Winter 2006

Vol. 23, No. 1

Gary Bailey
Illinois Fraternal Order of Police Labor Council

Illinois Public Employee Relations
>> REPORT
Winter 2006 • Volume 23, Number 1

Health Insurance Trends in Interest Arbitration

by Gary Bailey

I. Introduction

Under the bargaining impasse provisions of the Illinois Public Labor Relations Act (IPLRA),[1] employees designated as security employees, peace officers, firefighters and paramedics are prohibited from withholding services as a method to resolve issues that are deadlocked in collective bargaining negotiations.[2] Instead, these essential service employees must submit unresolved issues to statutory interest arbitration. A neutral arbitrator is empowered to select the more favorable of the parties' final proposals concerning the disputed provisions of the labor agreement by using the specific factors set forth in IPLRA.[3]

Since February 1986, the Illinois Labor Relations Board (ILRB) has documented the issuance of over 300 interest arbitration awards between Illinois public employers and the unions representing their employees.[4] These interest arbitration awards cover a myriad of mandatory subjects of bargaining, including economic issues (e.g., wages, insurance, vacations, hours of work and overtime, vacations, holidays, sick leave) and non-economic issues (e.g., residency, shift bidding, physical fitness testing, disciplinary appeal procedures, seniority).

Many articles have been written about the evolution of interest arbitration in Illinois and how interest arbitrators have interpreted and applied the statutory factors to resolve these bargaining impasses.[5] A review of interest awards reveals that one of the cornerstones in interest arbitration is that arbitrators view the process as promoting conservative results. From the outset, arbitrators have expressed favor in maintaining the *status quo*, which was likely established by way of mutual agreement. Where one party is proposing to depart from the *status quo*, interest arbitrators impose a burden to show the special circumstances necessary to impose a new benefit, a new procedure or changes to existing procedures on the parties.[6]

Arguably, the legacy of these arbitration awards created a level of predictability and conservatism in the bargaining process. In practical terms, the awards serve as advice to a party at the bargaining table seeking changes to existing provisions that it will bear a serious burden to show that its proposed change is more than just "a good idea."[7] Furthermore, the awards serve as support for a party attempting to maintain the *status quo* as to the reasonableness of its position in the face of demands for change.

Inject into this conservative world of collective bargaining the recent escalation of health insurance costs. Over the past five years, employers and employees wait with baited breath to hear from their insurance companies about increases to premiums, deductibles, out of pocket costs and prescription drug cards, with corresponding decreases in benefits and coverage. Faced with these rising costs, public employers have turned to their employees and sought increases in employee contributions. Not surprisingly, public employees (like their employers) have sought to limit their exposure to the unpredictable liability of medical and prescription drug bills.

As public employers and the unions representing their employees struggled at the bargaining table to reach agreement, impasses inevitably occurred and the parties turned to interest arbitration to resolve their disputes. Is the unusual upheaval in the health insurance industry cause for abandoning the conservative model of reviewing interest arbitration issues? Have arbitrators turned their backs to maintaining the *status quo* in the face of this crisis? This article explores the interest arbitration awards issued over the past two years that addressed the issue of health insurance contributions and examines how arbitrators have analyzed this issue in the face of unprecedented cost escalation.

II. Background

The IPLRA went into effect on July 1, 1984.[8] Although the law contained a

INSIDE

provision for interest arbitration for "security employees,"[9] the provisions of the new collective bargaining law expressly excluded peace officers and fire fighters from its coverage. In 1985, however, the IPLRA was amended to include peace officers and fire fighters, and the amendment provided that bargaining impasses for both employee groups were to be resolved through the existing interest arbitration process set forth in Section 14.[10]

Section 14 of the IPRLA governs the interest arbitration process. The process provides for evidentiary hearings to be conducted by a tripartite panel, consisting of a delegate chosen by the union, a delegate chosen by the public employer and a neutral chairman chosen by mutual selection.[11] The chairman[12] has the authority to require the attendance of witnesses, to administer oaths, to order the productions of documents and records, to see that verbatim record of the proceedings is made, and even to remand the dispute for further collective bargaining.[13]

The Chairman must initially determine whether the unresolved issues are economic or non-economic in nature and set forth a time by which the parties must announce and provide their final offers.[14] If an issue is economic in nature, the Chairman must adopt one of the party's final offers on the issue; however, if an issue is non-economic in nature, the Chairman may either adopt one of the party's final offers or order an entirely different result.[15] In either event, the Chairman must make his determination as the appropriate resolution based upon the factors found in Section 14(h).

Section 14(h) provides:

> . . . [T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as 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 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, the continuity and stability of employment and all other benefits received.
> (7) Changes in any of the following 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.[16]

The Chairman must issue a written award within thirty days after the conclusion of the hearing. The governing body of the public employer has twenty days to reject the award; the union membership has no internal right of acceptance or rejection[17] If the public employer's governing body rejects all or some of the award, the matter is remanded to the same Chairman for reconsideration.[18] The public employer, however, is responsible for the reasonable costs of the supplemental proceeding, including the union's attorney's fees.[19]

Arbitration awards are reviewable in circuit court.[20] The criterion by which a circuit court may reverse an interest arbitration award is severely limited.[21] If the circuit court affirms the award of money, rejecting the public employer's court appeal, the public employer is charged 12 percent per annum interest on the award if the award is retroactive.[22]

III. The Increase in Health Insurance Costs

In 2006, employers across the nation are expected to pay an increase of 9.9 percent for health insurance premiums.[23] This is relatively good news considering the past few years. In 2002, costs rose 11.2 percent;[24] in 2003, costs rose 14.7 percent;[25] in 2004, costs rose 12.3 percent;[26] and in 2005, costs rose 11.3 percent.[27] This cumulative increase of 59.4 percent over five years unquestionably demonstrates that the increased costs associated with medical care and

---

Gary Bailey is an attorney with the Illinois Fraternal Order of Police Labor Council. Prior to joining the FOP in 1989, Mr. Bailey was an Administrative Law Judge with the Illinois State Labor Relations Board. A member of the American Bar Association, he serves on the State and Local Government Bargaining and Employment Law Committee as the Union Co-Chair of the Sub-Committee on Interest Arbitration. He is also a member of the Senior Partner Council at Chicago-Kent College of Law, from which he received his law degree in 1986. He received his Bachelors degree in 1982 from Northwestern University.

insurance have significantly outgrown increases to wages and in the cost-of-living.[28]

In 2006, the portion of health insurance premiums paid by employers will reach $8,046 per employee, and the portion paid by employees will rise to $1,612 per employee.[29] On average, workers will pay more than $134 per month for their health insurance premiums, which is more than double what they paid five years ago.[30] Additionally, out-of-pocket costs for co-payments, drugs and other non-covered expenses are expected to rise 11 percent, to $1,524 a year.[31] Thus, in 2006, employees will be paying over $3,000 for medical costs covered and not covered by their insurance plan.[32]

In 2000, employees paid about 16 percent of health insurance premiums.[33] By 2006, that number should increase to 20 percent.[34] An employee earning an annual salary of $40,000 who receives a 3.0 percent wage increase ($1,200), will use more 25 percent of the wage increase ($326) to pay for the increase in health insurance premiums and out-of-pocket costs.[35] Furthermore, the employee earning an annual salary of $40,000 and paying over $3,000 in annual medical costs is dedicating 7.5 percent of gross salary (i.e., the salary prior to taxation) to health insurance and out-of-pocket medical costs.

In Chicago, the numbers are worse. In 2006, Chicago-area employees will pay an average annual sum of $1,707 for their share of health insurance premiums and about $1,549 for out-of-pocket costs.[36] The Chicago-area employee will therefore pay over $3,200 in 2006 for medical costs covered and not covered by their insurance plan.

How do these numbers translate to a labor negotiator? Both union and management negotiators try to prevent their clients from having to bear the brunt of these increases by having their adversaries accept a greater share of these costs. Both parties have compelling reasons why their clients have already borne a sufficient share of the burdens of increasing medical costs. Both parties, at the mercy of insurance companies and pharmaceutical giants, see their economic condition being worn down without hope for escape and with little or no control over the situation.

These facts bear out only one simple conclusion: the increase in health insurance costs have caused a crisis for those involved in collective bargaining.

IV. The Cases [37]

During 2004 and 2005, the Illinois Labor Relations Board reports that thirty-nine interest arbitration awards issued.[38] Of the sixteen interest arbitration awards issued in 2004, only six dealt with health insurance contributions. Of the twenty-three interest arbitration awards issued in 2005, only eleven dealt with health insurance contributions.

A. The Cases of Import

Of the seventeen interest arbitration awards issued over the past two years that addressed the issue of health insurance contributions, eleven fully explored the competing interests between public employers and their employees regarding paying for health insurance coverage. The cases are discussed below.

1. *County of Lee and Sheriff of Lee County and Illinois Fraternal Order of Police Labor Council*[39]

The union and the county arbitrated the contract covering three units of employees: the deputies; the corrections officers; and supervisory/administrative personnel.[40] Regarding the issue of health insurance, the union sought to limit the county's existing contractual right to raise the employees' insurance contributions by eliminating the following language in the existing health insurance article:

> In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees.[41]

During the term of the last contract, the county had experienced large increases in health insurance and exercised its contractual right by passing on large premium increases to the bargaining unit of deputies and corrections officers.

The union argued that the cost of health insurance had increased so substantially that altering the county's authority regarding contributions was not out of line or unreasonable under the circumstances. The union wanted to prevent future mid-term increases and by bargaining specific employee contribution levels that would remain constant throughout the term of the agreement.[42]

The arbitrator found in favor of the county.[43] The arbitrator placed on the union the burden to justify its proposed change.[44] The arbitrator held that merely because the county was exercising the right to pass along mid-term premium increases to the bargaining unit did not mean that the existing language was "broken."[45] Although the external comparables supported the union's offer, the arbitrator was convinced that the current language, which had been in existence for fourteen years, should not be changed suddenly merely because it was now (for the first time) being used in the manner in which the parties had agreed.[46]

With respect to premium contributions, the union proposed an increase of over $1,200 for single coverage and over $1,500 for family coverage for the term of the contract.[47] The county proposed larger increases, including

raising the deductible for single coverage to $1,000.[48]

The Arbitrator adopted the county's insurance proposal regarding contributions, which matched the levels the county had implemented for other employee groups. The arbitrator remarked that insurance was "a nightmare and at a crisis level,"[49] and the County was merely proposing the contributions levels that it had the right to implement under the agreement.[50]

2. *Village of Wilmette and Local 73, Service Employees International Union*[51]

The union sought interest arbitration to resolve the first collective bargaining agreement for the village's firefighters. After sixteen days of hearing, spread over nineteen months, the arbitrator issued this award, covering thirty-one issues.

With respect to health insurance, the arbitrator compared the two comprehensive proposals and determined that the most distinctive difference between the parties' proposals was the union's demand that the village create a Medical Reimbursement Account insurance plan. The arbitrator noted that the union's offer was "both novel and creative . . .".[52] The arbitrator adopted the village's offer based somewhat upon internal and external comparability, but also based on the fact that the union's offer was a departure from the ordinary which had not been thoroughly negotiated between the parties.[53]

3. *City of Mt. Vernon and Illinois Fraternal Order of Police Labor Council*[54]

The union, representing the city's police officers, sought interest arbitration to resolve the impasse in negotiations. One of the issues between the parties that remained unresolved was health insurance contributions.

The city sought a "breakthrough" by requiring the employees to contribute to the cost of premiums for single health insurance. The existing agreement provided that the city paid 100 percent of the premiums for single coverage but the employee paid 100 percent of the premium for family coverage. The union sought no changes to the contributions levels while the city proposed that employees contribute up to $55 per month depending upon the cost of premium assessed to the city.[55]

The city argued that the cost of health insurance had increased substantially so that asking the employees to make some contribution was reasonable under the circumstances. It further asserted that the national trend strongly supported employees sharing the cost of individual health insurance coverage.[56]

The arbitrator rejected the city's breakthrough and adopted the union's final offer. The arbitrator noted that external comparability and overall compensation, as well as bargaining history, supported the union.[57] The arbitrator acknowledged that the city's costs had increased and that national trends supported the city's position; however, the arbitrator found these factors less persuasive than the statutory factors supporting the union's final offer.[58]

4. *County of Effingham and the Sheriff of Effingham County and AFSCME Council 31*[59]

An impasse was reached covering a county bargaining unit of corrections officers and telecommunicators. Among the issues was health insurance.

With regard to health insurance, the union sought to maintain the *status quo* whereby the county paid 100 percent of the health insurance premiums for single coverage. The county proposed that it pay the first $350.00 of the health insurance monthly premiums for single coverage and that the county and the employee evenly divide premium costs in excess of $350.00 per month with a dollar cap on employee contributions.[60]

The arbitrator adopted the county's final offer. The arbitrator noted that a strong majority of the external comparables paid 100 percent of the insurance premiums for single coverage notwithstanding national trends.[61] However, the arbitrator noted that the sworn deputy unit had recently agreed to the county's health insurance proposal.[62] Further, the cost-of-living favored the county's offer.[63]

5. *City of Pekin and Illinois Fraternal Order of Police Labor Council*[64]

The union representing the city's police officers filed for interest arbitration after an impasse was reached. With regard to health insurance, the city sponsored a self-funded plan, paying 100 percent for single coverage while employees paid $25 per month for family coverage.[65] The city had begun to eliminate the plan, moving other unionized employees to a new plan with new cost-sharing requirements.[66]

The city proposed that employees pay $25 per month for single coverage and that the employees share equally with the city in increases to premiums for family insurance, up to a cap of $75 per month.[67] The union proposed for the city to offer both the new plan and the old plan, with breakthrough dollar contributions for both single and family coverage.[68]

The arbitrator noted that the city's proposal would "significantly increase employee health insurance costs,"[69] but found the proposal reasonable in light of strong internal comparability.[70] The arbitrator noted that although the union proposal contained concessions, they were insufficient to address the problems

experienced by the city.[71] The external comparables did not establish support for either party.[72] The arbitrator awarded the cty's final offer on health insurance.[73]

6. *City of Highwood and Metropolitan Alliance of Police, Highwood Chapter 105*[74]

The first contract between the city and the union representing the city's police officers and police sergeants was advanced to interest arbitration. The parties gave the Arbitrator authority to bifurcate the issue of single and family health insurance.[75]

The union sought to eliminate the existing employee contributions for both single and family coverage.[76] The city sought to maintain the existing 20 percent employee contribution for single coverage and 50 percent contribution for family coverage.[77]

The arbitrator found in favor of the union regarding single coverage. The arbitrator found that requiring 20 percent employee contributions for single coverage was out of line with the external comparables and that the additional cost to the city was not oppressive.[78] The arbitrator also took into consideration his wage determination in arriving at this decision.[79] However, the arbitrator found that requiring employees to pay 50 percent of the premium for family coverage was not out of line with the comparables.[80]

7. *City of Elgin and Local 439, IAFF*[81]

The union, representing the city's firefighters, and the city proceeded to interest arbitration to resolve an impasse over eight issues. The previous contract between the parties did not require the firefighters to make any contributions toward health insurance premiums.

The city proposed that employees pay 7.5 percent toward either single or family health insurance coverage, effective the second year of the contract. The city proposed to increase this level to 8.5 percent in the third year of the contract. The union proposed employees pay $10 per pay period for single coverage and $15 per pay period for family coverage, effective the second year of the contract. The union proposed to increase these contributions to $15 per pay period for single coverage and $25 per pay period for family coverage in the third year of the contract.[82]

The arbitrator adopted the city's proposal. The arbitrator found that the city's proposed contribution levels would be the lowest among the external comparables. The arbitrator noted that the city had bargained the same level of contributions for the police unit and for two other units for the second year of the contract. Although the union correctly asserted that the city's increase in the third year would require the firefighters to contribute more than any other employee group, the union's offer would result in the firefighters paying less than all other employees. The Arbitrator thus found that the city's offer was closer to internal consistency than the offer made by the union.[83]

8. *Village of Carpentersville and Metropolitan Alliance of Police, Chapter 378*[84]

The union that represented the village's police officers proceeded to interest arbitration. The previous contract between the parties required the police officers to contribute $5 per month for single health insurance coverage and $40 per month for family coverage.[85]

The union proposed to increase contributions to health insurance premiums to $40 per month for single coverage and $80 per month for family coverage.[86] The village proposed to change the contributions from a dollar system to a percentage system. Under the village's offer, the employees would pay 20 percent of the monthly health insurance premiums for either single or family coverage.[87]

The arbitrator voiced a preference for "percentage-based" systems, but adopted the union's final offer after agonizing over the extreme nature of the facts.[88] The arbitrator noted that the employees have "long enjoyed an almost cost free insurance benefit," and that the village was in need for "catch up."[89] The arbitrator also found that the majority of the comparable communities had percentage-based contribution levels.[90]

But, after examining the external comparables, the arbitrator found that the village's offer would result in the police officers now paying more for insurance than municipal officers in adjacent communities.[91] The arbitrator noted that the village's proposal would have the effect of the employees paying almost $75 per month for single coverage and almost $180 per month for family coverage.[92] Due significantly to the extreme size of the increase proposed by the village, the arbitrator found that the union's final offer was more reasonable.[93]

9. *Village of Bolingbrook and Metropolitan Alliance of Police, Bolingbrook Command Chapter 9*[94]

The union and the village proceeded to interest arbitration over one issue: health insurance. The contract was the first for the city's police sergeants and police lieutenants. The unit personnel had previously paid no premium for single health insurance coverage and $45 per month for family health insurance coverage.

The village proposed a matrix for premium contributions at the levels that all other village employees, except for the police officer unit, enjoyed. The matrix included ten options which provided that employees may choose between a variety of plans with different premium co-pays and corresponding deductibles and benefits.

The union proposed the *status quo* for health insurance contributions

until the award issued, followed by increasing contributions to the same levels the rank-and-file officers (also represented in collective bargaining) had to pay, which were $30 per month for single coverage and $60 per month for family coverage. These contribution levels were the result of an interest arbitration award, wherein the arbitrator rejected the village's offer to apply the same health insurance matrix to the rank-and-file police officers.

The arbitrator adopted the union's offer. The arbitrator found that both parties were trying to establish a level in internal parity: the union was trying for parity with the rank-and-file police unit while the village was trying for parity with other village employee groups. The arbitrator found that it was more reasonable for the police command unit to have parity with the rank-and-file unit than with other employees of the village.[95]

10. *City of Harvard and Illinois Fraternal Order of Police Labor Council*[96]

The union representing the city's police officers and police sergeants filed for interest arbitration. The issues advanced to arbitration included health insurance.

The union proposed no changes to the contribution levels (20 percent), deductibles or the benefit plan. The city proposed a new health plan that would not change contribution levels, but had premiums that would save those opting for single coverage $820 each year compared to the plan proposed by the union and save $1,700 each year for those opting for single plus spouse coverage and $2,629 per year for those opting for family covrage. The city's plan, however, had increased deductibles, increased co-pays for prescription drugs and greater out-of-pocket exposure.[97]

The arbitrator adopted the city's final offer. The arbitrator noted that the plan proposed by the city had been imposed on non-union employees and accepted by the public works' union. The city's premium costs were the highest among the comparables and the arbitrator found that the annual savings of $87,000 to the city would offset some of the salary increases sought by the union which cost just over $100,000.[98]

11. *City of Danville and PB&PA Labor Committee, Inc./Danville Police Command Offices Association*[99]

The union representing the city's police sergeants and lieutenants/commanders filed for interest arbitration. The issues advanced to arbitration included health insurance.

The city maintained a self-funded health insurance plan and in lieu of paying monthly premiums to purchase traditional health insurance coverage, the city made a monthly "escrow" payment to cover employee and family medical expenses. The amount escrowed was based upon claim experience and risk factors. The city had been experiencing double-digit increases.[100]

The union proposed no changes to its contributions of $45 per month for single coverage and $55 per month for family coverage. The city proposed to increase employee contributions $10 per month, commencing in the second year of the contract, with another increase of $10 per month in the third year of the contract.[101]

The arbitrator found in favor of the city. Converting the dollars to a percentage of the total costs, the arbitrator noted that the union's proposal would decrease the employee's rate of contribution while the city's proposal would only slightly increase the employee's rate of compensation (by .05 percent).[102] The arbitrator found that the city's offer was more reasonable because the increased contributions were *de minimus* by any standard. The arbitrator made no references to any particular statutory factor.[103]

B. Other Cases

Six of the seventeen interest arbitration awards issued over the past two years that addressed the issue of health insurance contributions do not reveal the difficult task facing arbitrators over choosing between the final offers of parties and their competing interests regarding paying for health insurance coverage. In *County of Ogle and the Sheriff of Ogle County and Illinois Fraternal Order of Police Labor Council*,[104] three separate units — a unit of deputies, a unit of corrections officers, and a unit of corporals and sergeants — consolidated their arbitration demands before a single neutral arbitrator. The case does not offer general insights into the process of selecting competing health insurance proposals because there was a tentative agreement, which was pivotal in the determination made by the arbitrator.

Four cases involved stipulated awards and thus offer no insights into arbitral selection of competing offers.[105] In *City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7*,[106] pursuant to alternative impasse procedures adopted by the parties, the arbitrator was authorized to deviate from the economic final offers submitted to him, if he was convinced that such deviation produced the most reasonable result. In fact, the arbitrator did just that regarding wages rates and premium contributions to health insurance. Consequently, the case is of limited value in examining how arbitrators choose between competing offers. The results in this arbitration, much like the stipulated interest arbitration awards, were not arrived at under the same considerations and restrictions present in a normal interest arbitration.

V. Conclusions

From the outset it should be noted that it is difficult to grasp with any confidence "trends in interest arbitration awards" if the focus is on results. It is easy to see trends in how arbitrators deal with procedural issues (such as dealing with the scope of supplemental hearings, applying and weighing particular statutory criteria, and the import of rejected tentative agreements), but arbitration results have so many independent influences that it can be very difficult to spot trends. For example, an arbitrator will likely buck a "trend" if he/she encounters a final offer that is out of the realm of reason. Furthermore, a party wanting to be "trendy" will have difficulty overcoming poor lawyering (as manifested by, for example, incomplete evidence, badly-constructed comparables, and incompetent arguments) or consecrated historical parities.

Nevertheless, the cases summarized above provide not only insight as to how arbitrators are dealing with the issue of allocating rising health insurance premium costs, but also a glimpse of a growing trend in interest arbitration. *The trend seems relatively obvious: interest arbitrators are not abandoning traditional interest arbitration analysis or altering the weight attached to any statutory factors when confronting whether proposed increases to employee health insurance premium contribution rates should be awarded.*

The cases reveal that interest arbitrators place a heavy emphasis on internal and external comparability when determining which offer regarding health insurance is more reasonable and are reluctant to agree to "breakthrough" changes in insurance language. In short, interest arbitrators are treating the issue of health insurance as they treat, and have treated other economic issues.

Thus, arbitrators have rejected "breakthroughs." Arbitrator Benn rejected the union's effort to eliminate unfavorable language because of traditional arbitral notions that support the *status quo* in *Lee County*. Similarly, in *Mt. Vernon*, Arbitrator Malin rejected the employer's effort to change existing contribution levels where the employer relied upon the notion of "national trends" as opposed to statutory factors such as internal and/or external comparability. In both cases, the losing party sought changes because the "bargain" it had struck suddenly became unfavorable due to the increasing costs associated with health insurance. Rather than make an exception in arbitration analysis for changes in the health insurance industry, the arbitrators applied the statutory factors in a predictable and traditional manner to reach their results.

Similarly, Arbitrator Briggs rejected the notion that interest arbitration is the forum to adopt unique and novel changes to a contractual benefit in *Wilmette*. Although Arbitrator Briggs found the union's offer intriguing, he applied traditional arbitral caselaw and rejected the idea that a breakthrough of a novel idea should be imposed through interest arbitration rather than agreed upon at the bargaining table.

Where changes were adopted by arbitrators, the reasoning was obvious and supported by traditional statutory factors. Arbitrator Benn adopted changes to the health insurance contribution levels in *Effingham County*, where the changes were identical with other internal employee groups and the cost of living supported the minimal increase of a 5 percent contribution that he awarded. Similarly, in *Bolingbrook*, arbitrator Cox adopted a union's offer for increasing contributions which were supported by internal comparables and in *Harvard*, he adopted an employer's offer for increasing out of pocket costs which was supported by internal and external comparables.

Where both parties proposed changes to existing health insurance contributions, by arbitrators measured the appropriate offer based upon the statutory criteria. Arbitrator Krinsky adopted the city's offer in *Elgin*, where the external and internal comparables supported the decision. Arbitrator Yaffe adopted the city's proposed changes in *Pekin*, where the internal comparables supported the city's offer and the external comparables supported neither party.

Where extreme changes to existing health insurance contributions were being proposed, arbitrators refused to adopt them and instead chose the lesser of two evils. Arbitrator Kossoff agreed to reduce health insurance contributions for single coverage where the alternative was to impose extraordinary increases to existing contributions that were in conflict with external comparables in *Highwood*. Similarly, in *Carpentersville*, Arbitator Cox adopted the union's final offer where the employer overreached in seeking employee contributions at levels that were not supported by the external comparables.

These cases reveal that despite the health insurance crisis that employers and employees have encountered, the interest arbitration system has not yielded different results. The arbitrators in these cases were not blind to the crisis and, in fact, many commented on it. Arbitrator Benn remarked, **"**Insurance is presently a nightmare and at a crisis level for employers, employees and unions . . ."[107]

> Arbitrator Yaffe remarked:
> While the undersigned recognizes that this award will have significant adverse economic consequences on unit employees, there appears to be little choice but to

> spread the pain that both employers and employees are experiencing in trying to cope with the problems both groups are having in trying to maintain the kinds of medical insurance coverage that have traditionally been provided employees by their employers.[108]

Nevertheless, despite these ominous observations, arbitrators are not making exceptions in their analysis when examining the appropriateness of final offers regarding health insurance contributions. The decisions in these cases do not reveal a different analysis from the cases that preceded them in the previous twenty years. Despite the extreme changes in the health insurance industry, the statutory factors found in Section 14 of the IPRLA have not changed and arbitrators are not changing the application of these factors.

There appears to be one exception to this conclusion. In *Danville*, Arbitrator Larney increased the level of employee contributions without any specific reference to internal comparables, external comparables, resisting breakthroughs or deference to the *status quo* in his analysis. Although it is not clear from the award what arguments were advanced by the union defending against the proposed increases or the city advocating these increases, the crux of his explanation for increasing the employee contributions was that the city's offer was more reasonable than the union's offer to maintain the current contribution levels.[109]

Granted, the adoption by an interest arbitrator of the more reasonable proposal is not earth-shattering; rather, such a conclusion is to be expected (and usually advocated) by the litigants. However, *Danville* stands as the only one among these cases that does not mention of particular statutory factors (e.g., comparability, etc.) in its analysis of whether increasing health insurance premiums is a reasonable offer — other than a passing reference that his determination complied with the factors in Section 14(h) of the IPLRA. Interestingly, the Arbitrator's analysis of the other two issues in the arbitration included specific references to comparability and breakthroughs.

VI. Final Thoughts

The "trend" found in these cases is perhaps best described as the absence of panic. After twenty years of experience in Illinois interest arbitration, the process has evolved but not stumbled under the pressures of the overwhelming health insurance nightmare. Public employers, essential service employees and unions have a predictable procedure for resolving bargaining impasses. Even an unparalleled explosion in health care costs failed to wreck the system.

Management and union advocates certainly have their own preferences and ideas as to how the interest arbitration process could be changed for the better. However, the present system certainly cannot be faulted for a lack of durability or consistency. ♦

Notes

1. 5 ILCS 315/1- 315/27.
2. 5 ILCS 315/14(m).
3. Those eight factors are enumerated at 5 ILCS 315/14(h).
4. The ILRB keeps track of interest arbitration awards on its website: www2.state.il.us/ilrb.
5. *See, e.g.*, Edwin H. Benn, *A Practical Approach to Selecting Comparable Communities in Interest Arbitration under the Illinois Public Labor Relations Act*, 15 ILL. PUB. EMP. REL. REP., Autumn, 1998, at 1; Harvey Nathan, *Arbitral Standards for Deciding Non-Economic Impasse Issues*, 21 PUB. EMP. REL. REP., Winter 2004, at 1; Thomas F. Sonneborn, *Trends in Illinois Interest Arbitration*, 12 ILL. PUB. EMP. REL. REP., Autumn, 1995, at 1.
6. *See County of St. Clair and the Sheriff of St. Clair County and Illinois Fraternal Order of Police Labor Council,* No. S-MA03-067 (2004) (McAlpin, Arb.);*County of Will and the Sheriff of Will County and AFSCME, Local 2961*, No. S-MA-88-009 (1988) (Nathan, Arb.).
7. *County of Cook and the Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council*, No. L-MA-02-008, at 12 (2003) (Benn, Arb.).
8. P.A. 83-1012 (1983), codified as amended at 5 ILCS 315/1 *et. seq.*
9. Section 3(p) of the IPLRA defines "security employees" as employees who are responsible for the "supervision and control of inmates at correctional facilities." 5 ILCS 315/3(p).
10. P.A. 86-412 (1985).
11. 5 ILCS 315/14(b), (c), (d).
12. The parties may (and often do) waive the empanelment of the parties' delegates to the arbitration panel, and thus the neutral chairman exercises the authority provided to the panel. The IPLRA allows the parties the flexibility to alter the provisions in Section 14 if they mutually agree such changes are acceptable. 5 ILCS 315/14(p).
13. 5 ILCS 315/14(d), (e).
14. 5 ILCS 315/14(g).
15. *Id.*
16. 5 ILCS 315/14(h).
17. 5 ILCS 315/14(n).
18. *Id.*
19. 5 ILCS 315/14(o).
20. 5 ILCS 315/14(k).
21. Awards are reviewable on the grounds that "the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means." 5 ILCS 315/14(k).
22. *Id.*
23. Bruce Japsen, *Health Insurance Cost to Rise Again, Employees' Portion of Expense Tops 20%*, CHI. TRIB., Oct. 9, 2005, at C1 (reporting on an annual survey conducted by Lincolnshire-based Hewitt Associates).
24. Rob Kaiser, *Health Premiums Soar; Annual Cost to Insure a Fam-*

ily Almost 60% Higher than in 2001, Study Finds, CHI. TRIB., Sept. 10, 2004, at C1.
25. Japsen, *supra* note 23.
26. *Id*.
27. Bruce Japsen, *Health Premiums Jump 15%, Workers Face Higher Co-Payments Too*, CHI. TRIB., Oct. 10, 2004, at SSW1.
28. Kaiser, *supra* note 24.
29. Japsen, *supra* note 22.
30. *Id*.
31. *Id*.
32. *Id*.
33. *Id*.
34. *Id*.
35. *Id*.
36. *Id*.
37.The cases used in this article were drawn from the records of the Illinois Labor Relations Board as of January 2, 2006. Awards that issued thereafter or were reported thereafter are not included.
38. The ILRB, on its website, keeps track of interest arbitration awards, which by virtue of Section of IPLRA are to be filed with the Board upon their issuance; however, the ILRB is at the mercy of the parties and arbitrators for submission of these awards.
39. No. S-MA-03-142 (2004) (Benn, Arb.).
40. *Id*. at 2.
41. *Id*. at 5.
42. *Id*.
43. *Id*. at 8.
44. *Id*.
45. *Id*. at 8-9.
46. *Id*. at 10-11.
47. *Id*. at 12.
48. *Id*. at 12-13.
49. *Id*. at 13.
50. *Id*.
51. No. S-MA-00-088 (2004) (Briggs, Arb.).
52. *Id*. at 67-68.
53. *Id*. at 65-68.
54. No. S-MA-04-123 (2005) (Malin, Arb.).
55. *Id*. at 17-18
56. *Id*. at 18-19.
57. *Id*. at 20.
58. *Id*.
59. No. S-MA-03-264 (2004) (Benn, Arb.).
60. *Id*. at 4.
61. *Id*. at 19.
62. *Id*. at 22.
63. *Id*.
64. No. S-MA-03-180 (2004) (Yaffe, Arb.).
65. *Id*. at 2.
66. *Id*. at 2-3.
67. *Id*. at 2.
68. *Id*. at 2-3.
69. *Id*. at 4.
70. *Id*.
71. *Id*.
72. *Id*.
73. *Id*.
74. No. S-MA-99-202 (2004) (Kosoff, Arb.).
75. *Id*. at 27.
76. *Id*. at 24.
77. *Id*. at 28.
78. *Id*. at 27.
79. *Id*.
80. *Id*.
81. No Reported Case Number (2005) (Krinsky, Arb.).
82. *Id*. at 8-9. (Note that the award was not paginated; the editor's paginated the award to provide pinpoint citations.)
83. *Id*. at 10-11.
84. No Reported Case Number (2005) (Cox, Arb.).
85. *Id*. at 2.
86. *Id*.
87. *Id*.
88. *Id*. at 5-6.
89. *Id*. at 6.
90. *Id*. at 7.
91. *Id*. at 9-11.
92. *Id*. at 10.
93. *Id*. at 13.
94. No. S-MA-04-077 (2005) (Cox, Arb.).
95. *Id*. at 7-9.
96.No. S-MA-03-161 (2004) (Cox, Arb.).
97. *Id*. at 7.
98. *Id*. at 11.
99. No. S-MA-04-246 (2005) (Larney, Arb.).
100. *Id*. at 27.
101. *Id*. at 7.
102. *Id*. at 28.
103. *Id*.
104. Nos. S-MA-03-051, S-MA-03-053, S-MA-03-204 (2005) (Goldstein, Arb.).
105. *Village of Brookfield and Illinois Fraternal Order of Police Labor Council*, No. S-MA-04-151 (2005) (Benn, Arb.); *Village of Deerfield and Illinois Fraternal Order of Police Labor Council*, No. S-MA-04-200 (2005) (Benn, Arb.); *Village of Skokie and Illinois Fraternal Order of Police Labor Council*, No Reported Case Number (20005) (Briggs, Arb.); *County of Warren and the Sheriff of Warren County and Illinois Fraternal Order of Police Labor Council*, No. *S-MA-04-069* (2005) (Callaway, Arb.).
106. No Reported Case Number (2005) (Benn, Arb.).
107. *Lee County* at 13.
108. *Pekin* at 4.
109. *Danville* at 28. The Arbitrator does reference the Union's position as maintaining "*status quo*". *Id*. at 37. ◆

Recent Developments

Recent Developments is a regular feature of The Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the two collective bargaining statutes.

IELRA Developments

Joint Employers

In *Service Employees International Union, Local 73 v. University of Illinois at Chicago and Illinois Department of Central Management Services*, No's 2005-CA-0006-C; 2005-CA-0001-S (IELRB 2005) the IELRB held that University of Illinois at Chicago (UIC) and Illinois Department of Central Management Services (CMS) were not joint employers and therefore dismissed the portion of the charges that related to CMS.

The IELRB viewed the key consideration in determining employer status as the extent to which an entity is necessary to create an effective bargaining relationship. In addition, as set out in *Orenic*, v. *ISLRB*, 127 Ill.2d 453, 537 N.E. 2d 784 (1989), other relevant factors for determining joint employer status are whether both employers have the power to hire and fire; promote and demote; and set wages, work hours, and other terms and conditions of employment.

The union argued that CMS, was a joint employer because it established employees' group life and health insurance plan benefits and costs in accordance with the State Employee Group Insurance Act, 5 ILCS 375/1. However, the IELRB observed, under the Insurance Act, the university was allowed to set the amount of premiums and the amount of member contributions. The IELRB concluded that CMS played no role in any of the *Ohrenic* factors and, accordingly, was not a joint employer.

Member Ettinger dissented. He argued that the Insurance Act required CMS to offer insurance benefits to union-represented employees through their unions. Consequentely, in his view, the Insurance Act made CMS a joint employer.

IPLRA Developments

Interest Arbitration

In AFSCME, Council 31 and State of Illinois, Department of Central Management Services, No. S-CA-03-002 et al (ILRB State Panel 2005) the State Panel held that security employees and other employees who are prohibited from striking have a right to interest arbitration to resolve mid-term disputes. The ILRB rejected the state's argument that interest arbitration was limited to disputes over an initial or successor contract. Therefore the state was required to arbitrate issues related to a facility closing that were negotiated mid-term to impasse.

This issue arose after the state announced that it was closing several correctional facilities. The parties negotiated the impact of the closings. They agreed on some issues, but others were negotiated to impasse. AFSCME demanded interest arbitration and the state refused on the ground that there was no obligation to arbitrate.

The state argued that there was no duty to arbitrate because section 14(a) of the IPLRA provides for mediation followed by interest arbitration to resolve impasses in bargaining for initial and successor collective bargaining agreements, but does not provide for arbitration of mid-term bargaining impasses. The ILRB, however, relied on section 2's provision that "all collective bargaining disputes involving . . . security employees shall be submitted to" interest arbitration. The board reasoned that the IPLRA was not intended to shift the balance of power in favor of employers in mid-term bargaining with employees who lacked the right to strike. Therefore the act affords those employees "alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" via interest arbitration, The board concluded that the ILPRA requires interest arbitration for mid-term disputes.

Subjects of Bargaining

In *Libertyville Professional Firefighters Association and Village of Libertyville*, No. S-CA-05-045 (ILRB State Panel 2005), the State Panel held that promotion to the rank immediately above the highest rank in a firefigher bargaining unit is a mandatory subject of bargaining. The board determined the union's proposal on the issue of promotions to fire lieutenant concerned a mandatory subject of bargaining under the recently-enacted Fire Department Promotions Act (FDPA), 50 ILCS 742/1. The empoyer was directed to bargain with the union with respect to that proposal.

The ILRB acknowledged that case law had previously held that promotions to non-bargaining unit positions were not mandatorily negotiable. *Village of Franklin Park*, 8 PERI ¶ 2039 (ISLRB 1992), *aff'd*, 265 Ill.App.3d 997, 638 N.E. 2d 1144 (3d Dist. 1994); *City of Chicago*, 15 PERI ¶3010 (ILRB 1999).

The board observed that the FDPA defines "promotion" to encompass advancement to ranks within a bargaining unit and to the rank immediately above the highest rank in the unit. Furthermore, the FDPA provides that it sets a "minimum standard" and is to "be construed to authorize and not to limit" bargaining over promotions. The board reasoned that this statutory language could only be interpreted to mandate bargaining and that any other interpretation would render the FDPA's language meaningless.

Member Hernandez dissented. He argued that the word "authorize" meant allow, rather than mandate. Consequently, he would have held that promotions outside the bargaining unit remained a permissive subject of bargaining. ♦

Further References

(compiled by Yoo-Seong Song, Librarian, Institute of Labor and Industrial Relations Library, University of Illinois at Urbana-Champaign)

Reese, Laura A. & Lindenberg, Karen, E. GENDER, AGE, AND SEXUAL HARASSMENT. *REVIEW OF PUBLIC PERSONNEL ADMINISTRATION*. Vol. 25, no. 4. December 2005. pp.325-352.

The authors conducted a survey of 525 municipal employees to study their attitudes based on gender and age groups toward sexual harassment policies. The authors were specifically interested in investigating if age groups differences are equally important for male and female employees, and also if there are significant relationships between age and gender in terms of evaluating sexual harassment policies at work. Previous research has reported how female and male employees interpreted sexual harassment policies and how they approached cases differently. This research confirms that age also is an important factor that shapes public employees' attitudes toward and satisifaction with sexual harassment policies.

McDonnell, Kenneth J. & Salisbury, Dallas. BENEFIT COST COMPARISONS BETWEEN STATE AND LOCAL GOVERNMENTS AND PRIVATE SECTOR EMPLOYERS. *PUBLIC PERSONNEL MANAGEMENT*. Vol. 34, no. 4. Winter 2005. pp. 321-327.

This article examines the total compensation discrepancy between public and private sector employers. The data released by the Bureau of Labor Statistics in 2005 reported that total compensation costs (salaries and wages and employee benefits) were higher for state and local government employers than for private sector employers (40% higher for salaries and wages and 61% higher for employee benefits). The authors seek to offer further insights in understanding the higher compensation costs for public sector employers compared to private sector employers.

Haraway, William M. EMPLOYEE GRIEVANCE PROGRAMS: UNDERSTANDING THE NEXUS BETWEEN WORKPLACE JUSTICE, ORGANIZATIONAL LEGITIMACY AND SUCCESSFUL ORGANIZATIONS. *PUBLIC PERSONNEL MANAGEMENT*. Vol. 34, no. 4. Winter 2005. pp. 329-342.

This article explores issues of workplace justice and organization legitimacy founded in formal employee grievance programs and procedures designed to afford aggrieved employees procedural due process, equal treatment and fairness. The author contends that workplace justice and organization success are closely tied to the legitimate actions of first-line supervisors and human resource management's abilities to design institutions capable of fulfilling their social responsibilities in self-serving ways. This will require a better understanding of how formal employee grievance procedures alter cooperative, alternative dispute resolution mechanisms for resolving employees' workplace concerns, complaints, and disputes in public organizations. [Publication Abstract]

(Books and articles anotated in Further References are available on interlibary loan through ILLINET by contacting your local public library or system headquarters.)

The Report Subscription Form (Volume 23, Numbers 1-4)

The publication of *The Illinois Public Employee Relations Report* reflects a continuing effort by Chicago-Kent College of Law and the Institute of Labor and Industrial Relations to provide education services to labor relations professionals in Illinois. *The Report* is available by subscription through Chicago-Kent College of Law at a rate of $40.00 per calendar year for four issues. To subscribe to *IPER Report*, please complete this form and return it with a check or billing instructions to:

Institute for Law and the Workplace
Chicago-Kent College of Law
Illinois Institute of Technology
565 W. Adams Street
Chicago, IL 60661-3691

☐ Please start my subscription to *IPER Report*.
☐ Please bill me.
☐ Enclosed is my check payable to Chicago-Kent College of Law.
☐ We also accept MasterCard, VISA and Discover Card;
Please complete the following information:

☐ MasterCard ☐ VISA ☐ Discover Card

No. _____

Exp. Date _____

_____
(Cardholder Signature Required)

Name: _____

Title: _____

Organization: _____

_____

Address (**Please give address where the *IPER Report* should be mailed**.)

_____

_____

Tel.: _____ Date: _____

The Illinois Public Employee Relations Report provides current, nonadversarial information to those involved or interested in employer-employee relations in public employment. The authors of bylined articles are responsible for the contents and for the opinions and conclusions expressed. Readers are encouraged to submit comments on the contents, and to contribute information on developments in public agencies or public-sector labor relations. The Illinois Institute of Technology and University of Illinois at Urbana-Champaign are affirmative action/equal opportunities institutions.

Illinois Public Employee Relations Report

Published quarterly by The Institute of Labor and Industrial Relations University of Illinois at Urbana-Champaign and Chicago-Kent College of Law, Illinois Institute of Technology, 565 West Adams Street, Chicago, Illinois 60661-3691.

Faculty Editors:
Peter Feuille and Martin Malin
Production Editor:
Sharon Wyatt-Jordan

Student Editors:
Judith Archer, Jeremy Edelson, Meagan C. LeGear and Evan M. Lison

Chicago-Kent College of Law
ILLINOIS INSTITUTE OF TECHNOLOGY

458