

BEFORE
ROBERT W. McALLISTER
ARBITRATOR

COUNTY OF LAKE)	Lieutenants Unit
LAKE COUNTY SHERIFF'S)	
DEPARTMENT)	S-MA-11-011
)	
and)	
)	
TEAMSTERS LOCAL 700)	

APPEARANCES:

For the Employer:

A. Lynn Himes, Esq.
Paul Ciastko, Esq.
Scariano, Himes & Petraca

For the Union:

Kevin Camden, Esq.

PLACE OF HEARING:

Waukegan, Illinois

DATE OF HEARING:

April 2, 2012

The statutory provisions governing the issues in this case are found in Section 14 of the IPLRA:

- (g) 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 facts prescribed in subsection (h).

Pursuant to Section 14(h), the Arbitrator is required to base his 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 employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization.
- (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.

IV. POSITION OF THE UNION

The Union states its final position increases the wage differential between the highest paid sergeant and lieutenant from 5% to 7 1/2 %. The proposal is as follows:

Article 16 Section 1 Wages

A. Longevity Scale

The Longevity Scale establishing wage rates base on length of service and The Pay Classification Table in Appendix (A) is attached to and made part of this Agreement.

B. Progress thru the Longevity Scale

B1) On the promotional date of each Bargaining Union Member, the employee covered by this Agreement will move to the next higher cell in the longevity scale which equates to the years of service accumulated by that Bargaining Union Member in his current pay classification.

B2) The Longevity Scale will begin with a wage that is five (5) percent higher than the top sergeant's wage as shown on the sergeant's wage scale. Beginning on December 1, 2009, 2010, newly promoted lieutenants will be placed in the entry wage cell. They will move to the next cell 1 year as a six months after promotion to lieutenant. After one year in the rank of lieutenant, the bargaining unit members will move to step 2. In all years of this Agreement, the remaining cells will increase to are two by (2%) apart, topping out with five years of service.

B3) All lieutenants on the effective date of this Agreement will be placed into the appropriate year (step) based on their years of service in the rank of lieutenant.

B4) The lieutenants will move to the next step on their promotional date to the rank of lieutenant.

B5) The parties realize that the Longevity Scale agreed upon in this Article will annually generate additional benefits to the employees covered by this Agreement and additional costs to the County as the employees covered by this Agreement move from one step to the next in the Longevity Scale. These step increases are intended as an annual benefit to those employees receiving longevity step increases which will

add to the annual wage costs of the County in each year of this Agreement.

The Union maintains the record shows the wage differential between the highest paid patrol officer and sergeant is 10%, and the differential between lieutenant and deputy chief is 10%. The Union states the rank differential between deputy chief and chief is 5%. According to the Union, its proposal seeks to equalize the rank differential between ranks. The Union reasons that in large part the parties are hampered in this case because all the Sheriff's bargaining units are currently in interest arbitration. No Awards have been issued. The Union argues that in order to avoid this uncertainty, a static rank differential would provide certainty with respect to wages.

The Union submits there have been no prior interest arbitration Awards establishing external comparables for lieutenants. The Union, therefore, asserts there is little evidence to aid in the resolution of this matter. The Union notes the parties herein agree that internal comparability is appropriate.

The Union reminds us the lieutenants' wage increase is a mathematical formula driven by the deputies and sergeants' respective wage scales.

The Union points out the Employer has proposed a wage increase for the deputies of 0% year one, 2.5% year two, and 2% year three for a total of 4.5% retro to December 2010. The Union states the (Consumer Price Index (CPI) increased 3.2% from December 2010, to November 2011. (Union Ex. 8) The Union contends this means the Employer's second and third year proposals to the deputies would in effect be 1.3% (4.5% less 3.2%).

In this case, the Union argues its proposal to increase the lieutenants' differential by 2.5% is an economic hedge against the rising cost of living. The Union insists the

Employer's status quo proposal to the deputies would result in less buying power for the lieutenants.

The Union stresses the Employer offered no testimony it was unable to pay the 5%, just an unwillingness to pay. Moreover, the Union insists the Employer offered no proof the difference of the 5% differential for lieutenants, as opposed to 10% for deputy chiefs, was because of less overtime available to the deputy chiefs. Likewise, the Union contends the Employer offered no evidence relating to the lieutenants having increased supervisory authority and/or increased responsibilities over sergeants.

V. POSITION OF THE EMPLOYER

The Employer states the parties are not at issue on the percentage wage increases for any of the base years for a new agreement. The Employer submits its agreements with the deputies and sergeants' units provide for a 10% wage differential between the highest paid deputy and the lowest paid sergeant, and a 5% wage differential between the highest paid sergeant and the lowest paid lieutenant. (Employer Ex. 1e)

The Employer insists the Union's proposal to add a 2.5% step at six (6) months after the date of promotion to lieutenant constitutes a breakthrough. According to the Employer, arbitrators take a conservative approach in making breakthrough determinations favoring the status quo. Adopting the "extra burden" concept enunciated in *Village of Broadview and Illinois Fraternal Order of Police Labor Council*, S-MA-06-145 (Cox, 2007), the Employer argues the Union has not met this burden. The Employer maintains the record reveals very little bargaining was done prior to arbitration.

The Employer states the Union was required to show (1) that there is a proven need for the change; (2) the proposal (to depart from status quo) meets the identified need

without imposing an undue hardship on the other party; and (3) that there has been a *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision. *County of Cook and Fraternal Order of Police Labor Council, L-MA-96-009, (McAlpin, 1998).*

The Employer contends the Union's proposal would impose an economic hardship on it because a ripple effect would result in higher wages from lieutenants up to the chiefs.

The Employer stresses Human Resources Director Rodney Marion explained the rationale for the wage differentials, stating:

It was set up that way because when you go from deputy to sergeant there is an increase in supervisory responsibilities. So the level of responsibility is higher. In addition to that, there is less overtime that is available for the newly promoted sergeant.

From sergeant to lieutenant, basically that person is still a supervisor. So they continue to get the – they get a 5 percent increase versus a 10 percent because they have been in a supervisory position.

From the lieutenant to the deputy chief is 10 percent because at that point in time that deputy chief loses overtime. That is an exempt position from FLSA. That position is not eligible for overtime as well as the level of management has increased.

The Employer believes the internal comparables weigh heavily in its favor. The Employer emphasizes that in FY2010 and FY 2011, none of the Employer's non-Union employees received a raise. (Employer Ex. 9) The Employer states non-union employees received a 2.5% increase in FY2012. The Employer insists it was only able to avoid major layoffs due to its fiscal discipline.

As for the Employer's other bargaining units, it states it was able to negotiate a deal with the bargaining unit in its Department of Transportation (DOT) represented by

IUOE, Local 150. The Employer avers Local 150 agreed to delay its April 1, 2010, increase to December 1, 2010. In addition, DOT members also agreed to take six (6) furlough days in 2011 in exchange for wage increases that same year. (Employer Ex. 9)

In 2009, the Employer states it bargained with the Health Department and Public Works, both of which are also represented by Local 150. (Employer Ex. 9) For those contracts, the Employer indicates it negotiated a reopener each year, and, in both, bargaining unit members were subject to the same wage freeze as the Employer's non-union employees in FY2010-2011 while receiving a 2.5% increase in FY2012 as a result of the reopener negotiations. (Employer Ex. 9) As for Local 150's other unit (Facilities Operations), those members were also subject to the same wage freeze as non-union employees for FY2010. However, Facilities Operations' last bargaining agreement expired on November 30, 2011, and the Employer and Local 150 have yet to complete negotiations regarding FY 2011 and FY2012 wage increases.

In addition, during the relevant period, the Employer maintains it has three (3) bargaining units represented by AFSCME – two (2) units at the Employer-owned nursing home (Winchester House) and one unit in the Coroner's office. In 2010 and due to economic conditions, the Employer contends it tried to negotiate concessions with one of the AFSCME's units at Winchester House. AFSCME would not agree to any concessions, so the Employer claims it had to lay off thirteen (13) employees in order to fund the wage increases for that unit. Then, in 2010 and 2011, the Employer states it again tried to negotiate concessions due the continuing economic slump - this time with both units at Winchester House. AFSCME, however, again would not agree to any concessions according to the Employer so it had to contract out the entire facility to a

private company. As for the last of the AFSCME bargaining units, the Employer asserts it also proceeded to interest arbitration on May 15, 2012, with the bargaining unit in the Coroner's office where the Employer's last offer is also 0%, 2.5%, and 2%.

VI. DISCUSSION

The Employer has in place collective bargaining agreements for its Peace Officer Unit and Sergeants Unit. Those agreements in effect provide a 10% wage differential between the highest paid deputy and the lowest paid sergeant. Read in conjunction with the Agreement covering the lieutenants (formerly represented by Teamsters Local 714) (Employer Ex. 1e), a 5% wage difference is provided between the highest paid sergeant and the lowest paid lieutenant.

From the above, it is evident the wage rate for both sergeants and lieutenants is, by agreement, established by what wages the deputies and the Employer negotiate. Currently, that contract is in the hands of an interest arbitrator, and the decision therein by the interest arbitrator will determine the deputies' wage rate. As noted, the Employer has proposed three a (3) year contract with the annual base and steps increases of 0%, 2.5%, and 2%. The FOP proposal for the deputies' annual base and step increases is for 1.5%, 2.5%, and 2.5%.

Herein, the Union's rationale for adding a new six-month step of 2.5%, thereby raising the differential between sergeants and lieutenants from 5% to 7.5% is to equalize the rank differential between ranks. In so proposing, the Union has offered no persuasive explanation why the rank differential of 5% between sergeants and lieutenants should be changed.

Rodney Marion's explanation of how the differentials were set up was not rebutted. Marion maintained the 10% differential between deputies and sergeants was essentially based on the increase in supervisory responsibilities. Marion testified a lieutenant continues to be a supervisor. Marion justified the 10% differential between lieutenant and deputy chief on the fact the deputy chief is an exempt position that is not eligible for overtime.

The Union also argues CPI must be considered. As set forth in the synopsis of the Union's position, the Union claims the Employer's proposed wage increase to the deputies will be overshadowed by CPI increases. As noted, the Union views the 2.5% step increase for the lieutenants to be a "hedge" against the rising cost of living. The problem with this argument is twofold. First, the interest arbitrator in the deputy's case is bound by the provisions of Section 14(g) of the ACT. Cost of living is one of the criteria/factors the interest arbitrator must address in determining which wage proposal in the deputy's case will be adopted. Normally, step increases are linked to longevity, not the CPI. Secondly, the Union's CPI argument focuses solely on the Employer's wage proposal to the deputies and ignores the possibility the interest arbitrator in that case might adopt the FOP's wage proposal of 1.5%, 2.5%, and 2.5%.

The Union's proposal to add a new step at six months after promotion of 2.5% is a substantial change in the Agreement because it would alter the existing negotiated wage differential between sergeants and lieutenants. The Union's initial proposal was in fact that the differential be increased to 10%. There is, however, no record of serious bargaining over the issue. Nonetheless, the bottom line is the Union's proposal must be

considered a breakthrough, which should have been rigorously pursued in negotiations.¹ An interest arbitrator is not a substitute for such negotiations. The record does not support the Union's proposal that a six (6) month step increase of 2.5% should be adopted. The arguments presented by the Union were not persuasive.

VIII. AWARD

The Employer's position to maintain the status quo for the provisions of Article 16, Section 1, Wages, is adopted.

November 9, 2012



Robert W. McAllister
Arbitrator

¹ See *Will County Board and Sheriff of Will County* (Nathan, 1988; and *MAP Chapter 360 and the Village of Western Springs* (Fletcher, 2011)