BEFORE
EDWIN H. BENN
ARBITRATOR

IN THE MATTER OF THE ARBITRATION **BETWEEN** **CITY OF COUNTRY CLUB HILLS** **("CITY")** **AND** **ILLINOIS COUNCIL OF POLICE** **("UNION")**	**CASE NO.:** Arb. Ref.: 21.074 (Interest Arbitration – Tentative Agreements)

OPINION AND AWARD

APPEARANCES:

For the City: John B. Murphey, Esq.

For the Union: Julie A. Trevarthen-Escarcida, Esq.

Dated: March 10, 2022

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I. BACKGROUND

This is an interest arbitration conducted pursuant to the provisions of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.* ("IPLRA"). The statutory factors available for use in interest arbitrations are footnoted below.[1]

The Union represents the City's full-time sworn peace officers in the rank of Lieutenant, Sergeant and Patrol Officer. The parties' most recent contract covered the period May 1, 2016 through April 30, 2019.

As discussed more fully below, this case is presented on cross-motions for summary judgment filed by the parties following the employees' twice rejecting ratification of two separate negotiated settlements for a successor contract.

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[1] Section 14 of the IPLRA lists the following factors for consideration in interest arbitrations:

(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 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.

II. DISCUSSION

A. Facts

The following facts are not disputed:[2]

- The parties' most recent collective bargaining agreement was effective May 1, 2016 through April 30, 2019.
- After mediation, the parties reached a tentative agreement for a new contract.
- The first tentative agreement for the new contract was presented to the employees for ratification.
- The employees failed to ratify the first tentative agreement.
- Representatives of the parties met again and reached a second tentative agreement for a new contract.
- The second tentative agreement was presented to the employees.
- The employees failed to ratify the second tentative agreement.

The parties then filed cross-motions for summary judgment.

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[2] According to the Union (Union Brief at 1-2):

> Following extensive negotiations, the parties requested the assistance of Arbitrator Ed Benn. Pursuant to the agreement of the parties, prior to commencement of a full Interest Arbitration Hearing, the parties participated in a mediation session facilitated by Arbitrator Benn. At the conclusion of said Mediation, the parties reached a tentative agreement which then went to the entire bargaining group for a vote, at which time it failed to ratify. ... Representatives of the parties again returned to the table ... [the Union representative] agreed to bring the terms discussed back to the membership for a vote ... The membership again submitted to a vote and they again rejected the proposed terms. ...

According to the City (City Brief at 1, 6):

> With this Arbitrator wearing his mediator's hat, the Employer City of Country Club Hills, initially reached agreement with the ICOPS bargaining team on a comprehensive package. That package was rejected by membership.
>
> * * *
>
> After all this work, membership has once again voted down the recommended CBA.

B. The Merits Of The Parties' Motions

As stated by the Illinois Supreme Court, "[s]ummary judgment is appropriate when there are no genuine issues of material fact ...." *Outboard Marine Corporation v. Liberty Mutual Insurance Company, et al.*, 607 N.E.2d 1204, 1209 (1992).[3] This is such a case allowing me to set the terms of the parties' contract on the basis of stipulated facts.

It has been observed that in interest arbitrations, "[t]he arbitrator's task is to determine what the parties as reasonable persons, should have agreed upon by negotiations." Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 1102. The problem with that general observation is that in a typical interest arbitration, the interest arbitrator becomes involved after the parties have negotiated in good faith (often for long periods of time) and, try as they did, the parties have been unable to agree upon a contract and are at impasse. For me as an interest arbitrator to just show up late in the game after impasse is reached and tell sophisticated negotiators what they "should have agreed upon by negotiations" would be rather presumptuous on my part and would be premised on an assumption that I have some special knowledge, skill or insight that the parties who have tried to negotiate a contract do not possess. As is most often the case, the simple fact is that the parties have been unable to agree upon a contract and thus they are before me in an interest arbitration. If the parties "should have agreed upon" terms of a contract, they would have.

However, the question in cases where the negotiators reach agreement only to have those efforts rejected by the union's bargaining unit members or the public employer's elected officials and administrators is what weight, if any, should be given to the fact that the negotiators accomplished the very result that an interest arbitration proceeding is theoretically supposed to accomplish – *i.e.*, "... to determine what the

[3] https://scholar.google.com/scholar_case?case=18804460649248393 46&q=summary+judgment&hl=en&as_sdt=4,14

parties as reasonable persons, should have agreed upon by negotiations." *Elkouri, supra*.

While there are differing opinions on the issue, the prevailing authority is that although not ratified, the fact that the parties reached a tentative contract through negotiations is entitled to weight. *See e.g., Village of South Holland and Teamsters Local 714* (Hill, 2009) and cases cited;[4] *City of East St. Louis and Illinois Fraternal Order of Police Labor Council*, S-MA-16-068 (Zimmerman, 2021).[5]

And that makes sense. The parties' negotiators are familiar with the respective needs and priorities as well as financial, political and personality considerations of those they represent involved in their disputes and are best equipped to address those considerations across the bargaining table. The interest arbitrator is merely the invited guest designated to break the impasse.

In this case, the parties' negotiators reached tentative agreements not once, but did so *twice* only to have both efforts rejected by the employees. The second tentative agreement generally increased wages and benefits to the employees. The fact that tentative agreements were reached on *two* occasions must be given great weight. Indeed, in this case, the second negotiated settlement following the rejections by the employees must be given determinative weight. Again, the parties' negotiators did what interest arbitrators are, in theory, supposed to do when the parties cannot reach agreement – "... to determine what the parties as reasonable persons, should have agreed upon by negotiations." *Elkouri, supra*. In this case, I cannot second-guess the experienced negotiators who addressed their respective needs and priorities as well as the financial, political and personality considerations involved in their disputes

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[4] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-231.pdf - search=holland

[5] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-068_arb_award.pdf

where they came to agreement on two occasions only to have those agreements rejected.

For that reason, the second tentative agreement must be adopted. To do otherwise in this case would allow multiple bites at the apple and take away the authority of those negotiating the contract to reach agreements.

Any attempt to modify the specific terms of the second tentative agreement by either party in this proceeding are rejected. For the reasons discussed, the parties reached agreement on two occasions, both of which were not ratified by the employees. The parties must be bound by the terms of the second tentative agreement as the successor to the expired contract. That is the deal they negotiated. That is the deal they must adhere to. Unless agreed otherwise by the parties, no further changes to the second tentative agreement will be made.

My award in *Village of Oak Brook and Teamsters Local* #714, S-MA-96-73 (1996) does not change the result.[6] In that case, the parties reached a tentative agreement on increasing insurance premiums for the employees. However, the employees did not ratify the agreed-upon change and the case proceeded to interest arbitration. The employer argued that the tentative agreement should be adopted, in part, because the parties reached a tentative agreement at the bargaining table. Following the employees' failure to ratify that change, the union argued in the interest arbitration that the *status quo* should be maintained after agreeing to the change in negotiations. *Id*. at 4-5. I adopted the union's position to maintain the *status quo*.

Oak Brook is quite different from this case. *Oak Brook* was a "unique case". *Id*. at 7. The parties in *Oak Brook* argued that case in a manner to basically frame the issue as which of the two offers on insurance was the more reasonable. *Id*. at 6-

[6] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-96-073.pdf

7. The employer's proposal to increase insurance premiums in *Oak Brook* was found not to be reasonable because while the employer sought to *increase* insurance premiums paid by the employees, the evidence showed that the employer's insurance premium costs had *decreased*. *Id*. at 9-11.

This case is far different from *Oak Brook*. Here, the City is not seeking to impose additional costs on employees when it has not experienced corresponding increases in costs that could reasonably justify any increase being passed on to the employees as was the case in *Oak Brook*. Instead, in this case, the City is agreeing to generally increase wages and benefits after the parties reached agreement on two occasions. Without an underlying basis to justify the increased insurance costs, the tentative agreement in *Oak Brook* could not be given determinative weight. Here, the agreement of those bargaining the contract which resulted in general increased wages and benefits must be given determinative weight.

To be clear, in this case those bargaining the contract reached agreement on two occasions, only to have their agreements rejected by the employees. Under the circumstances of *this* case, the second tentative agreement must be found determinative on *all* issues.

C. The "Applicable" Statutory Factors Have Been Followed

The statutory factors in Section 14(h) of the IPLRA are footnoted *supra* at note 1. Section 14(h) of the IPLRA sets forth those factors to be used by interest arbitrators "as applicable":

> (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*:

There is no statutory requirement that "all" of the Section 14(h) factors be considered. *See State of Illinois and AFSCME Council 31 (Vaccine Mandate Interest Arbitration Interim Opinion and Award)*, S-MA-22-121 (December 29, 2021) at 18-19:[7]

> All of the factors in Section 14(h) do not have to be applied. Only those factors "as applicable" are to be applied. If it were intended that all Section 14(h) factors be considered in every case, the words "as applicable" would not appear in Section 14(h).

The "applicable" Section 14(h) statutory factors in this case are found in the IPLRA at Sections 14(h)(2) and 14(h)(8).

With respect to Section 14(h)(2) ("[s]tipulations of the parties"), the parties stipulated to the material facts. The parties negotiated two tentative agreements which were not ratified by the employees.

With respect to Section 14(h)(8) ("[s]uch other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining ... [and] *arbitration* ...." [emphasis added]), the cited arbitration awards which addressed the same issue of weight to be given to tentative agreements which were subsequently rejected have been considered. *See Village of South Holland, supra*;[8] *City of East St. Louis, supra* and awards cited.[9]

III. CONCLUSION

The second tentative agreement negotiated by the parties is adopted as the parties' new contract. Unless agreed otherwise by the parties, no further changes

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[7] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-22-121.pdf

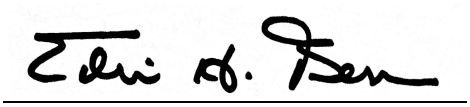
[8] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-231.pdf - search=holland

[9] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-068_arb_award.pdf

will be made. This matter is now remanded to the parties for drafting language consistent with the terms of this award. With the consent of the parties, I will retain jurisdiction to resolve disputes which may arise out of the drafting of that language.

IV. AWARD

The terms of the second tentative agreement are adopted for the successor agreement. Unless agreed otherwise by the parties, no further changes will be made.



Edwin H. Benn
Arbitrator

Dated: March 10, 2022