IN THE MATTER OF IMPASSE ARBITRATION

BETWEEN

VILLAGE OF MATTESON, Employer

AND

METROPOLITAN ALLIANCE OF POLICE,
CHAPTER #468, MATTESON POLICE OFFICERS, Union

FMCS No. 13-01948-6

REPORT OF ARBITRATOR

Curtiss K. Behrens

February 27, 2014

In the Matter of Impasse Arbitration	)	
	)	
between	)	Opinion and Award by
	)	Arbitrator
VILLAGE OF MATTESON, Employer	)	Curtiss K. Behrens
	)	FMCS No. 13-01948-6
and	)	February 27, 2014
	)	
M.A.P. CHAPTER #468, Union	)	

I. APPEARANCES

For the Employer:

Mark W. Bennett, Attorney at Law and Spokesperson

Kathy Murray, Director of Human Resources and Witness

Jenni Booth, Village Consultant and Witness

Paul Jordan, Police Chief

Michael Jones, Deputy Chief

For the Union:

Richard Reimer, Attorney at Law and Spokesperson

Alfred J. Molinaro, Labor Relations Assistant

Robert Christensen, Police Officer and Board Member

Ray Murray, Police Officer and Board Member

Robert Wilson, Police Officer and Board Member

Daniel Vanoskey, Police Officer and Board Member

II. INTRODUCTION AND BACKGROUND

This arbitration was held Friday, November 8, 2013 at the Matteson Village Hall, 4900 Village Commons Drive, Matteson, Illinois. The hearing was conducted pursuant to the impasse resolution provisions of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.* (hereinafter referred to as "IPLRA" or "Act"), specifically Section 14, and was formally opened at 9:20 a.m. and recessed at 12:30 p.m. There was no dispute as to the arbitrator's jurisdiction and authority, including the awarding of retroactive pay for the parties' respective wage proposals. The parties were afforded the opportunity to present evidence, examine and cross-examine sworn witnesses, and to present narrative testimony about their exhibits. This hearing was stenographically recorded and a transcript was produced.[1] The parties agreed that they would submit post-hearing briefs to the arbitrator no later than the end of business Friday, December 27, 2013. The parties subsequently agreed to extend their filing of post-hearing briefs to Monday, February 3, 2014. The parties agreed that this award should be postmarked no later than Friday, February 28, 2014.

The Village of Matteson (hereinafter referred to as "Employer" or "Village") is located in the south suburbs of Chicago and the Metropolitan Alliance of Police, Chapter #468, Matteson Police Officers (hereinafter referred to as "Union" or MAP") represents a unit consisting of 28 police officers. (T. 6). The Employer's Brief states: "In Fiscal year ("FY") 2012, the Village's population was 19,023. There are 48 employees in the Village's police department, and approximately 30 police officers are represented by the Union. The Village had a budget of $4.9 million for FY 2012." (Em. B. 2, citing Em.

[1] Employer exhibits referenced as "Er. Ex. __"; Union exhibits as "Un. Ex. __"; and transcript citations as "Tr. __." References to Employer Brief cited as "Er. B. __" and Union Brief as "Un. B. __."

Ex. 6). The parties' most recent contract (hereinafter referred to as "Agreement") expired April 30, 2011. (Un. Ex. 10; Er. Ex. 5). The parties have not previously been to impasse arbitration.

The parties reached agreement on several issues and have stipulated that the arbitrator would incorporate these tentative agreements into this award. Final offers on three economic issues were exchanged prior to this hearing:[2] Family Medical Leave (Section 13.6 of the Agreement); Wages (Section 16.1 of the Agreement) and Termination (Article XXVII of the Agreement.) (Er. Ex. 2 & 3; Un. Ex. 9). The parties are in agreement that their next contract will be for a four year term from May 1, 2011 through April 30, 2015, but disagree on the effective date of this award.

III. STATUTORY DECISION CRITERIA

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services. Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement (on each economic issue) which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(g) goes on to say that the "findings, opinions, and order to all other issues (the non-economic issues) shall be based upon" these same applicable factors.

Section 14(h) of the Act requires that an interest arbitrator base his or her decision upon the following criteria or "factors," as applicable:

[2] Both parties' final offers also included proposals to modify Article VII, Section 7.1 of the Agreement; however, prior to the start of this hearing, the parties reached agreement on this issue. (Tr. 7; Un. Ex. 9B). As such, this issue is no longer before the arbitrator.

(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 costs 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.

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable." Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his or her experience and equitable factors in resolving the disputed issue(s). The undersigned arbitrator issues this award in consideration of the above-referenced statutory decision criteria.

IV. THE COMPARABILITY FACTOR

Of the eight statutory factors, "comparability" is the factor that typically receives the most attention from the parties in Illinois. As mentioned in the background, this is the first time that the parties have been to impasse arbitration and they do not agree on a comparability group of cities. The Firefighters Union, AFFI Local 3086, had an interest arbitration with the Village in 2008 and in that proceeding the Village and Union agreed to stipulate to twelve (12) comparable communities. (Un. Ex. 14, Arbitrator Goldstein). In this hearing, both parties agreed that those communities are not comparable and that they are not relevant for this proceeding. (Tr. 20, 57-58).

The Village proposes eight (8) comparable communities based on its analysis of twenty-one (21) factors which it argues give the best overall picture of the community itself and the functioning of the police department within that community.[3] (Er. B. 15). The Union proposes twelve (12) comparable communities based on its analysis of five comparability factors: population, EAV, Total General Revenue, per capita EAV and per capita total revenue. (Un. Ex. 16). There are four (4) communities that both parties are proposing as comparable communities: Alsip, Brookfield, Evergreen Park and Homewood. In addition to these four, the Village is also proposing Bellwood, Crest Hill, Frankfort and Mokena. (Er. B. 15; Tr. 54; Er. Ex. 6). In addition to the four communities on which the parties agree, the Union is proposing Bridgeview, Burbank,

[3] The Village first looked at communities within a twenty-five (25) mile radius and then narrowed that list down to municipalities who had plus or minus 10% of the population of the Village of Matteson. Then the village looked at total square miles, total revenues, sales tax revenues, property tax revenues, EAV, median value of homes, median household income, total number of full-time employees, total number of part-time employees, number of employees in the police department, number of employees in the bargaining unit, total police calls, total municipal budget, the police department budget, total number of hours worked, municipal tax rate, whether there are any reserves or special assessments and whether the community is a home rule community (Matteson is a non home rule community). (Er. B. 16; Er. Ex. 6).

Forest Park, Lansing, Lockport, Oak Forest, Shorewood and South Holland. (Er. B. 15; Un. Ex. 16).

This aspect of comparability is often referred to as "external" comparability. The Village argues that its use of twenty-one (21) factors, and not just the five factors used by the Union, paints a "clear picture of what it means to be a comparable community. (Em. B. 15). The Union argues that its comparables are supported by verifiable and certified data, whereas the Employer used less reliable data sources.[4] (Un. B. 21 & 23). The arbitrator will not attempt to determine a definitive group of comparability communities. External comparability is a continuing analysis that will change from one year to the next and from one bargaining unit to the next. The arbitrator does not find any of the comparability exhibits to be irrelevant. The Union's analysis of the comparable wage rates focused on the top base salary paid to the officers and did not include longevity pay. (Tr. 28 & 48). The Village believes that external comparability should look at various points throughout the pay scale and that longevity pay must also be considered. (Er. B. 17-18).

There is another aspect of comparability, often referred to as "internal" comparability, i.e., what are the other employees within the same city/employer experiencing with regard to the impasse issue(s). There are two other protected service units/unions in the Village: the police sergeants, organized as M.A.P. #462 and the firefighters, organized as IAFF #3086. Both of these bargaining units/unions are also engaged in interest arbitration for the same contract period and no internal comparability is available at this time. (Tr. 18-19; Er. B. 14; Un. B. 25). Management and non-union

[4] Bellwood and Crest Hill failed to respond to the Employer's FOI request. (Tr. 57).

employees in the Village have not received wage increases during fiscal years 2011 and 2012. (Tr. 94; Un. B. 26; Er. B. 14).

V. ANALYSIS AND OPINION OF ARBITRATOR BY IMPASSE ISSUE

Family Medical Leave

The Union proposes to maintain the existing contract language for FMLA. (Un. B. 27). The Employer argues that its proposed changes are necessary to ensure that the Village meets its obligations under federal law. (Er. B.18). The parties agreed that the Employer's proposal renders it an economic offer and that the arbitrator is limited to choosing one or the other's final offer.

The prior collective bargaining agreement contained detailed language with respect to the Family Medical Leave Act benefits provided under the Agreement and the Union acknowledges that this current language is the longest and most detailed FMLA language existing in any of the Union's or Employer's comparability communities. (Un. B. 33). However, there is no comparability support for the changes the Village is proposing at this time. (Table 6, Un. B. 34; Table 7, Un. B. 36).

Article XXIII, SAVINGS CLAUSE, of the contract trumps the Employer's argument that its proposal is required by federal law.

> If any provision of this Agreement or any application thereof should be rendered or declared unlawful, invalid or unenforceable by virtue of any judicial action, or by an existing or subsequently enacted Federal or State legislation, or by Executive Order or other competent authority, the remaining provisions of this Agreement shall remain in full force and effect. In such event, upon the request of either party, the parties shall meet promptly and negotiate with respect to substitute provisions for those provisions rendered or declared unlawful invalid or unenforceable.

For these reasons, the Union's final offer on Family Medical Leave more nearly complies with the statutory decision factors.

Wages

The Village's final wage offer is 0.00% effective May 1, 2011; 1.00% effective May 1, 2012; 2.0% effective May 1, 2013 and 2.0% effective May 1, 2014. The Union's final wage offer is 2.0% effective May 1, 2011; 2.0% effective May 1, 2012; 2.0% effective May 1, 2013 and 1.5% effective May 1, 2014.

The Village argues that the evidence unquestionably proves that the Village's finances are in critical condition and that, while the Village would have been justified to declare an inability to pay wage increases for any year of the successor agreement, the Village did not do that. Rather, the Village offered the best wage proposal it could manage given its critical finances. (Er. B. 1). The Union maintains that the Employer cannot honestly make an "inability to pay" argument and is demonstrating only an unwillingness to pay. (Un. B. 46-47).

When assessing the parties' arguments regarding wages and ability to pay and the interests and welfare of the public, the arbitrator finds that the cost difference between the two proposals is not significant enough to make these factors compelling. The Village projects the total four-year increase of its proposal at $379,204 versus the total four-year increase of the Union's proposal at $449,771. (Er. Ex. 10-11). This difference between the two final offers, $70,567, in the context of a budget of $4.9 million for FY 2012 is not dispositive to determine which final offer is more reasonable.[5]

[5] The Union's brief states the difference between the two offers as, at most, $70,467. (Un. B. 51).

As for cost of living, the Employer argues that there is compelling and conclusive evidence to award the Employer's final wage offer and reject the Union's "clearly excessive" final wage offer. (Er. B. 14). The Union argues that its proposal is slightly less than the CPI-U (Chicago Region) for the first three years of the contract (fourth year, 2014, unknown) while the Employer's proposal is less than half of the CPI-U for the same period.[6] (Un. B. 45). The Union's final offer is not clearly excessive based upon CPI-U considerations.

Union comparability exhibits report that Matteson ranked fourth (4th) on top base salary prior to this current contract and that Matteson would maintain its fourth (4th) place ranking in 2011, 2012 and 2013 under the Union's wage proposal. As comparability city contracts begin to expire, the comparability data is less complete, but it is reported that Matteson would rank third (3rd) out of five in 2014 on top base salary under the Union's proposal. These exhibits report that, under the Employer's proposal, Matteson would drop in rank to seventh (7th) in 2011 and 2012 on top base salary. In 2013 and 2014, the Employer's proposal is reported to result in Matteson ranking fifth (5th) in each of these years. For 2014, due to contracts expiring, there are only five known comparability contracts and Matteson's top base salary would rank fifth (5th) out of five under the Employer's wage proposal. (Un. Ex. 19). These exhibits would favor the Union's final offer on wages. There is no justification for Matteson's police officers to experience a decrease in their comparability rankings on top base salary. The arbitrator has studied the impact of both parties' final wage offers to various other points throughout the pay scale. (Er. Ex. 9). The arbitrator is not persuaded that these exhibits

[6] Citation to Un. Ex. 26, reporting Union's final offer averaging 2% over this period and CPI-U averaging 2.1%. Employer final offer averaging 1% over this period

support a finding that the Employer's final wage offer is more reasonable than the Union's.

Table 9, page 40 of the Union's Brief reports that the average percentage increase for FY 2011[7] in its comparability cities was 2.45%. (The Employer's offer is zero percent (0.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2012 was 2.92%. (The Employer's offer is one percent (1.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2013 was 2.64% (The Employer's offer is two percent (2.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2014 is 3.06%. (The Employer's offer is two percent (2.0%) and the Union's offer is one point five percent (1.50%)).[8]

Table 10, page 41 of the Union's Brief reports the average percentage increases for FY 2011 through FY 2014 for the Employer's comparability cities. The average percentage increase for FY 2011 was 1.78%. (The Employer's offer is zero percent (0.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2012 was 2.82%. (The Employer's offer is one percent (1.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2013 was 3.72% (The Employer's offer is two percent (2.0%) and the Union's offer is two percent (2.0%)). The average percentage increase for FY 2014 is 3.74%. (The Employer's offer is two percent (2.0%) and the Union's offer is one point five percent (1.50%)).[9]

The non-compounded four-year average annual percentage increase for FY 2011 to FY 2014 of the Employer's eight (8) comparability cities is reported to be 3.02% and

---

[7] The columns in both Table 9 and Table 10 of the Union's Brief are labeled as "FY."

[8] Due to contracts expiring, only four of the twelve comparables have wage data available for FY 2014, but all of those reported are higher than the Union's proposal.

[9] Due to contracts expiring, only three of the eight comparables have wage data available for FY 2014, but all of those reported are higher than the Union's proposal.

the non-compounded four-year average annual percentage increase of the twelve (12) Union comparability cities is reported to be 2.77%. The Employer's final offer non-compounded four-year average annual percentage increase for FY 2011 to FY 2014 is 1.25% compared to the Union's final offer non-compounded average of 1.88%.

In light of the foregoing discussion, the arbitrator concludes that the Union's final offer wage proposal more nearly complies with the statutory decision factors.

Termination

Both parties agree that the contract should run through FY 2015, ending on April 30, 2015. However, the parties have different proposals on when the contract will start. The Union's proposal is to start the new contract term on the day after the prior contract ends, May 1, 2011. (Un. B. 52). The Village's proposal is that, unless specifically stated otherwise, all provisions of the successor agreement would be effective upon the arbitrator's decision prospectively to the termination date of the collective bargaining agreement. In other words, provisions such as the wage provision which the employer stipulated was retroactive, would be implemented retroactively based on the specific contract language, while other language changes, such as the arbitration of discipline agreed to by the parties, would be prospective only. (Er. B. 21).

The Employer argues that its proposal is what is intended by the parties. (Er. B. 22). The Union argues that when reviewing the contracts of proposed comparable communities, the majority of the external comparables use the day after the end of the prior contract to start the new contract. Table 13, page 53 of the Union's Brief reports that seven (7) of their twelve (12) comparability communities use the day after the end of the prior contract to start the new contract as do three of the four comparability

communities shared by both parties. And Table 14, page 54 of the Union's Brief reports that five (5) of the eight (8) additional comparability communities used by the Employer use the day after the end of the prior contract to start the new contract.

Absent a clearer showing of mutual intent to the contrary, the arbitrator finds the comparability arguments of the Union to support the awarding of the Union's final offer on this issue at this time.

VI. AWARD

The undersigned arbitrator awards the following outcomes as more nearly complying with the decision factors prescribed in Section 14(h) of the Act:

Family Medical Leave: Union's final offer, current language unchanged.

Wages: Union's final offer: two percent (2%) increase May 1, 2011, two percent (2%) increase effective May 1, 2012, two percent (2%) increase May 1, 2013 and one point five percent (1.5%) increase May 1, 2014.

Termination: Union's final offer, effective date of the agreement is May 1, 2011.

In addition, all of the parties' resolved issues and tentative agreements are incorporated by reference into this Award.

Dated this 27th day of February 2014, Evanston, Illinois.

Respectfully submitted,

Curtiss K. Behrens
Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 27th day of February, 2014, I served the foregoing Opinion and Award by Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mark W. Bennett
Laner Muchin, Ltd.
515 North State Street, Suite 2800
Chicago, IL 60654

Richard J.Reimer
Richard J. Reimer & Associates LLC
15 Spinning Wheel Road #310
Hinsdale, IL 60521

Curtiss K. Behrens
Labor Arbitrator