

DONALD W. COHEN, ARBITRATOR

In the matter of the
Arbitration between

CITY OF MORRIS

ILRB Case No. S-MA-10-180

Employer

and

METROPOLITAN ALLIANCE OF POLICE,
MORRIS POLICE CHAPTER #63

Union

Appearances:

Employer: Thomas Canna, Attorney

Union: Steven Calcaterra, Attorney



BACKGROUND

The City and the Union are parties to a collective bargaining agreement with the effective dates of 05/01/09-04/30/12. The agreement provided for wages for the first year of the contract and for a wage reopener only, for the last two years of the contract. The wage reopener provides:

The parties have agreed to a three-year collective bargaining agreement from 05/01/09-04/30/12 concerning the terms and benefits of this agreement, however the City and the Union have agreed only upon the wages for the 2009-2010 fiscal year. The parties have further agreed to open the wage negotiations no later than 90 days prior to the following fiscal year (05/01/10). This reopener applies

only to wages (Section 9.1) for the time period from 05/01/10-04/30/12. Negotiations for any other provisions will only be upon mutual agreement between the parties. This provision is not a waiver of any rights otherwise afforded to either party under the Illinois Public Labor Relations Act. In the event that the parties are unable to resolve an impasse concerning wages, the dispute shall be resolved in accordance with Section 14 of the Act

On or about January 20, 2010, the Union submitted a demand to bargain over the wages to be effective pursuant to the wage reopener, along with a mediation demand pursuant to Section 14(j) of the Act. The parties were unsuccessful in negotiations and mediation and the matter was brought to arbitration.

FINAL OFFERS OF THE PARTIES

The Union: 2.75% increase for the year 2010-2011 and 3% for the year 2011-2012.

The City: 1.5% for each of the last two years of the collective bargaining agreement.

APPLICABLE STATUTORY PROVISIONS

The determination of wages is an economic issue which is subject to Section 14 (g) of the Act. 5 ILCS 315/14 (g) provides:

On or before the conclusion of the hearing held pursuant to subsection (d) the arbitration panel shall identify the economic issues in dispute... 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 described in subsection (h).

Section 14 (h) of the Act establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration:

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 excuse time, insurance and pensions, medical and hospitalization benefits, 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 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.*

STIPULATIONS OF THE PARTIES

1. Both parties stipulated that Donald Cohen would be the sole arbitrator in this matter to hear and decide all issues presented to him, as authorized by the Illinois Public Labor Relations Act.
2. The hearing in the above referenced case would convene on September 10, 2010, at the Morris City Hall, located at 320 Wauponsee Street, Morris Illinois at 9:00 a.m.
3. The parties agreed to waive Section 14 (b) of the Act requiring the appointment of panel delegates by the Employer and the Union and agreed that Arbitrator Cohen would serve as the sole arbitrator in this dispute.
4. The parties further agreed that the hearing would be transcribed by a court reporter or reporters, whose attendance was secured for the duration of the hearing by the Arbitrator by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript were agreed to be shared equally by the parties.
5. The parties stipulated that the arbitration hearing would involve collective negotiating matters between public employers and their employees and representatives, and therefore would not be subject to the public meetings requirement of the Illinois Open Meetings Act, 5ILCS 120/1, *et seq.*
6. All sessions of the hearing would be closed to all persons other than the Arbitrator, the court reporter(s), representatives of the parties, including negotiating team members, witnesses to be called at the hearing, resources of the parties, members of the bargaining unit represented by the Metropolitan Alliance of

Police, Morris Chapter #63 and elected officials and the Management staff of the City and its Police Department.

7. The parties agree that the following issues remain in dispute and that these issues would be submitted for resolution by the Arbitrator and that the Arbitrator would be required to choose between the City's offer or the Union's offer on each of the following issues, inasmuch as the following issues were, for the purposes of hearing, determined by the parties to be "economic" within the meaning of Section 14 (g) of the Illinois Public Labor Relations Act.
8. The parties exchanged final offers on all issues listed in paragraph 7, above, on September 1, 2010, at 5:00 p.m. by e-mail with copies provided to the Arbitrator
9. The parties agreed that the following package of information would be submitted by stipulation to the Arbitrator at hearing on September 10, 2010:
 - a. Each party's last offer of settlement on each issue to be considered and decided by the Arbitrator (Joint Exhibit 1 (Union) and Joint Exhibit 2 (City)). Once exchanged by the parties, final offers of settlement would not be subject to change, except by mutual agreement of the parties in writing.
 - b. These are the Ground Rules and Stipulations of the Parties. (Joint Exhibit 3)
10. As the moving party, the Union would proceed with its case first. Once the Union had presented its case-in-chief as to all issues in dispute, the City would present its case-in-chief. Each party was free to present its evidence in either the narrative or witness format or a combination thereof. Neither party waived the right to object to the admissibility of

evidence, consistent with applicable regulations (including 80 Ill. Adm. Code # 1230.90(e)).

11. Post - hearing briefs were to be submitted to the Arbitrator, with a copy for the opposing party sent through the Arbitrator, no later than October 29, 2010 or 35 days from receipt of the full transcript of the hearing by the representatives of the parties responsible for preparing the briefs, or such further extensions as agreed to by the parties or as granted by the arbitrator. The date of postmark of mailing is to be considered the date of submission of the brief.
12. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Public Labor Relations Act. The Arbitrator shall issue his award by December 3, 2010, or 60 days after submission of the post hearing briefs or any agreed-upon extension requested by the Arbitrator.
13. 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.
14. Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois Labor Relations Board are to govern these arbitration proceedings.
15. The parties represented and warranted to each other that the undersigned representatives were authorized to execute on behalf of and bind the respective parties they represent.
16. 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. (Jt. EX.3)

THE EXTERNAL COMPARABLES PROPOSED BY THE PARTIES

The City of Morris proposes that the appropriate comparable communities for consideration by the Arbitrator are:

Bourbonnais, Bradley, Channahon, LaSalle, Manteno, Ottawa, Peru, and Pontiac.

The Union *relies* upon the comparable communities of:

Braidwood, Channahon, Coal City, Crest Hill, Shorewood, Wilmington, Yorkville and Grundy County.

INTERNAL COMPARABLES

The City also relies upon the fact that a 1.5% raise for the period in question, was granted to a large number of non-union City employees.

DECISION

THE ECONOMY

Until the great recession commenced in the fall of 2008, the guiding principle applicable to the determination of wage rates was how the collective bargaining agreement of the parties in question compared to the standards established for cities and towns similar to their situation. Then the economy tanked and arbitrators began to adopt a theory that economic conditions were the most important consideration, in effect, overriding the prior criterion of comparables.

The genesis of this concept appears to be the opinion and award issued by arbitrator Benn in County of Boone, S-MA-08-025 and issued on March 23, 2009. Benn premised his determination on his conclusion that the state of the economy outweighed the prevailing standard that comparability was the key factor.

He observed at page 8:

The following changes in the economy have occurred since the start of these proceedings:

First, on October 1, 2008-the date of the hearing-the Dow Jones Industrial Average ("DJA") had already begun its slide, was at 10,831. On the trading day before the issuance of this award, the DJA stood at 7278- a 33% decrease since the hearing.

Second, contemporaneous with the dramatic fall in the stock market, credit markets have frozen up, many companies have gone out of business or cut back operations, massive layoffs have occurred and government bailouts of staggering proportions have commenced in an effort to keep the economy moving again. The new administration has implemented economic stimulus packages in further efforts to jumpstart the failing economy. The results of these efforts are yet to be seen. And the news just keeps getting worse.

Benn continued at page 13, stating:

With an economy in freefall, unemployment marching steadily upward, credit markets frozen, businesses laying off or closing, revenue streams diminishing, government intervention programs of massive proportions seeking to prevent further harm and not knowing whether, when or to what degree does programs will succeed in stopping the bloodletting, how am I as in the interest arbitrator rationally supposed to set the economic terms of a multi-year collective bargaining agreement which the parties unsuccessfully

attempted to reach before the economy crashed with the added requirement that my hands are tied by Section 14 (g) and I can only select one of the parties' economic offers? The task becomes particularly difficult for interest arbitrators when, in the past, heavy emphasis has been placed on economic settlement in comparable communities and in this transition period, comparisons end up being major contracts which were negotiated before the current economic crisis.

Benn expanded his position in County of Rock Island, S-MA-09-072, dated April 7, 2010 when he pointed out that the unemployment level for the Country was extremely high and that of the State even more so. He then observed at page 10:

Instead of placing great weight on external comparability as in the past, to set wage and benefit levels during these uncertain economic times, I have focused more on the cost of living and inflation. North Maine, supra at 13 (“[i]nstead of relying upon comparables, in ISP and Boone County, I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act-- specifically, the cost of living (Section 14(h)(5) as shown by the Consumer Price Index (CPI)”).

In support of his reason for also relying upon cost-of-living considerations, he then quotes at page 12, Christina D. Romer, Chair of the President's Council of Economic Advisors as stated in “The Economic Assumptions Underlying the Fiscal 2011 Budget” (February 1, 2010), who wrote:

Finally, for the inflation rate (measured using the GDP price index), we project that inflation will be 1 percent over the four quarters of 2010. 1.4 percent over 2011, and 1.7 over 2012. These projections are lower than those of some forecasters and higher than others. Low levels of projected inflation reflect the effects of continued high levels of slack in the economy. Under these conditions, we see little risk of

noticeably increased inflation at the same time inflationary expectations appear to be well anchored, and so we do not project rapid declines in inflation or deflation. The Administration anticipates that inflation will level off at 1.8 percent, squarely within the Federal Reserve's long-run projection range of 1.7 to 2 percent.

The lesson to be learned from Arbitrator Benn's recent awards is that a new dynamic has been introduced into the standards established in Section 14 (h) of the Act. Just how this impacts upon the instant case is contingent upon a number of factors, the key ones being: when comparable communities negotiated wage rates for police officers (or the rates were determined in interest arbitration); what is the current status of the economy; and has the municipality in question established reasons why it cannot pay the increase requested by the union?

Benn and other arbitrators have made clear that contract increases negotiated prior to the economic downturn are of little relevance to the issue of comparability under present circumstances. I am in total agreement with this concept and will not take into consideration those communities which negotiated wage increases prior to 2009.

COMPARABLES

I have considered the Union argument that comparable communities should be restricted to a 25 mile radius of Morris because of competition for employees with similarly situated municipalities. The City's comparables while sometimes falling outside the 25 mile radius are certainly within an area which would make them appropriate for consideration and I have done so. Those communities, which are relied upon by the parties which have entered into collective bargaining agreements from May, 2009 on are as follows:

CITY COMPARABLES

The municipalities are listed, followed by the effective date of the contract, which may have been entered into subsequent to the date indicated, and the wage increases for the years 2009, 2010 and 2011.

Channahon: 5/09 3%-3%-3%

LaSalle: 5/09 0%-3%-3%

Ottawa: 5/09 2%-3%-3%

Peru: 5/09 No indication of the amount of the first-year increase and a re-opener for the next two years.

Pontiac: 4/09 3%-3.25%-3.5%

UNION COMPARABLES

Braidwood: 5/09 2%-3%

Channahon: 5/09 3%-3%-3%

Coal City: 1/10 1.5%-2%-2%

MINOOKA ARBITRATION AWARD

Minooka 4/09 3% -2.5%-2.5%

The City argues that wages alone are not the primary consideration. It points out that, as contrasted with the other communities, it pays the full amount for health insurance and that the costs of such have been increasing continuously.

While this expense is one which figures into the entire economic package for the collective bargaining agreement, it has been built into the contract for some time and is not a factor in these proceedings.

The City also contends that consideration should be given to the fact that the unemployment rate for Illinois far exceeds the national

average in that Grundy County in which it is situated, has an even higher rate of unemployment, ranking 13th in the State out of 102 counties.

The City also points out that its revenue funds continue to decrease during the period of the recession and that there is no indication that such will reverse course. Included in its argument is the contention that projected cost-of-living increases indicate at most, a 1.8% increase in the foreseeable future.

All of the foregoing are measures considered by Arbitrator Benn and other arbitrators in their recent awards dealing with the economic conditions with which communities are confronted. Notwithstanding, these arbitrators also have considered the possibility that the economy will commence a recovery.

Notable, is the fact that arbitrator Benn, in his Boone decision, supra. observed that on October 1, 2008 the Dow Jones Industrial Average stood at 10,831 and on the trading day before the issuance of his award, had fallen to 7,278-a 33% decrease. Clearly this was an element in the factors underlying his determination that the state of the economy was the primary consideration in determining appropriate wage rates.

As of Friday, November 19, 2010, the Dow Jones had risen to 11,203-a 4% increase over the high adverted to by Benn in his award. I do not profess to be Cassandra, prophesying the future of the nation's moribund economy, but the telltale signs of a rebound are readily apparent in the upsurge of the Dow Jones; the repayment of government loans; General Motors coming out of bankruptcy and recently having a highly successful initial public offering of stock; and the fact that the cost-of-living is projected to increase, albeit at a slower rate. These point to the fact that comparables are again the major consideration.

AWARD

The union wage proposal is adopted.



Donald W. Cohen, Arbitrator

Dated: November 26, 2010