



Before Arbitrator Robert Perkovich

In the Matter of an
Interest Arbitration
Between

Village of Mokena)
)
 and)
)
 Metropolitan Alliance)
 of Police, Chapter 72)

S-MA-93-74

OPINION AND AWARD

I. Statement of the Case

On November 20, 1992 the parties, the Village of Mokena ("Employer") and the Metropolitan Alliance of Police, Chapter 72 ("Union"), selected the undersigned to serve as interest arbitrator in the above-captioned matter¹. The Employer was represented by Nicholas Sakellariou of the firm of Robbins, Schwartz, Nicholas, Lifton & Taylor. The Union was represented by Joseph Mazzone of the firm of Schenk, Duffy, Quinn, McNamara, Phelan, Carey & Ford. The hearing commenced and concluded on February 1, 1993 and timely post-hearing briefs were filed by the parties on April 16, 1993.

II. Background

A. The Employer

The Employer is an Illinois municipal corporation located in Will County with a population of 6,128 spread over an area of 4.5 square miles. It employs 36 full-time individuals in the administrative, development, public works, police and other smaller departments. In the police department the Employer employs nine police officers, who comprise the bargaining unit in this matter, a chief of police, a commander, and two sergeants.

B. Bargaining History

The negotiations in this matter relate to a first time contract between the parties. Negotiations commenced in May of 1992 and resulted in a tentative agreement on all items except wages. The tentative agreement with respect to all fringe benefits provides that current police officers will maintain their current level of benefits, but that officers hired after a specified date will receive a different, and lesser, level of benefits.

¹At the hearing the parties waived any rights to a tripartite arbitration panel.

The record reflects that during negotiations the Union's primary demand was to replace the Employer's merit pay system with a step system based on seniority. In fact, the Union asserted during negotiations that in return for discontinuing the merit system it would agree to the status quo with respect to benefits. At first, the Employer rejected the step system but, late in negotiations, it no longer opposed discontinuing the merit system. Following that, the parties exchanged proposals for the wage increase, structure of the step system, placement of employees in the salary structure, and retroactivity. After negotiating those points, the parties could not agree and the instant proceeding was begun.

C. The Last Best Offers

The issue presented in this matter is whether the step pay plan offered by the Employer or the Union, including the placement of individual employees on the salary step schedule, is that which should be included in the collective bargaining agreement between the parties.

1. The Employer's Last Best Offer

The Employer proposes a step pay plan for the three years of the collective bargaining agreement as follows:

| <u>Step</u> | <u>7/1/92</u> | <u>7/1/93</u> | <u>7/1/94</u> |
|-------------|---------------|-----------------------|---------------|
| 1 | \$25,400 | \$23,900 ² | \$24,600 |
| 2 | 25,990 | 26,824 | 24,650 |
| 3 | 27,120 | 27,090 | 28,000 |
| 4 | 27,700 | 28,220 | 28,300 |
| 5 | 28,850 | 28,950 | 29,320 |
| 6 | 29,900 | 30,100 | 30,350 |
| 7 | 29,970 | 31,000 | 31,400 |
| 8 | 32,666 | 31,100 | 32,150 |
| 9 | 33,950 | 34,400 | 35,080 |

As such, the Employer's proposed plan represents wage increases in each of the three years beginning July 1, 1992 of 3.5%, 4.0%, and 3.6%.

²The Employer explained the apparent decrease in salary at this and other points in its proposed step pay system as necessary to correct "anomalies" created in moving from a merit system to a "within reasonable financial parameters..." It goes on to point out that in doing so no officer will receive a decrease in pay. Rather, certain cells in the plan are "artificially inflated" in such a way that as any individual officer moves through the "artificially inflated" cell, his or her actual salary does not decrease, although the cell itself may do so.

2. The Union's Last Best Offer

The Union's proposed step pay plan is as follows:

| <u>Step</u> | <u>2/1/93</u> | <u>7/1/93</u> | <u>7/1/94</u> |
|-------------|---------------|---------------|---------------|
| Starting | \$24,300 | \$24,835 | \$25,830 |
| 1 | 25,500 | 26,061 | 26,634 |
| 2 | 26,800 | 27,390 | 26,634 |
| 3 | 28,000 | 28,616 | 29,246 |
| 4 | 29,500 | 30,149 | 30,812 |
| 5 | 31,000 | 31,682 | 32,379 |
| 6 | 32,500 | 33,215 | 33,946 |
| 7 | 33,596 | 34,335 | 35,090 |

The Union's proposal results in wage increases over each of the years of the agreement of 3.63%, 11.66%, and 5.54%.

III. Discussion³

A. Is There One Issue or Three Issues Presented?

At the hearing the Union asserted that this matter presents three distinct issues: salary increases, the number of steps in the pay plan, and the placement of employees in the plan⁴. At hearing, and in its post-hearing brief, the Employer disagreed and asserted that if I were to pick and chose between the two proposals on each of these points I would no longer be engaged in final offer arbitration as required by Illinois law on economic issues.

I disagree with the Employer on this point. Each of these points are discrete and identifiable issues on which the parties have chosen disparate positions. Therefore, to choose, for example, the proposal proffered by the Union on percentage wage increases and that of the Employer on the number of steps in the plan is to choose either of the final offers. I realize that the total dimensions of the plans urged by the parties may have been devised based on a total expenditure or some other broad-based goal, but that does not detract from the essential characteristic that percentage wage increases, the number of steps in the plan,

³Notably absent from my analysis of the competing offers is any discussion of the "ability to pay" benchmark. I do not discuss this point because of the arguments in the Union's post-hearing brief pointing out crucial public comments made by the Employer that undermine its data and arguments on this point.

⁴In its post-hearing brief the Union did not renew this argument.

and the placement of employees in the plan are discrete and separate points. Accordingly, I will consider each of those points individually.

B. The Wage Increases

1. Comparables

The Union argued that the comparable communities against which the parties' respective proposals should be viewed are set forth in several sources. First, the Union relies upon the 39th Semi-Annual Regional Governmental Wage and Fringe Benefit Survey. Second, the Union offers the survey of the South Suburban Association of Chiefs of Police. Finally, the Union asserts, at least for certain criteria, that Frankfort, University Park, Lockport, Flossmoor, New Lenox, Olympia Fields, Orland Hills, and Palos Park are comparable communities.

I reject all of the Union's contentions in this regard. First, the two surveys relied upon by the Union are overbroad. The Regional Survey, for example, includes, inter alia, the communities of Chicago, Zion, Aurora, and Lansing. To the extent that the Survey is subdivided into regions, these two are similarly overbroad. For example, the Union points to Regions 5 and 6. An examination of those Regions however indicates that they include respectively, Burbank and McHenry. Accordingly, the Regional Survey is unreliable on both geographic and demographic grounds. The South Suburban Survey, although narrower in scope, is similarly flawed. Finally, the individual communities relied upon by the Union as comparable must be rejected. The only bases upon which the Union supports its claim that these communities are comparable are measures such as the starting and top salaries, number of steps in the relevant pay plans, total calls for service, chiefs' salaries, and number of patrolmen. Among the bases commonly relied upon by arbitrators in determining which communities are comparable, the Union has chosen to place into the record only that of relative population.

The Employer on the other hand has argued that Shorewood, New Lenox and Crete are comparable communities. In doing so, it has provided evidence of the equalized assessed valuation, population, number of square miles, location, employee complement, and size of police force for those communities as compared to the Employer.

As pointed out by Arbitrator Benn in Village of Streamwood, Case No. S-MA-898-89:

The concept of a true "comparable" is often times elusive...Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable

comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality⁵.

In light of the foregoing, and the fact that the Union has not adequately demonstrated why the communities it has chosen are comparable to the Employer, I find that, as urged by the Employer, Shorewood, New Lenox, and Crete are comparable communities⁶.

Having decided that Shorewood, New Lenox, and Crete are comparable communities it is now necessary to compare and contrast the parties' proposals against those communities. In Shorewood the starting salaries in each of the three years of the contract are \$23,735, \$23,808, and \$24,514. In New Lenox it is \$24,572 and in Crete they are \$21,736, \$22,609, and \$23,504. The Employer's proposal in this matter sets forth starting salaries of \$25,000, \$23,900, and \$24,600. With respect to starting salaries the Employer's proposal are more closely in accord with the comparable communities that the Union's proposal which includes starting salaries of \$24,300, \$24,835, and \$25,830.

Similarly, the Employer's proposed top salaries of \$33,950, \$34,400, and \$35,080 are more closely in accord with those of Shorewood (\$33,315, \$33,721, and \$34,201), New Lenox (\$34,505), and Crete (\$29,328, \$30,492, and \$31,699) than the proposed top salaries of the Union at \$33,596, \$34,355, and \$35,090.

2. Cost of Living

In addition to the examination of comparable communities I am also charged with examining the parties' proposals against the cost of living. The record shows that for calendar year 1992 the cost of living for the U.S. City average increased 2.9% while that for the Chicago average increased 3.3%. Clearly, the Employer's proposed wage increases of 3.5%, 4.0%, and 3.6% more closely

⁵Indeed, Arbitrator Benn was compelled to so conclude although he was faced with evidence and data that far exceeded even that provided by the Employer in this matter.

⁶In so doing, I specifically reject the notion, asserted by the Employer, that in determining which communities are comparable I must be cognizant of the fact that not all police departments are unionized as are the police officers of the Employer. To do so would, in effect, penalize the police officers who have chosen to assert their statutory right to organize.

approximates this history than those of the Union⁷.

Also, to adopt the Union's proposal, which includes a wage increase in the second year of the contract of approximately 11%, in light of this history of living expenses is to confer on the employees a benefit far in excess of that required to maintain their purchasing power in the current economy. Not only is this the case, but that type of wage increase is far in excess of that offered by the Employer which is otherwise equitable, as set forth above, in light of all objective criteria. For employees to receive a wage package which is significantly superior to anything employees would likely have obtained through the collective bargaining process, would create a situation where the Union might want to settle its subsequent contracts through arbitration instead of collective bargaining, the statutorily preferred method. To do so is unacceptable. See e.g., Village of Bartlett, Case No. FMCS 90-03589 (Arbitrator Kossoff).

3. Are Bargaining Unit Employees Entitled to "Catch-Up" for Alleged Disparities as a Result of the Merit Pay System?

The Union argues that the merit pay system under which the bargaining unit worked was fraught with less than objective and/or uniform wage determinations. As a result, because the parties agreed to abandon that system, employees must be compensated for those disparities⁸.

I do not agree. First, there is no basis in the record on which I can conclude that the wage increases granted under the merit plan were for any reason other than performance which is a perfectly valid basis on which to distinguish between employees. Second, any type of "catch-up" or extraordinary measures by which to correct real or perceived inequities should be the bilateral process of collective bargaining.

I conclude therefore that the Employer's proposed wage increases in each of the three years of the contract, that is, 3.5%, 4.0%, and 3.6%, is appropriate and I so award those wage increases.

C. The Number of Steps

⁷The evidence also shows that during the past two and one-half years the wage increase granted to the bargaining unit exceeded the U.S. City and Chicago average increases to the cost of living.

⁸The Union provided no evidence of any alleged infirmities of the Employer's prior system. Apparently, it asks that I infer that any merit pay system inherently yields impermissible distinctions between employees.

In their last best offers the Employer proposed that the step pay plan include nine steps while the Union argued that it should include eight ("Starting" plus seven).

The Employer's proposal again more fully comports with the number of steps in the pay plans of the designated comparable communities (Shorewood with nine, New Lenox with eight, and Crete with six) and in fact compares favorably with one of the communities urged by the Union as comparable (Orland Hills). Moreover, the disparity between the two proposals is not that great.

Therefore, I find, in accordance with the Employer's last best offer, that the step plan shall have nine steps.

D. The Placement of Employees

The parties have included in their last best offers the point at which individual employees should be placed on the salary schedule as proposed. As noted, the parties have agreed to a step plan on which placement is customarily premised on seniority. However, because both proposals deviate from this principle, it seems safe to say that both parties have been engaged in an exercise in varying degrees of gerrymandering.

For example, the Union's proposal places employees on the plan in such a way that of nine employees, the placement of four employees comports with their hiring dates. In contrast, the Employer's proposal is consistent with employee hiring dates in only two cases. Moreover, the parties disagree on the hiring dates of two of the nine employees.

In my view the "red-circling" of employees in this fashion is not consistent with selecting between last best offers on the basis of objective criteria such as the wages paid in comparable communities, ability to pay, cost of living, and others⁹. Rather, this type of bartering and brokering, which I do not mean to imply is in any way inappropriate and may be based on very legitimate and practical factors, is more consistent with the bilateral process of collective bargaining. Therefore, I remand to the parties the issue of the placement of employees.

IV. Award

The collective bargaining agreement shall provide for a step plan consisting of nine steps and providing for three annual wage

⁹These are my benchmarks as required by Illinois law and, as one might expect on an issue of this type, the parties, did not, and perhaps could not, provide evidence on these points with respect to employee placement.

increases, starting July 1, 1992, of 3.5%, 4.0%, and 3.6%.

The manner in which individual employees shall be initially placed on the salary schedule is remanded to the parties for resolution in continued collective bargaining. I shall retain jurisdiction over this matter with respect to this issue for a period not to exceed thirty (30) days unless the parties jointly ask that I retain jurisdiction for an additional period.

DATED: _____