

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

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

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

Case #S-MA-99-140

**OPINION AND ORDER**

A hearing was held on February 22 and June 15, 2000 in Lincoln, Illinois before Arbitrator Robert Perkovich, having been jointly selected by the parties, City of Lincoln ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Jonathan Wright. The Union was represented by its counsel, Thomas Sonneborn, and its representative Becky Dragoo. The parties submitted their evidence in narrative fashion and filed timely post-hearing briefs which were received on September 11, 2000.

THE ISSUES PRESENTED FOR RESOLUTION

The parties agree that the issues presented for resolution are health insurance, which they further agree is a single issue that is economic in nature, and residency, which is a non-economic issue.

BACKGROUND

The bargaining unit involved in this proceeding consists of all sworn officers in the ranks of patrol, corporal, and sergeant and there are approximately 27 employees in the bargaining unit. The most recent collective bargaining agreement between the parties, and the sixth one in their bargaining history, expired on May 30, 1999.

The Employer is approximately 30 miles northeast of Springfield and is directly linked to that community by Interstate Highway 55. The record reflects that over the past five years the Employer's General Fund Balance has grown both at the beginning and end of each fiscal year. Thus, revenues have either kept pace with or exceeded expenditures. Similarly, the Employer's General Fund Liquidity ratio has been such that the Employer could have easily paid current liabilities during this same period. Finally, the Employer has enjoyed growth as demonstrated by increases in equalized assessed valuation (EAV) from approximately 68 million in 1988 to 104 million in 1998.

## THE COMPARABLES

The parties appear to agree that the communities of Dixon, Kewanee, Pontiac, Jacksonville, Macomb, and Rantoul are comparable to the Employer for the purpose of weighing the parties' competing final offers on the issues of health insurance and residency<sup>1</sup>. The record discloses that the range of population of these six communities is from a low of 11,428 to a high of 19,952. The Employer's population compares favorably at 15,418 and is very close to the average of the other six communities which is 16,005. Similarly, the range of per capita incomes for the six communities is between \$9,135 and \$12,282 and that of the Employer is \$11,502, which again compares favorably to the average per capita income of the other six communities of \$10,911. Finally, the median household income of the six communities falls within a range of \$18,554 and \$26,767 with the Employer's at \$25,428. The average median household income of the other six communities is \$23,550.

The Employer asserts that the communities of Sycamore, Streator, Sterling, Belvidere, Morton, Centralia, Taylorville, Mattoon, and Canton should also be deemed comparable. Interestingly, in its post-hearing brief the Union joins in that suggestion, noting that its post-hearing review indicates "...all are of a least a similar size... and are geographically proximate..." to the Employer. Despite the apparent unanimity however, the record contains no evidence, unlike the record developed with regard to the other six communities, to consider the issue. This gap in the record evidence is especially problematic when, as the Union correctly points out, comparability plays a special role in the resolution of interests disputes and has been deemed the most important of factors to interests arbitrators. See e.g., *City of DeKalb and DeKalb Professional Firefighters Association, Local No. 1236*, (Goldstein). Moreover, although the comparability analysis of parties and arbitrators alike has become more sophisticated over the years, there is always the nagging possibility, or at least the perception thereof, that positions on comparability are not based simply on objective measures such as population, EAV, tax revenues, and the like. Thus, I will not run the risk of aiding that reality or perception by merely adopting comparables that were once in dispute, but are now embraced by both parties without adequate record evidence to support doing so.

Because there is no such record evidence, I find that the comparable jurisdictions for the purpose of this dispute are limited to Dixon, Kewanee, Pontiac, Jacksonville, Macomb, and Rantoul.

## THE ISSUE OF RESIDENCY

The Union's final offer on the issue of residency is that bargaining unit employees may be required to live within ten (10) miles of the Employer's city limits. The Employer on the other hand proposes that bargaining unit employees hired before August 1, 1991 be required to reside within the city limits as a condition of employment that must be

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<sup>1</sup> At the hearing the Union asserted that the parties had indeed agreed on this point. The Employer on the other hand was less certain of any such agreement, but did concede that any disagreement was limited to its effort to add additional communities to the list of comparables proposed by the Union.

satisfied no later than one year after hire and that bargaining unit employees hired before that date must reside in geographic areas serviced by the telephone prefixes of 732 or 735.

The record shows that in the prior collective bargaining agreement between the parties they obligated bargaining unit employees to a residency requirement that was identical to that proposed by the Employer herein but for the period in which newly hired employees must satisfy the residency requirement<sup>2</sup>. Therefore, the Employer argues that the Union bears the burden of proof because its proposal seeks to alter the status quo in a more substantial fashion. However, the Union correctly points out that the parties' prior agreement was negotiated before the 1997 amendments to the Illinois Public Employment Relations Act which lifted the subject of residency from the list of subjects outside the scope of bargaining, making the subject arbitrable as well. Thus, although the Employer may be correct as a matter of fact that the Union seeks to change the "status quo" more substantially than it seeks to do so, as a matter of law there is no "status quo" in light of the amendments to the IPLRA.

I hold to this view as well because this issue was, in my opinion correctly resolved by Arbitrator McAlpin in *City of Nashville and Illinois Fraternal Order of Police Labor Council*, S-MA-97-141 (1999). There Arbitrator McAlpin found that because the parties' prior agreement was only a tacit approval of unilateral action by the Employer that was for the first time in the proceeding before him negotiable, there was no status quo such that any party bore a heavier burden of proof than the other. Rather, resolution of the issue depended on a balancing of the needs of the Employer and those of the Union and the employees. It appears to me that such reasoning is not only correct, but also self-evident. This is so because when the parties faced the issue before it became a mandatory subject of bargaining and, ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties. Thus, they did not create a base from which to consider subsequent bargaining.

Fortunately, in weighing the parties' competing needs on the issue of residency, I have not only Arbitrator McAlpin's award, but also the awards of several other well-respected arbitrators. For example, in *Village of South Holland and Illinois Fraternal Order of Police*, S-MA-98-120 (Goldstein, 1999) Arbitrator Goldstein examined the issue of residency in the relatively unique context of a history of racial discrimination and the intervention of the United States Department of Justice. In *City of Highland Park and Teamsters, Local 714*, S-MA-98-219 (Benn, 1999) Arbitrator Benn merely considered the reasonableness of a final offer that employees be permitted to reside anywhere in the state of Illinois.

Three other cases however are more helpful because they did not involve unique circumstances or clearly less than reasonable final offers. The first, the *Nashville* award of McAlpin, involved the argument that employees of a governmental body should live in the confines of that entity because their salaries are paid by the residents of the

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<sup>2</sup> In that contract newly hired employees were required to meet the requirement to live within the city limits within ninety (90) days of hire.

their collective bargaining agreements. In Pontiac, the parties have agreed that bargaining unit employees must live within the city or a two mile radius of the intersection of Main and Howard streets. Therefore, the external comparables weigh heavily in favor of the Union's final offer.

Next, as Arbitrator LeRoy did in *City of Kankakee*, I proceed to weigh the legitimate interests of the employees against those of the Employer. Here the Union has placed into evidence eleven reports of vandalism against police officers since 1993. In reply the Employer contends first that eleven such instances are too few in number to justify selecting the Union's final offer. Secondly it asserts that if the vandalism is random, changing the residency requirement will do nothing and that if the vandalism is targeted, the community is small enough that police officers will be able to "run, but not hide."

On the first point, the adequacy of the record on the issue, it is clear that the eleven instances were reported incidents and that the record also contains numerous other instances described but not reported. Moreover, a number of those incidents were targeted against the subjects because they were police officers. Thus, the record evidence is both adequate in number and not random. Therefore, I must deal with the Employer's arguments that because police officers can run, but cannot hide, there is no point in expanding their residency requirement. Although the Employer is conceptually correct I do not believe that a residency requirement that is reasonably close as a matter of geography and that is supported by the external comparables, should be denied simply because it does not protect officers even more by expanding the residency limits to the point where they might feel safest. Rather, a proposal, like that of the Union herein, that attempts to address this demonstrated need and that is otherwise reasonable should be adopted unless operationally indefensible.

The remaining question therefore is whether there are operational reasons to reject the Union's final offer. On this point the Employer argues that the Union's final offer will permit officers to live further than they do at present and that housing costs and availability in the city limits does not vary appreciably from those outside of the city. Presumably the first argument carries with it the implicit notion that by living outside the city limits response time will be compromised. Although this appears to be a legitimate inference that one can draw, there is no record evidence as to what the response time has been under the existing residency requirement nor how, if at all, it will be impacted by the Union's final offer. On the other hand, the city is intersected and encircled by Interstate Highway 55 from the northeast to the southwest and is intersected by State Highway 10 from east to west and State Highway 121 from southeast to northwest. With regard to the claim that housing costs and alternatives are no better outside of the city than they are in the city, that argument ignores the fact that the Employer's final offer will remove from bargaining unit employees a right shared by others, as pointed out by Arbitrator Berman, and a right that has demonstrably been exercised by those individuals. For example, we have seen a rapid mobilization of society where households have been increasingly seeking lower residential densities at increasing distances from their workplace. See e.g., *Rethinking Accessibility and Jobs-Housing Balance*, Journal of the

it and the Union, as well as other unions with which it bargains, during which efforts to devise various cost containment strategies proposed by the Employer went unsuccessful<sup>3</sup>.

The Union on the other hand argues that the external comparables clearly favor maintaining the status quo and that a number of those comparables also pay, as does the Employer, retirees' premiums and a premium for single coverage that is in line with those paid by the Employer.

As noted above, the comparables I have selected for resolving this dispute are Dixon, Macomb, Pontiac, Jacksonville, Rantoul, and Kewanee. The record reflects that in all of the comparable communities employees are not required to pay any sum toward single health care coverage. Thus, the external comparables strongly favor the Union's final offer. In addition, two of the comparables, Dixon and Kewanee, also pay the premium for retirees. Finally, the range of the premium for single care coverage among the comparables is between \$193 to \$294.43. Thus, the Employer's premium of \$324.33 is admittedly higher, but not significantly disproportionate to that of the next highest comparable.

On the issue of a health care cost containment committee, none exists in any of the comparable communities. Thus, the external comparables again favor selection of the Union's final offer.

The Employer's final argument in favor of its final offer is that in light of the parties' agreements raising compensation to officers who testify in civil cases, paying overtime for all hours worked in excess of eighty hours in a fourteen day period, and to increase wages by 4.2%, 4%, and 3.9%, in excess of the cost of living, the employees' total compensation compels the selection of its final offer. The Union on the other hand contends that because the Employer's final offer will require employees to pay 5% of the single care coverage premium, without limitation, any such advances in compensation could be offset by the health care co-payment. It adds on this point that with the history of rising health care costs this concern is not misplaced.

As noted above, the parties have stipulated that this issue is a single issue and economic in nature. Therefore, I am required to choose between the two competing final offers. This choice is complicated by the fact that the purely economic element of the two offers, i.e. whether employees will pay a portion of the single care coverage premium, represents a break with the status quo that, although seemingly reasonable in light of the Employer's rising costs, is not supported in any way by the comparables. On the other hand, the other element of the proposals, i.e. whether it is reasonable to provide for some process by which the parties can meet to address this issue in the future, cannot be divorced from the "either-or" choice that I face.

Be that as it may, I am compelled to make the choice and I find that the Employer has failed to make a convincing case to depart from the status quo which frees the

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<sup>3</sup> The record does not disclose whether the parties invoked the arbitration provisions of their health care agreement at this time nor if they did, what outcome arose.

employees from paying any part of the single care coverage premium. As noted above, it has based its case largely on rising health care costs, a largely indisputable proposition, but those circumstances must be viewed in the context of the external comparables which weigh unanimously in favor of the Union's final offer. Moreover, the Employer's final offer also would require that I order the creation of a committee impacting unions and other individuals who are not a party to this proceeding. Frankly, I am unsure whether I possess that power.

In light of the Employer's failure to justify its proposal over the external comparables and the status quo I adopt the Union's final offer on health insurance.

### **ORDER**

1. The parties' tentative agreements reached prior to the date of this Order are hereby adopted.
2. The Union's final offer on residency is hereby adopted.
3. The Union's final offer on health insurance is hereby adopted.

**DATED:**

November 12, 2000



Robert Perkovich, Arbitrator