

INTEREST ARBITRATION

Steven M. Bierig, Attorney-Arbitrator-Mediator
Susan M. Matta, Allison, Slutsky & Kennedy, P.C.

BASIC INTEREST ARBITRATION CONCEPTS:

- ▶ **INTEREST ARBITRATION IS AN EXTREMELY CONSERVATIVE PROCESS**
- ▶ **IT IS THE FORUM OF LAST RESORT!!**
- ▶ **THE ARBITRATOR DOES NOT STAND IN THE SHOES OF THE PARTIES WHEN IT COMES TO NEGOTIATING CONTRACTS; THE ARBITRATOR SHOULD ONLY DECIDES ISSUES THAT ABSOLUTELY NEED TO BE ADDRESSED**
- ▶ **SECTION 14 OF THE ILLINOIS LABOR RELATIONS ACT IS THE GUIDING LIGHT FOR INTEREST ARBITRATIONS – BUT THE FACTORS ARE NOT PRIORITIZED- THE ARBITRATOR MAY SELECT WHICH FACTORS ARE MOST RELEVANT**

BASIC INTEREST ARBITRATION CONCEPTS

- ▶ **ISSUES ARE DIVIDED INTO ECONOMIC AND NON-ECONOMIC ISSUES**
- ▶ **ECONOMIC ISSUES: GENERALLY LIKE BASEBALL ARBITRATION – ARBITRATOR CAN ONLY SELECT ONE OR THE OTHER PROPOSALS – NO ABILITY TO PROVIDE “COMPROMISE”**
- ▶ **NON-ECONOMIC ISSUES: ARBITRATOR IS FREE TO SELECT EITHER OFFER OR TO CRAFT THEIR OWN RULING**

BREAKTHROUGHS

- ▶ The breakthrough analysis is used to determine whether major changes should be accepted:
 - 1) **THE OLD SYSTEM OR PROCEDURE HAS NOT WORKED AS ANTICIPATED WHEN ORIGINALLY AGREED TO; *OR***
 - 2) **THE EXISTING SYSTEM OR PROCEDURE HAS CREATED OPERATIONAL HARDSHIPS FOR THE EMPLOYER OR EQUITABLE OR DUE PROCESS PROBLEMS FOR THE UNION; *AND***
 - 3) **THE PARTY SEEKING TO MAINTAIN THE *STATUS QUO* HAS RESISTED ATTEMPTS TO BARGAIN OVER THE CHANGE (I.E., REFUSED A QUID PRO QUO).**

CITY OF BURBANK, CASE NO. S-MA-97-056 (GOLDSTEIN, 1998).

THE ISSUES

▶ PURE ECONOMIC ISSUES

▶ GOOD EXAMPLE IS WAGES

▶ ARBITRATOR REVIEWS FACTORS IN SECTION 14 TO DETERMINE WHICH PROPOSAL THEY WILL ACCEPT

▶ MOST RELEVANT FACTORS INCLUDE:

- EXTERNAL COMPARABLES
- INTERNAL COMPARABLES
- CONSUMER PRICE INDEX

▶ FOR ECONOMIC ISSUES, ARBITRATOR MUST ACCEPT ONE PARTY'S PROPOSAL OR THE OTHER

THE ISSUES

- ▶ NON-ECONOMIC ISSUES
- ▶ MINOR CHANGE – NON BREAKTHROUGH – NORMAL BURDEN OF PROOF PLACED UPON PARTY MAKING REQUEST
- ▶ BREAKTHROUGH ISSUE - PARTY REQUESTING MAJOR SIGNIFICANT CHANGE MUST SHOW THAT CURRENT SYSTEM IS “BROKEN” AND CANNOT BE FIXED -VERY HEAVY BURDEN (SEE BREAKTHROUGH ANALYSIS ABOVE)
- ▶ FOR NON-ECONOMIC ISSUES, ARBITRATOR MAY CHOOSE EITHER PARTY’S PROPOSAL OR MAY CRAFT A REMEDY

REFERENCES

▶ IV. SECTION 14 (H) OF THE ILLINOIS PUBLIC LABOR RELATIONS ACT:

▶ * * * *

- ▶ 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, if 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 price 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 hospital 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.

(5 ILCS 315/14(h))

REFERENCES

ILLINOIS PUBLIC LABOR RELATIONS ACT SECTION 14(i)

In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (including manning and also including residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreements to other units of government; and v) the criterion pursuant to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

(5 ILCS 315/14(i))

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ UNLESS YOU ARE NEW TO ILLINOIS OR FIRE SERVICE, YOU KNOW THAT LOCAL 3405 HAS HAD A MONUMENTAL BATTLE WITH THE VILLAGE OVER MANNING FOR DECADES
- ▶ AND YOU ALSO KNOW THAT LOCAL 3405 HAS REPEATEDLY WON THAT BATTLE
- ▶ I AM PLEASED TO ANNOUNCE THAT THE CURRENT CBA IS THE FIRST IN AT LEAST 20 YEARS THAT SETTLED WITHOUT GOING TO INTEREST ARBITRATION
- ▶ WE COULD NOT HAVE REACHED THIS POINT HAD THE UNION NOT LAID THE FOUNDATION FOR THE LAST TWENTY PLUS YEARS

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ IN THESE CONSOLIDATED CASES, YOU WILL SEE THAT ARBITRATOR BIERIG RULED IN FAVOR OF THE STATUS QUO ON EVERYTHING EXCEPT FOR THE ISSUES OF MERGER OF THE BARGAINING UNITS AND RESIDENCY
- ▶ HISTORICALLY THERE WAS ONE CERTIFIED BARGAINING UNIT, BUT SOMEWHERE IN HISTORY THE PARTIES DECIDED TO HAVE A FIREFIGHTER CBA AND AN OFFICER CBA
- ▶ THE UNION WANTED TO RETURN TO ONE CBA AND THE VILLAGE REFUSED
- ▶ THE UNION HAD TO LITIGATE THE ISSUE BEFORE THE LABOR BOARD, WHICH FOUND THAT IT WAS ONE BARGAINING UNIT AND THE VILLAGE COULD NOT INSIST UPON TWO SEPARATE CONTRACTS
- ▶ ACCORDINGLY, ARBITRATOR BIERIG RULED IN LINE WITH THE BOARD'S DECISION

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ WHAT MAKES THIS DECISION INTERESTING IS THE RESIDENCY DECISION
- ▶ HISTORICALLY, THE CBA WAS SILENT ON RESIDENCY
- ▶ MORE RECENTLY, THE IPLRA WAS AMENDED TO PROVIDE THAT FIREFIGHTER RESIDENCY OUTSIDE OF ILLINOIS WAS A PERMISSIVE TOPIC
- ▶ HOWEVER, THE MUNICIPAL CODE/FIRE PROTECTION DISTRICT ACT PROVIDE THAT RESIDENCY RESTRICTIONS IN PLACE AT THE TIME AN EMPLOYEE IS HIRED CANNOT BE MADE MORE RESTRICTIVE DURING THE EMPLOYEE'S EMPLOYMENT WITH THAT MUNICIPALITY OR DISTRICT

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ THE VILLAGE PROPOSED ILLINOIS RESIDENCY AND THE UNION TOOK THE POSITION THAT THE PROPOSAL WAS PERMISSIVE BECAUSE IT WAIVED EMPLOYEES' RIGHTS UNDER THE MUNICIPAL CODE
- ▶ THE VILLAGE FILED A UNILATERAL DECLARATORY RULING SEEKING AN OPINION FROM THE BOARD'S GENERAL COUNSEL AS TO WHETHER ITS PROPOSAL WAS A MANDATORY SUBJECT OF BARGAINING
- ▶ ULTIMATELY, THE BOARD'S GENERAL COUNSEL FOUND THAT THE VILLAGE'S PROPOSAL WAS A MANDATORY SUBJECT OF BARGAINING
- ▶ THE PARTIES MAINTAINED THEIR POSITIONS AT INTEREST ARBITRATION AND ARBITRATOR BIERIG'S DECISION FOLLOWS:

OAK LAWN

S-MA-16-015 & S-MA-16-131

AWARD:

For reasons stated in this Opinion and Award, the Arbitrator finds that the following shall be incorporated into the January 1, 2015 – December 31, 2017 Collective Bargaining Agreement between the parties:

Wages:

The Village's offer is adopted.

Wage Schedule for January 1, 2015 – December 31, 2017 Contract	
Date	% Increase
January 1, 2015	2.00%
January 1, 2016	2.00%
January 1, 2017	2.00%
TOTAL INCREASE = 6.00%	

Minimum Manning:

The *status quo* shall remain.

Extra Duties Pay:

The *status quo* shall remain.

Employee Medical Benefits:

The *status quo* shall remain.

Retiree Medical Benefits:

The *status quo* shall remain.

Education Incentive:

The *status quo* shall remain.

Tuition Reimbursement:

The *status quo* shall remain.

OAK LAWN

S-MA-16-015 & S-MA-16-131

Paramedic Certification:

The *status quo* shall remain.

Residency:

1. All Bargaining Unit members are required to live within the State of Illinois.
2. Any Bargaining Unit employee living outside the State of Illinois at the time of the issuance of this Award will have until the end of the contract, December 31, 2017, or any agreed upon extension thereto, to notify the Village of his/her intent to move to the State of Illinois and to provide the time frame for said move to the State of Illinois.
3. This matter is currently being litigated by the parties. In the event that a court of competent jurisdiction issues a final order indicating that the Union's proposal, that is, the *status quo*, is legal under State of Illinois law, this provision shall be null and void and the *status quo* shall be immediately reinstated.
4. This provision shall not constitute a *status quo* for subsequent negotiation and Interest Arbitration purposes.

Grievance Procedure/Merger of the Bargaining Units:

The Union's offer is adopted.

Steven
Bierig
Steven M. Bierig, Arbitrator
January 1, 2017



OAK LAWN

S-MA-16-015 & S-MA-16-131

Residency:

- ▶ All Bargaining Unit members are required to live within the State of Illinois.
- ▶ Any Bargaining Unit employee living outside the State of Illinois at the time of the issuance of this Award will have until the end of the contract, December 31, 2017, or any agreed upon extension thereto, to notify the Village of his/her intent to move to the State of Illinois and to provide the time frame for said move to the State of Illinois.
- ▶ This matter is currently being litigated by the parties. In the event that a court of competent jurisdiction issues a final order indicating that the Union's proposal, that is, the *status quo*, is legal under State of Illinois law, this provision shall be null and void and the *status quo* shall be immediately reinstated.
- ▶ This provision shall not constitute a *status quo* for subsequent negotiation and Interest Arbitration purposes.

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ THE UNION FILED A DECLARATORY JUDGMENT ACTION, AND, ONCE ARBITRATOR BIERIG'S DECISION ISSUED, A MOTION TO VACATE THE PORTION OF THE AWARD CONCERNING RESIDENCY
- ▶ THE CIRCUIT COURT FOUND FOR LOCAL 3405 AND THE VILLAGE APPEALED
- ▶ THE APPELLATE COURT FOUND THAT BECAUSE EMPLOYEES HAD STATUTORY RIGHTS CONCERNING RESIDENCY, THE UNION WAS UNDER NO OBLIGATION TO BARGAIN OVER RESIDENCY REQUIREMENTS
- ▶ THE COURT ALSO FOUND THAT THE CONTRACTUAL SILENCE ON RESIDENCY DID NOT AMOUNT TO AN AWARD OF RESIDENCY OUTSIDE OF ILLINOIS

OAK LAWN

S-MA-16-015 & S-MA-16-131

- ▶ THIS WAS A VERY TRICKY SITUATION FOR ARBITRATOR BIERIG AND I CANNOT FAULT THE WAY HE HANDLED IT
- ▶ ALTHOUGH UNILATERAL DECLARATORY RULINGS ARE NOT BINDING ON THE ARBITRATOR, THEY ARE HIGHLY PERSUASIVE
- ▶ THUS, ARBITRATOR BIERIG'S RELUCTANCE TO RULE CONTRARY TO THE DECLARATORY RULING WAS PERFECTLY UNDERSTANDABLE
- ▶ AND, YOU CAN SEE THAT HE VERY MUCH COVERED HIS BASES IN THE WAY HE WROTE THE DECISION
- ▶ ARBITRATOR BIERIG DID NOT BELIEVE HE HAD THE AUTHORITY TO OVERRULE THE BOARD'S GENERAL COUNSEL, BUT ACKNOWLEDGED THE PENDING LITIGATION AND TOOK INTO ACCOUNT THE POSSIBILITY THAT HIS DECISION WOULD BE OVERTURNED, WHICH IT WAS