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S-MA-17-059

IN THE MATTER OF INTEREST ARBITRATION BETWEEN THE FRATERNAL ORDER OF POLICE LABOR COUNCIL AND THE CITY OF COLLINSVILLE	BEFORE MARK W. SUARDI, ARBITRATOR FMCS No. 17-54514

APPEARANCES:

For the Union:

James Daniels, Attorney at Law
David Nixon, Field Representative

For the City:

Corey Franklin, Attorney at Law
Michael Lowenbaum, Attorney at Law

AWARD OF ARBITRATOR

BACKGROUND

This interest arbitration arises pursuant to Section 14 of the Illinois Public Labor Relations Act (the "ILRA" or "Act"), 5 ILCS 315/14. The undersigned was selected by the parties to serve as arbitrator through the auspices of the Federal Mediation and Conciliation Service (FMCS). A hearing of the case was held on January 26, 2018, in the City of Collinsville Council Chambers in Collinsville, Illinois. A record of the hearing was

transcribed. At the outset of the hearing, the parties waived their right to a tripartite panel and agreed that all procedural prerequisites required by the Act had been met.

In the course of the hearing each side outlined their respective proposals on issues which remained unresolved in the course of their negotiations for a new labor agreement. They also presented detailed statistical analyses and other documentation supporting their respective positions. Among the specific issues which remained unresolved were Wages, Retiree's Insurance, Subcontracted Work, Longevity, Drug and Alcohol Testing Permitted, Military Leave and Training Days.

After making their presentations, the parties requested time to see if any of the above-referenced outstanding issues could be resolved. Some time later the parties announced they had reached an agreement on all outstanding issues, with the exception of whether the agreed-upon wage increase should have retroactive effect.

At the conclusion of the hearing, the Arbitrator set up a briefing schedule in order for the parties to submit their positions on the question of the retroactivity of wages. The post-hearing briefs were submitted in due course and exchanged through the undersigned on March 20, 2018. A brief summary of each side's position on the retroactivity question is set forth below, followed by the Arbitrator's award.

ISSUE

Should the agreed-upon wage increase be made retroactive to January 1, 2017, or should it become effective upon the issuance of the Arbitrator's Award?

RELEVANT STATUTORY PROVISIONS

5 ILCS 315/14

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last offer settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.
(2) Stipulations of the parties.
(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly knows as cost of living.
(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

SUMMARY OF UNION CONTENTIONS

The Arbitrator should require fully retroactive wage increases to January 1, 2017, for all current and former employees for all hours in paid status. Based on the agreed-upon negotiated raises any contrary holding would require all Collinsville officers to lose approximately $2009.00 in base wages for 2017 alone, with an associated adverse impact on base wage amounts increased as the result of the officers' seniority. An additional adverse impact would be the wage amounts lost prior to the Arbitrator's ruling.

The City has the heavy burden of proving the necessity of a non-retroactive wage increase. The City cannot meet this burden, as a non-retroactive increase would change the status quo. It would also be contrary to the past eighteen (18) negotiated CBAs, which have never provided for a wage increase without retroactivity. Moreover, upholding the

City's position would amount to a financial windfall.

Annual changes are retroactive, and they are anticipated as such. There is nothing to indicate that applying the negotiated wages retroactively would force an operational hardship onto the City. Indeed, the City is in excellent financial shape, and it enjoys increased revenue streams through increased property tax receipts and virtually flat expenditures, this in contradistinction to adjoining counties.

The City cannot meet its burden of proving the need for a change from a retroactive to a non-retroactive pay increase. The 2.75% wage increase in 2017 does not represent a quid pro quo for withholding backpay, insofar as the Consumer Price Index-Urban (CPIU) shows wages have devalued about two percent (2%) in each of the past several years. The remaining difference of three-quarters of a percent (.75%) is hardly a quid pro quo of sufficient value to justify non-retroactivity. The agreed-upon wage increases for City officers are less than comparable increases in other departments in the area for fiscal years 2018 and 2019 (FY18 and FY19). As it is, there is no legitimate interest which might otherwise justify the non-retroactivity the City seeks. Nor can the City's argument that the Union dragged its feet in negotiations amount to a legitimate interest sufficient to warrant a holding in the City's favor.

The City's attempt to punish the Union for its conduct during negotiations should be rejected. There is no evidence to indicate the Union failed to act in good faith. Yet if the

City believes the contrary, its remedy would be to file an unfair labor practice charge. In any event, the City has not proven that it suffered any actual injury as a result of the negotiation process.

The City's apparent reliance on the fact other non-public-safety strike units accepted non-retroactive deals as justification for its position should also be rejected. Per the evidence adduced, contracts with other units were distinguishable. Yet even if a correlation existed, it would not be dispositive. Indeed, there has been no historical pattern of comparability between the Union and other City units; and other internal units do different work, on different shifts, with different credentials and under different conditions.

Insofar as the City's only other public safety unit, the IAFF firefighters, have not accepted retroactivity, the proffered external comparables should be given greater weight than the internals. Notably, none of the comparable external police units accepted non-retroactive raises.

The eight factors listed in Section 14 are solidly in the Union's favor. Further, the affected FOP officers perform a dangerous and thankless job protecting the public. The evidence presented supports a finding that the agreed-upon wages should be applied retroactively.

SUMMARY OF CITY CONTENTIONS

The City's non-retroactive wage proposal finds solid support in the statutory factors listed in Section 14(h). Factors involving internal and external comparability, cost of living and the total compensation package are particularly in the City's favor. Additionally, a holding in the Union's favor would discourage prompt, efficient and good faith bargaining. As it is, the Union's only apparent argument is that the City has the funds to make a retroactive payment.

Peace officers are prevented from striking under the Act, and binding arbitration is set up to resolve bargaining disputes in lieu of economic action. In practice, final offer arbitration serves as a supplement to the bargaining process, and should be no more than a natural extension of the parties' positions at impasse. The goal is to approximate a settlement the parties themselves would have reached if negotiations had succeeded.

The process is a conservative one. Of particular applicability in the present case are factors involving cost of living, internal comparability and overall compensation presently received. The question of internal comparability is governed by a determination of whether a pattern of applicable settlements exists and whether one side or the other is attempting to break the settlement pattern. Applied here, the City's non-retroactive wage offer is the same as its treatment of all other City bargaining units. There was no evidence to the contrary to support a deviation from the internal pattern. Neither the FOP civilian

unit, IUOE Local 148 (Water Plant), IUOE Local 148B (City Hall) and IUOE Local 520C (Public Works) received a retroactive wage. They also made considerable concessions agreeing, as the case may be, to the elimination of longevity incentives, a reduction in the new hire rate, a lower wage increase, or a freeze in starting wages. The FOP Patrolmen, by contrast, made no concessions.

The City has been consistent in its willingness to grant retroactivity if offered to other bargaining units. However, this did not occur and retroactivity should not be applied to the Union herein. Further, there are no unusual circumstances which might justify deviating from wages offered to the internally comparable bargaining units. To hold otherwise would have disastrous implications and would undermine the prospect of timely re-negotiation of expiring agreements.

CPI-U information for the St. Louis, Missouri - Illinois area also supports a denial of retroactivity. The City's data shows that the FOP Patrol wages increased nearly seven (7) times the rate of inflation since the expired agreement commenced and exceed the cost of living increase for 2017 by over sixty (60%) percent, not counting wage increases associated with longevity.

The City's Patrolmen are the highest paid among all of their external comparables. They also receive the highest wage of any internally comparable bargaining unit. Even ignoring all other unique benefits which the Patrolmen receive, there is no justification to

apply the agreed-upon wage retroactively.

External comparability also justifies denying a retroactive award. A comparison of historical comps clearly supports the City's position. Moreover, the FOP Patrolmen were the best paid among all externals even under the City's initial two and one-half percent (2.5%) wage increase. And they would continue their rank and status among external comparables throughout the three (3) year wage package.

During negotiations the Union only feigned good faith bargaining. Now, it seeks to unilaterally impose its position through this proceeding. Yet all of the relevant criteria support the City, not the Union.

The abbreviated duration of the parties' bargaining shows that the Union has unclean hands. As it is, during the negotiations which took place the City gained nothing at the bargaining table. To this extent, the Union's demand for retroactivity cannot be viewed as a quid pro quo for other concessions. Both the delay and commencement of negotiations, their short duration when they did commence, and the delays between sessions all indicate that the Union intended to declare impasse unless the City agreed to all of its demands. To uphold the Union's retroactivity demand would have negative repercussions on the parties' overall bargaining relationship.

The City's non-retroactive wage offer should be adopted.

DISCUSSION

The Arbitrator has considered the parties' testimony, statements, arguments and authorities. Based thereon the Arbitrator finds the parties' agreed-upon wage increase should be given retroactive effect. The Arbitrator's reasoning is set forth below.

As noted elsewhere, interest arbitration has as its goal the approximation of what the parties would have agreed to if they had been able to settle their differences themselves. *Village of Arlington Heights,* S-MA-88-89 (Briggs, 1991) at p. 12. The process has been characterized as an artificial one which involves educated guesswork. *Id.* It follows that the factors provided for consideration under the statute serve as guideposts when evaluating competing proposals. Some factors may be more important than others depending on the circumstances. Each case is different.

The Union relies in part the fact that all prior negotiated or awarded wage increases in a given year were retroactive. Such is the status quo, says the Union, and there can be no deviation from it unless the City meets its heavy burden of altering the status quo. The City counters that the relevant historical pattern of settlements between City bargaining units sets up the status quo which the Union is attempting to break. Predictably, the competing positions are mutually exclusive.

What emerges from the foregoing - - to the Arbitrator at least - - is a difference of opinion on whether the one side or the other's position on retroactivity represents a breakthrough, as that term is used in interest arbitration. The question is a difficult one

since “while all ‘breakthroughs’ are a change to the parties’ status quo, not all changes to the status quo are ‘breakthroughs’”. *City of Danville and Danville Police Command Officers Association,* S-MA-11-336 (Stanton 2013) at p. 6.

The Arbitrator agrees with the City that the statutory factor of internal comparability plays a critical role in the current case. Still, whether a settlement pattern exists is a question of fact.

The facts here reveal that each of the City’s non-public-safety strike units accepted non-retroactive contracts, as the City argues. Even so, the Arbitrator finds persuasive the Union’s argument that differences in the type of work performed by the units which accepted non-retroactivity, as well as the non-strike character of the FOP, are important distinctions which militate against a finding of internal comparability. *County of Woodford and Fraternal Order of Police Labor Council,* S-MA-09-057 (Feuille 2009) at p. 22.[1] The fact the IAFF firefighters, the City’s other public safety unit, has yet to accept retroactivity or non-retroactivity, provides another distinguishing feature from the units which accepted non-retroactivity.

Regarding the question of ability to pay the Arbitrator finds persuasive those cases which hold that in interest arbitration it is a demonstrated *inability* to pay which serves as a limiting factor, and that it is entirely within a city’s province to decide how to best utilize

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[1] See, too, *Illinois Fraternal Order of Police Labor Council and County of Tazewell,* S-MA-15-055 (Grecko 2017) at. pp. 7-8 (“the internal comparables consist of Deputies who perform significantly different duties on the road as opposed to the CO’s (Correction Officers) who take care of inmates in the jail.”

its appropriations and allocate its resources. See, e.g. *City of DeKalb and DeKalb Professional Firefighters Association, Local 1236,* S-MA-87-76 (Goldstein 1988) at pp. 11-13. So viewed, statutory factors dealing with the interest and welfare of the public and financial ability of the unit fall in the City's favor here.

Each side takes a somewhat different view of the statutory criteria regarding cost of living. On the one hand, the Union relies on cost of living data attributable to the cost of living index for all urban consumers. By contrast, the City presents changes in the cost of living for all urban consumers in the St. Louis, Missouri-Illinois area. The City goes on to urge that Patrolmen wages greatly increased since the last agreement commenced, and that in 2017 the agreed-upon 2.75% raise exceeded by some 60.3% the local cost of living.

Taking into account the uncertainties associated with inflation generally and the lesser wage increases of 2.0% the Patrolmen will receive in FY18 and FY19, it is difficult to say the agreed-upon increases, even under localized conditions, are so substantial as to amount to a quid pro quo for denying retroactivity.

The question of external comparables is a close one. Without doubt, the record shows that the City's Patrolmen fare better than their counterparts in other comparable jurisdictions. Moreover, the Union concedes that the agreed-upon wage increases are fair. Were the sole criteria at issue the impact of wages on comparability generally, this factor would fall in the City's favor. However, the issue to be decided is whether retroactivity applies. Notably, the Union has indicated that none of the external police units have

accepted non-retroactive raises, and that negotiations regarding FY19 continue in some jurisdictions.

Finally, the Arbitrator must address the City's argument that the Union has unclean hands in this matter. The City urges that the abbreviated character of the parties' actual negotiations coupled with initial delay poses significant threat to the efficacy of future negotiations with all of its unions. On this point, the Arbitrator agrees that the grand bargain approach which the City adopted in recent negotiations supplies an available mechanism to ensure bargaining consistency. At the same time, it is well recognized that all collective bargaining parties and all collective bargaining agreements are different. *Incom International, Inc.,* 83-2 ARB ¶8357 (Abrams 1983).

In the Arbitrator's opinion, just as the City's grand bargain approach sought universal non-retroactivity, the Union cannot be faulted for taking a contrary view on the topic. Nor can the Arbitrator reasonably conclude, as the City argues, that retroactivity was the primary object of the Union's approach to its earlier bargaining proposals and mindset. Stated differently, the record evidence does not preponderate in favor of a finding that the Union bargained in bad faith.

In Case No. S-MA-12-032 between these same parties, Arbitrator Nielsen addressed the City's argument as to the potential ripple effect of his award. In that case, Arbitrator Nielsen correctly identified the possible unwelcome effect to one side or the other as the result of any interest decision. He went on to observe that his jurisdiction only

extended to the parties before him. This view is correct. Accordingly, while an award in the Union's favor granting retroactive pay may be an "other factor" bearing on the determination of working conditions in the future, such a result is speculative at present.

Finally, the Arbitrator believes it unfair to deny retroactive pay to former Union members who were in paid status as of January 1, 2017, but who no longer work for the City.

AWARD

The agreed-upon annual wage increases shall be retroactive to January 1, 2017, for all current and former members of the Union, for all hours in paid status.

Signed in the County of St. Louis, Missouri this 27th day of April, 2018.

Respectfully submitted,

MARK W. SUARDI, ARBITRATOR