BEFORE ARBITRATOR
BRIAN CLAUSS

City of Countryside | **SMA 10-291**
SMA 10-292

and

Illinois Fraternal Order of Police Labor Council.

Interest Arbitration Award

APPEARANCES:
FOR THE UNION

Gary Bailey
Fraternal Order of Police Labor Council
Western Springs, Illinois

FOR THE EMPLOYER

Jeffrey Mayer
Katheleen Ehrhart
Freeborn & Peters
Chicago, Illinois

DATE OF HEARING: March 13, 2013

LOCATION OF HEARING: Countryside Police Department

INTRODUCTION

The City of Countryside Illinois ("City" or "Department") is an employer pursuant to the Illinois Public Labor Relations Act and the Fraternal Order of Police Labor Council ("Union") are parties to a Collective Bargaining Agreement ("CBA"). The parties reached impasse during negotiations for the CBA and the undersigned was selected to hear and decide the interest arbitration pursuant to the procedure of the Illinois Labor Relations Board. The term of the Agreement is May 1, 2010 through April 30, 2013. The arbitrator was selected and accepted this appointment pursuant to IPLRA Section 14 impasse procedures for protective service bargaining units.

PROCEDURAL HISTORY

The matter was set for hearing on February 14, 2013. The City moved for a continuance and the parties conferred by conference call on January 28, 2013. The continuance was denied. A continuance was later granted due to a necessary witness' medical issue. Final offers were submitted on March 1, 2013. (Attached Exhs. 1 and 2)

A Pre-Hearing Order was issued on March 13, 2013. (Attached Exh. 3) Pursuant to Paragraph 14 of that Order, the City filed Jurisdictional Objections. (Attached Exh. 4). The hearing was held on March 14, 2013. The hearing was conducted in a narrative format with parties calling witnesses where necessary. Numerous exhibits were submitted and the hearing was transcribed by a court reporter. Following an agreed continuance, briefs were filed on June 14, 2013.

INTEREST ARBITRATION

Jurisdiction

This interest arbitration comes before the Arbitrator pursuant to Section 14 of the Illinois Public Labor Relations Act. The subject collective bargaining agreement ("CBA") covers sworn Police Officers and Police Sergeants of the City of Countryside Police Department.

The arbitrator was selected and accepted this appointment pursuant to IPLRA Section 14 impasse procedures for protective service bargaining units.

STATUTORY FACTORS

The statutory provisions in pertinent part governing this arbitration are found in Section 14. All the statutory factors were considered by the undersigned when analyzing the issues presented in this Interest Arbitration Award. The statute does not provide for a ranking of the statutory factors according to importance and it is therefore up to the arbitrator to determine the importance of the statutory factors. See *City of Decatur and IAFF Local 505 SMA-29* (Eglit 1986). Nonetheless, all the statutory factors were considered in the instant matter.

The relevant statutory factors are set forth below.

> (g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
>
> (h) Where there is no agreement between the parties ... the arbitration panel shall base its findings, opinions and order upon the following 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 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.

ISSUES, PARTY POSITIONS AND AWARD

The Union submitted the below final offers.[1]

Patrol Contract

Section 14.1 Wages

Employees employed by the Employer within the bargaining unity covered by the terms and conditions of this Labor Agreement, as of May 2010 and hereafter, shall be subject to the following annual wage base schedule.

Prior Wage	Effective May 1, 2010	Effective May 1, 2011	Effective May 1, 2012[2]
	(+2.5%)	(+2.5%)	(+2.5%)

Sergeant Contract

Section 14.1 Wages

Employees employed by the Employer within the bargaining unity covered by the terms and conditions of this Labor Agreement, as of May 2010 and hereafter, shall be subject to the following annual wage base schedule.

Prior Wage	Effective May 1, 2010	Effective May 1, 2011	Effective May 1, 2012[3]
	(+2.5%)	(+2.5%)	(+2.5%)

Patrol Contract

Section 15.1 Retirement Coverage

Status Quo

Sergeant Contract

Section 15.1 Retirement Coverage

Status Quo

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[1] Exh. 1

[2] Salary figures omitted – see Exh. 1

[3] Salary figures omitted – see Exh. 1

Patrol Contract

Section 14.3 Longevity Benefit

Status Quo

Sergeant Contract

Section 14.3 Longevity Benefit

Status Quo

Patrol Contract

Section 25.1 Longevity Benefit

Status Quo

Sergeant Contract

Section 25.1 Longevity Benefit

Status Quo

The Employer made the following final offers:[4]

Section 14.1: Wages:

Effective May 1, 2010 all salary steps shall by increased by 2.5% on May 1, 2011, 2.5% and May 1. 2012, 2%.

Section 15.3: Retirement Coverage:

The City's contribution to retiree's health insurance coverage will remain status quo, with the City paying one hundred percent (100%), not to exceed three hundred fifty dollars ($350.00) monthly per covered employee, until they reach Medicare eligibility age.

[4] Exh. 2

Section 14.3: Longevity Benefit

The City will increase the longevity benefit previously paid of $850.00 per year to $910.00 per year but that benefit will be split evenly and paid across each of the 26 pay periods in a year. Therefore, each pay period, those officers eligible for the longevity benefit will receive $35.00 added to their base salary.

Section 25.1: Complete Agreement:

This Agreement constitutes the complete and entire agreement between the parties. This agreement supersedes and cancels all agreements and prior practices whether written or oral between the parties regardless of subject matter. However, as to non-economic matters, the parties may use existing informal practices as a guide to construe the Agreement so long as such practices do not conflict with the express terms of the Agreement, add new obligations for either party, impose costs on either party no expressly provided for in the Agreement or directly or indirectly, alter the economic terms of this Agreement.

ECONOMIC IMPASSE ISSUES

The parties agreed that the following disputed economic issues are mandatory subjects of bargaining within the meaning of Section 14(g) of the IPLRA.

1) Wages
2) Employee Contributions to Retiree Health Insurance
3) The Longevity Benefit.

The parties agreed at the exchange of final offers that the status quo should be maintained for retiree health benefits.

The parties agreed that the integration clause issue is a non-economic issue within the meaning of Section 14(g) of the IPLRA. The Employer filed a Jurisdictional Objection that the Arbitrator lacks jurisdiction if the Interest Arbitration Award does not produce a "conclusive" result. Particularly, the integration clause must be conclusive or the Award is "null and void."

Wages

The Employer

The Employer takes the position that the Arbitrator lacks jurisdiction if the Interest Arbitration Award does not produce a "conclusive" result. The Employer further argues that the "pension spike" issue is not part of the instant interest arbitration and cannot be considered.

The Employer argues that the communities of Brookfield, Chicago Ridge, Hodgkins and Westchester be included as comparable communities. The Employer further distinguishes the Union argument about comparables from the prior Award issued by Arbitrator Benn. According to the Employer, Arbitrator Benn specifically did not decide whether Brookfield and Countryside were comparables. Further, arbitration awards do not require that comparables be "locked in" in perpetuity.

The Employer continues at page 21 of its submission that "whether the four comparables Countryside proposes are or are not included, the differences are negligible. The Employer cites to the internal comparables for desk officers and two Local 150 bargaining units. The Employer maintains that it is offering the same increase as the desk officers and more than the two Local 150 units. The Employer cites to the external comparables at page 26 of its submission, including its four proposed additions to the comparables. The average among the 12 communities is 7.08 percent – nearly the same as the 7 percent offered by the Employer. For the prior agreement, Countryside was on par with the cited comparable communities. Further, those communities paying higher wages are in better financial shape than Countryside.

When considering the overall compensation, the Employer also points to the $10,000 training budget, tuition reimbursement, time buyback, and retiree health contribution.

Accordingly, when all the statutory factors are considered, the Employer maintains that its Wage Proposal should be adopted.

The Union

The Union argues that the statutory factor of external comparability is the determining factor for determining the appropriateness of a final offer. The historic and agreed comparable communities are Clarendon Hills, LaGrange, LaGrange Park, Lyons, North Riverside, Riverside, Western Springs and Willowbrook. These communities were found to be comparable by Arbitrator Benn in 1994. According to the Union, preserving the comparable communities forms

a foundation for a stable bargaining relationship. Absent a stable relationship, there is an increased possibility that no agreement will ever be reached during negotiations.

The Union continues that the internal comparables are not controlling because the Employer does not have a history of reliance upon those internal comparables. Further, given the unique nature of police work, internal comparables are of limited importance. Further, although criticized, the CPI is the most accurate measurement of cost of living for interest arbitrations. The average of the six communities is 5.91%. The cited communities and time period support the Union's offer.

The Union further argues that despite the City's argument about fiscal stress, the General Fund has increased significantly. The City's sound financial oversight has allowed it to weather the recession in good shape.

The Union continues that, due to the conservative nature of interest arbitration, the party departing from the status quo has the burden to show that special circumstances warrant the change. There should be a quid pro quo when an economic benefit is being reduced.

Analysis

The Employer seeks to add four more communities to the external comparables. The Union responds that nothing has changed that warrant varying from the previously determined external comparables. As other arbitrators have noted, a party seeking to change the previously established external comparables has the burden to show a change in the community that indicates it should no longer be included. An Employer witness testified that a lot has changed in the Western suburbs since the Benn award was issued approximately 20 years ago. Some of the Western suburbs have downtown areas that Countryside aspires to have.

Interest arbitration is designed to be conservative and promote stability in the labor management relationship by retaining established comparables. While changing the existing comparable communities in interest arbitration is certainly not prohibited, it does require a showing of a change in situation that warrants that change in comparables. An examination of the Employer's

evidence does not show that there has been a change in the community that would warrant the inclusion of the Employer's proposed 4 additional communities. A comparison of the existing External Comparables favors the Union.

The Union argues that the internal comparables are not dispositive where there is no history of pattern bargaining and the Employer responds that internals are an accurate gauge of what other City bargaining units are negotiating. The internal comparables are one of the statutory factors that must be considered. While none of the comparable units are sworn protective service employees, and therefore of somewhat limited comparable value, they are unionized employees. Comparing the other unionized employees is a statutory factor which favors the Employer.

The CPI is less than either the Employer's final offer or the Union's final offer. Although the two final offers do not match the CPI, the two offers are nonetheless relevant. The CPI is closer to the Employer's final offer. Comparing the final offers to the CPI favors the Employer's final offer over the Union's final offer.

While all the statutory factors must be considered, and have been considered in the instant matter, a review of Interest Arbitration awards show that the statutory factors of external comparables, internal comparables, and CPI are often the most important factors - with certain exceptions. When these three factors, and the remaining statutory factors, are considered in the entirety, the Employer's offer is the more reasonable offer.

Integration Clause

The Employer

The Employer argues at page 36 of the submission that Section 14 (g) requires that the "determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive." The Employer continues that a 2002 letter of understanding is an example of the underlying principle that that the parties intend to, and need to, have an integrated agreement.

The Employer further argues that the only reason that the Union cannot agree to the integration language is the "pension spike" that is the basis for the Employer's procedural objection. Although there was no evidence about the "pension spike" offered and the issue is not part of the instant consideration, the Employer argues at page 38 that the Union's position "can be disregarded on jurisdictional grounds...[and] it can be disregarded on evidentiary grounds as the Union put on no evidence that it does not want an integrated agreement."

The Employer continues that the integration clause is needed for the certainty it would bring to the pension calculations and how the Countryside Pension Board calculates pensions using the 2002 letter of understanding. On page 26, the Employer lists areas of confusion caused by the existing pension calculation system. They are related to the operation of the Pension Board.

The Employer concludes that the comparable communities have integration clauses similar to the Employer's instant proposal.

The Union

The Union cites the 1991-92 Patrol Agreement and the 1995-96 Sergeant Agreement as the negotiated language on the issue. There has been no change in that language. However, the City now seeks to change the language not to have a complete agreement, but rather to address a pension issue. Rather than proposing a narrow solution, the City has proposed language that would place past practice and oral agreements in jeopardy. The City's proposal would extinguish established terms.

Analysis

An examination of the statutory factors and the competing proposals does not support the Employer's Integration Clause proposal. The Union position that this Employer proposal is based on an unsupported legal opinion regarding the impact upon the Pension Calculation is well-founded. Arbitrator Perkovich's 2011 decision in *County of Carroll, Sheriff of Carroll County and IFOP Labor Council* is instructive on the issue. In that matter, the Employer's argument about FLSA implications was rejected because those conclusions were unsupported legal opinions of one party.

The instant matter is similar to *County of Carroll.* The "Pension Spike" issue was specifically excluded from consideration in this Interest Arbitration. Here, the Employer advocates for adoption of a proposal that would fix the "Pension Spike." However, the pension issue is specifically not part of the consideration in the instant matter – it formed the basis for the Employer's jurisdiction objection. Further, as in *Carroll County*, there are other legal avenues that the Employer can pursue, and is currently pursuing, to resolve the pension issue. Moreover, as the Union contends, the Employer's position would affect the pension and pension is a benefit. There is no quid pro quo from the Employer for this change. To adopt the Employer's position would require the same type of unsupported reliance that was rejected in *County of Kankakee.*

Additionally, as Arbitrator Kohn stated in *County of Kankakee and IFOP Labor Council*, the party proposing such a change must show: the existing system is not working as anticipated; the existing system has created operational hardship for the Employer or equitable hardship for the Union; and the party opposing the change has resisted attempts to negotiate the issue. Interest arbitration is designed to be conservative. Significant changes to the relationship should be bargained where possible. There cannot be a showing by the Employer that the status quo of the pension system is not working as anticipated or has resulted in an operational hardship because the "Pension Spike" is not part of the consideration in the instant matter. The evidence is neither fully-developed nor included with any detail.

The record does not support the Employer's offer and also does not support the Arbitrator drafting an integration clause provision. The Unions offer of Status Quo is the more reasonable offer.

Longevity Benefit

The Employer

The Employer argues that their proposed language provides a conclusive determination of the disputed issues by indicating the intent of the parties regarding the benefit and providing clarity regarding the longevity payment. The Employer's language prevents the longevity benefit from

being used to increase the value of any other benefit. It has always been the intent of the parties that the longevity stipend was a one-time payment that did not increase the value of other benefits.

The Employer continues that there is not loss of benefit and therefore no quid pro quo is required. According to the Employer, the Union's "unstated argument" runs afoul of the Employer's jurisdictional objections. Further, even if the quid pro quo is applied, the employees receive an additional $60.00 annually. Further, even if the Pension Spike is considered, the Employer's change is necessary because the existing system is not working as anticipated by the parties. Moreover, the Union has not addressed the Pension Spike issue as a benefit and therefore the Union's argument must be rejected.

The Union

The Union argues that the issue is about how the Pension Board calculates a retiree benefit. The Union continues that the 2002 Letter of Understanding reflected how the Union and the City would calculate income for retirement purposes. The City now seeks to change how the pension is calculated. However, the Pension Board determines how to calculate the benefits reached in collective bargaining.

At page 28, the Union cites Arbitrator Kohn's 2009 Award in *County of Kankakee and IFOP Labor Council* for the analysis of changes to the status quo. According to the Union, *County of Kankakee* stands for the proposition that the proposing party must show: the existing system is not working as anticipated; the existing system has created operational hardship for the Employer or equitable hardship for the Union; and the party opposing the change has resisted attempts to negotiate the issue. The Union continues that the status quo should be preserved because the City neither established that the existing system is not working as anticipated nor identified an operational hardship. Rather, the City has simply changed how it wants the Pension Board to calculate pension benefits. The Union concludes that the City has not shown the Special Circumstances warranting a change to the status quo and they have also not shown a quid pro quo for the change.

Analysis

An examination of the Employer's offer indicates that it is designed to alter an existing benefit by affecting how pensions are determined. As stated above in the analysis section of the preceding Integration Clause section applies to analyzing the Longevity Benefit offers. The Employer's change to the pension calculation is a significant change. Such a significant change requires evidence to support the Employer's position and that evidence is not present in the instant matter. The Employer has specifically advocated for excluding consideration of the "Pension Spike" in this Interest Arbitration. Without evidence of the effect of the "Pension Spike," there is no choice available but to reject the Employer's offer. The Union's offer of Status Quo on the Longevity Benefit is adopted.

I therefore award as follows:

That the parties' tentative agreements are adopted.

That the Employer's final offer on wages is adopted.

That the Union's Final Offer of Status Quo on the Integration Clause is adopted.

That the Union's final offer of Status Quo on the Longevity Benefit is adopted.

Brian Clauss

November 22, 2013