IN THE MATTER OF ARBITRATION BETWEEN Kankakee County ETSB AND ILLINOIS FRATERNAL ORDER OF POLICE - LABOR COUNCIL	ARBITRATION AWARD: ILLINOIS STATE LABOR RELATIONS BOARD CASE NO. S-MA-13-059 County of Kankakee - Kankakee, Illinois Before Raymond E. McAlpin, Neutral Arbitrator

APPEARANCES

For the Union: Jeffery Burke, Attorney

For the Employer: John Kelly, Attorney

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering December 1, 2011 Through November 30, 2014 and, therefore, submitted the matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The Parties did

not request mediation services. The hearing was held in Kankakee, Illinois on March 12, 2014 At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Briefs were received on May 21, 2014.

STATUTORY CRITERIA

(h) Where there is no agreement between the Parties, or where there is an agreement but the Parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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.

(I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (I) residency requirements; (ii) the type of equipment, other than uniforms, issued or used; (iii) manning; (iv) the total number of employees employed by the department; (v) mutual

aid and assistance agreements to other units of government; and (vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

STIPULATIONS OF THE PARTIES

The Parties entered into pre-hearing stipulations that provided in relevant part:

1) The Arbitrator in this matter shall be Ray McAlpin. The Parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and the arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to award increases in wages and all other forms of compensation retroactive to December 1, 2011. Each Party expressly waives and agrees not to assert any defenses, right or claim that the Arbitrator lacks jurisdiction and authority to make such a retroactive award; however,

the Parties do not intend by this Agreement to predetermine whether any award of increased wages or other forms of compensation in fact should be retroactive.

2) The arbitration hearing in this case will be convened on March 26, 2012 at 11:00 a.m. The requirement set forth in Section 14(d) of the Illinois Public Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the Parties. The hearing will be held at the Clinton County Courthouse in Carlyle, IL.

3) The Parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative.

4) The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured by the Employer for the duration of the hearing by agreement of the Parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the Parties.

5) The Parties agree that the following issues, which are mandatory subjects of bargaining and over which the arbitrator has authority and jurisdiction to rule, are in dispute:

a. Annual Wage Increases
b. Health Insurance
c. Holidays
d. Physical Fitness
e. Vacation
f. Discrimination
g. Drug Testing
h. Military Leave

6) The Parties agree that these Pre-Hearing Stipulations and all previously reached tentative agreements shall be introduced as joint exhibits. The Parties further agree that such tentative agreements shall be incorporated into the Arbitrator's award for inclusion in the Parties' successor labor agreement that will result from these proceedings.

7) Final offers shall be presented at arbitration. As to the economic issue(s) in dispute, the Arbitrator shall adopt either the final offer of the Union or the final offer of the City. As to the non-economic issue(s) in dispute, the Arbitrator shall have the authority to adopt either Party's final offer or to issue an alternate award consistent with Section 14 of the Public Labor Relations Act.

8) Each Party shall be free to present its evidence in either the narrative or witness format. Advocates presenting evidence in a narrative format shall be sworn as witnesses. The Labor Council shall proceed first with the presentation of its case-in-chief. The Employer shall then proceed with its case-in-chief. Each Party shall have the right to present rebuttal evidence.

9) Post-hearing briefs shall be submitted electronically to the Arbitrator, who will conduct the exchange. Deadline extensions as may be mutually agreed to by the Parties. There shall be no reply briefs, and once each Party's post-hearing brief has been received by the Arbitrator, he shall close the record in this matter.

10) The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall retain

the entire record in this matter for a period of six months or until sooner notified by both Parties that retention is no longer required.

11) Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

12) The Parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective Parties they represent.

The issues of the Parties including their final offers:

V. THE ISSUES AND THE PARTIES' FINAL OFFERS

COMPARABLES

Arbitrators generally consider the external comparables to be the most important factors. In this matter the external comparables have been set by a previous interest arbitration award by In that matter the following comparables were determined:

Neither Party is currently attempting to amend the comparable list - Bourbonais and Bradley.

The contract at issue expired on November 30, 2012. (See Union Ex. #2). The Parties held six (6) negotiating sessions and two (2) additional sessions with a federal mediator. Some issues were agreed to during the negotiations; however, several issues were unresolved and are being submitted for decision in this arbitration.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

This case involves an interest arbitration for the ETSB of Kankakee County.

There are 26 employees in the bargaining unit, 24 of which are tele-communicators and 2 are supervisors. Each of the three agreements has been resolved through the arbitration process.

The Final Offer includes the following wages including a proposal to smooth out the pay decrease between steps 15 and 17, which was an inadvertent result of an earlier modification of the pay plan at equity adjustment from steps 1 through 25 at which point the pay reaches comparability with Bradley and 2 ½% for each year of the contract. As noted above, the step decrease was not intentional. The employees do not recoup the pay loss until step 18, at which point the employees make some $20 more annually than what they made on

step 15. This was not an intentional situation. The Union's position is a reasonable one to fix the step system that will keep it constant with the remainder of the pay plan.

The Union also proposes an equity adjustment to become consistent with the external comparables, which does not resolve itself until step 29. The Union does not expect to have this pay disparity made up in one contract at which time at step 25 the employees would earn more than Bradley but still less than Bourbonnais. In addition the Union is proposing across-the-board wage increases of 2 ½ % for each year of a five-year contract. The Employer is financially able to afford these modest increases to help the employees keep pace with the cost of living.

With respect to health insurance, the Union has proposed an increase in caps that the employees will pay for their fair share of the health insurance premium. The now expired contract includes caps on premiums. The Union's proposal would increase these caps in the amounts proposed. The contract also includes a definition of "substantial change" which limits the imposition of an insurance comp policy with more than a $100 deductible. The proposed deductibles by the Union are more consistent with Bradley and Bourbonnais.

Article 20, Vacation Leave: The Employer has been refusing to approve vacation time for revoking outright previously approved days because of employee absences. The Union proposes to define "pre-approved time." The effect would be to ease the Employer's restrictions on the use of vacation time.

The remaining issues are being advanced by the Employer. There are more than a dozen of them, some were rejected by Arbitrator Percovich in the last interest arbitration. Theses issues include proposals for issues that were discussed in the Union's position, which includes the step plan pay cut at step 16 and the years it takes to make that up. The Final Offer suggests wage increases of 2%, 2.2%, 2.3%, 2.25% and 2.25% for each year of the five-year contract. The Employer is also proposing changing the number of hours per year that it compensates the bargaining unit members from 2,080 to 1,944. The Union would note that the 40-hour work week that the employees' salaries are based on has them working 2,080 hours per year. The Employer is disregarding Article 19, Sections. A and B. The Employer is not including the extra one-half hour per day in its wage formula and seeks to erase it in its proposal, therefore, the Employer is seeking to cut 30 minutes of pay per day from the employees' wages. Eliminating the 30-minute paid time per day would be financially drastic for the bargaining unit. The Employer's plan is to reduce the paid work day by 30 minutes. It is clear from the record that, regardless of the number of compensated hours per year, bargaining unit members are paid substantially less per hour than their comparables.

With respect to health insurance, the Employer's proposal greatly increases the employees' insurance cost. There was no showing by the Employer that the current system is broken and that the caps must be removed. The Union has proposed increasing the caps significantly.

Regarding vacations, the Employer advanced a host of vacation changes, all of which were unwarranted and not explained. It is not the Union's obligation to disprove the Employer's proposal. There is no evidence in the record to support these changes or even enough to form an opinion.

As noted above, the Employer had remaining proposals of its own including hours of work and holidays, which change the holidays but leave the total remaining the same. The proposals by the Employer are designed to discourage sick leave abuse, however, there is no evidence to show that this is a problem. Sick time occurs at random. One cannot choose when to get sick. The evidence presented by the Employer fails to meet its burden of proving that the current system is broken.

With respect to Article 26, Compensatory Time, the Employer made several proposals without supplying evidence to support the need.

Article 29, Wages: The Employer proposed to increase the shift differentials found in Section A. Of course the Union does not object to this. The Union would note that the proposals by the Employer do not amount to much enticement to work particular shifts.

Article 32, Overtime: The last round of Employer proposals appears at Article 32. It is difficult for the Union to believe that this issue is so important to the Employer that it should

be brought to interest arbitration, but not raised at the bargaining table. This is the particular type of issue that could, and should, be dealt with at the bargaining table.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

ISSUES PRESENTED

ISSUE	EMPLOYER	LABOR COUNCIL
Article 19 Hours of Work	New Language	Status Quo
Article 20 Vacation	New Language	New Language
Article 21 Holidays	New Language	Status Quo
Article 24 Health Insurance	New Language	New Language
Article 26 Compensatory Time	New Language	Status Quo
Article 29 Wages	New Language	Status Quo
Article 32 Overtime	New Language	Status Quo
Appendix D Wage Table	New Language	New Language

(See Final Offers, Employer Ex. Tab 1 and Union Ex. Tab 13.)

The open issues, as defined above, include a mix of both economic and non-economic issues.

II. The Issues

The following are the issues for the Arbitrator to decide:

(1) Appendix D: across the board wage increases,

(2) Appendix D; step plan adjustment

(3) Appendix D; equity adjustment,

(4) Article 24; definition of "substantial change" for health insurance,

(5) Article 20; definition of "pre-approved time off,"

(6) Article 24; health insurance contribution caps,

(7) Article 24; health insurance premium allocation,

(8) Article 24; "HMO" language,

(9) Article 19; definition of "normal work week,"

(10) Article 19; shift end times,

(11) Article 19; employee breaks,

(12) Article 21; holidays,

(13) Article 21; holiday pay rate,

(14) Article 21; holiday pay eligibility,

(15) Article 26; compensatory time request period,

(16) Article 26; compensatory time payout cut-off,

(17) Article 26; compensatory time use and accrual limit,

(18) Article 26; compensatory time credit, and

(19) limit on compensatory time use when causing overtime.

Article 19, Hours of Work: The Employer has proposed several changes to Article 19. Currently, the employees work an 8-hours day when the aggregation of breaks is taken into account. This change will result in an increased hourly rate of pay. The Employer would note that it is not proposing any change in the annual salary other than the annual cost of living raises that may be awarded. The Employer's proposal will continue to provide for the allotment of two 15-minute break periods but would remove the language allowing for the aggregation of the breaks at the end of the day.

With respect to external comparables, the Parties have historically used the villages of Bradley and Bourbonnais. These are the only two other dispatch centers in Kankakee County. Both centers are much smaller than the facility at issue in this matter. Exhibit at Tab 8 shows that the employees at issue here work longer schedules. It is only fair that a true comparison based on a similar number of hours be used to determine wage increases.

Article 20, Vacation: Both sides are proposing changes in the current contract. The Union is proposing language that would modify the maximum number of employees allowed off at any one time. The Employer's proposed language is one that seeks to clarify the

scheduling of vacation days, particularly as it relates to the ability of a senior employee to bump a junior employee's vacation time. The Employer believes that the proposed language added to Section D will resolve the Union's concerns.

The Labor Council has also proposed to modify the language of Article 20, which would significantly expand the number of people that could be off on accrued benefit time as relates to what is currently in the Labor Agreement.

Employer Tab 3 shows the difficulties that the Employer must face on a daily basis. The Union's position is that employees are unable to schedule time off, however, this is not supported by evidence offered in this matter. The record in this case supports the Employer proposal to maintain the status quo regarding language in Article 20, Section A.

Article 21, Holidays: The Employer has proposed two changes. The first is to substitute Christmas Eve and New Years' Eve for Washington's Birthday and Veterans' Day on the holiday schedule. As far as the Employer knows, the Union had no objection to this change.

In addition to the above, the Employer has proposed the following language in Section 2 of Article 21: Employees must work the last scheduled day prior to a holiday and the first scheduled day after a holiday to be eligible for any of the provisions in Article 21. Employees have been utilizing sick days in conjunction with the 12 paid holidays. The Employer would note that both Bradley and Bourbonnais have language similar to the Employer's proposal.

Article 24, Health Insurance: The Employer has proposed three changes in the health insurance article. The health insurance plan offered to the bargaining unit employees is the plan offered to all employees of Kankakee County. The Employer's proposal is that employees would continue to pay the same monthly contribution that they have paid since October 1, 2012.

The Union is also proposing that flat dollar amounts would be capped for the life of the contract. The dollar amounts are not large, but they will continue to increase over the life of the contract. The Bradley contract states that employees will pay 20% of the premium with no cap. The Bourbonnais contract sets a limit of $280 per month for family coverage. There is no limitation on single or employee coverage. The Employer would note that Kankakee County contributes 25% of the premium cost with no dollar cap. The Employer has tried to negotiate a change at the bargaining table during the last two rounds of negotiations with no success. The Employer would note that the FOP proposal also represents a change from the status quo. The Employer would also note that there is a quid pro quo for this change-the continuation of the payment of the employees' deductible expense.

The final change to Article 24 will expand the definition of substantial or significant changes. The Bourbonnais contract contains a limitation of $500 for the deductible, while the Bradley contract contains no language limiting the amount of the deductible.

Article 26, Compensatory Time: The Employer's proposal is to limit the employees' accrual and use of compensatory time to 96 hours per year. The FOP has made no proposal to change Article 26. There is a need for some limitation since the average employee earned 182.2 hours of comp time and used 165.1. Both comparable contracts contain language limiting the use of compensatory time. Bourbonnais allows 80 hours and Bradley offers 96 hours.

Article 26, Wages: The Employer has proposed an increase in the shift differential.

Article 32, Overtime: The Employer's proposals in no way seek to alter or limit employees' ability to earn overtime. The threshold for overtime eligibility is not being changed. The Employer also has proposed to clarify the contract procedure for employees who are being requested to work overtime. The Employer believes the changes suggested for Par. 4 are acceptable to the Union.

Wage Appendix: The Employer has proposed three changes in the wage matrix for a total of 11.0% over the life of the contract. The Union's proposals would total 12.5% of the changes to the wage matrix. The Employer referred to the increases for Bourbonnais and Bradley.

The PPI increase: The Employer's proposal would be 2.45% gain against the cost of living where the FOP proposed a gain of 3.7%.

The Act allows the Arbitrator to use the "overall compensation" as a measure of the reasonableness of the Parties' offers. KanComm employees enjoy more holidays and sick days than either of the comparables. KanComm employees enjoy three personal days along with Bourbonnais. Bradley employees have no personal days.

When judged by the applicable statutory guidelines, it is the Employer's position that is correct and should be awarded. A potential of decreased funding from the current agencies is a real possibility, therefore, the Employer submits that its final offers on all open issues should be adopted.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute interest arbitration for a potential strike

involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted

above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In this matter the Union has proposed an amount comparable to the cost of living and the Employer has proposed a less than cost of living increase.

It appears that the Parties have had little success in the most recent and some of the previous negotiations. Many issues in this case are open. Interest arbitration should be the last choice and this Arbitrator does not want to overly reward either side for turning the process over to interest arbitration.

Article 19, Hours of Work: The Arbitrator finds that the Employer proposals with respect to Article 19 are inappropriate and do not meet the criteria in the status quo requirements listed above.

Article 20, Vacation: Both sides have made proposals with respect to vacation leave. The Arbitrator refers to Status Quo and gives this issue back to the Parties.

Article 21, Holiday: The Arbitrator finds that the proposal to eliminate Washington's Birthday and Veterans' Day on the holiday schedule and substitute Christmas Eve and New Years' Eve is approved.

Shift Differential proposal by the Employer is approved.

The Employer's proposal is to require working on the last scheduled day prior to and after a holiday be included in the new contract. The Arbitrator has reviewed this proposal and finds that it does not meet the status quo requirements as noted above.

Article 24, Health Insurance: The Arbitrator finds that the KanComm employees receive the health insurance plan as all other Kankakee County employees, therefore, the Arbitrator finds that this is the appropriate plan and that all KanComm employees would receive the opportunity for the same benefits.

Article 26, Compensatory Time: The Employer is proposing to change the language of Par. B of Article 26. This does not meet the criteria in the status quo language quoted above.

Article 29, Wages-Shift Differential: The employees experience a pay decrease when moving from step 15 to step 16 of the current pay plan. They do not recoup that loss until step 18. The Arbitrator finds that this is an inappropriate method for step increases. In his experience he has not found any labor agreement that would require this situation, therefore, the Union's proposal to add $416.15 to each step from 16 ending at 20 is an appropriate fix.

The Union also proposes an equity adjustment. Again, this does not meet the requirements of the status quo.

With respect to Wage Appendix, the Arbitrator finds that the Employer's proposal of 2%, 12/1/12; 2.2%, 12/1/13; 2.3%, 12/1/14, 2.25%, 12/1/15; 2.25%, 12/1/16 is appropriate.

Any other items not specifically dealt with are referred to Status Quo.

AWARD

Under the authority vested in the Arbitration Panel by Section XIV of the Illinois Public Employees Labor Relations Act the Arbitrator finds that the decisions by the Arbitrator noted above most nearly comply with Sub-Section XIV(h) is the appropriate offer.

Dated at Chicago, Illinois this 19th Day of June, 2013

Raymond E. McAlpin, Arbitrator