ILLINOIS LABOR RELATIONS BOARD

FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of an

Interest Arbitration between

Village of Forest Park, Illinois	)	#S-MA-12-281
and	)	FMCS #13628-02429-A
Illinois Fraternal Order of Police Labor Council	)	

INTEREST ARBITRATION OPINION AND AWARD

An interest arbitration hearing was conducted in Forest Park, Illinois on November 18, 2013 before Arbitrator Robert Perkovich who was jointly selected to serve as such by the parties, the Village of Forest Park, Illinois ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Michael Durkin, and the Union was represented by its counsel, Jeffrey Burke. Both parties chose to present their evidence in narrative fashion and timely post-hearing briefs were filed on December 30, 2013 and January 10, 2014.

ISSUES PRESENTED FOR RESOLUTION

The issues presented for resolution are as follows:

1. Wages

2. Longevity Pay

3. Health Insurance

4. Uniform Allowance

In addition, the parties disagree as to the external comparables.

BACKGROUND

The Employer is a nearby suburb of Chicago, Illinois, lying only on or about seven miles from downtown Chicago. It is approximately 2.4 square miles in size and has a population of on or about 14,167. The building stock of the Employer is largely residential in nature, although there is some retail and commercial areas, and approximately 40 to 45 percent of its land is cemetery property.

As a non-home rule unit of government the Employer is subject to property tax limitations as set forth in state law such that its property tax levy each year must not exceed the lesser of five percent or the percentage increase in the Consumer Price Index for all urban consumers during the preceding year.

The Employer employs 111 full-time and 54 part-time employees including the employees involved herein. With regard to its employees other than police officers, its fire fighters are represented by Local 2753 of the IAFF, its communications operators are represented by the Union herein, its clerical staff by Local 3026 of AFSCME, its public works employees by Local 705 of the IBT, and its sole mechanic, by Local 701 of the Automobile Mechanics Union.

The Union herein has represented the Employer's patrol officers, of which there are 28, and its sergeants, of which there are eight, since 1986. They parties have successfully negotiated collective bargaining agreements from 1986 until the most recent which expired on April 30, 212, without resort to interest arbitration until now. In their negotiations for the current agreement they met four times between November of 2012 and February 2013 and met in mediation two times in March and April of 2013.

THE STATUORY FACTORS

Section 14(h) of the Illinois Public Relations Act requires interest arbitrators to examine the following factors in resolving interests disputes.

They are as follows:

1. the lawful authority of the Employer,

2. the 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. a 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 service and with other employees generally in public and private employment in comparable communities,

5. the cost of living,

6. the overall compensation received by the employees,

7. changes in any of those circumstances during the pendency of the proceeding,

8. such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration.

Using those factors, as more fully described below, I now turn to the issues.

THE EXTERNAL COMPARABLES

The parties agree that the communities of Bridgeview, Lyons, Schiller Park, Northlake, and Wood Dale should be including among the external comparables. The Union however argues that the communities of Chicago Ridge, Hickory Hills, Norridge, Northlake, and Palos Hills, should also be included. The Employer on the other hand disagrees and asserts that the communities of Bellwood, Broadview, Hillside, and River Grove should be included among the comparables.

The Union began its analysis of potential external comparable communities by taking a 15 mile radius around the Employer. It then narrowed that list by excluding those communities within that radius whose population was more or less than that of the Employer by 25%. It then examined those remaining communities with the Employer using traditional comparability factors such as equalized assessed valuation (EAV), police expenditures, general fund balance, median household income, median household value, police department size, and index crimes. It then considered those communities that, on those measures, were within 25% more or less than the Employer and then, of those remaining

communities it chose those which fell within that range on at least four of the seven traditional comparability factors that it chose to examine. Thus, it concluded that Chicago Ridge, Hickory Hills, Norridge, Northlake, and Palos Hills were comparable as well as Bridgeview, Lyons, Schiller Park, and Woodale.

The Employer on the other hand started its quest to ascertain the externally comparable communities with a ten mile radius around itself. It then, as did the Union, used population to narrow that list but, it used a difference of 50% with the Employer rather than 25% as used by the Union. Next, the Employer used a number of comparability factors using, as did the Union, equalized assessed valuation (EAV), median household income, and median household value. However, unlike the Union it did not use other factors such as police expenditures, general fund balance, police department size, and index crimes. Rather, it used general fund revenue, sales tax revenue, property tax revenue, income tax revenue, and per capita income and when it did so it concluded that Bellwood, Broadview, Hillside and River Grove should be included among the external comparables because they "matched" the Employer and that Hickory Hills should not[1].

The Union urges that I adopt its proposed comparables because I have previously regarded the methodology it used herein as acceptable. (See e.g., *City of LaSalle,* S-MA-12-126 (2013)). More specifically, it argues that its use of a 15 mile radius is better suited than the ten mile radius used by the Employer because the smaller radius is predominated by the city of Chicago. It also asserts that the Employer's use of a 50%, rather than the 25% used by the Union, cutoff to include or exclude communities creates, as was true in *City of LaSalle, supra,* the inclusion of widely disparate communities and, in support of that argument, its points out that the Employer would include Bellwood, with a population of 19,071, along with other communities such as Broadview, and Hillside with, respectively, only 7,932 and 8,157 people. Finally, the Union contends that the factors used by the Employer to determine its final list of proposed comparable communities is too limiting in that six of the eight factors it used relate to income, either that of the community or that of its residents. Thus, the Union argues, the Employer's methodology suffers from a "lack of diversity" in that it relies too heavily on income and excludes other traditional factors such as crime statistics, department size, and expenditures.

The Employer on the other hand contends a radius of ten miles is "more representative of the local labor market than fifteen...due to the density of...the nearby...region" and cites to the fact that I have used in prior arbitration awards a radius of as little as five miles, that I have relied on the factors it proposes in prior awards, and that I have held that although crime index is a relevant factor it is not determinative.

I and many, many other interest arbitrators have held in awards too numerous to cite, that the determination of the externally comparable communities is a less than precise science. This is true because first, no two communities are truly comparable. Second, often times, as is true herein, the parties use different measures. And then, again as is true herein, when the parties use the same measures they use different statistics. Finally, over time as the parties have become more sophisticated interest arbitration advocates they have become more strategic with respect to each of those observations.

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[1] The communities of Chicago Ridge, Norridge, Northlake, and Palos Hills, among the Union's proposed comparables were excluded because they were more than ten miles from the Employer.

This case is a perfect example. The Union relies on a fifteen mile radius, the Employer ten. The Union uses plus or minus 25% of the Employer, the Employer uses plus or minus 50%. The Union argues that factors in addition to revenue related factors should be used, the Employer disagrees. Sadly, on some of these contentions the distinctions are, although important, very very elusive.

Nevertheless, I am called to exercise my duty to choose and so, choose I must.

When I do so I find that the Union's proposed additional external comparables must be chosen and those of the Employer must be rejected. I do not do so because ten miles is more reasonable than fifteen or because plus or minus 25% is more reasonable than 50%. Rather I do so because when more, rather than fewer, factors are considered the Union's proposed additional comparables fare more favorably than those of the Employer.

First, I agree with the Union that looking only to income related factors, as the Employer does, is too limiting. It ignores, as the Union points out, other relevant factors such as public safety expenditures, general fund balance, department size, and crime index[2]. Moreover, to ignore those factors, especially in a case such as this where the Employer is *not* arguing an inability to pay, would be to take only a partial snap shot of comparability.

Second, when I examine the more inclusive list of factors as urged by the Union, the conclusion is that the Employer often falls in the same ranking in many instances with the Union's proposed additional comparables and when viewed against some of the factors urged by the Employer its ranking is quite disparate to those communities. For example, on the measures of EAV, public safety expenditures, general fund balance, median household income, and median home value the Employer is sixth, seventh, or eighth among the Union's proposed additional comparable communities. It is only with regard to the measures of department size and crime index that it ranks higher, either second or third. Conversely, when one uses those same measures although the Employer ranks favorably with the Union's proposed comparables on the measures of median household income and median home value it ranks quite disparately, i.e., much higher, on the measure of EAV and, as pointed out by the Union, on the measure of population when viewed against the Employer's proposed additional comparables.

Thus, for the reasons set forth above I find that the external comparable communities are as follows: Bridgeview, Lyons, Schiller Park, Wood Dale, Chicago Ridge, Hickory Hills, Norridge, Northlake, and Palos Hills.

THE ISSUES

a. Uniform Allowance

The parties' expired collective bargaining agreement provided that for patrol officers the Employer would maintain a quartermaster program and that in addition those individuals would receive a $400 annual allowance. However, those patrol officers who were assigned as detectives or tactical

[2] The Employer argues in its post-hearing brief that I have in prior awards used a five mile radius and have used the very factors that it relies upon herein and indeed it is correct. However, that does not make those arguments persuasive. With regard to my use of a five mile radius in *Village of Bellwood,* a close reading of the award there reveals that I simply noted that after using *other* comparability factors the external comparables that I chose were all within five miles of the employer therein. Similarly, it is true that in my awards in *City of Highland Park, Village of Westchester, and Itasca Fire Protection District,* I used the very same factors the Employer relies upon herein. However, as the Union urges herein, I used additional factors such as population, number of fire stations, number of employees, and public safety expenditures.

offers would receive, respectively, $700 or $500 as the additional annual allowance. The record reflects that the additional sums paid to those officers was to reflect the fact that they were required to wear a shirt, tie and sport coat each day while on duty. However, in 2009 that requirement was lifted and from that point forward and to the current time detectives and tactical officers are only required to wear polo shirts that are provided by the Employer.

The Union's final offer is to maintain the status quo. The Employer on the other hand proposes to eliminate the additional annual allowance for detectives and tactical officers in light of the fact that they are now no longer required to wear shirts, ties, and sports coats.

The Union opposes the change to the status quo because now, as before, the detectives and tactical officers could be required to wear patrol uniforms if called to work on patrol and because the elimination of the required apparel for detectives and tactical officers was an informal change to a condition of employment and thus the status quo could easily be restored. Finally, both parties rely on the external comparables.

First, the external comparables. The Union correctly points out that among the external comparables all pay their detectives and tactical officers a uniform allowance. However, the Union's analysis does not include which of those communities uses a quartermaster system and which pay the detectives and tactical officers a larger amount. The Employer's analysis of those communities indicates that Bridgeview, Lyons, Schiller Park and Wood Dale all provide additional allowances to various employee categories including detectives, investigators, and special response teams. Thus, the external comparables would appear to favor maintaining the status quo.

Nevertheless, I am loath to adopt a final offer intended for a specific purpose when that specific purpose is no longer extant[3]. I am mindful that because the Employer already eliminated the requirement that detectives and tactical officers wear shirts, suits, and ties and it could restore that requirement without, if the Employer's final offer is adopted, an additional allowance for those employees. It seems to me however that in such a case such action would be a change to a mandatory subject of bargaining and thus if the Employer so acted the Union could demand bargaining over the change. In my view eliminating the status quo, but leaving the Union that option should its fears be realized is the more prudent course of action.

I therefore adopt the Employer's final offer on this issue.

b. Wages

The Union's final offer on this issue is to increase bargaining unit wages by 2% in 2012, 2.25% in 2013, and 2.5% in 2014. The Employer on the other hand offers to increase wages in those same years, respectively, by 1%, 1.25% and 2%[4].

On this issue it is my view that the external comparables are not helpful. For example, although the Union correctly points out that none of the external comparables paid less than a 2% wage increase in 2012 and that in 2013 the average wage increase among the comparables was 2.31%, the Employer

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[3] As for the Union's point that detectives and tactical officers could be assigned to patrol duties, the uniform and gear for such assignments would appear to be covered by the Employer's quartermaster system. More importantly, the unrebutted testimony is that such an occurrence is quite rare.

[4] The Employer has also offered to increase wages in 2014 by an additional 1%, but it does so independently of the wage issue and as a *quid pro quo* for its final offer on health insurance, discussed *infra* at page 8.

points out that whichever final offer is adopted the ranking of the Employer among the comparables for top level and entry level patrol officer salaries and for sergeants will be virtually the same. For example, in 2011 the Employer ranked third among the external comparables for top level patrol officer salaries. In 2012 and 2013, with the Employer's final offer it falls to fourth and in 2014 it rises to third. With the Union's final offer the yearly ranks are fourth, third and second. Similarly, entry level patrol officer salaries paid by the Employer in 2011 ranked those employees fifth among the comparables. With the Employer's final offer and the Union's final offer they remain ranked fifth in each of the three years of the contract in play. Finally, for sergeants, in 2011 those employees were ranked second among the external comparables. With the Employer's final offer and the Union's final offer their ranking will remain unchanged.

However, when the factors of the cost of living and internal comparables are examined there is a clear choice, as described below, the final offer of the Employer.

First, the parties use different CPI measures. The Union chose to use the CPI-U for Midwest Urban areas, arguing that the Employer is in fact a midwest urban area. The Employer on the other hand chose to use the CPI for the Chicago-Gary-Kenosha region. In my view the Employer's choice is more appropriate. While I cannot argue that the Union is correct that the Employer is a midwest urban area, so is St. Louis, Missouri, Indianapolis, Indiana, and among others, Kansas City, Missouri. Thus, that measure would seem to be far too expansive. The Employer's choice however, is not.

When the CPI for the Chicago-Gary-Kenosha region is examined it seems that between May 1, 2011 and May 1, 2012 the cost of living rose 1% and between May 1, 2012 and May 1. 2013 it rose 1.5%, but yet for the 2012 and 2013 contract years the Union has proposed wage increases of 2% and 2.25%, well above the cost of living. Similarly, and again using that measure, the cost of living in June, July, August, and September of 2013 rose, respectively, 1.7%, 1.7%, 1.1%, and .7%. Again, the Union's final offer for the 2014 contract year is 2.5%, well above the cost of living.

Thus, the cost of living supports the Employer's final offer.

Similarly, the internal comparables support the Employer's final offer in that its wage proposal herein is identical to that agreed to by its fire fighters. Nevertheless, the Union urges that the internal comparables cannot carry the day because "there is no overriding history of parody (sic) between the different bargaining units."

Again, the Union is correct as to the facts, that there is no history of parity between the Employer's police and fire fighter units, but is incorrect as to the application of internal comparability. Simply put, internal comparability and parity are two different things. All case of parity are by definition internal comparability, but internal comparability is not always parity. Rather, it is simply a comparison relative conditions of employment of different employee groups in order to choose between competing final offers.

Accordingly, since external comparability does not compel the adoption of one final offer over the other, the factors of cost of living and internal comparability do, and both factors compel the adoption of the Employer's final offer on this issue.

c. Longevity

In the parties prior contract they agreed that bargaining unit employees with more than 25 years of service would enjoy an 8.5% longevity increase to their wages to be paid in each of two payroll

periods before April 1 of each year and that thereafter those same employees would receive only their base increases. In addition, the Police Pension Fund, a separate governmental entity, declared that the 8.5% longevity increase would serve to increase pensionable salary. However, the Illinois Department of Insurance took a contrary view declaring that using discrete payments for a discrete period of time as part of a full year's salary for pension purposes was and illegal pension spike. Thus, both the Employer and the Union, as well as the Employer's fire union who had the longevity provision, found themselves dealing with this issue in the current negotiations. In doing so, both the Employer and the Union propose that any employees who qualify for longevity increases will be required to pay a percentage of their salary equal to the longevity increase for that employee's health insurance co-payment.

However, they disagree as to the amount and duration of any longevity increases, with the Union proposing 8.5% longevity increases for employees with more than 25 years of service over the life of the contract and the Employer proposing a 4.5% wage increase in the first year of the contract for those employees with more than 25 years of service and a 4.5% wage increase in the second year of the contract for those employees with more than 30 year of service. Finally, it proposes that in the third year of the contract, effective April 1, 2014, those employees with 31 years of service there will be no longevity wage increase.

Again, the external comparables are less than helpful. The record shows that although many of them do in fact provide longevity wage increases only one, Chicago Ridge, relates the payment to an employee's retirement.

In light of that fact the Union urges that the Employer's final offer be rejected because, in its view, it departs substantially from the status quo and that the Employer has failed to support such a change. In reply, the Employer asserts that in light of the fact that the status quo has always been such that longevity wage increases bore some relation to retirement, its final offer continues that relationship in that it provides a retirement incentive to those employees with more than 31 years of service. On the other hand, the Employer agues, the Union's final offer does no such thing.

In my estimation the Employer's final offer should be adopted. First, the change to the status quo has been caused not by the desire of one of the parties, but rather by external factors, i.e., the Illinois Department of Insurance. Thus, I must consider which of the two competing final offers best approaches the status quo. In doing so I must concede that the Union is correct that the Employer's final offer deviates from the status quo as to the amount of the longevity wage increase and ending it at some point. However, the Employer's final offer best approximates the parties' long standing history of relating longevity wage increase to retirement while the Union's final offer does no such thing.

Finally, the record reflects that the internal comparables, e.g., the Employer's fire fighters, have agreed to the very same final offer that the Employer proposes herein.

In light of the fact that the Employer's final offer best approximates the status quo and is identical to the same benefit provided to its fire fighters[5], I adopt the Employer's final offer.

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[5] On this point the Union urges me to avoid "(c)onsistency for consistency's sake,.." In light of the fact that I have also considered which final offer better approximates the status quo, it is clear that I have not relied on consistency for consistency's sake.

d. Health Insurance

On this issue the parties agree that as of May 1, 2012 the status quo, employee contributions of either 10% or 12% depending on the coverage chosen, shall remain in effect.

The Union however proposes that in the second year of their Agreement the employee contributions should rise to 11 and 13% and in the third year to 12 and 14% and that the caps on the amount paid should remain in place. The Employer on the other hand proposes that after the first six months of the first year of the Agreement and for the remainder of the life of the Agreement the employee contribution should rise to 15 and 17% and the elimination of the caps. In addition, it proposes that at that some point in time the Employer is to create a high deductible plan that will require those employees who enroll in that plan to establish a Health Savings Account into which the Employer will make contributions. Finally, the Employer offers as a *quid pro quo* for these changes a 1% wage increase retroactive to January 1, 2013.

The Employer relies heavily on the internal comparables because they show that its firefighters and its clerical employees, represented by the IAFF and AFSCME, have agreed to the same employee contributions, without caps, that it is offering the Union herein. In so doing it points out that a number of interest arbitrators have held that for benefit issues internal comparability is a primary measure. (See e.g., *Macon County Board and Macon County Sheriff,* (Feuille, 1994); *County of Clinton,* (McAlpin, 2013); *Village of Lansing,* (Hill, 2013); *City of Carlinville,* (Goldstein, 2012)). Indeed, it points out that I too have joined those arbitrators. (See e.g., *City of South Beloit,* (2009) and *McHenry County,* (1999). On the issue of internal comparability, the Union did not address the matter in its post-hearing brief.

I find that internal comparability must carry the day for four reasons. First, as noted above, interest arbitrators have held that that measure is critical. Second, as the Employer points out, there has been uniformity among the police, fire fighter, and clerical bargaining units for some time and the Union's final offer would end that uniformity. And third, the external comparables do not yield a contrary result because although, as the Union argues, bargaining unit employees "are now paying...at least as much as their external comparables" and that "most" of the external comparables have a hard cap, when the matter of employee contributions are viewed from the perspective of actual cost, as the Employer does, the external comparables do not compel adoption of the Union's final offer. Finally, the Employer's final offer includes a 1% wage increase retroactive to January 1, 2013 as a *quid pro quo* for the changes it seeks to employee insurance contributions[6].

In light of the internal comparables I adopt the Employer's final offer.

AWARD

In light of the foregoing my award is as follows:

1. The parties' tentative agreements are hereby adopted.

2. The Employer's final offer on uniform allowance is adopted.

3. The Employer's final offer on wages is adopted.

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[6] The Union asserts that the 1% wage increase is inadequate. However, the record shows that in all but seven instances, employees will receive a net gain between of on or about $240 to just under $700 depending on the coverage an individual employee chooses.

4. The Employer's final offer on longevity is adopted.

5. The Employer's final offer on health insurance is adopted.

DATED: January 27, 2014

Robert Perkovich, Arbitrator