

A NICE INTEREST ARBITRATION WIN FOR MAP on the one issue of wages. While the arbitrator seemingly did not like either proposal, he went with MAP's. He stated the village's offer "... in the interests of saving money... would sack many years of bargaining history." And "there's no justification in this."

The village threatens to layoff if their proposal is not granted, but as the arbitrator states (as does MAP to all of our chapters) "...how can the union be assured that layoffs will not occur anyway?"

The arbitrator, Harvey Nathan, therefore chose the union's wage offer as stipulated in the award as the closest to meeting the criteria contained in Section 14(h) of the Illinois Labor Relations Act.

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration

between

THE VILLAGE OF VILLAGE OF
LAKE IN THE HILLS, Illinois

and

METROPOLITAN ALLIANCE OF
POILCE, CHAPTER #90

Before

HARVEY A. NATHAN

Sole Arbitrator

Hearing Held:

May 10, 2010

Briefs Exchanged:

July 30, 2010

For the Employer:

Stuart T. Gordon,
Gordon & Karr, LLP

For the Union:

Chris W. Pottoff, Jr.
Richard J. Reimer & Associates, LLC

O P I N I O N A N D A W A R D

I. INTRODUCTION

A. Background

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Board"). The parties are the Village of Lake in the Hills, a home rule community in McHenry County, Illinois ("Village"), and the Metropolitan Alliance of Police, Chapter #90 ("Union").

The Village is located in southeast McHenry County and has a population of approximately 29,500. The Union represents a bargaining unit of 32 Police Officers below the rank of sergeant since 1997. The Village also has a bargaining relationship with two other labor organizations. Chapter 168, Metropolitan Alliance of Police represents a bargaining unit of civilian employees of the Police Department, including telecommunicators, dispatchers, community service officers and record clerks. Local 73, Service Employees International Union represents a bargaining unit of Public Works employees including Utility Workers, Mechanics and Water Operators.¹

¹ Local 73 had a collective bargaining agreement with the Village through December 31, 2010. At some undisclosed date that contract was modified so that the covered employees would not get their scheduled wage increases in 2010 and the contract was extended through 2011 with a continuation of the wage freeze. In March, 2010, Chapter 168, on behalf of the Police civilian employees agreed with the Village for a two year contract with 3.5% step increases in 2009-2010 and a wage freeze for the 2010-2011 contract year.

The parties have had a number of prior collective bargaining agreements ("Agreement). Although the Village's fiscal year runs concurrent with the calendar year, the parties' recent Agreement are from May 1st through April 30th. The most recent Agreement expired April 30, 2009. On December 30, 2008, the Union made a formal demand for the Village to commence bargaining for a new Agreement. The parties had several bargaining sessions through April, 2009, at which time the parties reached impasse and requested mediation services from the Federal Mediation and Conciliation Service. When mediation did not resolve the matter the undersigned was selected as arbitrator and the hearing was set for May 10, 2010.²

During collective bargaining the parties the parties agreed on all issues, except for wages, for a new Agreement for the period of May 1, 2009 through April 30, 2012. Among the items resolved were: new overtime provisions, expanded period for comp time selection, increased life insurance benefits, expanded uniform allowance provisions, and new physical fitness requirements.

B. Statutory Factors

Section 14(h) of the Act provides that the arbitrator shall base his findings, opinions and order upon the following factors, as applicable:

"(1) The lawful authority of the employer.

² Although correspondence from the parties indicate that the undersigned arbitrator was selected to serve in this case in December, 2009, the date for the hearing was not set until March 17, 2010.

"(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 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, and 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 private employment."

II. THE ISSUES

The sole issue in this case is wage rates for Police Officers. The last Agreement provided for an eight (8) step wage schedule with \$3,495 between each step. This resulted in step adjustments in the final year varying from

7.51% (start to step 1) to 4.71% (step 7 to step 8). Employees also got a "cost of living" increase each year of the Agreement and moved a step on their employment anniversary date. The schedule was as follows:

| Yrs of Serv | Current | 2006-07 | 2007-08 | 2008-09 |
|-------------|----------|----------|----------|----------|
| Starting | \$45,949 | \$46,021 | \$47,863 | \$49,778 |
| 1 year | 48,926 | 49,257 | 51,223 | 53,273 |
| 2 years | 51,903 | 52,493 | 54,583 | 56,768 |
| 3 years | 54,880 | 55,729 | 57,943 | 60,263 |
| 4 years | 57,857 | 58,965 | 61,303 | 63,758 |
| 5 years | 60,834 | 62,201 | 64,663 | 67,253 |
| 6 years | 63,811 | 65,437 | 68,023 | 70,748 |
| 7 years | 66,785 | 68,673 | 71,383 | 74,243 |
| 8 years | | 71,909 | 74,743 | 77,739 |

The Union's final offer for this arbitration is as follows:

| Yrs of Serv | Current (2008-09) | 2009-10 | 2010-11 | 2011-12 |
|-------------|----------------------|----------|----------|----------|
| Starting | \$49,778 | \$49,778 | \$49,778 | \$49,778 |
| 1 year | 53,273 | 53,516 | 53,765 | 54,020 |
| 2 years | 56,768 | 57,254 | 57,752 | 58,263 |
| 3 years | 60,263 | 60,992 | 61,739 | 62,505 |
| 4 years | 63,768 | 64,730 | 65,726 | 66,747 |
| 5 years | 67,253 | 68,468 | 69,713 | 70,990 |
| 6 years | 70,748 | 72,206 | 73,700 | 75,232 |
| 7 years | 74,243 | 75,944 | 77,687 | 79,474 |
| 8 years | 77,739 | 81,675 | 81,675 | 83,716 |

The starting salary remains the same for the three years of the Agreement. The difference between steps is \$3,738 in the first year, \$3,987 in the second year, and \$4,242 in the third year. The percentage increases vary at each step.

The analysis of the differences between the step increases is as follows:

| Years of Serv | First Year | Second Year | Third Year |
|---------------|---------------|---------------|----------------|
| Start | 0%/ \$00 | 0%/ \$00 | 0%/ \$00 |
| 1 year | .46%/ \$243 | .47%/ \$249 | .47%/ \$255 |
| 2 year | .86%/ \$486 | .87%/ \$498 | .88%/ \$510 |
| 3 year | 1.21%/ \$729 | 1.22%/ \$747 | 1.24%/ \$766 |
| 4 year | 1.52%/ \$972 | 1.54%/ \$996 | 1.55%/ \$1021 |
| 5 year | 1.81%/ \$1215 | 1.82%/ \$1245 | 1.83%/ \$1276 |
| 6 year | 2.06%/ \$1458 | 2.07%/ \$1494 | 2.08%/ \$1531 |
| 7 year | 2.29%/ \$1701 | 2.30%/ \$1743 | 2.30%/ \$1787 |
| 8 year | 2.50%/ \$1943 | 2.50%/ \$1992 | 2.50%/ \$ 2042 |

The Village's final offer for this arbitration is as follows:

1. **Contract Year One** : No increase in the base (starting) wage. No movement for police officers on the step plan. On the officer's employment anniversary date the officer will receive a 3.5% wage increase.
2. **Contract Year Two**: No increase in the base wage. No movement on the step plan.
3. **Contract Year Three**: Wage re-opener.

The cost of the Village's proposal will be spread over the first two years of the Agreement because employees' birthdays straddle the contract year. In all other respects employees would get no wage increase during the twelve months from May 1, 2010 through April 30, 2011. The proposal for the third year is for a re-opener. The actual language reads as follows:

3. Contract Year Three (May 1, 2011 through April 30, 2012): During contract year number 3, the Village proposes a "wage re-opener" whereby the Village and the Metropolitan Alliance of Police agree to re-open collective bargaining for wages only.

According to the Village, negotiations for wages would begin upon the Union's request and the Union would retain its statutory right to interest arbitration. In its Brief the Village also suggests that a demand to bargain the third year wages would have to be made no later than February 1, 2011. Nothing in the offer itself contains that provision.

III. ANALYSIS OF EVIDENCE ON RELEVANT STATUTORY FACTORS

The Act identifies eight areas of facts and circumstances to be used in determining an appropriate award for each issue.

A. Interests and Welfare of the Public and Ability to Pay

In most public employment venues the bargaining unit represents a measurable but relatively small part of the employer's budget. It is therefore difficult for an employer to argue an "inability to pay." An employer can usually find the money to pay the bargaining agent's demands all be it at the cost of other important employer programs.

The Act provides that the "ability to pay" must be considered in the context of the "interests and welfare of the public." "Ability to pay" is not merely an arithmetic measurement. The "interests and welfare of the public"

is usually a political determination to be made by the elected authorities. No arbitrator should be in the position of making political decisions. This arbitrator interprets *ability to pay in light of the interests and welfare of the public* to mean that an arbitrator must consider the appropriateness of the economic proposals in the context of whether they materially impair the municipality's ability to provide the level of services to the public that the elected officials have had in place for a meaningful period of time. Viewed in this light the arbitrator does not determine the interests and welfare of the public but only whether the proposals at issue substantially interfere with the municipality's ability to provide its politically determined public services.

However, an employer's claim that granting an economic proposal will materially affect its ability to provide programs in place does not gain validity simply because the employer says so. Stated another way, it is not for an arbitrator to decide the level of public service the employer should provide for its electorate. It is appropriate for the arbitrator to determine whether the demands at issue will materially impact the employer's ability to maintain that level of service. Again, this must be proven by the employer. Its mere statement that if a certain proposal is selected by the arbitrator it will cause the employer to reduce its staff of police officers, etc., is not probative unless the employer demonstrates that it has no other reasonable options.

In the case before the arbitrator, the Village argues that the Union's

wage-related proposals are not in the "interests and welfare of the public."³ It thus argues that if the Union's proposal is selected by the arbitrator the Village will be required to reduce the number of police officers it currently employs. It relies upon facts that clearly show that the Village has lost a considerable portion of its sales, income, telecommunications and use tax because of the present distressed economy. The Village represents without disagreement from the Union that it has had to reduce its general fund expenditures as well as capital outlay expenses (such as for squad cars and other public safety equipment). The Village concludes that if the Union's final offer is accepted it would have to lay off Police Officers. The Village represents that it has frozen the salaries of unrepresented employees and seriously limited wage increases to the other two bargaining units.⁴

B. Bargaining History

There is little evidence of bargaining history. The parties have had a number of Agreements over the years which were arrived at amicably. The Village suggests this has been true with the other bargaining units in the Village and that these other units have settled and given up traditional wage increases should be considered part of the bargaining history.

³ It acknowledges that as a general proposition it does have the ability to pay either of the proposals before the arbitrator.

⁴ The Village does not have a Fire Department. Its fire protection comes from independent fire protection units.

The main feature of the parties' bargaining history in this case is that it has included a two-pronged salary structure. Employees get a cost-of-living increase on the anniversary of the contract and a step increase (through the eighth step) on the anniversary date of their employment. The Village's destruction of this system is a critical feature in this case.

C. Comparability

The parties sharply disagree as to the appropriate comparable communities. The Union offers two lists. The first is a list of 12 "traditional" or historical, bargaining units in the greater metropolitan (collar county) area that the parties have used in the past. According to the Union, the parties referred to during the negotiations leading up to this impasse. The Union does not push this list, referring to it primarily for historical purposes.⁵

The Union also refers to a second, smaller, list of 7 municipalities that, it argues, are statistically similar to Lake in the Hills. They are:

| | | |
|-------------------|------------|--------------------|
| Bartlett | 39,377 pop | 52 full time sworn |
| Hanover Park | 38,278 | 54 |
| Lake in the Hills | 29,500 | 45 |
| Batavia | 24,978 | 45 |
| Roselle | 23,115 | 37 |
| Cary | 18,713 | 27 |
| Huntley | 16,719 | 30 |
| Prospect Heights | 16,244 | 26 ⁶ |

⁵ In any event, it is not clear that the parties even agree as to make up of the historical list. The Village cites some communities not listed in the Union's exhibits on the subject.

⁶ Despite their size, Prospect Heights has the 2nd highest per capita EAV and Huntley has the 2nd highest per capita sales tax revenue. Huntley also is 4th total EAV.

From the Union's list the Village rejects Bartlett, Hanover Park, and Prospect Heights from consideration. Bartlett and Hanover Park are on the Cook County/ DuPage County line. Prospect Heights is in DuPage County. It does not reject Batavia which is further away from the Village than the three Union communities it does reject. It also accepts Roselle even though that community is very close to Hanover Park.

The Village has its own list of comparables that include some communities from both of the Union's lists and some that are newly added. The Union strongly objects to the Village's list because the data about the characteristics of these communities was obtained colloquially and not from publicly available sources. As examples, the Union cites examples where the Village's numbers are wrong. The Village's list, including Department size and population are as follows:

| | Population | Dept size |
|--------------------------|---------------|-----------|
| Algonquin | 30,500 | 59 |
| Batavia | 27,502 | 58 |
| Cary | 15,531 | 33 |
| Geneva | 21,901 | 57 |
| Huntley | 23,229 | 40 |
| Lake Zurich | 20,300 | 51 |
| Marengo | 7,698 | 22 |
| McHenry City | 27,500 | 65 |
| Mundelein | 32,000 | 71 |
| Roselle | 23,115 | 52 |
| Woodstock | 24,900 | 56 |
| Lake in the Hills | 29,500 | 59 |

The Village numbers for department size are misleading because they include non-sworn personnel. There can be no comparison between civilian employees of a police unit and the sworn personnel. There is also a problem because Geneva is non-union and cannot be compared to organized personnel. Indeed, it is settled arbitration law that non-union units cannot be considered unless there are insufficient organized units in an appropriate comparability group. Additionally, Marengo with a population 7,698, about one-quarter the size of the Village is, on its face, not comparable.⁷

The Village list includes Batavia, Cary, Huntley and Roselle, all of which are on the Union's list. The Village also proposes some communities from the "historic list" and suggests, incorrectly, that the Union is accepting these communities as well. But the Village's choices from that old list are an example of cherry picking. It discards the communities whose statistics are less favorable to the Village's position. It is inaccurate to say that the Union agrees to the inclusion of those communities when taken out of the context of the entire list on which they originally appeared.

The arbitrator finds that the appropriate list is the Union's list of seven plus Algonquin, McHenry City, Mundelein and Woodstock. This is a group with four communities a little larger than Lake in the Hills and seven a little smaller than the Village. The salaries shown are the top salaries on the schedule.

⁷ The Village dropped Harvard from the list it used at the hearing. Harvard has a population of 8,968, according to the Village.

| | <u>Population</u> | <u>F.T.Sworn</u> | <u>2009</u> | <u>2010</u> |
|--------------------------|-------------------|------------------|----------------|-------------|
| Bartlett | 39,377 | 52 | \$73,816(2008) | |
| Hanover Park | 38,278 | 54 | 76,908 | 79,023 |
| Mundelein | 32,000 | ? | 78,152 | |
| Algonquin | 30,500 | ? | 80,062 | 82,464 |
| Lake in the Hills | 29,195 | 45 | | |
| McHenry | 27,500 | ? | 75,722 (2008) | |
| Batavia | 24,978 | 45 | 78,753 | 82,297 |
| Woodstock | 24,900 | ? | 77,981 (2008) | |
| Roselle | 23,115 | 37 | 79,445 | 82,027 |
| Cary | 18,713 | 27 | 73,923 | |
| Huntley | 16,719 | 30 | 67,660 | 71,119 |
| Prospect Heights | 16,244 | 26 | 74,744 (2008) | |

D. Other Factors

The "cost of living" as measured by the Federal Bureau of Labor Statistics was stagnant in 2009 after modest increases since 2007. In 2010 the CPI-U (Consumer Price Index- All Urban Consumers) has increased very little. On the other hand, there has been some movement in 2010 and it is unlikely that there will be no movement in 2011. The Village proposes a cost-of-living increase in 2009, but nothing in 2010 or 2011.

The assessment of the total cost of the economic package and any increases being proposed (Section 14(h)(6))is no more than a recapitulation of considerations of finances, bargaining history and comparability in this case because no other substantive sections of the Agreement are at issue.

There have been no meaningful changes in the economic environment since the parties reached impasse. (Section 14 (h)(7).) The economy continues to be weak and the Village has considerably less resources than it had one year ago.

IV. DISCUSSION OF THE ISSUES

Among the settled principles in interest arbitration is that the systems or methodology the parties have negotiated and established for the operation of the terms and conditions of employment cannot be changed against the objections of the other party unless very good cause has been shown.⁸ In this case, the Village's proposal disrupts the way wages have been structured. It proposes a 3-1/2% increase on all wages. Its fixed percentage for all employees operates as if it were a cost-of-living increase, but in fact it is applied in the way the step increases are. This confusion of the two different wage programs works arbitrarily to the detriment of some employees. Thus, the term of the Agreement would go into effect on May 1, 2009, but employees would not get the increase until the anniversary of their employment. That is okay for Officer Story whose date of hire was May 13, 1994. If this were a cost-of-living increase as the parties have traditionally provided for, he would receive the 3-1/2% on the anniversary date of the Agreement. Now he will be receiving the cost-of-living increase 13 days late. However, Officer Wright has a seniority date of April 13, 1992. Under the Village's proposal Officer Wright will have to wait eleven months longer than Officer Story to receive his cost-of-living increase. Inasmuch as this is the only increase the Village provides in

⁸ The processes to be used in altering the operational elements of a labor contract can be said to be included in Section 14(h)(8) of the Act. This has been settled since 1988. Will County Board/Sheriff of Will County and AFSCME Council 31, S-MA-88-09 (Nathan, 1988).

its proposal for these two officers, both of long service and without step movements, the Village has created an unfair disparity. The two officers are being treated differently regarding an across-the-board increase for no objective reason other than their dates of hire.

Bargaining for the next Agreement could be chaotic as the Union will surely seek make-up amounts prorated for the time lost by each officer since his/her last cost-of-living increase. The only way that would not happen is if the Union abandoned the step system it had previously bargained and accepted the employee anniversary date as the new date for cost-of-living wages.

In the interests of saving money in these unarguably bad times the Village's proposal would sack many years of bargaining history. There is no justification for this. The Village could have preserved the system by proposing a smaller cost-of-living increase on May 1, 2009. This would certainly have been supported by the economic realities. Indeed, the Union in its proposal suggests a freeze on cost-of-living increases for the entire three years of the Agreement.

In making the proposal at issue here, the Village has caused net differences in the amount of money earned by the majority of officers who no longer are entitled to step increases, and destroyed the old step system for employees who anticipated these increases (other than as putative cost-of-living increases). The Village could have proposed a less draconian method for

saving money without destroying the Agreement's wage symmetry.

The Village has used the rationale of decreasing revenues to not just freeze wages but to deconstruct the system the parties negotiated and have enjoyed for some time. It is as if the Village is trying to undo a wage scale that had been negotiated in past years. It is one thing to freeze wages during a period of reduced revenues. It is something else to unravel many years of collective bargaining. The Village does not even offer a justification for this strategy. It says that revenues are down but it clearly admits that inability to pay is not a justification for its proposal. It states that it will have to lay off officers unless its proposal is accepted. But it provides no guarantees or even guidelines for such layoffs. Indeed, given the structure of the Village's proposal, how can the Union be assured that the layoffs will not occur anyway?

The Union's proposal is far from ideal. It calls its proposal "step increases." But in classic step systems the employees at the end of the system, those not entitled to any more steps, must rely on cost-of-living increases for their wages to increase. In the Union's proposal the steps increase each year as they have in the past. Some of these step increases are substantial and each year the percentage increase a little more at the same step than it was in the previous year.⁹ The bottom line is that the value of the steps for the majority of officers, those at the eighth step, will increase 2.5% each year from

⁹ See p.6, above.

what it used to be. Their salaries will go from \$77,739 to \$79,682 in the first year; to \$81,675 in the second year; to \$83,716 in the third year.

Among the comparables, most received cost-of-living increases for 2009. They ranged from 2% to 8+% in 2009. Although fewer contracts were settled in 2010 for comparison purposes the data available shows increases from 3% to 5+% in 2010, . What is significant, however, is that it appears that all of the comparables have step plans. Thus, the cost-of-living increases will trickle through the respective step systems. At \$79,682, in 2009, the Village is among the highest paying municipalities. The same is true for 2010, although there is much less data to rely upon. From the available information available, only Algonquin and Roselle pay above Lake in the Hills. Batavia and Mundelein are close behind . Woodstock paid more than the Village in 2008. No new numbers were provided for Woodstock.

This is a case where the arbitrator must choose from the lesser of two bad proposals. Because the Union's proposal maintains some similarity to the Village's place among the accepted comparables, because it freezes starting salaries for 3 years, because the Village's data on its comparables is unclear, if not wrong, because there was no evidence that wage proposal selected will materially interfere with the needs and interests of the public, and because the the Village's proposal will damage the historic symmetry of the parties' wage schedule, the finding is that the Union's proposal is the more appropriate.

AWARD

The Union's proposal is accepted as the closest to meeting the criteria contained in Section 14(h) of the Act.

Respectfully submitted,

Harvey A. Nathan
Harvey A. Nathan

October 8, 2010