

BEFORE THE ILLINOIS STATE LABOR RELATIONS BOARD  
ARBITRATOR ROBERT PERKOVICH

In the Matter of an  
Interest Arbitration  
Between

Village of Westchester )  
 )  
 and ) Case No. S-MA-98-150  
 )  
 Illinois Fraternal Order of Police )  
 Labor Council )

OPINION AND AWARD

On April 20 and May 15, 1999 a hearing was held before Arbitrators Robert Perkovich (jointly selected by the Village of Westchester and the Illinois Fraternal Order of Police), Lawrence Weiner, and Thomas Sonneborn. The Village of Westchester ("Employer") was represented by its counsel, Stanley Jakala, and provided narrative evidence and testimony by its village manager, John Crois, in support of its positions. The Illinois Fraternal Order of Police Labor Council ("Union") was represented by its counsel, Shelly Smith and Becky Drago, and presented narrative evidence in support of its positions. At the hearing on April 20, 1999 the parties, after mediation, settled on a number of issues leaving only those set forth below for resolution in arbitration. The arbitration hearing took place on May 15, 1999 and the parties filed timely post-hearing briefs on August 5, 1999.

STATEMENT OF THE ISSUES

The issues presented for resolution are as follows:

Wage increases effective May 1, 1998, May 1, 1999, and May 1, 2000;  
Longevity Pay for the life of the contract;  
Holidays  
The distance necessary for payment of travel time for training.

BACKGROUND

The Union was first certified as the exclusive bargaining representative for an unit consisting of patrol officers in 1988. The most recent collective bargaining agreement, which expired on April 30, 1998, was the fifth agreement between the parties. During that period the parties resorted to interest arbitration on only one other occasion. At all relevant times there have been approximately 23 patrol officers in the bargaining unit.

The Union demanded to bargain on January 5, 1998 and the parties bargained on several occasions until August when they secured the assistance of a mediator. Bargaining under the auspices of the mediator continued until November of that same year when the Union presented a demand for arbitration. Negotiations continued despite the pending arbitration demand and including the first scheduled day of arbitration when, as noted above, the parties succeeded in narrowing the issues that could not be resolved.

THE COMPARABLE COMMUNITIES

As is now commonly known, one significant measure in choosing between the final offers of an employer and union in bargaining for police and fire personnel is that of comparable communities. Thus, that is the threshold issue that we face. On this point it appears useful to set forth the parties' history on this issue. As noted above, the parties met once before in arbitration. There, in 1991 before Arbitrator Steven Briggs, the parties again disagreed on the issue of which communities should be deemed comparable. Before Arbitrator Briggs the Employer argued that Bellwood, Berkeley, Broadview, Hillside,

and Maywood should be deemed comparable communities because they, along with the Employer, comprised the "Net 17" network of communities that shared a radio network and supported each other on emergency calls. The Union agreed, for reasons unrelated to the composition of Net 17, that all but Berkeley should be deemed comparable but also contended that approximately ten other communities be deemed comparable. Apparently in light of the unanimity between the parties on four communities, Arbitrator Briggs adopted Bellwood, Broadview, Hillside, and Maywood as comparable communities. However, in addressing the conflict with regard to the other communities Arbitrator Briggs was faced with, in his own words, "a rather lean record" that consisted of comparability evidence only with respect to population, median home value, per capita income, and the number of officers employed by each jurisdiction. Armed only with that information he rejected the Union's proposed comparables and determined that Bellwood, Broadview, Hillside and Maywood were comparable, noting that other arbitrators who faced the same issue between the Employer and its firefighters' union made the same determination

In the instant proceeding the Employer again argues that those same jurisdictions be adopted as comparable communities because of their membership, along with the Employer in Net 17. The Employer has further supported its arguments by relying on other comparability data. For example, the Employer points out that the six communities are contiguous, located inside of Interstate 294 and in Cook County, are regulated by property tax caps, and are older suburban communities. More specifically, the Employer argues that the older, interbelt communities, including itself, have similar tax structures and growth patterns, and have less property available for annexation. In addition, the Employer relies upon commonly used criteria to support its position such as equalized assessed annual valuation (EAV), sales taxes, property taxes, and crime statistics. In this regard it's EAV is just less than 305 million, or almost 80% larger than that of the nearest proposed comparable, Hillside. Similarly, the Employer's sales taxes are approximately 22% larger than that of the nearest proposed comparable, again that of Hillside. Finally, a similarly large disparity exists between the property taxes of the Employer and the nearest proposed comparable, this time the jurisdiction of Bellwood. Only with regard to crime statistics does the Employer favorably compare with its proposed comparable communities.

As one might expect, the Union does not agree with the Employer's proposed comparable communities. Rather, the Union proposes the communities of River Forest, Bridgeview, Forest Park, LaGrange Village, Bensenville, Palos Hills, Darien, Brookfield, Westmont, Villa Park, and Elmwood Park.

In so doing the Union first addresses the weight, if any, that should be afforded to the prior decisions of Arbitrators Briggs, Berman, and Kossoff. First, it argues that with the passage of almost ten years the significant facts on which comparability rests have changed. Second, it argues that over that same period the sophistication with which advocates and arbitrators alike use to resolve comparability disputes has been enhanced with the use of more and better data. For example, as noted above the parties provided Arbitrator Briggs with data relating only to population, median home value, per capita income, and the relative number of officers in each jurisdiction. Now in this proceeding we have been presented with the same data, but also data relating to relative EAV, median household income, tax revenues, and public safety expenditures.

We agree with the Union that we are not bound by the findings of comparability of Arbitrator Briggs or, for that fact, those of Arbitrators Berman or Kossoff. We are mindful, and to its credit the Union has reminded us, that although interest arbitration is not bound by principles of stare decisis, it does pay homage to stability in labor relations. However, such obedience to an important public policy does not require blind adherence especially where the party seeking to depart from past findings creates a compelling argument. In our view the Union has made such an argument. There is no question that the record before us differs significantly from that provided to Arbitrator Briggs. In addition, the Union has not sought to change the comparable communities close in time to that finding and the data upon which it relies has changed over that same period of time. We therefore believe that undertaking the comparability analysis anew will not impair stable labor relations.

We deal first with the comparables proposed by the Employer and with which the Union does not agree. When comparing commonly used comparability tests they are quite disparate from one another. Thus, the Employer's EAV and sales and property tax revenue is quite larger than that of Broadview, Berkeley, Hillside, and Maywood. On the other hand, as the Employer correctly points out, they all share the Net 17 radio network, are older Cook County communities within Interstate 294, and are contiguous to one another. These factors however do not move us to adopt them as comparable communities for the purposes of this interest arbitration. First, as far back as Arbitrator Briggs' award in 1991 he declared, correctly we might add, that "(i)t is also advisable to look beyond...immediate neighbors, so long as their distance...does not place them in a different local labor market." Thus, the mere facts that the Employer's proposed communities are contiguous to one another and are all within Interstate 294, although relevant, do not carry the day, especially when other comparability tests compel their exclusion. Secondly, the fact that the Employer has proposed, like itself, older communities within Cook County and subject to property tax caps is again relevant, but not dispositive. Rather, the use of other comparability tests such as EAV, total tax revenues, and median home value provide a better of measure of comparability because they show how the communities have dealt with the geographic and political dynamic as reflected in, for example, property tax caps. On this point the Employer has seen its EAV grow over a ten year period by approximately 111% in comparison with the growth of Berkeley, the closest among it proposed comparables at 59%, and a percentage change over that same period in median home value in Maywood of 52% compared with that of the Employer at 78%.

To say however that we reject the comparables proposed by the Employer but for the one with which the Union agrees, does not necessarily mean that we adopt the Union's proposed communities. Rather, before we do so we will endeavor to determine whether any of all meets commonly accepted measures of comparability.

First, with regard to the Union's proposed comparable communities all are within a twenty-mile radius of the Employer and the farthest away, Palos Hills, is approximately 15 miles distant. Moreover, even using one of the Employer's criterion, location within Interstate 294, seven of the twelve communities proposed by the Employer meet that test. Thus, we find that each of the twelve communities proposed by the Union meet geographic tests and comprise an appropriate labor and geographic market for purposes of comparability.

Next, with regard to relative demographics, the Employer has a 1990 population of 17,301 with Elmwood Park leading the list among the Union's proposed comparables at 23,206 and with River Forest as the smallest population center among them at 11,669. Thus, the Employer compares favorably to both placing ninth among the thirteen and very close to the average of the comparables, which is 18,006. On the measure of median household value the Union's list is led by River Forest, at \$258,900 and rounded out at the lowest point by Bellwood, one of the agreed-upon comparables, at \$74,100. Again, the Employer compares favorably, placing fifth at \$127,200 and close to the average of the proposed comparables at \$128,050. The measure of median household income tells a similar tale with River Forest leading the list at \$62,469 and Forest Park at the low end with \$30,572. More importantly, the Employer ranks fourth among the thirteen with a median household income of \$44,635 and again compares favorably with the average of the proposed comparables of \$41,647. Even with regard to the percentage change in these factors between the 1980 and 1990 census, a measure of growth and dynamic stature, the Employer places ninth in median household income and fifth in median home value and close to the average in both categories.

In light of the foregoing we find that the Union's proposed comparable communities should be adopted from the perspective of various relevant demographic data.

There remains then a comparative financial analysis. Here again, the Union appears to be correct. For example, per capita taxes for the Employer place it fifth among the Union's proposed comparable communities and it compares favorably with the average among them (\$351 as against \$296). The Employer's 1996 EAV, approximately 304.15 million, is sixth among the list and is very close to the average of the proposed comparables (301.6 million) and its percentage growth of 111% places it second and comparable to the average at 92%. Finally, the Employer places fourth and fifth, respectively, among the Union's proposed comparables with regard to total local taxes and public safety expenditures and in

both categories it is close to the average of the communities in question.

Upon review of the history between these parties that led to earlier findings with regard to comparability, the passage of time, and the more sophisticated record provided to this panel relative to that provided in the past including geographic, demographic, and financial data, we adopt the Union's proposed comparable communities. Thus, the comparable communities are deemed to be Bellwood, Bensenville, Bridgeview, Brookfield, Darien, Elmwood Park, Forest Park, Lagrange Village, Palos Hills, River Forest, Villa Park, and Westmont.

## THE ISSUES TO BE RESOLVED

### Holidays

Currently the Employer's patrol officers have two options with regard to holidays. First, they can opt to receive holiday pay on December 1st every year for each of the twelve holidays recognized by the Employer or they can take the twelve days off at straight time pay. The Union proposes that the holiday compensation protocol be changed so that whenever officers work any of six of those twelve holidays, New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day, the rate of compensation be a premium rate of one and one-half times the officer's regular rate of pay in addition to straight time pay for the hours worked. The Employer on the other hand asserts that the current holiday compensation remain unchanged.

The record reflects that in each and every one of the adopted comparable communities patrol officers are paid double time if they are off on designated holidays and in seven of the twelve communities they receive a premium rate between two and one-quarter and three times the regular rate of pay. However, the Employer's firefighters are subject to the same holiday compensation protocol as that currently applied to patrol officers, but they receive "Kelly days," or one day off each week so that overtime compensation is not warranted by the Fair Labor Standards Act.

In our view the comparability evidence requires that we choose the Union's final offer on this issue. As noted above, seven of those jurisdictions pay premium pay for working on holidays and five pay the same rate as that proposed by the Union with two others paying an even greater rate. Although the internal comparables would appear to favor the Employer's final offer, we believe that because firefighters receive "Kelly Days" renders the comparison less than helpful.

We find for the Union on the issue of holiday pay compensation.

### Payment for Time Traveling to Training

On this issue the parties' differences is less than significant. Both agree that when patrol officers travel to training they should be paid two hours compensatory time whenever they travel thirty-five or more miles from the village. However, they disagree as to the measuring stick to be used to determine if the requisite number of miles have been traveled. The Employer argues that the two hour payment should be made only if the employee travels outside of a thirty-five mile radius from the village and the Union argues that payment should be made whenever the employee in fact travels the required number of miles.

On this point the Union contends that thirty-five miles is a considerable distance and that even if it might not be considerable "as the crow flies" it certainly is when measured by the amount of time required to drive that distance in a metropolitan area like greater Chicago. The Union rejects the Employer's proposal that the distance should be measure in terms of a radius from the village because in the metropolitan area there are few if any direct routes that could be traveled. The Employer on the other hand argues that a radial measure would be easier to assess and would avoid disputes whether the employee took the best, or most direct route, to the training site.

The comparability evidence is less than helpful, perhaps reflecting the fact that this issue is not easily quantified. For example, in five jurisdictions the collective bargaining agreements are silent and the

employers there handle this issue pursuant to department policy. In four others employees receive actual mileage apparently without regard to the distance traveled. In the one jurisdiction in which the payment is predicated on some measuring stick, the point used is twenty-five miles from the residency requirement. Finally, two jurisdictions pay based on the amount of time spent traveling.

Upon reflection, we believe that the arbitral process should be disruptive to the parties' relationship, if at all, to the least extent possible. Thus, we fear that adoption of the Union's final offer could lead to arguments whether the employee in question traveled a route that required more than thirty-five miles, but that another route would have required less distance and therefore payment would not have been required. We do not believe that creating a process that could lead to these types of conflicts, even if caused by wholly unintentional conduct, would help the parties as they deal with one another. Thus, we adopt the Employer's final offer on this issue.

#### Longevity Pay

Currently, patrol officers receive longevity pay of \$24 per month after six years of service and \$50 per month after ten years of service. The Union asserts in its final offer that two additional payments should be added, a payment of \$75 per month at fifteen years of service and \$100 per month at twenty years of service. The Employer on the other hand again argues that the status quo be maintained.

In support of its final offer the Union points out that the current longevity pay benefit has remain unchanged since before the was certified in 1988 and that the situation is particularly grave because at the expiration of the last contract six of the Employer's twenty-three officers would be qualified for the longevity benefit under the Union's proposal and four additional employees would become eligible over the life of the contract now under consideration.

With regard to comparability the record reflects that of the comparable communities only four make longevity payments to patrol officers and that of those jurisdictions one pays \$600 per year after eight years of service with no changes thereafter and another pays \$1,493 per year after twelve years of service, \$2,986 after fifteen years, and \$4,479 per year after nineteen years of service. Thus, the Employer's current longevity pay system is better than eight of twelve of the comparables and is consistent with at least one of the three jurisdictions that offer longevity pay. Finally, the internal comparability evidence shows that the status quo longevity pay for patrol officers is the same as that for the Employer's firefighters.

We believe that we have no choice but to accept the Employer's final offer with regard to longevity payments. The internal comparability is identical between the Employer's patrol officers and its firefighters and any external comparability that might compel a contrary conclusion is less than persuasive in that the overwhelming majority of the comparables offer no longevity at all and among those that do, the status quo compares favorably with one community.

We therefore adopt the Employer's final offer on longevity.

#### Wage Increases

The parties are in partial agreement with respect to the wage increases to be afforded bargaining unit employees during the life of the agreement under consideration. Thus, they agree that for employees at Step 7 of the salary schedule there shall be a wage increase of 3.5% effective May 1, 1998, an increase of 3% for those same employees effective May 1, 1999 and another wage increase of 3% effective May 1, 2000. Moreover, they agree that all wage increases awarded shall be retroactive.

It is with respect to employees at steps one through six of the salary schedule that the parties disagree. The Union argues that they should be awarded salary increases of 4% in each year of the agreement while the Employer contends that they should be awarded an increase of 3.5% in the first year of the agreement and 3% each year thereafter.

The record shows that a patrol officer is initially placed at the first step of the salary schedule upon

hire and moves to the second step upon completion of the police academy. Following completion of the first year of service an employee moves to the third step of the schedule and then moves to the next step with each year of service. Thus, after five years a patrol officer moves to the top of the salary schedule.

The record further reflects that at some point in the early 1990's the Employer was faced with financial complications and approached the Union for relief with respect to the salary schedule. The Union acknowledged the Employer's predicament and agreed that there would be no increases to the salary schedule for employees hired after the effective date of the collective bargaining agreement in place between 1992 and 1994, but that employees at the higher end of the salary schedule would indeed receive a salary increase. In the successor contract, for the period between 1994 and 1996, the parties agreed to increases in the salary schedule, but maintained the two-tier approach. Finally, in the contract for the period 1996 through 1998 the parties the two pay scales were merged into one and an increase to the salary schedule was adopted without regard to an employee's date of hire.

With regard to the comparable communities, officers in Forest Park received wage increases of 6% for 1998 and the officers of one, Westmont, received a 5% increase. In two communities, LaGrange and Brookfield, wages were increase by 4.5% while Bensenville and Villa Park officers received wage increases in 1998 of 4%. In five other communities the wage increases were between 3% and 3.75% and in one community, Bellwood, wage increases were awarded at 2.5%. For 1999 the wage increases remained the same in four communities (either 4.5, 4, or 3%) with two other communities in negotiations at the time of this proceeding. In the four remaining jurisdictions the wage increases for 1999 were 5%, 4%, 3.75% and 2.63%. Finally, to the extent that there were agreed-upon wage increases for the year 2000 at the time of this proceeding, those increases among the comparables were 4.5%, 3.75%, and 3.5%. Thus, in the two years in which there is adequate data, 1998 and 1999, there were only five jurisdictions in which wage increases were less than 4% in 1998, as offered by the Employer, and only one jurisdiction which had wage increases of 3% or less in the following year, again as offered by the Employer. Conversely, in 1998 six jurisdictions increased wages by 4%, as offered by the Union, or more in 1998 and in 1999.

Internally, the evidence shows that the Employer's firefighters also agreed to freeze the salary schedule between 1994 and 1996. However, the freeze encompassed all employees on the salary schedule. Then, in the following year, the first since the freeze in which all employees in both groups received wage increases, patrol officer wage increases at all steps but for the last were 3.50% and for employees at the top of the schedule the wage increase was 3.70%. For that same year all firefighters received a wage increase of 3.5%. Finally, the current collective bargaining agreement between the Employer and its firefighters provides for wage increases, without regard to an employee's placement on the salary schedule, of 3.5%, 3% and 3%, as offered by the Employer to the Union herein. With regard to non-unionized employees, the record reflects that for 1998 all received 3.5% increases but for supervisory personnel and one clerk, whose position and responsibilities were re-evaluated.

We believe that this final issue presents a most difficult choice for several different reasons. First, the Union has made clear that its purpose is to remedy the ill effects of its agreement to freeze the salary schedule earlier this decade. Thus, the question whether it may "catch-up" is not only viewed in the ordinary context of the propriety of awarding such movement in arbitration, but also in light of its conscious agreement in the past that created the circumstances that gave rise to the desire to "catch-up." Second, a comparability analysis clearly shows that with regard to external comparability the Union's final offer is more reasonable, but with regard to internal comparability the Employer's is favored. Third, evidence with regard to the cost of living is not particularly helpful because the final offers of both parties exceeds that measure. Finally, the difference between the parties' final offer is problematic because, quite frankly, only a "spitting distance" separates them. This is best demonstrated when one views the two competing offers as to the placement of the Employer among the comparables. For example, when one examines that placement in 1998 and 1999 the parties' competing offers place the Employer only one slot apart in eight of ten steps of the salary schedule in 1998 and in six instances in 1999. Moreover, even at those points in the salary schedule at which the two competing offers are not next to one another in relative placement, the "gap" between them is represented by only one other comparable jurisdiction.

Thus, we can only conclude that the wage issue is postured such that arbitration is uniquely ill

suites as a dispute resolution device. Sadly, despite the good faith and continuing efforts of the parties to avoid an imposed solution, we must face our duty to make such a choice.

On the issue of "catch-up" the Union argues that other arbitrators have awarded such wage increases despite any inclination to refrain from doing so. Indeed, as apparent from the cases cited by the Union, it is correct. However, when one closely looks to the justification for doing so it is always couched in the context of the statutory criteria for choosing between competing final offers, i.e. external and internal comparability and/or cost of living.

Upon very close and careful consideration we conclude that the Employer's final offer with respect to wages must be adopted. First, although external comparability favors the final offer of the Union in the first year of the agreement, it does not demonstrate a "direct and proven" or "crystal clear" need for catch-up because it comports favorably with only six of the twelve comparables. Moreover, in the second and third years of the agreement the Union's final offer is even less compelling when judged against this standard. Second, the internal comparability between the wage history and increases of the patrol officers and the firefighters leads us again to the same conclusion because the Employer's final offer herein comports exactly with that of the firefighters and non-supervisory employees. Finally, patrol officers' total wage increases for the period between 1993 and 1997 outpaced those of firefighters by approximately one percent and firefighter salaries did not change between 1994 and 1996 while those of patrol officers did.

#### AWARD

The Union's final offer as to holidays is adopted.

The Employer's final offer as to compensation for travel to training is adopted.

The Employer's final offer as to longevity is adopted.

The Employer's final offer as to wages is adopted.

The parties' tentative agreements reached before the commencement of the arbitration hearing on May 15, 1999 are adopted.

\_\_\_\_\_  
Arbitrator Robert Perkovich

Date \_\_\_\_\_

\_\_\_\_\_  
Arbitrator Lawrence Weiner

Date \_\_\_\_\_

\_\_\_\_\_  
Arbitrator Thomas Sonneborn

Date \_\_\_\_\_

At the hearing the parties stipulated that this issue was non-economic in nature.

In one of those two cases Arbitrator Herbert Berman based his determination, at least in part, on the fact that the parties "...always addressed the battalion in...negotiations." In the other case, before Arbitrator Sinclair Kossoff, this record does not disclose the basis for his finding.

The parties do agree however that Bellwood should be included among the comparable communities. Thus, we so find.

Interestingly, even among the Employer's proposed comparable communities two of the five provide some sort of premium pay for holidays worked.

This test for an award of catch-up wage increases was articulated by Arbitrator Elliot Goldstein in Cook County & Sheriff of Cook County & Teamsters, Local No. 714 (L-MA-95-001).