**#716**
**S-MA-16-017**

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| In The Matter of the Arbitration Between | ) |
| | ) |
| International Brotherhood of Teamsters Local 700 | ) |
| | ) |
| and | ) |
| | ) |
| County of Lake and Sheriff of Lake County | ) |
| | ) |
| Interest Arbitration | ) |
| | ) |
| FMCS No. 170620-01981 | ) |

## OPINION AND AWARD

The hearing in the above captioned matter was held on December 13, 2017, at the Lake County Sheriff's offices in Waukegan, Illinois, before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Mr. Kevin P. Camden, its attorney. The Employers were represented by Mr. R. Theodore Clark, Jr., their attorney. The hearing was held pursuant to Section 14 of the Illinois Public Labor Relations Act (IPLRA). The parties agreed to waive their delegates to the arbitration panel and stipulated that they would be bound by my award as sole arbitrator. The parties also waived the IPLRA's requirement that the hearing commence within fifteen days following the arbitrator's appointment.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. A verbatim record of the hearing was maintained and a transcript was produced. Both parties filed post-hearing briefs.

### The Issue

The parties stipulated that there is only one issue before me and it is economic. Specifically, the parties disagree over whether step increases should be 1.5% (Employers) or 2.0% (Union).

### The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors, as applicable:

(1) The lawful authority of the parties.

(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 with other employers 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 arbit ration 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.

**Background**

This dispute concerns the successor collective bargaining agreement to the parties' initial contract which was effective December 1, 2013 through November 31, 2015 (Jt. Ex. 1). The terms of that contract were resolved with an interest arbitration award issued by Arbitrator Amedeo Greco on September 29, 2014) (Er. Ex. 15, hereinafter cited as *Greco Award*). The bargaining unit consists of five Correctional Lieutenants. Three of the lieutenants serve as commanders of the three shifts. One lieutenant is the administrative lieutenant. He is the only member of the unit mandated to carry a firearm while on duty. The fifth lieutenant is in charge of the work release and electronic monitoring programs.

The Union also represents the following bargaining units with the Employers: Correctional Sergeants; Corrections Officer, Corrections Officers/Maintenance, Resident Field Coordinators and Corrections Support Civilian Receptionists; Law Enforcement Sergeants; and Law

Enforcement Lieutenants. The Illinois Council of Police represents a unit of Sworn Deputies and designated support personnel.

Lake County is part of the metropolitan Chicago area. Its population as of July 1, 2016, was 703,047. Its budget for FY 2018 showed Total Projected Revenue of $514.2 million (Er. Ex. 33).

**Final Offers**

Union's Final Offer:

Increase step by .5% annually to 2.0%; fully retroactive to the expiration of the prior agreement.

Employers' Final Offer:

Section 16.1 – Wage Table

Wage rates shall be retroactive to 12/1/15

| | Top Corr. Sgt. | Promotion | 1st Year | 2nd Year | 3rd Year | 4th Year | 5th Year |
|---|---|---|---|---|---|---|---|
| 12/1/2015 | 44.74 | $50.13 | $50.88 | $51.64 | $52.41 | $53.20 | $54.00 |
| | | 5.00% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% |
| 12/1/2016 | | | | | | | |
| | | 5.00% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% |
| 12/1/2017 | | | | | | | |
| | | 5.00% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% |

**Union's Position**

The Union argues that its final offer of step increases of 2.00% is supported by internal and external comparability. The Union urges that the Law Enforcement Lieutenants have step increases of 2.00% and are the positions internally most comparable to the Corrections Lieutenants. The Union maintains that a comparison of the job descriptions for Corrections Lieutenant (Er. Ex. 22) and Deputy Sheriff Lieutenant (Er. Ex. 23) shows the positions to be comparable. The Union avers that the majority of the language is the same in both position descriptions. Each position requires eight years of experience with two years as a sergeant. Each

requires a bachelor's degree. The Corrections Lieutenant experience requirements include the ability to properly handle firearms, something not contained in the Deputy Sheriff Lieutenant job description. The two job descriptions contain identical language for the Safety of Others heading under General Responsibilities and Requirements. They contain the same language under the headings Physical Demands and Sensory (ADA) Requirements.

The Union argues that the only external comparable offered by either party is Will County. Will County is the only nearby county in which the correctional lieutenants are represented for collective bargaining. The Union maintains that the Will County correctional lieutenants have a 2.4% increase at each step.

The Union disputes the Employers' argument that increasing the step increases to 2.00% would be a breakthrough. Quoting from Arbitrator John C. Fletcher's award in *Metropolitan Alliance of Police Chapter 6 and Village of Romeoville*, S-MA-10-064 at 15 (Fletcher 2010), the Union argues that a status quo established by a single arbitration award is not to be given the same weight as a status quo resulting from the parties' negotiated agreement. The Union maintains that Arbitrator Greco's award was incorrect and that I should not defer to it.

The Union attacks the *Greco Award* as premised on Arbitrator Greco's finding that the job requirements for Correctional Lieutenants are less dangerous than for Deputy Sheriff Lieutenants without making any "factual findings about why the sheriff lieutenant and correction lieutenants are not equal" (Un. Br. at 3). The Union dismisses Arbitrator Greco's comparison of taking care of inmates in a secure environment to being on the road in an insecure environment and his determination that the two positions involve different certifications, job skills and duties as contradicted by Lt. Kalfas's testimony in the instant proceeding and the job descriptions for the two positions. Furthermore, says the Union, Arbitrator Greco pointed to Will County as a comparable community in awarding the Employers' offer with respect to random drug testing but, with respect to step increases, Will County supports the Union's offer of 2.00% in the prior arbitration and in the instant case.

The Union urges that cost of living data is not entitled to much weight because under either party's offer, the wage increases will exceed the increases in the cost of living. The Union observes that the Employers agreed to the wage increases without conditioning them on other factors, i.e. maintaining the step increases at 1.50%. According to the Union, "Little if any weight should be give to the CPI and cost of living arguments when an employer voluntarily offers substantially higher wage increases" Un. Br. at 6-7. The Union avers that the Employers are not claiming an inability to pay and urges I reject what it labels the Employers' "inability to pay lite" argument. The Union asks that I award its final offer.

**Employers' Position**

The Employers contend that the Union is seeking a breakthrough. In the Employers' view, that the status quo was established by an interest arbitration award rather than a negotiated

agreement is irrelevant. The Employers cite Arbitrator Sinclair Kosoff for support. *City of Rock Island and IAFF*, ILRB No. S-MA-06-142 (Kosoff 2007). Citing Arbitrator Brian Clauss in *County of DuPage and DuPage County Sheriff and Metropolitan Alliance of Police*, ILRB No. S-MA-15-374 (Clauss 2018), the Employers argue that the Union has the burden to show that the status quo has created operational or equitable hardship, that the existing system is not working as anticipated, that the party opposing the change has resisted attempts to negociate it and that the party proposing the change has offered a quid pro quo for it.

The Employers contend that the Union has not carried its burden. The Employers maintain that there is no evidence that the current step increases are not working as intended, The Employers maintain that each member of the bargaining unit will receive at least one step increase over the life of the contract. Furthermore, say the Employers, citing the *Greco Award*, the award of 2.00% step increases will create an ever-growing salary differential between Correctional Lieutenants and Correctional Sergeants whose step increases are 1.50%. It will lead to the sergeants demanding that they too get 2.00% step increases, a whipsawing that should not be created by awarding the Union's final offer. Finally, the Employers aver, the Union presented no evidence of any change in circumstances since the *Greco Award* to justify the breakthrough and offered no quid pro quo for the breakthrough.

The Employers maintain that the cost of living and the employment cost index data support their final offer. They look to the CPI-U for Chicago-Kenosha-Gary as the most relevant gauge of the cost of living and the Philadelphia Reserve Bank's Survey of Professional Forecasters forecast for the future inflation rate during the remainder of the contract. The Employers contend that both parties' offers exceed the increase in the cost of living but the Union's is excessive when the increase in the step increases is added in. The Employers cite my award in *Village of Skokie and IAFF Local 3033*, ILRB No. S-MA-150 (Malin 2017) for the proposition that in light of the political constraints on public employee collective bargaining, it is unlikely that the parties would have agreed to the higher total increase had their bargaining process not broken down.

The Employers contend that internal comparability strongly supports their final offer. The Employers urge that the appropriate internal comparable is the Correctional Sergeants rather than the Deputy Sheriff Lieutenants. The Employers cite the *Greco Award's* rationale that the Correctional Lieutenants' wages rates are linked to the Correctional Sergeants, making the Sergeants the appropriate internal comparison.

The Employers attack the Union's reliance on Will County to support its final offer. The Employers maintain that external comparability is irrelevant, given the importance of treating the Correctional Lieutenants comparably to the Correctional Sergeants. But, say the Employers, if external comparability is considered, the Will County handling of step increases does not dictate a different result. The Employers concede that the Will County Correctional Lieutenants receive step increases of 2.40%, but the Employers urge that as of December 1, 2015, Will County lieutenants started at $46.44 per hour compared to $50.13 per hour for Lake County lieutenants.

Even with the 2.4% step increases, at every step, the Employers aver, Lake County lieutenants remain ahead. Top hourly pay after five years, say the Employers, is $54.00 in Lake County compared to $53.82 in Will County. The Employers ask that I award their final offer.

**Discussion**

The arbitrator has considered his notes and the transcript of the hearing, the exhibits, the parties' briefs and arguments and all authority relied on therein. Because the issue is economic, under the IPLRA, I am required to select either the Union's final offer or the Employers' final offer. Based on the relevant statutory factors, I have determined that the Employers' final offer must be awarded.

As I have stated many times over the past quarter century, both in awards and in law review articles, interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of its value in making such a determination. Clearly, some of the factors have more significance than others in a specific case.

Section 14(h)(8) provides for consideration of "other factors . . . 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." One such factor is whether a party's offer constitutes a breakthrough. Interest arbitrators generally agree that a party advocating a breakthrough bears the burden of justifying the departure from the status quo. As I have stated previously, the presumption against breakthroughs arises because, absent evidence to the contrary, the manner in which the parties have resolved a matter in the past provides strong evidence of how they would have resolved it in the current round of negotiations had their negotiating process not broken down. The more significant the change, the greater the burden of justification. *See, e.g. Illinois Fraternal Order of Police Labor Council and County of Will and Sheriff of Will County*, ILRB No. S-MA-12-083, at 6 (Malin 2013).

The Employers urge that the presumption against breakthroughs should apply even when the status quo was established by an interest arbitration award and point to *City of Rock Island, supra* for support. The Union urges the opposite and cites *Village of Romeoville, supra for* support. I find neither award particularly helpful.

The Union quotes Arbitrator Fletcher as follows:

> [I]nterest arbitration is inherently risky in that the parties are handing over to a "casual observer" complete authority to alter their contractual relationship, and thus the established *status quo* for the future. While in years past arbitrators have concluded that a

> *status quo* established through interest arbitration should not (or does not) carry the weight of a negotiated one, those days will rapidly come to a close if the interest arbitration process morphs into something more like firefighting than substantive and thoughtful assistance with matters of authentic contractual deadlock. In other words, if the parties subject to the Act begin using this process as a substitute for good-faith bargaining and/or grievance arbitration, then resulting contracts will, after a number of rounds, more accurately represent unilateral arbitral opinion than the mutual goals and interests of the parties. If that happens, as a necessary consequence, "arbitral opinion" will become the new (and firm) *status quo*.

*Romeoville, supra,* at 15. Read in context, Arbitrator Fletcher was expressing his frustration with the parties before him who he believed had not made a concerted effort to resolve their differences through good faith negotiation but instead turned their dispute over to the arbitrator. This is understandable, given that the dispute was litigated and awarded in 2010, just as the impact of the Great Recession on municipal finances was hitting its peak as Stimulus money was drying up. Indeed, 2010 saw an unprecedented and dramatic increase in resort to interest arbitration in Illinois law enforcement and firefighting. *See* Martin H. Malin, Two Models of Interest Arbitration, 28 *Ohio St. J. Disp. Resol.* 145, 154-55 (2013). The same cannot be said for the instant dispute. On the contrary, admirably, the parties resolved every issue through good faith negotiations except for the single issue of step increases which has been submitted to me to resolve.

The Employers quote Arbitrator Kosoff as follows:

> I think it is one thing to award the right to arbitrate discipline when the issue is presented in arbitration for the first time but quite another to do so in an arbitration for the contract immediately succeeding the contract for which the right to arbitrate discipline was denied in arbitration. Arbitrator Nathan's decision, I believe, must be given the same weight as if the parties had voluntarily negotiated exclusion of discipline from their 2003-2006 contract. Otherwise arbitration has little meaning, and parties are encouraged to ignore direct collective bargaining and, instead, to resort to arbitration every contract. What one arbitrator fails to give, another will be free to bestow, and the parties will be relieved of any burden of showing changed circumstances from the prior arbitration. There will be no predictability because everything is up for grabs when the contract expires.
>
> I do not think the foregoing is what the legislature envisioned or consistent with the principles that have developed in interest arbitration over the years. One of the principles is that when a contract term is negotiated or is awarded in arbitration, the party desiring a significant change in the provision must provide compelling evidence of the need for change. No such compelling evidence has been presented in this case.

*Rock Island, supra*, at 50. Reading the quoted portion of Arbitrator Kosoff's award in context, however, reveals that it is not as sweeping as the Employers make it out to be. At issue before Arbitrator Kosoff was a union proposal to give employees facing discipline the option to contest the discipline through the contractual grievance and arbitration procedure. In the interest arbitration proceeding for the immediately prior contract, the union had made the same proposal and Arbitrator Harvey Nathan rejected it. But, it appears that Arbitrator Nathan's reason for rejecting the union's proposal was that it sought to change what had been the negotiated status quo. *See id.* at 49. Furthermore, after finding that the union had not carried its burden to justify changing the status quo before him, Arbitrator Kosoff issued an award which did change the status quo. He did not award the union's final offer but he also did not award the city's final offer which was to retain existing contract language. Instead, he awarded a modification, adding to existing contract language, "With regard to an employee's appeal on discipline or a hearing on disciplinary charges, the Board of Fire and Police Commissioners shall not have the authority to increase any discipline imposed or recommended by the Fire Chief or the City." *Id.* at 51. He based his award not on any evidence that there had ever been a problem with the Board increasing discipline or that the potential for the Board to increase discipline had ever deterred an employee from appealing, but because "the Union has presented a good reason to change the disciplinary provision . . ." *Id.*

Having found that the awards cited by both parties are not particularly helpful, the question remains, what weight should the *Greco Award* receive in the instant proceeding. Because it was a term imposed by an arbitrator in the parties' first contract, it cannot receive the same weight as a negotiated agreement as evidence of what the parties would have agreed to in the current round of bargaining had their process not broken down. However, that does not mean I am free to ignore it and address the issue de novo. In submitting certain issues in their first contract to interest arbitration, the parties manifested an understanding that because they were unable to resolve those issues on their own, they would submit to their mutually-selected arbitrator the determination of what would essentially become the baseline for future rounds of bargaining. Thus, the Union's burden is to persuade me to alter that baseline. The question is not how I would have ruled were I deciding the issue for the first time, but whether there is a substantial reason for altering the baseline established by the *Greco Award.*

The Union recognizes this. It argues that there is a serious flaw in Arbitrator Greco's reasoning. The Union writes:

> Arbitrator Greco's finding that the job requirements for correctional lieutenants are "less dangerous" was unsupported by the record and ignorant of the dangers, albeit different than what the sheriff's lieutenants face. In comparing the two sides of the sheriff's department to each other at the lieutenant level, Arbitrator Greco made no factual findings about why the sheriff lieutenant and correction lieutenant are not equal. Rather, he makes a sweeping statement about "taking care of inmates in a relatively secure environment, whereas the Law Enforcement Lieutenants for on the road in an insecure environment performing different tasks." [citation omitted] He goes on to opine about different

certifications and different job skills and duties supporting different wages. For the reasons further outlines (sic) below, Arbitrator Greco was wrong when his award issued and no distinction should have been found.

Un. Br. at 3. The Union urges that Arbitrator Greco's analysis is contradicted by a comparison of the job descriptions of the two positions.

It is necessary to place the comments of Arbitrator Greco that the Union attacks in context. Arbitrator Greco was addressing the statutory factor of the cost of living. He observed that the CPI-U rose nationally by 2.0% and locally by 1.9% for the 12 months ending July 2014 and was predicted to increase 1.9% and 2.1% in 2014 and 2015. The Employers' total wage package proposal provided for an increase over the life of the contract totaling 9.25%, compared with the Union's proposal's 15%. He detailed the differences between wages paid Deputy Sheriff Lieutenants and Correctional Lieutenants. He continued:

> This substantial disparity might justify wage increases well in excess of the CPI if these two lieutenant groups are similarly situated and thus are entitled to similar wages for doing similar work. The fact that they both have lieutenant job titles, however, does not necessarily mean they do the same work.
>
> To the contrary, the Corrections Lieutenants work in the Jail where they primarily take care of inmates in a relatively secure environment, whereas the Law Enforcement Lieutenants work on the road in an insecure environment performing different tasks. That is why the training and certifications for the two groups are different; why their job skills and job duties are different; why their working conditions are different; and why their wages historically have been different.
>
> This explains why top step Deputies receive about an 18.74% higher hourly rate than the top step Corrections Officers and why top step Law Enforcement Sergeants receive about a 10.42% higher hourly rate than the top step Corrections Sergeants.
>
> The Employer therefore correctly points out that the parties "through negotiations have recognized that the unionized classifications on the law enforcement side are paid significantly more than the corresponding unionized classifications on the corrections side."
>
> Accordingly, and because there is no evidence showing that Corrections Lieutenants earn the same as Law Enforcement Lieutenants in external comparable communities, I find the Union's catch-up argument is without merit and that Factor 5 relating to the cost of living supports the Employer's wage offers.

*Greco Award* at 7-8. The clear thrust of Arbitrator Greco's analysis was that the parties' own bargaining history reflected a recognition that the Corrections Division and the Law Enforcement

Division were not comparable and, therefore, the disparities in wage rates between Correctional Lieutenants and Deputy Sheriff Lieutenants did not justify catch-up increases in compensation. Although I do not know the contents of the record before Arbitrator Greco, the most recent contracts for all represented ranks within both divisions are in the record before me (Er. Exs. 21A - 21E) and it appears that the parties in their negotiations continue to recognize that with respect to wage rates, the two divisions are not comparable.

Furthermore, when he addressed step increase specifically, Arbitrator Greco acknowledged the Union's argument that all represented ranks within the Sheriff's Office received step increases of at least 2.00% except for Correctional Sergeants who received 1.50% step increases. He stated, "The Union's proposal [for 2.00% step increases] is supported by internal comparability and thus weighs in the Union's favor." *Id.* at 13. But he found the internal comparability factor outweighed by other factors. He found that the Employers' proposed 1.50% step increases was supported by the Correctional Sergeants bargaining history dating back to 2007, and that "adopting the Union's 2% proposal would result in an ever-growing salary differential between the Corrections Lieutenants . . . and the Corrections Sergeants . . . thereby creating the whipsawing the Employer is legitimately concerned about." *Id.* Finally, he reasoned that because "the salaries of the Corrections Lieutenants are pegged to what the Sergeants earn, there is no sound basis for establishing different step increases." *Id.*

Far from being the seriously flawed decision that the Union makes it out to be, Arbitrator Greco's award reflects a careful and reasonable weighing of the competing factors. Regardless of whether I would have reached the same result that he did, and I cannot make that determination because I do not have access to the record that was before Arbitrator Greco, I find that he reasonably established the baseline that the parties tasked him to set. Accordingly, I turn to the Union's rationale for moving from that baseline.

Apart from its attack on the *Greco Award*, which I have not found persuasive, the Union urges that its proposal of 2.00% step increases is supported by external comparability. The only comparable external community presented is Will County and there is no dispute that the step increases in Will County are significantly higher than the Employers' offer of 1.50% and than the Union's proposal of 2.00%. However, the Will County step increases must be analyzed in context. As the Employer demonstrated, and as my review of the record (Un. Ex. 12) corroborates, the Will County Correctional Lieutenants start at a wage rate considerably below the starting wage rate for Lake County Correctional Lieutenants and while the larger step increases narrow the gap at each step, the Lake County Correctional Lieutenants remain ahead at the top pay step. Therefore, I cannot say that the higher step increases in Will County provide a reason to change the baseline established in the *Greco Award.*

In light of the above analysis, I do not find it necessary to address in detail the cost of living. The Union does not argue that the cost of living supports its final offer. Rather, the Union argues that the cost of living should not be given much, if any weight, whereas the Employer emphasizes the cost of living as a factor supporting its final offer. Regardless of which party's

view of the cost of living I might adopt, it would not change the result I have reached. All of the other statutory factors are not relevant to a resolution of the instant dispute.

Accordingly, I shall award the Employers' final offer with respect to step increases. The parties stipulated that I incorporate in my award their tentative agreements and I shall do so. They also stipulated that I retain jurisdiction until the parties have executed the collective bargaining agreement and I shall do so.

## AWARD

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. The Employers final offer to continue step increases at 1.50%.

2. The parties' tentative agreements in evidence as Joint Exhibit 2.

3. The Arbitrator will retain jurisdiction until the parties execute the collective bargaining agreement. The parties shall notify the arbitrator upon execution of the collective bargaining agreement.

Chicago, Illinois

March 19, 2018

Martin H. Malin, Arbitrator