) Post-Hearing Briefs: Post-hearing briefs, if requested by the Arbitrator, shall be submitted to the Arbitrator within forty-five (45) days of receipt of the transcript of the hearing or such further extensions as may be mutually agreed or granted by the Arbitrator. The post-marked date of mailing shall be considered the date of filing. There shall be no reply briefs.

G) Decision: The Arbitrator shall base his decision upon the evidence and argument presented and the applicable factors set forth in Section 14(h) and issue his award within sixty (60) days after submission of briefs or any agreed upon extension requested by the Arbitrator, retaining jurisdiction for purposes of implementing the award.

H) Continued Bargaining: Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

I) Record: The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

UNION POSITION

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

In accordance with the language at Article IV, the Provost established a wage freeze for the civil service employees, and the Union on August 31, 2009 promptly issued its demand to bargain over year three of the Collective Bargaining Agreement wage rates. The Parties were unable to reach an agreement resulting in this interest arbitration.

The University is a large land grant institution with over 40,000 total students, any one of which may or may not be studying and or drinking at any given time. This facility is Illinois' flagship university and is one of the top ranked universities in the United States.

Despite the downturn in the economy the University has raised considerable amounts of funds. The University recently completed a search for a new president at the reported cost of \$300,000. A new president was hired at a base salary of \$620,000 and another \$225,000 in a longevity bonus if he remains in his position for five years. This is a significant increase over the previous president. In addition to his salary he was given a number of perks.

The Division of Public Safety serves a community of approximately 53,000 people. It has a patrol operation and other specialty units and is in every way a police force with large scale resources. In July, 2009 the University president announced that there would be a zero percent general salary increase for University employees. The Union notes, however, that many employees were given wage increases during this time.

The University Police Department contracts with outside vendors to provide police services for outside events which results in unrestricted cash that comes back to the Department. The Department also charges for an "overhead charge," which in an 8-month period raised \$93,000. This, compared to the Union's final offer of 2.5%, is a cost

of \$57,059.

The original set of external comparables was determined in a case involving this same Arbitrator in a decision dated April 12, 2004. Those comparables are Eastern Illinois University, Illinois State University, Southern Illinois University at Edwardsville, University of Illinois at Springfield and Western Illinois University. The Arbitrator specifically rejected Northern Illinois University and Southern Illinois University at Carbondale utilizing an award involving Arbitrator Perkovich dated May 19, 2002. In that decision the Arbitrator also did not accept the inclusion of the City of Champaign, the City of Urbana and County of Champaign as external comparables and remanded this question to the Parties for their next negotiations. In an interest arbitration decision by Arbitrator Clauss those local departments were included in the comparable group. The Union would note that the Employer itself identified Champaign City as the most appropriate comparable. The Parties agreed to link the wages of this agreement to the Champaign City's agreement one year behind those officers. In addition the bargaining unit's longevity movement was also linked to the City of Champaign.

Having identified Champaign City as the comparable and even utilizing the Union's offer in this matter, they would fall even further behind the wage rates for that unit. The language reproduced above was a compromise between the Parties in order to reach an agreement. By offering a wage freeze the Employer is abandoning its commitment to move toward the City of Champaign Police Department wages.

With respect to internal comparables the Employer's offer in this matter is a zero wage increase commencing in August, 2009. However, other Union members at the University have received wage increases during this time frame - for example, the graduate students after a strike received a 3% increase in 2009, a 5.7% increase in 2010 and a 4% increase in 2011.

The Union would note that some arbitrators have given extraordinary status to the ability to pay criterion trumping the remaining 7 ½ criteria to be taken into consideration. What arbitrators should consider are this Employer, these employees and this labor market. The Union would note that these same arbitrators would not give an extraordinary increase during boom times when the economy is strong. Many public employees are arguing rather than proving that they have fiscal shortcomings. Arbitrators in the State of Illinois have generally found that there is no true inability to pay as opposed to a lack of desire to pay.

The ability to pay factor contains two parts. The interest and welfare of the public are to be considered. It is in the best interest of the public to retain experienced and well-trained law enforcement officers. Most interest arbitrators have held these employers to a very high standard of proof. Protective services are considered essential to the welfare of the public. The interest and welfare of the public are not well served by trying to get by on the cheap. The Union would note that these decisions by arbitrators set the stage for thousands of other contracts that are made without arbitration. Reasonable

predictability and consistency of reasoning of arbitral standards are extremely important.

The facts of this case show that the University Fund, which is the major fund at this facility, does not support the Employer's argument of an inability to pay. Combined operating and non-operating revenues have increased every year since 2002 with the exception of 2005. The record shows that the state appropriations as compared to student revenue show a decline on reliance on state revenue. The Arbitrator in this matter must determine if the Employer has the ability to pay, not to show that it would make the University's lot more difficult. The University must prove that it cannot pay the award. The record shows that the University does not have an inability to pay.

Based on the above, the Union's offer is the most reasonable and the offer of a wage freeze is simply unreasonable. The Parties have linked wage increases and longevity to Champaign City. Even with the Union's offer there will be some diminution of that goal. The Union's offer is less than half of what the University Police Department charges vendors for "overhead." There is no justification to support a wage freeze.

EMPLOYER POSITION

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

Employer:

The current economic climate presents a situation where additional focus or weight should be given to a factor that may not have historically been strongly considered. This is particularly true where comparables' wages were set prior to the recent economic difficulties.

While the Union claims that the City of Champaign is the key comparable, the University notes that the steps of the City of Champaign and the University are not the same. This shows that the Parties did not simply intend for Champaign to be the only comparable, but rather "the locality" as agreed in the Collective Bargaining Agreement. The University falls approximately half and half between Champaign and Urbana. The officers received significant wage increases over the first two years of the current Collective Bargaining Agreement. As a result, their wages remain competitive with their geographical counterparts. Most officers received an 8% increase or more during the first year of the current contract, and in the second year of the contract 3% on top of that. The external comparables demonstrate that an increase is not justified for the third year of the contract. The FOP argues that its competitive position will be diminished if it receives a zero increase for the third year. The facts remain that the wages are still competitive and comparable in the locality. The Act also allows the Arbitrator to rely on factors other than external comparables and does not require a strict formulaic approach as presented by the FOP. The current economic situation should be factored into the decision.

The economic realities show that our state government is in a financial crisis. This has an impact not only on units of local government, but also the University itself. The state appropriation is approximately 50% of the funding for the University's day-to-day activities with the remaining 50% essentially coming from tuition. The University's current financial picture must focus in its ability to fund day-to-day operations. The FOP seems to focus on restricted funds that are not at the general disposal of the University. The University's ability to effectively function is directly affected by the State of Illinois financial problems. The University is in a situation which involves a great deal of uncertainty. At the conclusion of fiscal year 2010 the University had not received all of the money due under the state appropriation. There is a shortfall of approximately \$279,000,000. The trend shows that this amount is increasing from year to year. The Arbitrator should note that the majority of funds are restricted and cannot be used for day-to-day operations. This is also true of the asset structure of the University.

The University has taken steps to improve its financial situation through the use of travel limits, strict controls on new hires and sustainable initiatives. In addition there is a voluntary separation and retirement program intended to reduce the size of the campus work force. Unfortunately for the University, the savings due to these programs are not instant due to the cost of the buyout. However, these cost saving measures do provide support for the University's proposal in this matter.

The FOP noted that the Department provides services to other entities, however, because of their nature these charge-outs have the effect of transferring funds from one department to the another and not reducing the financial problem.

The future of the state's economic situation does not look optimistic. Governor Quinn stated that the upcoming fiscal year promises to present the greatest fiscal challenges our state has ever confronted. State approved appropriations have been on our schedule to be reduced. Due to the above, more weight should be given to internal comparables of the University. Internal units received no general wage increase although anniversary steps of all Collective Bargaining Agreements were honored where applicable.

The University, while not providing an across-the-board increase to the members of the Graduate Employee Organization, did increase the minimum salary. All employees not covered under the Collective Bargaining Agreement received a 0% wage increase. In addition the University has implemented a furlough program for certain employees. This resulted in a de facto pay decrease of approximately 2%. The internal factors are of unique interest to the Employer. While the University recognizes that this bargaining unit has the unique ability to request interest arbitration, it is part of the campus community and is dedicated to the same mission and purpose. Internal comparables weigh heavily in favor of the University's proposal especially in light of the raises in the first two years of the Collective Bargaining Agreement.

With respect to cost of living factor, taking into account the substantial raise that the officers received in the prior years, the cost of living for this period is not overly dramatic. Arbitrators have found no pressing need for increases given the low level of cost of living.

There was no real dispute over other factors contained in the statute. The police officers here receive benefits as set forth in the University's Policy and Rules.

Based on the above, the Arbitrator is requested to select the University's final offer on the sole economic issue presented in this matter covering the period of August 26, 2007 through August 21, 2010.

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 safety 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 this matter the Union has proposed an amount comparable to the cost of living and the Employer has proposed a less than cost of living increase.

Of the eight factors required of the Arbitrator to consider in this matter, factors three and four are the most important. The third factor is "interest and welfare of the public and the financial ability of the unit of government to meet these costs." The

Employer made a number of compelling arguments with respect to the financial impact of both offers on the University's budget. While the Employer did not plead an inability to pay, there was strong evidence that, if the Arbitrator were to choose the Union's offer, it would place a hardship on the University and subsequently affect the interest and welfare of the public since monies would have to be taken from other areas of the budget due to the severe financial problems of the State of Illinois. This undoubtedly would have some impact on the citizens of the State of Illinois. The Union argued that, if wages were not comparable, then the University would be unable to attract and keep competent employees.

This is an excellent argument, however, there was no showing at the hearing that any unusual turnover was being experienced within this bargaining unit or that the University was unable to hire those with sufficient skills to perform these jobs. Certainly, this could become a factor in the future. While the above factor is not determinative in this matter, it certainly mitigates in favor of the Employer's position and must be given substantial weight in the final decision.

With respect to criterion four, in an arbitration decision written by this Arbitrator in 2004 all state universities with the exception of SIU Edwardsville and NIU were the external comparables to be used by these Parties. However, in the most recent contract negotiations the University took the position that it is the City of Champaign that should be the key external comparable. As a result of this, the officers received extremely large increases in the first year of this contract followed by a more modest increase in the second year of the contract. Since the Parties voluntarily agreed to this single comparable, any

deviation from the status quo should not be taken lightly. The purpose of this is to provide some consistency and continuity in the collective bargaining process. In addition, this is a wage re-opener and is part and parcel of the current Collective Bargaining Agreement utilizing that single external comparable. There is nothing contained in the record of this case that would allow this Arbitrator to approve the deviation from the status quo. As noted above, the proponent of any such change must fully justify its position providing strong reasons and a proven need. That showing has not been made and, therefore, the external comparable remains as determined at the beginning of this contract. In addition the Arbitrator would note that it was unrefuted that it was the Employer that made this suggestion at the bargaining table, and it was fully accepted by the Union.

The University relies to a great extent on its internal pattern. This Arbitrator has found in a number of arbitrations that internal comparables are generally not comparable to police units with the possible exception of firefighters which are not at issue here. Those who are involved in public safety are often put at great personal risk in carrying out their assigned duties. The internal comparables mentioned by the Employer do not have enough in common with this police unit to be in any way directly comparable. The Arbitrator would note that there are exceptions to the 0% wage pattern and that most of those covered by the 0% are not represented and therefore have little say in the wage amount received.

The record in this case shows that the Employer, as are many public sector units in the State of Illinois, is in difficult financial circumstances. There is a good deal of uncertainty as to how the University will achieve income necessary to run day-to-day operations; however, the Arbitrator would note that this is a unique set of circumstances with a unique bargaining unit and a bargaining history which favors the Union's position. In addition, even if the Union's offer were accepted, it would have a very limited impact on the overall budget of the University as the Union's proposal is an insignificant % of the overall budget.

The Arbitrator notes that the University has taken numerous steps to reduce its budget problems. The compensation of the newly appointed president is irrelevant to this matter. The main issue for this Arbitrator is that, even with a large increase in the first year of the contract, this unit remains well behind the external comparable agreed to by the Parties. Even with the Union's proposal, they will remain behind the City of Champaign Police Department. Given the Employer's proposal, they would be even further behind.

All in all this is a unique situation. The Parties had agreed that they would make a good faith effort to close the gap between the City of Champaign Police Department pay rates and the University Police Department pay rates, and it is the Union's proposal that will serve that goal.

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 Union's offer.

Dated at Chicago, Illinois this 1st Day of December, 2010

Raymond E. McAlpin, Arbitrator