

ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION
RICHARD M. STANTON ARBITRATOR

TOWN OF CICERO,)	
)	
EMPLOYER)	
)	
and)	CASE NO.
)	S-MA-11-166
ILLINOIS FRATERNAL ORDER)	
OF POLICE LABOR COUNCIL,)	
Police Sergeants Unit)	
)	
UNION)	

OPINION AND AWARD

APPEARANCES:

For the Town:

Holly Tomchey, Esq.
Julie E. Diemer, Esq.
Dan Schultz
Donald L. Schultz

For the Union:

Gary L. Bailey, Esq.
Pete Balderas
Greg Dybas

Date of the Award:

December 9, 2012

BACKGROUND

STATUTORY FRAMEWORK

The Union was certified as the collective bargaining representative for Cicero's police sergeants in 1987. The most recent collective bargaining agreement expired on December 31, 2009. When the parties were unable to agree on all of the terms for a successor agreement, the unresolved issues were submitted to the under-signed for resolution.

On June 28, 2012, an interest arbitration hearing was held, during the course of which both parties presented evidence. The Union submitted a post-hearing brief. The parties have directed that the tentative agreements they have reached with respect to other proposals be incorporated into the Arbitrator's Award.

This interest arbitration award is rendered pursuant to Section 14 of the IL Public Labor Relations Act ("Act") which provides that as to each economic issue, the arbitrator shall adopt

the last offer of settlement which, in the opinion of the arbitrator more nearly complies with the following eight (8) factors prescribed in subsection (h) Act:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.

 - (B) In private employment in comparable communities.

- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Arbitrator relied upon all of the eight (8) factors set-forth in the Act in arriving at his decision. The Act does not give any more weight to one factor over another but leaves it up to the discretion of the arbitrator to determine the weight to be given to any particular factor.

ISSUES

NON ECONOMIC

1. Duration
2. Chemical Testing

ECONOMIC

1. Wages
2. Automatic Rank Differential Adjustment
3. Insurance
4. Sick Leave Buy Back

DISCUSSION

DURATION

The Employer has proposed a five (5) year agreement. In support of its proposal the Employer's witness testified that:

And based on the length of time we were in negotiations in our last contract and now for this one, there is no telling where we will be before we get to the contract taking us for planning purposes to 2013, 2014. That's why we're proposing five years. Certainly for planning purposes it's necessary but also because of how far along we are in the current three-year period ***.

(Transcript, pg. 107)

The Union seeks a three (3) agreement pointing out that only once in the parties' long relationship, eight (8) agreements, have the parties had a five (5) year agreement.

In evaluating these competing proposals the Arbitrator must take into consideration what is occurring in the country at large. Namely, we are in very uncertain time with some economic indicators trending toward an improvement while others signaling stagnation or a downward

trend. However, of perhaps more importance is the effect that the Patient Protection and Affordable Care Act (PPACA), commonly called Obamacare, may have. Only time will tell.

Since the goal of an arbitrator in an interest arbitration is to try and replicate what parties would have agreed to when bargaining in good faith, I believe prudent negotiators would want to enter into a three year (3) agreement due to the uncertain economic climate and the unknown impact of Obamacare. Accordingly, I find that the Union's three (3) year agreement more reasonable under present circumstances.

WAGES

1. Parties' Proposals For The Three Year Agreement Proposals

a. Employer

Current: \$86,525.51

January 1, 2010: 1.5% = \$87,823.39

January 1, 2011: 1.5% = \$89,140.74

January 1, 2012: 1.5% = \$90,477.85

b. Union

Current \$86,525.51

January 1, 2010: 2.0% = \$88,256.12

January 1, 2011: 2.0% = \$90,021.14

January 1, 2012: 2.0% = \$91,821.56

2. Wage Offers in Comparison with Wages in Comparable Communities

a. Determination of Comparable Communities

Pursuant to Section 14(h)(4)(A) of the Act, an arbitrator may take into account the "[c]omparison of the wages, hours and conditions of employment of the employees involved in the arbitration

proceeding with the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities.” 5 ILCS 315/14(h)(4)(A).

Since, as stated above, the goal of an arbitrator in an interest arbitration is to try and replicate what parties would have agreed to when bargaining in good faith. I believe one of the most important factors that the parties need to consider is what is occurring in comparable communities. Accordingly, before turning to the substantive wage issue, the Arbitrator must determine the comparable communities to which the proposals of the parties relate to wages, hours, and terms and conditions of employment may appropriately be compared.¹

The Union proposes seven (7) communities: Aurora, Evanston, Joliet, Berwyn, Waukegan, Oak Park and Oak Lawn. The Employer proposes Berwyn, Waukegan, Hanover Park, Calumet City, Carpentersville, Round Lake Beach and Lansing. Thus, the parties are in agreement that Berwyn and Waukegan should be considered comparable to Cicero. It should be noted that in the most recent interest arbitration award involving the parties it was agreed that Oak Lawn should be considered as a comparable community.

The Town of Cicero and Illinois FOP Labor Council, S-MA-06-012 (Briggs 2009)

The legislature has provided no guidance in determining comparability for Section 14(h)(4) purposes. One means of determining comparability, at least when both parties agree that some communities are comparable and disagree about others is to begin with the

¹ Comparables are important because they give a sense of how collective bargaining agreements are being resolved in other communities.

communities that the parties agree are comparable, examine their characteristics, and determine the extent to which the communities about which the parties disagree share a sufficient number of characteristics with the agreed-upon communities.

Another approach is to evaluate a list of criteria and determine the extent of the difference between the Employer's community and the proposed comparable communities. If a proposed community differences exceeds a certain percentage, e.g. 50%, that community is considered to be not comparable. For example, if a certain number of key measures of comparability are present, such as, population, median household income or median home value, and exceed a certain percentage, that community is considered not comparable.

I believe that the Arbitrator's role is to arrive at a decision that as best as possible reflects the agreement that would have been reached by the parties bargaining in good faith. In my experience, agreements are more often than not influenced by terms and conditions that exist in comparable communities. However, it is not my experience that negotiators apply what may be arbitrary percentages to a certain number of criteria in order to justify that a particular community is comparable. Determining comparability is more art than science; and applying arbitrary percentages does not, in my opinion, make determining comparability more rational.

In the instant case, the Employer has urged the Arbitrator to use a percentage based approach in determining comparability. For example, the Employer has argued that the Arbitrator should limit his analysis to communities with a population of approximately 70% of the population of Cicero and approximately 50% of various other criteria. However, the

Employer has not put forward a persuasive rationale for the percentage based approach. Accordingly, I see no reason for changing my opinion that a percentage approach is arbitrary and does not comport with how collective bargaining functions in the real world.

In real world bargaining, comparability determinations involve not arbitrary percentages but an overall comparison of relevant conditions in both the Employer's community and the proposed comparables. First, it must be determined if a community has enough commonality regarding relevant factors, such as, geographical proximity, working conditions, financial condition, and tax base. Secondly, it must be determined if there are sufficient number of comparables as to constitute a meaningful data pool. Finally, one would look at how the selected communities have resolved the issues in question.

The parties agree that Berwyn and Waukegan should be considered comparable to Cicero.

The parties disagree concerning following proposed comparables:

<u>Union Proposed Comps</u>	<u>Employer Proposed Comps</u>
Oak Lawn	Hanover Park
Aurora	Calumet City
Evanston	Carpentersville
Joliet	Round Lake Beach
Oak Park	Lansing

I believe that while many types of data could be used to determine comparability, the following four (4) types of data are the most relevant:

1. EAV and total receipts/general revenue are important indicators of financial resources.

2. The amount of serious crime is used to measure the work load and is one of the indicators of working conditions.
3. Geographic proximity is one of the determiners of the labor market in which an employer recruits employees.
4. A larger population generally increases the work load of police officers and is another factor when evaluating police officers' working conditions.

The following chart uses the five (5) types of data to show how the proposed comparables compare to Cicero:

City or Town	Total Receipts and General Revenue 2010 ₁	EAV ₁	Serious Crimes 2009 ₂	Geographical Proximity ₃	Population ₄
Oak Lawn	37,528,567	1,490,589,107	1,114	10	56,690
Hanover Park	23,079,135	784,364,180	428	30	37,973
Aurora	145,491,411	4,063,919,608	3,467	38	197,899
Calumet City	28,246,602	625,720,696	2,882	29	37,042
Evanston	79,749,329	2,938,397,892	2,626	18	74,486
Carpentersville	21,435,501	702,698,745	601	40	37,691
Joliet	52,949,920	3,056,272,146	4,367	42	147,433
Round Lake Beach	9,456,132		879	56	28,175
Oak Park	42,803,360	1,844,102,316	2,178	4	51,878
Lansing	17,402,448	520,693,211	1,244	32	28,331
Waukegan	52,2778,097	1,627,431,047	3,331	41	89,078
Berwyn	44,310,824	2,242,277,809	1,595	2	56,690
Cicero	67,644,164	888,471,138	2,706		83,891

1. Source: Union Exhibit Book 2, Tab 48 and 49 and FY 2010 Annual Reports – Illinois Comptroller General
2. Source: Union Exhibit Book 2, Tab 47
3. Approximate miles from Cicero. Source: Mapquest

4. Source: Employer Book of Exhibits, Tab 5

Based on the data contained in the above chart, the following can be easily eliminated from the list of comparables due to significant variation from the Cicero data:

1. Hanover Park – lower revenue, fewer serious crimes and lower population
2. Aurora - larger population and higher revenue
3. Calumet City – lower population and lower revenue
4. Carpentersville - lower population and lower revenue
5. Round Lake Beach – lower population, lower revenue and fewer serious crimes
6. Lansing - lower population and lower revenue
7. Joliet – higher revenue

Based on this analysis, that leaves the following communities that are not as easily disposed of:

1. Oak Lawn
2. Evanston
3. Oak Park
4. Waukegan – parties agreed
5. Berwyn – parties agreed

When the parties agreed that some communities are comparable and disagree about others, I believe that the place to start is with the communities that the parties agree are comparable. Their characteristics should be examined and a determination be made concerning the extent to which any of the communities about which the parties disagree share a sufficient number of characteristics with the agreed-upon communities.

Comparison of Cicero, the agreed compatible communities of Berwyn and Waukegan with Oak Lawn, Evanston and Oak Park:

City or Town	Total Receipts and General Revenue 2010	EAV	Serious Crimes 2009	Geographical Proximity	Population
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Oak Lawn	37,528,567	1,490,589,107	1,114	10	56,690
Evanston	79,749,329	2,938,397,892	2,626	18	74,486
Oak Park	42,803,360	1,844,102,316	2,178	4	51,878
Waukegan	52,2778,097	1,627,431,047	3,331	41	89,078
Berwyn	44,310,824	2,242,277,809	1,595	2	56,657
Cicero	67,644,164	888,471,138	2,706		83,891

All of the above-listed proposed comparable communities share some characteristics with the agreed comparable communities of Waukegan and Berwyn but differ significantly in other respects. For example, Evanston and Waukegan have a similar number of serious crimes but diverge in almost every other respect. Similarly, Oak Lawn and Berwyn have almost identical populations but again are dissimilar in most other respects.

Other arbitrators when faced with the determining what communities were comparable with Cicero observed that the data was problematic. See, Town of Cicero and Illinois FOP Labor Council, S-MA-07-022 (Yafee 2009).

In the instant case there is a problem due to significantly different data for each of the five (5) considered factors for the proposed comparable communities in comparison to the agreed comparable communities of Waukegan and Berwyn. Accordingly, I am not considering any of the proposed comparable communities because none of the proposed comparable communities share a sufficient number of characteristics with either the agreed-upon communities or Cicero.

I am also mindful of the fact that two (2) comparable communities is a very small pool. In Town of Cicero and Illinois FOP Labor Council, S-MA-012 (2009), where Arbitrator

Briggs was considering a pool of three (3) comparable communities, he was of the opinion that:

*** the undersigned Arbitrator will view the Berwyn/Oak Lawn/Waukegan data here with a cautionary eye, since they comprise such a small comparability pool.

Wage Increases in the Agreed Comparable Communities

The following chart shows wages in proposed comparable communities:

<u>Wages</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Waukegan	April 3.0% Nov. 1.1%	April 3.25%	-
Berwyn	Jan. 1.0% <u>Dec. 2.0%</u>	<u>Jan. 3.0%</u>	<u>Jan. 1.0%</u>
% Average	2.09%	2.7	1.0%
Total wage increases Avg. (2010-2012)	1.93%		

COMPARISON OF UNION FINAL WAGE OFFER AND CPI

<u>Wages</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Union Offer	2.0%	2.0%	2.0%
Comparable Avg.	2.09%	2.7%	1/0%
Difference	-.09%	-.7%	+1.0%
Offer Exceed Avg.	+0.21%		

(2010-2012)

COMPARISON OF EMPLOYER FINAL WAGE OFFER AND CPI

<u>Wages</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Employer Offer	1.5%	1.5%	1.5%
Comparable Avg.	2.09%	2.7%	1.0%
Difference	-.59%	-1.2%	+.5%
Offer Below Avg. (2010-2012)	-2.29%		

In summary, for the years 2010-2012 the Employer's final wage offer is 2.29% below the three (3) year average for the two (2) comparables. The Union's final offer exceeds the three (3) year average by .21%.

3. Consumer Price Index Analysis

INCREASES IN CPI 2009 -2011

<u>Time Period</u>	<u>Average Increase*</u>
Through Dec. 2009	2.37%
Through Dec. 2010	1.09%
Through Dec. 2011	<u>2.28%</u>
Total CPI Increase 2009 -2010	5.74%
Union 2.0% Offer (6.0%) Exceed CPI 2009 – 2010	0.26%
Employer 1.5% Offer (4.5%) Less than CPI 2009 - 2010	1.24%

*U.S. Dept. of Labor, BLS – Union Book of Exhibits 2. Tab 50

4. Decision on Wages

The Union did not claim that there was a high turnover because the pay was too low. It appears that the situation in Cicero is stable. I believe that the stability resulted in part because the Employer's wages are fair in comparison to the proposed and agreed comparable communities so that employees were not tempted to move to higher paying positions. In addition, wages have kept pace with inflation as reflected in the CPI. While this stability came at a cost to the Employer, it has also benefitted because high turnover also has a cost, for example, recruiting and training. Stability is also in the best interest and welfare of the public because a well-trained stable police department is better prepared to protect the citizenry.

The question is, which final wage offer is most reasonable in consideration of all the statutory requirements? The relationship between the wages in Cicero with agreed comparable is desirable and should be maintained. In that regard the Union's final offer maintains that relationship.

Furthermore, since an important factor is the CPI and the Union's final offer better tracks the CPI. As shown above, the Union's wage offer exceeds the CPI 2009 – 2010 by +.26% but the Employer's wage offer is less -1.24% than the CPI for the same period.

After evaluating the final wage offer and considering all of the statutory factors, the evidence in the record and discussion set-forth above, I find that the Union's final offer on wages is more reasonable. Accordingly, the Union's last wage offer shall be adopted and is included in the parties' new collective bargaining agreement as following:

Effective January 1, 2010: 2.0%

Effective January 1, 2011: 2.0%

Effective January 1, 2012 2.0%

HEALTH INSURANCE

Both parties have made the same health insurance proposal for 2010 and 2011 – status quo. The Union proposes status quo for all of 2012. The Employer for 2012 only seeks status quo until July 1 when it seeks to put in place an extensive revision of the health insurance, such as, having Sergeants contribute “[t]he lesser of (a) 5% or (b) the percent contributed by unrepresented employees”.

Since I have decided that a three (3) year agreement term is more reasonable, because, *inter alia*, it will give the parties the opportunity to engage in bargaining with more complete information in regard to the potential impact of Obamacare. I also believe that for the same reason it is more reasonable to maintain the status quo through 2012 for the health insurance issue until the effect of Obamacare can be determined. Accordingly, the Union’s health insurance offer shall be adopted and the status quo shall be maintained for the agreements effective January 1, 2010, January 1, 2011 and January 1, 2012.

SICK LEAVE BUY BACK

The Employer has a very generous sick leave buy back benefit. As the Employer witness testified, “So you're really seeing the richness of and the costliness of Cicero's sick leave buyback program. It's an extremely costly buyback situation that we have in place.” (Tr. Pg. 137). Furthermore, the Employer established that employees in comparable communities did not enjoy as generous sick leave benefit.

A majority of arbitrators hold that in order to prevail when a party seeks to modify an existing benefit it must show that:

1. The existing program is not working.
2. The existing program has created operational hardships for the employer or . equitable issues for the union.
3. The party seeking to maintain the status quo has resisted attempts to address problems.

See, County of Will and Sheriff of Will Count and AFSCME, Local 2961, S-MA-88-009 (Nathan 1988).

A different approach was taken by Arbitrator Goldberg City of Bloomington and IAFF Local 49, S-MA-08-242 (2011) where he opined at page 17 that:

*** I find the term "need" too strong, suggesting an absolute necessity. Instead, I prefer to ask whether (1) the City has shown a legitimate interest in the change it seeks; (2) the proposed change meets the City's legitimate interest without imposing undue hardship on the Union, and (3) the City has proposed an adequate quid pro quo for the proposed change.

I disagree that the word "need" suggests absolute need. I believe that to satisfy the "need" requirement the party seeking the change has to establish more than an interest. A party must show that the program or benefit is causing a significant problem that needs to be addressed.

A sick leave buy back program is a type of attendance incentive program. The obvious purpose of such a program is to encourage employees to come to work rather than take advantage of a benefit, such as, sick leave. The advantage of such a program to the employer is that it addresses problems such as scheduling and overtime. Employers are willing to pay for that advantage having a sick leave buy back program. In the instant case at some time in the past the Employer and the Union agreed that having the sick leave buy back program was worth the cost as currently set-forth in the existing collective bargaining agreement. The only reason the Employer witness asserted for changing that agreement is that the cost is too high.

Cost is a legitimate interest but unless the cost is causing an operational hardship or other significant problems, cost alone will not justify changing an existing program through arbitration. In the circumstances presented here, the bargaining table is the place to change the sick leave program. Furthermore, the Employer has not claimed, and the evidence does not establish, that it offered an adequate quid pro quo.

Accordingly, I am awarding the Union's final offer, status quo.

AUTOMATIC RANK DIFFERENTIAL

To state the obvious, employees in higher ranks should be paid more than employees in lower ranks. The question is, how much more? During the negotiations for the existing labor agreement the parties agreed that the minimum differential would be changed to 10% between the annual salary of twenty-five year Patrol Officer and a starting Sergeant. In the prior agreement there was a flat \$5,000 differential between the salary of a starting Sergeant and a nineteen year Patrol Officer.

The Employer's final offer was that the differential should be a \$7500 between a starting Sergeant and a twenty-five year Patrol Officer. In other words, the salary differential would go back to the flat amount, albeit at a higher amount, rather than the 10% that was negotiated for the existing agreement. The Union's final offer is status quo.

To justify the change, the Employer's witness testified that:

In 2011 Cicero would still have the greatest rank differential both in terms of percentage and in terms of dollars compared to the Town's proposed comparable group.

Tr. Pg. 129.

As further justification for the proposed change, the Employer cited the fact that when the Patrol Officers' wages increased after the new differential went into effect, the Sergeants pay also increased. This was not unanticipated result. In fact, the differential functioned as intended. Sergeants received a percentage salary differential based on the salary rate that was currently effect, not the one that was in effect when the Employer agreed to the percentage salary differential. In essence, the Employer apparently now believes it made a bad deal when it agreed to the percentage salary differential because the cost is too high.

As discussed in the Sick Leave Buy Back section, cost is a legitimate interest but unless the cost is causing an operational hardship or other significant problem, cost alone will not justify changing an existing program through arbitration. In the circumstances presented here the bargaining table is the place to change the salary differential that the Employer agreed to put in the existing agreement. Furthermore, as with the Sick Leave Buy Back provision, the Employer has not claimed, and the evidence does not establish, that it offered an adequate quid pro quo. Accordingly, I am awarding the Union's final offer, status quo.

CHEMICAL TESTING (DISCIPLINE)

Beginning with the 1992-1993 collective bargaining agreement, all of the agreements have contained chemical testing provisions. Through negotiations the chemical testing provisions have become increasingly comprehensive with the current provision covering eleven (11) pages. However, when the parties were unable to reach agreement on all the issues, including chemical

testing, for the first time the parties issues in dispute were referred to interest arbitration before Arbitrator Briggs. (Town of Cicero and Illinois FOP Labor Council, S-MA-06-012 (2009))

In his decision Arbitrator Briggs stated that:

*** the Chemical Testing provisions in the current Sergeants' Agreement are the result of detailed, intense negotiations between the Union and the Town. There is no evidence in the record to suggest that those provisions have been ineffective. No Police Sergeants have been accused of violating them, and no grievances have been filed over their interpretation or application. While the Town may have been embarrassed by drug and/or alcohol-related incidents involving other employee groups, no such incidents involving Police Sergeants were cited in these proceedings.

Town in these proceedings seeks to make drastic changes to a detailed and lengthy Chemical Testing provision hammered out by the parties during the collective bargaining process. Undoubtedly, both of them made difficult compromises on its various elements. Given those origins, the Arbitrator is unwilling to adopt the Town's sweeping final offer on this issue, or even to cherry-pick individual elements of the parties' negotiated Chemical Testing provision and alter or eliminate them.

Arbitrator Briggs statements are equally relevant to the present matter:

1. There is no evidence in the record that the current testing procedures have been ineffective.
2. No Police Sergeants have been accused of violating the testing provision and no grievances have been filed over their interpretation or application.
3. The Employer admitted in this case that “*** no one really disputes in this case that we haven’t any significant issues with the [testing procedures]. Tr. Pg. 145.

The only difference is that in the present case and the matter before Arbitrator Briggs is that unlike the earlier case, after bargaining concerning chemical testing, the parties did reach agreements to make changes, namely, in Sections

8.1, 8.2 and 8.3. Those changes will be included in the new agreement.

Given these facts, as was the case was before Arbitrator Briggs, the Arbitrator sees no reason to grant the Employer's requested modifications to the chemical testing procedures. Accordingly, I am rejecting the Employer's final offer and accepting the Union's final offer of status quo.

AWARD

The substance of the above decisions shall be incorporated into the parties' January 1, 2006 – December 31, 2009 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

The Arbitrator will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 9th day of December, 2012.

Richard M. Stanton

Richard M. Stanton