
IN THE MATTER OF INTEREST ARBITRATION)	
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between)	
)	
THE INTERNATIONAL UNION OF)	FMCS No. 07-0703-58138-8
POLICE ASSOCIATIONS, LOCAL 3)	
)	
and)	
)	
THE CITY OF SHAWNEE, OKLAHOMA)	
)	

Arbitration Panel

J. Mart Mitchell, Neutral Arbitrator
 Bill Young, Union Arbitrator
 Anita Breen, City Arbitrator

Appearances

For the City:	Margaret McMorrow-Love, Esq. 228 Robert Kerr Avenue, Suite 540 Oklahoma City, Oklahoma 73102
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For the Union:	Douglas D. Vernier, Esq. Moore & Vernier, P.C. 301 N.W. 63rd Street, Suite 550 Oklahoma City, Oklahoma 73116
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INTRODUCTION

There are five articles of the Collective Bargaining Agreement ("CBA") and one appendix that the parties were unable to reach agreement during the contract negotiations. Unable to reach an agreement with the City, the IUPA requested interest arbitration, pursuant to the Fire and Police Arbitration Act ("FPAA") which requires the Arbitration Board to select either the complete Last Best Offer of the IUPA or the City. The FPAA requires the Board to select either the IUPA's or the City's offer in its entirety without modifications or changes.

FPAA 11 O.S. §51-108(4).

I. STATUTORY CRITERIA

The Board is governed by the standards set forth in the FPAA interest arbitration statute. The overarching standard is for the Arbitration Board to reach a "prompt, peaceful and just settlement" of the issues. FPAA, 11 O.S. 51.109. Section 51-109(4) requires a Last Best Offer to be in the "interest and welfare of the citizens." In contracting with police union, municipalities are required to adhere to the highest standard of good faith. The Oklahoma Supreme Court stated that a municipality must adhere to a standard of "absolute good faith" in matters of labor relations with FPAA bargaining issues. *Stone v. Johnson*, 1984 OK 76,, 690 P.2d 459. Police officers are denied the right to strike over labor issues such as contract terms and conditions. The interest arbitration process is the substitute for the right to strike.

Accordingly, the Arbitration Board's selection of a Last Best Offer is governed by standards that include the reasonableness of the Last Best Offer and whether the Last Best Offer is just and in good faith. The Union argues that the City must prove its concessionary offer is in good faith, is just, reasonable, and is in the interest and welfare of the citizens and meets the other statutory elements for interest arbitration. Section 51-109 lists specific evidentiary Standards.

So, too, pursuant to the PPAA interest arbitration process, Management gets two chances to have its contract offer accepted where the Union only has one chance. If the Arbitration Board chooses the IUPA's offer, Management has the option of submitting that decision to a vote of the people. FPAA, 11 O.S. Section 51-108(8). The citizens then get to vote on the two offers to see which one is to be accepted. On the other hand, if the Arbitration Board rules in favor of Management, the police officers have no choice but to accept that award and are bound by Management's terms.

THE AREAS OF DISPUTE

The articles and appendix which the parties were unable to reach agreement during extensive negotiations are as follows:

- Article 6: Police Officers Bill of Rights
- Article 20: Health and Life Insurance
- Article 22: Skills, Firearms Proficiency ,and Continuing Law Enforcement Training Incentive
- Article 28: Corporal
- Article 30: Vehicle Policy
- Appendix A: Hourly Base Rate of Pay.

A lengthy hearing in this matter was conducted on November 14, 2007 in the City of Shawnee.' The several items here at issue were testified to and explored at length. The record abounds with numerous exhibits and recorded testimony purportedly in support of each parties' position, The panel members were afforded the opportunity to participate fully and to cross-examine witnesses. The impartial Arbitrator who has thoroughly reviewed the entire record believes no useful purpose would be served to discuss and detail herein each issue raised. Indeed, the Arbitrator is reminded by the parties of the statutory language which limits the arbitration panel to select either the complete last best offer of the IUPA or the City. The FPAA requires the Arbitration Board duly designated to select either the IUPA's or the City's offer in its entirety without modification or changes (FPAA 11 O.S. §51 -108(4). Hence, the panel is governed by the standards set forth in the FPAA interest arbitration statute.

This Arbitrator does observe, however, that to uphold the City's last best offer would upset many longstanding contract terms through interest arbitration. And, while not authoritatively binding, I agree with Arbitrator Gordon's conclusion, that "as a general rule, the longer an employee benefit has existed, the more compelling the evidence required for the (Arbitral) Board to eliminate it." FOP Lodge 123 and City of Oklahoma City.

Here, much of the City's offer on the unresolved issues in the City's Last Best Offer seeks to strip the Union of longstanding terms, conditions and benefits of employment. All of the items which City seeks concessions on were part of past bargained for exchanges and are important rights particular to the officers. I do not find the City's evidence compelling to support the concessions it seeks. Nor is the City's evidence supported by the specific evidentiary standards referred to as the "five factors" (Section 5 -109), Indeed, much of the City's offer on many unresolved issues seeks to strip the Union of longstanding terms, conditions and benefits of employment.

All of the items the City seeks concessions on were part of past bargained for exchanges and are important rights particular to the officers. The City offered no "compelling" evidence to

support most of the concessions it seeks. The City's offer presented little "countervailing consideration" for the concessions it requests.

While the Arbitrator deems it unnecessary to make a detail discussion of the oft referred to five evidentiary factors, an examination of the parties' position on a wage increase may be illustrative.

The IUPA proposed a 7.2% across the board pay increase. City proposed a 7.0% pay increase. The parties were able to stipulate to one of the most important wage and financial factors of FPAA interest arbitration, Factor 4, that City has the available revenue to fund the IUPA's offer. In other words, City does not claim inability to pay.

Factors 1 through 3 are the remaining factors that apply to financial items in Last Best Offer such as wages. City did not present any evidence of these factors to support its lower wage offer. The City's only complaint about the IUPA's wage offer is the Chief did not think it was reasonable." City offered no rationale for that statement. And City did not articulate why its lower wage offer was reasonable. In, fact. City's only witness, Mr. Mathis, had no input on why City offered 7%. The FPAA requires City prove its wage offer is comparable to what officers earn in other police departments. City provided no such proof. City fails to show its wage offer is justified based on comparability to other cities.

City also failed to justify its lower wage offer given that each of City's other articles in dispute require the IUPA to make unwanted concessions. Additionally, City wants to eliminate the outside member of the review board, reduce the number of strikes the officer has on board members, make the officer pay for a court reporter at the discipline board, eliminate a take home car for the supervisors who previously had take home cars, enact an unfair firearm incentive, eliminate the terms of the health insurance article stating insurance issues must be negotiated, and reduce the experience levels of supervisors.

FPAA Factors 2 and 3 set forth the following comparisons:

2. Comparison of wage rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the fire department or police department in question with wage rates or hourly conditions of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;
3. Comparison of wage rates, insurance retirement, other fringe benefits or hourly conditions of employment of the fire department or police department in questions with wage rates or hourly conditions of employment of fire departments or police departments in cities, towns or other political subdivisions of comparable size and economic status both within and without the State of Oklahoma;

The IUPA offered evidence on Factor 2 and 3 which compare Shawnee officers' pay to the pay of other police officers in cities similar in size and status to Shawnee and to firefighters in Shawnee.

The nineteen cities on the IUPA's wage comparison include cities of similar size and economic status to Shawnee, five above Shawnee and five below Shawnee's size and economic status, and nine cities of similar size and economic status that are in the geographical area of Shawnee. Combined, this is the same wage comparison methodology the IUPA has used for at least twelve years without objection from the City.

The Factors 2 and 3 evidence demonstrates Shawnee police officer wages have fallen behind and will continue to lose ground compared to wages of their colleagues in comparable cities for comparable employment. The IUPA's wage offer seeks to prevent Shawnee officers from sliding further behind the market.

Factor 2 compares the wages of Shawnee officers with the wages of other employees in the local area who perform like or similar skills under similar working conditions as Shawnee officers. City of Shawnee firefighters received a 7.25% wage increase this year. The Factor 2 wage comparison would include firefighters. City provides no justification for only offering 7% wage increase to police when they gave a 7.25% wage increase to the firefighters.

Police officer wages in other local cities is also part of a factor 2 wage analysis. IUPA Exhibit I demonstrates Shawnee police are behind their counterparts 8.66% at the officer level, 11.40% behind at the rank of sergeant and 8.79% behind at the rank of lieutenant. IUPA Ex. I. This analysis also serves as the Factor 3 comparison by comparing wages of other police departments in cities of comparable size within the state of Oklahoma. Thus, the IUPA's wage offer is more than supported and justified under both Factors 2 and 3.

An exhaustive review of the evidence of record amply demonstrates that the "five factors" test has been met, Moreover, the "interest and welfare of the public" has been fully satisfied and the Union's Last Best Offer promotes a just settlement of the dispute between the parties.

In any event, the Arbitration Board as here constituted has no authority to pick and choose and/or rewrite the terms of the parties' labor agreement. By statute it must select either the complete Last Best Offer of the Union or the City without modification or changes.

ISSUE PRESENTED

Whether the Board should select The Last Best Offer of IUPA, Local 3, or that of City Management, as the contract of the parties for fiscal year 2007-2008.

