ILLINOIS STATE LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an
Interest Arbitration between

City of Rock Island	)	
	)	
and	)	Case No. S-MA-04-136
	)	
Illinois Fraternal Order of Police	)	
Labor Council	)	

LABOR ARBITRATION OPINION AND AWARD

A hearing was held in Rock Island, Illinois on June 20, 2005 before Arbitrator Robert Perkovich, having been jointly selected by the parties, City of Rock Island ("Employer") and Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Arthur Eggers. It presented its evidence in narrative fashion and it called to testify John Dean Thorsen and Troy Larson. The Union was represented by its counsel, Gary Bailey. It too presented its evidence in narrative fashion and it called Timothy Steines to testify. The parties filed timely post-hearing briefs that were received on September 2 and 3, 2005.

STATEMENT OF THE ISSUES

The parties were unable to reach agreement on a collective bargaining contract for the period 2004 through 2007. The outstanding issues are as follows:

1. Wages
2. Longevity Wage Increases
3. Overtime
4. Educational Reimbursement
5. Sick Leave
6. Residency

The parties agree that all but the last issue, residency, are economic in nature.

BACKGROUND

The Union has served as the exclusive bargaining representative of the Employer's patrol officers and investigators since 1987. There are approximately eleven investigators and approximately 55 patrol officers. They have negotiated eight contracts before the current contract in issue herein and have also been to interest arbitration in the past.

THE COMPARABLE COMMUNTIES

The parties agree that for the purposes of external comparability analysis the following communities are appropriate: Alton, Belleville, Danville, Galesburg, Moline, Normal, Quincy, and Urbana. They disagree however whether Pekin and/or Granite City should also be included, with the Union urging inclusion of the former and the Employer proposing the latter.

The choice involving these two communities is interesting in this dispute for two reasons. First, in arguing for their respective communities the Union and the Employer use two very different sets of data. For example, the Union relies on relative crime index whereas the Employer relies on factors such as population, property values, tax rates and revenues, general and public safety funding, and median home value. Thus, I can make no meaningful choice between, nor can I choose both, because I am unable to compare one against the other.

This issue is also interesting because the parties are no strangers to the interest arbitration process and these very same communities have been examined before and just within the last year. For example, before Arbitrator Nathan in a 2004 interest arbitration between the Employer and its firefighters, the parties agreed again that Alton, Belleville, Danville, Galesburg, Moline, Normal, Quincy, and Urbana were comparable. In addition they agreed to include Pekin. Their dispute thus turned on Granite City and Arbitrator Nathan, relying on the parties' prior experience, chose to exclude Granite City. Then, earlier this year, the Employer went to interest arbitration with a bargaining unit consisting of its command personnel, also represented by the Union herein, and again they agreed to use Alton, Belleville, Danville, Galesburg, Moline, Normal, Quincy and Urbana. Again the Employer proposed Granite City and the Union proposed Pekin. This time Arbitrator Yaffe considered the fact that the communities had been used before, the lack of any evidence of significant changes that might affect the comparability of the two cities, and the fact that there were few comparable settlements in what would be the third year of the parties' agreement. He then chose to use both Pekin and Granite City so that "stability and predictability on this issue is in the best interest of both parties in future negotiations."

I agree Arbitrator Nathan that the parties' history is significant and with Arbitrator Yaffe that, especially with regard to external comparables, stability and predictability is important. The fact of the matter however is that the parties' history has led to just the opposite, best exemplified perhaps by Arbitrator Yaffe's choice to use both Pekin and Granite City while Arbitrator Nathan excluded the latter. To the extent that the parties' respective positions during this and prior arbitrations have met the stability and predictability test, the Union has the stronger argument. For example, it proposes here the very same communities that Arbitrator Nathan deemed comparable and again before Arbitrator Yaffe it did the same. The Employer on the other hand proffered Granite City, after agreeing with the firefighters' union that Pekin was comparable, without success to Arbitrator Nathan and despite its failure to persuade him it proffered Granite City again to Arbitrator Yaffe. Moreover, the Employer's vacillation has not been supported by

evidence either to Arbitrator Nathan, Yaffe, or to me that a change from the pattern that Alton, Belleville, Danville, Galesburg, Moline, Normal, Quincy, Urbana *and* Pekin have been deemed comparable was or is warranted.

Thus, I find that Alton, Belleville, Danville, Galesburg, Moline, Normal, Pekin, Quincy, and Urbana are the comparable communities for the purposes of external comparability analysis.

Wages

On this issue the Employer proposes that bargaining unit wages be increased by 2.5% in each of the three years of the parties' collective bargaining agreement. The Union, on the other hand, proposes a wage increase in each year of 3.5%. Moreover, the parties differ in their approach to merit pay increases, as described more fully below.

The record reflects that historically the Employer has provided to bargaining unit employees merit pay increases in addition to their contractual wage increases. These merit pay increases are a matter of the Employer's discretion and historically have been opposed by the Union. Thus, their agreements over time have not included the provision of merit pay and the unrebutted testimony supplied by the Union was that the Employer asserted to the Union that at no time would the existence of merit pay be used by the Employer when negotiating with the Union with respect to wage increases. In any event the record shows that during the life of the parties' last agreement merit pay increases were an average of 1.14% per year and that they could be anywhere in a range of zero to three percent. However, the Employer has now determined that the range of potential merit increases will between zero and 1 and 1/2%.

As noted above, the parties differ in their view of the merit increases. The Employer contends that its 2.5% wage offers must be viewed in light of the fact that merit increases have been awarded and may again be awarded. The Union on the other hand argued at the hearing that merit pay increases be "suspended" with the third year of the parties contract such that the status quo for subsequent negotiations would not include merit pay. However, in its post-hearing brief the Union has asserted that it "seeks no suspension" but rather, relying on the testimony described above, asserts that the Employer's merit pay system is "an unreliable and uncommitted source of income" and that it is "impossible to guarantee that anyone in the bargaining unit will receive any merit pay in the future." Thus, the Union argues that reliance on merit pay increases is unwarranted.

To resolve the wage issue I first must determine exactly what the Union proposes since there appears to be a distinction between its position at hearing, to "suspend" merit increases in the third year, and its assertion in its brief that it now "seeks no suspension." Thus, relying on its assertion in its post-hearing brief I find that the Union is not proposing any change to the Employer's merit pay system, but only that it argues that it is not proper to take any such merit pay increases into account when determining which of the two competing wage offers I will select.

The issue then becomes whether merit pay is a permissible factor in weighing the Employer's wage offer against that of the Union. I find that it is not. First, I am fortunate that I am not the first arbitrator to consider the matter of the Employer's merit pay system. Arbitrator Nathan in the firefighters' arbitration noted that the Employer argued that the system "has not worked as intended," but that given the record before him is was "not clear why the system broke down." Thus, opining that any such changes to the merit pay system should be left to bargaining, he adopted the union's wage proposal that the merit pay system be "suspended" in the last year of the parties' agreement. Arbitrator Yaffe also pondered the impact of the merit pay system although he was not forced to do so in the context of any offer to "suspend" it. Rather, he found that because command officer personnel had received merit pay increases it was proper to consider that fact in determining the degree to which the parties' two competing offers would affect total compensation. However, for the second and third years of their contract, a period for which merit pay increases had not yet been given, he held that to consider that possibility was not warranted.

In my view these two approaches to the issue of merit pay govern the dispute herein. First, the matter appears to be one on which the parties differ and thus is one best left to the bargaining table, especially in light of the fact that the Union apparently no longer proposes herein that the system should be "suspended." Moreover, because no unit employee has in fact received merit pay increases there is no basis for using any such increases, which may or may not be given, as a basis for determining the degree to which the parties' two competing offers will improve the wages of unit employees. Accordingly, I will view the two competing offers without regard to merit pay increases.

I next turn to the issue of external comparables. First, I must consider the fact that the parties' wage structure differs from that in many other communities in that it provides that patrol officers earn a salary within a range determined by the step at which they are placed within that range. Thus, two officers with the same number of years of service may earn different salaries. The Union proposes that under these circumstances the average salary of each range is the best measure of salary for the bargaining unit because it "encompasses the entire spectrum (from the minimum to the maximum)" and therefore provides a "fair and reasonable" basis for comparing the external comparables. I agree.

Using this measure the record reflects that before the period for which this agreement will govern there was a wage disparity between the bargaining unit employees herein and the employees in the comparable communities at all steps but for the starting wage. In addition, under the two competing offers that of the Union will reduce that disparity by a moderate degree while the Employer's wage offer will actually increase the disparity.

Moreover, the record reflects that in the first year of the agreement the Union's wage offer of 3.5% compares more favorably than that of the Employer when compared to the external comparables as follows: Alton at 3%, Moline at 2.5%, Quincy at 3%,

Urbana at 2¾%, Belleville at 4%, and Danville at 3.8%[1]. This same pattern is apparent in the second year of the parties' agreement when the Union's offer compares favorably with that of the external comparables in that year as follows: Alton, Quincy, and Urbana at 3% and Moline at 3.3%[2]. Finally, the Union's wage proposal also compares favorably with that of the external comparables in the third year of the parties' agreement as follows: Alton at 4% and Moline at 3.3%, with the other jurisdictions still in negotiations.

In light of the foregoing, the external comparables clearly favor the wage proposal of the Union.

The same conclusion is compelled when I resort to the internal comparables. Arbitrator Nathan ordered a wage increase for firefighters in each of three years at 3.5%, precisely that proposed by the Union herein, and Arbitrator Yaffe, for the year in which there were no merit increases, rejected the 2.5% offer of the Employer, precisely that which it proposes herein, and ordered increases of 3.25%, 3.5%, and 3.5%[3].

Finally, another factor upon which arbitrators frequently is the cost of living. The record reflects that for the relevant period the cost of living as determined by CPI-U and CPI-W for the Midwest was, respectively, 2.93% and 3.07%. Therefore, the Union's offer, although above the cost of living, does not, unlike that of the Employer, fail to keep pace with the cost of living.

Thus, external comparability, internal comparability, and the cost of living all lead to the conclusion that the Union's wage offer of 3.5% increases in each of the three contract years, with no alteration to merit pay increase, must be adopted and I so order[4].

Longevity

On this issue the Union proposes that longevity pay no longer be a matter of a precise amount, in this case $900, but that it be expressed as a percentage of pay, with the Union suggesting 2%. The Employer on the other hand proposes that the status quo remain unchanged.

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[1] Galesburg settled at 0% and Normal had not yet settled.

[2] Belleville, Danville, Galesburg, and Normal had not yet settled.

[3] The Employer argues that the Union's proposal on wages will lead to a result that would be substantially different that the result that might be expected from bargaining and cites the fact that in only year did patrol officers receive a larger wage increase than the command personnel. However, the record reflects that between 1990 and 2003 patrol officers never received an increase less than 3% and that the average wage increase over that period was 3.35%.

[4] The Employer's final argument in support of its wage proposal is that although it does not suffer from an inability to pay, its financial health is not the best and that it has provided substantial effort, as found by Arbitrator Yaffe, to financially support the police department. However, it has been held that even in those cases where a public sector employee is "financially distressed," wage comparisons cannot be ignored because the criteria in the Public Labor Relations Act seeks to "mimic the operation of an actual labor market." See e.g., *City of East St. Louis*, S-MA-99-65 (Edelman, 2000).

Here the parties agree that the Union's proposal is a "breakthrough" and thus, not only does the Union carry the burden of proof but that its burden is greater than that governing an interest arbitration proposal that is not so regarded. The Union contends that it has met the burden of justifying a "breakthrough" because the comparability data is overwhelming[5], because its proposal is more reasonable on a practical level[6], and because its proposal addresses a proven need it does not require a *quid pro quo*[7].

I find that the Union has met the burden for a "breakthough." The record reflects that in comparison to the external comparables the members of this bargaining unit suffer from a significant wage disparity and a percentage longevity system will reduce that disparity faster than a set dollar amount. Moreover, I agree with the Union that its proposal will do so in a reasonable fashion because 2% of $45,000 is $900 and therefore the Employer will bear a greater burden only in those cases of employees who earn more than that amount. Moreover, for employees who earn less than that amount the Employer will actually pay less than it would have under the status quo. Finally, looking at the discrete issue of dollar specific longevity systems versus percentage based longevity systems, the Union's offer again compares more favorably with the external comparables in that five of the nine have a percentage based longevity system and a sixth has a mixed basis system.

I am mindful that neither the firefighters nor the command personnel have a percentage based system. However, that fact does not, in my opinion, overcome the rationale set forth above, especially in light of the fact that, drawing from the arbitrators' opinions in those cases, that rationale was not applicable in those cases.

Overtime

The parties current practice is that bargaining unit employees are paid overtime when those who are assigned a ten and one quarter hour shift work more than 41 hours and when those who are assigned a eight and one quarter hour shift work more than 41 and ¼ hours. Essentially this means that the time that employees spend in roll call each day, approximately fifteen minutes at the beginning of each shift, is not taken into account for the purposes of overtime. The Union seeks to revise the parties' agreement so that overtime is paid whenever any employee works more than 40 hours. The Employer on the other hand asserts that the status quo should be maintained.

The Employer first contends that the Union's proposal is a "breakthrough." In my view the Employer's characterization is wrong. The Union's proposal is indeed a departure from the parties' practice, but that fact in and of itself does not warrant labeling it as a breakthrough, especially since it is not a radical departure from the parties' practice. Thus, I find that the Union's burden is no different than it would otherwise be.

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[5] See e.g., *City of Loves Park,* S-MA-95-113 (Berman, 1996)
[6] See e.g., *City of Loves Park, supra.*
[7] *County of Rock Island,* S-MA-04-060 (McAlpin, 2005)

In terms of external comparability the evidence shows that all of the comparable communities pay overtime for hours worked outside of the normal workday which is variously defined as eight or eight and ½ hours per day. It is only in Belleville that time before and after each shift is excluded from calculating the number of hours worked to exceed the threshold for overtime pay. In addition, I agree with the Union that in light of the fact that the Employer is located in a metropolitan area with a number of different communities bargaining unit employees herein might feel compelled to work elsewhere that is close to their homes in order to be paid the overtime for roll call. Thus, the interests and welfare of the public in a stable law enforcement work force are met by its proposal. Finally, its proposal carries with it the promise and ease of uniform application.

I am mindful that the command officers are not paid in the fashion that the Union seeks here and thus the test of internal comparability is not met. That however is only one of several factors and when weighed against the factors described above it does not compel a contrary conclusion.

Thus, the Union's proposal for overtime is hereby adopted.

Educational Reimbursement

The parties' last contract provided for an educational reimbursement allowance of 50% of the cost of tuition and books not to exceed $1,000 per year. The Union seeks to have an allowance for 100% of books and 100% for tuition with each capped at $1,000 per year. The Employer on the other hand urges that the status quo be continued.

Again the Employer contends that the Union's proposal constitutes a "breakthrough" and again I reject that argument. The parties have the benefit in their agreement already and although the Union seeks to increase the benefit it does not seek to do so in any radical fashion.

On this issue external comparability is mixed. For example, three of the communities contain no reference in their bargaining agreements to the benefit and of the five that do only one contains a numerical cap while another requires a certain level of attainment in order to receive the total amount expended for books and tuition. Finally two other communities pay the entire cost of tuition and books provided that the employee who is so paid repays the amount in the event that they do not work for two years thereafter.

However, internal comparability yields a different result. Here, no bargaining unit receives an educational reimbursement that is 100% of costs and no employee is eligible for a total reimbursement of $2,000 as would be the case under the Union's proposal. Moreover, in the command arbitration the Union sought to increase the reimbursement of those employees to the same total level as that of the employees herein under the status quo i.e., $1,000, and Arbitrator Yaffe found in favor of the Union finding that the Employer did not make a "persuasive" case why those employees should receive

less than the patrol officers. Thus, adopting that rationale I look to see whether the Union has similarly made a "persuasive" case for again perpetuating the disparity between these two groups. In so doing I find that the Union has failed to make the case. Although it argues, soundly, that its proposal still caps the Employer's liability and that the chances of an employee reaching the cap with his or her purchases of books alone is quite remote, neither of these arguments address the concern rightly identified by Arbitrator Yaffe[8].

Thus, I find that the Union's proposal on this issue is not warranted and decline to adopt it herein.

SICK LEAVE

On this issue the Employer seeks to revise the parties' current agreement and practice that employees receive 3.7 hours per pay period of sick leave with no distinction between short or long term use. More specifically it seeks to take the same amount of leave to be granted each pay period but it wishes to designate 1.54 hours of each accrued amount as eligible for use in short-term absences and 2.16 hours of each accrued amount as eligible for use in longer absences. Thus, the amount of sick leave granted remains unchanged, but the manner in which it can be used would be restricted.

Here it is the Union that seeks to characterize the proposal as a "breakthrough," but I find the characterization neither useful nor illuminating. The fact of the matter is that even if the proposal is not deemed a "breakthrough" and measured against a more strict level of scrutiny, the proposal must be rejected. None of the comparable communities has any such distinction and no other bargaining unit with the Employer's work force is similarly restricted. Moreover, the Employer asserts in its post-hearing brief that its proposal should be adopted because it addresses "the City's need to avoid sick leave abuse." However, at the hearing in this matter it conceded that it faced no such dilemma at the present time and that its proposal was intended to address only the potential for sick leave abuse. (See e.g., Tr. 135).

Accordingly, I reject the Employer's proposal on sick leave.

RESIDENCY

Historically employees were not required to live within any set area as a condition of employment. In 1991 however the Employer's City Council passed an ordinance requiring that all employees live within a ten mile radius of the intersection of 17th Street and 31st Avenue in the city but only within the state of Illinois. It also provided that if an employee as of that time did not live within the boundary he or she would be required to move only if they changed their residence. Six months later the ordinance was revised such that all employees living outside of the boundary were grandfathered and thus were

[8] Moreover, had the internal comparability arisen because of a significant period of time between this interest arbitration and that before Arbitrator Yaffe I might have looked upon the matter differently. However, the fact is that Arbitrator Yaffe's award issued just slightly more than two months ago and thus internal comparability for a significant period of time going forward is in the interests of all.

not required to meet the residency requirement. This set of circumstances has also comprised the parties' status quo such that on or about one third of the bargaining unit is grandfathered. However, the parties have never included the residency restrictions in their collective bargaining agreement.

The Union's proposal herein is to extend the ten mile radius to fifteen miles, again excluding areas outside the state, and to place the restriction into the parties' collective bargaining agreement. The Employer seeks the status quo.

A comparability analysis on this issue is problematic. In terms of external comparability only one community does not provide for its residency restriction in the collective agreement and of the others five have a boundary between fifteen and twenty miles. In addition, another community, Quincy, sets a boundary within three surrounding townships. Thus, external comparability would seem to favor the Union's proposal. With regard to internal comparability however there is a different result. No other bargaining unit with whom the Employer negotiates has a radius that exceeds ten miles, including the command officers.

One could argue that internal comparability must prevail under these circumstances because unlike wages and other economic issues an issue of this type does not represent the "price" for labor as determined by parties subject to a comparison with other similar employers in the labor market. In addition, Arbitrator Yaffe's analysis regarding consistency between employee groups is equally applicable here. I cannot ignore however that the residency restriction in a community where there is a natural and immutable boundary such as the river or state line, employees are necessarily restricted more than they would otherwise be. Moreover, this Employer is also located in a metropolitan area with easy access by employees in the event they are needed and indeed the Employer has made no argument in opposition to the Union's proposal that would turn on operational considerations. Finally, the Union has cogently argued that extending the residency limits as it proposes will expand employees' school choice beyond that which they face now both as to quantity and quality[9]. Thus, I find that extending the residency restriction another five miles is not unreasonable.

As noted above, the parties have agreed that this issue is non-economic. Therefore, I am not obligated to accept only the Union's proposal or that of the Employer. However, I find that including the residency restriction in the parties' collective bargaining agreement is reasonable and, I might add, prudent. First, as argued by the Union, inclusion in their agreement is supported by the external comparables. Second, the matter of residency is now a mandatory subject of bargaining and therefore, no differently than any other mandatory subject of bargaining, it too should be in the parties' agreement. Finally, inclusion in their collective agreement can only serve to

[9] The Employer's argument that I must reject this argument simply because the Union has failed to show that any employee has left the force for this reason is not persuasive. Although evidence to that effect might make the Union's argument stronger, the absence of it does not undermine the argument in its entirety.

stabilize the parties' bargaining relationship as there will be an agreed upon method of dispute resolution in the event the parties have differences on the subject in the future.

I find therefore that the Union's position on residency should be adopted.

AWARD

I hereby find and order as follows:

1. That the parties' tentative agreements are to be incorporated into their Agreement
2. That the Union's proposal on wages be adopted.
3. That the Union's proposal on longevity be adopted.
4. That the Union's proposal on overtime be adopted.
5. That the Employer's proposal on educational reimbursement be adopted.
6. That the Union's proposal on sick leave be adopted.
7. That the Union's proposal on residency be adopted.

DATED: November 7, 2005

Robert Perkovich, Arbitrator