INTEREST ARBITRATION

ILLINOIS STATE LABOR RELATIONS BOARD

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

and

ILLINOIS SECRETARY OF STATE

ILRB No. S-MA-12-324

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
January 4, 2014

I. Procedural Background:

This matter comes as an interest arbitration between the Illinois Secretary of State ("Employer" or "Secretary") and Illinois Fraternal Order of Police Labor Council ("Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The record in this case establishes that the bargaining unit includes approximately 59 sworn peace officers in the job classification Investigator. The bargaining unit was organized under an original certification issued in Case No. S-RC-46. The parties in this case failed to reach a final settlement on all issues for their collective bargaining agreement, which the parties agree will have a term of July 1, 2012 through June 30, 2015. On May 1, 2011, the Union filed a demand for interest arbitration with the Illinois Labor Relations Board.

A hearing before the undersigned, as the sole arbitrator, on July 16, 2013, the Union was represented by:

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Illinois Fraternal Order of Police Labor Council
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Counsel for the Employer was:

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The Union's post-hearing brief was filed with the Arbitrator on October 4, 2013. The Employer's post-hearing brief was filed with the Arbitrator on November 27, 2013. The record was closed on that date.

II. Factual Background

The Investigators are employed within the Secretary's Department of Police. They are responsible for enforcing the Illinois Vehicle Code, with primary focus on truck regulations. In addition, they enforce various State regulations covering automobile dealers. They also investigate crimes committed at the many Secretary of State facilities throughout the State, and at the State Capitol. The Department is divided State-wide into two main regions, which are subdivided into a total of four investigative districts. The Capitol Complex in Springfield constitutes a separate third region. A decade ago, the Investigators numbered around 95 officers. The record evidence does not disclose any single and precise reason for the drop in numbers, but it appears to be the result of perhaps a combination of jurisdictional changes within the Secretary of State's office and budgetary constraints that led the Employer to reduce their numbers, which

occurred primarily through attrition.

III. The Parties' Bargaining History.

The parties bargaining relationship goes back many years. Their last two contracts were settled through interest arbitration. Nevertheless, the record discloses very little of the parties' bargaining history, including any prior agreements or practices on the issues relating to appropriate comparables.

In this case, the parties were able to reach tentative agreement on a number of issues, but were unable to reach agreement on the issues presented herein.

IV. Statutory Authority and the Nature of Interest Arbitration

The relevant statutory provisions governing the issues in this case are found in Section 14 of the Labor Act. In relevant part, they state:

> 5 ILCS 315/14(g)
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> On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute… the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… 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).
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> 5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]
>
> (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.

The Arbitrator finds that the issues submitted for resolution here are economic in nature[1] and that his job, therefore, is to select that parties' offer on each issue that most nearly "complies" with the above factors. As has been so often explained since the Act's adoption, the Act itself provides almost no guidance to the arbitrator in deciding which factors apply in any given circumstance or in giving them an appropriate weight. Arbitrators have over the years established external comparability, how the terms and conditions of employment of these employees stack up against the terms and conditions of

[1] With one exception, *see,* footnote 2 below.

employment of employees who perform similar duties in comparable communities, as the single most important factor in choosing between competing proposals on wages and other economic issues. Other important factors include changes in the Consumer Price Index ("CPI") and the employer's ability to pay. The Arbitrator raises these points at this time for the specific purpose of establishing the primary context for his subsequent findings in this case. In addition, this Arbitrator's approach to the issues at impasse in this record, and the application of the statutory criteria will, as always, comport with his firm opinion that this process is not, nor will it ever be, a substitute for grievance arbitration or meaningful bilateral collective bargaining.

V. THE PARTIES' STIPULATIONS

The parties expressly stipulate only that the procedural prerequisites for convening the hearing have been met and that Arbitrator John C. Fletcher has jurisdiction and authority to rule in his capacity as the sole arbitrator on the impasse issue set forth below as authorized by the Act and that he has authority to award increases in wages retroactive to July 1, 2012.

VI. OUTSTANDING ISSUES[2]

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[2] In addition to those issues listed herein, the Union submitted a proposal to modify the Employer's policies on issuing badges to former Investigators following their separation. The Employer objected to the proposal on the ground that it did not involve a mandatory subject of bargaining. The Labor Board has provided in its rules, the following:

Section 1230.90 Conduct of the Interest Arbitration Hearing

> k) Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue.

Issue #1

Article 40, Section 40.1 (Wages) – Wage Increases effective July 1, 2012 through June 30, 2013; July 1, 2013 through June 30, 2014; and, July 1, 2014 through June 30, 2015;

Issue #2

Article 40, Section 40.10.1 (Bomb Squad Pay) – Additional Compensation for Investigators assigned to the Bomb Squad;

Issue #3

Article 15, Section 15.1.2 (Holidays) – Additional Days Allotted.

Issue #4

Article 26, Section 26.4 (Leaves of Absence) – Incentive to Save Sick Time

VII – EXTERNAL COMPARABLES

As mentioned above, external comparability is of primary importance in the analysis of the parties' respective proposals. The Union proposed the following list of comparable State units:

Attorney General Investigator

Commerce Commission Police Officer I

Department of Natural Resources Conservation Police Officer II

State Police Trooper

State Police Special Agent

Secretary of State Special Agent I and II

The Union arrived at the above list of comparables by a comparison of a variety of factors including educational requirement; whether the position is entry

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However, except as provided in subsections (1) and (m) of this Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to be a subject over which the parties are required to bargain.

Therefore that matter is remanded to the parties to take whatever action they deem to be appropriate.

level or promotional major; and whether the job entails any of six major job duties, including investigation, interrogation, covert surveillance, court testimony, investigative reports and liaison functions. The Union surveyed 12 State-employed law enforcement titles. The Union included in its final list, set out above, those titles which overlapped with the Investigators at issue here in at least six of the categories.

For its part, the Employer offered no alternative external comparable police groups, relying instead on internal comparables, as will be discussed in greater detail below. Moreover, the Employer did not raise any specific objections to any of the Union's proffered comparables.

For these reasons, this Arbitrator finds that all of comparables proffered by the Union are reasonable and will be considered for purposes of this Award.

VIII – INTERNAL COMPARABLES

The Employer currently has bargaining relationships with three other unions representing, in all, more than 2,500 employees. They are, excluding the present bargaining unit: the Service Employees International Union ("SEIU"), representing the Employer's clerical and professional employees at all of its offices and facilities, by far the largest unit of the Employer's employees; the Illinois Federation of Public Employees ("IFPE"), representing a unit of the Employer's administrative employees and a separate sworn unit of the Employer's Capitol Police Investigators, Capitol Police Sergeants and Special Agents; and the

International Brotherhood of Teamsters Local 700 ("IBT"), representing the Employer's Investigator Sergeants, the supervisors of the Investigators at issue here. The record presents no suggestion of any parity relationships between these unit employees and any internally comparable groups.

At the time of the hearing, SEIU members had recently ratified an agreement for the period FY2013 through FY2015, the same period for the agreement at issue in this matter. The agreement provides in the first year of its term, for a 1% across-the-board increase for the clerical employees, with a one-year freeze in their step movement. There are no across-the-board increases to the clerical's pay plan for FY2014 or FY2015. It is also noteworthy that the clerical employees appear to have received increases in their last agreement of 3% (July 1, 2007), 2% (July 1, 2008), 2% (July 1, 2009), 1% (January 1, 2010), 2% (July 1, 2010), 1% (January 1, 2011), 2% (July 1, 2011) and 2% (January 1, 2012).

The SEIU agreement also calls for the professional unit employees to receive a 1% across-the-board increase in the first year of the contract. Effective July 1, 2013, the professional employees are placed into a new step plan at the step closest to, but not less than, their current pay – according to the Employer the new step plan has lower starting and top pay. The employees then receive step increases effective July 1, 2013 and again on July 1, 2014. The agreement also provides for across-the-board increases to the new professional employee scale of 2%, effective July 1, 2013 and again on July 1, 2014.

The IFPE also ratified an agreement for fiscal years 2013 through 2015. That agreement, which covers approximately 125 of the Employer's professional employees, none of who are on a step system, provides for across-the-board increases of 1% for FY2013 and 2% each year for FY2014 and FY2015. The salary ranges for the IFPE positions were also adjusted downward in the agreement on both the tops and bottoms.

Both SEIU and IFPE bargaining unit members agreed to eliminate merit increases that employees in their bargaining units had previously received on an annual basis. The merit increases were in addition to the general increases and were capped at 6 1/2% per year.

At the time of the hearing, the Employer had also reached tentative agreement with the IBT for its bargaining unit of Investigator Sergeants. The agreement reached with the IBT was the first contract for the bargaining unit. The agreement does not contain any step plan or across the board increases. Rather it provides that each Sergeant is paid at a 6% differential over an Investigator with the same years of service within the Secretary of State, Department of Police.

IX – OTHER STATUTORY CRITERIA

Regarding the factor "interests and welfare of the public," the Arbitrator notes, as a matter of importance, that the Employer specifically and expressly does not raise the issue of its ability to pay any aspect of the Union's proposals in this case. It does suggest, however, that the Secretary may only spend what the

General Assembly appropriates to it. It points to evidence showing that its appropriations from the legislature have hovered between flat and falling in each fiscal year beginning in 2010, such that the total appropriated budget for FY2014 was less than it was for FY2012. During that same period, its expenditures increased for essential items such as personal services (7%), leases (17%), automobiles (31%), and electricity (15%). Regarding personal services the Employer adds that expenditures for overtime have increased by 64% since FY2010. According to the Employer, expenditures for personal services now make up 82% of the Employer's total budget. This is so, despite the efforts of the office to reduce staffing, through layoffs and attrition, which have left more than 300 positions either indefinitely vacant or eliminated.

In recent years, the Secretary of State's Office has also been hit with large unfunded mandates from the General Assembly. For example, in FY2012, the Secretary was forced to absorb approximately $1.8 million in costs for advertising and mailing in connection with proposed constitutional amendments. The General Assembly appropriated only $1 million for that purpose. The remaining $800,000 in the actual cost of the operation came out of the Secretary's budget. In FY2014, the Secretary anticipates that it will incur unusual costs totaling somewhere between $800,000 to $1 million, in order to provide licenses for undocumented individuals under the State's new initiative. The Secretary expects that it will eventually receive additional appropriations to help cover those costs, but there are

start-up costs for the program will likely have to be absorbed.

The Union, for its part, points to evidence in the record showing that the revenues generated by the Secretary of State have risen each year since FY2010, and continue to rise. The appropriations received by the office in FY2012, FY 2013 and FY 2014, which the Employer stresses have been flat or falling, were precisely what the Secretary requested in its proposed budgets to the General Assembly. The Union stresses that during the same period, the revenues generated by the Secretary of State's operations have increased by 73%, while its overall expenditures for personal services – including salaries – have gone up by only 7%. Those expenditures are expected to drop by another 6% in FY2014. The Union also points out that the expenditures for wages in this unit continue to fall as the size of the unit is reduced through continuing attrition – ten officers retired in the past year and were replaced thus far by only two recruits.

The Union adds that the Investigators at issue here make up only a tiny fraction of the Employer's overall workforce. Inability to pay their wages, at any rational level of increase, is simply not a viable argument. See Southern Illinois University and Illinois Fraternal Order of Police Labor Council, S-MA-01-239 (Stallworth, 2003); Woodford County and Illinois Fraternal Order of Police Labor Council, S-MA-09-057 (Feuille, 2009), p. 35 (awarding union proposal for increases totaling 7.5% over three years where employer failed to show that such increases would result "in the elimination or harmful diminution of essential . .

.services, or extensive layoffs, or both"). The Employer has likewise made no such showing here.

X. THE ISSUES

Article 40, Section 40.1 - Wages

The Union's Final Proposal

The Union proposes general wage increases as follows:

1. Effective July 1, 2012 – retroactive general wage increase of 1.5%.

2. Effective July 1, 2013 – retroactive general wage increase of 1.5%.

3. Effective July 1, 2014 – retroactive general wage increase of 1.75%.

The Employer's Final Proposal

The Employer's final offer on wages is to provide for annual step movement only during the term of the contract, without any across-the-board increases.

The Position of the Union:

The Union's argument starts with reference to the consumer price index. The Union asserts that for any proposal to be deemed reasonable, it must at minimum keep up with inflation, see County of Tazewell and Illinois Fraternal Order of Police Labor Council, S-MA-09-054 (Meyers, 2009); Village of Broadview and Illinois Fraternal Order of Police Labor Council, S-MA-06-145 (Cox, 2007). For the year July 2012 through June 2013, the first year of the proposed agreement, CPI-U was reported at 1.76%. The Union's proposal of 1.5%

for that year is much closer to the figure than is the Employer's proposal of zero. Moreover, the Union's overall proposal of 4.75% over three years is much more likely to be in line with cost of living for the term of the agreement than would be the Employer's proposal of no increases over the entire period.

The Union also points out that the wages paid to the officers in this unit are well below the average among the external comparables. The Union concedes that the wage data among the external comparables is spotty at best when projecting out through the term of this agreement. However, the Union asserts, The wages of the Investigators coming into this agreement ranged between 7.5% and 14% below the average of the comparables at all steps until after 20 years – top pay for the Investigators exceeded the average among the comparables by some 4.5% due to the fact that they receive an additional increase after 29 years of service that few in the external comparables receive. The Union submits that its proposal here of 4.75% over three years is almost certainly the minimum necessary to avoid a result where these Investigators losing further ground vis-à-vis their comparable officers. In all likelihood, the Union's proposal will result in the Investigators merely keeping pace with their counterparts in the external groups. The Employer's proposal, on the other hand, will necessarily result in a widening of the existing wage gap.

The Union strenuously opposes the Employer's attempts to introduce non-Section 14 bargaining units into the mix of comparables, both as to internal units,

i.e. the SEIU and IFPE, and also the master agreement of the American Federation of State, County and Municipal Employees, Council 31 ("AFSCME"), referred to in the Employer's presentation, which covers some 40,000 civilian employees under the umbrella of the Governor's Office. The Union points out that all the wage comparability data offered by the Employer in this case, with the sole exception of the Commerce Commission Police, involved non-sworn employees. The Union cites a number of arbitral awards from various arbitrators as support for its view that comparisons to non-sworn employees in Section 14 cases is not appropriate, at least in the absence of evidence that the non-sworn and sworn employees enjoy a lock-step historical parity in their respective terms and conditions of employment. Such parity does not exist here.

Moreover, the Union adds, the Employer's own witnesses conceded that the Employer considers the non-sworn employees included in its analysis to be, in the main, among the most highly paid among their respective external comparable groups. As a whole, the settlements in these non-sworn units contain a mixture of wage increases combined with step freezes, and vice-versa, as well as changes to step structures that do not resemble what the Employer proposes here. In the final analysis, the comparison to these non-sworn units should be given little weight in comparison to factors such as CPI and the interests and welfare of the public.

As discussed previously in this award, the Union disputes that Employer's claims regarding its ability to pay the wage increases at issue. On the other hand,

the Union counters, there are several senior employees in the bargaining unit who will not receive any increases in their individual wages, for one or more years of the contract, because they are, or will soon be, at the top step of the pay schedule.

The Position of the Employer:

The Employer's position is that the traditionally key factor of external comparability is in this case trumped by economic considerations. The Employer specifically does not suggest that it lacks the ability to pay the increases proposed by the Union, but suggests nonetheless that it would be fiscally irresponsible for the Employer to agree to the Union's "excessive demands" for wage increases in this contract term (Er. Brief, p. 11).

The Employer suggests that the Union in relying heavily on external comparables to support its wage offer ignores current trends in arbitration in this State. The Employer cites awards from a number of arbitrators; all suggesting in essence that in the current state of economic recession and "tepid economic growth", a "hiatus in the use of the comparability factor" is warranted. (Er. Brief, p. 12)[quoting, City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7, Arb. Ref. 09.281, slip op. (Benn, 2010), at p. 28]. Moreover, there is no evidence that the agencies employing any of the bargaining units offered up as external comparables here have of late faced the same flat or reduced appropriations that this Employer has seen. In fact, unlike the other agencies in the group of external comparables this Employer is absolutely hamstrung by and at the

mercy of the budgetary desires of the General Assembly.

In any case, there is no evidence to suggest that the Employer's proposal will have a significant negative impact on the Investigators' ranking among the comparables. It appears in fact that these Investigators will maintain their position as the highest paid in the comparables group, at top pay. The Employer also asks the Arbitrator to consider that it pays into the pension fund at a rate 2.5% higher than any of the other employers in the external group. That 2.5% should be added to the "reported wages" of the Investigators when making external comparisons.

The Employer argues that internal comparability is the most important factor in this case. The Employer's suggests that its proposal, when step movement is factored in, will give Investigators an average total wage increase over the life of this agreement around 7.46%, some reaching as high as 13%. By comparison, the nearly 2,500 employees in the SEIU bargaining unit, and also the non-professionals represented by IFPE, will receive an across-the-board increase of 1% for FY2013, but with a freeze in step movement. The clericals will thereafter receive only step movement in FY2014 and FY2015, which under their respective contracts amounts to increases of only 2% at each step. Moreover, agreements reached with both SEIU and IFPE resulted in downward adjustments at the bottom and top of the applicable wage schedules, or ranges as the case may be, and elimination of merit increases, which in some cases could be as high as 6.5%. In short, the Employer suggests that no one in its other unionized groups

will receive more than 5% in increases over the period covered by this agreement.

Discussion:

The Arbitrator notes as an initial matter that the Employer's proposal is properly characterized as a three-year wage freeze. The fact that the Employer does not also propose that the employees be frozen in their step placement during the term of the agreement does not bear significantly on this Arbitrator's view of the proposal. The step plan, as well as the employees' right to advance within it, is nothing more than the status quo. This Arbitrator does not accept its continuation as a proposal to increase the wages of the employees and the Employer failed to cite any arbitral support for a contrary view. The Arbitrator hastens to add that the costs associated with step movement, and/or the mitigating effect of step increases on the impact of any wage freeze proposals, may be relevant consideration in the final analysis. See City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-10-233 (Fletcher, 2011).

The Arbitrator recently noted that external comparability remains the primary factor in assessing respective wage proposals. County of McHenry and Service Employees International Union, Local No. 3, S-MA-12-001 (Fletcher, 2013). The "hiatus" that Arbitrator Edwin Benn announced in his award in City of Chicago, supra, has no application here. As this Arbitrator understands his reasoning, set out in that award and several others that he issued in the months following the economic collapse of 2008, the justification for limiting external

comparability's impact was that agreements offered into evidence at the time were often the product of pre-recession negotiations, before the impact of the downturn could have been know. Such contracts, Arbitrator Benn reasoned, could not be the basis for an apples-to-apples comparison to wage proposal made after the recession took root. See, City of Peru, supra, at p. 11. None of the data presented here predates the current recession, which I acknowledge likely continues.

The Arbitrator finds that the available data from the external comparables supports the Union's proposal on wages. That data is limited, the Arbitrator notes and the Union acknowledges as much. In fact, the Arbitrator cannot determine, in a definitive way, on this record whether or to what extent either party's wage proposal will change the Investigators' ranking among the comparables. However, the available data indicates that the comparable groups have received or will receive some general increases in wages during the period at issue here. There is scant evidence to suggest a pattern of zero wage increases among the external units. Assuming, as the Employer suggests, that the Commerce Commission Police unit agreed to a zero increase for FY2013, following the AFSCME settlement in its master contract with the State, the Arbitrator must assume that they will also receive wage increases of 2% that are called for in the AFSCME settlement in both FY2014 and FY2015.[3]

[3] The Employer's counsel suggested during the hearing that the AFSCME master contract provided for step freezes in years FY2014 and FY2015. The Arbitrator has not been able to confirm that in the written documentation provided nor can he find that any of the external units that might adopt or have adopted similar settlements have agreed to freeze step increases during that period.

Single-year wage freezes are not at all surprising in today's economic climate. This Arbitrator recognized as much in awarding the employer's proposal for a one-year wage freeze in City of Peru, supra. However, **this Employer's proposal for a three-year freeze in wages is too harsh.** The Arbitrator will not assume that other police units in the State will receive comparable treatment, despite the economic stress of the times. The Arbitrator's experience in these matters, including that of recent years, suggests too strongly the unlikelihood of such a result. The most likely result, as supported by the available data, is that the Employer's proposal would have the effect of driving downward the Investigators' standing among the comparables.

The wage data for the internal comparables, while more favorable to the Employer, nevertheless provides only meager support for its offer. Nearly all of the data provided relates to the Employer's non-sworn employees and is therefore given limited weight, see County of McHenry, S-MA-12-001, at pp. 14-15 (an employer's non-sworn employees are not excluded from comparison with the employer's sworn employees but, in the absence of evidence suggesting a historical parity among the internal groups, carry significantly less weight than external sworn groups). The internal comparability data provided here is limited to a three-year snapshot of what the SEIU and IFPE members agreed to in this last term. The record contains no evidence suggesting a historical parity among the internal bargaining units. In fact, the record suggests that the largest component of

the internal comparables, the clericals represented by SEIU, received much larger increases in the last contract than did the Investigators at issue here. The other two groups, the IFPE administrative unit and the SEIU professionals unit, are not even paid from a step pay plan. Meaningful comparison would seem to be impossible without a complete listing of the actual salaries paid to each of these employees.

The Arbitrator also wonders whether any meaningful comparison can be drawn between the cocktails of one-year wage freezes, step freezes and step adjustments agreed to by SEIU and IFPE, on the one hand, and the straight-up three-year wage freeze proposed for settlement here, on the other. These various cost-cutting measures are not quantitatively equivalent to one another. Depending on where an employee stands in terms of years of service a one-year freeze in wages across-the-board has potentially a much greater impact, long term, on his or her career earnings than will a one-year delay in step movement. The record, put simply, does not contain enough information for the Arbitrator to get a sense of the short-term and long-term impact of each of these various cost-cutting measures on the earnings of the SEIU and IFPE represented employees as a whole.

The Arbitrator does not discount the Employer's arguments regarding its fiscal difficulties. In City of Peru, supra, this Arbitrator found many of the same arguments advanced by the Employer here, i.e. financial distress short of a strict inability to pay, the standing of the employees among their comparables in total compensation, and the fact that employees would continue to enjoy step and

longevity increases, in awarding the employer's wage offer, which included a wage freeze in the first year of the contract. In so doing, this Arbitrator was persuaded by the record as a whole that the proposed one-year wage freeze was a reasonable response to the employer's well-documented financial decline, that the wage freeze was proposed in good faith and solely for purposes of responding to the employer's financial difficulties, and that a one-year wage freeze found substantial support among both the external and internal comparables. This Arbitrator pointedly stated that he would not in the ordinary course depart from prior determinations that "fiscal responsibility" would not alone support an inferior wage proposal. City of Peru, supra, at p. 28.

The Arbitrator again notes the draconian nature of the Employer's proposal here. CPI should at this point be considered as favoring the Union's position. The Arbitrator agrees with the Union that as a general rule, general wage increases should keep pace with the cost of living. It may be, as the Employer counters, that individual Investigators will see their wages rise during the term of the agreement due to step increases. However, that presents the issue in a snap shot. It remains that in the long run, over the length of each Investigators employment, he or she will lose ground to cost of living as a result of the Employer's offer. The record simply does not support the result.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator

finds the Union's final proposal to be more reasonable than the Employer's with respect to the issue of wage increases. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 40, Section 40.1 – Wages is adopted. It is so ordered.

Article 40, Section 40.10.1 – Special Assignment Pay (Bomb Squad)

The Union's Final Proposal

The Union proposes to increase the monthly compensation for members of the Bomb Squad from $125 to $200

The Employer's Final Proposal

The Employer proposes maintain the status quo.

Position of the Union:

The Union stresses the dangers that members of the Bomb Squad face in the course of their duties. Their duties, as such, include rendering safe and removing various forms of explosives and other hazardous materials. Calls for service average 100 per year.

Bomb Squad members are frequently on the road for training purposes, whether receiving it or providing it. Overnight out-of-town stays are frequent. One

officer testified that he spent 35 nights away from home in the twelve months preceding the hearing, all related to such training.

The Union points the Arbitrator's attention to the Employer's internal pay plan documents, which state in pertinent part that Investigators, "upon assignment and certification as a Hazardous Device Technician," should receive $200 per month in addition to base pay. One Union witness testified that he knew of several Investigators and "ranked officers" who received the $200 per month called for in the pay plan.

The Union also cites to evidence in the record of extra pay given to other law enforcement bomb squad personnel. For example, Cook County pays its bomb squad members an extra $375 per month, and has done so since 2004. Kane County pays its bomb squad members an extra $150 per month, and the City of Chicago pays canine handlers and explosives technicians between $1,500 and $1,800 per year.

Bargaining for what is essentially a fair stipend is futile. The Employer has all but refused to discuss it. During this last negotiation, the only counteroffer made by the Employer on the issue was for the Union to eliminate Trainer pay from the same section. Such a trade off would do no more than engender resentment within the bargaining unit.

Position of the Employer:

The Employer points out that the status quo of $125 per month "specialty pay" was voluntarily agreed to past bargaining. The Union now seeks a 62.5% increase in the negotiated amount without providing any credible evidence to support its position.

The Employer points to testimony from its own Director of Personnel who testified that the pay plan is a general guideline which was superseded by the relevant provisions of the parties' labor contract. Additionally, a Captain assigned to the Bomb Squad since 2012 testified that he is not currently receiving any stipend for his participation on the Squad. In short, there is no credible evidence that the Employer is currently paying non-union members of the Bomb Squad the $200 per month referred to in the pay plan.

The Employer also objects to the Union's reference to benefits paid to employees outside the relevant comparables. It points out that the Union's witnesses admitted to essentially cherry picking among various agencies throughout the State to come up with the evidence it presented in support of its offer.

Discussion:

At this point the Arbitrator considers it prudent to point out that the interest arbitration process is a conservative one, Village of Romeoville and MAP, S-MA-10-064 (Fletcher, 2010), aiming always to coexist with the bargaining process and avoid efforts to supplant it. Village of Western Springs and MAP, FMCS Case No.

10-02482-A (Fletcher, 2011) at pp. 10-11 ("[This] Arbitrator has stated on numerous prior occasions, it is worth mentioning that interest arbitration in general is intended to achieve resolution to immediate and *bona fide* impasse, but no to usurp, or be exercised in place of, traditional bargaining. . . [The] function of interest arbitration, as opposed to . . . grievance arbitration, [is] actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of collective bargaining."). In Village of Romeoville, supra, this Arbitrator made clear his adherence to the notion, advanced by what he considers to be a majority of his colleagues in the State, that the party seeking to depart from the status quo must show more that that change is a good idea; it must show that the current conditions are "broken" some how.

The Arbitrator finds no basis for awarding the Union its requested increase in the stipend for Bomb Squad members. The Arbitrator agrees with the Employer that whatever purposes the Employer's internal pay plan may serve, it was overridden by the terms of the parties' own labor contract at some point. Although increasing the amount previously agreed to would not be a breakthrough in any sense, still the Union must show some basis for the change. Simply put, the Union has not done so.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Employer's final proposal to be more reasonable than the Union's with

respect to the issue of Special Assignment Pay (Bomb Squad). Accordingly, the Employer's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer's proposal with respect to Article 40, Section 40.10.1 – Specialty Assignment Pay is adopted. It is so ordered.

Article 15, Section 15.1.2 (Holidays) – Additional Days Allotted.

The Union's Final Proposal[4]

The Union proposes the following:

SECTION 15.1.2: Additional Days Allotted

In addition to the holidays listed in Section 15.1.1. above, all Investigators shall have time off with full salary payment on ~~And~~ any additional days proclaimed as holidays or non-working days by the Governor of the State of Illinois or by the **Secretary of State** ~~President of the United States.~~

The Employer's Final Proposal

The Employer proposes the following:

SECTION 15.1.2: Additional Days Allotted

In addition to the holidays listed in Section 15.1.1. above, all Investigators shall have time off with full salary payment on ~~And~~ any additional days proclaimed as holidays ~~or non-working days~~ by the Governor of the State of Illinois or by the **Secretary of State** ~~President of the United States.~~

[4] The parties agreed up front to the language to be added to Section 15.1.2 and to the replacement of "President of the United States" with "Secretary of State." The only issue is the Employer's proposed additional deletion of the phrase "or non working days."

Position of the Union:

The Union suggests that the additional language agreed to by the parties is intended merely to clarify the parties' intent. The second change agreed to by the Union, the substitution of the Secretary for the President of the United States, is a concession, an actual reduction of the benefit. The Union adds that it demanded and received nothing from the Employer in return.

The Union challenges the Employer's rationale for proposing to also eliminate "non working days" at the level of its foundation. The evidence makes clear that the change is intended to eliminate instances where the Investigators benefit from a declaration of the Governor closing State offices due to inclement weather, i.e. snow days. The Union points out that the Employer's justification for the change is based entirely on the testimony of the Director of Personnel who suggested that even on bad weather days, the Secretary of State may still require the attendance of Investigators to "keep certain operations going." (Tr. 163-164). The Union counters that the safety concerns that would warrant the Governor cancelling work for State employees at the many State facilities throughout the State, affect the Investigators with equal vigor.

The Union argues that an axiom of interest arbitration law holds that a party seeking to change long-established status quo bears a heavy burden to prove a compelling need for the change. That party must show that the current system is dysfunctional and in need of change, that its proposed change would render the

system right and that it has offered a quid pro quo to the other side, which the other side unreasonably rejected. Here, the Employer failed to identify any of the "operations" that it would need to operate in such conditions or why the Investigators are necessary to the operation. On a more practical level, the Union points out that the Employer has not identified any bad outcomes that would have been avoided under its proposed change to the language.

The Union finally points out that the Employer has the ability to call Investigators in on holidays, or non-working days, at its discretion. In such circumstances, the Union adds, Section 15.2 of the labor agreement provides for the Investigators' compensation, as follows:

> An Investigator who is required to work any part of or all of any day designated as a "holiday" shall, only receive, in addition to his/her regular compensation for the holiday, overtime pay at one and one-half (1.5) for all hours actually worked on the holiday.

The Employer's ability to operate is fully protected under the current language. The Employer truly seeks by its proposal here to have the ability to compel the Investigators to work in dangerous conditions for less money.

Position of the Employer:

The Employer asserts that its proposal tracks a "self-evident" fact, that the provision at issue here appears within the "Holiday" provisions of the parties' labor agreement and should, accordingly, be construed so as to apply to holidays, whether they be specifically listed in the article or ad hoc declared holidays. The

Employer notes the testimony of its Director of Personnel regarding situations, such as a recent blizzard that occurred in 2012, wherein the Governor or the Secretary may declare a day as a non-working day for most employees due to the hazardous conditions. The Director added that due to the nature of certain jobs, namely Investigators, their presence on the job in such conditions may be needed to keep certain operations open.

The Director that the Employer was seeking a similar change in all of its contracts in this most recent round of negotiations, and had been successful in achieving the change in the tentative agreements already reached.

The Union provided no evidence to refute the Employer's evidence in support of its proposed language change.

Discussion:

This Arbitrator has consistently followed the rule that the party seeking to change the status quo as to has the burden of showing that there is a proven need for the change; and, that the proposed change meets the identified need without imposing an undue hardship or burden on the other party. See, Lake County Sheriff, S-MA-11-203, at p. 14. The Arbitrator finds that the Employer's proposal is not simply to change the value of an existing benefit, such as the Union sought with respect to the Bomb Squad stipend. Rather, the Employer seeks to change the status quo by eliminating a class of benefit, specifically paid "non working days"

as declared by the Governor, or the Employer itself, due most typically to inclement weather. The Arbitrator also finds that the Employer failed to meet its burden here to show a sufficient basis for the change it seeks.

The Employer offered scant evidence to support its position. The Union is correct to point out that the Director's testimony was short of specifics as to adverse affects of the single snow day referenced in the record, that occurring in 2012, on the Employer's operations. For example, the Employer's Director of Personnel suggested that the Secretary of State may need to keep certain operations going during "non working days," for example during a blizzard, he failed to identify any such operation or explain why the presence of the Investigators would be necessary to such operations. It seems to the Arbitrator that the Employer could have provided some specifics, at least as they were manifest during the 2012 event.

The Arbitrator was not able to confirm the Employer's assertion that the change in language that it seeks here was agreed to in the settlements it negotiated with the Employer's other bargaining units.

Moreover, the Employer did not even address the question of whether the complete elimination of what the Arbitrator will refer to as "snow days," for lack of a better term, is necessary to protect the Employer's operational needs. It seems

to the Arbitrator that less imposing measures, such as might reserve the Employer a right to call out employees as needed, with or without additional pay.[5]

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the Employer's with respect to the issue of the holidays. Accordingly, the Employer's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 15, Section 15.1.2 (Holidays) – Additional Days Allotted is adopted. It is so ordered.

Article 26, Section 26.4 – Incentive to Save Sick Time

The Union's Final Proposal

The Union proposes to maintain the status quo.

The Employer's Final Proposal

The Employer proposes to revise Article 26, Section 26.4, as follows:

SECTION 26.4: Incentive to Save Sick Time

[5] The Arbitrator takes no position here on whether Section 15.2 applies to employees who would be required to work on a non-work day.

For those employees who show a sincere effort to minimize their use of sick time given by the ***Secretary of*** State ~~**of Illinois**~~, the following considerations shall be in effect for the life of this Agreement only:

a) any employee using three (3) sick days or less in a calendar year shall be given two (2) additional personal leave days for their use during the next calendar year; and

b) any employee using more than three (3) but less than six (6) sick days during a calendar year shall be given one (1) additional personal leave day for their use in the next calendar year.

c) any employee who has an absence that results in a dock in a calendar year shall not receive an additional personal leave day even if he/she otherwise qualifies for the incentive under paragraphs (a) and (b) above in that same calendar year.

Position of the Union:

The Union suggests that the proposed additional provision is open to abuse. That is, should the Employer decline an Investigator's request to use sick leave, for whatever reason it does so, the employee would be disqualified from earning any personal day bonus for use the following year.

The Union also challenges the foundation on which the Employer's proposal is based, an allegation that employees are using non-sick time to cover their actual sick days in order to "game" the system. The Union specifically notes that the Director of Personnel was able only to suggest a suspicion such gaming was going on. He testified that he had a specific example in mind but could not identify the individual except to say that the individual was not in fact an Investigator.

Position of the Employer:

The Employer suggests, pointing to the testimony of its Director of Personnel, that the incentive program has lead to unintended consequences. Because of the manner in which the language is currently drafted, the system allows individuals to use paid time off, such as compensatory time or personal days, to cover days in which they are in fact sick. They qualify for the bonus even though their actual attendance may not be the type that should be rewarded. The intent of the proposal is to clean up the system so that it rewards only those employees with good attendance.

The Employer adds that the internal comparables support the its position. The same modification has been made in the collective bargaining agreements that the Employer recently negotiated with its other bargaining units. The Employer is seeking the change here as well because the underlying problem cuts across the entire agency.

Additionally, the proposal does not eliminate the sick leave incentive or even reduce it for worthy employees. The proposal only targets those employees who are time abusers. "Certainly, maintaining contract language simply to protect the potential ability of bargaining unit members to abuse the system is not reasonable justification to preserve the status quo." (Er. Brief, p.20).

Discussion:

Once again, the Employer has offered scant evidence to support its position. This Arbitrator is not in the habit of changing agreed-to language,

however slightly, simply to address a voiced concern that the existing language may be open to abuse. Indeed, the Arbitrator not only agrees with the Union that the evidence fails to show any of the suspected abuse occurred in this bargaining unit, he also notes that the record evidence does not show that using a compensatory day or personal day to cover a day when the employee is absent from work because he or she is sick, is in any way an abuse of any provisions of the parties' contractual leave provisions or the Employer's own policies.

Additionally, as to the Employer's suggestion that the proposal at issue here was agreed to by its other bargaining units, the Arbitrator has determined that the provisions agreed to by SEIU is not identical to that proposed by the Employer here. The Arbitrator does not have enough information to determine precisely how the provisions would differ in application, but that is the Employer's problem. The Employer, as part of its burden of proof on this issue, bore the burden of showing the Arbitrator that the two provisions are substantially the same.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the Employer's with respect to the issue of the Sick Leave Incentive. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 26, Section 26.4 – Incentive to Save Sick Time is adopted. It is so ordered.

XI. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

_____
John C. Fletcher, Arbitrator

Poplar Grove, Illinois, January 4, 2014