

BEFORE ARBITRATOR ROBERT PERKOVICH

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JAN 29 1999

Illinois State Lab Rel. Bd.
SPRINGFIELD, ILLINOIS

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

McHenry County)
)
and)
)
Illinois Federation of Police,)
Labor Council)

Case # S-MA-97-78

LABOR INTEREST ARBITRATION OPINION AND AWARD

On May 15, 1998 a hearing was held in the above-captioned matter before Arbitrator Robert Perkovich, having been jointly selected by the parties, McHenry County ("Employer") and Illinois Federation of Police, Labor Council ("Union"). Appearing for the Employer was its counsel, Bruce Mackey. Appearing for the Union was its counsel, Robert Costello. The parties presented their evidence in narrative fashion and filed timely post-hearing briefs on August 17 and 18, 1998. Thereafter, an executive session was conducted on January 7, 1999.

STATEMENT OF THE ISSUES:

The issues presented for resolution are as follows:

1. Wages
2. Uniform Allowance
3. Insurance
4. Hours of Work
5. Contract Duration

I. BACKGROUND

The McHenry County Sheriff's office is divided into three separate collective bargaining units. The first, known as Unit 1, consists of patrol deputies and the second, known as Unit 2, consists of correctional officers. The third collective bargaining unit, involved in the instant dispute, consists of 63 employees working in 13 different civilian job classifications in law enforcement support. Historically, and through the collective bargaining agreement that expired on November 30, 1990, the three units bargained with the Employer as a coalition. Since that time the parties have negotiated

separate agreements for each unit with the most recent bargaining agreement governing the unit involved herein expiring on November 30, 1996.

II. THE COMPARABLES

The threshold matter in any interest arbitration is to determine those communities with which the Employer is to be compared so that the parties' competing proposals can be viewed through the lens of comparability, one of the criteria deemed relevant under the Illinois Public Employment Relations Act for the resolution of interests disputes.

In the instant matter the Employer first asserts that it has become commonplace among interest arbitrators to use counties as the relevant comparable when the employer in question is indeed a county unit of government. The Union has not contested that assertion therefore I begin from that point of view.

In this regard, the Employer asserts that the proper criteria to determine which counties are comparable are the following: population, per capita income, total revenue, total expenditures, sales tax revenue, property tax revenue, equalized assessed valuation, number of sworn officers, total department size, and crime index. Again, the Union has not contested this proposition and these factors are among those commonly used by interest arbitrators. Accordingly, I too shall look to this indicia to determine comparability. Moreover, the Employer has devised a formula whereby if any county is at least fifty percent above the number for four or more of the same characteristics for the Employer, that county is therefore deemed comparable. Admittedly, the Employer acknowledges that this methodology has "some drawbacks" because not each of the characteristics can be weighted equally. In addition, I find the methodology somewhat problematic because the Employer has not explained why four is the magic number of characteristics that will drive the assessment of comparability. In any event, the Union has not contested the methodology. Once the methodology is utilized, four counties rise to a level worthy of consideration as comparables: Winnebago (10 points in common), Kane (8 points in common), Will (5 points in common), and Whiteside (4 points in common)¹. If I were to conclude that the Employer's methodology is suspect, a conclusion which I do not necessarily reach, at least two of the four counties could be deemed comparable because they have a preponderant number of commonalities. However, I fear that such a small sample would be too little to yield a meaningful comparison. Therefore, despite any misgivings that I may have, and in light of any objection by the Union, I agree with the Employer that the counties of Winnebago, Kane, Will, and Whiteside are the relevant external comparables.

The Union has weighed in however on the issue of internal comparables explaining that it relies "primarily" on that comparison point. The Employer, although it does not contend that internal

¹The Employer's methodology also yielded the counties of DuPage and Walworth and Rock Counties in Wisconsin. However, it declines to use DuPage County because it is not unionized and has withdrawn from consideration the Wisconsin counties. Therefore, I will not consider those communities in the disposition of this matter.

comparables are irrelevant, argues that the Union has shaped the internal comparability debate erroneously by using only the Employer's patrol officers and by failing to "...focus on positions similar to those in the bargaining unit." Upon reflection I do not share the Employer's concern entirely. Although an internal comparison urged by the Employer would be ideal, it is clearly not always possible because by definition a bargaining unit excludes those job positions that do not share a community of interest with the positions in the bargaining unit in question. Thus, precise comparisons are not always possible. Accordingly, I find that the Union's use of internal comparisons to other job classifications is appropriate. However, as discussed below, that does not mean that those comparisons are always meaningful or even helpful.

III. ISSUES PRESENTED

A. Uniform Allowance

On the issue of uniform allowance the Union has proposed that the contract be changed so that the allowance for uniform purchases be increased from \$200 to \$250 and that the cleaning allowance be increased from \$300 to \$400. In addition the Union has proposed that additional language be added to the agreement providing that "(p)rior to purchasing nightsticks/ASP baton and/or OC spray, an employee be trained by the Department to carry and use said equipment" and that body armor be added to the list of items that may be purchased with the purchase allowance. The Employer on the other hand contends that the allowances and the language in the contract should remain unchanged.

On this point the record reflects that among the external comparables only Winnebago County provides for a uniform purchase allowance and that the amount is \$550. However, neither Winnebago County nor any of the other comparable communities provide for a cleaning allowance. Thus, a review of the external comparables would appear to favor the Employer's proposal. However, the internal comparables of patrol officers shows that the Union's proposal with respect to the amount of the purchase and cleaning allowance would provide for complete equity between the two units. The same can also be said for the Union's language proposals regarding training in the use of nightsticks and spray and the inclusion of body armor to the list of items that may be purchased with the allowance. Moreover, there is nothing in the record that might cause me to conclude that there is some distinction between the members of this bargaining unit and the patrol officers' unit that could mitigate against the provision of equal benefits of this type between those classes of employees.

Accordingly, in light of the strong internal comparability and the existence of some external comparability, I accept the Union's proposal on uniform allowance.

B. Hours of Work

On this issue the Union's proposes to add the following language to the parties' agreement:

In the event the Employer wishes to establish work schedules

departing substantially from those currently in effect, we will bargain over the implementation and effect.

The Employer disagrees and urges that the current contract language remain unchanged. It supports that position by pointing out that none of the comparables, either external or internal, justifies the Union's proposal. In addition, it argues that the Union's asserted rationale for the proposal, a fear that the Employer might establish weekend schedules, has been rebutted by the Chief's testimony that there are no such plans. Finally, the Employer portrays the Union's proposal as unclear.

I need not address any of these points. It appears to me that the subject of scheduling is a mandatory subject of bargaining under the IPLRA. Thus, the Employer has a statutory duty to bargain with the Union over the implementation and effect of any action on those matters unless the Union has waived the duty. The record does not reflect whether there is any basis for concluding that any such waiver exists that might warrant the type of reservation of the right to bargain that the Union appears to seek by way of this language. Therefore, since the Union bears the burden of proof as the proponent of the language and because it has failed to meet its burden, I decline to adopt the Union's proposal on hours of work.

C. Wages

The record reflects that the parties agreed to pay the employees in this bargaining unit pursuant to a step plan and that this methodology represented a drastic change from the prior practice of negotiating pay raises for each individual classification. As a result, the parties first disagree with respect to the resolution of the matter of wages in this arbitration whether there is one issue only or, one issue for each of the job classifications involved. The Union argues that there is only one issue and the Employer believes that each classification must be resolved on a final offer basis.

I believe that there is only one issue to be resolved in this arbitration. First, the Employer itself recognizes that fact by agreeing to establishing a step plan. In other words, the parties themselves have in effect disregarded their prior practice of negotiating pay increases for each classification. Accordingly, I should follow their lead. There is however another reason to reject the Employer's arguments on this point. More specifically the Employer contends that there are multiple wage issues because the bargaining unit in question contains disparate job classifications. However, as noted above, a bargaining unit by definition includes only those job classifications that share a community of interest. Thus, if I were to accept the Employer's argument on this point I would be disregarding the scope of the bargaining unit to which the Employer and the Union agreed or that which was deemed appropriate by the Illinois State Labor Relations Board. I decline to do so.

The next point of contention is the parties' wildly different characterization of the wage proposals. For example, the Union asserts that its proposal calls for a 4% wage increase but the Employer points out that as employees move between the steps of the pay plan wage increases under the Union's proposal will be between 5.3% and 13.2%. On the other hand the Employer characterizes

its proposal as calling for wage increases of 4.67%, 3.08%, and 2.49%. The Union points out in reply that the amount of "new" money under the Employer's proposal, i.e. wage increases without regard to step movement, is only 1.25%.

It seems to me that the only appropriate point of view is to ask by what amount will an employee's paycheck increase under the two competing proposals without regard to the reason or the purpose underlying the increase. Similarly, the same question can and should be asked with regard to the Employer's costs attributable to wage increases under each proposal. In couching the wage increase in this fashion, one takes into account the real change in compensation, i.e. the amount employees will see and enjoy and the amount which the Employer will no longer be able to use for some other purpose. Thus, I believe that step movement is a relevant component of the two offers when they are compared to one another and the other statutory criteria to be used in choosing between them.

The two criteria adopted by the parties herein are those of internal and external comparables. Here however the impact of including step movement in comparing and contrasting the proposals becomes apparent. The Union argues that its proposal for wage increases should be chosen because it is equal to the wage increases provided to the other bargaining units of the Employer. However, once step movement is considered the Union's proposal calls for wage increases that far exceed those granted to other employees. Thus, by seeking and obtaining a step plan for wages the Union has created a situation where, especially in the initial creation of the plan and the initial placement of employees on the plan, no meaningful internal comparability analysis can be made.

Conversely, a meaningful comparability analysis can be made with regard to external comparables. However, the parties' two competing proposals offer little to distinguish between them when compared with the external comparables. For example, the two competing proposals place bargaining unit employees at their start of employment, after five years of service, and at the top of the scale in either the second or third rank among the six communities involved. Moreover, in two instances each of the two proposals places the employees in the highest rank of the six. Thus, the distinction is less than helpful.

In light of the foregoing therefore I reject the Union's wage proposal relying primarily on the fact that the Union's proposal, when viewed in the context of the increase to the pay plan as a whole and the step movement between steps of the plan, provides for wage increases that far exceeds the cost of living, internal comparability and therefore reaches a result that I doubt the parties might have bilaterally chosen if bargaining had not reached an impasse and arbitration utilized. Such an approach is of course in keeping with the legislative function of interest arbitration and the arbitrator's duty to approximate the result that the parties would have chosen had they reached a mutually agreeable solution.

D. Insurance

With respect to insurance the Employer proposes that the agreement be amended so that unit

employees will receive the same benefit as that provided to employees in the patrol officers' unit, including the reopener language from that agreement as well. The Employer characterizes its proposal as "...modest increases in co-pays..." The Union on the other hand urges that the insurance benefit remained unchanged so that any reopener is in the last year of the agreement only.

In support of its proposal the Employer points out that it comports with internal comparability and that the opportunity for reopener bargaining sooner rather than later on an important and costly issue is appropriate. The Union responds by criticizing the Employer for its reliance on internal comparables in this case, but ignoring the same measure on the issue of wages.

The record reflects that the Employer's proposal compares favorably with two of the four external comparables on the issue of single coverage. For example, the Employer's proposal would call for co-pays between \$13 and \$22 in comparison to co-pays in Kane and Winnebago counties ranging between \$20 and \$30. With respect to family coverage, the Employer's proposal is significantly greater than those required in any of the comparable counties.

Moreover, as pointed out by the Employer, its proposal comports squarely with the co-pays required of its patrol officers. Unlike the Union, I am not concerned with the Employer's reliance on internal comparables in this case while rejecting their use on the issue of wages. I do not share that view because benefit packages, and especially those where economies of scale are appropriate, call out for uniformity irregardless of the nature of the work performed by different classifications of employees. Wages on the other hand are often determined by, at least in part, the relative knowledge, skills and abilities between those positions which can therefore sometimes justify distinctions as to pay.

On the discrete issue of the point at which insurance should be subject to reopener negotiations, I am confounded by the fact that acceptance of the Employer's proposal would bring the parties into negotiations immediately and without the benefit of any experience that might have been realized under the change put in motion by adoption of the Employer's insurance proposal. Unfortunately, I have no choice as this is final offer interest arbitration and I must accept either the entire proposal of the Employer or that of the Union.

Thus, in light of the strong degree of appropriate internal comparability and some degree of external comparability I find that the Employer's proposal with regard to insurance should be adopted.

E. Contract Duration

The parties agree that their collective bargaining agreement should be three years in duration. However, they disagree only with respect to the scope of the reopener clause with the Union contending that it should include wages and insurance and the Employer arguing that it should be limited to insurance only.

As is evident from the disposition of the wage issue *supra* at pages 4-5, the transition to the

step pay plan is fraught with uncertainty that can only be exacerbated by negotiations without the benefit of some data and experience against which to judge its efficacy. Indeed, I was concerned by that prospect with regard to the issue of insurance. However, unlike that issue the parties have framed this issue to enable me to adopt a course of action that might prevent my concerns. Thus, I find that it would be more prudent to reduce the scope of the reopener so that the parties will not bargain again the issue of wages until there has been the maximum amount of experience permitted given their agreement on the life of the contract.

Accordingly, I adopt the Employer's position on the issue of duration.

IV. AWARD

- A. On the issue of uniform allowance, the Union's proposal is adopted.
- B. On the issue of hours of work, the Employer's proposal is adopted.
- C. On the issue of wages, the Employer's proposal is adopted.
- D. On the issue of insurance, the Employer's proposal is adopted.
- E. On the issue of contract duration, the Employer's proposal is adopted.

DATED:

January 25, 1999



Robert Perkovich, Arbitrator

