ILRB #181

INTEREST ARBITRATION
OPINION AND AWARD

NOV 09 1998

In the Matter of Interest Arbitration

between

UNIVERSITY OF ILLINOIS AT CHICAGO

and

ILLINOIS FRATERNAL ORDER OF POLICE (FOP) LABOR COUNCIL

(Case No. S-MA-96-240)

Hearing Held

March 18, 1998

Conference Room
University of IL at Chicago
715 South Wood
Chicago, Illinois

Arbitrator

Steven Briggs

Appearances

For the Union:

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For the University:

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BACKGROUND

This interest dispute concerns certain provisions to be included in two separate collective bargaining agreements between the University of Illinois at Chicago (the UIC; the University) and the Illinois FOP Labor Council (the Union) for their police supervisor unit. The first of those collective bargaining agreements is two years in duration (September 1, 1996 through August 31, 1998); the second is for three years (September 1, 1998 through August 31, 2001).

Pursuant to their own Submission Agreement and Section 14 of the Illinois Public Labor Relations Act (IPLRA) the parties selected Steven Briggs to serve as the arbitrator in this matter. They waived the IPLRA provisions regarding a three-person arbitration panel, and granted the Arbitrator the exclusive authority to decide the issues. An interest arbitration hearing was held on March 18, 1998, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions. A verbatim transcript was made. After the parties had filed timely posthearing briefs with the Arbitrator on July 13, 1998, the record was declared closed.

THE ISSUES

At the hearing the parties advanced the following four issues for resolution. They also reached agreement regarding the status of each (i.e., economic or non-economic).

Issue 1	Hourly Rate for Serving as Watch Commander (Economic)
Issue 2	Method of Assigning Watch Commanders (Non-Economic)
Issue 3	Method of Assigning Specialty Details (Non-Economic)
Issue 4	Time Limit for Response at Chancellor's Step of the Grievance Procedure (Non-Economic)

RELEVANT STATUTORY CRITERIA

Section 14 of the IPLRA directs the Arbitrator to consider the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interest 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 COMPARABLE JURISDICTIONS

University Position

The University maintains that the relevant universe of external comparables should be limited to other four-year state universities and other campuses of the University of Illinois, all of which are subject to the State Universities Civil Service System. It notes that the Universities Civil Service Merit Board is responsible for prescribing "duties of each class of positions and the qualifications required by employment in that class."[1] The University argues that since the Police Sergeant classification involved in the present dispute is common to Illinois State University campuses, it is appropriate to use them for comparability purposes.

The University asserts as well that municipalities should not be considered comparable. In support of that assertion it notes that most interest arbitrators under Section 14 of the IPLRA have ruled that only like types of governmental bodies should be used for external comparability purposes, except under unique circumstances.

The University's suggested comparables are listed below:

Chicago State University
Eastern Illinois University
Governors State University
Illinois State University
Northeastern Illinois University
Northern Illinois University
Western Illinois University
Southern Illinois University
University of Illinois

Union Position

The Union does not believe that comparability should be given significant weight in these proceedings. It notes with regard to the University's proposed comparables that it provided no data regarding university population, department size or ability to pay. Moreover, the Union argues, only five of the University's suggested comparability grouping have command officers who are organized. The Union additionally observes that several of the University's comparables are quite distant

[1] State Universities Civil Service System, 110 ILCS 70/36d, § 36d(2) , at 3.

from Chicago.

The Union identifies four municipalities as comparables, arguing that all of them are suburbs of Chicago and are listed among the UIC's agreed upon comparables for its patrol officers. The Union's proposed comparability grouping is listed below:

Cicero
Oak Park
Evanston
River Grove

Discussion

The University is absolutely correct in its assertion that in public sector interest arbitration generally, external comparables have been limited to organizations similar in nature to the focal one.[2] That is, counties have been compared to counties, cities to cities, and four-year universities to four-year universities. Comparing police command staff at a university to those of a municipality not only conflicts with that general approach, but it also makes little sense when considering their respective jobs. The former work in an environment somewhat insulated from the surrounding community. They deal mostly (though certainly not exclusively) with campus security. In contrast, municipal police command staff are confronted with a wider variety of policing issues. In addition, universities and municipalities are funded differently. Their respective police organizations are characterized by distinctly different reporting relationships. For example, municipal police departments are generally accountable to a board of fire and police commissioners; university police departments are not. Moreover, though the Union argued that its four comparables are listed among the agreed comparables for UIC patrol officers, it did not sufficiently explain why it excluded the remaining six agreed-upon jurisdictions (Chicago, Evergreen Park, Lincolnwood, Morton Grove, Elmhurst and Skokie) from these proceedings. For all of those reasons, the Arbitrator has concluded that the Union's proposed municipalities are not comparable to the UIC for the purpose of this interest arbitration.

[2] See, for example, Cook County Sheriff (Feuille, March 20, 1987); Will County Sheriff (Fleischli, June 26, 1996); McLean County Sheriff, Case No. S-MA-92-29 (Feuille, July 9, 1993); Thornton Community College (Feuille, October 27, 1983). An exception was made by Arbitrator Briggs in City of Carbondale, Case No. S-MA-96-83, because the City had a mutual aid pact with SIU-Carbondale. Under that arrangement, police officers from both jurisdictions worked side by side. Moreover, the parties had looked to SIU-Carbondale police officer wage rates in the past for comparison purposes.

It is true that many of the University's proposed comparable jurisdictions are far removed from Chicago geographically. Thus, it is quite probable that they do not compete with the University of Illinois at Chicago with regard to attracting and retaining command officers. They do not operate in the Chicago labor market. For that reason, and given the fact that the parties introduced relatively little evidence in support of their respective comparability proposals,[3] the Arbitrator does not attach a great deal of weight to the external comparability criterion. Nevertheless, since the University's proposed external comparables seem more reasonably related to the UIC than do the Union's, they are adopted.

ISSUE 1: HOURLY RATE FOR SERVING AS WATCH COMMANDER

The pay differential currently in effect for Sergeants assigned Watch Commander duties is governed by the following contract provision:

> ARTICLE IX - SENIORITY
> Section 3. Watch Commander Assignments for Sergeants
>
> Sergeants assigned the duties of Watch Commander shall be compensated in addition to the basic straight time hourly rate set forth in Appendix "A," an additional two dollars seventy-eight cents ($2.78) per hour for all hours worked under the following conditions:
>
> (a) When a Sergeant is assigned the duties of Watch Commander on any other than his/her normally scheduled shift, and
>
> (b) When a Sergeant is assigned the duties of Watch Commander on his/her normally scheduled shift and is replacing the Watch Commander on the Watch Commander's regularly scheduled days off.
>
> (c) When a Sergeant is assigned the duties of Watch Commander due to a Lieutenant Watch Commander calling in sick due to the Lieutenant's own personal illness up to a maximum of three (3) days.

[3] For example, they provided no data on the size of the police departments in question, crime statistics, types of specialty details, number of persons assigned to each watch, etc.

> Effective September 1, 1994 such additional compensation shall be increased to $2.89 per hour and effective September 1, 1995 shall be increased to $2.98 per hour. Sergeants who are on percentage rates (90% or 95%) will receive the appropriate percentage of the additional hourly compensation when eligible for such additional hourly compensation.

Since the foregoing language was negotiated the UIC Police Department has been restructured. The Lieutenants are now performing more administrative duties, and Sergeants are serving as Watch Commanders on a regular basis. Thus, both parties' final offers depart significantly from the existing language of Article IX, Section 3 in that they eliminate the obsolete language concerning the circumstances under which Sergeants were entitled to additional pay when they temporarily performed the Watch Commander duties of Lieutenants.

University Position

The University's final offer on this issue is to delete Article IX, Section 3 in its entirety and replace it with the following new language:

> Section 3. Hourly Rate for Sergeants Assigned as Watch Commander or Acting Watch Commander.
>
> Effective the first date that a Sergeant was assigned to serve as Watch Commander on a full-time basis, Sergeants assigned the duties of Watch Commander shall be compensated, in addition to the basic straight time hourly rate set forth in Appendix "A", an additional $2.00 per hour for all hours worked while serving as the designated Watch Commander or designated acting shift commander on a shift. This provision shall be retroactive to the first date that a Sergeant was assigned to serve as Watch Commander on a full-time basis; as a result, any Sergeant who served as Watch Commander or acting Watch Commander between the first date that a Sergeant was assigned to serve as Watch Commander on a full-time basis and the effective date of Arbitrator Briggs' award shall be paid the difference between the amount, if any, he received in additional pay for serving as Watch Commander or acting Watch Commander during said period and the amount he would have received based on the provisions of this paragraph; provided, however, that any Sergeant who received more

> in additional pay for serving as Watch Commander or acting Watch Commander between the first date that a Sergeant was assigned to serve as Watch Commander on a full-time basis and the effective date of Arbitrator Briggs' award than he would be eligible to receive hereunder shall be allowed to retain such additional pay.

The University argues that serving as a shift supervisor or Watch Commander is part and parcel of the duties encompassed within the Police Sergeant classification as defined by the State Universities Civil Service System Merit Board effective October 3, 1995. That definition amended the prior one to provide that the primary responsibility of Police Sergeants is to serve as shift supervisor or Watch Commander. Moreover, the University observes, the Union was fully advised of that proposed modification and did not object to it.

The University also notes that none of the comparable universities pay Police Sergeants additional amounts to serve as shift supervisors or Watch Commanders. And those who pay police officers in lower ranks incrementally for such service do not pay them anywhere near the $2.00 per hour being proposed here. Thus, the University asserts, the external comparability data support the adoption of its position on this issue.

The University also underscores the limited circumstances in which Sergeants were eligible to receive extra pay under the 1994-1996 contract for performing Watch Commander duties: (1) on other than their normally scheduled shift; (2) when replacing on their normally scheduled shift the Watch Commander on his/her regularly scheduled days off; and (3) when assigned as Watch Commander when a Lieutenant Watch Commander called in sick due to his/her own personal illness, up to a maximum of three days. Under that same contract, when Sergeants were assigned Watch Commander duties on their regular shift on a regular basis, they did not receive additional pay. The University estimated that a total of approximately $10,000 per year was paid to Sergeants under those circumstances. Under the University's final offer in these proceedings, it estimates that its annual cost for compensating Sergeants serving as Watch Commander or acting Watch Commander will be $17,520. Thus, the University argues, its final offer was not advanced as a cost-saving item.

Union Position

The Union's final offer on this issue is quoted below:

> (c) Effective September 1, 1996, the Watch Commander shall receive in addition to his/her regular compensation $2.75 per hour for all hours served in such position; provided, no employee shall suffer a reduction in any Watch Commander pay received prior to the implementation of the Award herein.

The Union notes that incremental pay for Sergeants temporarily assigned Watch Commander duties has historically been the difference between Sergeant and Lieutenant pay. That difference, as of the date of the arbitration hearing, was $2.98 per hour. The Union asserts that there is no basis for not extending that pay practice to cover Sergeants as full-time Watch Commanders.

The Union asserts as well that the University chose to assign Sergeants as Watch Commanders on a full-time basis. The increased cost of doing so should therefore not be a significant consideration, it argues. The Union also notes that its final offer represents a concession, in that it does away with the automatic tie-in to Lieutenants' pay and even reduces Watch Commander pay from the current amount.

Discussion

The parties have in the past negotiated and agreed on the incremental amount Sergeants should be paid for temporary performance of Watch Commander duties. As the Union correctly notes, since at least September 1, 1993 that amount has been equivalent to the difference between the Sergeant and Lieutenant hourly rates. Table 1 on the following page is illustrative:

Table 1

Hourly Pay Rate Differential vs. Increment for Sergeants' Temporary Performance of Watch Commander Duties

	9/1/93	9/1/94	9/1/95
Lieutenant Rate	$ 26.91	$ 27.99	$ 28.83
Sergeant Rate	$ 24.13	$ 25.10	$ 25.85
Difference	$ 2.78	$ 2.89	$ 2.98
Increment	$ 2.78	$ 2.89	$ 2.98

Source: Feb. 1, 1994 - Aug. 31, 1996 Agreement.

The data included in Table 1 speak quite definitively about the value historically placed by the parties themselves on the temporary performance of Watch Commander duties. There is no indication in the arbitration record that Watch Commander duties have changed materially since then. Indeed, the only change seems to have been that those duties are no longer assigned to Lieutenants, they are assigned on a regular basis to Sergeants. And since for the latter portion of 1995 and early 1996 the temporary performance of those duties by a Sergeant has been valued by the parties at $2.98 per hour, the University's proposed decrease to $2.00 per hour (an approximate 33% cut) must stem from particularly compelling circumstances to be adopted.

The external comparables lend support to the University's position, since not one of them provides Sergeants assigned Watch Commander duties a pay differential anywhere near those advanced by the parties in these proceedings. In fact, most of the comparable universities pay Sergeants no increment at all for the performance of such duties. But again, the parties here have felt since at least 1996 that such an increment is justified. And they have valued that increment at exactly the dollar difference between Sergeants' and Lieutenant's hourly pay. That negotiated outcome is particularly compelling, because it was reached through free collective bargaining wherein the parties had the opportunity to consider all relevant circumstances. Among such circumstances, obviously, was the differential (if any) being paid to Sergeants at comparable universities. The only change since then at UIC has been the transfer of regluarly-assigned Watch Commander duties from Lieutenants to Sergeants. And there is no evidence in the arbitration record to

suggest that the performance of such duties on a regular basis is any less arduous than their performance on a temporary basis.

A fundamental purpose of interest arbitration is to approximate what the parties themselves would have negotiated on their own. It is highly unlikely that the University would have convinced the Union without offering some significant quid pro quo that Watch Commander pay for Sergeants should be decreased by 33% in one fell swoop. In reaching that conclusion the Arbitrator recognizes that Sergeants chosen to perform Watch Commander duties on a regular basis will have a greater income even under the University's final offer than they would have enjoyed had the Department not reorganized. But that is not the point. One could also argue that an employee making five dollars per hour in a forty-hour week (i.e., $200 for the week) would make more money if he/she worked eighty hours at a rate of three dollars per hour (i.e., $240 for the week). No responsible union would ever agree to such an arrangement.

On balance, the Arbitrator is not convinced from the record that there is sufficient justification to decrease the Watch Commander duty differential from the current $2.98 to $2.00. The Union's proposed differential of $2.75 seems to be the more reasonable choice.

ISSUE 2 - METHOD OF ASSIGNING WATCH COMMANDERS

Grievance History

Prior to the Department's reorganization, Lieutenants served as Watch Commanders. In their absence, Watch Commander duties were performed by Sergeants on a temporary basis. In April, 1996, Sergeant Gordon Hartman was assigned to the 3rd watch. Newly-promoted Sergeant Alfred Perales was also assigned to that watch, as was Lieutenant Willard Bethel. When Bethel went on indefinite sick leave, Sergeant Perales was assigned to perform the Watch Commander duties. He received incremental pay ($2.98 per hour) for doing so. Hartman, who was senior in grade to Perales, filed a grievance. The grievance advanced to arbitration, and the parties selected the undersigned to hear and decide it. The resulting October 11, 1997 Award is quoted in pertinent part below:

> (2) The Employer violated the parties' mutually accepted, unequivocal, longstanding and binding past practice of assigning Watch Commander duties to the senior Sergeant on the watch when in the absence of Lt. Willard Bethel it assigned such duties

to Sergeant Alfred Perales instead of assigning them to the more senior Sergeant Gordon Hartman.

(3) On the basis of decision no. 2 above, the grievance is sustained.

(4) As a remedy, the Employer is directed to pay the Grievant the additional compensation he would have received under Article IX, Section 3, had he been properly assigned the Watch Commander duties at issue.

In the "Opinion" section of the Opinion and Award, the following paragraph appeared:

> On balance, the record supports the Union's claim that a valid past practice exists with regard to the temporary assignment of Watch Commander duties to the senior Sergeant on the watch when the Lieutenant who normally performs them is absent. If the Employer wishes to discontinue that practice, it must do so at the bargaining table during contract negotiations. Doing so unilaterally as it did in the present case, during the term of an existing Collective Bargaining Agreement under which the practice still exists, was contrary to well-established principles of agreement interpretation.

Since the foregoing Opinion and Award was issued, all subsequent temporary Watch Commander assignments have been given to the senior Sergeant on the relevant shift. The more recent ermanent assignments of Sergeants to serve as Watch Commanders have been made on the same basis, even though the Opinion and Award did not address that question. The University took both issues to the bargaining table in the negotiations which ultimately led to these interest arbitration proceedings.

Union Position

The Union's final offer on this issue is to replace the current Article IX, Section 3 (a) and (b) with the following language:

(a) The Watch Commander position for any shift not manned by a lieutenant as Watch Commander, shall be offered to qualified

sergeants assigned to the shift on the basis of seniority. If no volunteers are found on the shift, the position shall be offered to all qualified sergeants in the bargaining unit on a seniority basis. If no volunteers are found within the bargaining unit, the position shall be assigned to the least senior qualified sergeant on the shift.

(b) In the absence of the permanent Watch Commander on any shift, the most senior qualified sergeant shall be assigned to act as Watch Commander.

The Union underscores the long-standing past practice in the Department of selecting Sergeants as Watch Commanders based exclusively upon seniority. And, the Union notes, no evidence was proffered by the University to show that the functions of a full-time Watch Commander differ so markedly from those of a permanent or temporary fill-in Watch Commander that a departure from traditional seniority rights is necessary.

The Union also believes that the Watch Commander selection issue is a mandatory subject of bargaining. It argues that since the UIC's position to the contrary is based on a declaratory ruling of the ISLRB General Counsel,[4] the Arbitrator is not prevented from reaching his own conclusions on that issue.

The Union takes extreme exception to the General Counsel's opinion in Evergreen Park, but also notes that its proposal here is distinguishable from that case. That is, it allows for some management discretion to bypass the most senior Sergeant in the event he or she is not qualified to perform as a Watch Commander. Should the UIC determine that the senior Sergeant is not qualified, it would be in a better position to prove that determination to a grievance arbitrator than the Union would be to prove the reverse. Thus, the Union declares, its proposal is entirely reasonable.

The Union believes that in light of the clear and long-standing practice of respect for seniority at UIC, its final offer on this issue should be accepted. It asserts in addition that the University's final offer disregards seniority rights in favor of complete and unchallengeable employer discretion in the selection of Watch Commanders.

[4] Village of Evergreen Park, 12 PERI ¶ 2036 (ILSLRB Gen. Con. 1996).

University Position

Here is the University's final offer on this issue:

> The watch commander on each shift shall be assigned by the Chief of Police/designee from among the Sergeants working on each shift. If the Sergeant selected by the Chief of Police/designee as the watch commander is absent, Chief of Police/designee shall assign another sergeant to serve as acting watch commander.

The University argues that the Union's proposal to select Watch Commanders essentially by seniority is not a mandatory subject of bargaining. It cites as support for that argument the ISLRB General Counsel's decision in Evergreen Park and the undersigned Arbitrator's decision in Village of Schaumburg and Schaumburg Professional Firefighters Association.[5] In the latter case, notes the University, the Arbitrator rejected the union's proposal to make shift and company assignments on the basis of seniority because doing so "would severely compromise the Chief's ability to ensure that a proper mix of experience would be characteristic of each shift and company assignment roster."[6] The University stresses the fact that in the present case a Shift Commander is the supervisor of anywhere from nine to twelve sworn personnel, plus telecommunicators, security guards, and student patrol employees. It argues that the Union's final offer so limits the Police Chief's legitimate managerial function that it should be considered a non-mandatory subject of bargaining.

And even if the Arbitrator determines the Union's final offer to be mandatory, the University argues, its own final offer should be selected because it would permit the Police Chief to designate who will be the Watch Commander on each shift. Prior to May, 1997, the UIC notes, Lieutenants were designated as Watch Commanders. In selecting them through the promotion procedure specified in the State Universities Civil Service System, the UIC was reasonably assured of obtaining fully qualified Lieutenants who could serve in that capacity. And the Chief of Police was allowed through that procedure to select from among the top three candidates emerging from the written examination and oral interview. Since there were only three Lieutenants, the Chief knew when selecting from the top three candidates that the one selected would be serving as a Watch Commander on a regular basis. Thus, the UIC argues, it seeks in these proceedings only to carry forward a right the Chief has always had --- to select the best qualified Sergeant to serve regularly as the Watch Commander.

[5] Briggs, February 23, 1998.

[6] *Ibid*, at 47.

Moreover, the UIC notes, this issue is significantly different from the Arbitrator's grievance award in Hartman. In that case, the issue was the method of assigning Sergeants to perform Watch Commander duties on an **acting** basis; here, the primary issue concerns the performance of those duties on a **permanent** basis. The University also notes that pursuant to the Arbitrator's Award in Hartman it sought at the bargaining table to negotiate a change in the practice of selecting Sergeants for the temporary performance of Watch Commander duties.

The University points to the external comparables in support of its position on this issue, citing the absence in any of their police labor agreements of a provision which would inhibit the universities' right to select shift commanders or Watch Commanders on a permanent basis. The UIC notes as well that even the Union's proposed external comparables support adoption if its final offer on this issue.

The Watch Commander manages the shift. He or she is accountable to the University and the Police Chief to carry out the mission of the Department. Accordingly, the University believes that in selecting the Sergeant to fill it the Chief should be able to consider job performance, leadership ability, respect of fellow officers, and the ability to deal with the press and various other constituency groups.

Discussion

The Negotiability Question. While the University asserts that "the Union's final offer is not mandatorily negotiable," it also urges the Arbitrator to "issue an award based on the University's final offer . . ."[7] Thus, the University has not taken the position that the Arbitrator has no authority over this issue. Put another way, the University has not "objected in good faith to the presence of this issue before the Arbitrator."[8] The Arbitrator therefore asserts authority over the Watch Commander selection issue.

There is no question that the seniority concerns embodied in the Union's final offer are integrally related to the general notion of wages, hours and terms and conditions of employment. In that sense, it appears to be within the scope of mandatory bargaining issues. But there is a second, more specific standard against which to judge the nature of the Union's final offer. That standard concerns whether its adoption would severely compromise the Chief's ability to meet the

[7] University posthearing brief, pp. 19-20.

[8] Section 1230.90 (k) of the ISLRB "Rules and Regulations" (May 10, 1996) mandates that an arbitration panel's award "shall not consider that issue" whenever one party has "objected in good faith to the presence of (the) issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain . . ."

Department's objectives. It has been embraced consistently by the ISLRB General Counsel,[9] and employed by the undersigned Arbitrator as well.[10]

The Union's final offer on this issue does not absolutely require the Chief to designate the most senior Sergeant on the shift to serve as Watch Commander. Rather, it requires that the position "shall be offered to qualified sergeants assigned to the shift on the basis of seniority." (emphasis added) Thus, under the Union's final offer the Chief would still retain the right to determine whether the senior Sergeant is "qualified" to serve as a Watch Commander. That determination could legitimately be based upon all the considerations cited by the UIC as appropriate (e.g., job performance, leadership ability, respect of fellow officers, and the ability to deal with the press and various other constituency groups). It is true that a senior Sergeant bypassed would then have the right to grieve his/her non-selection, but that outcome does not compromise the Chief's ability to make the qualification determination in the first place. The Arbitrator therefore concludes that the Union's final offer does not constrain the Chief to such an extent that it would prevent him from meeting the Department's objectives. It is therefore a mandatory subject of bargaining.

The Merits. As noted, Lieutenants served as Watch Commanders prior to the Department's May, 1997 reorganization. There was one Lieutenant assigned to each shift, and just three Lieutenants in the entire Department. When selecting a new Lieutenant from among the Sergeants who had declared their candidacy for the position, the Chief was able to select the cream of the crop. He had his choice of the top three candidates on the eligibility list, which was a rank order of the best performers on a written exam and an oral interview. That discretion defines the status quo in this case. The Police Chief has had the discretion to select Lieutenants (i.e., Watch Commanders) from among the three top candidates. Seniority has never been the deciding criterion. The Union's proposal to make seniority the deciding factor therefore represents a quantum leap from that status quo.

As discussed in the preceding paragraphs, the Arbitrator recognizes full-well that the Union's final offer allows the Police Chief to determine whether the senior Sergeant on a shift is qualified to assume the Watch Commander position. But given the importance of that position to the Department's overall performance, and especially considering the Chief's historical breadth of discretion in making permanent Watch Commander assignments, the Arbitrator does not believe it would be appropriate to restrict that discretion through these proceedings.

[9] See Village of Arlington Heights, 6 PERI ¶ 2052, and Village of Evergreen Park, *Supra*.

[10] Village of Arlington Heights & International Association of Firefighters, January 29, 1991 interest arbitration award; Village of Schaumburg & Schaumburg Professional Firefighters Association, February 23, 1998 interest arbitration award.

The Arbitrator recognizes as well that under the University's final offer the Chief would have the ultimate and exclusive authority to select Watch Commanders. If there were any evidence in the arbitration record to suggest that in the past he had abused his discretion with regard to selecting from the top three candidates on the Lieutenant eligibility list, the Arbitrator would be more inclined to look favorably on adoption of the Union's offer. But that is not the case. There is no evidence that the Chief has exercised personal favoritism or used any other inappropriate criteria in making his permanent Watch Commander (i.e., Lieutenant) selections.

The external comparables also favor adoption of the University's final offer on this issue. The Arbitrator's review of the relevant portions of their police collective bargaining agreements did not uncover any restriction on management with regard to the selection of Watch Commanders on a permanent basis.

In contrast to the status quo with regard to permanent Watch Commander assignments, seniority has been the deciding factor in determining which Sergeant on a shift would be assigned Watch Commander duties on a temporary basis as a replacement for the regular Watch Commander. But the temporary assignment question is much less significant than the permanent assignment of Watch Commander duties. Temporary assignments encompass a mere fraction of the total time Watch Commanders are on duty. Thus, in terms of the Department's ability to meet its objectives, the selection of Watch Commanders for permanent assignments is the more important question.

For all of the foregoing reasons, the Arbitrator believes the University's final offer on this issue is more closely aligned to the applicable statutory factors than is the Union's.

ISSUE 3 - METHOD OF ASSIGNING SPECIALTY DETAILS

The current agreement language on this issue is found at Article VI, Section 7 (a) of the parties' expired contract, as quoted below:

> (a) Special Services Details may be activated for indefinite periods from time to time. The Chief of Police or his/her designee will select and appoint to such details from a roster of volunteers; (sic) employees who, in his/her opinion, are qualified to perform the services required.

Union Position

The Union's final offer on this issue, if adopted, would appear as Section 4 of Article IX. It is quoted here in its entirety:

> Specialty assignments shall be offered to qualified sergeants or lieutenants, whichever is applicable, on the relevant shift on the basis of seniority. If no volunteers are found on the shift, the assignment shall be assigned to the least senior qualified sergeant on the shift.
>
> {Note: the second sentence in Article VI, Section 7(a) shall be deleted.]

The Union believes that the University's final offer on this issue seeks "unqualified discretion to disregard the seniority rights of its employees."[11] Based upon that belief, and for the same reasons it advanced concerning issue no. 2 (Method for Selecting Watch Commanders), the Union believes its final offer on this issue should be adopted.

University Position

The following is the University's final offer on this issue:

> (a) Special Services Details may be activated for indefinite periods from time to time. The Chief of Police or his/her designee will select and appoint to such details from a roster of volunteers employees who, in his/her opinion, are qualified to perform the services required. If no such qualified employees volunteer for the special service details, the Chief of Police or his/her designee shall appoint qualified employees to perform the services required.

For the same reasons it advanced with respect to the Watch Commander selection issue, the University argues that the Union's final offer on this issue is not a mandatory subject of bargaining. Should the Arbitrator decide otherwise, the University adds, then its final offer on this issue should be adopted.

[11] Union's posthearing brief at 12.

In support of its offer on this issue the University notes that it maintains the status quo concerning the selection of volunteers. In addition, it provides in the last sentence an appropriate method for assigning details where there are no qualified volunteers. The addition of that sentence was designed to avoid situations like one in the past, where there were initially no volunteers for taking charge of the student patrol.

The University also notes that the Police Chief has historically had the right to make specialty detail assignments without reference to seniority. The Union's final offer would change that status quo both when there are and when there are not qualified volunteers. And the University objects to the Union's proposal that the least senior Sergeant would be assigned specialty details in the latter situation. The presumption that the least senior Sergeant would be qualified to assume any specialty detail whatsoever is fallacious, the University argues.

The University also observes that the applicable contractual provisions across the comparable jurisdictions support its final offer. Not one of them, it notes, provides for assignment to specialty details on the basis of seniority. With regard to internal comparability, the University points to its contract with the University Police Association on behalf of rank-and-file police officers, noting that it allows broad managerial discretion for making such assignments and does not require that seniority be a factor.

Discussion

The Negotiability Question. The University's claim that the Union's final offer on this issue constitutes a non-mandatory subject of bargaining is based upon the same reasons it advanced with regard to the Watch Commander Selection issue. Essentially, it argues that adoption of the Union's offer would severely restrict the Chief's ability to meet the objectives of the Police Department. The Arbitrator disagrees. The Union's final offer here still permits the Police Chief or his designee to decide which Sergeants among the volunteers are qualified for specialty assignments. It permits the same in situations where no volunteers step forward. That is, if no volunteers are found on the shift, the assignment would be given to the least senior "qualified" Sergeant on the shift. The Arbitrator therefore concludes that the Union's final offer would not prevent the Police Chief from meeting the Department's objectives. Accordingly, I conclude as well that it constitutes a mandatory subject of bargaining.

The Merits. Both parties' final offers on this issue attempt to change the status quo. The UIC's offer would only change it slightly, however, by specifying how specialty detail assignments would be made in the event no Sergeants volunteered for them. In contrast, the Union's final offer would force the Police Chief to select the most senior qualified Sergeant from among those volunteering, and to assign the least senior qualified Sergeant in the event there are no volunteers. Using seniority as the deciding factor in both instances represents a broad departure from the status quo. Accordingly, the Union must demonstrate compelling reason to do so.

There is no evidence in the record to indicate that the Police Chief has ever abused his discretion regarding the assignment of Sergeants to specialty details. Absent such evidence, the Arbitrator concludes that the existing method of making such assignments (i.e., without regard to seniority) is working smoothly, and there is no compelling need to change it.

The University's position on this issue is supported by the collective bargaining agreements across the pool of comparable employers. All of the four-year state universities in that grouping provide wide managerial latitude in making specialty detail assignments; none of them make seniority a primary factor.[12] Thus, there is no external support for adoption of the Union's final offer on this issue.

On balance, the Arbitrator finds no compelling justification for adoption of the Union's seniority-based proposal. It departs significantly from the status quo — a selection method which seems to have worked well. The only exception to that overall conclusion is the one situation cited by the University, wherein no volunteers stepped forward for a particular specialty assignment. The parties were eventually able to resolve that matter on their own. Had they not been able to do so, the Police Chief would no doubt have been forced to make the assignment unilaterally. It is reasonable to conclude that such action would be inevitable under the current language if no volunteers came forward, because it is not likely that specialty detail assignments could remain unfilled indefinitely. Thus, the University's final offer simply formalizes an eventuality that would likely take place under the current language.

[12] The University of Illinois at Champaign-Urbana/FOP Agreement provides that when selections are being made for new vacancies on certain details, seniority shall be the deciding factor if two employees are equally qualified.

ISSUE NO. 4 - TIME LIMIT FOR RESPONSE AT CHANCELLOR'S STEP OF THE GRIEVANCE PROCEDURE

The existing contract language on this issue provides that a grievance appealed to the Chancellor will be investigated, and the Chancellor or his designee "will render a decision within seven (7) calendar days after the conclusion of the investigation or the close of any hearings."

University Position

The University's final offer on this issue is to retain the status quo. It argues that the Union has presented no hard evidence to demonstrate the need for change. Rather, the University asserts, the Union merely claims that it has had "problems with grievances languishing."

The UIC also believes that the investigation at the Chancellor's step should not be artificially limited, a result it claims the Union's final offer would produce. Such investigations can be very detailed, the University notes, and limiting them to ten days' duration as the Union proposes might in some cases be unrealistic.

Union Position

The Union's final offer on this issue would amend the relevant portion of the grievance procedure as follows:

> Section 5. Step 2 - Campus Level.
>
> (a) Chancellor Investigation. Within ten (10) calendar days of receipt of an appeal the Chancellor, or an official designated to act for him/her, will complete such investigation as he/she thinks necessary and will render a decision within seven (7) calendar days after the conclusion of the investigation.

The Union notes that the parties have negotiated specific time limits for the University's responses at all other steps of the grievance procedure. Therefore, it argues, some temporal limitation on the Chancellor's investigation should be awarded by the Arbitrator.

Discussion

The Union has the burden of demonstrating a compelling need to change the status quo on this issue. If the Chancellor or his/her designee had abused that status quo in the past, intentionally delaying the processing of grievances by extending investigations unreasonably, the Union would certainly have cited such instances in these proceedings. It did not do so. The Union advocate's general claim that there have been problems with grievances "languishing" is not enough.

It is also important to recognize that the parties themselves negotiated the existing contract language. For reasons of their own, which are not reflected in the interest arbitration record, they mutually determined that no specific time limit should be attached to the Chancellor's investigation. The Arbitrator finds no compelling reason in these proceedings to alter that negotiated status quo.

AWARD

Based upon full consideration of the interest arbitration record, and having applied all of the statutory criteria to the issues as appropriate, whether discussed in this Opinion and Award or not, the Arbitrator has reached the following decisions:

(1) Hourly Rate for Serving as Watch Commander - the Union's final offer is adopted.

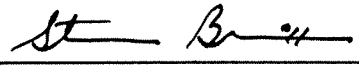
(2) Method of Assigning Watch Commanders - the University's final offer is adopted.

(3) Method of Assigning Specialty Details - the University's final offer is adopted.

(4) Time Limit for Response at Chancellor's Step of the Grievance Procedure - the University's final offer is adopted.

The tentative agreements reached by the parties themselves on any and all remaining issues shall be incorporated into their September 1, 1996 through August 31, 1998 and September 1, 1998 through August 31, 2001 collective bargaining agreements as well.

Signed by me at Chicago, Illinois this 24th day of October, 1998.



Steven Briggs