ILLINOIS LABOR RELATIONS BOARD

BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an Interest

Arbitration between

City of LaSalle, Illinois	)	
and	)	#S-MA-12-216
Illinois Fraternal Order of Police	)	
Labor Council	)	

INTEREST ARBITRATION OPINION AND AWARD

On March 20, 2013 a hearing was held in LaSalle, Illinois before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, City of LaSalle ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Anita Kopko, and the Union was represented by its counsel, Jeffery Burke. The parties presented their proofs and evidence in narrative fashion and filed timely post-hearing briefs that were received on May 31, 2013.

ISSUES PRESENTED[1]

The issues presented for resolution are as follows:

1. The External Comparables

2. Health Insurance Premium Contributions

3. Wages

4. Drug Testing

BACKGROUND

The Employer is a municipality in LaSalle County, on or about 100 miles southwest of Chicago, Illinois.

The Union herein represents two bargaining units, one consisting of police sergeants and lieutenants and another, the unit involved herein, consisting of patrol officers. At all material times herein three detectives and fourteen patrol officers with dates of hire between 1991 and 2013 have been in that bargaining unit. With regard to that bargaining unit the Union has been the exclusive bargaining representative for some time and the parties have successfully negotiated four collective bargaining agreements. Moreover, they have done so without resort to interest arbitration although their last collectively bargained agreement did take the form of a stipulated interest arbitration award. That agreement expired on April 30, 2012.

[1] In its post-hearing brief the Employer asserts that the issue of educational and specialty pay is also before me. However, neither party addressed that issue at the hearing and, more importantly, it is not included in the parties' list of stipulated issues. Therefore, I find that the issue is not properly before me.

In addition to these two bargaining units the Employer also collectively bargains with a unit consisting of its firefighters, represented by a local of the International Association of Fire Fighters (IAFF), and another bargaining unit represented by the American Federation of State, County, Municipal, and County Employees (AFSCME).

THE EXTERNAL COMPARABLES

Because the parties have never resorted to interest arbitration there is no history or practice between them with respect to external comparables. Despite that fact, they have agreed that the communities of Mendota, Peru, Princeton, and Streator are comparable. They differ however in that the Employer also proposes the communities of Marseilles, Oglesby, Ottawa, and Spring Valley while the Union contends that none of those are comparable.

The Employer first looked to those communities that it believed were close enough to it to constitute a relevant job market. Then it next looked to various factors such as relative population, total equalized annual valuation (EAV), per capita EAV, number of sworn full-time officers, number of citizens per officer, median housing value, median rent, median household income, sales tax revenue, sales tax receipts, crime index, and county-wide unemployment rates[2]. When it did so it concluded that on many of these measures (e.g.s, population, total EAV, per capita EAV, number of sworn full-time officers, and sales tax receipts) the Employer ranked at or near the middle of the communities in question. With regard to other measures however (e.g.s, number of citizens per police officer, median rent, median household income, and crime index) it ranked either near the top or the bottom of the communities in question.

The Union, although it took a similar approach, assessed this issue differently. For example, it first started with a 25 mile radius around the Employer and included only those communities that fell within that area. In so doing it, like the Employer, concluded that the communities of Henry, Marseilles, Mendota, Oglesby, Ottawa, Peru, Princeton, Seneca, Spring Valley and Streator fell within that area. Next, like the Employer, it considered population, but in doing so it excluded the communities of Henry, Oglesby, Ottawa, and Seneca because their populations were either more (Ottawa) or less (Henry, Oglesby, and Seneca) than 50% of the population of the Employer. The Union then considered, again like the Employer, other factors such as EAV, general fund balance, public safety expenditures, median household income, median home value, department size, and index crimes and again, excluding those that that did not compare to the Employer on each factor within plus or minus 50%, it excluded Marseilles and Spring Valley. Thus, the Union was left with the communities of Mendota, Peru, Princeton, and Streator.

It appears then that the determination whether Marseilles, Oglesby, Ottawa, and/or Spring Valley should be deemed comparable communities lies in the choice of methodology, i.e., whether the Employer's or the Union's methodology yields a more accurate pool of external comparable communities.

When I view these two methodologies I am compelled to find for the Union and to reject the Employer's additional proposed comparable communities. I do so not because the 50% percent threshold has some particular significance, though in many of the interest arbitrations I have conducted that figure is often used by unions and employers alike, but because a comparison of those communities

[2] With regard to this measure I am unsure how helpful it is in light of the fact that it is a county-wide statistic.

to the Employer yields communities that are not comparable, but rather dissimilar. For example, on the measure of population Ottawa has a population that is almost double that of the Employer while the Employer's population is almost double that of Marseilles and Spring Valley and almost triple that of Oglesby. A similar trend is evident when EAV and the number of sworn full-time officers is examined, and when per capita EAV, number of citizens per police officer, median home value, median rent, median household income, median family income, sales tax receipts, and total crime index, are examined the differences between the Employer on the one hand and Marseilles, Oglesby, Ottawa, and Spring Valley are again quite disparate. Indeed, the only measures on which the Employer's proposed additional external communities compare favorably with it are distance from one another, relative median monthly home owner costs and crime index per capita and those, although relevant, are insufficient when viewed against the other measures described above on which there is a significant difference with the Employer.

In other words, the search for external comparable communities, admittedly a less than precise science, does not turn on whether an employer is at or near the middle of the list of candidates but which of those candidates is most like the Employer. When using that measure I find that the proposed external communities of Marseilles, Oglesby, Ottawa, and Spring Valley are not suitable for use in resolved this interest dispute.

THE ISSUES

A. The Appropriate Standards

As set forth in Section 14(h) of the Illinois Public Labor Relations act arbitrators are to consider the following factors in resolving interests disputes:

1. the lawful authority of the employer;

2. the stipulations of the parties;

3. the interests and welfare of the public and the financial ability of the employer;

4. a comparison of the wages, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;

5. the cost of living;

6. the overall compensation of the employees;

7. changes in any of the foregoing during the pendency of the proceedings;

8. such other factors which are normally or traditionally taken into consideration.

Applying those factors, as described below, I now turn to the issues presented for resolution.

B. Health Insurance Premium Contributions

The record reflects that in the parties' last collective bargaining agreement they agreed for the first time that bargaining unit employees would pay ten per cent of their health insurance premiums with no cap. With its final offer the Employer seeks to increase the percentage to, in the second and third years of the parties' agreement, respectively, fifteen and twenty per cent, while maintaining the

status quo in the first year of the agreement. The Union on the other hand seeks to maintain the status quo throughout the agreement.

Examining the external comparables it seems that they favor the Employer's final offer. For example, patrol officers in Peru have the same contribution as the Employer's, but in Princeton, Mendota, and Streator the employee contribution is more than that currently required of the bargaining unit employees herein.

Similarly, although the Union's final offer to maintain the status quo matches the terms and conditions of the Employer's sergeants and lieutenants, the Employer's final offer matches those conditions for its fire fighters and other unionized employees. Moreover, the contracts for those employees are already in place and share a duration with that of the bargaining unit herein while the contract for the Employer's sergeants and lieutenants going forward has yet to be determined.

Finally, as the Employer points out, the bargaining unit employees enjoy a rather low deductible for their health insurance.

On balance I find that in light of the comparables, both external and internal, the Employer's final offer must be accepted[3].

C. Wages

On this issue the Union's final offer is for a wage increase of two per cent in each of the three years of the parties' collective bargaining agreement. The Employer on the other hand proposes in its final offer two percent in the first year, three per cent in the second, and two per cent in the third year of the agreement. In addition, for newly hired bargaining unit employees from May 1, 2013 thereafter it proposes that that longevity increases for those employees differ from those given to employee hired before that date.

In support of its final offer the Union first relies on the external comparables pointing out that although when base pay is considered the Employer's patrol officers are paid more than those in Peru and Mendota, i.e., two of the four external comparables, when base pay and longevity pay are considered the Employer's patrol officers are the lowest paid. Moreover, the Union notes, the Employer's wage schedule is such that its patrol officers require more years than any of the external comparables to reach top pay. I find therefore that with respect to external comparables that measure favors the Union's final offer.

Next I turn to the internal comparables and in so doing two issues must first be addressed. I agree with the Union, and have long held, that the use of employees who are not represented by a union is inappropriate for the purposes of an internal comparability analysis. The fact of the matter is that the wages of those individuals, whether it is similar or dissimilar to that of represented employees,

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[3] The Union contends that relying on the contracts for the fire fighters and other unionized employees is inappropriate because those unions have their "own circumstances, bargaining history, and goals" and because the "motivation for agreeing to the increased employee contribution" is unknown. Those arguments fail however for two reasons. First, it is equally applicable to the contract between the Employer and its sergeants and lieutenants yet the Union has no issue with using that contract for assessing internal comparability. More importantly however, to accept those arguments would entirely eviscerate internal and external comparability analyses because more often than not, and perhaps always, an arbitrator never knows the circumstances, bargaining history, goals and motivations surrounding collective bargaining elsewhere.

lies exclusively in the control of the Employer and is not the product of collective bargaining. Thus, any such comparison is similar to that of "apples to oranges" rather than "apples to apples."

Similarly, I reject the Union's argument that the wages of the AFSCME represented employees should not be used because they are not employees covered by Section 14 of the Illinois Public Employees Relations Act. Although the Union is correct that those employees are not covered by Section 14, i.e., that rather than resorting to interest arbitration they have the right to strike, that distinction has been the subject of many a debate not only among academics but also among those who make public policy, as to whether it is a difference with a distinction. Thus, I find it less than helpful to repeat that debate here. Moreover, it is important to recall that one of the Section 14(h) standards is a comparison with "employees generally in public and private employment..." and that would therefore seem to contemplate using for a comparability analysis employees who are not in the protective services.

Therefore, for the purposes of an internal comparability analysis I look to the relative wage increases for the Employer's sergeants and lieutenants, its fire fighters and its other unionized employees. In so doing it is apparent that the Union's final offer over the three years of the collective bargaining agreement is identical to those employees.

The final benchmark that the Union uses to support its final offer is the cost of living and it relies on the Consumer Price Index for Midwest Urban which shows a cost of living of 2.2 per cent through February of this year and thus its final offer is actually less than that. In reply the Employer instead relies on the "Chained Consumer Price Index, " noting that there is a trend among public policy experts that it is a more reliable measure of consumer costs. More importantly, the Employer points out that the Chained Consumer Price Index rose less than 2 per cent in 2012. However, an examination of that measure shows that in January and February of 2013 the Chained Consumer Price Index was, respectively, 1.8% and 2.0% and thus, more closely matches the final offer of the Union.

Despite the fact these measures favor the Union's final offer on wages I find that I must reject the Union's final offer. I do so because the Employer has made clear (see e.g., its post-hearing brief at pages 11 and 14) that its final offer on wages is intended to be considered in conjunction with its final offer on health insurance premium contributions. In light of the fact that I have adopted the Employer's final offer on that issue I am compelled to adopt the Employer's final offer on wages as well, but only as to across the board increases.

The reason I do so is because I must reject that portion of the Employer's final offer that includes the component of instituting a different longevity pay schedule for patrol officers hired after May 1, 2013. Quite frankly, one need only look to the historic and strong opposition by labor unions generally to treating newly hired employees differently than those hired before them to conclude that this is a "breakthrough" and I so find. Thus, the burden is on the Employer that before its breakthrough offer can be accepted in arbitration, rather than at the bargaining table, the Employer must establish that the status quo has not worked as anticipated, that the status quo has created operational hardships or equitable or due process problems, and that the Union has resisted attempts to bargain over the change. A review of the record evidence indicates that no such evidence was put into the record by the Employer and therefore that portion of its final offer is rejected. Rather, it merely asserts that the change it seeks to the parties' longevity schedule is not a "major change." With this assertion I cannot agree. First, as noted above, labor unions have long objected to such pay plans and second, as the Union points out, the existing longevity pay schedule has been in the collective bargaining agreement for some time.

D. Drug Testing

On this issue the Employer seeks to change the status quo by adding to the parties' current contract language allowing no more than four random drug tests to no more than two patrol officers at a time during any given fiscal year, permitting testing when there is reasonable suspicion that an officer is under the influence of drugs or alcohol and when an officer has been involved in an accident, and setting forth testing procedures . The Union seeks to maintain the status quo.

In support of its final offer the Employer points out that there is such a provision in the collective bargaining agreements of three (Peru, Princeton, and Streator) comparable communities and that in the fourth the contract is silent on the issue. Thus, it argues, its final offer should be accepted.

In reply the Union asserted at the hearing that the Employer's final offer should be rejected because it should be required to "bargain over that" and that the Employer is "supposed to.., bargain with us." I must confess that with those assertions I am unsure just what is the Union's position because I cannot ascertain whether it contends that the Employer did in fact fail to bargain or if it did bargain what the extent and course of negotiations was. However, in its post-hearing brief the Union has enlightened me further, asserting that the issue in question is a "breakthrough," that the Employer has failed to meet the requisite burden of proof, and that the Employer's final offer "rewrites much of the existing language, for reasons completely unknown[4]." On these points the Employer states that its proposal on drug testing is "language proposed by the Union during negotiations" and that it was taken "from an FOP contract with the City of Streator."

After reviewing the record as a whole, including the parties' characterization of the genesis and evolution of the issue of drug testing during their negotiations, I can only conclude that the record is not only less than helpful, but is in fact no help at all. Thus, I remand the issue to the parties for further bargaining.

AWARD

1. The parties' tentative agreements are hereby adopted.

2. The Employer's final offer on health insurance premiums is hereby adopted.

3. The Employer's final offer on wages is hereby adopted.

4. The issue of drug testing is hereby remanded to the parties for further bargaining.

DATED: July 8, 2013

Robert Perkovich, Arbitrator

[4] In light of those assertions I cannot agree with the Employer that its final offer on drug testing must be adopted because it has gone "unaswered."