

**BEFORE THE ARBITRATOR
THOMAS F. GIBBONS**

In the Matter of the Interest Arbitration)	
Between)	
)	
FOREST PRESERVE DISTRICT OF COOK)	
COUNTY)	
)	ILLINOIS LABOR RELATIONS BOARD
Employer)	
and)	
)	
ILLINOIS FRATERNAL ORDER OF POLICE)	
LABOR COUNCIL)	
)	
Union)	

Arbitration Number No. L-MA-09-011

Hearing Date: June 15, 2011

Hearing Place: Forest Preserve District of Cook County
536 Harlem Avenue
River Forest, IL

Appearances:

For the Union: Gary Bailey, Esq.
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Date of Award: May 16, 2012

JURISDICTION

The Hearing in this matter took place on June 15, 2011 at the headquarters of the Forest Preserve District of Cook County, 536 Harlem Avenue, River Forest, IL. The Hearing commenced at 10:00 a.m. before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. The Union and the Employer agreed at the outset of the interest arbitration hearing that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315/14, (hereinafter referred to as "IPLRA" or "Act"). The parties also submitted ground rules and pre-hearing stipulations. Union Exhibit Book #1, Section 1.¹

STATEMENT OF ISSUES

A procedural issue arose at the start of the interest arbitration that ultimately framed the issues to be decided by the Arbitrator in this matter. *See Arbitrator Gibbons Ruling as to Final Offers, December 28, 2011.* This Award addresses the issues outlined in that Ruling.

FACTUAL BACKGROUND

The Forest Preserve District of Cook County (hereinafter the "District" or the "Employer") is comprised of 68,000 acres or 106-square miles of publicly-held Forest Preserve property scattered throughout Cook County. Tr. 64.² The Illinois Fraternal Order of Police Labor Council (hereafter the "FOP" or "Union") represents a bargaining unit of Police Officers below the rank of Sergeant employed by the District and who patrol and enforce the laws within the Forest Preserve on a 24-hour, 7-day basis. Tr. 65. The Employer and the Union are parties to a Collective Bargaining Agreement covering the bargaining unit's 79 Forest Preserve Police Officers. The contract's term was

¹ The parties at Hearing submitted Exhibit Notebooks. For purposes of identification, the notebooks are marked as Union Exhibit Notebook #1, #2 and #3, and Employer Exhibit Notebook #1.

² References to the hearing transcript are designated as "Tr. ___."

from January 1, 2005 to December 31, 2008, and continues in effect pending a negotiated agreement or an interest arbitration ruling setting out the terms of a new contract. Tr. 43.

As the contract term drew to a close, the Union filed a demand to bargain a successor Collective Bargaining Agreement. The parties attempted to negotiate a new contract but were unable to reach a settlement. In December 2010, the Union filed for interest arbitration to resolve the contract impasse. This Arbitrator was chosen to hear this matter per the IPLRA selection process administered by the Illinois Labor Relations Board. On June 15, 2011, the District and the Union held an interest arbitration hearing to present evidence regarding their unresolved issues. The hearing was conducted under the impasse resolution provisions of the IPLRA, which provides public employees who are statutorily prohibited from exercising the right to strike with a forum to resolve bargaining impasse. The parties were afforded an opportunity to present evidence and arguments, including examination and cross-examination of all witnesses. A 125-page transcript was prepared.

However, the interest arbitration was suspended before the completion of case presentations. The parties exchanged final offers at the start of the Hearing, prompting a procedural disagreement that was dispositive of a resolution of the interest arbitration. The parties subsequently filed timely briefs in support of their respective positions. On July 15, 2011, the Arbitrator per the authority of the IPLRA instructed the parties to return to negotiations. At the request of the parties, the Arbitrator agreed to assist the negotiations in the role of a mediator. The negotiations took place on September 6, September 23 and October 31, 2011. By mutual agreement the negotiations extended beyond the statutory 14-day negotiation period. The parties engaged in good-faith bargaining but ultimately the Union on December 19, 2011 requested that the parties return to interest arbitration and seek a binding resolution. The Arbitrator declared an impasse on December 20, 2011 and directed the parties to return to interest arbitration pending his ruling as to the outstanding procedural issues. As noted, the Arbitrator

ruled on the procedural issues on December 28, 2011. The parties mutually waived additional hearing dates and, per agreement, filed timely Post-Hearing Briefs on or before March 16, 2012.

STATUTORY CRITERIA

This proceeding is governed by the provisions of the Illinois Public Labor Relations Act, *supra*. The IPLRA makes a distinction between economic and non-economic issue. The IPLRA states, "as to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." 5 ILCS 315/14(g)(2006). That same restriction is not placed on the items considered non-economic, which allows the Arbitrator flexibility in shaping a resolution. The applicable statutory factors are as follows:

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 proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In the 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 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 of private employment.

5 ILCS 315/14 (h) (2011).

The IPLRA sets forth the criteria for consideration in interest arbitration, though there is no guidance on which factor or factors are to be given the most consideration. In recent years, the interests and welfare of the public, and the financial ability of the unit of government to meet costs have become increasingly important factors due to the severe economic

conditions over these past five or so years. *See County of Cook and Cook County Sheriff's and AFSCME, L-MA-09-003, 004, 005, 006 (Benn, 2010)* The *Benn* award held that "as the economy crashed,...it was inherently unfair to public sector employers (and the public) for interest arbitrators to use comparability as a driving factor for making these decisions because in an economy where public sector employers have taken such a hard hit, looking at contracts which were negotiated before the economy crashed did not yield 'apples to apples' comparisons." *Id*, p. 16. However, the *Benn* award does not tell the whole story, it does not conclude the analysis. When two parties sit down to bargain collectively, there are many moving parts. Often times when the dollars are tight, there are other non-monetary, or minor monetary concessions made to reach a final agreement on the subsequent collective bargaining agreement. To merely talk about the economic component without the non-economic piece does not analyze the entire picture. Moreover, the Act itself requires more. Paragraph 8 requires consideration of "(s)uch other factors, ..., 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 of private employment." Even with the conservative nature of the process, the realities of collective bargaining cannot be ignored. It is a balance that recognizes the economic realities faced by employers and the public at large, and the legitimate interests and bargaining rights of public-sector employees.

STIPULATIONS

At the hearing the parties entered into the following stipulations:

1. The Arbitrator in ILBR Case No. LA-M-09-011 shall be Arbitrator Thomas Gibbons. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to make retroactive adjustment to wages and benefits. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such adjustments; however, the parties do not intend by this Agreement to predetermine whether any adjustments to wages or other forms of compensation in fact should be retroactive.
2. The hearing in said case will be convened on June 15, 2011 at 9:00 a.m. The requirement set forth in section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days

following the Arbitrator's appointment, has been waived by the parties. The hearing will be held at the District Headquarters, River Forest, Illinois.

3. The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative and agree that Arbitrator Gibbons shall serve as the sole arbitrator in this dispute.
4. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured by the Employer for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.
5. The parties agree that the following issues remain in dispute, that the issues, which are mandatory subjects of bargaining, are submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer on the issues presented inasmuch as the issues are economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:
 - a. See Attached
6. The parties agree that the following issues remain in dispute, that the issues, which are mandatory subjects of bargaining, are submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer or award his own language on the issues presented inasmuch as the issues are non-economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act.
 - a. See Attached
7. The parties agree that the Arbitrator shall incorporate into the collective bargaining agreement any tentative agreements reached during the negotiations between the parties. Copies of those tentative agreements shall be submitted into the record at the arbitration hearing or thereafter.
8. Final offers shall be exchanged in a manner agreeable to counsel. Once exchanged, such final offers may not be altered except by mutual agreement of the parties. Each party shall be free to present its evidence in either the narrative or witness format, or a combination thereof. The Labor Council shall proceed first with the presentation of its case-in-chief. The Employer shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.
9. Post-hearing briefs shall be submitted to the Arbitrator, with the copy for the opposing party sent through the Arbitrator, no later than August 18, 2011 or such further extensions as may be mutually agreed to by the parties or as granted by the Arbitrator. The post-marked date of mailing shall be considered to be the date of submission of a brief.
10. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.
11. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.
12. Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois Labor Relations Board shall govern these arbitration proceedings.

13. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.
14. The parties agree that the arbitration proceedings are not subject to the public meeting requirements of the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.* All sessions of the hearing(s) will be closed to all persons other than the arbitrator, court reporter, representatives of the parties, including negotiating team members, witnesses to be called at the hearing, resources persons of the parties, members of the bargaining unit, and elected officials and management staff of the Employer. The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

The stipulation was signed and dated by both parties at the hearing on June 15, 2011.

DISTRICT'S ABILITY TO BEAR THE COSTS

The Union introduced evidence as to the financial well being of the District. Unlike many other public employers in these difficult economic times, the District's financial condition is relatively good. According to the information on the District's own website, their total fund balance at the end of 2008 was \$23.2 million. (Union Exhibit notebook#1, Tab 19, Tr. 93) The District to its credit has come a long way to improve its finances over the past 10 years, growing from an annual \$16.6 million deficit to a surplus of \$23.2 million as of 2008. That surplus has continued to this day with \$19 million in unreserved funds. Union Book #1, Tab#19, p. 3. The District does not refute its positive economic position. "Even the most vigorous employer advocate would not contend that the Forest Preserve District of Cook County does not have the ability to pay the wage increases proposed by the Union." Employer Post-Hearing Brief, p. 10.

COMPARABLES

These parties are no strangers to interest arbitration. There are two prior awards and one stipulated award. The first interest arbitration resulted in a stipulated award. In 2005, the second of those awards Arbitrator Lamont Stallworth determined the following to be the relevant comparables for this bargaining unit:

- Cook County Sheriff's Police Officers
- Cook County Sheriff's Corrections Officers
- Cook County Sheriff's Court Deputies and Civil Service Deputies
- Cook County Sheriff's DCSI Fugitive Unit Investigators
- Cook County Sheriff's DCSI Day Reporting Investigators
- Cook County Sheriff's DCSI Electronic Monitoring Investigators

Cook County Sheriff's Internal Affairs Division Investigators
Cook County State's Attorney's Investigators

See, *Forest Preserve District of Cook County and the Illinois FOP Labor Council*, L-MA-01-007 (Stallworth, 2005) Once established, there is a heavy burden to change the external comparables. There was no evidence introduced by either side to suggest the need to change them here, so they will stand.

CHANGES TO THE STATUS QUO

It is a well-established tenet that the party proposing the change from the status quo bears the burden of establishing the need for the change. See *County of Will and Sheriff of Will County and AFSCME, Local 2961*, S-MA-88-009 (Arb. Nathan, 1988) Changes to the status quo are warranted when: (1) the existing system is not working as anticipated, (2) the existing system has created operational hardships for the employer or equitable issues for the union, and (3) the party seeking to maintain the status quo has resisted attempts to address the issue. See *County of Kankakee and Sheriff of Kankakee County and Illinois FOP Labor Council*, S-MA-07-046 (Arb. Kohn, 2009). However, a basic premise of this formulation is that both parties actively participated in the negotiations that led to the impasse and subsequent arbitration. That does not appear to be the case here. At the start of the hearing, the parties had no tentative agreements and the amount of bargaining that occurred was limited at best.

The evidence in the record is clear that prior to the hearing the District was reluctant to bargain with the Union even over the simplest matters. There was not a single tentative agreement between the parties on the date of hearing. This included items that could fairly be described as housekeeping matters, see non-economic #3 (a proposal to remove jobs that no longer exist within the District). It would hardly seem fair to hold the Union to the same elevated standard when there was never any real opportunity to bargain in the first place. As Arbitrator Flechter held:

...when one party or the other patently refuses to negotiate, as the Village has done here, it is not a foregone conclusion that the *status quo* will be preserved for lack of meaningful bargaining. Indeed, as the Arbitrator has already noted, sometimes "no" is "no", and that truth is neither sinister or surprising. However, "Because I said so" does not constitute meaningful bargaining and that is the difference.

Village of Posen and Illinois FOP Labor Council, S-MA-09-182 (Arb. Fletcher, 2011).

ECONOMIC ISSUES

1. Rates of Pay, Section 3 Field Training Officers

a. Union Offer

Officers certified by the State of Illinois as FTO's, for any shift of portion thereof during which they perform FTO duties, shall receive an additional hour of compensation which may be taken as wages or compensatory time at the officer's option.

b. District Offer

No offer, status quo

c. Analysis

The Union is proposing that officers who serve in the capacity of a field training officer (FTO) be compensated one hour of compensatory time for each shift that they act as an FTO. According to the Union an FTO is a rookie officer's "instructor, mentor and guide to passing his probationary period." (Un.Br. at 14)

In support of their position, the Union provided evidence that the Cook County Sheriff's police officers receive one hour of compensatory time per day when acting in the capacity of an FTO. There were no other provisions provided regarding this issue from other comparable contracts.

The District asserts that the requirements for an FTO are minimal. Chief Waszak testified that:

They do not work any additional hours. They don't do any additional duties except fill out the manual which quite frankly is just to check off – check off a box of the trainee – if the trainee did in fact do something, he just check it off. (Tr. 150)

Chief Waszak also stated that FTO's are not responsible for doing any qualitative evaluation of the trainees. (Tr. 156) The District asserts that there is no reason to provide additional compensation for such minimal paperwork responsibility.

While it is not out of the ordinary for an FTO to receive additional compensation for the extra duties, it does not appear as though the District's FTO program is an ordinary program. The undisputed evidence provided at the hearing was that the officers who serve as an FTO really are not required to do much more than fill out a form, they are not

responsible for the rookie's actions or whether or not the rookie is advancing through the program. Under these circumstances, there is no need for the additional compensation.

Union offer rejected.

2. Holidays, Section 4 Holidays in Vacations

a. Union Offer

If a holiday falls within an employee's scheduled vacation, such employee, if otherwise eligible, shall be granted an additional day of vacation. The holiday shall be paid as a holiday but it shall form an integral part of the vacation request for purposes of vacation preference and scheduling.

b. District Offer

No offer, status quo.

c. Analysis

The Union asserted in its oral presentation at hearing that this proposal was merely a clarification. (Tr. 102) During the pendency of this existing agreement there had been an issue with a holiday falling within a vacation and according to the Union, their proposal merely reflects the deal that the parties' reached. (Tr. 102, U.Br. at 15) Chief Waszak testified that he agreed that the Union's proposed language reflected that status quo. (Tr. 157) The parties are in agreement with the language in the proposal

Union proposal adopted.

3. Welfare Benefits, Section 4 Disability Benefits

a. Union Offer

Employees incurring any occupational illness or injury will be covered by Worker's Compensation insurance benefits. Employees injured or sustaining occupational disease on duty, who are off work as a result thereof, shall be paid Total Temporary Disability Benefits pursuant to the Worker's Compensation Act. Duty Disability and ordinary disability benefits also will be paid to employees who are participants in the Forest Preserve District Employees Annuity and Benefit Fund of Cook County. Duty disability benefits are paid to the employee by the Retirement Board when the employee is disabled while performing work duties. Benefits amount to seventy-five percent (75%) of the employee's salary at the time of injury, and begins the day after the date the salary stops. Ordinary disability occurs when a person disabled due to any cause, other than injury on the job. An eligible employee who has applies for

such disability compensation will be entitled to receive, on the thirty-first (31st) day following disability, fifty percent (50%) of salary less an amount equal to the sum deducted for all annuity purposes. The first thirty (30) consecutive days of ordinary disability are compensated for only by the use of any vacation pay credits unless the employee and the District otherwise agree. All the provisions of this Section are subject to change in conjunction with changes in state laws. However, the employee, at his option, may use any paid leave, including vacation, personal, or compensatory time, while awaiting determination of the position regarding the nature of injury leave, which time shall be returned to the employee if the determination of the District is that the nature of the injury is duty disability.

b. District Offer

No offer, status quo.

c. Analysis

The Union is proposing to allow officers to use any accumulated paid leave time while awaiting a determination of the nature of the injury – duty related or non-duty related. According to the Union, there is a need for this provision because it takes the County weeks or even months to determine whether an employee’s injury is duty related or not. During this “limbo” period, the County currently denies officers use of their own accumulated benefit time, such as vacation time, compensatory time or sick time. The Union refers to Chief Waszak’s testimony that if six months were to pass and one of his officers was in this “limbo” period, Waszak would defer the issue and not address it. (Tr. 158) The District asserts there is no need for this provision as Chief Waszak testified that he had not received any complaints from employees regarding this issue (Tr. 159). The District also asserts that this provision involves “the interplay between a number of statutes.” (D.Br. at 15) The District states that the problem with this proposal is that the Arbitrator would not know if he was treading on any statutory rights.

This issue was previously addressed in an arbitration of one of the comparable bargaining units by Arbitrator Fletcher in *County of Cook and Sheriff of Cook County (DCSI Fugitive Investigators) and Illinois FOP Labor Council, L-MA-05-007 (2007)*. Arbitrator Fletcher stated that, “the Union proposes to close the gap by offering a solution which, in the end, costs the Joint Employer nothing new. Accrued time is already earned, and belongs to the employee.” *Id.* at 78-84 (emphasis in original). If the injury is determined to be non-duty related, the District is merely allowing employees to use whatever accrued time they have, if any. If the injury is determined to be duty related, the District has a statutory obligation to

continue to pay the employee for a period of one year with no deductions from any accumulated time. The District would merely have to re-credit the employee for any time deducted during the “limbo” period. As Arbitrator Fletcher pointed out, “...it makes little sense to starve when there is bread in the house.” *Id.* at 84.

Union proposal adopted.

4. Miscellaneous, Section 14 Uniforms

a. Union Offer

The current system of providing uniforms to employees shall be maintained during the duration of this Agreement. In addition to the uniform currently provided, the Employer will also provide each employee with pepper spray and an expandable baton. ~~The Employer will continue to apply for bullet proof vests through any grant program and, if granted, shall provide each employee with a Bullet Proof Vest and maintain in accordance with manufacturer’s specifications.~~ The Employer also will provide and maintain in accordance with the manufacturer’s specifications Level 3 protective body armor.

b. District Offer

No offer, status quo

c. Analysis

The Union has proposed to strike language regarding any grant program and include language that the District will provide Level 3 protective body armor, which is one level greater than is currently provided. According to the Union, this change is needed because of an issue that arose between the parties where there was a recall on the vests the District purchased and they were not replaced in a timely manner. The Union also points out that the proposal could have been for a uniform allowance, which is common among their comparables at a cost of around \$51,350, but that the choice was made to go with this, a lower cost alternative, at around \$7,900.

The District stated that due to the previous arbitration award, the parties agreed that the District would provide all bargaining unit members with level 2 protective body armor. According to Keino Robinson, Senior Attorney for the Forest Preserve District, every officer was issued a vest per the previous grievance arbitration and all new hires are issued vests upon hire. (Tr. 159-61) However, he stated that the employees are responsible for replacing the vest. (Tr. 159) The District points out that accepting the Union’s proposal

would require them to purchase every officer a new vest, which is quite costly. And, it would require the District to maintain level 3 protective body armor. This, argues the District, is beyond the scope of the Arbitrator's authority. According to the District, this proposal would amount to the Arbitrator mandating what "type of equipment" the department must buy.

The District does not have any sort of uniform allowance, they operate in the nature of a quartermaster system. If an officer's uniform wears out, the District issues a new shirt. (Tr. 163) There is no cash payment from which officers can purchase their own replacement vests. However, the Union did not offer any evidence to establish that the Level 2 protective body armor is inadequate and none of the comparable bargaining units require Level 3 protective body armor.

Union proposal rejected.

5. Appendix C Related Directives

a. Union Offer

....

5. Any patrol officer requesting to utilize compensatory time due must submit their requests in writing, using the proper form to the Office of the Chief of Police. This request must be submitted in a timely manner so as to reach the Office of the Chief of Police not later than two (2) working days, excluding Saturday and Sunday, prior to the effective date of the requested days off. Requests to use compensatory time shall be responded to within three (3) days (exclusive of Saturday and Sunday) after submission by the employee to the date requested. Multiple requests to use compensatory time on the same day shall be responded to on a first come basis. Requests to use compensatory time made less than three (3) days prior to the requested date shall be responded to as soon as practicable.

....

8. During the period between 15 May and 01 September, the following guidelines will also apply:

a. A patrol officer may ~~not~~ utilize compensatory time in conjunction with other vacation ~~unless a holiday falls within a vacation scheduled between 15 May and 01 September, in which case an officer may request to extend their vacation by one (1) additional compensatory time day. Except as otherwise provided herein, a minimum of (5) calendar days must occur between vacation and compensatory time used.~~

b. District Offer – ER says impossible to do this.

No offer, status quo

c. Analysis

The Union is proposing several changes to the language regarding compensatory time. The first requires the District to respond to requests for use of compensatory time within three days of the request, or as soon as practicable for requests made less than three days in advance of the requested day off. The second change involves granting the time off on a first come, first serve basis, instead of in seniority order, if multiple requests are made on the same day. The third proposed change to this provision allows officers to use compensatory time in conjunction with their vacation time during the period of May 15 through September 1. The Union makes these proposal in hopes of equalizing the process for its bargaining unit members and reducing the number of grievances filed regarding compensatory time.

The District opposes this proposed change. Chief Waszak testified that it would be impossible for the District to respond to a request within three days because of the nature of their operations. (Tr. 165-66). Their normal protocol is to address requests for compensatory time off 10 days prior to posting the schedule for the month. (Tr. 164-65) The rotating schedule gets posted for each 28 day period, rather than for an entire year. According to the Chief, it would simply be impractical for the District to consider requests made far in advance. The District argues the same is true for the provision that allows officers to use compensatory time in conjunction with their vacation time. The District asserts that granting this proposal would “unleash endless grievances and arbitrations regarding comp time requests.” (D. Br. at 19)

As the District points out, interest arbitration is a conservative process. This District is also correct that scheduling is complicated. Granting a proposal like this one may have a series of unintended consequences. While there have been a few issues with compensatory time over the years, the evidence is far from clear that this proposal put forth by the Union would solve them. An issue as complicated and far reaching as this one is better suited to discussions at the bargaining table.

Union offer rejected.

6. Appendix D Salary Chart - Annual Increases

a. Union Offer

1/1/09	2%
1/1/10	1.5%
1/1/11	4% (2% increase, 2% equity adjustment)
1/1/12	2%
6/1/12	1%

b. District Offer

1/1/09	2%
1/1/10	1.5%
1/1/11	2%
1/1/12	2%
7/1/12	1%

Wages shall be retroactive to January 1, 2009

c. Analysis

The parties' wage proposals are patterned after the wages awarded by Arbitrator Benn in *Cook County Sheriff and AFSCME Council 31*, (Arb. Benn 2010). The only difference in the proposals is the Union's addition of a 2% equity adjustment effective 1/1/11. The remainder of the proposals are identical.

In a recent decision with one of the comparable units, Arbitrator Steve Beirig found that "two primary factors at issue in this case are the interests and welfare of the public and the financial ability of the government to meet those costs as well as the internal comparison of wages, hours and conditions of employment of employees performing similar duties within the County." *Cook County Sheriff's Department (DCSI Day Reporting Unit)* (Beirig2011) The interesting distinction between those cases and this one is that 1) the Employer here is not Cook County and 2) the Cook County Forest Preserve District has not suffered the financial crisis like many other public entities. The evidence shown by the Union indicates that there were some difficult times for the District during the early part of this new century – layoffs, financial instability, etc. However, in recent times, the number of employees has

grown, as has the District's overall surplus. This is an enviable situation that very few other public entities find themselves in 2012. Moreover, there are no internal comparables for the Forest Preserve District. The police are the only unionized group of employees within the District. All of the information on comparability is from external entities – all of whom are Cook County entities and all of whom are suffering in this tough economy.

So the question here becomes, is it appropriate to award the Union's final offer which includes the 2% equity adjustment? It is without question that the District officers are paid below average as compared to their comparables. Taking the FY 2009 numbers provided by the Union, the District officers range anywhere from 6.16% below the average (after 1 year) to 16.22% below (at top pay). This is comparing the January 2009 wages to the December 2008 wages of the comparable units. Going back to FY 2008, the District officers are at best 5.69% below the average (after 1 year) to 15.35% below the average (at top pay). In terms of ranking where the District officers fall – after 1 year of service, they rank 9th out of 10; after 5 years of service 9th out of 10; after 10 years of service 10th out of 10; after 15 years of service 10th out of 10; after 20 years of service 10th out of 10; and at top pay 10th out of 10. They are at or near the bottom at each level.

However, the "ability to pay" is not simply an inquiry as to whether the District can meet its costs and pay the Union's proposed wage increases. The Employer is correct that the ability to pay must be factored, as mandated by the IPLRA, with the "interests and welfare of the public." At a time of record unemployment, and when many public and private employees are receiving no or minimal salary increases in these difficult times, it may not be the best time to consider giving District officers an equity adjustment. This determination should not be viewed in any way as a reflection of whether the officers are entitled to an equity adjustment. It is only a finding that, at this time when employers and the public in Illinois are struggling due to the depressed economy, it is more appropriate to only consider a Cost of Living adjustment for District officers to preserve their buying power during this economic downturn.

Employer offer adopted.

7. Appendix D Salary Chart – New Step

a. Union Offer

Add Step 10, 25 Years to existing Salary Chart

Effective 1/1/11, the amount shall be 4% greater than the amount at Step 9, 20 years.

b. District Offer

No offer, status quo

c. Analysis

As was previously discussed, the pay for the District officers is at or near the bottom at every level. While now may not be the best time to give out an equity adjustment, now is a good time to increase top pay for these officers. The top step is where the officers are furthest behind. All of the comparable units have a step at 25 years, and the Cook County Police have their top step at 29 years. There is ample support in the comparables for the addition of this step. The current impact on the District is minimal. According to their own brief, over half of the employees were hired in 2005 or later. (D. Br at 4) This half of the work force is nearly two decades away from the 25 year step. Moreover, the District has the financial wherewithal to pay for this additional step. This will not bring the top pay even up to the 9th position in the rankings, they will still be at the bottom, but it will be an improvement.

Union proposal adopted.

NON-ECONOMIC ISSUES

1. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

Work schedules shall be posted ~~ten (10) calendar days in advance as far as practicable by the 15th of December for the following year, and remain posted.~~

b. District Offer

No offer, status quo

c. Analysis

This proposal goes hand in hand with non-economic proposal 5. Therefore, the two will be discussed and analyzed together. See 5 below.

2. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

It is recognized that schedules may have to be changed to meet staffing requirements and District obligations from time to time but only as a temporary assignment of fifteen (15) days or less in duration and on a "reverse seniority basis", or, if changed due to emergency, then until the state of emergency no longer exists.

b. District Offer

No offer, status quo

c. Analysis

The Union proposes to avoid potential issues with schedule changes to limit the duration of such changes to fifteen days. This proposal will avoid having the District make an arbitrary decision as to whose schedule will be changed, it will be done by reverse seniority.

Moreover, the Union points out that this proposal does not cost the District anything.

The District asserts that there is no need for this provision. Chief Waszak testified that there has not been an occasion where he has had to change shifts to meet staffing requirements or held anyone off a shift for more than 15 days. (Tr. 176) He also stated no one ever raised this issue. (Tr. 177) The District argues that if there is no problem, there is no need to make any change.

The Union's proposal is reasonable. It strikes a balance between the District's need for flexibility and meets the employee's need for stability. A theme throughout this entire hearing was the Union's desire for stability in scheduling. This is one area where the District can provide it with no cost and virtually no inconvenience to the District. This is one of those area mentioned above where employer can and should take the opportunity to make improvements when the wages are lagging so far behind.

Union proposal adopted.

3. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

...

~~Officers assigned to the following categories will be excluded from the mandatory patrol rotation cycle: All officers below the rank of Sergeant will be assigned to patrol, with the exception of the officers assigned to the following specialized units:~~

- ~~1. OIC~~
- ~~2. Specialized Units (i.e. K-9, Mounted)~~
- ~~3. S.O.G.~~
- ~~4. Office Personnel~~
- ~~5. Detective~~
1. Detective
2. Chief's Detail

b. District Offer

No offer, status quo.

c. Analysis

The Union asserted during its presentation that this proposal was merely a clarification of the status quo. During the District's presentation, the District agreed to this proposal at hearing. (Tr. 177-78)

Union proposal adopted.

4. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

...

The Union membership will ~~then~~ bid by seniority for the patrol area first and then the patrol shift of their preference.

b. District Offer

No offer, status quo.

c. Analysis

Although the District did not make a final offer on this issue, the Chief indicated at hearing that the Union's proposal reflected the current practice. (Tr. 178)

Union proposal adopted.

5. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

....

~~The officers who have successfully bid for the Second and Third Shifts will work those shifts, beginning on January 23, 2004, for a total of twenty-eight (28) consecutive days. This rotation will continue until the next annual bid. The Officers, who have successfully bid for the First Patrol Shift upon completion of the shift bid, will remain on that shift, ~~without rotation~~, until the next annual bid. The annual bid will take place in December each year.~~

....

~~Should the Chief of Police decide that the Second Patrol Shift and the Third Patrol Shift be staffed by an unequal number of officers, the shift switch (which occurs every twenty-eight (28) days) will still be a switch en masse, with the following explanation on how the department will maintain more manpower on one shift:~~

~~As has been historically done, the least senior employees on the shift with the extra manpower will not shift. These employees will remain on the same shift for another twenty-eight (28) days for a total of fifty-six (56) days. The number of employees not shifting will be equal to the difference in the two (2) shifts (e.g. if the Second Patrol Shift has twenty-five (25) officers and the Third Patrol Shift has thirty (30) officers, the number of officers not shifting would be five (5)).~~

~~At the next switch, the employees who have not switched will switch firsts and the next group of least senior employees will remain on the same shift for another twenty-eight (28) days for a total of fifty-six (56) day. The same process will continue, with the least senior officers not having previously been held to the same shift remaining on a shift for fifty-six (56) days. The process will restart after every officer who has worked the shift with the extra manpower has been held for a fifty-six (56) day period.~~

...

b. District Offer

No offer, status quo.

c. Analysis

The Union is proposing to move away from the rotating shifts to permanent shifts.

Currently the officers on the day shift and the afternoon shift rotate shifts every twenty-eight days with one exception. When the afternoon shift has more officers than the day shift, some officers are held on afternoons for an additional twenty-eight days. So some officers stay on the shift for a total of 56 days. The officers on the midnight shift are on a permanent shift. The Union proposal here would require that all officers bid for a shift and

stay on that shift for one year. The District would then post the schedule for all officers on December 15 prior to the start of the year, as proposed in Non-Economic 1.

In support of their position, the Union points out how the current system is dysfunctional. The Union asserts that numerous grievances have been filed regarding scheduling and that has reduced the officers' ability to use their earned time off. Moreover, the Union introduced a number of studies that show that people working rotating shifts have increased medical ailments. Finally, the Union argues that the District's way of dealing with these issues is to ignore them. This, the Union posits is reason enough to change the status quo.

The District asserts that this is a huge breakthrough issue. The District points out that only a few officers are on the midnight shift, so a majority of the officers only rotate between days and midnights. This makes the Union's studies irrelevant here because these officers do not rotate through all three shifts. The District argues that the Union did not offer any evidence to support the need for the change.

Moreover, the District maintains that if they go to a seniority-based shift bid, that increases the likelihood that the older and more senior officers will gravitate to the day shift. According to the District, this would leave the busier, afternoon shift with less experienced officers at a time when there is the greatest need for police protection. Chief Waszak testified that, "without a doubt" having permanent shifts bid by seniority would "result in loss of valuable experience during the more active 3:00 to 11:00 shift period." (Tr. 172) The Chief also maintains that the permanent shifts would result the day shift being older, whiter and male-dominated, that it would reduce diversity. (Tr. 173-74) Finally, the District asserts that the rotating shifts promote the morale of the agency. The idea that everyone gets to work the day shift at some point is seen as a benefit to all.

As was previously discussed, interest arbitration is a conservative process. The idea of changing the officer's schedule is a complicated one. This is exactly the type of issue that is better suited to the bargaining table. There are many moving parts involved with the schedule - everything from vacation picks to mandatory overtime. In the absence of more information about the consequences of this proposal, it would be inappropriate to award

this proposal under these circumstances. While the Union did establish that there have been some issues, it is not clear that moving to permanent shifts would alleviate the problems.

If the shifts are not changed to permanent shifts, there is no reason to post the schedule for the year on December 15. They will continue to rotate. Additionally, while the posting of the schedule on December 15 would offer predictability for officers it also raises a concern as to impossibility for the employer if bargaining unit members have not yet submitted vacation schedules. As explained earlier, this is an issue best addressed by informed negotiators at the bargaining table who are in the best position to see the consequences of such scheduling practices.

Union proposal on Non-Economic #1 and #5 are rejected.

6. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

....

Every twenty-eight (28) days, ~~in conjunction with the rotation between Second Patrol Shift and the Third Shift,~~ officers will change their consecutive days-off by rotating backwards their days off (i.e. and officer with Mondays/Tuesdays off from work will have Sundays/Mondays off from work in the next rotation.) ~~The Chief of Police will initially determine the officers' consecutive days off after the bids have been complete. The Chief will make this designation, taking into account officers' current days off and attempting to avoid any inequities.~~ Distribution of the day off groups will be equalized to the extent possible and officers will bid their day off groups in seniority order after the shift bid.

b. District Offer

No offer, status quo.

c. Analysis

This proposal is made as part of the Union's overall permanent shift schedule. This proposal would ensure that officers' day off group continued to rotate, as is the current practice. The only difference is that the officers would select their first day off group, rather than the Chief.

The District has opposed the permanent shifts in every proposal and continues to do so here.

As was mentioned in the provision above, this Arbitrator is loathe to get involved in changing the current schedule to a permanent schedule. This provision is part of that overall plan and therefore will also be denied.

Union proposal rejected.

7. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

....

(New)

New employees, will be assigned their shift by the Chief of Police, or his designee, and, after completing the field training program (maximum of six months), they will remain in their patrol shift assignment until the next annual bid. In no case will the hiring and assigning of new employees result in a change in shift assignment for any other employee.

b. District Offer

No offer, status quo

c. Analysis

The Union proposal here is to clarify the rights of the probationary employees with regard to shift bidding. There is no current reference to probationary employees and their status regarding shift bids.

Chief Waszak testified that his only objection with this paragraph was the six month limitation. He testified that if that provision were changed to "after probation" he would have no objection to the Union's proposal. (Tr. 185)

Based on the general consensus, the new paragraph will read:

New employees will be assigned their shift by the Chief of Police, or his designee, and, after completing the probationary period, they will remain in their patrol shift assignment until the next annual bid. In no case will the hiring and assigning of new employees result in a change in shift assignment for any other employee.

Modified Union proposal adopted.

8. Hours of Work and Overtime, Section 2 Regular Work Periods

a. Union Offer

....

(New)

At his discretion, the Chief of Police may create a special detail whose members will not be assigned to any Area and will not participate in the annual shift bid. Members of the Chief's Special Detail can be used to fill staffing needs in any Area as determined by the Chief of Police. All officers on the detail will participate in the next annual shift bid following the termination of their assignment to the detail. Prior to the next annual shift bid each officer returning to patrol duties shall be able to select, in seniority order, from available shifts in the system. No more than 3.0% of the officers can be assigned to the Chief's Special Detail. The members of the detail will count against the maximum limits for officers assigned to special units and details according to Article XII, Section 12. Officers assigned to the detail will participate on a voluntary basis only.

b. District Offer

No offer, status quo.

c. Analysis

The parties "discussed" this provision through the Chief's testimony. Chief Waszak testified that he had no objection to this proposal. (Tr. 190) According to Chief Waszak it essentially reflects the current practice. He went on to clarify that if the words "or shift" were added after Area in line 2, he would be in agreement with the proposal. (Tr. 191) He went on to say he disagreed with the provision that limited the officers to one year in the detail. (Tr. 192) Given that it is a voluntary assignment, there is no reason to limit participation to one year.

With that, the new paragraph will read:

At his discretion, the Chief of Police may create a special detail whose members will not be assigned to any Area or shift and will not participate in the annual shift bid. Members of the Chief's Special Detail can be used to fill staffing needs in any Area as determined by the Chief of Police. All officers on the detail will participate in the next annual shift bid following the termination of their assignment to the detail. Prior to the next annual shift bid each officer returning to patrol duties shall be able to select, in seniority order, from available shifts in the system. No more than 3.0% of the officers can be assigned to the Chief's Special Detail. The members of the

detail will count against the maximum limits for officers assigned to special units and details according to Article XII, Section 12. Officers assigned to the detail will participate on a voluntary basis only, and officers may volunteer for this detail for periods exceeding one (1) year.

Union proposal adopted with modification.

9. Hours of Work and Overtime, Section 3 Compensatory Time and/or Overtime Compensation

a. Union Offer

Employees may use and replenish compensatory time throughout the year, and it is understood that no employee may accrue more than 160 hours at any given time. Employee's use of compensatory time shall be in accordance with Appendix C District Policy #P.O.97-07.1, "Compensatory Time," ~~which shall remain in effect for the duration of this Agreement.~~ Employee's use of compensatory time shall be in accordance with the Fair Labor Standards Act (FLSA).

b. District Offer

The District initially proposed to reduce the amount of compensatory time that can be accrued from 160 hours to 80 hours. That proposal was withdrawn in the brief.

c. Analysis

At the hearing the parties indicated that they were in agreement on this proposal. (Tr. 192).

Therefore, the Union proposal is adopted.

10. Vacations, Section 4. Vacation Preference and Scheduling:

a. Union Offer

....

E.

....

(Add the following)

During the period September 2 through May 14 no more than four (4) officers per area (two (2) officers in the Central Area) assigned to the second shift (0800 hours to 1600 hours) and no more than four (4) officers per area (two (2) officers in the Central Area) assigned to the third shift (1600 hours to 0000 hours) shall be granted vacation at the same time; and no more than four (4) officers per area (two (2) officers in the Central Area) assigned to

the first shift (0000 hours to 0800 hours) per area shall be granted vacation at the same time.

b. District Offer

No offer, status quo

c. Analysis

The Union is proposing to add a provision that sets forth how many officers can take time off at any one time during the period of the year with the lowest level of activity. There are currently restrictions of this type for the busy season. In formulating their proposal, the Union simply doubled the number of officers who could be off at any one time during the less busy season.

Chief Waszak summarized his objection to this proposal at the hearing. (Tr. 194) He essentially stated that with the rotating shifts and days off, it could put them in a situation where they could not handle the patrol given the vast geographic distribution of the patrol areas. According to the District, this is the type of offer that should be rejected in favor of serious collaborative bargaining.

This Arbitrator agrees. Much like revamping the entire schedule, this is a provision that is much better suited to bargaining by the parties. To randomly decide to double the number of officer who can be off at any one time without any real analysis of the impact on patrol is a dangerous exercise; one that will not be engaged in here.

Union proposal rejected.

11. Additional Benefits, Section 3 Personal Days

a. Union Offer

A.

....

Personal days shall not be used as additional vacation leave. If the health of an employee warrants prolonged absence from duty, the employee will be permitted to combine personal days, sick leave, compensatory time and vacation leave.

b. District Offer

No offer, status quo.

c. Analysis

Despite not making a proposal on this issue, the District agreed to this proposal at the hearing. (Tr. 195, D.Br. At 26) Union proposal adopted.

12. Leaves, Section 4 Military leave

a. Union Offer

~~Employees who enter the armed services of the United States shall be entitled to all the reemployment rights provided for in the Universal Military Services and Training Act of 1951, as amended. The Employer shall make reasonable accommodations for employees who have reserve duty on Saturday and Sunday.~~

~~An employee who has at least six (6) months or more of continuous actual service and is a member of the Illinois National Guard or any of the Reserve Components of the Armed Forces of the United States, shall be entitled to leave of absence with full pay for limited service in field training, cruises, and kindred recurring obligations, provided such employee presents a military order to the Chief of Police requiring such leave. Such leave will normally be limited to eleven (11) calendar days in each year.~~

Employees who enter the armed services of the United States, or who are members of the National Guard or any Reserve component of the Armed Forces of the United States, shall be entitled to all the rights and privileges conferred by any applicable federal or state law, Act, Executive Orders or Regulations.

b. District Offer

No offer, status quo.

c. Analysis

The District agreed to this proposal at the hearing. (Tr. 133-34) Union proposal adopted.

13. Grievance Procedure

a. Union Offer

Section 3 – Representation

Employees may take up grievances through Steps One to ~~Two~~ Three either on their own and individually or with representation by the Union. If an employee takes up a grievance without Union representation, any resolution of the grievance shall be consistent with this Agreement and the Union representative shall have the right to be present at such resolution. A grievance relating to all or a substantial number of employees or to the Union's own interests or rights with the District may be initiated at Step ~~Two~~ Three by a Union representative. All grievances relating to suspensions or discharges shall be initiated at Step ~~Two~~ Three.

Section 4 – Grievance Procedure Step

The steps and time limits in calendar days as provided in the Forest

Preserve Grievance Procedure are as follows:

Step	Submission Time Limit	To Whom Submitted	Time Limit Meeting	Response Time
1	30 days	Department Head	10 Days	10 Days
2	10 Days	Gen Supt/Designee	10 Days	10 Days
3	10 Days	Chief Admin Ofc/HO	20 Days	30 Days
3 4	30 Days	Third Party/Arbitration	20 days	30 Days

Section 6 - Impartial Arbitration Procedure

Only the FOP Labor Council may request arbitration under this Agreement. If the Labor Council is not satisfied with the Step ~~Two~~ 3 answer to a grievance involving an alleged violation of the contract or transfer, it shall within ten (10) days after the receipt of the Step ~~Two~~ 3 answer submit in writing to the Employer notice that the grievance is to enter impartial arbitration.

....

- b. District Offer

Section 4 – Grievance Procedure Step

The steps and time limits in calendar days as provided in the Forest

Preserve Grievance Procedure are as follows:

Step	Submission Time Limit	To Whom Submitted	Time Limit Meeting	Response Time
1	30 days	Department Head	10 Days	10 Days
2	10 Days	Gen Supt/Designee	10 Days	10 Days
3	10 Days	Chief Admin Ofc/HO	20 Days	30 Days
4	30 Days	Third Party/Arbitration	20 days	30 Days

(New)

The grievance shall reference the specific section of this Agreement alleged to have been violated. The grievance may not thereafter be amended. Any reference to “all other applicable sections of this Agreement is insufficient to satisfy the specificity requirements of this section.

(New)

Any Notice of Arbitration not noticed within 30 days after the Step 3 Hearing Decision shall be deemed to be waived unless the time limit is expressly waived by the parties.

c. Analysis

This issue involves several proposals. The first involves removing step three from the grievance procedure. The parties are in agreement on this point. (Tr. 196) The new grievance procedure will have three steps, down from four. Also, the proposed modifications to Section 3 and Section 6 to reflect those changes are also adopted. (Tr. 196)

The second issue is a proposal by the District. The District proposes to add a new section which would require the Union to specify the section of this Agreement that was violated and that using generic language such as "all other applicable sections of this Agreement is insufficient to satisfy the specificity requirements of this section." In support of this proposal, the District asserts that there are frequent communication issues between the parties and this proposal would tighten up the grievance procedure. The District feels that it is reasonable to require the Union to specify the specific contractual section claimed to have been violated.

The District has argued that the Union should not be allowed to "switch gears" during the pendency of the grievance process. As is demonstrated for the next issue, the Union had provided evidence that for each and every grievance filed in 2008, 2009 and 2010 received "No Response" at one or more levels of the grievance procedure. It is difficult to argue that the alleged "changing gears" is occurring when only one party is actively involved in each step of the grievance procedure. This District proposal is rejected.

Finally, the District proposes to insert language that would result in automatic waiver of the right to arbitrate if the notice is not filed within the 30-day time limit. In support of this proposal, the District asserts that it would make it clear that if the Union failed to offer arbitration within 30 days after the General Superintendent's decision, the matter would be considered resolved in favor of the General Superintendent's decision. According to the District, this is a usual and customary provision in most collective bargaining agreements.

It is generally accepted practice in arbitration that time limits are mandatory and failure to adhere to them results in a waiver unless the time limits are mutually agreed. This proposal would merely clarify what is a basic tenet of contract interpretation. This District proposal is adopted.

14. Grievance Procedure, Section 5 - Time Limits

a. Union Offer

The initial time limit for presenting a grievance shall be thirty (30) days and the same limit shall apply to hearings and decisions at Step ~~Two~~ ~~Three~~. Time limits may be extended by mutual agreement in writing between the employee and/or the Union and the District. The parties agree that they have an obligation to meet and attempt to resolve the grievances at Steps 1 and 2. Failure to meet in an attempt to resolve shall result in a forfeiture of the positions of the party responsible for failing to meet. Any forfeiture under this section shall not serve as a precedent.

b. District Offer

No offer, status quo

c. Analysis

The Union proposes to insert an obligation on the parties to meet and try to resolve grievances. The proposal also requires a party who does not meet with the other to forfeit their position. In support of this proposal, the Union provided grievances filed in 2008, 2009 and 2010. All of these grievances for all three years include some form of written documentation that the Union received "no response" at one or more levels of the grievance procedure. The Union seeks to penalize District for failing to meet to discuss grievances.

The District argues that this provision is merely another arbitration waiting to happen. It would be difficult to enforce such a provision. This type of provision would create more problems than it would solve. The District suggests instead that the Arbitrator create some language that is customarily found in contracts that says if the District fails to respond to a grievance within the time limits, the Union should treat that as a denial and move to the next step. (Tr. 197-97, D.Br. at 27)

The Union even goes so far as to suggest a provision from one of the comparable contracts. In the Sheriff's DCSI Fugitive Investigators contract, it states:

If the Labor Council or the grievant does not receive an answer to the grievance at any step of the grievance procedure within the time limits specified in Section 5.3, the Labor Council or the grievant may elect to treat the grievance as denied at that step and appeal the grievance to the next step of the grievance procedure.

This language has merit. If the section of the contract is modified to reflect the provisions of the current contract, the language should resolve at least part of the problems here. The Union will be able to clearly keep the grievances moving forward, without making the

situation worse with ambiguous provisions. Given that, the language for the final agreement will be:

If the Labor Council or the grievant does not receive an answer to the grievance at any step of the grievance procedure within the time limits specified in Section 4, the Labor Council or the grievant may elect to treat the grievance as denied at that step and appeal the grievance to the next step of the grievance procedure.

This paragraph will be added to the end of Article IX, Section 5. Time Limits.

15. Grievance Procedure, Section 7 – Stewards

a. Union Offer

The Union will advise the District in writing of the names of the stewards in each area agreed upon with the District and shall notify the District promptly of any changes. The Steward shall obtain approval from area commander or Office of the Chief, before leaving their work assignment or area, stewards will be permitted to handle and process grievances referred by employees at the appropriate steps of the grievance procedure and to participate in negotiations and any needed preparations for a successor Agreement during their normal hours without loss of pay, provided that such activity shall not exceed a reasonable period of time.

Stewards will be allowed the occasional use of the District's fax machines to send material related to union business to other union stewards. This privilege shall not be abused or used excessively.

b. District Offer

No offer, status quo

c. Analysis

The Union has argued that the use of the District fax machine would make their operation more efficient. This would allow the Union to transmit grievances instead of physically driving them from one area to another, which can be quite a distance.

The District argues that this is really an economic proposal. They assert that it is unfair to their taxpayers to allow the first part of the Union's proposal. It would require the District to pay the officers for any amount of time spent preparing for negotiations. However, the District indicated it would be open to more narrow language regarding the fax machine for grievances. (Tr. 200-01)

It is somewhat disingenuous for the District to argue in its brief that this is an economic issue. The parties jointly signed a prehearing stipulation which set out what the open issues

were and whether they were economic or not. This issue will be treated as the parties requested at the outset, as a non-economic issue.

The first part of the proposal extending the right to handle negotiations and any preparations on duty puts a larger burden on the District to staff the Forest Preserve during negotiations. This is not a provision that should be entered into lightly. There is little to no evidence to establish the impact this would have on the operations of the District. There is simply not enough evidence to make this change in the contract.

The second part of this provision, allowing the Union stewards use of District fax machines is another matter. While this Arbitrator will acknowledge that advances in technology make fax machines somewhat antiquated, they are still an essential piece of business equipment. Allowing the Union to use the fax machine to process grievances instead of driving them from area to area creates greater efficiencies in the labor-management relationship with virtually no perceivable impact on the District. The fax machine is not needed for all Union communications, certainly email and texting should be considered first by the Union, but to file and advance grievances, texting is not an option. Email is only an option if there is a scanner present. This is not likely. This provision should only serve to enhance the parties' clearly strained relationship.

The final paragraph will read:

The Union will advise the District in writing of the names of the stewards in each area agreed upon with the District and shall notify the District promptly of any changes. The Steward shall obtain approval from area commander or Office of the Chief, before leaving their work assignment or area, stewards will be permitted to handle and process grievances referred by employees at the appropriate steps of the grievance procedure during normal hours without loss of pay, provided that such activity shall not exceed a reasonable period of time.

Stewards will be allowed the occasional use of the District's fax machines to send material related to union business to other union stewards. This privilege shall not be abused or used excessively.

Union offer adopted in part, rejected in part.

16. Bill of Rights, Section 2 Witness Officer's Statements in Disciplinary Investigations

a. Union Offer

...

E. An officer being interviewed pursuant to this section shall, upon his request, have the right to be represented by counsel of his own choice and to have that counsel present at all times during the interview, and/or at the request of the officer being interviewed, he shall have the right to be represented by a representative of the Union.

b. District Offer

No offer, status quo.

c. Analysis

At the hearing the parties were in discussions regarding this issue. (Tr. 202-04) The parties discussion centered around the idea that whether there was one representative or two, there cannot be an undue delay. (Tr. 203-04) The parties prefer to have the Union lawyer present. (Tr. 204) With those two points understood, the Union's proposal is adopted.

17. Duration

a. Union Offer

This Agreement shall become effective on January 1, ~~2009~~ 2005 and shall remain in effect through December 31, ~~2012~~ 2008. It shall automatically renew itself from year to year thereafter unless either party shall give written notice to the other party not less than ninety (90) calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify or terminate this Agreement.

b. District Offer

Effective 1/1/09 through 12/31/12

c. Analysis

Based on the parties' final offers, the briefs and the testimony in the record, the parties are in agreement on this issue.

AWARD

After studying the record in its entirety, including all of the evidence and argument presented by both parties, it is held that on the Economic Issues:

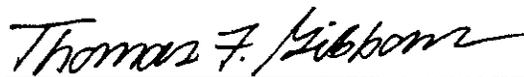
1. Union offer rejected. Maintain status quo.
2. Union proposal adopted.

3. Union proposal adopted.
4. Union offer rejected. Maintain status quo.
5. Union offer rejected. Maintain status quo.
6. District officer adopted.
7. Union offer adopted.

On the Non-Economic issues:

1. Union offer rejected. Maintain status quo.
2. Union offer adopted.
3. Union offer adopted.
4. Union offer adopted.
5. Union offer rejected. Maintain status quo.
6. Union offer rejected. Maintain status quo.
7. Modified Union offer adopted.
8. Modified Union offer adopted.
9. Union offer adopted.
10. Union offer rejected. Maintain status quo.
11. Union offer adopted.
12. Union offer adopted.
13. Section 3 – Union offer adopted
Section 4 – Union offer adopted
Section 6 – Union offer adopted
New District proposal A rejected. Maintain status quo.
New District proposal B adopted.
14. Neither offer adopted, Arbitrator crafted provision.
15. Union offer adopted in part and rejected in part.
16. Union offer adopted.
17. Union offer adopted.

It is so ordered this day, May 16, 2012.



Thomas F. Gibbons, Esq.
Arbitrator

**BEFORE THE ARBITRATOR
THOMAS F. GIBBONS**

In the Matter of the Interest Arbitration Between	}	
FOREST PRESERVE DISTRICT OF COOK COUNTY,		
Employer		ILLINOIS LABOR RELATIONS BOARD (Final Offers)
and		
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNTY		
Union		

Interest Arbitration No.:	L-MA-09-011
Hearing Date:	June 15, 2011
Hearing Place:	Forest Preserve District of Cook County 536 Harlem Avenue River Forest, IL
Appearances:	
For the Union:	Gary L. Bailey, Esq. Illinois Fraternal Order of Police Labor Council 5600 S. Wolf Road Western Springs, IL 60558 (708) 784-1010
For the Employer:	John B. Murphey, Esq. Rosenthal, Murphey, Coblenz & Donahue 30 North LaSalle Street, Suite 1624 Chicago, IL 60602 (312) 541-1070
Arbitrator:	Thomas F. Gibbons, Esq. P.O. Box 5465 River Forest, IL 60305 (312) 503-1152
Award Date:	December 28, 2011

JURISDICTION

The Hearing in this matter took place on June 15, 2011 at the headquarters of the Forest Preserve District of Cook County, 536 Harlem Avenue, River Forest, IL. The Hearing commenced at 10:00 a.m. before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. The Union and the Employer agreed at the outset of the interest arbitration hearing that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315/14, (hereinafter referred to as "IPLRA" or "Act"). "Ground Rules and Pre-Hearing Stipulations," Union Exhibit Book #1, Section 1.¹

STATEMENT OF ISSUES

The issues before the Arbitrator can be summarized as follows:

1. What is the authority of the parties to define the scope of the interest arbitration?
2. Is there any justification to permit the Employer to submit late "final offers" on the Union issues listed in the Stipulation?
3. Is there any justification to permit the Employer to submit "final offers" on issues not listed in the Stipulation, and if so, is there any justification to require the Union to submit "final offers" as to those issues?
4. What is the scope of the Arbitrator's review?

FACTUAL BACKGROUND

The Forest Preserve District of Cook County (hereinafter the "District" or the "Employer") is comprised of 68,000 acres or 106-square miles of publicly-held Forest Preserve property scattered throughout Cook County. Tr. 64.² The Illinois Fraternal Order of Police (hereafter the "FOP" or "Union") represents a bargaining unit of Police Officers below the rank of Sergeant employed by the District and who patrol and enforce the laws within the Forest Preserve on a 24-hour, 7-day basis.

¹ The parties at Hearing submitted Exhibit Notebooks. For purposes of identification, the notebooks are marked as Union Exhibit Notebook #1, #2 and #3, and Employer Exhibit Notebook #1.

² References to the hearing transcript are designated as "Tr. ___."

Tr. 65. The Employer and the Union are parties to a Collective Bargaining Agreement covering the bargaining unit's 79 Forest Preserve Police Officers. The contract's term was from January 1, 2005 to December 31, 2008, and continues in effect pending a negotiated agreement of a new contract. Tr. 43.

As the contract term drew to a close, the Union filed a demand to bargain a successor Collective Bargaining Agreement. The parties attempted to negotiate a new contract but were unable to reach a settlement. In December 2010, the Union filed for interest arbitration to resolve the contract impasse. This Arbitrator was chosen to hear this matter per the IPLRA selection process administered by the Illinois Labor Relations Board. On June 15, 2011, the District and the Union held an interest arbitration hearing to present evidence regarding their unresolved issues. The hearing was conducted under the impasse resolution provisions of the IPLRA, which provides public employees who are statutorily prohibited from exercising the right to strike with a forum to resolve bargaining impasse. The parties were afforded an opportunity to present evidence and arguments, including examination and cross-examination of all witnesses. A 125-page transcript was prepared.

However, the interest arbitration was suspended before the completion of case presentations. The parties exchanged final offers at the start of the Hearing, prompting a procedural disagreement that is dispositive of a resolution of the interest arbitration. Specifically, the parties are in disagreement as to the submission of the final offers and as to what bargaining issues the Arbitrator may consider. In support of their positions, attorneys for the parties put forward legal arguments at hearing and filed timely briefs in support of their respective positions on July 15, 2011.³ Tr. 1-30.

³ Upon the filing of the parties' briefs on July 15, 2011, the Arbitrator per the authority of the IPLRA instructed the parties to return to negotiations. At the request of the parties, the Arbitrator agreed to assist the negotiations in the role of a mediator. The negotiations took place on September 6, September 23 and October 31, 2011. By mutual agreement the negotiations extended beyond the statutory 14-day negotiation period. The parties engaged in good-faith bargaining but ultimately the Union on December 19, 2011 requested that the parties return to interest arbitration and seek a binding resolution. The Arbitrator declared an impasse on December 20, 2011 and directed the parties to return to interest arbitration pending his ruling as to the outstanding procedural issues.

The events leading up to the procedural issue follows: The parties agreed to exchange final offers on the morning of the June 15th Hearing. Prior to the exchange of final offers the attorneys for the parties that morning signed a document entitled "Ground Rules and Pre-Hearing Stipulations" (hereafter "Stipulation"). Union Exhibit Book #1, Section 1. The Stipulation states, in part:

5) The parties agree that the following issues remain in dispute, that the issues, which are mandatory subjects of bargaining, are submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer on the issues presented inasmuch as the issues are economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

(1) See Attached

6) The parties agree that the following issues remain in dispute, that the issues, which are mandatory subjects of bargaining, are submitted for the resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer or award his own language on the issues presented inasmuch as the issues are non-economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

(1) See Attached

* * * *

8) Final offers shall be exchanged in a manner agreeable to counsel. Once exchanged, such final offers may not be altered except by mutual agreement of the parties. Each party shall be free to present its evidence in either the narrative or witness format, or a combination thereof. The Labor Council shall proceed first with the presentation of its case-in-chief. The Employer shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.

* * * *

The "Attached" document to the Stipulation states the following:

Economic Issues:

1. Art. V, Section 3 (NEW) Field Training Officers (FTO)
2. Art VI, Section 4 Holidays in Vacations
3. Art. VII, Section 4 Disability Benefits
4. Art. XIII, Section 14 Uniforms
5. Appendix C Compensatory Time (Sections 5 and 8)
6. Appendix D Across the Step Wage Increases
7. Appendix D Additional Step

Non-Economic Issues:

- | | |
|------------------------------|---|
| 1. Art. III, Section 2 | Regular Work Periods (Posting Work Schedule) |
| 2. Art. III, Section 2 | Regular Work Periods (Changes to Work Schedule) |
| 3. Art III, Section 2 | Regular Work Periods (Assignments Outside Patrol) |
| 4. Art III, Section 2 | Regular Work Periods (Bid for Area and Shift) |
| 5. Art III, Section 2 | Regular Work Periods (Permanent Shift) |
| 6. Art III, Section 2 | Regular Work Periods (Bid Day Off Groups) |
| 7. Art III, Section 2 | Regular Work Periods (Shift Assignment New Hires) |
| 8. Art. III, Section 3 (NEW) | Chief's Special Detail |
| 9. Art. III, Section 3 | Compensatory Time and/or Overtime Compensation |
| 10. Art. VII, Section 4 | Vacation Preference and Scheduling |
| 11. Art. IX, Section 3 | Personal Days |
| 12. Art. X, Section 4 | Military Leave |
| 13. Art. XI, Section 4 | Grievance Procedure Steps |
| 14. Art. XI, Section 5 | Time Limits |
| 15. Art. XI, Section 7 | Stewards |
| 16. Art. XIV, Section 2 | Witness Officer's Statements |
| 17. Art. XV, Section 1 | Duration |

Immediately upon signing the Stipulation, the attorneys for the parties exchanged their respective final offer in the presence of the Arbitrator, who was also provided with each parties' final offers. Upon inspecting the District's final offer, FOP attorney Gary L. Bailey raised an objection to the Employer's submission, stating it included issues not referenced in the Stipulation. Except for a wages final offer, there were also no Employer final offers for the issues listed in the Stipulation. Mr. Bailey argued that the issues before the Arbitrator are limited to what is contained within the Stipulation signed by the parties only minutes earlier. Tr. 7 Employer attorney John B. Murphey disagreed, stating that "it was not the intent of the District to bind itself only to the issues listed by the Union in its final offer, a list which I just now saw this morning. It was the intent of the District to have its final proposals heard and reviewed by the Arbitrator." Tr. 6 Mr. Murphey said the purpose of the Stipulation was to "simply lay out the ground rules and not have the substantive proposals be part of it because...we weren't exchanging the offers until this morning." *Id.* Mr. Murphey said he based this belief on a June 10, 2011 email from Mr. Bailey in which he

attached the proposed ground rules and wrote, in part (Employer Brief, Attachment Ex. 16)⁴:

I have enclosed herewith my draft of the pre-hearing stipulation and ground rules for the upcoming interest arbitration. With regard to the issues (listed on page 4), I have added pages (taken from the Union's prior proposals) to assist in identifying the issues.

THESE PAGES ARE **NOT** INTENDED TO BE PART OF THE STIPULATION.

MORE IMPORTANTLY, THE PAGES ARE **NOT** THE UNION'S FINAL OFFER.

I add these pages only to help you identify the issues.

The issues raised by the Employer as its final offer includes the following: Wages; Insurance; Article III, Section 3, Compensatory Time And/Or Overtime Compensation; Article IV, Section 5, Termination of Seniority; Article VIII, Section 5, Sick Leave; Article XI, Section 4, Grievance Procedure Steps; Article XI, Section 9, Authority of Arbitrator and Wages/Retroactivity.

PARTIES' POSITIONS

Employer's Position

The District argues that the Stipulation should not restrict the Employer's presentation of final offers and evidence in support of those offers. The District states that the Arbitrator should be guided by Illinois law relating to the issue of stipulations and mistake. A stipulation is in the nature of a contract and Illinois courts will, for example, set aside a stipulation where either a mutual or unilateral mistake is clearly shown or the parties failed to reach a "meeting of the minds" and the Stipulation stands in the way of a true determination of the parties' rights. These equitable principles should be applied in the spirit of justice rather than a narrow or technical application of a stipulation in order to defeat a right not plainly intended to be relinquished. Furthermore, the District claims the parties did not abide by the IPLRA with respect to the timing and deadline for final offers on economic issues. There was no identification of the economic issues in dispute and no

⁴ The contract pages referenced in the June 10th email were attached with specific contractual sections circled in marker, with proposed revisions and identified in writing, for example, as ECON #1, #2, #3, etc. or NECON #1, #2, #3, etc. *Id.*

direction that the parties submit “to each other its last offer or settlement on each economic issue” as required by Section 14(g). There was no determination of which issues were in dispute, and which of those issues were economic, nor was there a requirement that the parties submit their final offers of settlement on each economic issue in dispute as required by Section 1230.90(o). Finally, Section 14(g) grants the Arbitrator ample authority to correct the misunderstanding and place the parties in the position they would be in had all observed the statute with the requirement that final offers be exchanged by date certain prior to the commencement of the Hearing. Finally, the District states, the fact that the Hearing is not closed grants the Arbitrator a separate vehicle for ordering an equitable remedy.

Union’s Position

The Union states that the Stipulation must guide the Arbitrator’s decision. Specifically, paragraph #8, which holds: “Final offers shall be exchanged in a manner agreeable to the counsel. Once exchanged, such final offers may not be altered except by mutual agreement of the parties....” Once the Union has “shown its hand” and given its final offers to the District, it stands at a significant and unfair disadvantage if this provision is not enforced. The Union claims the terms of the stipulation should not have been confusing to the District’s attorney since it is nearly identical to the stipulation he signed for the last interest arbitration hearing between the District and Union in 2008, and almost identical to the Stipulation he signed the same year for the Forest Preserve Sergeants interest arbitration hearing. Union Brief, Union Exhibit # 67, 68 (*Cook County Forest Preserve District and Illinois FOP Labor Council*, L-MA,050010 (Arb. Briggs 2009); *Cook County Forest Preserve and Illinois FOP Labor Council*, L-MA-03-009 (Arb. Yaffe 2009). If the Arbitrator were to allow these issues to be presented it would do harm to the Union’s case. Once the exchange occurs, a party cannot alter a final offer unless the opponent agrees. The reason for this prohibition is self-evident: once a party announces its final offer, the opponent gains a distinct advantage in crafting its final offer. The art of keeping final offers secret until exchange is vital. In order to maintain fairness, the exchange of final offers has to occur at the same time. Accordingly, the Arbitrator must abide by the Stipulation and not allow the District to revise its final offer.

ARBITRATOR'S DISCUSSION AND CONCLUSION

The Arbitrator's authority as to this matter is dictated by statute. 5 ILCS 315/14(g) directs that "at or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue." Further, as the Employer states, Section 1230.90 of the Regulations sets forth the requirements for the conduct of an interest arbitration hearing. Under subsection (o), the Arbitrator is to "determine which issues are in dispute and which of those issues are economic issues, and serve a copy of that determination on the parties and require the parties to submit their final offer of settlement on each economic issue in dispute."

What is the authority of the parties to define the scope of the interest arbitration?

The IPLRA is not a statutory straight jacket. It provides parties with the latitude to tailor their interest arbitration to meet their unique needs and circumstances. Specifically, Section 14(p) of the Act provides the parties with this leeway, stating:

Notwithstanding the provisions of this Section the employer and the exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.

Furthermore, it is a well-established practice for parties in interest arbitration to mutually agree to waive some statutory requirements relating to the arbitration process. In this instance, and a routine practice in the public sector, the parties agreed to waive the following: (1) Section 14(d), requiring that the arbitration hearing commence within fifteen (15) days following the Arbitrator's appointment; (2) Section 14(b), requiring the appointment of panel delegates and instead agreed that this Arbitrator would serve as the sole Arbitrator; (3) Section 14(g), requiring the Arbitrator to retain a court reporter and instead the Employer agreed to acquire the services of one; (4) Section 14(g), requiring issuance of an award after thirty (30) days of the conclusion of the hearing and extend it to

sixty (60) days. There is nothing unusual as to these mutual waivers and, in fact, most of these were included in the parties' Stipulation. For further examples, see *County of Rock Island and AFSCME, Council 31 and Local 2025A*, S-MA-09-072 (Arb. Benn 2010) (parties permit the arbitrator to fashion his own final decision on the sole economic issue of wages); *County of Will and Sheriff of Will County and MAP, Chapter #123*, S-MA-10-002 (Arb. Kravit 2011); *Village of Maryville and Illinois FOP Labor Council*, S-MA-10-228 (Arb. Hill 2011); *Village of Morton Grove and Illinois FOP Labor Council*, S-MA-09-015 (Arb. McAllister 2011). Union Brief, pp. 9-10.

In a pre-hearing telephone conference with the Arbitrator, the attorneys for the parties were asked their preference for the identification of issues and the exchange of final offers. Counsels, who are both well-respected and seasoned labor-management professionals in the field of interest arbitration, mutually agreed they would identify their respective issues and exchange their final offers directly with each other. On the morning of the Hearing, June 15, 2011, in the presence of the Arbitrator, the attorneys executed the Stipulation and exchanged their final offers with one another, as well as providing the Arbitrator with the parties' final offers. The District and the Union mutually waived the issue identification and statutory submission process, as they waived other statutory provisions, and as experienced practitioners agreed to exchange their final offers at a time and place that was most convenient for them. The parties assumed the risk of any miscommunication when they took it upon themselves to jointly determine their issues and to set the time and place to exchange their final offers. The time has surely passed to now rely on the statutory scheme to address these procedural issues.

Is there any justification to permit the Employer to submit "final offers" on issues not listed in the Stipulation, and if so, is there any justification to require the Union to submit "final offers" as to those issues?

The Stipulation states that the Arbitrator must choose either the Employer's offer or the Union's offer on the issues presented inasmuch as the issues are economic within the meaning of Section 14(g) of the IPLRA, and that the Arbitrator must choose either the

Employer's offer or the Union's offer or award his own language on the issues presented inasmuch as the issues are non-economic within the meaning of Section 14(g) of the IPLRA.

The Union presented in its final offer 24 issues, which were all listed in the Stipulation. Of those issues, 7 are economic issues and 17 are non-economic issues. The only mutual issue presented by the District and the Union and contained in the Stipulation is the economic issue of wages. The District submitted additional economic and non-economic issues relating to insurance, compensatory time/overtime compensation, termination of seniority, sick leave, grievance procedure, arbitrator authority and wages/retroactivity. However, those issues were not identified in the Stipulation.

The Union is correct in its analysis that the Arbitrator is not barred from considering the views of the parties as to the 17 non-economic issues raised by the Union since the Arbitrator must choose between the Union's final offer or a result he finds to be more appropriate. Union Brief, p. 17. As the Union states:

While it seems unfair to the Union, the Arbitrator must still conduct a regular analysis of the non-economic issues and allow the parties to present whatever arguments they wish. Granted the District has no "final offer", but the Arbitrator has the authority to award whatever he deems just, which could be the Union's final offer or the District's verbal plea - or something else entirely.
Id.

However, it is the Union's view that the Arbitrator must accept the Union's economic final offer because the Arbitrator, per the parties' Stipulation, must choose between either the Union's or the Employer's proposal. Since the Employer submitted no final offers to the economic issues listed in the Stipulation, other than wages, the Arbitrator must accept the Union's economic proposals. I cannot agree with the Union's position. To not allow the District to put forward its economic final offers would be an injustice to the District and the taxpayers it serves. The evidence supports the view that there was a miscommunication between the parties, leaving the District with the belief that the Stipulation signed by the parties covered the ground rules for the interest arbitration and not the issues the parties' final offers were to address. It would appear the June 10th email between the attorneys

caused this confusion even though the Stipulation signed by the parties is perfectly clear that final offers would apply to the issues listed in the document's attachment. The Stipulation was executed as a result of a unilateral mistake and certainly does not reflect the intent of the District. To prevent the Employer from presenting economic final offers on such a technicality would be unjust and contrary to the public interest. Any disadvantage to the Union would be minimal, at best, especially since the Employer had submitted a final wage offer, which appears to be the most significant economic issue. Aware of what has transpired the Arbitrator can ensure that all parties are treated fairly and equitably.

The same principle, however, cannot be extended to the Employer's position that it should be allowed to put forward its own final offers not raised in the Stipulation, and that the Union should be allowed to submit late final offers to those issues. The Union is right that it would be prejudiced to now allow the Employer to submit its final offers after the Union has revealed its hand. The reason parties mutually exchange final offers is to prevent such prejudice to either side. The mutual exchange of final offers is a long and well-respected practice in interest arbitration and reinforced by the parties themselves in their Stipulation, which states in part: "Final offers shall be exchanged in a manner agreeable to counsel. Once exchanged, such final offers may not be altered except by mutual agreement of the parties." As aptly stated by the Union: "The art of keeping final offers secret until the exchange is vital. In fact, the process of exchanging final offers is so dependent upon a simultaneous trade that it has been compared to scenes in old spy thriller-movies where two countries are swapping prisoners on a foggy bridge." Union Brief, p. 17.

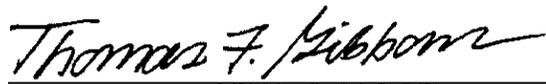
The Union reasonably argues that final offers are not only considered by parties issue-by-issue but also within the context of the total package. Parties routinely weigh these overall considerations when submitting final-offer packages, as Arbitrators often do when weighing parties' final offers. By not including its issues into the Stipulation, the Union rightly believes the District deprived the Union of "the ability to take into account the entire landscape of issues and prevented it from making final offers in the context of the overall dispute, which it did based on the 24 issues set forth in the Stipulation." Union Brief, p. 16.

It is one thing to permit the Employer the opportunity to put forward economic final offers to issues that have been identified in the executed Stipulation and to which the Union has submitted final offers. To deny the Employer the opportunity would be manifestly unfair. However, it is quite another thing to allow the District to present new issues after signing a Stipulation that spells out the issues to be addressed. This would seriously prejudice the Union and cannot be allowed.

AWARD

After studying the record in its entirety, including all of the evidence and argument presented by the parties, it is held that the District may submit final offers to the Union's 7 economic final offers. The District will also be allowed to present evidence and argument as to the Union's 17 non-economic final offers. However, the District is limited to the issues raised in the Stipulation signed by the parties and is barred for raising any new issues in the interest arbitration except where mutually agreed to by the parties.

It is so ordered this day, December 28, 2011.



Thomas F. Gibbons, Esq.
Arbitrator