ILLINOIS PUBLIC LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an
Arbitration between

City of Rockford	)	
	)	
and	)	Case #S-MA-~~09-167~~ 11-039
	)	
City Fire Fighters Local 413, International Association of Firefighters, AFL-CIO	)	

INTEREST ARBITRATION OPINION AND AWARD

On January 24, 2010 a hearing was held in Rockford, Illinois before Arbitrator Robert Perkovich who was chosen by the parties, City of Rockford ("Employer") and City Fire Fighters, Local 413, International Association of Firefighters, AFL-CIO ("Union") to serve as such. The Employer was represented by its counsel, Patrick Hayes, and the Union was represented by its counsel, Joel D'Alba. The parties presented their evidence in narrative fashion and filed timely post-hearing briefs that were received on April 23, 2011.

ISSUE PRESENTED

What is the wage increase for the bargaining unit for the year 2011?

BACKGROUND

A. General

Under governing state law I am to follow certain factors in resolving this interest dispute. Those factors include:

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 employer to meet those costs;
4. external comparability in public and private employment;
5. the cost of living;
6. the employees' present overall compensation;
7. changes in any of the following categories during the pendency of the arbitration proceedings;
8. such factors not confined to the foregoing which are normally or traditionally taken into consideration in the resolution of interests disputes.

Moreover, it is well-settled that the statute makes no effort to rank these factors in terms of their significance and thus it is for the arbitrator to make the determination as to which factors bear most heavily in any particular dispute. (See e.g., *City of Decatur*, S-MA-29 (Eglit, 1986).

In reaching my conclusions herein I have considered all of the above-mentioned factors and have done so in keeping with Arbitrator Eglit's well founded observation.

This dispute reaches arbitration as a result of a mediated agreement between the parties when they approached arbitration for their 2009-2011 collective bargaining agreement. In that mediated settlement the parties agreed, in relevant part, that there would be no general wage increase in 2009 or 2010 and that the contract "shall be subject to a re-opener on wages only for 2011." The parties also agreed that in the event they were unable to reach an agreement pursuant to wage re-opener negotiations that the undersigned arbitrator would be recalled for arbitration and that in any such hearing the Union "shall not be subject to the ordinary interest arbitration burden to justify a catch-up and the arbitrator shall not be restrained by the arbitral precedent disfavoring wage catch-ups." Finally, they agreed that the arbitrator "shall only have jurisdiction to resolve the issue of wages."

THE ISSUE OF WAGES

A. External Comparables

On numerous occasions before this dispute arose the parties have used, both in interest arbitrations, including those between the Employer and its police department, and in negotiations the communities of Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria, and Springfield. In this dispute however, the Employer seeks to exclude from consideration the communities of Aurora, Elgin, and Joliet. The Union disagrees.

The Union argues that the Employer is precluded from doing so by virtue of the parties' mediated agreement that governs this dispute as well as the equities. The Employer in its post-hearing brief did not address these contentions.

I do not agree with the Union that the parties' mediated agreement precludes consideration of this issue. The Union relies on the parties' stipulation in their agreement that the arbitrator shall "only have jurisdiction the issue of wages" and argues this language precludes a determination of the external comparables. This argument must fail however for two reasons. First, external comparables are one factor that is to be used in determining interests disputes including those involving wages and the parties' stipulation, by merely referring to the "issue of wages," cannot then explicitly eliminate that factor. More importantly however, if the Union were correct, then the consideration of all of the statutory factors would be disallowed, a result that I doubt anyone would seek.

The Union's other argument however carries much force and thus, the day. On this point the Union reminds me that the issue is before me as a result of a wage re-opener and it asserts that it would be unfair to exclude from the list of external comparable communities those very communities that the parties used, at least in part, to reach their wage agreement for the first two years of their Agreement. As a matter of consistency and fairness it seems to me that the same rules of comparability should apply during the life of the parties' Agreement and not for a portion thereof.

Assuming *arguendo* that I was to reconsider the inclusion of Aurora, Elgin, and Joliet in the comparable communities I would still reject the Employer's argument that they should be excluded.

First, it is clear from the record that for many years, both in negotiations and in arbitration, including the explicit or tacit agreement of the parties as well as findings of prior arbitrators, the communities of Aurora, Elgin, and Joliet have been used among the external comparable communities. Thus, to upset the continued use of these benchmarks is warranted only if the party seeking the change can meet a heavy burden.

In that regard, the Employer attempts to do so, but in my estimation it has failed. First, as pointed out by the Union, the Employer's analysis is static, using data from a fixed point in time rather than looking at data over a period to assess any real, and not apparent, change in the relationship between the Employer and the three communities in question. Moreover, when one engages in that dynamic analysis over time the record evidence compels the conclusion that continued use of the communities of Aurora, Elgin, and Joliet is still justified.

For example, when one looks to data concerning the percentage of families living below the poverty level, median household income, and relative equalized assessed valuation the relationship between the four communities is no different, or little different, than before[1]. More specifically, although the Employer is correct that the unemployment rate for its population in 2009 was greater than that of Aurora, Elgin, and Joliet the Union persuasively points out that between 2000 and 2009 that rate doubled in Aurora as well as Rockford and that it was relatively close between all four communities during that period. A similar conclusion, when the data is viewed over time rather than in 2009 alone, is warranted with respect to equalized assessed valuation and median household income. In other words, the critical analysis is whether over time the communities of Aurora, Elgin, and Joliet have changed so much that their further inclusion among the external communities as historically established is justified. I find that it is not[2].

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[1] In some instances the parties have used different measures. For example, the Union has used the additional measures of department size and department activity while the Employer does not and the Employer has used the measures of unemployment and median housing value while the Union does not. I have limited my examination of this issue to those factors, listed above, that both parties have used.

[2] In addition, the Union points out that if the three communities challenged by the Employer are in fact removed from the list of external comparables the comparability analysis will then be limited to communities that are far geographically removed, a consideration that has loomed important for many interest arbitrators including this one.

Nevertheless, the Employer asserts that there are important other factors that justify the exclusion of these three communities, namely, the fact that they have access to significant riverboat gambling revenues and that they have home rule authority that allows them to raise more and diversified revenues, unlike the Employer.

However, as pointed out by Arbitrator Briggs in another interest dispute between these parties the fact that one community has access to gaming revenues does not alone justify its exclusion from the comparables (Citation Omitted). Moreover, as the Union points out, despite the fact that the Employer does not enjoy home rule authority it has been successful in convincing its populace to pass referenda that allowed it to raise various revenues.

Thus, in light of the foregoing I find that again the comparable communities are Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria, and Springfield.

b. Wages

The Employer's final offer is that bargaining unit employees should receive a two percent wage increase effective on October 1, 2011. The Union's final offer on the other hand is that those employees should receive a two percent wage increase effective April 1, again on June 1, and again on October 1, 2011.

1. The External Comparables

The record evidence shows that in the external comparables the percentage wage increases were as follows:

Aurora	0%
Bloomington	3%
Champaign	2 and 2.5%
Dekalb	0%
Joliet	4%
Peoria	2%
Springfield	4.03%

These percentage wage increases average at 1.94% and thus clearly support adoption of the Employer's final offer[3].

The Union counters however that looking simply to the negotiated percentage wage increases is inappropriate because such an analysis ignores the concessions awarded to the Employer herein relative to those in the external comparables, if any. Moreover, the Union argues, when one looks to the concessionary agreements during this period it is clear that the bargaining unit employees herein made greater concessions than

[3] Thus I need not consider the Employer's argument that wage increases negotiated among the comparables before the recent national and local economic collapse should not be considered.

the firefighters in the external comparables. In reply, the Employer argues that the Union's withdrawal of its demand for early retirement benefits cannot be considered a concession.

I find that consideration of the role, if any, that the concessions the bargaining unit herein has granted, play in the external comparability analysis, is unnecessary to resolve this dispute. Rather, I believe that the parties' own mediated agreement controls. In that agreement, as noted above, the parties' agreed that the Union would not be prohibited from seeking a "catch-up" and that I would not be restrained by the arbitral precedent that disfavors any such effort in interest arbitration. Thus, it seems that the deciding factor should be a consideration of why the Union is seeking adoption of its final offer.

When I examine that point it is clear that the Union is attempting, as best it can under the circumstances, to re-establish its historic placement among the external comparables, a goal that has been sanctioned by a number of arbitrators in wage disputes between these parties in the past (Citations Omitted). When one looks to this effort the evidence compels adoption of the Union's final offer because restoring its historic placement among the comparables is permissible, more importantly, because it is not prohibited by the parties' mediated agreement that allowed the Union to do so via a "catch-up," and, finally, because the Employer's final offer does not produce this result.

In light of the foregoing therefore I find, to the extent that external comparables is helpful, that the evidence relating to external comparability favors the final offer of the Union.

2. Internal Comparables

On this point the evidence is mixed. The Employer relies on the fact that it negotiated wage increases with the bargaining unit represented by AFSCME of 3.5% in 2006, 3.5% in 2007, and 4.0% in 2008 and 2009, but adds that those were negotiated before the economic collapse. Moreover, it relies on the fact that in an interest arbitration proceeding with its police officers Arbitrator Yaffe awarded the Employer's final offer of 0% in 2009 and 2% in 2010 and 2011. In reply the Union argues however that the Employer's police officers did not make concessions like those that it made and that the wage increases awarded to AFSCME bargaining unit should be rejected because there is no history of parity between those units.

I deal first with the easier issue, that of parity. In so doing I find that the Union's argument must be rejected for the simple fact that it confuses parity with internal comparability. Thus, simply looking at the percentage wage increase the internal comparability evidence with respect to the police officers would seem to favor adoption of the Employer's final offer but with respect to the AFSCME bargaining unit would seem to favor adoption of the Union's final offer.

I find therefore that internal comparability favors neither the final offer.

3. Cost of Living

On this factor the Employer relies upon statistical evidence that shows that the cost of living in 2009 and 2010 rose by .4% and that it was projected to rise in 2011 by 1.6% for a total average over the life of the parties' three year agreement of 2.8%. The Union on the other hand presents statistical evidence of the real, not projected, cost of living through May of 2011 that shows at that point the cost of living was 6.73% more than May of 2008 and 3.6% more than the cost of living in May of 2010.

In light of these figures it is clear that not only does the Union's final offer compare more closely to the cost of living over the life of the contract and at present, but that the Employer's final offer does not even keep pace with the average of the cost of living over the life of the parties' three year agreement.

4. The Employer's Financial Position

There is little question that the Employer has been burdened by the recent economic downturn and the Employer argues that as a result its final offer should be adopted. For example, in 2008 is suffered a 8.9 million dollar budget loss, a 2.3 million dollar budget loss,[4] and a 3.2 million dollar budget loss in 2010. Moreover, it projects a 5.0 million dollar budget loss this year. However, the record also reflects, as the Union points out, that in a February, 2011 report the Employer's own Finance Director asserted that in 2010 revenues exceeded projections and that expenses ended the year as forecasted. Thus, he concluded "(t)he 2010 result stops the ongoing decline in the fund balance since 2007." Moreover, the Union also points out that despite the recent situation the Employer's reserve balance is 20% of expenses and four times what bond rating agencies, which have rated the Employer as "excellent," seeks.

In my view this contradictory evidence does not compel adoption of the Employer's final offer particularly where, as described above, the other relevant factors favor adoption of the Union's.

AWARD

In light of external comparability, the cost of living, and the Employer's financial position I find that the Union's final offer on wages should be, and hereby is, adopted.

DATED: June 27, 2010

Robert Perkovich, Arbitrator

[4] This reduction was achieved primarily through staffing cuts that the Employer is contractually prevented from doing with the bargaining unit herein.