

IN THE MATTER OF IMPASSE ARBITRATION

BETWEEN

**ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL, Union**

AND

**FOREST PRESERVE DISTRICT
OF COOK COUNTY, Employer**

Case No. L-MA-13-019

REPORT OF ARBITRATOR

Curtiss K. Behrens

February 7, 2017

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| In the Matter of Impasse Arbitration |) | |
| |) | |
| between |) | Opinion and Award |
| |) | by Arbitrator |
| ILLINOIS FRATERNAL ORDER OF POLICE |) | Curtiss K. Behrens |
| LABOR COUNCIL, Union |) | dated |
| |) | February 7, 2017 |
| and |) | |
| |) | Case No. L-MA-13-019 |
| FOREST PRESERVE DISTRICT |) | |
| OF COOK COUNTY, Employer |) | |

I. APPEARANCES

For the Union:

Gary L. Bailey, Attorney at Law and Spokesperson

Jerry Paszek, Police Sergeant and Witness

For the Employer:

James D. Thomas, Attorney at Law and Spokesperson

Hubert O. Thompson, Brothers and Thompson, P.C.

Destiny Woods, Forest Preserve District of Cook County

II. INTRODUCTION

This arbitration was held Wednesday, September 29, 2016 at 5600 South Wolf Road, Suite 120, Western Springs, Illinois. The hearing was formally opened at 10:00 a.m. and closed at 2:00 p.m. after both parties' presentation of evidence and oral argument.¹ The Illinois Fraternal Order of Police Labor Council (hereinafter referred to as "FOP" or "Union") represents a bargaining unit of Police Sergeants employed by the Forest Preserve District of Cook County (hereinafter referred to as "District" or "Employer") for purposes of collective bargaining, pursuant to the authority of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.* (hereinafter referred to as "Labor Act"). The hearing was conducted pursuant to the impasse resolution provisions of the Labor Act, specifically Section 14. Pursuant to authority granted to them under the Labor Act, the parties agreed to some deviations from the procedures promulgated in the statute and the Rules and Regulations covering impasse resolution proceedings. For example, the parties waived the need for a tri-partite panel and pursuant to the parties' Memorandum of Agreement, the undersigned arbitrator is charged with the responsibility to incorporate all tentative agreements into his award. (Jt. Ex. #1, par. 6). These tentative agreements were submitted at the hearing as part of the Union exhibits (Union Book #1, Tab #10) and referenced as twenty issues that the parties reached tentative agreement on (Jt. Ex. #4) in the Employer's brief and these tentative agreements are hereby incorporated into this award. (Un. Bf., p. 2; Er. Bf., pp. 3 & 4).

The most recent collective bargaining agreement for the District's sergeants has a stated term of January 1, 2009 through December 31, 2012 and is the result of an interest

¹ A transcript of the hearing was prepared and references to the transcript will be designated as (Tr. p. ____). References to Joint Exhibits will be designated as (Jt. Ex. ____), Union Exhibits as (Un. Ex. ____), and Employer Exhibits as (Er. Ex. ____).

arbitration award by Arbitrator Donald Cohen. The sergeants bargaining unit is a relatively new bargaining unit having been certified in 2003. The agreement that results from this proceeding will be the fourth agreement between these parties, and all but the initial collective bargaining negotiations between these parties have ended in interest arbitration. (Er. Bf., p.3; Jt. Ex. 3; Un. Ex. 5).

The agreement covers the terms and conditions of employment of the seventeen (17) Police Sergeants in the bargaining unit. (Un. Ex. 3). When the agreement was near its expiration, the Union commenced bargaining a successor agreement. Prior to this hearing, the parties submitted their final offers to the arbitrator. The parties have agreed that one issue remains in dispute and that the issue is economic within the meaning Section 14(g). The remaining issue is wages for the term of the five (5) year agreement: January 1, 2013 to December 31, 2017. The parties' final offers are different only in the last (fifth) year of their submissions. Post-hearing briefs were submitted to the arbitrator Friday, December 9, 2016² and the parties agreed that this award should be dated no later than Friday, February 10, 2017.

III. STATUTORY DECISION CRITERIA

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services. Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement (on each economic issue) which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(g) goes on

² References to the Union Brief will be designated as (Un. Bf. __) and Employer Brief as (Er. Bf. __).

to say that the “findings, opinions, and order to all other issues (the non-economic issues) shall be based upon” these same applicable factors.

Section 14(h) of the Labor Act requires that an interest arbitrator base his or her decision upon the following criteria or “factors,” as applicable:

- (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 costs 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.

Section 14(h) requires only that the Arbitrator apply the above factors “as applicable.” Enumeration of the eighth factor, “other factors,” in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his or her experience and equitable factors in resolving the disputed issue(s). The undersigned arbitrator issues this award in consideration of all of the above-referenced statutory decision criteria.

IV. ANALYSIS AND OPINION OF ARBITRATOR

As mentioned in the introduction, the parties' final wage offers are only different in the last (fifth) year of their submissions. The District and Union make the following final offer with respect to wages for the first four years of the Agreement: 7-1-2013, 1.00% increase; 7-1-2014, 1.50% increase; 7-1-2015, 2.00% increase; 1-1-2016, 2.00% increase. The District's final offer for year five is to maintain the status quo wage scale for the bargaining unit while providing across-the-board wage increases on 1-1-2017, 2.25%; and 7-1-2017, 2.00% resulting in a total five-year increase of 10.75% (uncompounded) and 11.24% compounded. (Er. Bf., p. 5; Un. Bf., p.3).

The Union's final offer proposes to move the bargained for employees to an entirely new salary scale on January 1, 2017 by proposing a salary scale with placement and step movement based on years of service as a sergeant rather than the current scale providing for step movement based on years of service with the District. The Union's wage proposal for year five does not provide for uniform across-the-board wage increases for members of the bargaining unit but, instead, proposes to move each sergeant on an individual basis to a new wage scale and means that the proposed increases can only be determined by analyzing each individual sergeant. The District has presented this information in two charts in its brief on pages 5 and 6 with each employee's name which can be summarized as follows: eleven employees who will have been in the bargaining unit for the entire contract term will all experience an end of contract salary over \$100,000 (their 12-31-2012 salaries ranged from \$67,409 to \$73,318) and their proposed contract term total percentage increases range from 33.36% to 50.86% (seven of the eleven would receive 50% increases over the contract term). The six employees added to

the bargaining unit during the contract term experience a range of increases between 32.37% to 54.05% under the Union's proposed new salary scale.

As summarized, the Union's wage proposal is a "breakthrough" proposal in terms of its proposed salary increases as well as a substantial modification to the parties' current salary scale. The Union's proposal sets the lowest step of the new salary scale to be higher than the highest step of the District's police officer salary scale.³ The Union has not met its burden in justifying that the undersigned arbitrator should award its breakthrough proposal at this time with proper consideration to all of the statutory criteria. The parties are involved in an ongoing dispute about where newly promoted sergeants are to be placed into the sergeant's pay scale.⁴ However, the Union has not met its burden in persuading the undersigned neutral that its proposal is adequately supported by the statutory criteria to be considered in selecting the more reasonable final offer between the parties.

³ The District's brief argues that the parties have never had a wage scale in which all of the sergeants are paid more than all of the police officers. (Er. Bf., p. 5).

⁴ The Union argues that it has based its final offer primarily on "traditional factors in collective bargaining" because it seeks to address a fundamental disagreement that arose during the term of the existing contract. (Un. Bf., p. 5; Un. Bf., p. 9; Un. Bf., p. 18). The Union argues that cost of living is not a relevant factor because there is no concrete evidence regarding the future inflationary rate. (Un. Bf., p. 21). The Union argues that there is no pattern among the internal unions and the District, especially about wage increases, and that, in this case, internal comparability is not a relevant factor. (Un. Bf., p. 23).

V. AWARD

For the reasons set forth above, the undersigned arbitrator hereby awards the Employer's final offer on wages. In addition, all of the parties' tentative agreements are incorporated by reference into this Award.

Dated this 7th day of February
2017, Fontana, Wisconsin.

Respectfully submitted,



Curtiss K. Behrens
Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 7th day of February, 2017, I served the foregoing Opinion and Award by Arbitrator upon each of the parties to this matter by electronic mail at their respective addresses as shown below:

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