

ILLINOIS LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an

Interest Arbitration between

City of Peoria)	
)	#S-MA-13-144
and)	
Peoria Police Benevolent Association)	

INTEREST ARBITRATION OPINION AND AWARD

On November 19, 2014 a hearing was held in Peoria, Illinois before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, City of Peoria ("Employer") and Peoria Police Benevolent Association ("Union"). At that time the disputed issues were annual wage increases, reduction of step progression, elimination of longevity payment for newly hired bargaining unit employees, duty relief days, and availability pay. In an Opinion and Award dated April 4, 2015 I resolved all of those issues except reduction of step progression, which I remanded to the parties for further negotiations. Following unsuccessful remand negotiations another hearing was held on October 16, 2015 and the parties filed timely post-hearing briefs on December 18, 2015.

I. ISSUE PRESENTED

The issue presented for resolution is that relating to step progression.

II. EXTERNAL COMPARABLES

At the original hearing, and again herein, the parties have agreed that the external comparables are as follows:

- a. Bloomington
- b. Champaign
- c. Decatur
- d. Moline
- e. Normal
- f. Rock Island
- g. Springfield
- h. Urbana.

III. BACKGROUND

The bargaining unit herein consists of all full-time sworn police officers excluding the chief of police, deputy chief, assistant chief, captains and managerial and confidential employees. Between 2009 and the current time the number of bargaining unit employees fell from a high of 248 to 219. The last collective bargaining agreement between the parties ended in 2012, but it was extended by mutual agreement to 2013.

As noted above, in my original Opinion and Award I dealt with the issue of step progression. There, the Union's final offer was to maintain the status quo. The Employer on the other hand proposed that the parties' salary schedule be revised such that step movement for salary increases would allow employees to move one step each year rather than the status quo which allowed employees to move two steps each year.

In considering the Employer's final offer I found that it was a breakthrough because the status quo had been in place for a substantial period of time and that although the Employer was correct that its final offer would initially affect only 22% of employees, it could not be ignored that the number of employees affected going forward would be greater.

I then considered the Employer's final offer using the breakthrough analysis common in arbitration and concluded that although the status quo had not failed the Employer did carry the day on the issue whether the Union had resisted the Employer's efforts to negotiate a change to the status quo. In so doing I relied on the fact that in reply to the Employer's initial proposals the Union did not address the step movement issue and that despite the fact that the Employer subsequently revised its proposal on that issue both on and off the record, including three *quid pro quo* items in exchange for the Union's agreement, the Union replied by declaring that further negotiations would be futile.

However, noting that it has long been held that interest arbitration is intended to replicate the result the parties would or might have arrived at if negotiations had been successful, and further noting that the parties' course of negotiations was such that I could not make that determination, I remanded the issue to the parties for further negotiations.

IV. THE PARTIES' REMAND BARGAINING HISTORY

On April 13, 2015¹ the Union sent an email to the Employer seeking to arrange meeting dates for the remand negotiations. In addition, the Union asked the Employer whether its offer would be the same as that set forth at the interest arbitration hearing and whether the Employer would provide the Union an extensive narrative on that issue. The Union also asserted that it needed to know the impact of the Employer's offer on the Union's ranking among the external comparables, the financial impact on unit employees, the impact on morale, recruitment and retention, how the Employer's final offer compared to the internal comparables, and why the Employer believed that it needed the revision to

¹ All dates hereinafter referred to are 2015.

step movement. Finally, the Union asked what *quid pro quo* the Employer was offering in return for the revision it sought.

The Employer replied in a letter dated May 13 indicating that its offer in the remand negotiations would indeed be the same as that set forth in the interest arbitration. As for the Union's requests for data relating to financial impact and external and internal comparability and the need for the revisions that the Employer was seeking, it referred the Union back to its submissions in the interest arbitration and asserted that its offer would not negatively affect morale, recruitment and retention because the Employer "has never had problems with recruitment and retaining employees" and because it "is and will remain a destination police department." As for the Union's inquiry about any *quid pro quo*, the Employer asserted that because in my Opinion and Award I found that the Employer met its burden of proving a justification for a breakthrough no *quid pro quo* was necessary and instead if the matter were to proceed to arbitration again the Employer's final offer would be viewed against the criteria set forth in Section 14(h) of the Labor Act. Finally, it asserted its view that since I had awarded the Union's final offer on general wage increases and longevity increases "this should be considered a *quid pro quo* to anything that occurs on step progression."

In a letter dated May 29 the Union replied asking if the Employer was "no longer offering any *quid pro quo* at all for the breakthrough it proposes" and asserted that the data the Employer proffered in the interest arbitration "bears little value for those seeking factual information." It then closed its letter stating the Union needed "to understand the specifics of your proposal and how your proposal will operate before (it) can present a counter to it."

Four days later, on June 2, the Employer replied in a letter stating that it found the Union's letter of May 29, "condescending" and that the Union demonstrated "a lack of seriousness." It went on to say that it found the Union's statements to be "representative of the Union's demeanor and attitude throughout negotiations and are demonstrative of why the Parties have been unable to seriously negotiate the step issue in the first place." It then referred the Union again to its submissions at the interest arbitration hearing and repeated its view that should the matter again proceed to arbitration the final offers would be examined without regard to any *quid pro quos*. Nevertheless, it added that although it was not offering any *quid pro quos* at the time the Union was "aware of the (its) previous on-the-record and off-the-record offers" and that it was "incumbent on the Union to demand such *quid pro quos* if it believes they are necessary..."

In a letter dated June 3, the Union replied. It asserted that because the Employer's offer on step progression would extend the current pay scale and was not accompanied by any *quid pro quos* "(w)hat was once a too-far-reaching proposal has,..become an ultimatum." The Union then discussed the *quid pro quos* that the Employer had previously offered and rejected them again as "non-specific and vague" and "poorly conceived." Thus, the Union stated, it did not take them seriously, but that if the Union was incorrect it welcomed the Employer's explanations, if any.

On June 8, the Employer replied in a letter relying on an external comparability analysis in support of its offer and declaring, with regard to the earlier *quid pro quos* that it had offered, that it did

not find it "worthwhile to discuss the merits of its past offers." Finally, it asserted that the Union had never proposed an alternative to the Employer's proposal regarding step progression, that the Union "has never demanded or otherwise signaled what *quid pro quo* would be necessary," and that "(i)f the Union never goes on record with a counterproposal, it is impossible to negotiate."

The following day, June 9, the parties met. At that time Union negotiators asked the Employer's negotiators why the Employer wished to reduce the number of steps in the pay scale from nineteen to eight. In reply the Employer's negotiators said that they wished to do so in order to save money and that the status quo was needlessly complex. The Union negotiators then asked how much money the Employer was seeking to save, but when it did not reply the Union negotiating team caucused. After they returned to joint session the Union offered a proposal that would eliminate from the current pay scale any unused steps. In addition, it also mistakenly offered to eliminate the first step from the pay scale. Thus, although the first component of the proposal yielded no cost savings to the Employer, the second component did and the Union, though offering it in error, maintained that portion of its proposal. The Employer then rejected the Union's proposal which led the Union to caucus once again. This time after returning to joint session the Union offered another revision to the pay scale for all officers but for sergeants and lieutenants by again eliminating the first step and, this time, by extending by one year the amount of time an officer needed to reach top pay. Finally, the Union proposed as a *quid pro quo* "comp time for all." That bargaining session ended with no reply from the Employer.

The following day, June 10, the Union wrote to the Employer thanking it for meeting the day before and informing the Employer that the Union was awaiting the Employer's reply. In addition, it asked the Employer to confirm its belief that in recent negotiations with its firefighters' union the Employer "compacted rather than expanded the firefighter pay scale" by deleting a pay step for those employees in 2008 and again in 2009.

On July 22 the parties met again. At that same time the Employer provided a written reply to the parties' exchange on June 10. In that written submission the Employer stated that the it did not consider the Union's proposals set forth on June 10 as "serious" because they did not address the Employer's concerns that the current pay scale provided too short a time for officers to progress through the pay scale, that the status quo had no support in the comparables, and that the Union's proposals would actually be more expensive for existing officers and for new hires than the status quo. Nevertheless, the Employer revised its proposal regarding step progression such that officers, but not sergeants or lieutenants, would receive a 5% wage increase after one year, a 5% wage increase after two years, a 5% wage increase after three years, a 5% wage increase after four years, and a 5% wage increase after five years. However, its proposal provided that after six years the wage increase would be 2.5%, 3.5% after seven years, 3.5% after ten years, 6% after fifteen years, and 5.5% after seventeen years and that longevity and COLA payments would be unchanged². This, the Employer declared, would provide "steep pay growth in the first five years of employment...identical to the status quo..." with

² The status quo provides for wage increases in the first year of 2.5% and 5% after the second, third, fourth, fifth and six years, a 3.5% increase after the tenth year, a 6% increase after the fifteenth year, and a 5.5% increase after the seventeenth year of service. Thus, the Employer's offer of July 22 differed from the status quo only in first, sixth, tenth, fifteenth, and seventeenth years of service.

more gradual pay increases, all at the same time providing "the same level of top pay that Peoria officers obtain now." Finally, the Employer asserted that this proposal was consistent with the officers' ranking in pay among the external comparables and provided supporting data showing that the ranking at the tenth year of employment, where under the status quo officers were ranked the highest, they would rank third highest.

On July 27 the Union replied in a letter stating that it "may have an additional offer to make (but that it) believes that a substantial and pervasive quid pro quo is essential to any agreement that would result in substantial and pervasive cost savings to the employer...because cost savings for the employer under all of the exchanged proposals would come directly from the employees of the bargaining unit."

The record contains no further exchanges between the parties, other than informing the arbitrator that another hearing was necessary and scheduling that hearing for October 16, until October 13 when the Employer sent to the Union by US mail and e-mail a letter with its "Revised Step Progression Offer and Quid Pro Quo" and suggesting procedures for the arbitration hearing. In that letter the Employer repeated its proposal on step progression that it made on July 22, but added as a *quid pro quo* to increase the rate at which employees accrued vacation after fifteen years of service. The Employer asserted in its letter that its proposed *quid pro quo* was "substantial and pervasive, " that it was in direct response to the Union's wishes stated earlier in negotiations that employees have more time off, and that it would immediately benefit the majority of bargaining unit employees unlike its step progression proposal that would "affect only a small percentage of existing officers and would realize savings over time." Finally, it stated that the proposed *quid pro quo* would cost the Employer "more to implement now that it will save in changes to step progression."

The Union did not agree to the Employer's proposal of October 13 because in its view the enhanced vacation benefit did not offset the cost to employees of the revised step progression. Nevertheless, in an email dated that same day the Union asked the Employer if it would be "willing to agree to postpone the hearing, implement the General Wage increases that were awarded on the next pay cycle (with retro checks before thanksgiving), and go back to the table to discuss the City's new proposal."

The supplemental interest arbitration then commenced three days later.

V. DISCUSSION

a. The Statutory Factors

Section 14(h) of the Labor Act requires that I, as the interest arbitrator, choose between the parties' final offers using the following factors, where applicable:

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 employer

4. a comparison of the wages, hours, and other conditions of employment of employees involved with those of other employees performing similar services and with other employees generally in public and private employment in comparable communities
- 5 the average cost of living
6. the overall compensation of employees involved
7. changes in any of the foregoing during the pendency of the arbitration and
8. such other factors which are normally or traditionally taken into consideration in the resolution of such disputes.

As more fully described below, I have considered all of the above in rendering this award.

b. The Final Offers

The Employer renews its July 22 proposal to the Union as its final offer herein while the Union continues to urge that the status quo be maintained.

c. Is the Employer's Final Offer a Breakthrough?³

In the first proceeding the Employer's final offer revised the parties' salary schedule only with respect to the rate at which employees moved through the schedule. Here, its final offer makes no such revision, but rather revises the rate at which employees' salaries increase as they move through the salary schedule.

The test for determining whether a final offer is a breakthrough is whether it a "game changer" (*City of Canton*, S-MA-1-0-316, Perkovich, 2014) or, stated another way, whether it is a "comprehensive, game-changing alteration" to the parties' collective bargaining agreement. (See, e.g., *City of Danville*, S-MA-07-220 (Meyers, 2010) Moreover, I held in *City of LaGrange*, S-MA-11-248 (2013) that such a determination could be made on either a quantitative basis, e.g., the cost or value of a final offer, or a qualitative basis, e.g., the deviation from the parties' past practice that the final offer represents.

When viewed against these tests I find that the Employer's final offer is indeed a breakthrough because it represents a change to the parties' salary schedule that has been in effect without change for a substantial time. (See, *City of Skokie*, S-MA-12-124, Perkovich, 2014)

³ As noted above, I found in my original Opinion and Award that the Employer's final offer at that time was a breakthrough. I must address this issue again however because its final offer now differs from that originally proffered.

d. Has the Employer Met Its Burden of Proof for the Breakthrough?

I, as have many interest arbitrators in Illinois, have held that for a party to justify adoption of its final offer when that final offer is a breakthrough, the party must show that (1) there is a substantial and compelling need for the change, (2) the status quo has failed to work, (3) the status quo has caused inequities for the bargaining unit, (4) the other party has resisted attempts to bargain, and (5) the party seeking the change has offered a *quid pro quo* for the change. (See, e.g., *University of Illinois at Springfield*, S-MA-00-282 (2002) and *City of Highland*, S-MA-06-159 (2007)).

With regard to the first two steps set forth above, the need for the change and the effectiveness of the status quo, the Employer relies on its financial condition and on an external and internal comparability analysis. As for its financial status, the Employer argues that it supports a finding that there is a compelling need for the change it proposes and that a finding that the status quo has failed because the "long term pressures of its pension liabilities are unsustainable and unaffordable" and that revenue increases and decreasing expenditures "will suffice in the short term, (but they) are not a solution to the long term budgetary problem (it) faces." Upon reviewing the record established herein, including that developed in the initial hearing, I find that the Employer has prevailed on these two factors⁴.

I turn then to the issues of inequity, bargaining, and the *quid pro quo* and when I do so I find that the Union's final offer must be adopted.

First the question of inequity. Here, it is clear that the status quo does not impose any inequity on the bargaining unit herein. Rather, to the extent that any inequity is extant, it is the Employer's final offer that imposes it for it provides, essentially, for a two tier pay scale. In a telephone conference with the parties after the close of the hearing I clarified with the Employer that while its final offer revises the pay scale for officers, it does not do so for sergeants and lieutenants, fellow bargaining unit members along with patrol officers. More importantly, of 219 total bargaining unit employees the 41 sergeants and lieutenants would be paid differently than the patrol officers. Thus, almost 20% of the bargaining unit would be paid disparately from the rest.

Moreover, in an exhaustive analysis of interest arbitration awards Arbitrator Marvin Hill pointed out that no Illinois interest arbitrator has adopted a final offer with a two tier pay scale (*City of Wilmette*, S-MA-14-068 (2015) and that I am among them. (See e.g., *City of LaSalle*, S-MA-12-216 (2013). The rationale for this long line of cases was succinctly stated by Arbitrator Nathan in *Village of Gurnee*, S-MA-12-185 (2014) where he held that two tier salary schedules "would disrupt the working force and pit one group of employees against the other (and) would put the Union into a dilemma because it would have to decide which group, or tier, would get more money."

⁴ As noted above, the Employer also relies on a comparability analysis. I however decline to do so because, as I have held in other cases, to do so would negate the higher quantum of proof needed in breakthrough cases. (See e.g., *City of Skokie*, *supra*.)

Thus, I find that the Employer's final offer does not meet the test of inequity for the bargaining unit.

I then turn to the breakthrough test of the parties' bargaining and again I find that the Employer has failed to meet this test as well.

First, it is important to remember that Illinois law allows that parties to collective bargaining have the right to engage in hard bargaining so long as they bargain in good faith. Thus, this breakthrough test requires that when one views the parties' course of bargaining he or she must ask whether the party whose conduct is under scrutiny has bargained hard or, has it bargained in such a way that the very premise underlying the breakthrough analysis, i.e., that a breakthrough should be adopted in interest arbitration only when bargaining was futile, is applicable? (*City of Highland, supra.*)

When viewed in this light I find that the Union herein has done nothing more than bargain hard and in doing so it did not bargain in such a way that the Employer's breakthrough final offer should be awarded. In doing so I note that, unlike the bargaining that preceded my original Opinion and Award, the Union made two proposals to the Employer to address what the Employer perceived as the problems with the parties' status quo and also offered a *quid pro quo* for its proposals. Thus, I cannot say that the parties' course of bargaining was such that the breakthrough could only be achieved in interest arbitration.

The final test for determining whether a final offer that is a breakthrough should be adopted is an analysis of the *quid pro quo* that the party seeking the change has offered. Here, the Employer has offered as a *quid pro quo* an additional week of vacation for officers once they reach fifteen years of service, at a cost to the Employer of approximately \$16,800⁵. On the other hand, its proposed revisions to the employees' salary schedule would not only continue over the course of a patrol officer's career starting in their first year of employment and again at the sixth, tenth, fifteenth, and seventeenth years and would do so at a cost calculated by the Union to be approximately \$75,000 over an officer's entire career. This disparity in my estimation compels the conclusion that an additional week of vacation at fifteen years of service is an insufficient *quid pro quo*⁶.

In light of the foregoing I find that the Employer has failed to meet burden of proof for its breakthrough to compel the adoption of its final offer.

⁵ The Union contends that I cannot consider this matter because the only issue before me is the question of the salary schedule. That argument fails however because it ignores the fact that vacation is the Employer's proposed *quid pro quo* for its breakthrough.

⁶ I am mindful of the argument the Employer put forth in its post-hearing brief that its *quid pro quo* should also be viewed as including the fact that under its final offer existing employees will benefit as a result of pay increases necessary to transition to the pay scale under its final offer and that employees will earn more in their first five years of employment than under the status quo. That argument fails however those conditions were not offered to the Union as a *quid pro quo*, but rather as consequences of adopting the Employer's final offer.

VI. AWARD

The Union's final offer of the status quo is adopted.

DATED: January 28, 2016

Robert Perkovich, Arbitrator