ILRB
#215

BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an Interest Arbitration Between **S- MA-99-196**

Village of Brookfield	)	
	)	
and	)	FMCS #99-0527-11849-A
	)	
Service Employees International Union	)	
Local No. 73	)	

LABOR ARBITRATION OPINION AND AWARD

An interest arbitration hearing was held on January 19, March 6, and April 6, 2000 in Brookfield, Illinois before Arbitrator Robert Perkovich, having been jointly selected by the parties, Village of Brookfield ("Employer") and Service Employees International Union, Local 73 ("Union"). Appearing for the Employer were its counsel, James Baird and Michael Durkin. Testifying for the Employer were Michael Durkin, Charles LaGreco, and James Mann. Appearing for the Union was its counsel, Richard Reimer. Testifying for the Union were Mark Duffek, Scott Saulters, Nicholas Belsanti, and Timothy McDonald. The parties filed timely post-hearing briefs which were received on May 25, 2000.

STATEMENT OF THE ISSUES

At the hearing the parties stipulated that the issues presented for resolution were Kelly days, Hourly Rate of Pay, Call-In Pay, Holidays Observed and Holiday Pay, Salary, and Certified Paramedic and Training Officer Stipend. However, at the close of the hearing the Union amended it's final offer for settlement and either withdrew its proposals or agreed to the Employer's final offer on all but one issue. Thus, the only remaining issue presented for resolution in this arbitration is that of salary adjustments.

BACKGROUND

The Employer is probably best described as a middle-class, "bedroom" community without the type and extent of retail and/or industrial activity that characterizes other communities in the Chicago metropolitan area. It is best known for its internationally famous zoo, which of course attracts many people to the community who may make purchases in the community. However, the Employer directly receives from the Zoo only a small portion of sales taxes from the sale of items at the Zoo, $4,000 each year for liquor licenses issued to the zoo, and $100,000 for water use which is segregated in a fund devoted to water maintenance and related expenditures. Thus, although the Employer does indeed have sales and property tax revenues, as well as a utility tax which yields approximately 1.2 million dollars per year, its revenue stream is not substantial.

The Employer has approximately 90 full-time employees in administration, the cashiers' office, building department, public works, recreation department, police telecommunications, and the police and fire departments. The telecommunications and police departments are represented, in separate bargaining units, by the Illinois Fraternal Order of Police (FOP) and have been so represented, respectively, since 1999 and 1987. In those two departments there are respectively six employees (all of whom are in the bargaining unit) and 29 employees, of whom 26 are in the bargaining unit.

BARGAINING HISTORY

The fire department is the unit which is involved in the instant matter. There are a total of 16 full-time employees in the department of whom 12 are in the bargaining unit consisting of three lieutenants and nine firefighter/EMT's and firefighter/paramedics. The Employer utilizes two firehouses, known as the north and south firehouses, and, when at full staffing levels, there are five sworn personnel, including a captain and two paramedics, and two contract paramedics at each firehouse. The record shows that since 1995 only two firefighters have left the Employer's fire department for employment elsewhere.

The Union has represented the bargaining unit involved herein since 1996 and the contract at issue herein will be the second collective bargaining agreement between the parties. In negotiations for the first contract the Union sought to obtain a "me-too" clause by which salaries paid to bargaining unit members would be the same as those paid to the police bargaining unit. However, the Union abandoned it's efforts when the Employer repeatedly declined to agree to any such approach. In negotiations for the contract at issue herein the Union again argued that it should receive the same salary increases as those agreed to with the FOP, contending that historically there had been parity of salaries and salary increases between the two bargaining units. The Employer disagreed with the Union's characterization of the relative salary history between the two groups and asserted that the total compensation package, i.e. wages, stipends, and benefits, of the firefighter unit exceeded that of the FOP unit. Thus, it refused to agree to the Union's wage proposals.

Between 1985 and 1995, during which only the police unit was organized and engaged in collective bargaining, the Employer customarily matched the wages paid to firefighters with those paid to police officers. However, in 1992 and through September of 1994 that equality of wage levels was disturbed when, using the starting salary levels as an example, the wages of police officers exceeded those of the firefighters. (See e.g., Union Exhibit 4.) Despite the disparity for that discrete period of time the Employer again paid, in September of 1994 the same starting and top wage to both firefighters and police. (Union Exhibit 4.) Then, in September of 1995 the relative wages of these two groups again fell out of conformity with one another when the wages of police were frozen during negotiations with the FOP and firefighters received a wage increase. Moreover, once negotiations ended with the FOP and retroactive wage increases were agreed upon, firefighter salaries still exceeded those of the police. Thereafter, following

negotiations with the newly certified firefighter's union, the parties agreed to wage levels that were identical between police and firefighters between March of 1996 and through May of 1997[1]. Finally, in May of 1998, when the Employer and the FOP agreed to their current contract, relative wage levels between the two bargaining units fell out of balance with one another and police salaries exceeded those of firefighters.

During this same period there was also a history of relative wages between those paid to fire lieutenants, once referred to as fire engineers, and police sergeants. Again, during the early 1990's the Employer had a general policy of wage conformity between these two groups such that until March of 1996 the starting, midpoint, and top wages for these two groups were identical. At that time the Employer instituted a merit pay program for police sergeants while the parties herein negotiated for uniform wages for members of the firefighter's unit. Thus, between March of 1996 and through May of 1998 the relative wages of the two units were not in balance and those of police sergeants exceeded the collectively bargained wages of firefighters[2]. (See e.g., Union Exhibit 5). Then, in 1998 the police sergeants joined the FOP bargaining unit through a self-determination election and, through collective bargaining the merit plan was eliminated and the wage levels negotiated between the Employer and the FOP at that time exceeded those paid to fire lieutenants.

THE COMPARABLE COMMUNTIES

The parties, as is so often the case in these types of proceedings, disagree as to the comparable communities that should be used for the purposes of choosing between the two final offers on the issue in dispute. The Union believes that the communities that are comparable and should serve as benchmarks are Broadview, Elmwood Park, Forest Park, North Riverside, and Westchester. The Employer on the other hand proposes the communities of Bellwood, LaGrange, Maywood, Worth, and the fire protection districts of Roberts Park, Pleasantview, and Northlake. In support of their proposed comparables, and in an effort to undermine those proposed by the other side, the parties have presented evidence with regard to population, equalized assessed valuation (EAV), EAV per capita, sales tax revenue, sales tax revenue per capita, average family income, median income, average home value, fire department size and structure, and property tax rates[3]. Key determinants among the data provided by the parties to determine what communities should be selected for the purposes of comparability analysis include sales tax revenue, property tax rates, EAV, relative distance, and department size and structure[4].

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[1] It is true however, as the Employer points out, that in 1997 there was a four month lag between the equality of wage levels.

[2] It is true, as the Union points out, that during this period no police sergeants were performing at a level of work that enabled them to be paid at the top rate.

[3] However, in some cases only one party provided data, e.g.s. average home value and median income, and in other cases although both parties provided data there was a discrepancy between the data. Therefore, I have chosen to use only those categories in which both parties provided data and in those cases where the data did not conform to that provided by the other party, I have relied on the more current set of numbers.

[4] At the hearing, and again in their post-hearing briefs, the parties have argued regarding the impact of their discussions during bargaining as to which communities might be comparable in the event that they found themselves in arbitration. However, neither party has demonstrated why these discussions should be determinative and neither has cited to any authority, nor am I aware of any such arbitrral authority, that

When the parties' proposed communities are compared and contrasted against one another and, more importantly, against the Employer, a selection can be soundly made. For example, with respect to EAV, the Union's closest comparable (Forest Park) is 3.60% less than that of the Employer and the proposed comparable least like the Employer is 49.3% greater (Westchester). Using this same benchmark for the Employer's proposed comparables, the closest in terms of EAV (Bellwood) is 15% less than that of the Employer and the least like the Employer (Worth) has an EAV 45% greater than that of the Employer. Therefore, on this discrete comparison point, the Union's proposed comparables are slightly more like the Employer.

Similarly, no meaningful distinction can be made between the proposed comparables of the Union and those of the Employer on the important point of relative geographic proximity to the Employer, especially as it relates to the labor market in which the Employer competes. For example, all of the comparables proposed by both parties are within 10 miles of the Employer.

However, on the remaining key determinants, sales tax revenue, property tax rate, and department size and structure, a significant difference arises in the data and therefore drives my conclusion. For example, on the issue of sales tax revenue, the closest among the Union's proposed comparables (Elmwood Park and Westchester) have total sales tax and sales tax per capita approximately 200% and 150% greater than that of the Employer. Conversely, the Employer's proposed communities compare much more favorably than those proposed by the Union[5]. For example, only one of the Union's proposed comparable communities (Westchester) compares favorably to the Employer while two of the Employer's four proposed communities (LaGrange and Worth) does so.

Finally, not only do the Employer's proposed communities compare more favorably than those proposed by the Union on the issue of revenue, but they also do so with respect to the relative fire department size and structure. For example, among the Union's proposed comparables the closest fire department in size (North Riverside) is approximately 30% larger while the closest of the Employer's proposed comparables (LaGrange) is only 10% smaller than the Employer.

Thus, it is clear that with respect to revenue stream and fire department size and structure, two factors of critical importance with respect to economic issues like wages, the Employer's proposed municipal communities are more comparable than those proposed by the Union and I find that that LaGrange, Worth, Bellwood, and Maywood are to be used for comparability purposes for choosing between the parties' final offers.

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stands for the proposition that such discussions are dispositive or, for that fact, relevant. Thus, I do not rely on this record evidence and instead will use the traditional tests for determining comparability.

[5] This same conclusion is warranted when sales tax growth trends are compared. For example, among the Employer's proposed comparable communities sales tax revenues grew between 1998 and 1999 anywhere between 3.3 and 6.6% while the growth trend among the Union's proposed comparables was between 5.77 and 9.11%.

As noted above however, the Employer also proposes that the fire protection districts of Roberts Park, Northlake, and Pleasantview should be deemed comparable. The Union vigorously disagrees that fire protection districts can be used as comparable communities "...as there is no way to truly compare these Districts to municipalities." In response to this argument the Employer contends that there are appropriate relative measures to compare and contrast fire protection districts and municipalities. For example, it relies on the close proximity of the fire protection districts that it has proposed and that the Employer's small sales tax revenues offset the fact that fire protection districts do not have ready access to sales tax revenues in the first instance. Finally, it argues that without using the fire protection districts, four comparables would be an inadequate sample for analysis.

As the proponent of using fire protection districts the Employer of course bears the burden of proving the wisdom of using them as such. As noted above, the Employer attempts to meet this burden by relying on geographic proximity and by arguing that since it has so little sales tax revenue the fact that fire protection districts have no such revenue has little significance. However, the record contains no evidence as to nature and amount of the revenue stream that fire protection districts have and how that revenue stream compares to that of the Employer. For example, as noted above, the Employer's revenue stream includes sources other than sales taxes yet the record contains no similar analysis of the fire protection districts. In addition, as a municipality the Employer has available to it other options for increasing existing revenues or developing new revenue sources either by passing new taxes and/or fees and encouraging business and residential development within its boundaries. However, the record demonstrates nothing in this regard with respect to fire protection districts[6]. Therefore, I conclude that the Employer has failed to meet is burden to show thorough and significant bases for comparing fire protection districts to municipalities and I decline to include among the comparable communities anything other than LaGrange, Worth, Bellwood, and Maywood.

THE ISSUE OF WAGES

The Employer's final offer on wage increases is for an increase in the first year of the contract at 3.75% and in the second and third years at 3.60%. The Union on the other hand has sought wage increases for the term of the contract at 5.26%, 3.75%, and 4%.

The threshold point of contention in determining which of the two competing offers on wages should be accepted is whether the parties' history of relative wages paid to the police bargaining unit and those paid to the firefighter's unit is such that there is no need to resort to traditional external comparability analysis. On this question the parties appear to agree that in order for this history to be dispositive it must be either a well-

[6] The Employer cites in support of its position that fire protection districts can and should be used as comparables to a municipality the award of Arbitrator Harvey Nathan in *Pleasantview Fire Protection District.* However, a close examination of that award clearly shows that it is distinguishable in that the record before Arbitrator Nathan contained evidence regarding the relative status of the fire protection districts in question and other municipalities on issues such as population, personnel, budget, and EAV.

established pattern such that the parties expect such a result[7] or a historical relationship in salaries between bargaining units[8]. The Union of course argues that the history of relative wages between the two groups equates to a pattern of parity between them and therefore the Union's final offer should be adopted. The Employer on the other hand disagrees and asserts that to the extent there was any history of parity of wages between the two groups it was broken and cannot be used to resolve the issue of what wage should be adopted.

The record reflects that between 1985 and 1992 the Employer, even after the FOP organized the police officers, maintained parity between police and firefighters. However, in 1992, and until 1994, its agreements with the FOP were such that police wages exceeded those paid to the firefighters. However, in 1994 and 1995 parity was again the norm. Then in 1995 the firefighters organized and, critically, sought not only parity, but a "me-too" clause. In other words, the firefighters sought to enshrine in their collective bargaining agreement unremitting equality of wages with the police unit. Equally important, the Employer declined the Union's offer and since that time there has been parity between the two units only for two years[9].

Thus, in a fourteen year span there was without question parity only for the first of those seven years. However, in the next seven year period, parity was the case only for two years. Therefore, the evidence of parity as a well-established pattern to create an expectation thereof, *City of Mt. Vernon, supra,* is inconclusive at best. Moreover, the other cases cited by the Union are distinguishable. For example, in *Village of Skokie, supra,* the average difference between salaries in the units involved was only $46 for fourteen years. Similarly, Arbitrator Lieberman relied on the fact that police and fire salaries had been identical for almost 25 years in *City of Chicago* (1989) and Arbitrator Edelmen found in *City of Granite City,* S-MA-93-196 (1994) that the relative salaries between the two groups were identical for every year between 1985 and 1993, the year before him for resolution.

In addition, it seems important to look to the fact that when the undisputed parity broke down in 1995, it did so at or around the same time that the Union gained its status as the exclusive bargaining representative for the unit in question. The Union of course characterizes the confluence of certification and the break in parity as a punishment. The Employer on the other hand characterizes the break in parity as a recognition that collective bargaining with two groups differs from bargaining with one.

In my estimation the Union's view, although reasonable, is first, not supported by any record evidence other than the timing of events. Without question however, such evidence standing alone is a slender reed on which to conclude as the Union urges.

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[7] See *City of Mt. Vernon,* S-MA-94-215 (Briggs, 1995) as cited by the Union and *City of Waterloo,* S-MA-97-198 (Perkovich, 1999) as cited by the Employer.

[8] See *Village of Skokie,* (Gunderman, 1993) as cited by the Union.

[9] I am mindful that during the short life of the merit pay plan for police sergeants there were no employees in those ranks paid at the top rate. However, the fact of the matter is that the Union herein agreed to a wage rate different than that available to police sergeants, signalling an *agreement* that police sergeants could be paid more than fire lieutenants.

Secondly, and more importantly, that argument does not adequately take into cognizance the realities of the new paradigm of collective bargaining in a context with multiple bargaining units. Under such circumstances when two bargaining units agree to the same wage levels in bargaining with an employer they deem those equal levels appropriate and each feels comfortable with the agreed-upon wage levels relative to the other group. (See e.g., *Village of Arlington Heights, supra* at 21.) It must therefore be true that when those unions agree, for whatever reasons, to a disparity in wages they are once again comfortable with that result. This is particularly true when, as here, the Union herein sought to codify wage equality with a "me-too" clause and abandoned that quest by agreeing to a disparity of wages. Thus, when it did so it indicated a comfort with the different wage levels. Moreover, it did so when, unlike bargaining for non-protective service employees, it could have sought parity in arbitration in the first round of negotiations *in the absence of a bilateral agreement with the Employer to break parity.* If the Union now wishes to undo the ramifications of its choices in that first contract, it can do so, but it cannot do so in arbitration. Rather, it must achieve that goal at the bargaining table.

I conclude therefore that any pattern of parity is inconclusive at best and not adequate to justify adoption of the Union's final offer without regard to other traditional criteria such as external comparability, cost of living and other factors.

On the issue of comparing the final offers of the Union and the Employer with regard to wages, a clear and distinct pattern emerges. As noted above, the Union proposes wages increases in 1999, 2000, and 2001 of 5.25, 3.75, and 4% respectively. The Employer on the other hand proposes 3.75, 3.6 and 3.6%. In comparison with the percentage wage increases for that same period in the comparable communities of Bellwood, LaGrange, Maywood, and Worth, the Union's final offer would grant wage increases that would be either the highest or second highest among the five, with the first year percentage wage increase exceeding that of the nearest comparable community by 1.51%. Conversely, the Employer's final offer would put its firefighters in second place among the five communities in two of the three years and tied for first in 1999. Moreover, in two of the three years the Employer's final offer would exceed the average percentage wage increase of all of the communities in question.

Further comparing the Employer's final offer with respect to total annual salaries at various points on the salary scales of the five communities, the evidence shows that the Employer's proposal would place its firefighters at either the second or third place in years 1999 and 2000 at the starting wage and at five years of service and in first place at ten and twenty years of service.

In light of these facts of record I am compelled to conclude that on the basis of external comparability the Employer's final offer on wages must be adopted.

Other factors however compel the same result. For example, the cost of living has increased from 1996 and 1999 at rates between 2.24 and 2.09%. Moreover, current projections for the year 2000 and 2001 are that inflation will increase by 3.1 and 2.7%

respectively and that inflation will increase for the next ten years by about 2.5% per year. (See, *Economists Boost 2000 Inflation Estimate,* Wall Street Journal, May 23, 2000, page A2.) Thus, the Union's final offer of 5.25, 3.75, and 4% far exceeds any such determinants and the Employer's offer of 3.75, 3.6, and 3.6% will enable firefighters to more than keep up with projected cost of living estimates. Similarly, the fact that only two firefighters have left the Employer for work elsewhere demonstrates that, as was true in *City of Mt. Vernon, supra* at 16, the Employer has been able to attract and retain qualified employees.

Finally, when the Employer's final offer on wages is included with the other elements of compensation on which the parties have agreed, e.g.s. stipends and other allowances but excluding step increases, the total compensation to firefighters under the Employer's final offer will be in each year of the contract 5.72, 3.75, and 3.76% or 13.23% over the full term of the agreement. This appears by all measures to be reasonable and adequate and is an additional reason to adopt the Employer's final offer.

AWARD

Therefore, in light of the inconclusive evidence of parity, the external comparables, cost of living, retention, and total compensation, the Employer's final offer on wages is hereby adopted and IT IS SO ORDERED[10].

DATED: _____

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Robert Perkovich, Arbitrator

[10] The Employer has also argued that although it is able to pay the Union's final offer if I were to adopt that view it would not be in the public interest. In support of that position it points to various expenditures that the Employer has already deferred and, implicitly, expenditures that will be deferred if the Union's final offer were to be adopted. However, in light of what I believe to be overwhelming evidence described above that supports the Employer's final offer, I find it unnecessary to examine this issue.