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ILLINOIS STATE LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an
Interest Arbitration Between

City of Highland Park	)	
	)	
and	)	ISLRB #S-MA-96-13
	)	
Teamsters, Local 714	)	

LABOR ARBITRATION OPINION AND AWARD

On February 23, 1996 an interest arbitration hearing was held in the above-captioned matter before Robert Perkovich, having been jointly selected by the parties, City of Highland Park ("Employer") and Teamsters, Local 714 ("Union"). The Employer was represented by its counsel, Bruce Mackey and Terrence Creamer. Testifying for the Employer was Daniel Dahlberg. The Union was represented by its counsel, Robert Costello. Testifying for the Union was Lesa Northam. The parties filed their post-hearing briefs on April 18, 1996.

The parties have stipulated that the issues before me are the following:

1. across-the-board wage increases for fiscal years 1995/96, 1996/97 and 1997/98
2. employee shift exchanges
3. court appearance pay
4. life insurance
5. tuition reimbursement
6. hospitalization insurance
7. EMT stipend
8. vacations
9. "me-too" clause

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10. hours of work and overtime[1]

The parties agreed to waive the provisions of the Illinois Public Labor Relations Act regarding tripartite panels and further stipulated that I would have the full authority to award increases in wages and all other forms of compensation retroactive to May 1, 1995 without predetermining that retroactivity was indeed appropriate[2].

BACKGROUND

On September 27, 1994, in Case No. S-RC-94-161 the Union was certified by the Illinois State Labor Relations Board as the exclusive bargaining representative for a bargaining unit consisting of the Employer's full-time police officers below the rank of sergeant. There are 45 bargaining unit employees and 56 sworn officers in total. Following certification, the parties commenced bargaining for an initial collective bargaining agreement and when they were unable to successfully conclude negotiations they initiated this interest arbitration procedure.

THE APPLICABLE STANDARDS

Under Section 14 of the IPLRA in those cases in which the parties are unable to agree to a collective bargaining agreement for a bargaining unit of peace officers, they are required to submit any unresolved issues to arbitration. After taking evidence and considering the arguments of the parties the arbitrator is to issue an Award on those issues as they relate to the following criteria:

-the lawful authority of the employer
-the stipulations of the parties
-the interests and welfare of the public and the financial ability of the employer to pay
-a comparison of the wages, hours, and terms and conditions of employment between the bargaining unit and employees performing similar services in public and private employment in comparable communities
-the cost of living
-the overall compensation presently received by bargaining unit employees
-such other factors which are normally or traditionally taken into consideration in arbitration.

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[1]At the hearing in this matter the parties settled the issues of holiday pay and compensatory time.

[2]I note however that at no time did either party contest the appropriateness of a retroactive award.

THE COMPARABLES

The parties agreed that the following communities are comparable to the Employer for the purposes of this hearing: Elk Grove Village, Wheeling, Morton Grove, Rolling Meadows, Deefield, Glenview, Park Ridge, Wilmette, Northbrook, Palatine, Buffalo Grove, and Lake Forest[3]. The Employer argues that only Bensenville, Libertyville, Elmhurst, and Mount Prospect should also be included. The Union disagrees and argues that Niles should also be added to the list of comparable communities.

In making their comparability arguments both parties used some of the same factors. Those include, population, per capita income, revenues, equalized assessed valuation (EAV), and number of sworn officers. The Employer in addition utilized the factors of expenses, sales taxes, property taxes, total department size, and crime index. I find that all of these factors are relevant for determining the comparable communities appropriate for this matter. See, *Labor and Employment Arbitration,* Bornstein and Gosline, editors, (1993) at page 63-8.

I turn first to the additional communities that the Employer argues are comparable to the Employer. The first, Bensenville is generally at the low end of the scale on each of the factors vis-a-vis the other agreed upon comparables. More importantly, it is below the Employer in all of the categories that are appropriate for consideration. (E.g.s, 50% of the Employer in the categories of population, revenue, and EAV.) Accordingly, I reject Bensenville as a comparable community for use in this matter. On the other hand, although Libertyville compares as does Bensenville to the other agreed upon comparables, but is more comparable to the Employer, it too fails, in my estimation, because it does not compare favorably to the Employer on what I regard as critical elements such as EAV, total revenue and the size of the workforce. (E.g.s, a relative EAV and total workforce of just more than one-half of that of the Employer.) The other two communities urged as comparable by the Employer are Elmhurst and Mount Prospect. I agree that these two communities are comparable. They are either at the middle or high end on all factors relative to the other agreed upon communities. More importantly, they compare favorably to the Employer in terms of EAV, tax revenues, and number of sworn officers.

As noted above, the only comparable that the Union proposes that is in dispute is Niles. I reject Niles as a community comparable to the Employer. That community does not compare favorably to the Employer in terms of EAV, revenues, and sales and property taxes. (E.g.s an EAV approximately three-quarters that of the Employer and sales and property taxes that are either

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[3]In its post-hearing brief the Employer asserts that the parties are at odds whether Lake Forest is a comparable community. However, at the hearing it stipulated that it was appropriate to include Lake Forest as one of the comparable communities. (Tr. 21, lines 18-21). Similarly, at the hearing in this matter the Union disagreed with the Employer whether Palatine and Buffalo Grove should be regarded as comparable communities, but declared in its post-hearing brief that they were comparable. (See Union post-hearing brief at page 6.) Accordingly, I include these three communities among the comparables utilized in my findings.

disparately greater or lesser than those of the Employer.)

In light of the foregoing, I find that the appropriate comparable communities are as follows: Elk Grove Village, Wheeling, Morton Grove, Rolling Meadows, Deerfield, Glenview, Park Ridge, Wilmette, Northbrook, Palatine, Buffalo Grove, Lake Forest, Elmhurst, and Mount Prospect.

THE ISSUES

1. Hours of Work and Overtime

On this point the parties' dispute centers on the Union's proposal that the normal eight hour workday include a fifteen minute in-service training period to be compensated at employees' straight time pay. As a threshold matter the Employer asserts that this subject is a permissive subject of bargaining under the IPLRA and, prior to the arbitration, secured a declaratory ruling from the General Counsel of the Illinois State Labor Relations Board that the matter was indeed a permissive subject. In addition, the Employer has pending before the ISLRB an unfair labor practice procedure on this same issue.

Under Section 1230.90(k) of the rules of the ISLRB I may not, as the arbitrator in an interest proceeding under the IPLRA, consider an issue over which the parties are not required to bargain. However, at the hearing the parties agreed that I could decide the matter nonetheless. (Tr. 85). Moreover, the unfair labor practice charge, which was not placed into evidence, presumably alleges that the Union has violated the IPLRA by seeking to bargain to the point of impasse over a permissive subject of bargaining. Ordinarily, it would appear that the remedy for such a charge, if substantiated, would require the Union to cease and desist from doing so. In other words, the ISLRB would not, in resolving the unfair labor practice charge, pass judgement on any settlement of the issue had bargaining been in good faith. Therefore, for me to pass on this subject would not be of assistance to the parties if for some reason the ISLRB either dismissed the charge or found a remedy that did not address the terms of the contract settlement on the issue at hand. Under those circumstances, I do not believe that either arbitral economy or the final resolution of this matter will be realized if I fail to rule on the issue. Accordingly, I find that the matter is properly before me. However, because any order of the ISLRB may serve to negate whatever conclusion I may reach on this issue, I find that my award on this point should be conditional on the action of the agency to the extent that it may, if at all, bear on the propriety of the award.

The next argument raised by the Employer without regard to the merits of the Union's proposal is that because the Union's final offer is inconsistent with the terms of the parties' tentative offer, which was rejected by the rank and file, I must reject the Union's final offer placed before me.. I have dealt with this subject before and have ruled that a parties' final offer need not be rejected simply because a tentative agreement was not ratified. *Village of Franklin Park,* (1993). I have ruled in this fashion because the right of ratification is an essential right of the public sector bargaining process for both unions and employers. See e.g., *City of Grand Rapids,* 1968 MERC Lab. Op. 194. To find therefore that a final offer that differs from the terms of a tentative agreement must be

rejected would render that right illusory.

The final analysis on this issue however must turn to the criteria to be used for the resolution of interests disputes under the IPLRA. One of the tests traditionally used by arbitrators to justify selection of one proposal over another is whether the proposal is a codification of current employer practice. In the instant matter, there is no dispute between the parties that the Union's proposal is indeed a codification of past practice. Therefore the Union, urging that I accept its proposal, cites the opinion of Arbitrator Berman in *Rock Island County Board and States' Attorney,* (1993) that the codification of past practice is a primary factor absent a persuasive reason to the contrary. In addition, it has been said that codification of past practice is of special significance where, as here, the parties are negotiating an initial contract. See, *How Arbitration Works,* Elkouri and Elkouri, 4th Edition, BNA, page 843.

The only argument on the merits of this proposal made by the Employer is that none of the comparable communities offer such a condition of employment to their police officers. A review of the evidence shows that this is undeniably true. However, the critical question is whether this comparability evidence is "persuasive" enough to outweigh the strong preference to codify past practice. I do not believe that it has sufficient weight to operate in this fashion. Apparently before the certification of the Union as the exclusive bargaining representative the Employer saw some justification for including the fifteen minute period as part of the paid work day. Therefore, I do not believe that after unionization it is sufficient to take that benefit from employees merely because other employers do not share the same point of view.

Accordingly, on the issue of the paid fifteen minute in-service period, the Union's proposal is accepted.

2. Court Appearance Pay

On this point the parties differ as to the rate of pay officers should receive for appearing in court. The Union proposes that officers be paid at least two and one-half hours at time and one-half while the Employer's final offer is for at least two hours at straight time.

The comparability evidence shows that eight of the fourteen comparable communities (Morton Grove, Deerfield, Glenview, Wilmette, Northbrook, Buffalo Grove Elmhurst, and Mount Prospect) pay time and one half for at least three hours and that the other five pay at the same rate for at least two hours. Thus, the overwhelming weight of the comparability evidence conforms better to the Union's proposals with respect to the rate of pay and/or the amount of hours for which employees are to be compensated. Therefore, I accept the Union's proposal.

3. Shift Exchange

The Employer's final offer on this issue provides that employees may substitute for one another so long as the substitution does not "interfere with the operation of the Police Department"

and provided the employees in question obtain advance approval of the substitution. During the hearing the Union provided no evidence on this issue nor did it address the matter in its post-hearing brief.

The comparability evidence shows that among the comparable communities there is either no reference to shift exchanges, that shift exchanges must be approved in advance but are not limited in any other fashion, or that shift exchanges must be approved in advance and may be limited in various ways. Thus, when viewed relative to this evidence I can only conclude that the Employer's final offer on this issue is not unreasonable nor out of substantial conformity with the comparable communities. Therefore, the Employer's proposal is selected.

4. Life Insurance

With regard to this item the parties differ as to the amount of life insurance the Employer shall provide employees in the bargaining unit. The Union proposes that life insurance in the amount of one and one-half times an employee's salary shall be required by the collective bargaining agreement while the Employer's final proposal is that life insurance shall be equal to an employee's salary.

Here the comparability evidence is not as extensive as in other areas. In one case the data is inconclusive (Morton Grove) while in other examples (Wheeling, Deerfield, Glenview, Park Ridge, Elmhurst, and Mount Prospect) the benefit is a set dollar amount without apparent reference to the employee's salary. However, in four of the comparable communities (Elk Grove Village, Rolling Meadows, Buffalo Grove, Lake Forest) the life insurance benefit is one time the employee's salary while in only three (Wilmette, Northbrook and Palatine) does the life insurance conform to the Union's proposal. More importantly however, the evidence with regard to internal comparables, i.e. the life insurance offered by the Employer to its firefighters, conforms to the Employer's proposal.

Thus, in light of the internal comparability and the preponderance of the external comparability evidence, I select the Employer's proposal on this issue.

5. Tuition Reimbursement

The Employer's final offer with regard to tuition reimbursement differs from the Union's largely with respect to the conditions under which an employee may receive complete reimbursement and the total amount of compensation that an employee may receive in any one fiscal year. The Union proposes that complete reimbursement will be paid so long as the employee achieves a grade of "C" or better and that the total amount payable will be $2,850 per fiscal year. In its final offer the Employer suggests that the amount of reimbursement be linked to the grade achieved (total reimbursement for a "B" or better and 50% for a "C") and that the total be $3,780 per year.

Again the comparability evidence is not wholly conclusive. First, seven of the comparables, or almost half, are not helpful in that they either have no limitation on reimbursement, a limitation linked to the degree of job relatedness of the course in question, or no policy at all regarding tuition reimbursement. With regard to the remaining comparables, four (Wheeling, Morton Grove, Park

Ridge, and Deefield) require only a "C" or better for total reimbursement but two others (Buffalo Grove and Rolling Meadows) reimburse on a sliding scale according to the grade achieved. The matter is further complicated by the fact that although the Employer's proposal makes it more difficult for an employee to obtain total reimbursement, its offer enables employees to receive higher total reimbursement.

Because of the less than conclusive nature of the external comparables, internal comparables again provide a compelling reason for selecting one offer over the other. The evidence shows that the Employer's final offers conforms with that provided to all its employees and was the product of employee involvement[4]. (Tr. 67). This fact, combined with the external comparability evidence, leads me to conclude that the Employer's proposal should be selected. I so find.

6. "Me Too" Clause

The Union proposes that the parties' collective bargaining agreement include a clause whereby bargaining unit employees will receive increases to certain wage levels and other economic provisions when other employees of the Employer receive such adjustments. The Union argues in support of its proposal that such provisions are common and that inclusion of such a provision will be beneficial to the collective bargaining process. However, as pointed out by the Employer, none of the comparable communities have any such provision.

Because of the comparability evidence I do not agree with the Union that such provisions are common. Therefore, the Union must find some other basis for justifying its proposal. In this regard I note that a large number of jurisdictions have either found such provisions to be permissive subjects of bargaining or plainly illegal. Thus, I do not agree with the Union that any such clause will necessarily be beneficial to the collective bargaining process and to the extent that it may be, it should be left to the parties to choose bilaterally to take such an approach.

7. Wage Increases

With regard to base wages, i.e. wage levels without regard to longevity, the parties agreed that an new SS step should be added to the salary schedule and to the rate of pay for employees in that step. In addition, the parties agree that with regard to the first year of the collective bargaining agreement, the across-the-board wage increase should be 3.5%. Thus, the only point of contention between the parties is with regard to the across-the-board wage increases in the second and third year of the contract. On this point the Union urges 3.5% and 4% wage increases while the Employer asserts that I should select a 3% wage increase in both years.

Once again the external comparability evidence does not overwhelming lead to one choice

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[4]The degree, nature or scope of the employee involvement is not explained in the record. However, the Union did not dispute the bona fides of that process.

over another with regard to the second year of the agreement. In both cases the two proposals will place the employees in the bargaining unit at the top of a relative wage scale with the other comparable communities at, for example, the starting rate, the thirteenth year of service and at the maximum end of the scale[5].

Therefore, I must turn again to the internal comparability evidence for the conclusive evidence. On this point the collective bargaining agreement between the Employer and its firefighters' provides for wage increases of 3.5% in 1994/95 and 1995/96. Therefore, its wage proposal to its police officers for the second year of the agreement, 3%, would not compare favorably with the expectations and progression enjoyed by the firefighters. Secondarily, it would also represent a percentage wage increase that is less than that adopted by the parties in the first year of the agreement, 3.5%.

Finally, the evidence with regard to the cost of living shows that in the Chicago area the cost of living between 1991 and 1995 has fluctuated between 2% and 3.5% with the most recent figure, for the period 4/94 through 4/95 being 3.5%. Accordingly, the Union's wage proposal for the second year of the contract more closely conforms with the most recently known cost of living.

Thus, in light of the internal comparables and the cost of living I select the Union's proposal for the second year of the contract.

With regard to the third year of the contract the evidence of external comparability is even less helpful for there is such evidence only with regard to one comparable. Moreover, even with regard to that one community both of the parties' final offers are significantly disparate. However, internal comparables and the cost of living are again useful measures for the Employer's final offer, 3%, still does not conform to the progression and expectations set by the internal comparables, the firefighters, nor does it conform to the rising cost of living.

8. EMT Stipend

On this issue the Union proposes that because the Employer requires that bargaining unit employees be certified as emergency medical technicians they should receive an annual stipend of $1,000. In support of its proposal it cites both external and internal comparables. The Employer on the other hand argues that those very same comparables warrant rejection of the proposal.

I agree with the Employer's characterization of the relevant comparables. First, with regard to the external comparables the Union's evidence shows that in some communities employees receive a stipend for "specialization" pay, but it does not describe what is the extent of the specialization in question and how, if at all, it compares to the sole requirement of EMT certification. Thus, I do not

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[5]Interestingly, although the Union's proposal makes the disparity greater at any one point in time, it does not conflict with the general relative ranking set forth above.

believe that this evidence is useful for purposes of any comparative analysis.

With regard to the internal comparables, the Union asserts that the Employer provides a stipend to its firefighters who are EMT certified while the Employer denies that it does so. A review of the collective bargaining agreement between the Employer and its firefighters does indeed provide that firefighters who are certified as an EMT I or II are paid at a higher rate of pay than those who are not. However, there is no evidence in the record whether this distinguishing rate of pay is centered exclusively on EMT certification, which is the basis for the Union's proposal on this issue. Therefore, as the proponent of the matter, the burden is on the Union to show that the asserted comparable is indeed an appropriate measure. It has failed to meet that burden.

In light of the foregoing I therefore reject the Union's proposal on this issue.

9. Hospitalization

The parties' dispute on this issue centers on the issue of employee co-payments for health insurance. While the Employer proposes that the contract require that employees be obligated to a 3% co-payment, the Union insists that the collective bargaining agreement continue the current practice requiring no such payment. Moreover, the Union therefore argues, that because a 3% co-payment constitutes a "takeaway," the Employer bears a heavy burden which it did not meet.

The external comparability evidence on this point indicates that six communities require employees to co-pay between 15% and 6.5% of applicable health insurance premiums. Five other communities require that employees pay a set dollar amount towards premiums. Finally, in three of the comparable communities no co-payment is required. Thus, the overwhelming weight of the comparability evidence tends toward some type of co-payment and the Employer's proposal that employees pay 3% is not out of line with those communities where such co-payments are required. Presumably, this trend among those comparable communities reflects the continuing concern with regard to rising health care costs that does not require elaboration[6].

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[6]The Union argues that despite the comparability evidence the Employer's offer should be rejected because it would be at the high end of the range of comparables and because the Employer is more able to pay higher health care costs than the comparable communities. Although the Union is correct in its relative ranking, it fails to adequately appreciate the limits of final offer arbitration. I am obligated to accept either the Employer's or the Union's proposal based on the comparison between communities with some co-payment versus those with none. Therefore, it is not sufficient to say that the Employer's proposal must be rejected because it includes a higher co-payment when most comparable communities require some co-payment similar to that sought by the Employer. With regard to the Employer's relative ability to pay, I have considered that argument before and have rejected it because, as here, only the ability to pay of the Employer, and not that of other communities, is before me. Moreover, the record does not support the assertion that the Employer is more able to pay. See e.g., *Round Lake Area Schools, District 116* (1995) at page 13, fn 24.

Therefore, the Employer's proposal on this issue is selected.

10. Vacations

The parties agree that for employees with up to 4 years of service the vacation benefit should be 80 hours and that those employees with between five and eleven years of service the vacation benefit should be 120 hours per year. At this point the two proposals diverge. The Employer proposes that for employees with more than eleven years of service the vacation benefit should be 160 hours. The Union on the other hand would establish that as the vacation benefit for employees with 11 to 19 years of service and that employees with 20 or more years of service should receive 200 hours of vacation.

Both the Union and the Employer appear to agree that the external comparables favor the Unions proposal. (See e.g., at page 23 of the Employer's post-hearing brief where it concedes that "(a)ccording to both the City's and the Union's Exhibits, a number of communities provide for five weeks of vacation after twenty years of service..." and page 22 of the Union's post-hearing brief where it asserts that its proposal will bring the vacation benefit cap "...in line with that cap available for employees in 11 of the comparable communities.")

However, the Employer urges that I reject the Union's proposal nonetheless because the total compensation of employees, including base salary, longevity, and insurance, would be higher than that of police officers in comparable communities. Indeed, the Employer proffered this argument on the basis of its own wage proposal which, at pages *7-8 supra*, I rejected. Therefore, the total relative compensation is even higher than that used as the basis for its assertion. In addition, other arbitrators have relied upon this basis in rejecting various proposals and the IPLRA itself mandates that it be considered.

Therefore, the total compensation afforded to bargaining unit employees, particularly as calculated by my award of the Union's wage proposal, compels the conclusion that the Employer's proposal on this point be selected. I therefore do so.

AWARD

1. On the issue of hours of work, the Union's proposal is selected to the extent that it is consistent with any order of the ISLRB in a related unfair labor practice matter.

2. On the issue of court appearance pay, the Union's proposal is selected.

3. On the issue of shift exchange, the Employer's proposal is selected.

4. On the issue of life insurance, the Employer's proposal is selected.

5. On the issue of tuition reimbursement, the Employer's proposal is selected.

6. On the issue of wage increases, the Union's proposal is selected.

7. On the issue of EMT stipend, the Employer's proposal is selected.

8. On the issue of the "Me-Too" clause, the Employer's proposal is selected.

9. On the issue of hospitalization, the Employer's proposal is selected.

10. On the issue of vacations, the Employer's proposal is selected.

DATED: June 14, 1996