BEFORE THE ARBITRATOR

IN THE MATTER OF THE CITY OF NEWTON

AND

Case 447/1
Police

RECEIVED
2013 JUN -5 AM 8:41
PUBLIC EMPLOYMENT
RELATIONS BOARD

PUBLIC PROFESSIONAL AND MAINTENANCE
EMPLOYEES, LOCAL 2003

Appearances: For the City — Michael M. Galloway, Esq.
Ahlers & Cooney

For the Union — Mark Mann
Field Representative

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Iowa Public Relations Board. A hearing was held on May 6, 2013 in Newton, IA. At the hearing, the Parties agreed to waive the fifteen day timeline for the Arbitrator's Award and extend it to June 30, 2013. The parties were then given the full opportunity to present evidence and testimony. The Parties chose not to file briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, and the exhibits in reaching his decision.

BACKGROUND

The City of Newton is located in Jasper County. It is the County Seat. It has a population of slightly over 15,000. The City has Collective Bargaining Agreements with three different bargaining units. The Union here represents the Police Officers, Clerk, Parking Enforcement Attendant and Identification Technician employed by the City. There are 21 employees in the Bargaining Unit. The other two Units are Public Works and Firefighters. Both of those units have settled their contracts for July 1, 2013 to June 30, 2014. This Unit also reached a tentative agreement with the City for that term, but the proposed agreement was rejected by the membership. The Union then requested arbitration over the outstanding issues. This is only the third time since 1977 the Parties have had to proceed to arbitration. They were able to resolve the matter themselves without utilizing mediation on several occasions and on others they resolved the issues at or just after mediation concluded.

FINAL OFFERS OF THE EMPLOYER ACCEPTED BY UNION AT THE HEARING

The parties reached agreement on most of the terms to be included in this successor agreement. All of those tentative agreements are incorporated into this Award. While the Union in its final offer only addressed a wage increase, it did during the hearing agree to several of the proposals of the Employer. It agreed to the following contract changes:

> Article 19 Uniform and Clothing Allowance
> Section 3 Each employee shall receive replacement for those items of clothing and equipment carried on the officer' duty belt, including belts, that have been destroyed through the performance of duty."
>
> Appendix A
> The shift differential shall be $150 per month
> Acting Supervisor pay shall be $1.50 per hour

The proposal regarding the clothing allowance added the replacement of equipment. Previously only clothing was to be replaced. The shift differential was increased by $25 per month and the Acting Supervisor pay was increased by $.25 per hour. As those items were agreed to by the Union they are adopted as part of the Agreement. Both Parties also agreed that the Agreement shall expire June 30, 2014. That date is also adopted as part of the final Agreement.

STATUTORY CRITERIA

Chapter 20 of the Public Employment Relations Act set forth several factors an arbitrator must consider in deciding an interest arbitration matter. They are:

a. Past Collective Bargaining Contracts between the Parties
b. Comparison of wages, hours and working conditions of employment of the involved public employees with those other public employees doing comparable work giving consideration to factors peculiar to the area and classification involved.
c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

As is often true in interest arbitration not all factors are relevant in every proceeding. The Employer has not argued it does not have the ability to pay for the Union's proposal. The cost of the two proposals is not significantly different. The issue of levying taxes to pay for either proposal is, therefore, also not in issue. The relevant factors are the comparables and the past history of bargaining between these parties as well as "any other relevant factors." In this case there is another relevant factor.

The City's final offer is identical to the terms that were rejected by the Union Membership. It argues the Arbitrator should adopt the tentative agreement as the

Agreement of the Parties on each of the issues. It cited several prior awards to support its argument. Arbitrator Hoh in City of Glenwood discussed the rationale for such a rule. Quoting Arbitrator Gilroy, he noted:

> A third party neutral should not take lightly that which presumably competent representative of the Union membership and the Employer judged to be a fair settlement honestly arrived at through the give and take of the negotiation process. While the right of subsequent rejection by elected officials or union membership may be inherent in the negotiating process, a good faith agreement arrived at by negotiators, albeit tentative in this case, must be given strong consideration.

Arbitrator Hoh then concluded absent fraud or misrepresentation, he should adopt the tentative agreement unless "the rejecting party (makes) a strong showing of cause under the statutory criteria as to why the elements of the tentative agreement should not be deemed as the 'most reasonable final offers' under the Statute." Arbitrator Baker in Marshalltown Community School District also agreed that great weight should be given to a tentative agreement of the parties. He noted the Statute lists certain factors an arbitrator must consider in interest arbitration, but also pointed out the wording of the introductory sentence of the Section authorizes the arbitrator to consider "any other relevant factors" in reaching a decision. Arbitrator Baker concluded a tentative agreement of the parties fell within this provision of the Act.

There is no evidence in this case the City engaged in fraud or made a misrepresentation to the Union Bargaining Committee during negotiations. The Parties engaged in good faith bargaining and walked away from the table with an agreement subject only to ratification by each side. The Union members had a right to reject the agreement. Arbitrator Baker noted the existence of the right by either side to reject the Agreement. He added: "No party should be rewarded or

punished for adhering to their responsibility to vote for or against the tentative agreement." He held, however, like Arbitrator Hoh that the TA should be given strong weight by the Arbitrator in deciding the issues before him.

This Arbitrator agrees with these cited decisions. The tentative agreement is most certainly a factor that must be considered by this Arbitrator. It is a very strong factor given the absence of fraud or a misrepresentation. In any interest arbitration, the job of the interest arbitrator is to attempt to issue an award that best reflects what the parties themselves would have done during the negotiation process. That job becomes easier when the parties during the course of bargaining reached agreement at the bargaining table. That does not mean this Arbitrator must adopt all those agreed upon terms, but strong evidence is needed in order for him to disregard all or part of what the parties themselves agreed should be the contract terms.

The Arbitrator will now turn to the specific provisions that remain open. In doing so, the Arbitrator must initially address the parties' comparability group. Each side has presented a list of comparables to the Arbitrator and argued that its list should be used. That is where the discussion will begin.

The Union proposes the following localities as the comparable group:

City	Population
Urbandale	40,311
Boone	12,635
Indianola	14,932
Ankeny	46,302
Marshalltown	27,775
Ottumwa	24,881
Newton	15,130

This list was adopted with the exception of Ottumwa by Arbitrator Cramer in 1993 and subsequently adopted by Arbitrator Fokkena in an1999 arbitration. Both of those cases involved this bargaining unit.

The Employer offers as comparables two options:

City	Population
Burlington	25,663
Fort Dodge	25,206
Ottumwa	25,023
Muscatine	22,886
Coralville	18,907
Johnston	17,278
Clive	15,447
Indianola	14,782
Altoona	14,541
Waukee	13,790
North Liberty	13,374
Boone	12,661
Oskaloosa	11,463
Fort Madison	11,051

The Employer in choosing this list took 7 localities that were larger than Newton and 7 that were smaller. The City's second group excludes localities in suburban Des Moines. Coralville, Johnston, Altoona, Waukee and North Liberty would be excluded from this second group.

The three localities that are common to both of the Employer lists and the Union list are Ottumwa, Boone and Indianola. Those three will be included. The City points out that the population of the localities in the Union's group has changed since the 1999 decision. Looking at the population of some of the Cities there have been changes in the size of the Cities that were used as comparables. Ankeny is now three times as large as Newton. Urbandale is almost three times the size of Newton. Arbitrator Cramer in 1993 noted that the average population for these comparables at that time was 17,871. The average today for these same

cities is over 27,000. Because of these changes, other than the three noted and one other the remaining Cities no longer qualify as comparables. Marshalltown is larger than Newton, but in close proximity to Newton. The Arbitrator will include Marshalltown in the list. The Arbitrator agrees with the concept used by the Employer in choosing both larger and smaller municipalities on its list. The group that excludes the suburban localities is more appropriate. Those living in suburban Des Moines are more likely to work in the Des Moines area and may not have as much in common as those in the other jurisdictions that make up the list of comparables.[1] The Arbitrator will accept the smaller list as the comparable group plus the City of Marshalltown.

Wages

. The Union's only item in its final proposal was a request for a 2.5% wage increase effective July 1, 2013. The Employer proposed a 2.0% wage increase effective July 1, 2013. The Arbitrator will first look to the external comparables and then the internal comparables.

The following are the top wages for the external comparables in 2014 and the number of steps it takes to reach the top. In some of the Cities, the employees received two increases. They received an increase on July 1, 2013 and another on January 1, 2014. The Arbitrator is going to utilize the wage in effect on June 30, 2014 as that is when this contract ends. It will better represent where these employees will be vis-à-vis the comparables at the expiration of this Agreement. Only the Police Officer Rate is being used for comparison as they comprise the vast majority of those in the bargaining unit. The Arbitrator in doing the

[1] The list from Arbitrator Cramer also included West Des Moines. That was not included on the Union's proposed list. Presumably, that was done for the same reason this Arbitrator is not utilizing suburban Cities on the list. Their interests are not the same.

calculations had to convert some of the rates as the City utilized an hourly rate and the Union used an annual rate. A 2080 hour year was used for the conversion.

Clinton	30.94	9 steps over 26 years
Boone	27.05	4 steps over 2 years
Indianola	27.33	8 steps over 10 years
Burlington	26.57	5 steps over 10 years
Muscatine	26.28	6 steps over 8 years
Ottumwa	25.38	7 steps over 15 years
Oskaloosa	23.05	5 steps (#of years not clear)
Fort Dodge	26.67	6 steps (#of years not clear)
Fort Madison	21.97	4 steps over 2 years
Marshalltown	26.00	11 steps over 13 years
Average	26.15	5.6 steps over 10.5 years
Newton (2%)	26.90	5 steps over 5 years
Newton (2.5%)	27.03	

As can be seen the police officers in this bargaining unit are above the average regardless of which offer is adopted. [2] Furthermore, the number of steps and the number of years it takes to get to the top step is shorter than the average. [3] Consequently, the external comparables do not demonstrate a need for the officers in this unit to obtain the additional .5% they seek.[4]

Internal Comparables

The other two bargaining units accepted the same wage increase proposed by the City for this Unit. The City maintains that there has always been pattern bargaining between the three bargaining units. Bargaining history is a factor that

[2] The Arbitrator would have liked to have seen the percentage increases in 2013 for these jurisdictions. It would have shown where these employees would rank both before and after the increases proposed by the parties here. Are they gaining or losing ground to the average when one party's proposal is accepted over the other?

[3] From the limited data on the Union exhibits it does appear as though the 2% raise is in keeping with those in the comparable group, but it only lists a few of the comparable jurisdictions on the exhibit.

[4] The Union has argued that the command staff has not been held to the same standard. It contends they received more than 2.5%. It introduced a chart to make its point. At the hearing, it was pointed out that the figures on the chart not only included percentage increases, but also built in step increases. This unit also gets step increases and they have not been factored into the costs. The Union is comparing apples with oranges.

must be considered by the Arbitrator. Pattern bargaining is directly related to bargaining history. Arbitrator Graham emphasized its importance in Blackhawk County Sherriff's Department. He noted:

> The concept of pattern bargaining is well established in both the private and public sectors. The Employer and one Union negotiate. The resulting agreement serves as the pattern or benchmark... In this manner, both parties are protected from the phenomenon known as whipsawing. The existence of the (Agreement) places a very, very heavy burden upon a union which seeks to deviate from it.

Therefore, if the City is correct and there has been pattern bargaining this would be another factor favoring the City's proposal.

This Union and both of the other units all received a 3.25% increase in 2007. In 2008, the Public Works Unit received 3.1% while the fire and police got 3.25%. In 2009, 2010, 2011 and 2012 the percent increase was the same for all three units. Thus, with only one exception, the percent increase has been identical for all the units. In the one year it was not, the fire got the same as the police. Often police and fire are grouped together for comparison as they are both part of the protective services and uniquely provide those services 24 hours a day, seven days a week. From these facts, the Arbitrator does find a pattern has been formed over the last 7 years at least. Internal Comparables then also favor the City proposal.

Summary

It is difficult to compare a police bargaining unit with units that do not provide the type of services police or fire provide for the reason noted above. When viewing wages, this Arbitrator, as well as many other arbitrators usually, therefore, have looked more to police departments in other jurisdictions for comparison rather than the wage increases given to other units in the City. That

is true unless the parties themselves have developed a pattern like the one established here. However, even if the Arbitrator did not find a pattern had been established and looked outside this jurisdiction to find the proper wage he would have reached the same conclusion. The wage proposal of the City is favored. When this is coupled with the fact that the parties had reached a tentative agreement the City proposal gains even further traction. The strong presumption in favor of that tentative agreement simply has not been overcome. The Arbitrator adopts the City wage proposal.

Health Insurance

Article 18 addresses insurance. The Employer has provided several options for employees as to choice of plans. The current agreement has several PPO options. It has a low, medium and high PPO plan available. It pays 90% of the cost of premium for the low plan, 95% for the medium. It pays 100% of the premium for any other plan. This includes the high PPO and an HMO. The Employer has proposed eliminating the low PPO. It will pay the full premium for employee only coverage under the medium, high and HMO plans. The employee would pay 5% of the premium for dependent coverage under the medium plan. The employee would pay none of the premium for dependent coverage under the high PPO or the HMO. Thus, the only real change is the elimination of the low PPO. This proposal was accepted by both of the other Bargaining Units. The Union had stated during the hearing that if its wage proposal were adopted it would agree to this change. Since it has not been adopted, the Arbitrator must address it.

The Union indicated during the hearing that one item that was a particular sticking point during ratification was the changes in health insurance. Specifically, the members expressed a concern about how the City went about

making this proposal. They felt the City in doing so had failed to comply with a provision in the current Agreement. Article 18, Section 4 states in part:

> It is the intent of the Employer to maintain the same insurance carrier throughout the term of the contract, unless the cost of such insurance shall increase to such an extent that the Employer or the Union feels the need for change is probable. In that event, joint studies will be made and any change shall be a joint decision between the Union and the Employer. However, this shall not be interpreted to limit the recommendations of the insurance committee referred to in Section 6.

Section 6 is a City-wide committee in existence "during the term of this Agreement." The Committee's task was to evaluate types of insurance coverage. The membership felt that the City by-passed the Union before making its proposal, and thereby violated Section 4.

There are several reasons why their concerns are misplaced and why these Sections do not apply here. First, the Sections only apply when changes are made mid-term. If the City wanted to make a change before June 30, it could be argued that Section 6, not 4 might apply. The City did not do that. Its proposal would not take effect until after the expiration of the Agreement. Either party is free to make a proposal changing any term of the then expiring contract when it negotiates a successor agreement. That is what the City is did. The requirement to meet does not extend beyond the term of the Agreement in which the requirement is included. Furthermore, Section 4 only applies to a change in carriers, not a change in plan types. The Employer is not proposing a change in carrier. That is what the first sentence of the paragraph says. Thus, the Section that was of concern to the membership is inapplicable to negotiations of a new agreement or the proposed change sought here.

The Arbitrator finds that the City proposal should be adopted. It confirms to the changes made in the other bargaining units. Arbitrators have often held that where benefits such as insurance are involved internal comparables carry the most weight. Here, the change in reality is not a significant one. The percentage paid by employees did not increase. It was only the plan that required the most payment that was eliminated. The Employer insurance proposal is adopted.

Leave of Absence

Article 9 is entitled "Sick Leave." The Employer proposes amending, Section 1 by deleting the following sentence:

> Sick Leave will not be allowed if an employee is injured while gainfully employed on non-city work.

The Union wants the current contract language which would include the above sentence. The Arbitrator finds no reason not to adopt the Employer proposal. It is a benefit to the employee. They can use sick leave for a reason they could not previously use it. The above sentence shall be eliminated from the Agreement.

Shifts

The City proposed modifying Section 3 of this Article. The Article contains the hours for the various shifts. The City contends the proposed schedule more accurately reflects the current schedules. The Union did not refute this contention. Its proposal is the following:

1st Shift	0715;1715
2nd Shift	1700-0300
Power Shift	1130-2130
3rd Shift	2130-0730
Clerks	0730-1530

> The Chief reserves the right to adjust the start time and shift schedule of the clerks to ensure coverage for the front office.

This last sentence is new. It is unclear why this last sentence needed to be added. The Arbitrator would be hesitant to adopt that sentence if that were the only change to the Section. If he rejected the proposal, the hours in the Agreement would not be correct and could cause problems in the future. To avoid that situation, the Arbitrator must accept the Employer proposal notwithstanding the Arbitrator's misgivings regarding this added sentence. Therefore, the Employer proposal is adopted.

Hours of Work

The City wants to replace a sentence in Section 4 of Article 14. Section 4 addresses the work schedule of those in the investigative unit. The current Contract states: "The work schedule shall consist of six (6) workdays followed by two days off; four days off followed by two days off." It wants the sentence to now read: "The work schedule shall consist of Monday through Friday; five days on and two days off."

The Union opposes the change. In the preceding discussion, the City stated and the Union did not disagree that the new schedule accurately reflected the current schedule. The changes in the schedule proposed there did not deviate substantially from the schedule that is in the current agreement. A few alternate schedules were deleted, but it appeared those alternate schedules were not being utilized. The change here is a substantial change. It significantly modifies the work week for those in the investigative unit. They are going from a four day schedule to a five day schedule. The record is not clear whether this new investigative schedule reflects the schedule currently in effect. The burden falls on the party prosing to change the status quo to prove the need for the change. The Arbitrator is not satisfied this burden has been met. Notwithstanding that

this proposal was part of the rejected TA, the change appears to be too significant to simply accept based on the evidence adduced at the hearing. Accordingly, this proposal is rejected. The current contract language shall remain. If the Parties want to later change it, they certainly can do so, but it will not be done in this proceeding.

Family and Medical Leave

The Current Agreement in Article 28 lists the benefits to which an employee is entitled under the FMLA. It lists them in nine separate paragraphs. The Employer proposes deleting seven of those paragraphs and replacing them with a sentence that reads; "The City shall comply with the Family and Medical Leave Act of 1993." The two paragraphs it proposes retaining are:

> 3. In all cases, applicable paid leave shall be substituted for unpaid leave except that employees may retain forty (40) hours of vacation and/or forty (40) hours of sick leave, whichever is applicable.
>
> 4. For purposes of the Family and Medical Leave Act, a year shall be defined as a rolling twelve (12) month period of time measured backward from the first day of the leave.

The change proposed is not substantive. The current Article simply sets forth the benefits under the FMLA. The Arbitrator can see no reason not to adopt this proposal. Should any amendments to the Act be passed, the proposed language would automatically incorporate those changes. Listing them separately may not. While the City would certainly have to comply with the law, as amended, it is far cleaner to simply state that whatever the law provides will be provided to employees. This proposal is then adopted by the Arbitrator.

Longevity

Currently, the top level is reached after 24 years of service. At that level, an employee earns an additional $105 per month. The City proposes adding three additional steps. At 26 years, an employee would receive an extra $115 per month. When the employee has 28 years of service, the employee would receive an additional $125 per month and at 30 years would receive $135 extra per month. The Union preferred receiving an additional .5% wage increase instead of this change. As the Arbitrator has not adopted the Union proposal on wages, he will accept the Employer longevity proposal. While there are no bargaining unit members who will benefit from this change during the term of the new contract, it will be a benefit to any member who remains with the Employer 26 years or more. As it is a potential benefit to bargaining unit members, it will be adopted.

AWARD

1. The Arbitrator adopts all of the Employer proposals on the outstanding issues, except for the proposed change to Article 14, Section 4.
2. Article 14, Section 4 shall be unchanged from the current contract language.
3. All tentative agreements shall be made part of and become the 2013-2014 Collective Bargaining Agreement together with the issues resolved here.

Dated: June 3, 2013

Fredric R. Dichter,
Arbitrator

RECEIVED
2013 JUN -5 AM 8:41
PUBLIC EMPLOYMENT
RELATIONS BOARD

CERTIFICATE OF SERVICE

I certify that on the 3rd day of June, 2013, I served the foregoing Award of Arbitrator upon each of the parties to this matter by (_____personally delivering) (X mailing) a copy to them at their respective addresses as shown below:

Mark Galloway
Ahlers & Cooney
100 Court Ave, #600
Des Moines, IA 50309

Mark Mann
5738 NW 2nd Street
Des Moines, IA 50313

I further certify that on the 3rd day of June, 2013 I will submit this Award for filing by (_____personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319.

Fredric R. Dichter, Arbitrator

(Print Name)