

**BEFORE  
JACALYN J. ZIMMERMAN  
ARBITRATOR**

**IN THE MATTER OF THE INTEREST  
ARBITRATION BETWEEN:**

**ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL**

**and**

**September 1,-2015 through  
August 31, 2020 collective  
bargaining agreement**

**SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE**

**OPINION AND AWARD**

Appearances:

*For Illinois Fraternal Order of Police Labor Council:*

Rob Scott, Esq.  
974 Clock Tower Drive  
Springfield, IL 62704

*For Southern Illinois University Edwardsville:*

Phyleccia Reed Cole  
Senior Associate General Counsel  
Sherrie Senkfor, Director, Office of Human Resources  
Edwardsville, IL 62026

The Illinois Fraternal Order of Police Labor Council (FOP or Union) and Southern Illinois University Edwardsville (University or Employer), selected the undersigned to serve as the arbitrator of a dispute over the terms of the collective bargaining agreement for the Employer's Police Officers I and II. A hearing was held on November 2, 2017, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. Prior to the hearing the parties stipulated to waive the requirement, set forth in Section 14(d) of the Illinois Public Labor Relations Act, 5 ILCS 315 et seq. (the Act), that the matter be transcribed by a court reporter and the provision requiring the appointment of panel delegates by the employer and exclusive representative, and stipulated that the undersigned arbitrator has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to her. Both parties submitted post-hearing briefs.

### **Statutory criteria**

Section 14(h) of the Act provides the specific factors for an arbitrator to use when analyzing the issues in an interest arbitration 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 following 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.

All of the criteria have been considered in arriving at this Award, although given the nature of the dispute, not every criterion is discussed.

**Issues and final offers**

This dispute involves the single issue of wages for the term of this collective bargaining agreement. The Employer proposes that the employees at issue receive the same annual salary increases provided its non-represented employees:

|                |         |
|----------------|---------|
| 7/1/15—8/31/16 | 0%      |
| 7/1/16—8/31/17 | 2%      |
| 7/1/17—8/31/18 | 2%      |
| 7/1/18—8/31/19 | Unknown |
| 7/1/19—8/31/20 | Unknown |

The Union’s final offer is:

|                        |      |
|------------------------|------|
| Effective July 1, 2015 | 2.5% |
| Effective July 1, 2016 | 2.5% |

|                        |       |
|------------------------|-------|
| Effective July 1, 2017 | 2.5%  |
| Effective July 1, 2018 | 2.75% |
| Effective July 1, 2019 | 2.75% |

The parties have agreed that any wage increases will be applied retroactively on all hours paid and that, should there be a need to do so, the Employer will correct any pension issues that arise from the terms of this award.

### **Positions of the parties**

#### ***The Employer***

The Employer states that it very much values its police officers and recognizes that their salaries are not competitive with those of other area municipalities, but maintains that its financial situation has been precarious and uncertain, and, although it wishes it could offer more, this offer reflects what is available at this time.

The University was greatly impacted by the two-year Illinois budget impasses (FY 2016 and 2017), during which the Illinois legislature provided only two “stop gap” appropriations, which, at the end of fiscal 2017 (June 30, 2017), reflected 72% and 47% decreases from the fiscal year 2015 funding level.

On July 6, 2017, the Illinois General Assembly passed an override of Governor Bruce Rauner’s budget veto. That resulted in additional funding for fiscal year 2017, bringing the total to 100% of the fiscal year 2015 total, and for fiscal year 2018, bringing that year’s appropriation to 90% of the fiscal year 2015 budget.

Notwithstanding the fact that the Employer now has a fiscal year 2018 budget, the financial situation remains serious and uncertain. It is possible that the University could suffer a mid-year reduction during fiscal year 2018, and there is the risk that fiscal year 2019 could see another budget impasse, given the fall 2018 election and the fact that the incumbent Governor has never, during his time in office, approved a budget. The University has no idea what funds would be available for fiscal year 2019 increases.

There is no dispute as to the Employer's appropriations, and they have simply not been sufficient for the University to operate effectively. The University has had to utilize financial reserves and take other severe financial measures to remain viable.

The University has undertaken numerous efforts to reduce expenses and increase tuition revenues.<sup>1</sup> Every campus unit reduced its salary expenses approximately 9% in fiscal year 2016 by eliminating positions and delaying hiring, even in critical areas. The Employer reduced approximately 82 staff positions between November 12, 2014 and November 1, 2016, including 36 tenure track positions. Growth in enrollment, although admittedly healthier than at some other public universities in Illinois, has still been modest and comes mostly from on-line as opposed to traditional students, and such students generally take fewer courses, resulting in less revenue per student.

These budget reductions have resulted in a lack of financial resources for the University to continue to provide guaranteed salary increases to its employees. It has offered salary increases during years that have had some funding, and foregone increases when the funding has been incomplete.

The University notes that it has offered the unit employees the same base salary increases it has provided its non-represented employees. The offer supports a competitive wage and reflects the Employer's ability to pay increases in the continuing uncertain financial climate.

The Employer asserts that its offer complies with Article IX, Section 2 of the parties' agreement, in which it agrees to "take into account the rate of compensation generally paid for similar work in the locality in which the work is to be performed." The Employer requests that the arbitrator adopt its final offer of wage increases commensurate with those provided its non-represented employees during the relevant period.<sup>2</sup>

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<sup>1</sup> However, because of guaranteed tuition, the increases apply only to incoming freshmen, and therefore generate far less revenue than would otherwise be the case. In addition, the Employer has had to utilize this revenue to cover unfunded mandates and unavoidable expenses such as recurring operations and new building maintenance costs.

<sup>2</sup> The University rejects the Union's argument that the Employer had the ability to "loan" its Carbondale campus over \$10 million dollars, demonstrating its ability to pay the increases proposed by the FOP. No cash actually exchanged campuses and the expectation was that the funds would be repaid as quickly as possible, as they were. Wage increases are not a loan and thus permanently deplete the University's funds.

## ***The Union***

The Union notes that the parties have agreed to a five-year agreement, so it has made a five-year wage offer. The State's failure to finalize budgets for fiscal years 2015 and 2016 caused the parties to delay negotiations on wages. However, the University's offer for zero increases in some years is very extreme, and that position was rejected by Arbitrator Sinclair Kossof in a recent interest arbitration involving Western Illinois University. Indeed, the Union is aware of only one instance in which an arbitrator has accepted a zero, and that was in very different circumstances than these.

The Union appreciates that the University had to deal with the budget delay, but now there is a budget and it is necessary to make up for the fact that the budget situation delayed its ability to grant increases. Moreover, this university is in better financial shape than most. It loaned \$30 million to its Carbondale campus, and has many different operating resources that can be used to provide these employees reasonable increases.

The Union stresses that the University does not contend it is unable to pay the proposed increases, just that it would be difficult. The parties agreed that comparables should be taken from the local labor market, and they show that these officers are woefully behind, in fact at the very bottom.

There has been some attrition in the unit, which may very well be due to the low salaries, and the University has had to hire new offers. They obviously will be at the lower end of the wage scale, which will mitigate some of the impact of the Union's offer. The Union's offer is, under all of the circumstances, more fair and reasonable than the Employer's. It should be granted by the arbitrator.

## **Discussion**

As stated above, wages are the only issue remaining in dispute. Of the statutory factors governing my resolution of the question, the parties only address two: The Employer's ability to pay and the wages paid to employees in comparable situations. No doubt the financial climate has been difficult for the Employer, as it has been for public universities throughout the State during the ongoing period of budget uncertainty over the last several years. For this reason, the parties have delayed bargaining over wages.

However, as the Union notes and the Employer concedes, the recent budget agreement has mitigated that situation, and, as the Union notes, the University does not argue that it is unable to pay the wages proposed by the Union. Rather, it argues that it will be difficult, as is likely the case for all of its obligations. As noted in the Western Illinois University award cited by the Union, the General Assembly, at the same time that it approved fiscal year 2017 and 2018 budgets, also voted to increase the State income tax, which also should improve the general financial climate. This record does not establish that the Employer's fiscal situation requires acceptance of its offer over the Union's, unless it is otherwise more reasonable under the statutory criteria.

The primary factor governing the result herein is the comparison of wages paid in comparable situations, as defined by the parties. The parties' contract itself mandates that this comparison be made according to Article IX, Section 2 of the parties' agreement. The parties agree to "take into account the rate of compensation generally paid for similar work in the locality in which the work is to be performed."

These employees do specialized work not performed by other University employees, as they are police officers tasked with maintaining security and order on the campus. The University has offered increases commensurate with those given non-represented employees, but the record does not describe the duties of these employees and there is no basis upon which I could conclude that they in fact perform similar work. It is highly likely that they do not. The University has also offered no information concerning raises paid to members of other bargaining units, which would certainly more closely approximate what the Employer has paid as the result of collective bargaining. It is well established that the unilaterally imposed wage increases of non-represented employees are not a reliable indicator of what would result from voluntary collective bargaining. Thus, the Employer cannot justify its proposal based on what it has paid non-represented employees.

As for external comparables, the parties agree that the appropriate groups for my consideration are the municipal police officers in Fairview Heights, O'Fallon, Collinsville, Edwardsville, and Highland. The relevant salary data for these communities is attached hereto as Attachment 1. Suffice to say that except for the unit members' starting wage,

which is higher than in those communities, the Employer's proposal would put the unit members' salaries far below those in the other communities at every step of the salary schedule, except for top pay, where it would average about 1.6% more. The employees at issue, quite simply, lag far behind similar-situated employees in the neighboring communities at the great majority of benchmarks. The Employer has not pointed to any other factors which would justify higher salaries for these other law enforcement employees, nor has it pointed to anything—such as, for example, better overall benefits or working conditions—which would justify less for its police officers.

### **AWARD**

Having considered the record evidence and the parties' strong arguments, I conclude that the Union's final wage offer should be adopted over the University's final wage offer. This is not to say that I do not recognize the difficult situation facing the University. However, I have considered the applicable statutory factors in reaching this decision, and must conclude that they mandate this result.

The parties' 2015-2020 agreement shall consist of the terms of the predecessor agreement, as modified by the tentative agreements reached in bargaining, attached hereto as Attachment 2, and the Union's final wage offer.



Jacalyn J. Zimmerman, Arbitrator  
November 17, 2017