

**BEFORE THE ARBITRATOR
THOMAS F. GIBBONS**

In the Matter of the Interest Arbitration)	
Between)	
COUNTY OF LAKE and)	
LAKE COUNTY SHERIFF'S DEPARTMENT)	ILLINOIS LABOR RELATIONS BOARD
Employer)	
and)	
TEAMSTERS, LOCAL 700)	
Union)	

Interest Arbitration No.:	S-MA-11-010
Hearing Date:	May 24, 2012
Hearing Place:	Lake County Sheriff's Office Waukegan, IL
Appearances:	
For the Employer:	A. Lynn Himes, Esq.; Paul J. Cisastko, Esq. Law Offices of Scariano, Himes and PetRARCA, CHTD Two Prudential Plaza, Suite 3100 Chicago, IL 60601-6702 (312) 565-3100
For the Union:	Michael D. Jacobs, Esq. Teamsters, Local 700 1300 W. Higgins Road, Suite 301 Park Ridge, IL 60068 (847) 939-9700
Arbitrator:	Thomas F. Gibbons, Esq. P.O. Box 5465 River Forest, IL 60305 (312) 503-1152
Award Date:	November 14, 2012

JURISDICTION

The undersigned Arbitrator was duly appointed by the parties to render a final and binding decision in this matter. The Union and the Employer agreed at the outset of the interest arbitration hearing that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315/14, (hereinafter referred to as "IPLRA" or "Act"). Pre-Hearing Stipulations and Agreements, Section A (Arbitrator's Authority).

STATEMENT OF ISSUES

The sole issue to be determined is economic. The issue presented to this Arbitrator is the Union's proposal to revise the bargaining unit's step increase from 1.5% to 2.0%. Tr. 6; Union Ex. 4.¹ The Employer's proposal on steps is to maintain the status quo.²

All other tentative agreements between the parties presented in this interest arbitration shall be incorporated into the Arbitrator's Award, per the parties' pre-hearing stipulations. Tr. 62; Pre-Hearing Stipulations and Agreements, Section C (Tentative Agreements and Final Officers), and Union Exhibit Book #1 and Employer Exhibit Book #1.³

FACTUAL BACKGROUND

This interest arbitration involves a successor contract between the Lake County Sheriff's Department Correctional Sergeants bargaining unit, represented by Teamsters, Local 700, (hereafter "Teamsters" or "Union") and the County of Lake and the Lake County Sheriff's Department (hereafter "Lake County" or "Employer"). Lake County is located in the northeast corner of Illinois, midway between the cities of Chicago and Milwaukee. The County's 457 square miles of land borders Lake

¹ References to the hearing transcript are designated as "Tr. ___."

² The narrow issue before this Arbitrator is only the issue of step increase not the issue on the percentage wage increases for any of the base years over the term of the new Agreement. Tr. 6

³ The parties at Hearing submitted Exhibit Notebooks. For purposes of identification, the notebooks are marked as Union Exhibit Notebook #1, and Employer Exhibit Notebook #1.

Michigan to the east, runs north to Wisconsin, west to the chain of lakes, and runs south to the Cook County boarder. The County has a population of 703,462 and is the third largest county in Illinois. The County consists of 53 municipalities and 18 townships. There are unincorporated areas in 17 of the 18 townships with a total population of 82,520. Employer Ex. 12 and 4, and Employer Post-Hearing Brief, p. 2.

Lake County Sheriff Mark Curran is one of the county's elected officials, whose office is a constitutional office in Illinois that has exclusive powers and authority. The Lake County Sheriff's Office stated mission is that it exists to preserve life and property, to enforce the laws of the State of Illinois and to protect the rights of all citizens to live in peace. The goals of the Sheriff's Office include the prevention of crime, deterrence of crime, apprehension of offenders, and recover and return of property. Employer Post-Hearing Brief, p. 3. The Sheriff's Office is one of 24 other Lake County departments, which all report to the Lake County Board through a committee structure. All 25 departments, whether the officials are elected or appointed, fall under the County's budget jurisdiction, rules and planning requirements. *Id.* p. 4.

Like most public bodies, the Lake County Board has struggled financially due to the recent economic downturn. The FY2010 operating and capital budget totaled \$498 million. Tr. 28; Employer 12. This amount was \$6 million less than the previously adopted budget. *Id.* In 2010, significant issues impacting the budget included approximately \$6 million annual revenue loss from state sales and business taxes. *Id.* In addition, there were significant declines in anticipated revenue from new property tax growth related to the housing and commercial development slowdown. Other issues faced by the county was a 50% percent reduction in interest income due to historically low interest rates, escalated costs to fund retirement plans due to the investment fund loses in the stock market, to name but a few examples. Tr. 28-29; Employer Ex. 12. To meet these challenges the county engaged in a variety of fiscal belt tightening, from departments cutting \$3.5 million from their approved

budgets, voluntary reductions in hours by employees and an accelerated retirement option (ARO) that was offered. *Id.*

The FY2011 operating budget was \$306 million, which amounted to \$9.3 million less than the previously adopted budget. Tr. 31. Again, the county's departments worked together to close the budget deficit by holding vacancies, cutting spending, renegotiating contracts and implementing other cost saving programs, including the ARO in which a total of 117 employees chose to participate. *Id.* In addition, most departments also reduced work force levels by holding vacancies and eliminating positions. Tr. 30-31. Non-union county employees did not receive a wage increase in FY2010 or 2011. Tr. 32. In total, since 2009, the county has eliminated 42 positions and defunded an additional 72 positions for projected savings of more than \$9 million. Tr. 32-33. All totaled, the county has saved nearly \$50 million in salary expenses between 2009 and 2011 cumulatively. Tr. 126. In 2008, the county had 2,744 positions, and in 2012 the county started with 2,633 positions. Tr. 35; Employer Ex. 12. In addition, there are 82 positions that are unfunded, meaning the head-count remains on the county payroll but the positions are not filled. Therefore, the county is actually down from 2,744 positions to 2,551 positions for FY2012 budget. Tr. 35. In the past year, the county's economic position has slightly improved. The FY2012 budget increased 1.6% from 2011 due to improvements in the economy and increased service demand. Employer Ex. 12. However, the FY2012 budget is almost \$20 million less than the 2009 budget. *Id.*

There are five collective bargaining units within the Sheriff's Office, of which four are between the Employer and the Teamsters. Tr. 8. There are three bargaining units in the Sheriff's Law Enforcement Division (Highway Patrol Peace Officers/Deputies, Sergeants and Lieutenants). There are two bargaining units in the Sheriff's Correctional Division (Correctional Officers and Correctional Sergeants). Teamsters Local 700 represents all units except Peace Officers who are represented by the Illinois Fraternal Order of Police. Tr. 8, Employer Post-Hearing Brief, p. 17. All five contracts are currently in interest arbitration. Tr. 9.

The parties before this Arbitrator are at interest arbitration over the terms of their third collective bargaining agreement. The first agreement was effective December 1, 2004 to November 30, 2007. The second and most recent agreement was effective December 1, 2007 to November 30, 2010. Employer Ex. 1 (3a) and Union Ex. 1 (2). In the latest negotiations the parties were unable to resolve all issues. A Demand for Compulsory Interest Arbitration was then filed with the Illinois Labor Relations Board, which per the IPLRA, appointed this Arbitrator as interest arbitrator and chairman of an interest arbitration panel selected by the parties. The parties have waived their statutory right to an arbitration panel and have mutually agreed that this Arbitrator will be the sole arbitrator for this matter. Pre-Hearing Stipulations and Agreements, Section B.

STATUTORY CRITERIA

This proceeding is governed by the provisions of the Illinois Public Labor Relations Act, 5 ILCS 315 *et seq.* The IPLRA's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services. The IPLRA makes a distinction between economic and non-economic issue. The IPLRA states, "as to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." 5 ILCS 315/14(g)(2006). That same restriction is not placed on the items considered non-economic, which allows the Arbitrator flexibility. Section 14(h) of the Act requires that an interest arbitrator base his or her decision upon the following criteria or "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 proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:

- (A) In the 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 of private employment.

STIPULATIONS

At hearing the parties entered into the following Pre-Hearing Stipulations and Agreements:

The parties agree the following shall govern their Section 14 and Article 29 impasse resolution proceedings:

- A) **Arbitrator's Authority:** The parties stipulate the procedural prerequisites for convening the hearing has been met and that the Arbitrator Thomas Gibbons has jurisdiction and authority to rule on the issues set forth below including the express authority and jurisdiction to make adjustments to wages. 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.
- B) **The Hearing:** The hearing will be convened on May 24, 2012 at 10:10 a.m., 25 South Martin Luther King, Jr. Avenue, Waukegan, Illinois. 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 Gibbons 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) **Tentative Agreements and Final Offers:** The tentative agreements presented in this case shall be incorporated into the Arbitrator's Opinion and Award. Final offers on the remaining issue(s) 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.

- D) **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 Teamsters shall proceed first with its case-in-chief, followed by the Employer's case-in-chief. Each party may present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.
- E) **Post-Hearing Briefs:** Post-hearing briefs shall be submitted to the Arbitrator within sixty (60) 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.
- F) **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.
- G) **Continued Bargaining:** Noting 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.
- H) **Record:** The Arbitrator shall retain the official record of the arbitration proceeding until such time as the parties confirm that the award has been fully implemented.

PARTIES' POSITIONS

Employer's Position

The Employer's proposes to maintain the status quo of a 1.5% step increase. The Union's proposal for a 2.0% increase, according to the Employer, does not meet the requirements of a so-called "breakthrough." The Employer argues that such matters must first be negotiated at the bargaining table before being brought to arbitration. However, the Union did not raise the issue in negotiations and only raised its increased step proposal at arbitration. The Union, the Employer adds, failed to meet its "extra burden" in seeking to depart from the status quo. Specifically, the Union failed to show: 1. there is a proven need for the change; 2. the proposal meets the identified need without imposing an undue hardship on the County, and 3. there has been a *quid pro quo* to the County of sufficient value to buy out the change or that other comparable groups were able to achieve this provision. Additionally, the Employer argues it is not justified to provide this step increase at a time the

economic downturn has forced the county to take unprecedented measures to balance its budget, including reducing the county payroll by nearly \$50 million between FY2009 and FY2011, and reducing the county operating budget nearly \$20 million between the same time frame. Finally, the Employer holds that the Correctional Sergeants and Highway Patrol Sergeants are not similarly situated, as Correctional Sergeants are not sworn peace officers with arrest authority, and therefore they are not otherwise internally comparable such that their percentage step increase must be equal to that of the sergeants in the Law Enforcement Division. Accordingly, the Employer asks the Arbitrator to adopt its economic proposal and award the Correctional Sergeants a 1.5% step increase.

Union's Position

The Union argues that there are adequate grounds for a "breakthrough" 2.0% step increase for Sheriff's Department Correctional Sergeants. The Correctional Sergeants and Highway Patrol Sergeants had step parity prior to the time the Correctional Sergeants unionized and entered into their first contract in 2004. The step parity was lost as part of the first-contract negotiations between the parties. The Union argues Correctional Sergeants and Highway Patrol Sergeants are both first level command staff and each provides the first level of supervision to lower-level correctional officers or highway deputies. It is the Union's view there should not be any wage differential between the sergeants because of their similar supervisory duties. Due to the step disparity between these two groups since late 2004, the salary for Highway Patrol Sergeants has grown at a faster rate over those years. This proposal attempts to restore parity so the Correctional Sergeants will no longer lose ground to the Highway Patrol Sergeants. The Union believes this change is justified because it reestablishes a historical step and prevents further erosion of pay differential between bargaining units with little, if any, dissimilar responsibilities. While acknowledging that the Employer has engaged in belt-tightening during the most recent economic downturn, the Union believes the County is now in a position to support step parity because savings have been realized by reductions in the county workforce and at the same time the economy

has begun to show signs of improvement. Accordingly, the Union asked the Arbitrator to revise the Correctional Sergeants step increase from 1.5% to 2.0%.

ARBITRATOR’S DISCUSSION AND CONCLUSION

A threshold issue has been raised as to whether this Arbitrator should rule on the merits of the single issue, the step-increase proposal, presented at hearing when there was no meaningful bargaining over the matter. “The Union’s wage proposal to increase the step from 1.5% to 2.0% was never presented to the Employer as part of these limited negotiations and was only made on the day of arbitration,” the Employer argues. “This lack of serious bargaining, in and of itself, should be considered fatal to the Union’s proposal.” Employer Post-Hearing Brief, p. 15. The Union states that “(t)he parties spent a (spent) considerable period of time bargaining over many months. Due to those efforts, the parties reached a number of tentative agreements (See Union Exhibit No. 1), which has left a single issue open for interest arbitration.” Union Post-Hearing Brief, p. 1.

The documentary evidence supports the Employer’s view that the step-increase proposal was not raised by the Union during negotiations between the parties. Union Ex. 1 and Employer Ex. 2. Only one set of proposals were exchanged during negotiations. *Id.* There were three tentative agreements: a name change for the Union; an agreement requiring seniority to be used as a tiebreaker in a shift preference bidding, and an update to the list of holidays. *Id. See also Union and Employer’s Stipulated Agreements.* The day prior to hearing the parties also agreed on the percentage wage increases for the base years over the term of the new Agreement, which was the Employer’s Final Offer. Tr. 5-6, Employer Post-Hearing Brief, p. 13. *See also Union and Employer’s Stipulated Agreements.* The parties agreed to the following:

<u>Fiscal Year</u>	<u>Begins On</u>	<u>Wage Increase</u>
FY 2011	12/1/2010	0%
FY 2012	12/1/2011	2.5%
FY 2013	12/1/2012	2.0%

While the Union made a wage proposal over the term of the new Agreement, as part of its bargaining proposal to the Employer, the Union did not propose in writing a change in the Correctional Sergeants step-increase. Union Ex. 2. No evidence was presented a hearing to show that the step-increase issue was raised either in writing or verbally at any time during the negotiations, thus further supporting the Employer's claim that the first time the issue was raised by the Union was as part of its Final Offer on the eve or the day of hearing.

Final offer arbitration, introduced in 1984 through the Illinois Public Relations Act has, as its objective, the advancement of collective bargaining and the negotiation process and, whenever possible, voluntary agreement between the parties. "This brand of interest arbitration," as observed by Arbitrator Goldstein, "was clearly intended to supplement the bargaining process, not supersede it." *City of DeKalb and DeKalb Professional Firefighters Association, Local No. 1236, I.A.F.F. , S-MA-87-76* (Goldstein,1988), p. 7. Arbitrator Goldstein stated:

Each party in the ordinary course of affairs, should and must be able to present data sufficient to justify their proposal; any "breakthroughs" or changes in the status quo should be bargained for and negotiated out at the table. Otherwise, both the particular bargaining unit involved in this dispute, Local 1236 of the IAFF, and the other collective bargaining units negotiating with the City, may be less inclined to resolve their disputes outside of arbitration. Were it otherwise, each proponent would hold back or wait out the bargaining process, anticipating interest arbitration, where they hoped to "get more" from an outside, third party neutral." *Id.* p. 8.

There is widespread agreement among arbitrators on the bargaining requisite. *Village of Broadview and Illinois Fraternal Order of Police Labor Council, S-MA-06-145* (Cox, 2007). "Interest Arbitration is not intended to initiate a bargaining process but only to determine which of the final positions after bargaining most closely complies with applicable factors set forth in subsection 14(h)." *Id.*, p. 3. In *City of North Chicago and Illinois Fraternal Order of Police, S-MA-99-101* (Briggs, 2000), Arbitrator Briggs observed: "As noted in countless interest arbitrations across many states over the years, interest arbitration should be a last resort when

good faith, give-and-take negotiations have broken down. In the present case, the parties have discussed the residency issue at the bargaining table only recently.... The Arbitrator therefore concludes that the parties have not really given the collective bargaining process a chance to work with regard to the residency issue.” *Id.*, p. 16.

In what has been described as a Landmark Award involving the so-called “breakthrough” doctrine, Arbitrator Nathan laid out three tests to be satisfied before a proposed substantial change in an Agreement should be adopted: (1) the old system or procedure has not worked as anticipated when originally agreed to or, (2) the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) or (3) the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems. *Will County Board and Sheriff of Will County and American Federation of State, County and Municipal Employees, Council 31*, S-MA-88-9 (Nathan, 1988), p. 51-52. Arbitrator Nathan also wrote, as a condition of the Arbitrator’s deliberation of the issue, the parties must have bargained about the change. “These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.” *Id.*, p. 52. He concluded: “Without first examining these threshold questions, the arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary to encourage collective bargaining.” *Id.*

The single issue before this Arbitrator is one that could legitimately be described as a “breakthrough,” namely a proposal to substantially modify a long-standing benefit. The evidence is uncontroverted that the Union did not propose the step-increase during negotiations with the Employer, and that the proposal was only raised as part of the Union’s Final Offer. To rule on the Union’s proposal would undermine the statutory preference in Illinois for good-faith collective bargaining to take place before presenting a Final Offer in interest arbitration, especially as it relates to a

“breakthrough” contractual provision. To permit either party to circumvent the negotiation process, and appeal directly to the arbitrator for a “breakthrough” contractual change, would undermine the legitimate role each party plays in shaping their own Collective Bargaining Agreement through the healthy give-and-take of contract negotiations.

AWARD

After studying the record in its entirety, including all of the evidence and argument presented by the parties, the following is held:

The Union’s economic proposal seeks to revise the bargaining unit’s step increase from 1.5% to 2.0%, and the Employer’s economic proposal is to maintain the status quo. The Union’s proposal is rejected and the current contractual step increase of 1.5% shall remain in effect.

The following contractual terms have been agreed to by the parties and are hereby incorporated into the new Collective Bargaining Agreement:

1. Change the name from ~~Teamsters Local 714~~ to Teamsters Local Union 700 as applicable in the contract.

2. Article 16 - Wage Rates

December 01, 2010 Employees will receive a 0% wage increase.

December 01, 2011 Employees will receive a 2.5% wage increase.

December 01, 2012 Employees will receive a 2.0% wage increase.

These wage increases will be retroactive and issued by separate/individual payroll checks upon signing of the contract.

3. Shift Bidding: Section 10.3 Shift Preference
Management recognizes the hardships that shift work places on individuals and the importance of working with individuals to accommodate shift preferences. Management agrees to solicit choice of shift preferences of all the bargaining unit members during each year during the month of December. Management further agrees to place each bargaining unit

member on their choice and seniority will be the determining factor (member with more seniority will have preference over lower seniority members) where conflict exists between members.

4. Article 17 – Holidays

<u>Fixed/Floating</u>	<u>Holiday Type</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Fixed	New Years Jan 1	Sat., Jan 1	Sun., Jan 1	Tues.,
Floating	M.L.K. Jr. Day Jan 21	Mon., Jan 17	Mon., Jan 16	Mon.,
Floating	Lincoln’s Birthday Feb 12	Sat., Feb 12	Sun., Feb 12	Tues.,
Floating	Floating Holiday March 29	Fri., April 22	Fri., April 6	Fri.,
Fixed	Memorial Day May 27	Mon., May 30	Mon., May 28	Mon.,
Fixed	Independence Day July 4	Mon., July 4	Wed., July 4	Thurs.,
Fixed	Labor Day Sept. 2	Mon., Sept. 5	Mon., Sept. 3	Mon.,
Floating	Columbus Day Oct 14	Mon., Oct. 10	Mon., Oct. 8	Mon.,
Fixed	Election Day	Tues., Nov. 6		
Floating	Veteran’s Day Nov. 11	Fri., Nov. 11	Sun., Nov. 11	Mon.,
Fixed	Thanksgiving Day Nov. 28	Thurs., Nov. 24	Thurs., Nov 22	Thurs.,
Fixed	Day After Thanksgiving Nov. 29	Fri., Nov. 25	Fri., Nov. 23	Fri.,
Fixed	Christmas Day Dec. 25	Sun., Dec. 25	Tues., Dec. 25	Wed.,

It is so ordered this day, November 14, 2012.

A handwritten signature in black ink that reads "Thomas F. Gibbons". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Thomas F. Gibbons
Interest Arbitrator