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**ILLINOIS STATE LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH**

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Illinois State Lab Rel. Bd.
SPRINGFIELD, ILLINOIS

**In the Matter of an Interest
Arbitration Between**

City of Waterloo)
)
and)
)
Illinois Fraternal Order of Police)
Labor Council)

Case No. S-MA-97-198

INTEREST ARBITRATION OPINION AND AWARD

On May 7, 1999 a hearing was held in Waterloo, Illinois before Arbitrator Robert Perkovich, having been jointly selected by the parties, City of Waterloo ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Jill Leka. The Union was represented by its legal assistant, Becky Drago. Both side presented their evidence in narrative fashion and timely post-hearing briefs were received on September 2, 1999.

STATEMENT OF THE ISSUES

The parties stipulated that the unresolved contractual issues relate to the employee payment for health insurance contributions and the retroactivity of wage increases agreed upon by the parties.

BACKGROUND

The Employer was incorporated in 1889 and serves as the seat of Monroe County. It employs approximately 45 to 50 employees who are largely represented by one of three unions. The public works and clerical employees are represented by the American Federation of State, County, and Municipal Employees (AFSCME) and the Employer's electrical distribution line workers are represented by the International Brotherhood of Electrical Workers (IBEW). The bargaining unit involved in the instant proceeding, represented by the Union since about 1982, consists of all sworn patrol officers below the rank of assistant chief of which there are six patrol officers and one sergeant. Of those employees, one has approximately 14 years of service, two have been employed approximately nine years, two have approximately five years seniority, and one employee each has two years, one year, or six months of service. Since 1994 three employees have left the Employer from this unit. In two cases they were terminated.

The last collective bargaining agreement between the Employer and the Union was effective from July 1, 1994 until June 30, 1997. On March 1, 1997 the Union served upon the Employer its notice to bargain and on May 15, 1997 the Union presented the

Employer with its initial contract proposals. Approximately six weeks later the Employer responded with its proposals and after negotiating the parties sought the assistance of a federal mediator in October of that same year. Negotiations continued in mediation and, on February 9, 1998¹ the parties' negotiating teams reached a tentative agreement. In March the Union's bargaining unit however rejected the tentative agreement and on June 24 the Employer wrote to the Union setting forth its understanding why the tentative agreement was rejected. In that same letter it reserved the right to reconsider retroactive pay increases and the phase-in of employee health insurance contributions, both elements of the tentative agreement.

Between September 28 and September 30, the parties' correspondence crossed in the mail. In the first, that of the Union, it notified the Employer that it was filing for interest arbitration. In the second, that of the Employer, it expressed its concern over the length of time and the absence of action since the rejection of the tentative agreement and notified the Union that it no longer agreed to retroactive pay increases. On October 9 the parties asked for a panel of arbitrators and between that date and January 27, 1999, when the parties notified the undersigned of his selection as arbitrator, the parties processed the request for an arbitration panel. On January 29, 1999 the undersigned offered dates for hearing and just less than two weeks later the was set for hearing. On March 4, 1999 the Employer suggested that the parties hold a pre-arbitration conference. However, due to the Union's unavailability, the parties did not meet until April 27, 1999.

DISCUSSION

THE IMPORT OF THE TENTATIVE AGREEMENT

As noted above, the Union rejected the parties' tentative agreement that provided for, *inter alia*, retroactive pay increases and employee health insurance contributions that without caps. Moreover, and again as noted, after the passage of time following the rejection the Employer withdrew its offer of retroactive pay. Ultimately, and now at this arbitration, both parties have proffered final offers that differ from the terms of the tentative agreement. More specifically, the Employer has limited its offer of retroactivity to only those employees on its payroll at the effective date of this arbitration award and only in the last two years of the agreement. The Union continues to agree to the employee health contributions contained in the tentative agreement, but seeks in its final offer in arbitration to cap those contributions.

Both parties appear to acknowledge, though with differing levels of zealotry, that tentative agreements are just that – tentative. There is no dispute between the parties that such circumstances are a reality of collective bargaining and that they in fact agreed to such conditions in their ground rules for negotiations.

However, they disagree on the impact the tentative agreement should have once the parties move to arbitration. Essentially, the Employer argues, and cites a number of arbitration awards in support of its view, that a party that seeks in arbitration to win terms

¹ All dates hereinafter referred to are 1998 unless otherwise noted.

and conditions of employment that differ from those in the tentative agreement bears a heavy burden in order to prevail. The Union on the other hand contends that its final offer does not seek more than it obtained in the tentative agreement and therefore there is no reason to impose the terms of the tentative agreement.

The issue of the impact of a tentative agreement raises, as is so often true, compelling countervailing considerations. On the one hand, the parties acknowledged that any agreements between the negotiating teams would be tentative and required adoption by the principals. In addition, such a condition is commonplace in collective bargaining and has been for as long as one can recall. Moreover, in the public sector ratification is a condition precedent to final agreement by both the union and the employer. Thus, unlike the private sector where one side may be less concerned with its representational status and obligations, any risk of uncertainty due to rejection was borne by both parties. On the other hand, there is a fear that a party will reject a tentative agreement and therefore the "floor" for interest arbitration will be higher than it would have been had there been no such agreement. Clearly, negotiations and arbitration in that context would be inherently unstable and counter-productive.

However, there is no evidence in this record that the Union acted for this purpose or in some other fashion indicative of bad faith. Indeed, I have seen as a mediator numerous occasions when either an employer or union bargaining team simply misread their principals' predilections, succeeded all too well in stoking the fires in the hearts and/or egos of the principals, or took offers back for ratification that fail despite the team's best efforts to the contrary. Under such circumstances, there would be no reason to say that the tentative agreement must be imposed or that a party seeking to deviate from the agreement bears a burden any different that it might otherwise. Thus, I agree with Arbitrator Benn who, in *Village of Oakbrook*, S-MA-96-73, held that the arbitrator's role is to apply the general factors in Section 14 of the Public Labor Relations Act without regard to how the parties arrived at impasse.

THE COMPARABLES

The threshold argument on the issue of determining the comparable communities to be used in choosing between the parties' final offers turns on the Union's choice to restrict its inquiry to Illinois communities within the St. Louis metropolitan area, otherwise known as the St. Louis MSA. The Union argues that it is appropriate to do so because that area comprises the labor market for the Employer and because comparability should be limited to those areas influenced by St. Louis with regard to factors such as employment, leisure, and shopping, unlike some of those chosen by the Employer which are farther away. The Employer responds by asserting that such an analysis is faulty because it would lead to incongruous results such as, for example, a determination that communities in Kendall, Grundy, and DeKalb counties would be deemed comparable only with communities in Lake, DuPage, and Kane counties. In addition, the Employer points out that Arbitrator Briggs, in *City of Mount Vernon*, held that in southern Illinois it is appropriate to deem the geographic scope of an employer's labor market to be as much as 75 miles.

In my estimation I can resolve this debate without regard the arguments set forth by the parties. Rather, a review of a map of the region in question adequately forms the basis for my finding on this discrete point. For example, both parties stipulated that East Alton, a county within the St. Louis metropolitan area, should be deemed comparable. Yet, Bethalto, a community proposed only by the Employer, is virtually "next door" to East Alton. Similarly, Mascoutah, a community proposed only by the Union as one of several within the St. Louis metropolitan, is closer to the Employer than East Alton. Similarly, Breese and Greenville, communities within the St. Louis metropolitan area and each proposed by one, but not the other party, are virtually the same distance from the Employer. Finally, Jerseyville, again within the metro area but proposed only by one party, is close enough to a stipulated comparable, East Alton, to warrant inclusion among the comparables at least as a preliminary matter. In other words, I fail to understand how one community, East Alton for example, is "influenced" by its inclusion in the St. Louis MSA but other communities that are very close to it and in some cases closer to the Employer, are not also similarly influenced.

On the other hand three communities proposed by the Employer, Vandalia, Murphysboro, and Salem, are farther from the Employer, the stipulated comparables, and the St. Louis metro area. Moreover, they are also closer to another metro area, that of Evansville, Indiana, than they are to St. Louis and in at least one case, Murphysboro, the community is very close to another noteworthy source of employment, leisure, and shopping, Carbondale, Illinois. It is indeed true, as the Employer points out, that Arbitrator Briggs, has declared that in southern Illinois a labor market reach of 75 miles is appropriate and that these three communities fall within that reach, but a mere geographic boundary should not be the only determinant. Rather, as I have done here, that geographic boundary should be examined in conjunction with other geographic factors such as relative location to stipulated comparables and other noteworthy labor and commercial markets.

Thus, using geography alone as a preliminary device I find that Bethalto, Mascoutah, Breese, Jerseyville, Greenville, East Alton, and Columbia are comparable communities².

However, simply because these communities are geographically proximate to one another they are not necessarily comparable for the purposes of choosing between the parties' final offers. Rather, that determination rests on a review of their relation to one

² On this basis the communities of Troy and Highland would also pass the first cut. However, as the Union points out, these two communities do not have a unionized police force. The Employer argues, again citing Arbitrator Briggs in *City of Elmhurst*, that those communities should be deemed comparable because, "... whether unionized or not they compete for the same human resources." Although Arbitrator Briggs is undoubtedly correct, I believe that the competition for the same human resources is more complicated. In other words, the unionized employer competes for those same employees, but does so within the restraints of a partner, a union, which plays a role in determining on what terms the employer will compete. Thus, I find, in accord with other arbitrators who have done so, see e.g. *City of Nashville*, S-MA-960130 (Traynor); *City of Rushville*, S-MA-97-147 (Meyers), that only unionized employers should be used for external comparability analysis.

another on various factors such as population, taxation, equalized assessed valuation (EAV), median household income, and per capita income³.

On relative population the smallest of the eight communities, Breese, has a population of 3,567 and the largest, Bethalto, has 9,507 people. The Employer, with a 1997 population of 6,579 is ranked fourth of the eight. Similarly, the Employer ranks either fourth or sixth of the eight, depending on which parties' data is used, in relative EAV, and the same with respect to household per capita income and median home value. On the issue of taxes, the parties disagree as to which tax levels are appropriate to use in determining comparable communities. The Employer contends that only sales taxes should be used and the Union contends that total revenues are more appropriate. In my view the relative placement of the Employer to the other communities is such that I need not resolve that debate because under either measure the Employer compares favorably, albeit differently, with those communities. For example, using the measure of sales tax revenue the Employer is the second highest of the eight communities but the third highest is a stipulated comparable, East Alton. Using total revenue the Employer is third highest among the comparable communities under review⁴.

In light of the foregoing I conclude that the communities of Bethalto, Breese, Columbia, East Alton, Jerseyville, Mascoutah, and Greenville are comparable to the Employer with respect to relative distance, labor and commercial market, degree of unionization, and demographic and financial factors and I so find.

THE ISSUES PRESENTED FOR RESOLUTION

Insurance

On the issue of insurance only one issue divides the parties, i.e. whether employee contributions should be capped in each year of the contract. They have agreed, both in their tentative agreement and at arbitration, that employees will pay \$50, 12 and one-half percent, and 15 per cent toward health insurance in each year of the contract. The Union's final offer includes a cap in the second and third year of the agreement at \$72.76 and \$100 respectively. The Employer's final offer includes no cap.

³ On this point the Employer attacks the Union's comparability analysis as fundamentally flawed for a variety of reasons including the fact that it failed to use the most current population for the Employer, that it used different percentages for its "plus/minus" screening analysis, and because it used median home value and household income, characterized by the Employer as irrelevant factors. On the first point I agree with the Employer and instead use the population levels that it provided as they appear to be in all cases the 1997 population of the communities reviewed. I also note that in four of the eight instances the Union's data and that of the Employer are the same as to population. With regard to the Employer's other two points however I do not agree. On the first, the Union's use of different percentages for initial screening, I have chosen to use a different method, that of geography. Thus, the argument is moot. On the second, it appears to me that median home value and household income are indeed relevant. The value of homes in a community may indeed be a determinant of the value that a community places on protective services such as police and fire and median household income may indeed be a determinant of the tax, or the "price" if you will, that an employer will expect its residents, or "customers" if you will, to pay for those services.

⁴ The Union provided total revenue data however only for six of the eight communities, choosing not to do so for the communities proposed by the Employer.

Turning first to the external comparables, the record shows that in five of the seven comparable communities, Breese, East Alton, Bethalto, Greenville, and Jerseyville, employees do not contribute in any amount toward health insurance. With regard to the remaining two jurisdictions, Columbia and Mascoutah, the contributions that employees will make under both final offers in this matter are greater than those made by employees in those communities. However, in one of those two, Columbia, the contribution is indeed expressed as a percentage of the premium and in neither of the two comparables where employees contribute is there a cap on the amount of the contribution. Thus, in five of the seven communities the issue of caps is irrelevant because the employer pays the entire premium and in the two in which employees pay there is no cap, but the employee payment under both final offers exceeds that paid by employees in those two communities. Under these circumstances, I find external comparability to be less than helpful but, to the extent it assists at all, it appears to favor the Union's final offer in that the purported vice to be addressed by caps, uncertain liability, is remedied in some other fashion.

Using internal comparability however, the data is complete, though the issue is no easier. The record shows that prior to 1994 no employees paid toward health premiums and that only since 1995 the AFSCME and IBEW bargaining units have done so with their contribution determined as a percentage of the premium and without caps. Since 1994 the Employer and the Union herein have also agreed to employee contributions, but the contributions have been a specific dollar amount until the final offers presented herein.

The Employer thus argues that the internal comparability established by the AFSCME and IBEW units agreeing to percentage contributions without caps compels that I accept its final offer. In support of its argument it cites decisions of prior arbitrators that on the issue of health insurance internal comparability is particularly persuasive because that issue presents considerations relating to economies of scale, uniformity and fairness, and does not involve valuing the knowledge, skills, abilities and other characteristics of employees differently from one job to another as one might do with regard to compensation. The Union on the other hand argues that a close reading of those decisions compels the conclusion that although internal comparability might be weighed differently on the issue of insurance than other issues, other factors such as external comparability and the relative reasonableness of the competing final offers are to be examined as well. In addition, the Union argues that on the discrete issues of caps on employee contributions, not at issue in the cases cited by the Employer, there is an element of fairness in that employees' other economic benefits can be calculated and ascertained with certainty, but that their liability for health contributions cannot.

In assessing these competing arguments and the pronouncements of other arbitrators I find that indeed internal comparability on the issue of health insurance is a significant determinant and indeed may carry the day, especially when, as here, the external comparability evidence is not overwhelmingly to the contrary. However, simply to say that the Employer's other bargaining units have agreed to percentage health

contributions without caps is not enough. Rather, because interest arbitration is intended to replicate what the parties would have bilaterally adopted, I believe evidence of internal comparability must be of such a degree and/or bear a history that is strong and fixed. Tests that one might use to make this assessment would include the length of time the agreements or terms have been extant with the other groups, the other concessions those groups obtained in return for those terms and conditions, and the history of bargaining on this same issue between the parties to the arbitration.

When internal comparability in this case is viewed through this historical lens I am not as sanguine as the Employer that it carries, at this time, the weight that the Employer might like. First, percentage employee health contributions have been in place with AFSCME and IBEW for only two years prior to the end of the last agreement between the parties in arbitration. Second, the Employer settled with the other unions for wage increases that were greater than those included in the tentative agreement with this Union. Third, there is a long history between these two parties, which continued after the percentage employee contributions were agreed upon with AFSCME and IBEW, of flat dollar amount employee contributions rather than percentages. In addition the record shows that the Union has not been dismissive of the Employer's concerns with regard to health care costs in either the prior contract or in this round of negotiations. Thus, I do not believe that this history of internal comparability is sufficient to outweigh the risk that employees face of percentage contributions without a cap⁵. Accordingly, I adopt the Union's final offer on this issue.

Retroactivity

On this issue the Union argues that the parties have a long-standing and rich history of full retroactivity and that the Employer has a similar history with its other unionized groups. The Employer concedes that point but argues that retroactivity should be limited in this matter because it places a cost or burden on the Employer, because those employees who no longer work for it should not be rewarded for leaving, and finally because there was a significant delay in negotiations after the rejection of the tentative agreement for which the Union must bear responsibility.

I do not find the Employer's first two arguments especially troublesome. First, although it is true that retroactivity places a cost and burden on the Employer it is a cost and burden that it has assumed not only with this Union but with AFSCME and IBEW as well and it has done so for a long period of time. Thus, unlike the issue of insurance, there is a rich and established history that should not be easily ignored and certainly not when the asserted reason for doing so, administrative concerns, were extant in those prior cases as well. On the issue of restricting retroactivity to only those employees working

⁵ I am mindful that one can then ask when the history of internal comparability here will become such that it might compel the conclusion urged by the Employer at this time. Frankly, I cannot answer that question with certainty. However, it appears that in subsequent negotiations and/or arbitration with the other bargaining units the Employer has available to it the argument if either or both groups seek to obtain caps that such an attempt is a breakthrough. Thus, each time the Employer prevails in that argument the history of internal comparability hardens and becomes more difficult for this Union to overcome.

on the effective date of the award, I do not regard any such action as a "reward" for leaving. Rather, it is compensation that they earned while they worked for the Employer and therefore can be regarded in the nature of "make whole" remedy.

The final argument raised by the Employer however bears closer examination. There can be little doubt that the period of time between the rejection of the tentative agreement and the onset of arbitration was extended. Moreover, to the extent that there is evidence in the record on this point, during the period between rejection of the tentative agreement in March of 1998 and the point at which the arbitrator selection process was underway in earnest in November of that same year, it appears that the Employer was more active than the Union. Thus, the Union could have insulated itself from this argument had it been more overtly proactive than it was. However, the fact of the matter is that the evidence does not establish whether the Union was motivated by any thing other than the legitimate economic interests of its members (see e.g. *Village of Skokie*, (Arbitrator Berman); *Village of Westchester*, (Arbitrator Berman)) or that the complex mélange of personalities, economic factors, political considerations and intraorganizational bargaining so common in public sector bargaining was not at work. (See e.g., *Village of Lombard*, (Arbitrator Briggs). Without evidence to the contrary, I decline to depart from the well-settled point of view that retroactivity is to be awarded. I so find.

AWARD

1. The Union's final offer on insurance is adopted.
2. The Union's final offer on retroactivity is adopted.
3. The parties' other agreements are adopted.

DATED: November 16, 1999



Robert Perkovich, Arbitrator