

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

CITY OF ROCKFORD

AND

CASE S-MA-09-125

POLICEMEN'S BENEVOLENT
LABOR COMMITTEE, #6

APPEARANCES:

Sean Smoot on behalf of the Union
Patrick Hayes on behalf of the City

This is an interest arbitration award under Section 14 of the IL Public Labor Relations Act. Pursuant to Section 14 (c) of the Act, the parties selected the undersigned to serve as a single arbitrator in the matter, waiving their right to a three-person panel. Pursuant thereto, and at the request of the parties, the undersigned met with the parties on 12/16 and 17/09 in an informal proceeding, the purpose of which was to define and narrow the issues in dispute. A hearing on unresolved issues was conducted on 2/18/10. Post hearing exhibits and briefs were submitted by 5/5/10 and the record was closed on 5/7/10.

BACKGROUND/ISSUES:

The last agreement between the parties expired on 12/31/08.

For the successor agreement two economic issues are in dispute, wages and health insurance. The parties directed the undersigned to address each issue, over the three-year period their successor agreement will cover, as a single issue for purposes of this proceeding.

On the issue of wages, the Union proposes a general wage increase of 3.5% on 1/1/09, 2% on 1/1/10, and 3% on 1/1/11. The City proposes 0% for '09, 2% on 7/1/10, and 2% on 10/1/11.

On health insurance, the Union proposes continuation of the status quo, and the City proposes the changes described in the attached appendix, which reflects the City's summary of its proposal.

The parties also disagree as to whether Joliet, Aurora, and Elgin should continue to be utilized as external comparables in interest arbitration proceedings such as this.

Comparability:

On the comparability issue, there is no dispute that historically, in interest arbitration proceedings, Joliet, Aurora, and Elgin have been utilized by arbitrators as external comparables, in addition to another group of cities on which there is no dispute.

The City argues that the use of those three cities should no longer be the case based upon the following considerations:

In '83 the City lost Home Rule authority by referendum, and thus, unlike any of the historical comparable communities, it has little means to diversify revenue for general fund purposes.

Only through referendum on a second attempt was the City able to establish a non-home rule sales tax in 2007. However, that revenue is statutorily restricted to infrastructure expenditures.

In contrast, Aurora, Elgin and Joliet have home rule authority, as well as significant riverboat gaming revenues.

Additionally, Winnebago County, within which the City is located, has one of the largest poverty level populations in the State. This also is not true of the counties in which the three disputed comparables exist. Similar comparisons exist between the poverty level populations in the City and the three cities in question, as well as the median household income and unemployment levels in the four cities.

A comparison of median housing values, a primary measure of wealth, also indicates that the three cities in question are far wealthier than Rockford.

The City's relative lack of wealth translates directly into its ability to raise income.

In contrast, of the historic comparables, the EAV in the three cities in question all exceed the City's, significantly. The same conclusion applies when total revenues per capita are compared.

All of these factors explain the wage disparity that has existed between police units in these cities over time.

In contrast, the Union notes that this is the first time the City has objected to the historic comparables in negotiations. Indeed, they have been stipulated to as historical comparables in prior proceedings. (Citation omitted) Furthermore, use of these comparables has historically affected the expectations of the parties in the negotiations process, and the outcome of such negotiations over the years.

Wages:

With respect to the wage dispute, the City argues that it is absurd to compare increases that were agreed upon prior to the economic crisis the City is currently confronting with the increases that will be awarded in this matter. There is arbitral precedent for the rejection of such comparisons. (Citation omitted) In addition, agreed upon wage increases, both among internal and external comparables, have been affected by furlough days, delayed raises, and staffing adjustments.

In 2010, it further argues that many external comparables have not yet reached agreements. Furthermore, even in those that have, the increases have been accompanied by layoffs, furloughs, wage freezes, and insurance cost shifts. When these changes are viewed in their entirety, the City's proposal for 2010 is indeed more comparable than the Union's.

It is undisputed that most comparables do not have agreements covering wages in 2011.

No doubt, Rockford concedes that its' comparable historic position will suffer by virtue of the fact that it will be the first to conclude a post crash agreement. However, it submits that the economic stability that existed when agreements were reached among the comparables simply no longer exists.

The City and at least one other arbitrator project that the relevant CPI for 2010 and '11 will be between one and two percent per year. (Citation omitted) If such projections are valid, the total relevant CPI for the period of time covered by the agreement will approximate between 4.6 and 4.7%. In this context, the City argues that its' proposal will lift wages over 4% over the term of the agreement, while the Union's proposal will result in a lift of over 8.7%. Therefore, using CPI as an indication of reasonableness, the City's wage proposal should prevail.

It appears to be undisputed that the most relevant internal comparable is the City's agreement with its firefighters. That agreement contained no general wage increase for 2009, a 2% increase in 2010, which, the City submits was offset by an agreement that significantly curtailed overtime pay entitlement. The agreement contained a wage reopener for 2011.

The three other represented units in the City settled their contracts in November 2006. Two agreed to a one-year wage freeze in 2010. The other agreed to a 3% increase; however, the City notes that the unit is funded by federal grant dollars.

Since the economic downturn in 2008, the City argues that it has not agreed to a single pay increase unless the cost was directly offset by a concession.

The City also emphasizes that it experienced declines in revenue and budget losses in '08 and '09. The City's revenue forecast for 2010 is for little to no recovery. It

also projects a deficit in '11 of over 5 million dollars, assuming no increases in wages. Much of that deficit is due to the increase in the City's police and fire pension contributions.

The City thus contends that its' offer reflects the gravity of the City's budget shortfall. In the last two years the City has been forced to borrow 15 million dollars in order to make payroll and other obligations during the first half of '10. Literally, every penny of any '09 and the first half of a '10 increase will have to be borrowed. In addition, the City's '11 budget will call for additional staffing reductions, including police personnel, even with the City's proposed wage increase.

In contrast, it argues that the additional cost of the Union's proposed increase is in excess of three million dollars, or the equivalent of roughly 35 officers.

The Union, on the other hand, argues that generally, in the City, historically speaking, police and firefighters have been treated equally with regards to general wage increases, and that the City is attempting to change that historical relationship, without good reason.

It points out that in '09, the firefighters received an early retirement incentive package that also paid for retiree health insurance premiums.

Firefighters also retained minimum manning provisions, which resulted in eight laid off firefighters immediately being recalled to duty and guaranteed overtime. It submits that the only quid pro quo for this agreement was a reduction of the '09 firefighter overtime budget by \$23,000.

In contrast, the police force is 7% smaller now than it was in 2008.

Firefighters also received a 2% wage increase beginning 1/1/10, and a wage reopener/me too agreement for '11.

The City's wage offer speaks for itself. Contextually however, the Union contends that, unlike the firefighters, laid off police officers will not be recalled, nor is the unit being offered an early retirement package or incentive plan.

Furthermore, the Union notes that in the recent past it has made significant cost saving concessions to the City that have resulted in a savings of over \$1,000,000 in overtime costs in '09, and that similar savings were achieved in '08.

The Union also relies on the fact that the City agreed to a 4% general wage increase for the units represented by AFSCME for '09. It also agreed to wage reopeners in '11.

The Union contends that the average general wage increase for comparable departments that have reached agreement for years '09, '10, and '11 was 3.7%. The

Union's wage proposal averages out to be a reasonably comparable 2.83%, while the City's average is only .5%.

The Union further argues that its '09 wage proposal early equals the relevant CPI for that year and thus is supported by that statutory consideration.

Under the worst of circumstances, the Union submits that the City will have a reserve in excess of \$13 million at the end of '11. Furthermore, it notes that the City maintains its A1 Moody's rating, it has not imposed the 5% utility tax that it has the authority to impose, and it has access to over \$12 million in available credit. Thus, it contends that there clearly is not a legitimate ability to pay issue in this dispute.

In support of this contention, the Union argues that the only statutory consideration relevant to the City's contention that it is confronting difficult financial times is what the City's financial ability is. In that regard, it submits that the City did not demonstrate that it was unable to pay a general wage increase. Instead, it argues that its' wage proposals will make its' financial position healthier. There is no evidence that the City cannot meet the Union's wage proposal without maintaining a prudent and reasonable budget. Absent a demonstrated inability to pay, the Union argues that hard times do not justify wage freezes and minimal wage increases over time, which are justified based upon numerous other statutory considerations.

In further support of its offer, the Union argues that the record demonstrates that the City experiences crime at a higher proportion than all other cities within its comparable group; that the correlation between the level of compensation and the quality of work expected has been well established in interest arbitration; and that because of the City's relative crime rate, in spite of the City's tight budget, the public's interest in ensuring that the City's police officers are compensated consistent with police officers in comparable communities is undiminished.

Generally speaking, the Union notes that its' wage proposal maintains the City's relative ranking and relationship with its historical comparables, a significant standard in interest arbitration proceedings such as this. (Citations omitted) Historically, it argues that it is generally understood that changes in such wage relationships have the potential of becoming inequities that could become the subject of rectification or restoration of parity. (Citation omitted) In that regard, the Union proposes wage increases below those agreed to by the City and AFSCME, and, in '10 an increase similar to that agreed to by the City and IAFF. Thus, the Union's wage proposal is much more consistent with the pattern of internal comparable settlements than is the City's.

Furthermore, and relatedly, the Union argues that the City's wage proposal ignores the significant and lucrative quid pro quo the firefighters received in exchange for their lower wages, specifically, the inclusion of minimum manning language in their contract.

Lastly, the Union contends that its' wage proposal is also far more consistent with external comparable settlements reached heretofore than is the City's.

Health Insurance:

On this issue the City relies primarily on the fact that three other units in the City represented by AFSCME accepted a significant increase in insurance costs in their agreements running through '09.

The City's final health insurance offer would, the City contends, increase premium contributions and deductibles to bring them in line with AFSCME represented employees.

It submits that its' proposed increases to premiums and deductibles will reduce the pressure on the general fund from health insurance cost increases, while at the same time, it will not change the City's position on premium expenses among its comparable communities.

It contends that the buying power of the City's wage package is superior to area workers and more than offsets the modest increase in employee costs, even when comparing comparable community health care employee contributions.

In addition, it argues that continuing administration of separate health insurance plans would be unnecessarily costly and burdensome, and that the City simply cannot continue to offer a deeply discounted health plan, ignoring the fact that the City is simply not in the superior position it was in when the plan was started.

Lastly, in looking at external comparables, the City notes that it needs to be kept in mind that the City includes dental coverage in its health plan, while the plans in most other cities do not; and that the City's health insurance proposal does not alter its' position/ranking on this issue among its external comparables.

On this issue the Union notes that the City insurance budget had a fund balance of \$900,000 in '09; that firefighters will see no increase in premiums, deductibles, and out of pocket expenses, nor will their benefits change for the duration of their agreement with the City, and that no persuasive reason has been presented why police officers should be treated differently.

While the insurance in the AFSCME represented units mirrors the City's insurance offer, the Union argues that the City has not accompanied its offer with wage increases that approached the increases agreed to with AFSCME. Those increases reflect a quid pro quo for the insurance concessions made by those affected employees. No such quid pro quo has been proposed in this matter. Indeed, over the life of the Agreement, most affected employees would experience a zero sum gain, or loss.

While comparisons with external comparable health benefits are very complex, generally speaking, neither party's proposal on this issue changes the City's ranking among comparables.

DISCUSSION:

While the Statute and custom mandate the consideration and disposition of each issue in dispute in matters such as this individually, in this case the undersigned is of the opinion that although each will be decided individually on its relative merit, because the merits of each are so related and intertwined, all three issues in dispute will be evaluated, discussed, and resolved as inter-related entities. Thus, the discussion that follows reflects the undersigned's consideration of the relative merits of the parties' proposals on each of the issues in dispute not only individually, but also contextually as interrelated ingredients that constitute the major components of the economic terms and conditions of employment to be incorporated into the parties' successor collective bargaining agreement.

Though not a term or condition of employment, external comparability, an important statutory criteria in proceedings such as this, though historically resolved, surfaces again in this proceeding, most probably as a result of the fact that the City considers itself seriously adversely affected by the fact that it has historically been compared with more affluent communities more proximate to the Chicago metropolitan area.

The undersigned understands and is sympathetic to the City's concerns, but finds it unnecessary to address the merits of the City's comparability concerns in this proceeding due to the fact that external comparability needs to be and will be given considerably less weight than usual. This is due to the fact that the record demonstrates that in the current recession, the City is experiencing, and has experienced, significant economic disparities between itself and a number of its historical external comparables, justifying greater reliance on factors other than external comparability in determining what constitutes a reasonable/fair economic settlement in this dispute.

Furthermore, for reasons expressed by other interest arbitrators (Citations omitted), even if the arguments supporting reconsideration of the external comparables were meritorious, the undersigned would be reluctant, absent extraordinary circumstances, to change the rules of the game in this regard, particularly where, as here, both parties prepared for the proceeding, understanding what external comparables would probably be considered in the evaluation of the merits of their respective proposals.

The foregoing discussion relates to the fact that the undersigned herein adopts and will apply the general precept that where, over time, there are changed economic circumstances adversely affecting a public employer's financial and political ability to provide and pay for public services, such circumstances should be given serious

consideration and weight in proceedings such as this. In such circumstances terms and conditions of employment negotiated in externally comparable communities prior to such changes, though meriting consideration, may become less determinative if it can be concluded that the problems cited and relied upon are legitimate and the solutions proposed are fair, reasonable, and balanced (taking into considerations the rights and interests of not only the public employer, but affected employees and, most certainly, the public).

In this record at least one IL interest arbitrator has articulated general agreement, at least conceptually, with this premise. (Citation omitted)

In this case, the record demonstrates that the City has been and continues to confront serious economic and political realities, including high levels of poverty, unemployment, crime, and limited revenue raising options. While it may be argued that, worst case scenario, it technically has the ability to pay the Union's wage proposal, in reality, that option would result in at least two harmful consequences, significantly increased borrowing, and additional reductions in staff, resulting in additional reductions in services.

Such consequences, in the undersigned's opinion, merit serious consideration.

While it is possible that the City's wage proposal could result in a downward shift in the City's ranking among its external comparables, that is by no means certain since a considerable number of the comparables do not have agreements in place for 2011, and a few remain without agreements for '10.

It is also pretty evident that, no matter who prevails on the wage issue, further borrowing by the City, and layoffs may occur.

It is also relatively clear that if the Union prevails on the wage issue, such an award will have a considerable \$ impact on the firefighter agreement in 2011, both for the firefighters and the City.

Based upon the foregoing considerations, and the record as a whole, the undersigned is persuaded that the City's concern about its ability to provide for continuing law enforcement services, without significant and harmful sacrifice, is warranted and reasonable, under both parties' proposals.

The question then is whether, under these circumstances, the City's wage proposal is a reasonable one, considering all of the competing interests involved.

While the undersigned wishes that a wage settlement were obtainable that could prevent a loss of real earnings over time for affected officers, it would appear, under the economic circumstances present herein, that accomplishment of such a goal is not viable, particularly where, as here, the undersigned must select one party's three year wage proposal, without modification. Accordingly, though the City's

proposal on this issue will, at best, and hopefully, not result in a loss of real wages, it is deemed justified based upon the adverse economic environment in which the parties find themselves, and the harmful consequences that would likely flow if the Union's wage proposal were awarded.


In the context of, and related to the foregoing, the undersigned needs to address the parties' dispute over health insurance. While the City's desire for a uniform, less costly plan is understandable, it cannot be supported in this award, particularly in view of the fact that at best, unit officers will stay even, with respect to wages, over the term of the agreement. Further support for the status quo on this issue can be found in the fact that the City is not currently confronting difficulties in funding current health insurance arrangements, the firefighters were allowed to maintain their unique plan, requested increases in employee contributions could result in significantly increased costs for some employees, particularly those who need to utilize the medical services covered by the plan, and lastly, the City is not able to offer a reasonable quid pro quo at this time, in its compensation package, as it was able to do in other units that agreed to switch to the City's proposed plan.

Based upon all of the foregoing considerations, and after taking into consideration the factors set forth in Section 14(h) of the Act, the undersigned hereby renders the following:

INTEREST ARBITRATION AWARD

The City's final wage offer shall be incorporated into the parties' successor collective bargaining agreement; the Union's final offer on health insurance shall be incorporated into said agreement; and the parties' tentative agreements shall be similarly incorporated into said agreement.

Dated this th 13 day of May 2010 at Chicago, IL 60660.


Byron Yaffe
Arbitrator