ILLINOIS LABOR RELATIONS BOARD

BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an
Interest Arbitration between

Village of Skokie)

and) #S-MA-12-124

Illinois Fraternal Order of Police Labor Council)

INTEREST ARBITRATION OPINION AND AWARD

A hearing was held on October 14, 2013 in Skokie, Illinois before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, Village of Skokie ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, James Baird, and the Union was represented by its counsel, Gary Bailey. Both parties offered their evidence in narrative fashion and both filed timely post-hearing briefs that were received on December 13, 2013.

STATEMENT OF THE ISSUES

The issues presented for resolution are as follows:

1. Sick Leave
2. Quartermaster
3. Retiree Separation Benefit
4. Holidays
5. Insurance
6. Wages

THE EXTERNAL COMPARABLES

The parties agree that the following communities are the external comparables: Arlington Heights, Des Plaines, Elk Grove, Elmhurst, Evanston, Glenview, Highland Park, Lincolnwood, Morton Grove, Mount Prospect, Niles, Northbrook, Oak Park, Park Ridge, Wheeling, and Wilmette.

BACKGROUND

The Employer is a suburb of Chicago, Illinois located approximately sixteen miles northwest of the city. It consists of ten square miles and has on or about 64,000 residents, 24,000 households, and 2,400 businesses. Among its employees, its police officers and fire fighters are unionized while the remaining employees are not. The Employer's police officers are represented by the Union herein and have been since 1986 and at the current time there are 92 police officers in that bargaining unit. Between 1986 and 2004 the parties successfully negotiated six collective bargaining agreements without resort to interest arbitration. However, their seventh agreement was the result of a stipulated arbitration award after successful mediation by Arbitrator Steven Briggs. The next agreement, and the

parties immediate past agreement with a ending date of April 30, 2012, was the result of an interest arbitration, again before Arbitrator Briggs.

The parties commenced bargaining for the agreement that is the subject of this proceeding on April 11, 2012 and thereafter they met and negotiated on nine additional occasions with their last meeting on January 16, 2013. Subsequently they met with the assistance of a Federal mediator in one additional meeting, but without success. With that bargaining history, the parties found themselves before me in this interest arbitration proceeding.

THE STATUORY FACTORS

The Illinois Public Relations Act requires that an interest arbitrator consider the following factors in resolving the outstanding issues in a proceeding of this type. They are as follows:

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 unit of government,
4. a comparison between the wages, hours, terms and conditions of employment of the employees involved with those of other employees performing similar services and with other employees generally in public and private employment in comparable communities,
5. the average consumer prices for goods and services,
6. the overall compensation of the employees involved,
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 in interest arbitration.

Applying those factors, as more fully discussed below, I turn to the issues in dispute

THE ISSUES

a. Sick Leave, Quartermaster, and Retiree Separation Benefits

In bargaining the Union and the Employer tentatively agreed to contract language revising the employee's sick leave benefit and their quartermaster program. However, when interest arbitration became imminent, the Employer withdrew its agreement on those issues. Then at the arbitration hearing the Employer chose not to offer evidence in support of its final offers. The Union contends herein that the Employer did so in order to appeal to the interest arbitrator so that he or she would think that since the Employer conceded the issues to the Union in arbitration he or she would "owe" an issue to the Employer. (See Union post-hearing brief at 35-38.)

Regarding the issue of retiree separation benefits, the Union cites to the statement made by the Employer's counsel at the arbitration hearing that it would not present evidence in support of its final offer on this issue because disturbing the status quo was inappropriate just as, in his view, the Union

was similarly seeking to do on the issue of holiday pay. Thus, the Union claims, the Employer is arguing that if it's final offer on the issue of retiree separation benefits is rejected then the Union's final offer on holiday pay must also be rejected as both disturb the status quo.

The Employer on the other hand argues that because on the issues of sick leave and quartermaster the Union has offered the status quo and because the Employer has provided no record evidence on those two issues as well as the issue on which it originally sought changes, i.e., retiree separation benefits, the status quo must be adopted on all three issues "because neither party presented evidence that would support" changes to the status quo. (See Employer post-hearing brief at page 5.)

I find it unnecessary to address the Union's arguments as to the Employer's real intentions or the Union's perceptions thereof[1]. Interestingly, and perhaps in light of those perceptions, the issue has played out before me in such a way that the Union is urging that I adopt the Employer's final offers on the issues of sick leave and quartermaster. In my view a decision on all three of these issues is compelled by examining the record evidence and, when I do so I adopt the Union's final offer on sick leave and retiree separation benefits and the Employer's final offer on quartermaster.

On the issue of sick leave the only record evidence is an exhibit offered by the Employer costing out its final offer. In other words, of all the statutory factors that I am called upon to rely in resolving this dispute at best, one was satisfied. Under those circumstances I cannot change the status quo.

Similarly, on the issue of retiree separation benefits the Employer provided no evidence in support of its final offer and thus I cannot justify altering the status quo.

On the quartermaster issue however there is record evidence with respect to external comparability. That evidence shows that the Employer's final offer would change the parties' quartermaster benefit such that it would be identical to one of the external comparables, very close to that of four of the external comparables, and would place the bargaining unit third of seven of the external comparables with a similar provision. Under those circumstances external comparability compels adoption of the Employer's final offer.

b. Holiday Pay

Currently for the purposes of holiday pay bargaining unit employee receive seven additional paid days without viewing any particular days as holidays for the purposes of holiday pay. However, if employees are called into work on a holiday they are paid time and one-half their ordinary pay. The Union's final offer is to change the time and one-half provision to recognize "premium" holidays (Christmas, Thanksgiving, and New Years Day) and to change the compensation for such days. More particularly, it proposes that if an employee works one of these "premium" holidays he or she will receive time and one-half pay and if an employee is called in to work one or more of the three new "premium" holidays for hours outside of one's regularly scheduled hours he or she will receive double time pay. The Employer's final offer is to maintain the status quo.

As background on this issue the record reveals that the Union made a similar, but less generous, final offer in the interest arbitration before Arbitrator Briggs for the parties' last agreement.

[1] As for the Union's argument that a ruling on one issue compels a particular conclusion on another, the parties can rest assured that any conclusion that I make on one issue is made without regard to the conclusions that I have made on others. Rather, my conclusions on all issues are based on the statutory factors and those alone.

Arbitrator Briggs however declined to adopt the Union's final offer because, *inter alia*, the issue had not been a "significant issue" in the parties' negotiations and he was therefore "reluctant to award the Union in interest arbitration something that it may not have exhaustively pursued at the bargaining table." The Union has brought the matter to interest arbitration again arguing that the compensation of bargaining unit employees is negatively skewed because of their holiday pay, that the Employer has been unwilling to entertain a change to holiday pay in negotiations, that the Union's final offer herein is not as generous as that placed before Arbitrator Briggs, and that the Employer has broken internal parity between the police officers and fire fighters.

The Employer in reply asserts that the Union's final offer is a "breakthrough" and the Union has failed to meet the higher quantum of proof required when a party asserts a "breakthrough" in interest arbitration. Alternatively, it asserts that under traditional Section 14(h) factors the Union's final offer must be rejected. I agree, for the reasons stated below, with the Employer that the Union has failed to meet the greater quantum of proof to justify selecting a "breakthrough" final offer.

In *City of Canton,* S-MA-1-0-316, I held that for a final offer to be considered a "breakthrough" it must be a "game changer" and not just an enhanced benefit. (See also, *CIty of Danville,* S-MA-07-220 (Meyers, 2010). Moreover, I held in *Village of LaGrange,* S-MA-11-248 (2013) that either a quantitative analysis i.e., the cost of the final offer, or a qualitative analysis, i.e., a consideration of the parties' bargaining history on the issue and how long the negotiated status quo had been in effect, could be used in determining whether the final offer is a "breakthrough." Finally, in *Village of LaGrange, supra,* as well as *University of Illinois at Springfield,* S-MA-00-282 (2002) and in *City of Highland,* S-MA-06-159 (2007) I held that if a final offer is a "breakthrough" the party seeking the changes must prove (1) whether there is a substantial and compelling need for the change, (2) whether it has demonstrated that the status quo has failed to work, (3) whether the status quo had caused inequities for the bargaining unit, (4) whether the other party has resisted attempts to bargain, and whether the party seeking the change has offered a *quid pro quo* for the change.

Applying these factors I find that the Union's final offer on this issue is a "breakthrough" and that it has failed to meet the tests set forth in *Village of LaGrange, supra, University of Illinois at Springfield, supra, and City of Highland, supra.* I do so find for the following reasons.

The Union's final offer is a "gamechanger" when measured against the quantitative or the qualitative analysis set forth above. As for the former, the record evidence shows that the cost of the Union's final offer is $1,532.52 per employee, or a 1.7% increase in compensation and approximately $15, 328 in total. As for the qualitative test, the status quo has been in effect for more than fifteen years.

When faced with the application of the higher quantum of proof for a "breakthrough" issue, the Union argues that it has met this quantum of proof because when compared to the external comparables on the issue of holiday pay bargaining unit employees are faced with an equitable hardship and because the Employer has steadfastly refused to consider changes to the holiday pay benefit in bargaining. As noted above, the Union is faced with meeting four tests. Apparently, it's reference to the external comparables is its attempt to meet the first three of those tests as it is the only one that refers to the factors unrelated to bargaining. However, in my view the Union's argument on external comparability conflates the higher quantum of proof for adoption of a "breakthrough" with traditional Section 14(h) factors, one of which is, of course, external comparability. In other words, if one can meet the "breakthrough" tests by using traditional Section 14(h) factors then what remains of the higher quantum of proof?

As for the last factor required for the "breakthrough" analysis, the other party's approach to negotiations over the issue, the Union fares better because the record evidence shows that on the issue of holiday pay it revised its offer on this issue in bargaining four times but each time, as well as in response to the Union's initial offer, the Employer held fast demanding no change to the status quo. In reply the Employer points out that in prior negotiations it offered to enhance the holiday pay benefit.

I deal first with the Employer's response and find it unpersuasive. Simply put, I do not believe that a party can rely on negotiations for a prior contract to assess its approach to the current bargaining. However, the mere fact that the Employer was resistant to any change to holiday pay does not, in and of itself, warrant selecting the Union's final offer because it is only one of several tests and, as I have already concluded, the Union has failed to meet the others.

But perhaps more importantly, I cannot rely on the Union's assertion that the Employer "determined the chances of an interest arbitrator awarding this 'breakthrough' are in its favor and thus it will not bargain over the slightest change." First, I cannot, of course, divine the Employer's motives in bargaining. Second, although one might sympathize with the Union's frustration, it is well settled that interest arbitration may have a "chilling effect" on negotiations that precede it and thus that risk is assumed by not only the parties at the bargaining table, but also by the Illinois General Assembly when it chose interest arbitration over economic weaponry as the means for resolving interests disputes for police and fire fighters.

I find therefore that the Union's final offer is indeed a "breakthrough" and that it has failed to meet the higher quantum of proof necessary for adoption of its final offer[2]. I therefore find that the Employer's final offer on holiday pay must be accepted.

c. Health Insurance

On this issue the parties have agreed that bargaining unit employees will pay 12% of the cost of their health insurance premiums and 13% if the Employer raises the employee contribution to that level for its unrepresented employees. The only point of disagreement is whether the Employer must take such action by a date certain, May 1, 2014 or forfeit its right to do so.[3]

As background, the record reflects that the 12%/13% sharing of health insurance premiums was placed into the parties' collective bargaining agreement with its 2000-2004 agreement that was mediated by Arbitrator Briggs. In that same agreement they also set forth the date by which any change from 12% to 13% had to be implemented, a date that was adjusted for each new agreement. At no time however did the Employer make the change for its non-represented employees and thus no increase was required of the bargaining unit either. In the interest arbitration before Arbitrator Briggs for the parties' agreement in effect prior to the one that is the subject of this dispute, the parties made final offers that were identical to those before me and Arbitrator Briggs adopted the Union's final offer. More specifically, he did so because the Employer's final offer would allow it to "raise police officer health insurance rate with no corresponding increase to non-represented employees" and because the Employer's final offer created a window of opportunity that was "unlike the window of opportunity in the previous contract,..open-ended." Thus, the parties arrived at the status quo.

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[2] Because I do so I need not address the parties' arguments as to the application of traditional Section 14(h) factors.

[3] This represents the status quo for the year 2014.

Before me the Employer asserts two reasons why its' final offer should be adopted this time around. First, it asserts that the Union's final offer, the status quo, creates an incentive for the Employer to increase health insurance premiums for employees even when there is no reason to do so. Second, it relies on the fact that the Employer is on a June 1 insurance plan year and therefore "the Union's proposal to let (it) change premiums on May 1, 2014 is completely illusory."

I find these arguments unpersuasive for one simple reason. That is, they pose conditions that are not new but that have been present ever since 2000 when the parties first negotiated the date certain provision of the health insurance premium regimen. In other words, why have these conditions become problems only now? In addition, as for the incentive for the Employer to raise insurance premiums even when not justified, although that might be true as a matter of contract interpretation, I doubt that any employer would take such an action and risk the obvious consequences which could include, but might not be limited to, decreased morale and productivity and increased turnover among all of its employees.

Next, the Employer relies on the external comparables, but that argument fails because it involves a comparison of the percentage of employee contributions toward health care premiums and not the date by which any increase to that percentage must take place, the issue posed herein.

Finally, the Employer argues that if the award of Arbitrator Edwin Benn in the pending arbitration between it and its fire fighters does not issue before the date certain in the Union's final offer the Employer "will not have enough information to know whether it should increase insurance premiums..." This argument fails however because it is purely speculative.

On the other hand, the Union's final offer not only preserves a status quo that has been in place for some time and without evident complications, but it also recognizes that employees must bear a share in bearing the burden of health care costs. Moreover, in doing so the Union's final offer also provides a measure of certainty for those employees[4].

Thus, I find that the Union's final offer on this issue must be adopted.

d. Wages

On this issue both parties' final offers have two components, wage increases to the base pay as applied to the November 1, 2011 salary schedule and whether there should be changes to what the parties have negotiated, and is more fully described below, as an equity adjustment to wages[5]. On this issue the Union has offered wage increases in the three years of the contract at, respectively, 2%, 2.25%, and 2.75% and the Employer has offered wage increases in each of the three years at 2.25%, 2.50%, 2.50% As for the equity adjustment the Union's final offer is that the parties' agreement should provide for such an adjustment based on a calculation that would place bargaining unit officers in the middle of the top step salary for the external comparables which rank 6th and 7th among the comparables using the top step salaries in those communities as of November 1 whether or not those comparable communities have completed negotiations with their unions. The Employer disagrees and seeks to maintain the status quo.

[4] In reply to this argument the Employer relies on the fact that the amount of money in question is, at it put it, "far from earthshattering." That however is much like beauty in that it lies in the eyes of the beholder.
[5] Consistent with a prior interest arbitration award by Arbitrator Briggs the parties' treat these as a single issue.

It appears from the record, and the parties agree, that difference between their final offers as to the annual wage increases is not the major issue as it is in the order of one quarter of one per cent. Rather, the rub is the calculation of the annual equity adjustment and, more specifically, whether the adjustment should be calculated using all the comparable communities, as the Employer suggests, or only those communities where a collective bargaining agreement exists, as the Union urges.

This provision of the parties' agreement was first arrived at in their 1994-1997 agreement where the parties agreed to use, for purposes of calculating the equity adjustment, "...the seventeen communities...that the parties have historically used for comparability purposes..." In 1995 and 1996 employees did not receive an equity adjustment and in determining that no adjustment was in order the Employer used all the communities whether or not they had collective bargaining agreements in place. In 1999 the Employer, excluding those communities where no collective bargaining agreement was in place, determined that employees would receive a .06% equity adjustment. The Union agreed with the adjustment, although some communities were excluded, because including those communities would not have changed the calculation of the equity adjustment. In 2002, 2003, 2006, and 2007 the Employer again did not use communities without collective bargaining agreements in place when determining the equity adjustments for those years. The Union grieved the 2002 and 2003 adjustments but the parties reached a settlement and it did not grieve the other years. In all instances the Union chose to settle or acquiesce because inclusion of the communities would not have changed the amount of the adjustment. Again in 2007 the Employer excluded communities without collective bargaining agreements but rather than grieve, it took the matter to the bargaining table and, ultimately before Arbitrator Briggs. However, Arbitrator Briggs found, contrary to the Union's argument, for the Employer.

In 2011 the Employer again excluded communities from the equity adjustment calculation and the Union grieved, arguing that all communities should have been used. The Employer on the hand argued that the parties' contract language did not require such a result and the matter went to arbitration.

On September 23, 2013, on or about two weeks before the hearing in this dispute, Arbitrator Steven Bierig issued his award. He dismissed the grievance, finding that the parties relevant contract language was unclear and ambiguous and that based on the parties' past practice excluding communities without collective bargaining agreements in place was the parties' mutual intent.

Thus, the parties reached the status quo.

Before assessing the parties' competing final offers I am again faced with whether or not the Union's final offer is a "breakthrough." However, it appears that the parties agree that it is as the Employer clearly makes that assertion (see its post-hearing brief at pages 11-12) and the Union in its post-hearing brief analyzes the issue as though it is (see its post-hearing brief at page 28).

More particularly, the Union asserts that the existing system is not working and that it has created equitable issues for the Union and its argument on these points are that the calculation of the equity adjustment as allowed by Arbitrator Bierig makes no sense because the parties could not have "intended an adjustment to occur based on a roll of the dice as to which contracts were up for negotiations at a random date" and that such a result was "NOT what the parties intended when (they) created this mechanism." (Emphasis in original at Union post-hearing brief at page 28). Finally, it goes on to argue that the parties' equity adjustment provision as interpreted by Arbitrator Bierig "does not make any sense."

In reply the Employer argues that the Union's concerns about having, under Arbitrator Bierig's interpretation, too few communities to make a meaningful adjustment determination is "nothing but fear mongering and sheer speculation" because in each adjustment the parties have had at least eleven communities to use even when they limited themselves to those communities with contracts in place.

I find myself in an unenviable position as the Union essentially asks me to overrule Arbitrator Bierig by adopting its final offer. I am loath to do so however not simply out of arbitral respect for a colleague, but because the Union, as is clear from the quotations above lifted from its arguments, is essentially arguing that what Arbitrator Bierig deemed the parties' mutual intent was not in fact the case. I am not called upon to make that determination. Arbitrator Bierig was called upon to do so and he discharged his duty accordingly.

More importantly however, it seems to me that if a party finds itself faced with a finding by a grievance arbitrator regarding the parties' mutual intent with which it does not agree, the proper place, absent a successful appeal of that award, is to address the issue at the bargaining table. And, when I look to the parties bargaining history on this issue once the matter was placed before Arbitrator Bierig there was little, if any, bargaining on the issue.

I am mindful that Arbitrator Bierig's award issued near the date of this hearing and it could be argued that no meaningful bargaining could have taken place. However, I am not sure that is true because it is possible nevertheless that the two able negotiators in this matter could have addressed the issue while the grievance arbitration was pending and perhaps in doing so reached some sort of conditional agreement that would have taken effect once Arbitrator Bierig issued his award or that could have been revised once he did so.

Finally, even if that possibility strains credulity, as I am willing to admit one could conclude, the Union still had the option once Arbitrator Bierig issued his award to postpone this matter and return to the bargaining table to negotiate what was then known as the status quo or to arbitrate the remaining issues and return to the bargaining table to negotiate the equity adjustment formula in light of Arbitrator Bierig's award.

In conclusion, this debate has raged in one form or another since 1995 and came to a head just a few short weeks before this proceeding commenced. Thus, on this issue there has been a notable absence of bargaining. Under those circumstances, and in light of the parties' mature bargaining relationship, I believe that to choose between the two competing final offers in a "winner take all" approach to this issue would be imprudent. Accordingly, I remand the issue to the parties so that they can engage in the bargaining that never took place.

AWARD

I find as follows:

1. That the parties' tentative agreements are adopted herein.

2. That the Union's final offer on sick leave is adopted.

3. That the Employer's final offer on quartermaster is adopted.

4. That the Union's final offer on retiree separation benefits is adopted.

5. That the Employer's final offer on holidays is adopted.

6. That the Union's final offer on health insurance is adopted.
7. That the issue of wages is remanded to the parties for further bargaining.

DATED: January 6, 2013 ________________________________

Robert Perkovich