INTEREST ARBITRATION BEFORE
THE DISPUTE RESOLUTION BOARD

NEUTRAL ARBITRATOR STEVEN M. BIERIG
EMPLOYER ARBITRATOR JOSEPH MARTINICO
UNION ARBITRATOR SEAN SMOOT

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN: **THE CITY OF CHICAGO POLICE DEPARTMENT** **AND** **THE POLICEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION OF ILLINOIS, UNIT 156 - SERGEANTS**	**ISSUES: 1) WAGES** **2) RETIREE HEALTH CARE** **3) DUTY AVAILABILITY PAY** **4) TUITION REIMBURSEMENT** **5) QUARTERLY DIFFERENTIAL** **ILRB CASE NO. L-MA-12-005** **ARB. NO. 13-103**

Before: The Dispute Resolution Board:

Steven M. Bierig, Neutral Arbitrator
Joseph Martinico, Employer Arbitrator
Sean Smoot, Union Arbitrator

APPEARANCES:

For PBPA Unit 156 - Sergeants: Thomas Pleines
Chicago Metro Legal Counsel

For The City of Chicago: James C. Franczek, Jr., David A. Johnson, Jennifer A. Dunn
Franczek, Radelet

Dates of Hearings: August 7-8, 2013

Location of Hearings: Franczek Radelet
300 S. Wacker 34th Floor
Chicago, IL

Pre-Hearing Submissions Filed: July 20, 2013

Date of Award: September 19, 2013

AWARD:

For reasons stated in this Opinion and Award, the Panel finds that the following shall be incorporated into the July 1, 2012 - June 30, 2016 Collective Bargaining Agreement between the parties:

Wages:

Wage Schedule for July 1, 2012 - June 30, 2016 Contract	
Date	**% Increase**
July 1, 2012	2.0%
January 1, 2013	2.0%
January 1, 2014	2.0%
January 1, 2015	1.0%
January 1, 2016	1.0%
TOTAL INCREASE = 8.0%	

During the term of this Agreement, should there be enacted into law legislation pursuant to which Sergeants covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of Chicago or any successor pension fund in an amount above the amount of the current annual contribution of 9% of salary, the Union may reopen this Agreement solely on the issue of Wages for the purpose of renegotiating the base salary and percentage increases which shall be paid to Sergeants. The Union shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing, of its intent to reopen this Agreement. In the event this Agreement is reopened, the wages set forth herein will not be changed or reduced without the written consent of the Union. The parties shall have ninety (90) days to renegotiate the base salaries and percentage increases. In the event the parties are unable to resolve the issue of base salary and percentage increases during the negotiation period, or within any mutually agreed to extension, the dispute shall be submitted to interest arbitration pursuant to Section 28.3 (B).

Retiree Health Care:

The terms of the April 30, 2010, Memorandum of Understanding Regarding Retiree Health Care Benefits shall apply to retirements occurring through December 31, 2013, except that the Filing Deadline provided for in Section B(2) of the Memorandum of Understanding, for 2013 only, shall be extended to October 21, 2013. However, an officer who retires pursuant to Section B(2) shall still be required to have an Effective Date of Retirement of November 1 through December 31, 2013.

Effective for retirements pursuant to Section B(2) occurring in 2014 and thereafter, the following changes to the Memorandum of Understanding shall apply: 1) the Effective Date of Retirement may be between May 1 through December 31, provided the officer files for retirement at least thirty (30) days prior to the Effective Date of Retirement; 2) the officer shall contribute to the cost of the benefit in the amount of 2.00% of the annuity received from the Policemen's Annuity and Benefit Fund of the City of Chicago. This contribution shall remain in effect until the employee no longer avails him/herself of the benefit or reaches the age of full Medicare Eligibility under federal law.

During the term of this Agreement, officers who retire pursuant to Section B(1) of the Memorandum of Understanding Regarding Retiree Health Care Benefits shall continue to receive the health care benefit as provided for in that Section.

Tuition Reimbursement:

The *status quo* shall remain.

Duty Availability Allowance

The *status quo* shall remain.

Quarterly Differential

The *status quo* shall remain.

Steven Bierig

Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o=Steven M. Bierig Attorney Arbitrator Mediator, ou, email=arb438@comcast.net, c=US
Date: 2013.09.18 21:45:21 -05'00'

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Steven M. Bierig, Neutral Arbitrator
September 19, 2013

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Joseph Martinico, City Arbitrator
September 19, 2013

Concur_____

Dissent_____

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Sean Smoot, Union Arbitrator
September 19, 2013

Concur_____

Dissent_____

I. INTRODUCTION

The Interest Arbitration Hearings took place on August 7 and 8, 2013 at the Offices of Franczek Radelet, located at 300 S. Wacker Drive Suite 3400 in Chicago, Illinois. The Hearings commenced at 12:00 noon on August 7 and 10:00 a.m. on August 8. The Hearings took place before the undersigned Panel Members who were selected to render a final and binding decision in this matter. At the Hearings, the parties were afforded a full opportunity to present such evidence and arguments as desired, including examination and cross-examination of all witnesses. A 240-page transcript of the Hearings was prepared. The parties filed Pre-Hearing Briefs on or about July 20, 2013. The parties filed Final Offers on August 14, 2013, at which time the evidentiary portion of the Arbitration was declared closed. All parties stipulated to the Panel Members' jurisdiction and authority to issue a final and binding Award in this matter.

II. RELEVANT STATUTORY LANGUAGE

Section 14 of the Illinois Public Labor Relations Act:

* * * *

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, if applicable:
>
> 1. The lawful authority of the employer.
>
> 2. Stipulations of the parties.
>
> 3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

   a. In public employment in comparable communities.
   b. In private employment in comparable communities.

5. The average consumer price for goods and services, commonly known as the cost of living.

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospital benefits, the continuity and stability of employment and all other benefits received.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

   5 ILCS 315/14(h)

III. PRIOR RELEVANT CONTRACT PROVISIONS

ARTICLE 12 HEALTH INSURANCE AND RELATED BENEFITS

Section 12.1 Medical, Dental and Flexible Spending Account Plans

The Employer's medical and dental plans are incorporated by reference into this Agreement and described in Appendices D, E, F, G, H, I and J.

The Employer shall provide Sergeants with the opportunity to enroll in a Flexible Spending Account ("FSA") plan, which will permit Sergeants to fund, on a pre-tax basis, an individual account that the Sergeant may use to pay for qualified unreimbursed medical expenses, as provided under Section 213 of the Internal Revenue Code. Subject to Internal Revenue Service regulations, the FSA plan will allow participants to pay the following qualified expenses on a pre-tax basis: dental expenses; vision expenses; health plan contributions, deductibles and co-payments; prescription drug

co-payments and payments for over-the-counter drugs; and other unreimbursed medical expenses. Participation is voluntary, and participants may contribute up to $5000.00 annually on a pre-tax basis, which will be deducted pro-rata each payroll period. Sergeants may enroll in the FSA plan or change the amount of their elections once per year during open enrollment or when they have a change in family status. As mandated by the Internal Revenue Code, a "use it or lose it" rule applies to Section 125 plans. During open enrollment, the parties will engage in a joint educational campaign to inform Sergeants of the benefits of the FSA plan and otherwise increase employee participation in such plan.

The medical plan (health insurance plan) shall consist of two (2) separate alternative coverages—a PPO plan ("PPO") and two (2) HMO plans ("HMO"). In the event that a new health care plan becomes available to the Employer during a plan year, the Employer shall have the right to include that new plan in the plan alternatives upon reasonable prior notice to and discussion with Unit 156-Sergeants.

The Employer shall make available to Sergeants and their eligible dependents summaries of the benefits provided by the Employer's health care plan either electronically or in print with the cost of any printing to be borne by the Employer.

The plans for both medical and dental benefits, including the provisions on eligibility and self-contribution rules and amounts in effect as of the date of this Agreement, may not be changed by the Employer without the agreement of Unit 156-Sergeants; however, any changes during the term of this Agreement relating to health care (including, but not limited to, changes in employee contributions, deductibles or out-of-pocket limits) agreed to with Lodge 7 and applicable to Bargaining Unit members represented by Lodge 7 or Fire Lieutenants represented by Local 2, shall be applicable to Sergeants covered by this Agreement. Any increases in deductibles or out-of-pocket limits affecting the higher health care contribution band shall not exceed an increase in deductibles or out-of-pocket limits for the lower health care contribution band.

The Employer agrees to make available to the following other persons the above- described hospitalization and medical program and the dental plan: Sergeants who retire on or after age sixty (60) and their eligible dependents; widows and children of Sergeants killed in the line of duty; former Sergeants on pension disability (both duty and occupational) and their eligible dependents; and widows and children of deceased Sergeants who were formerly on pension disability (both duty and occupational). The Employer will contribute the full cost of coverage for any of the above-

enumerated Sergeants who elect coverage under any plan or plans. However, coverage under a plan for such Sergeants shall terminate when a Sergeant either reaches the age for full Medicare eligibility under federal law or ceases to be a dependent as defined in a plan, whichever occurs first. After a Sergeant reaches the age for full Medicare eligibility, the Sergeant shall be covered under the medical program for annuitants, provided the person pays the applicable contributions.

Section 20.11 Duty Availability Allowance

A. Effective January 1, 2006 and thereafter, all eligible Sergeants shall be paid the following quarterly payments as duty availability pay:

EffectiveDate	Per Quarter
January 1, 2006	$730.00
January 1, 2011	$755.00
January 1, 2012	$805.00

ARTICLE 24 EDUCATIONAL REIMBURSEMENT

The Employer agrees to provide tuition reimbursement to Sergeants for extra-Department education subject to the following conditions:

A. To be eligible for reimbursement—

1. Each course taken must be job-related or necessary for an undergraduate or graduate degree.

2. Proof of acceptance for a degree program must be presented upon request.

3. Each course taken towards a college or university degree must grant college level credit.

4. Each course must be taken through an accredited college or university.

B. Sergeants must file applications for reimbursement on the appropriate forms no later than thirty (30) days after the beginning of the course of study.

C. Reimbursement will be granted on the following basis:

1.	Grade "A"	100%
2.	Grade "B" and any other grades classified by the school as passing	75%

D. Reimbursement may be denied if a Sergeant's work performance is deemed inadequate or if a Sergeant has a record of sustained infractions of Department orders, directives or procedures.

E. Reimbursement will not be granted to the extent—

1. Tuition costs are covered by the U.S. Department of Veterans Affairs or other funds; or

2. The program in which the Sergeant is enrolled is reimbursable through a federal grant-in-aid program for which the Sergeant is eligible.

F. Reimbursement will be made for a maximum of two (2) courses per school term.

G. Reimbursement will be granted when a Sergeant is required by the Superintendent to attend an educational or training program.

H. In the event a Sergeant commences an undergraduate or graduate degree (including a law degree) program after January 1, 1997 and obtains an undergraduate or graduate degree with the assistance of the tuition reimbursement program, and the Sergeant, within one (1) year of obtaining such degree, voluntarily resigns from the

Department, all tuition costs [one hundred percent (100%)] reimbursed to the Sergeant by the Employer for obtaining such degree shall be repaid to the Employer. If the Sergeant voluntarily resigns after one (1) year, but less than two (2) years, after obtaining the degree, the Sergeant shall repay one-half [fifty percent (50%)] of the tuition reimbursement to the Employer. If the Sergeant does not complete the degree program and voluntarily resigns from the Department, the Sergeant shall repay one hundred percent (100%) of all tuition reimbursement received for any course completed within two (2) years of such resignation. Sergeants receiving tuition reimbursement for such degrees shall, as a condition of receiving such reimbursement, execute an appropriate form consistent with this paragraph. This provision shall not apply to reimbursement under Article 24(G), nor shall this provision apply to Sergeants who resign from the Department for the purpose of accepting employment within another City of Chicago department.

Section 26.2 Quarterly Differential

Effective January 1, 1999 and subsequent years, the quarterly differential shall be increased by the same percentage increase as the base salary and shall be paid in accordance with Appendix M.

Section 28.3 Impasse Resolution, Ratification and Enactment

A. If the parties reach a complete agreement as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:

1. The agreement will first be presented to Unit 156-Sergeants' membership with the recommendation of the Executive Board for ratification.

2. Within ten (10) days after such ratification by Unit 156-Sergeants' membership, the agreement will be submitted to the City Council of the City of Chicago with the Superintendent's and the Mayor's recommendation for ratification and concurrent adoption in ordinance form pursuant to the City of Chicago's Home Rule authority. The Employer and Unit 156-Sergeants shall cooperate to secure this legislative approval.

3. In the event the City Council should reject the recommended agreement, the parties shall meet again within ten (10) days of the City Council's vote to discuss the reasons for the City Council's rejection and to determine whether any modifications can be made to deal with the problems, but either party may thereafter invoke arbitration in accordance with Section 28.3(B) upon ten (10) days' written notice to the other party.

   For purposes of this Article, rejection by the City Council means affirmative rejection by a three-fifths (3/5) vote of the members of the City Council within thirty (30) days of the date the agreement is submitted to it.

B. If a complete agreement is not reached between the parties as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:

1. In the event that disputed items cannot be resolved during the negotiation period, all disputed items shall be referred to a three- (3-) person Dispute Resolution Board, one (1) member to be selected by each of the parties and the third member to be jointly agreed upon by the parties.

2. The Board shall be convened and shall be composed of the following three (3) persons: one (1) appointed by the Employer, one (1) appointed by Unit 156-Sergeants and one (1) impartial member to be mutually selected and agreed upon by the Employer and Unit 156-Sergeants. If, after a period of five (5) days from the date of the appointment of the two (2) representatives of the parties, the remaining Board member has not been selected or otherwise agreed upon, then either representative may request the American Arbitration Association, or its successor in function, to furnish a list of seven (7) members of said service from which the remaining Board member shall be selected. The American Arbitration Association shall be advised that the eligibility criteria for names to be placed upon the list shall include the following:

membership in the National Academy of Arbitrators; at least five (5) years' experience in labor relations dispute resolutions in either the private or public sector; U.S. citizenship; and a commitment by any such individual that, if appointed or selected, said individual agrees to comply with the time limits set forth in subsection (B)(5). Upon mutual written agreement of the Employer and Unit 156-Sergeants, the parties' right to appoint any Board members other than the impartial member may be mutually waived.

3. The list shall be immediately published, and the representative appointed by the Employer shall, within five (5) days after publication of said list, eliminate three (3) names from the list. Within two (2) days after such elimination, the representative appointed by Unit 156-Sergeants shall eliminate three (3) names from the list. The remaining individual, plus the individual appointed by the Employer and the individual appointed by Unit 156-Sergeants, shall compose the Board.

4. The member of the Board selected, pursuant to subsection (B)(3), shall act as Chairman. He/she shall be an impartial, competent and reputable individual and shall be administered and subscribe to the constitutional oath or affirmation of office. The Employer and Unit 156-Sergeants shall each pay one-half of the fees and expenses of the impartial member.

5. The Chairman shall have the authority to convene and adjourn proceedings, administer oaths, compel testimony and/or the production of documents and employ such clerical or research assistance as in his/her judgment and discretion are deemed warranted. He/she shall convene proceedings on the issues presented to the Board within ten (10) days after his/her appointment and/or selection; the Board shall make its determination within thirty (30) days after it has convened. The time limits set forth herein may be extended only upon written mutual agreement of both the Board member appointed by Unit 156-Sergeants and the Board member appointed by the Employer.

6. The Employer and Unit 156-Sergeants shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations.

   During the course of proceedings, the Chairman shall have the authority as necessary to maintain decorum and order and may direct (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public, and the parties understand and agree that the provisions of 5 ILCS 120/1 *et seq.* are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate to meet with either the Employer or Unit 156-Sergeants for mediation or conciliation functions, the Board may do so, provided only that notice of such meetings shall be communicated to the other party.

7. The compensation, if any, of the representatives appointed by Unit 156-Sergeants shall be paid by Unit 156-Sergeants. The compensation of the representative appointed by the Employer shall be paid by the Employer.

8. The terms decided upon by the Board shall be included in an agreement to be submitted to the City Council for adoption. The terms of this Agreement shall continue to bind both parties hereto during all negotiations and impasse resolution procedures.

9. If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the City Council's vote to discuss the reasons for the City Council's rejection and to determine whether any modifications can be made to deal with the problems, but either party may thereafter terminate this Agreement upon ten (10) days' written notice to the other.

10. There shall be no implementation of any provisions of a successor agreement without City Council ratification and adoption in ordinance form of the agreement, except, however, that the terms of this Agreement shall remain in full force and effect until a successor agreement is adopted in ordinance form or this Agreement is terminated pursuant to subsection (B)(9).

11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply: subsections (h), (i), (k) and (m).

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHICAGO AND THE POLICEMEN'S BENEVOLENT & PROTECTIVE ASSOCIATION OF ILLINOIS,
UNIT 156A–SERGEANTS, REGARDING RETIREE HEALTH CARE BENEFITS

The parties agree that the health care benefit provided to officers who retire on or after age sixty (60) pursuant to Article 12 of the parties' collective bargaining agreement effective July 1, 2007 through June 30, 2012 ("the Agreement") shall be extended to officers who retire on or after age fifty-five (55), subject to the following terms and conditions:

A. <u>Applicability</u>

This memorandum of understanding applies only to any officer who retires on or after age fifty-five (55) with a retirement date on or after the thirty-first (31st) day following the ratification of this memorandum of understanding by Unit 156-Sergeants pursuant to Section (E), regardless of whether he/she is currently or then eligible for the health care benefit provided to officers who retire on or after age sixty (60) by Article 12 of the Agreement.

B. Health CareBenefits Upon Retirement

1. Officers Who Retire on or After Age Sixty (60)

Officers who retire on or after age sixty (60) shall continue to receive the health care benefit set forth in Article 12 of the Agreement, but shall have their final compensation paid in accordance with Section (C).

2. Officers Who Retire on or After Age Fifty-Five (55) and Before Age Sixty (60)

Officers who retire on or after age fifty-five (55) and before age sixty (60) shall be eligible for the health care benefit set forth in Article 12 of the Agreement, provided that they file for retirement in accordance with the following schedule:

Filing Deadline	**Effective Date of Retirement**
30 Days Prior to Effective Date of Retirement	31st Day Following Ratification through 12/31/2010
10/01/2011	11/01/2011 through 12/31/2011

For calendar year 2012 and each succeeding calendar year thereafter, the schedule shall be a filing deadline of October 1 with effective dates of retirement of November 1 through December 31.

(Jt. Ex. 1)

IV. TENTATIVE AGREEMENT - PBPA SGTS AND CITY OF CHICAGO FEBRUARY 12, 2013

Duration: July 1, 2012 through June 30, 2016 (4 years)

Wages: 7/1/12 2%
1/1/13 2%
1/1/14 2%
1/1/15 2%
1/1/16 1%

Duty Availability: No change

Uniform Allowance: No change

Quarterly Differential:	$1,000 one-time supplement to Differential ("signing bonus"), payable upon ratification. Increases in Differential between July 1, 2012 and June 30, 2016 consistent with percentage base wage increases (above) implemented consistent with the parties' historical practices (i.e., 9% increase in the Differential over term of the contract)
Retiree Health Care Benefits:	1) Effective upon ratification, all prospective retirees participating in the benefit will pay a contribution consisting of 2% of their annuity, to be paid for the duration of the time they participate in the benefit; 2) Minimum age 55 for eligibility of the health insurance Benefit 3) Employees wishing to participate in benefit must provide at least 30 days' notice and retirement may not occur prior to May 1
Promotion:	Union will receive rank order promotional list, written qualifying test and answer key
Cap on Length of Disciplinary Investigations:	Per attached Section 9.4C
Other Operational Issues:	All tentatively agreed to proposals to be incorporated in CBA. All proposals not tentatively agreed to are withdrawn

Pension Changes:

Employee Contributions:	1% increase effective July 1,2013 1% increase effective January 1,2014 1 % increase effective January 1, 2015 (net 3% increase for a total employee contribution of 12% as of 1/1/15) Total employee contribution reduced to 10% when

	Pension Fund attains 80% funding level, for as long as the Fund remains at 80% or greater funding level
COLA:	Current retirees: alternate COLA suspension in years 2014,2016 and 2018 with 2.5% COLA non-compounded in years 2015 and 2017. In 2019 and thereafter COLA is 2.5% non-compounded until the Fund attains a funding level of at least 80% [1] then 3% non-compounded; Future retirees: alternate COLA suspension in even years (2014,2016,2018, etc.) with 2.5% COLA noncompounded in odd years (2015, 2017, 2019, etc.) for as long as Pension Fund is less than 60% funded. If funding level of Pension Fund is equal to or greater than 60%, COLA suspension occurs every third year, with 2.5% COLA non-compounded in intervening years. If Pension Fund funding level reaches 80% or more, COLA suspension is discontinued and annual COLA is increased to 3.0% non-compounded. If funding level drops below 80%, then COLA formula (suspension every third year, 2.5% COLA non-compounded) applicable to 60% - 80% funding is resumed until funding level once again reaches 80%. If funding level drops below 60%, then COLA is suspended every other year (with COLA of 2.5% noncompounded) until 60% level is attained. COLA not payable before age 60
Minimum Retirement Age:	Increase to 53 effective January 1, 2014
Maximum Annuity:	1) Increase maximum to 80% of final average salary; 2) Unchanged rate of accrual (2.5%) for first 30 years, thereafter 2.5% for year 1 and 2.5% for second year; 3) Incremental pension (between 75% and 80%) and COLA based on 80% accrual not payable before age 64 (i.e., Sergeant who retires at age 59 with 32 years of service (minimum number of years of service to qualify for 80% annuity) would receive annuity based on 75% of final average salary; upon attaining age 64 the annuity would be re-calculated based on 80% of final average salary, plus the additional COLA (if any) attributable to the incremental 5%). This increase would be prospective only.

[1] COLA suspension would not apply to annuitants over 80 YOA or below a defined poverty level

Funding Commitment:	The City will introduce legislation, supported by the Union, which will amend Public Act 96-1495 (SB 3538) to provide during a seven (7) year period prior to the applicability of actuarial funding, the City will pay into the Pension Fund sufficient moneys ("ramp") to ensure payment of pension benefits for retirees from the Sergeants' bargaining unit during that time and to enable the City to assume an appropriate actuarial funding obligation with respect to pension benefits for current and future retirees of the Sergeants' bargaining unit. The actuarial funding obligation (ARC) created by P.A. 96-1495 shall be revised to provide for 90% funding of the Sergeants' pension benefits referred to above by no later than 2055.
Hold Harmless:	City to offer representation and hold Sergeants Union harmless in event of litigation from retirees challenging pension changes.
Ratification and Legislative Commitment:	The Union and the City will use their best efforts to assure timely ratification of the CBA and passage of legislation incorporating the changes set forth herein. In the event that the City Council rejects the CBA, the pension provisions of this agreement are void. In the event that satisfactory legislation incorporating this agreement is not passed into law by June 30, 2013, either party may reopen the CBA on the issue of wages and no more than five (5) other economic issues designated by each party and proceed directly to interest arbitration.

(Un. Ex. 3)

V. PRE-HEARING STIPULATIONS AND AGREEMENTS

A. Memorandum of Agreement Between the City of Chicago and the Policemen's Benevolent and Protective Association Unit 156- Sergeants

* * * *

WHEREAS, on or about July 25, 2012, the City and the PBPA commenced negotiations for a successor collective bargaining agreement and met regularly thereafter in good faith to bargain wages, hours and other terms and conditions of employment for Sergeants;

WHEREAS, on or about February 11, 2013, the City and the PBPA reached tentative agreement on all operational and economic issues related to a successor collective bargaining agreement;

WHEREAS, as part of their tentative agreement, the City and the PBPA agreed that either party could invoke the procedures set forth in Section 28.3(B) of the 2007-2012 Agreement in the event the tentative agreement was not ratified;

WHEREAS, on or about March 11,2013, the PBPA membership did not ratify the tentative agreement;

WHEREAS, on or about April 23, 2013, the PBPA filed a Demand for Compulsory Interest Arbitration;

WHEREAS, the City and the PBPA agree that this Memorandum of Agreement contains all of the operational and economic issues that have been the subject of the parties' negotiations and have been agreed to, identifies the remaining disputed issues, and establishes the agreement of the City and the PBPA to resolve those remaining disputed issues in interest arbitration proceedings governed by Section 28.3(B) of the 2007-2012 Agreement, which is a process the parties that the parties have availed themselves of in the past to resolve similar disputes;

WHEREAS, pursuant to Section 28.3(B)(6) of the 2007-2012 Agreement, the parties are required to attempt to agree upon a written statement of the issues to be presented to the Dispute Resolution Board; and

WHEREAS, the City and the PBPA, by agreeing to this Memorandum of Agreement, which contains terms and conditions substantial enough to stabilize the parties' bargaining relationship, have incorporated all bargaining subjects agreed upon and the precise means by which the remaining disputed issues shall be resolved;

NOW THEREFORE, in recognition of the parties' bargaining relationship and the foregoing, the City and the PBPA agree as follows:

1. The following issues were the subject of good faith negotiations between the City and the PBPA and have been agreed to:

City and PBPA Agreement

Duration	July 1, 2012 through June 30, 2016
Promotion	Union will receive rank order promotional list, written qualifying test and answer key
Cap on Length of Disciplinary Investigations	Per the parties' agreement on new Section 9.4(C)
Section 6.11	Mediation
Section 9A.3	Suspension Grievances
Section 23.8	Details
Section 26.3	Work Out of Grade
Article 32	Watch/District/Unit Selection
Article 19	Bereavement Leave
Memorandum of Understanding	District Bid Procedures

2. The City and the PBPA agree that the following are the remaining unresolved disputed issues and will be submitted to the Dispute Resolution Board: wages; Age 55 retiree health insurance; and no more than three (3) additional economic issues that either party may identify no later than May 31, 2013.

3. Any Article or Section of the Agreement not specifically referenced in paragraphs 1 and 2 above remains unchanged from the 2007-2012 Agreement. A copy of the 2007-2012 Agreement is attached and incorporated herein as Exhibit A.

4. Any and all proposals not tentatively agreed to and not referenced herein are withdrawn.

5. The parties recognize and agree that the terms of the 2007-2012 Agreement remain in full force and effect.

6. The City and the PBPA agree that, in accordance with Section 28.3(B) of the 2007-2012 Agreement, the unresolved disputed issues shall be referred to the interest arbitration proceedings set forth in Section 28.3(B) of the 2007-2012 Agreement for resolution. The parties expressly limit the scope of the interest arbitration proceedings set forth in Section 28.3(B) of the 2007-2012 Agreement solely to the unresolved disputed issues. The parties summarize the interest arbitration proceedings, and their compliance with those procedures to date, as follows:

a. The unresolved disputed issues shall be referred to a three-person Dispute Resolution Board, with one member to be selected each by the City and the PBPA, respectively, and the third impartial member to be jointly agreed upon by the City and the PBPA.

b. The City and the PBPA have agreed to the selection of Arbitrator Steven Bierig to serve as the third impartial member and Chairman of the Dispute Resolution Board, and further have agreed that the Arbitrator shall have the authority over the interest arbitration proceedings as set forth in Section 28.3(13) of the 2007-20 12 Agreement.

c. The City and the PBPA have agreed to a schedule before the Arbitrator and the Dispute Resolution Board to govern the interest arbitration proceedings and the resolution of the unresolved disputed issues.

d. The terms decided upon by the Dispute Resolution Board shall be included, in addition to the operational and economic issues that were negotiated and agreed upon by the City and the PBPA as set forth above in a successor collective bargaining agreement. This arbitrated agreement thereafter shall be subject to ratification and impasse resolution procedures detailed in Section 28.3(3) of the 2007-2012 Agreement.

(Jt. Ex. 2)

PRE-HEARING ORDER OF NEUTRAL ARBITRATOR STEVEN BIERIG OF MAY 17, 2013

The parties have agreed to the following items and schedule before the Neutral Chair and Dispute Resolution Board to govern the interest arbitration proceedings and the resolution of their unresolved disputed issues, as set forth in their May 6, 2013 Memorandum of Agreement, which is hereby incorporated by reference and attached to this Order:

I. Dispute Resolution Board

Pursuant to Section 28.3(B) of the Collective Bargaining Agreement ("the Contract"), the parties have selected and convened a three-person Dispute Resolution Board ("the Board"). The City's appointee to the Board is Chief Labor Negotiator Joseph P. Martinico, and the PBPA's appointee is General Counsel Sean M. Smoot. The City or PBPA may substitute appointees prior to the conclusion of the evidentiary hearing. The parties have selected Arbitrator Steven M. Bierig as the Neutral Chair. The parties' advocates shall be in attendance at any conference of the Board and shall otherwise be advised of any communications between or among Board members.

The parties have agreed that the procedural prerequisites for convening the Board and the arbitration hearing have been met, and that the Board has jurisdiction and authority to rule on the issues set forth in Section III below, except as otherwise specifically indicated. The time limits as set forth in Article 28 of the Contract are hereby waived by agreement of the parties. Further, the parties may waive the requirements of Article

28.3(B) with respect to their representative's participation on the Board with respect to all preliminary hearings, evidentiary hearings, and oral argument upon the record.

II. Hearing

The hearing in this matter shall proceed as follows:

1. On June 7, 2013, the parties shall identify the issues in dispute electronically with the Neutral Chair and serve a copy on the opposing party.

2. On June 14, 2013, the parties shall file offers on the disputed issues electronically with the Neutral Chair and serve a copy on the opposing party.

3. On July 16, 2013, the parties shall file pre-hearing briefs electronically with the Neutral Chair that set forth the evidence and arguments in support of their offers. Each party shall also serve a copy of its pre-hearing brief on the opposing party.

4. By 5:00 p.m. on August 2, 2013, the Neutral Chair shall notify the parties electronically if any additional evidence or information is necessary in order to aid the resolution of this matter.

5. On August 7 and 8, 2013, the parties and the Neutral Chair shall meet at 10:00 a.m. at the offices of Franczek Radelet, 300 South Wacker Drive, Suite 3400, Chicago, Illinois, to convene an evidentiary hearing on the issues. This hearing will be conducted in accordance with the Rules of the ILRB, including Section 1230.90(a) through (p), except where specifically modified by this Order. At the close of the hearing, the parties shall file final offers on the disputed issues with the Neutral Chair and serve a copy of them on the opposing party.

6. Each party shall be free to present its evidence in either the narrative or witness format. Narrative presentations shall be under oath so as to permit cross examination by the opposing party. The PBPA shall proceed first with the presentation of its case-in-chief on the issues. The City shall then proceed with its case-in-chief on the issues. Each party shall have the right to present rebuttal evidence. The order of presentation shall not be determinative as to which party, if any, bears the burden of proof on any issue.

7. Any modification of this Order must be by mutual agreement of the parties. If the parties do not agree, the Neutral Chair will decide.

III. Issues

The parties retain the right to withdraw issues from the proceeding; stipulate that no evidentiary hearing will be necessary for any issue; and modify their offers, provided that any such modification is submitted at or prior to the completion of the hearing.

IV. Media and Attendees

No member of the media or public shall be present at any evidentiary hearing in this matter. In addition, no person present at the arbitration proceedings will comment to the media regarding said proceedings. Both parties will secure a written agreement from their representatives that they will maintain the confidentiality of the actual proceedings from the media until a final decision is rendered. The proceedings will not be electronically recorded or transmitted by any means. However, the court reporter shall be able to audio record the hearing for the sole purpose of preparing the transcript.

V. Joint Exhibits

The parties shall submit the following exhibits to the Board by stipulation:
- The parties' current collective bargaining agreement (Jt. Ex. 1).
- The May 6, 2013 Memorandum of Agreement between the parties (Jt. Ex. 2).
- This Order and any other stipulation (Jt. Ex. 3).

VI. Award

The Board shall base its findings and decision upon the relevant provisions of the parties' collective bargaining agreement and the applicable provisions of the Illinois Public Labor Relations Act ("IPLRA") including Sections 14(h)(i)(k) and (m) and any stipulations by the parties. The Board shall issue its written opinion and award no later than September 2, 2013, unless another date is mutually agreed to by the parties.

VII. The Record

The evidentiary hearing will be transcribed by a court reporter, and the parties will order three transcripts of the hearing, to be delivered upon an expedited basis. The parties will equally share the cost of the court reporter and the transcripts. The Neutral Chair shall retain the entire record in this matter (including the parties' submissions) until such time as he has been directed by both parties to destroy the record. Any reasonable storage costs incurred by the Neutral Chair in fulfillment of this obligation shall be shared equally by the parties.

VIII. Continued Negotiations

No provision herein shall be construed to prevent negotiations and settlement of the terms of the successor agreement at any time, including any negotiations or settlement prior to, during or subsequent to an evidentiary hearing or award of the Board.

IX. Sequence of Controlling Authority

These proceedings shall be governed by the following, in order of priority:
1. This Order; then
2. Article 28 of the collective bargaining agreement; then
3. Sections 14(h), (i), (k) and (m) of the IPLRA, and the Rules and Regulations of the Labor Board with respect to those sections, including Section 1200. 143..
(Jt. Ex. 3)

VI. ISSUES

As noted above, the issues submitted to the Panel for resolution were:

1) **WAGES (Joint Issue)**

2) **RETIREE HEALTH CARE (Joint Issue)**

3) **DUTY AVAILABILITY PAY (City Issue)**

4) **TUITION REIMBURSEMENT (City Issue)**

5) **QUARTERLY DIFFERENTIAL (City Issue)**

VII. THE PARTIES' FINAL OFFERS AS PRESENTED ON AUGUST 14, 2013:

ISSUE	CITY OFFER	UNION OFFER
Duty Availability Allowance	Effective upon the final date of ratification of the collective bargaining agreement, this Section shall be modified to provide that Duty Availability Allowance shall not be payable for any period of time where the Sergeant was absent from work on account of a non-IOD injury or illness pursuant to Section 18.2 or any period of time where the Sergeant is on Limited Duty (Non-IOD).	*Status Quo*

Tuition Reimbursement	A) Effective upon the final date of ratification of the collective bargaining agreement, the number of classes for which a Sergeant may seek reimbursement is capped at twelve (12), for the duration of the Sergeant's career. All classes for which a Sergeant has received reimbursement over the course of his or her career, including those taken prior to the final date of ratification, shall count toward the cap of twelve (12) classes. B) The amount of reimbursement shall be limited to fifty percent (50%) of the cost of the class. C) All other terms and conditions of Educational Reimbursement shall remain in force, except where modified by (A) and/or (B) above.	*Status Quo*
Quarterly Differential	A) The amount of the Quarterly Differential, for each Step, shall be frozen at the amount in effect on January 1,2012, and there shall be no further increases. B) Effective upon the final date of ratification of the collective bargaining agreement, all newly-promoted Sergeants shall receive the Quarterly Differential applicable to Step 6 as of January 1, 2012, which amount shall not thereafter increase. Incumbent Sergeants shall remain at the Step and dollar amount they were at as of the final date of ratification. C) The Quarterly Differential shall not be payable for any period of time where the Sergeant was absent from work on account of a non-IOD injury or illness pursuant to Section 18.2 or any period of time where the Sergeant is on Limited Duty (Non-IOD). D) In 2015 the City shall calculate, on a per Sergeant basis, the amount of Quarterly Differential not paid out in 2014 as compared to the amount paid out in 2013 by virtue of the operation of the provisions of (A), (B) and (C) above and contribute that sum directly to the Policemen's Annuity and Benefit Fund for the City of Chicago ("Police Pension Fund") for the purpose of providing additional support for the annuities and other benefits payable by the Police Pension Fund.	*Status Quo*

	The payments referenced in this paragraph shall be credited to the City's financing obligation under Section 168 of the statute governing the Police Pension Fund (40 ILCS 5/5-168) to the extent permitted under law. Under no circumstances shall the payments referenced in this paragraph be deemed to constitute employee "wages" nor shall they be deemed to constitute "contributions" by the members of the Bargaining Unit within the meaning of Section 168(a), and such payments shall have no effect on the amount of City contributions pursuant to the "multiplier" approach in Section 168(a). In 2016, the City shall calculate the amount of Quarterly Differential not paid out in 2015 as compared to the amount paid out in 2013 by virtue of the operation of the provisions of (A), (B) and (C) above and contribute that sum directly to the Police Pension Fund in the same manner as set forth in the preceding sentence.	
Age 55 Retiree Health Care	Effective upon the final date of ratification of the collective bargaining agreement, each individual who avails him- or herself of the health care benefit provided for in the Memorandum of Understanding Regarding Retiree Health Care Benefits shall contribute to the cost of the benefit by contributing 2.00% of the annuity received from the Policemen's Annuity and Benefit Fund for the City of Chicago. This contribution requirement shall be applicable both to prospective retirees and to those individuals who were formerly members of the Sergeants' Bargaining Unit and are now receiving the health care benefit pursuant to the terms of the MOU. Effective July 1, 2014, all former Bargaining Unit members availing themselves of the benefit as of that date shall contribute three percent (3.00%) of the annuity then being received. Effective July 1, 2015, all former Bargaining Unit members availing themselves of the benefit as of that date shall contribute four percent (4.00%) of the annuity then being received. As the annuity payment increases the amount of the contribution shall be increased to keep pace with the 2.00/3.00/4.00% contribution requirement, whichever is then applicable, for as long as the individual is participating in the health care benefit.	On the Issue of Contributions to Health Care, if, and only if, the Dispute Resolution Board awards the City's Offer to require currently active Sergeants to contribute to the cost of their health care upon retirement, the Union's Final Offer is: Article 12 and the Memorandum of Understanding Regarding Retiree Health Care Benefits shall have the following additional language added: "No Sergeant will be required to contribute to the cost of the health care coverage provided to Sergeants who retire at age 55 or older until contributions are required to be made by employees represented by the Fraternal Order of Police, Lodge 7 and also employees represented by Local 2 of the IAFF."
Wages	July 1, 2012 1.5% January 1, 2013 1.5%	July 1, 2012 3.0% January 1, 2013 2.0%

	January 1, 2014 1.75% January 1, 2015 1.75% January 1, 2016 1.00% **Total Increase 7.5%**	January 1, 2014 2.0% January 1, 2015 2.0% January 1, 2016 2.0% **Total Increase 11.0%** During the term of this Agreement if Sergeants covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of Chicago, or any successor pension fund above the amount of the current annual contribution of 9% of salary, the Union may reopen this Agreement on the issue of Wages for the purpose of renegotiating the base salary and percentage increases which shall be paid to Sergeants. The Union shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing of its intent to reopen this Agreement. In the event this Agreement is reopened the wages set forth herein will not be changed or reduced without the written consent of the Union. The parties shall have ninety (90) days to renegotiate the base salaries and percentage increases. If the parties are unable to agree to modifications to this Section within that time, the dispute shall be submitted to interest arbitration pursuant to Section 28.3 (B.)

VIII. STATEMENT OF FACTS

A. Introduction

The Bargaining Unit in the instant Interest Arbitration consists of Sergeants of Police employed by the City of Chicago Police Department (the "City" or the "Department"). The Bargaining Unit is represented by the Police Benevolent and Protective Association of Illinois, Sergeant's Unit 156 (the "Union"). The Bargaining Unit is comprised of approximately 1100 Chicago Police Sergeants. The parties' previous collective bargaining agreement was in effect from July 1, 2007 through June 30, 2012. The instant Interest Arbitration concerns the Collective Bargaining Agreement (the "Contract") that will succeed the agreement that expired on June 30, 2012. This Interest Arbitration is governed by a tripartite Dispute Resolution Board (the "DRB", the "Board" or the "Panel") consisting of one Neutral Arbitrator, one Employer Arbitrator and one Union Arbitrator. (Jt. Ex. 1)

B. Bargaining History Leading to this Interest Arbitration

As noted above, the prior collective bargaining agreement between the parties expired on June 30, 2012. Following a series of informal meetings between the parties beginning in the Spring regarding various pending issues, formal negotiations took place between July 25, 2012 and Labor Day 2012.[2] In Summer 2012, the parties began a series of small group meetings to attempt to agree upon a successor Contract. The principals were James Ade, Thomas Pleines, Paul Bilotta and Glenn White representing the Union, and Deputy Mayor Mark Angelson, James Franczek and David Johnson for the City. During the following months, the parties

[2] At the parties' initial meeting, there was acknowledgement and agreement to deal with the pension, *Korshak* and contract issues simultaneously. The specific significance of the Labor Day Holiday was to meet the anticipated legislative timetable for passage of pension reform by the end 2012. At bargaining, the City indicated in order to have the pension matter considered by the legislature in relation to the Sergeants' contract, the negotiations needed to be completed by Labor Day in order to fit in with the contemplated legislature calendar.

simultaneously negotiated the terms of the new Contract, and discussed possible amendments to the Pension Code to address the pension funding issue. The parties' goal was to reach agreement regarding these issues by Labor Day 2012.[3]

Prior to the start of negotiations, the parties agreed to focus on what they identified as a three-pronged approach to the negotiations, which included traditional contract issues, including both economic and operational matters, pensions, and retiree health care. Both sides understood the limitation that within the context of negotiations, the parties were precluded from effectuating changes in the Pension Code, as this is governed by Illinois State Law. However, the parties believed that the State Legislature might be more likely to consider proposed pension changes agreed to by a public employer and a public sector union.

Throughout bargaining, the Union emphasized that a priority concern was the security of retired members in terms of the preservation of pensions and the access to quality, affordable health care.

After approximately 22 bargaining sessions, and a score of informal sessions, on February 11, 2013, the parties reached a Tentative Agreement (the "TA"), unprecedented both as to scope and time, subject to ratification. In their case presentations, both parties characterized these negotiation as unique in both the duration of negotiations together with the scope of matters encompassed within the TA. The TA included operational changes, a 9% wage increase over a 4-year period retroactive to July 1, 2012, and changes in retiree health insurance. The previously free health care benefit for retired Sergeants was modified in that Sergeants who retire after the effective date of the Contract would pay 2% of their annual pension towards the cost of health insurance until the Sergeant reaches the age for full

[3] This schedule was interrupted when Chicago teachers and support staff went on strike in early September 2012. Negotiations resumed in October 2012 and the meetings increased in frequency between December 2012 and January 2013.

Medicare eligibility under the federal law. The parties also agreed to mutually support legislation that would increase employee contributions to the Policemen's Annuity and Benefit Fund, also known as the "Police Fund" by 3%, to be phased in with a 1% contribution effective on January 1, 2013, another 1% on January 1, 2014 and 1% again on January 1, 2015. The legislation would also increase the statutory minimum retirement age from 50 to 53 effective January 1, 2014. Under the contemplated legislation, cost of living increases (COLA) for retirees would be suspended in alternating years. (Un. Ex. 3)

However, the parties were unable to resolve the *Korshak* matter. As noted below, *Korshak* was the product of over 20 years of litigation and not surprisingly, and raised many complicated issues and involved retirees in pension funds who were not parties to the contractual issues. Despite their efforts and intentions, the City and the Sergeants could not resolve these issues in the time available.

The TA was finalized by the parties on February 12, 2013. However, while the TA was recommended by the Executive Board of the Union, the membership rejected the TA on March 11, 2013. Pursuant to Article 28 of the prior collective bargaining agreement and Section 14 of the Illinois Public Labor Relations Act, the Union demanded Interest Arbitration. (Jt. Ex. 1)

Pursuant to the May 7, 2013 Memorandum of Agreement between the City and Union and the May 17, 2013 Order, each party in June 2013 initially identified issues for Interest Arbitration. The parties submitted their initial offers on June 14, 2013. The City's issues included Wages, the cost of Retiree Health Care, Duty Availability Allowance, Tuition Reimbursement and the Quarterly Differential. The City's proposal regarding Wages was 6% over the course of the Contract with an additional amount to be paid directly into the Pension Plan. The Union identified the issues of Wages and Retiree Health Care, and indicated that the City's issues and

Retiree Health Care remain *status quo*. The Union's initial Wage proposal was 15% over the course of the Contract. (Jt. Ex. 1, 2; Un. Ex. 1)

Pursuant to Section 14(p) of the IPLRA, the parties had voluntarily opted out of the IPLRA statutory process and established their own contractual impasse resolution procedure, which is set forth in Section 28.3(B) of the prior collective bargaining agreement. The parties' contractual procedure specifically incorporates Sections 14(h), (i), (k) and (m) of the IPLRA.

As noted above, the instant Interest Arbitration proceedings are governed by the terms of the Neutral Arbitrator's May 17, 2013 Order, Article 28 of the expired collective bargaining agreement, Sections 14(h), (i), (k) and (m) of the IPLRA, and the Rules and Regulations of the Illinois Labor Relations Board related to said IPLRA provisions. (Jt. Ex. 3)

Significantly, the parties did not incorporate into their contractual impasse resolution procedure the "last best offer" provision of the IPLRA, which 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)."

Thus, in the instant case, the DRB is not required to choose between the parties' last offers of settlement on economic issues, and instead, "… has the latitude to design its own resolution for each and every issue in dispute." *See City of Chicago and Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants* at 7 (Goldstein, 2005). Thus, in the instant Interest Arbitration, the Panel is free to fashion what it believes is the appropriate Contract based on the relevant statutory factors and case law, regarding both economic and non-economic proposals.

C. The Employer

Chicago is the third largest city in the country and is recognized as a major financial center and a hub of the nation's manufacturing and transportation industries. With an overall budget of $6.54 billion, the City delivers essential public services and programs to more than 2.7 million residents, over 260,000 businesses, and at least 43 million annual visitors. (Er. Ex. 1)

Within its 2013 budget, the City appropriated $3.16 billion to its General Operating Fund, also known as the Corporate Fund. The Corporate Fund is the primary funding source for the Chicago Police Department, including personnel costs. The vitality of the Corporate Fund is significantly impacted by the ailing economy. As noted below, the City was only able to balance its budget between 2009 and 2011 by using up significant reserves earned from the sale of the parking meters and the privatization of the Chicago Skyway. Between 2002 and 2007, an average of 47% of total Corporate Fund revenues were derived from local tax revenues. Beginning in 2008 with the onset of the recession, these revenues declined both in total dollar amount and as a percentage of the City's total revenues. Similarly, intergovernmental taxes received from Cook County and the State of Illinois represent another source of Corporate Fund revenue, and also declined with the overall economy, falling to only 16% of 2011 Corporate Fund revenues. Non-tax revenues also declined. Thus, the Corporate Fund resources are contingent upon revenue streams and can rise and fall based on fluctuations in the economy. (Er. Ex. 1, 2)

Approximately 83% of the City's 2013 Corporate Fund expenses are designated for personnel-related costs that include employee salaries and wages, health care, overtime pay and unemployment compensation. Public safety personnel and operational costs represent the largest category of expenses of the personnel-related costs, accounting for approximately 59%

of the Corporate Fund budget. The Chicago Police Department's annual budget is $1.3 billion. (Er. Ex. 1)

The Chicago Police Department is the largest City Department and the second largest police department in the country. Garry F. McCarthy is the Superintendent of Police. There are five command bureaus, which are responsible for all administration, patrol operations and specialized functions. In 2011, the Department made over 152,000 arrests. (Er. Ex. 1)

The Department is comprised of two categories of personnel, 11% of which are civilian and 89% of which are sworn. Of the Department's sworn personnel, more than 90% are represented by two Unions for purposes of collective bargaining and are organized into four separate Bargaining Units. As of July 1, 2012, the Department's Police Officers, Police Sergeants, Police Lieutenants, and Police Captains are represented by the Fraternal Order of Police, Lodge No. 7, the Policemen's Benevolent and Protective Association, Unit 156B-Sergeants ("Sergeants"), the Policemen's Benevolent and Protective Association, Unit 156B-Lieutenants ("Lieutenants"), and the Policemen's Benevolent and Protective Association, Unit 156C-Captains ("Captains"), respectively. As of July 1, 2012, the Sergeant's membership totaled 1,084 members. (Er. Ex. 2)

D. <u>The Statutory Factors</u>

The Bargaining Unit in the instant case consists of sworn employees who are unable to strike, and is therefore covered by Section 14 of the Illinois Public Relations Act. Section 14(h) of the Act obligates the Arbitrator to consider the following factors in reaching a decision:

> (h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed

new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

Section 14(h) of the Act requires that the DRB base its decision upon the following criteria or "factors", as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the costs 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 or in private employment.

Each of these factors is relevant, although no one factor is determinative. An Arbitrator has discretion to rely on some factors more heavily than others where appropriate. The statute does not rank the factors in importance. In *City of Decatur and International Association of Firefighters,* Local 505, S-MA-29 (Eglit 1986), Arbitrator Eglit observed that the importance of each statutory factor is not ranked: "… moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make the determination as to which factors bear most heavily in this particular dispute." Thus, some of the statutory factors may be deemed more significant than others, depending upon the issues and the evidence presented. *See also City of Waukegan and MAP, Waukegan Police Sergeants, Chapter No. 285*, S-MA-07-092 (Martin, February, 2008).

E. <u>The Economic Situation Leading to The Current Interest Arbitration</u>

1. <u>The 2008 Recession and Continued Economic Stagnation</u>

In 2008, the U.S. economy encountered a significant decline effecting national, state and local economies. *See City of Chicago and Fraternal Order of Police Chicago Lodge No. 7*, Arb. Ref. 04-328, at 8-9 (Benn, 2010), *See Cook County Sheriff/County of Cook and AFSCME Council 31*, Arb. Ref. 10-116, at 9 (Benn, 2010). The country remains in "unstable economic times," and economic recovery is still in progress. See *City of Rock Island and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-11-183, at 6 (Benn, 2013). The national unemployment rate is currently 7.6%, and the Congressional Budget Office expects that rate to remain above 7.5% throughout 2014. (Er. Ex. 1, 4, 5; Tr. 138-172 generally, *See Also* Holt PowerPoint Presentation)

This economic collapse has significantly impacted Illinois and Chicago. Illinois' unemployment rate currently is 9.2%. Although personal income taxes were raised from 3% to

5% and corporate taxes were raised from 7.3% to 9.5%, the State has been spending more than it collects in tax revenue. In addition, as discussed below, Illinois also has the nation's most underfunded pension system. (Er. Ex. 1, 3, 6)

As a consequence of these economic conditions, the City's revenue streams have been seriously affected in a negative manner. The City's unemployment rate is higher than the national average and recently equaled the state unemployment rate of 9.2%. All income-related and employment-based taxes have severely declined. Although State personal income taxes were increased by 67%, this did not translate into any additional funds flowing to the City. The housing crisis has also affected the Chicago area and thus further intensified the economic issues. (Er. Ex. 8)

The City contends that the downturn in the economy has repeatedly challenged its ability to provide essential services. The City has attempted to handle the economic downturn with a combination of management initiatives, reductions in personnel costs and other approaches, including the use of proceeds from the long-term lease of the Chicago Skyway in 2005 and the Chicago Parking System in 2008. Non-represented City employees have experienced reductions in compensation through unpaid furlough days, unpaid holidays, and compensatory time in lieu of overtime compensation. Some of the City's unionized employees also previously agreed to a number of concessions in order to avoid layoffs. (Er. Ex. 2)

The City has decreased its total workforce by 20%, from 40,506 positions in 2003 to 32, 153 positions in 2013; however, the City's total personnel costs increased by 14% during this same time period. The City's Public Safety Departments, including Police and Fire, account for the largest portion of personnel expenses. Those departments, because they provide essential public safety services, have not experienced reductions to the same degree as have other City departments. (Er. Ex. 2, 63)

For the 2013 budget, the City faced a $635 million shortfall, which was partially closed through a number of expense reductions, management initiatives and other measures, including 517 layoffs. As a result, the City's budget gap for 2013 was reduced from $635 million to $298 million. On July 17, 2013, Moody's Investors Service reduced the City's general obligation bonds and sales tax ratings associated with these liabilities. (Er. Ex. 1, 9)

The City obtains much of its revenue from state and federal government, both of which are facing fiscal difficulties. While total City sales tax revenues are expected to increase slightly in 2013, the City contends that the proportion of revenue designated for the Corporate Fund will actually decrease. Real estate property transfer tax revenues are projected to increase only minimally based upon the current housing situation. The City projects that it will experience substantial budget gaps of $331 million in 2014 and $360 million in 2015.[4] (Er. Ex. 2)

2. <u>The Pension Situation</u>

a. <u>The Pension Fund Structure</u>

City employees are members of one of four Pension Funds created under the Illinois Pension Code: the Policemen's Annuity and Benefit Fund, ("the Police Fund")' the Firemen's Annuity and Benefit Fund, ("the Fire Fund")' the Municipal Employees' Annuity and Benefit Fund, ("the Municipal Fund")' and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund, ("the Laborers' Fund") (collectively "the Pension Funds"). The Pension Funds are governed by the State Pension Code, and changes to their terms and conditions require legislative action by the Illinois General Assembly.

[4] This figure does not include the additional $600 million City contribution to the Fund based on the actuarially funding requirement (*See infra*.)

The Pension Funds are all defined benefit plans, in that the employees and the City contribute fixed amounts intended to cover future annuity pension payments, which are tied to the individual's salary and length of service. Each employee contributes a fixed percentage of his/her salary. Participants in the Laborers' and Municipal Funds contribute 8.5%, participants in the Police Fund contribute 9.0%, and participants in the Fire Fund contribute 9.125%.

Currently, the City's contribution to the Pension Funds is determined by a "multiplier", which is a multiple of the amount contributed by participants in the Pension Funds. The multiplier differs among the Pension Funds: the Laborers' Fund multiplier is 1.00 (i.e., the City contributes the same amount contributed by employees), the Municipal Fund multiplier is 1.25, the Police Fund multiplier is 2.00, and the Fire Fund multiplier is 2.26. (Er. Ex. 10)

The individual's pension benefit, also known as an "annuity", is an amount determined as a percentage of his/her final average salary, which consists of the individual's highest average salary for any four consecutive years out of the ten years preceding retirement. The percentage of the final average salary that becomes the annuity is determined by the individual's years of service multiplied by an accrual factor. For the Laborers' and Municipal Funds, the accrual factor is 2.4. Thus, a participant who retires with 20 years of service would have his/her annuity computed at 48% of his/her final average salary. The Police and Fire Funds has an accrual factor of 2.5; a sworn officer retiring with 20 years of service would have his/her annuity computed at 50% of his/her final average salary. Each of the Pension Funds has a maximum annuity, expressed in the form of a maximum percentage of final average salary. For the Laborers' and Municipal Funds, the maximum is 80% of final average salary. Based on the specific accrual factor, a participant in these funds must work 33 years in order to reach the maximum. For the Police and Fire Funds, the maximum is 75% of final average salary, and the employee must work 29 years plus one day to attain the maximum.

In order to qualify to receive a pension, an individual must have attained a minimum age and minimum number of years of service. For the Laborers' and Municipal Funds, the individual must be at least 55 years of age of with 25 years of service. For the Police and Fire Funds, the minimum retirement age is 50, and the individual must accrue a minimum of 20 years of service.

Finally, retirees are eligible for automatic annual annuity increases, also known as the Cost of Living increase, or COLA. For the Laborers' and Municipal Funds, the automatic increase in the annuity consists of a 3% increase in the amount of the annuity, compounded, beginning at age 60. For the Police and Fire Funds, the amount and timing of the COLA is dependent upon the age of the retiree. Retirees born before 1955 are eligible for a 3% increase, non-compounded, at age 55; those annuitants born after January 1, 1955, are not eligible for an increase until age 60, and then the amount of the increase in the annuity is 1.5%, which in turn is capped at 30% of the amount of the original annuity. Thus, such retiree receives the automatic increase for twenty years.

The Pension Funds invest the contributions they receive to pay the benefits. Ideally, the assets that the Pension Funds have on hand plus their expected investment earnings and future contributions should equal approximately the anticipated amount of future benefits, discounted to present value. The assets divided by the present value of this liability is referred to as the "funded ratio," often expressed as a percentage; a funded ratio of 100% is fully funded. (Er. Ex. 10)

b. <u>The Current Progression of the Pension System</u>

As of the end of 2006, the individual actuarial reports of the Pension Funds indicated funded ratios in the individual Pension Funds. The funded ratio for the Fire Fund was 44%, for the Police Fund was 52%, for the Laborers' Fund was 96%, and for the Municipal Fund was 71%.

This was an aggregate funded ratio of 62% with a combined unfunded actuarial liability of nearly $8.6 billion. At the end of 2009, the aggregate unfunded liability of the Pension Funds had increased to $14.57 billion, and the aggregate funded ratio was 43%, with the Police Fund dropping to a funding ratio of 37%. (Er. Ex. 10)

On January 11, 2008, then Mayor Richard M. Daley, announced the formation of the Commission to Strengthen Chicago's Pension Funds ("the Commission") to examine the Pension Funds and make recommendations regarding how to maintain higher funding levels. The Commission was comprised of City officials, Union leaders, Pension Fund executives, and business and civic professionals. (Er. Ex. 10, 11)

The Commission issued its report in April 2010, summarizing a "complex situation":

> The financial health of each of the City's four pension Funds has deteriorated due to increasing liabilities, inadequate contributions, which are based on a fixed percentage of payroll, as opposed to actuarial need, and adverse market conditions leading to fluctuating returns on investment which could not keep pace with the growth in liabilities. Liabilities have increased due to enhanced benefits, especially non-recurring early retirement programs that were not properly funded. Due to inadequate contributions, the Funds have had to use assets to pay current benefits, which in turn puts pressure on the asset base and funded ratio. As the funded ratio sank, a given percentage increase in liabilities had a magnified effect on the need for additional contributions or higher investment returns, and a "vicious circle" was created.

It concluded that the Pension Funds were facing a "financial crisis" because they were significantly underfunded and lacked the financial assets to pay all anticipated future pension benefits. The Commission estimated that even with optimistic investment return assumptions, all four Pension Funds would run out of money by 2030, with the Police Fund running out of money in 2024. The Commission indicated that this problem would worsen with each passing year. The Commission recommended that the Pension Funds adopt an actuarially-based

funding policy. Further it recommended that such funding policy provide for a sustainable funded ratio of at least 80%, to be reached within 50 years. (Er. Ex. 10)

The Commission was unable to reach a consensus regarding the handling of pension benefits of current employees. In March 2010, one month before the Commission's Report, the Illinois General Assembly enacted Public Act 96-0889, often referred to as Senate Bill 1946, providing for reduced pension benefits for new employees hired after January 1, 2011, in the non-sworn, civilian Pension Funds in the State of Illinois, including the City's Laborers' and Municipal Funds. For said new hires, also known as "Tier 2" employees, the minimum retirement age was increased to 67, the definition of "final average salary" was limited to the highest eight year average (as opposed to a four-year average), a cap of $106,800 was imposed on pensionable earnings, and COLA was limited to the lesser of 3% or one-half the increase in the Consumer Price Index ("CPI"), non-compounded. Nothing in this legislation impacted the pension benefits of those employees and retirees who were hired prior to the end of 2010.

In December 2010, the Illinois General Assembly passed Public Act 96-1495, also referred to as Senate Bill 3538. This legislation applied the two tier concept from Senate Bill 1946 to downstate police and fire pension funds as well as the Chicago Police and Fire Funds. Under this legislation, employees hired after January 1, 2011 are subject to an increased minimum retirement age of 55, the same definition of "final average salary," and the same maximum pensionable earnings and COLA provision as Tier 2 civilian employees. Like Senate Bill 1946, this legislation did not modify the pension benefits of current employees hired before 2011 or current retirees. In addition, Senate Bill 3538 imposed, for the first time, an actuarial funding obligation on the City with respect to the Police and Fire Funds. This obligation requires the City in 2015 to begin making contributions sufficient to bring the funded ratio of each Pension Fund to 90% by the end of 2040.

According to the City, such a 2-tier approach to pension benefits barely scratches the surface of the Illinois pension problem. In May 2013, the Civic Federation issued its report on the Status of Local Pension Funding Fiscal Year 2011. The Civic Federation is an independent, non-partisan government research organization that analyzes and makes recommendations regarding government finance issues for Chicago and the State of Illinois.[5] In that report the Federation recognized that, even with reduced benefits for Tier 2 employees, the Laborers' and Municipal Funds are still projected to run out of assets by 2031 and 2030, respectively. (Er. Ex. 10, 12)

The pension crisis sparked a legal debate over the ability of the Illinois General Assembly to modify pension benefits for Tier 1 employees and retirees under the Illinois Constitution. According to the City, there was growing acceptance of the conclusion that significant changes in benefits for current, pre-2011 employees and current retirees were required.

When the Commission issued its April 2010 Report, the Police Fund funding level was 37%. On April 30, 2012, Gabriel Roeder Smith & Company, ("GRS"), the Police Fund's actuaries, issued their Actuarial Valuation Report for 2011. According to GRS, the Police Fund funded ratio dropped from 33.70% in 2010 to 31.72% in 2011. Under a different, "Market Value" approach to assets, GRS concluded that the funded ratio dropped from 36.69% to 32.78%. GRS repeated its annual evaluation in April 2013. Under the "Book Value" approach, the funded ratio declined from 31.72% in 2011 to 28.89% in 2012 and under the Market Value approach, the funded ratio declined from 32.78% to 31.44%. (Er. Ex. 13, 14)

In 2000, the unfunded liability for the Police Fund was a total of $1.632 billion. Eleven years later, the unfunded liability of the Police Fund totaled $6.244 billion. The City's property tax levy has historically been the primary revenue source for the payment of pension

[5] http://www.civicfed.org/about-us

obligations. According to the City, in order to cover the cost of future pensions, the City must either reduce City services or increase the property tax levy. (Er. Ex. 2, 12)

Mayor Rahm Emanuel traveled to Springfield in May 2012 to address the Illinois General Assembly and lay out his "Roadmap" to pension reform. As the Mayor stated:

> We do not face these challenges because our public employees or our taxpayers did anything wrong. They did what was required of them with every pay stub. If we do nothing, we will force taxpayers to make impossible choices between either using that money to pay for pensions or using it to pay for essential services like public safety and schools. Doing nothing will force me to choose between either letting our pension funds go bankrupt, or raising the City's property taxes by 150 percent. As long as I am Mayor of Chicago that is a burden I refuse to put on the backs of our taxpayers. That's why we are finally doing something to resolve this crisis and ensure retirement security that is fair to both employees and taxpayers.
>
> (Er. Ex. 16)

The Mayor proceeded to outline the several aspects of the Roadmap:

1. Suspend COLA increases
2. Phase-in a 5% increase in employee contributions
3. Increase minimum retirement age by five years
4. Offer alternative retirement choices
5. Allow no increase in City contributions until the system has been corrected

According to the City, the City's statutorily required contribution to the Police and Fire Funds will grow from an anticipated $476 million in 2012 to $1.07 billion in 2015. The City's current property tax levy pension contribution payment is $797 million. The $797 million

includes employer pension contributions, debt service and libraries. In order to cover this anticipated shortfall, property taxes would have to be raised from $800 million to $1.40 Billion, a 75% increase for the residents of the City of Chicago. When asked at the hearing how it intended to cope with this additional liability, the City said it did not know. (Er. Ex. 2)

3. The *Korshak* Agreement

Through June 2013, the City was a party to what was known as the "*Korshak* Agreement," a court approved settlement regarding the provision of health care to retirees. The matter began as a state court lawsuit, *City of Chicago v. Korshak*, 87 CH 10134. The original lawsuit arose out of a dispute between the City and the four Pension Funds regarding which entity was obligated to pay for retiree health benefits. The City and the Pension Funds reached a settlement agreement in which the City would subsidize 50% of the cost of retiree health care, the four Pension Funds would contribute a flat dollar subsidy depending upon Medicare eligibility, and retirees would pay the remainder of the cost.

The terms of the settlement agreement remained in effect until 1998. In 2003, they entered into another settlement agreement, expiring June 30, 2013, which created a new retiree health plan in which the City would subsidize 50% of the cost, the Pension Funds would contribute an increased subsidy, and the retirees were responsible for the remainder of the cost. At the time of the settlement's expiration, the parties could assert any legal claims regarding the entity legally responsible for retiree health care. The settlement agreement called for the creation of the Retiree Health Benefits Commission ("RHBC") to study the problem and make recommendations to the Mayor before July 1, 2013. (Er. Ex. 20)

The RHBC issued its report on January 11, 2013. According to the Report, as of 2012, a total of 33,880 retirees and dependents were covered under the health care plan. Of that number, 11,842 were non-Medicare eligible and 22,038 were Medicare eligible. The total City expense for retiree health care in 2012 was $108.7 million, with $64 million spent on those that were non-Medicare eligible and the remaining $44.6 million spent on those that were Medicare eligible. The RHBC analyzed the cost implications of several suggested alternatives. The RHBC also noted the possibilities offered by the Affordable Care Act. (Er. Ex. 21, 22)

In its report, the RHBC stated:

> With an increasing retiree population, early retirement ages, and longer life spans, the ability of the City to provide benefits to its retirees on the same basis that they are provided today would appear to be untenable. Continued funding on the same basis would also likely result in other financial consequences as the significant change in long-term liability will likely affect both the City's bond rating and its creditworthiness.
>
> (Er. Ex. 21)

On May 21, 2013, the City advised retirees that the City would extend the current health care coverage through the remainder of 2013 and further advised them that beginning in 2014, the City would provide a health care plan with continued contribution from the City of up to 55% of the cost of the coverage for their lifetimes for those who retired prior to August 23, 1989. For all other retirees, the City would offer a plan through 2016. On June 21, 2013, the annuitants were advised that the General Assembly had extended the Pension Funds' subsidies through 2016. (Er. Ex. 23, 24)

F. The Issues of the Parties

1. Wages

The parties have made the following final Wage proposals:

CITY PROPOSAL		UNION PROPOSAL	
July 1, 2012	1.5%	July 1, 2012	3.0%
January 1, 2013	1.5%	January 1, 2013	2.0%
January 1, 2014	1.75%	January 1, 2014	2.0%
January 1, 2015	1.75%	January 1, 2015	2.0%
January 1, 2016	1.00%	January 1, 2016	2.0%
Total Increase	**7.5%**	**Total Increase**	**11.0%**

a. The Union

The Union has presented support for its Wage proposal. The TA provided for a 9% wage increase. The City is now offering a raise of 7.5% over four years. The Union contends that it agreed to a lower wage increase during negotiations as a *quid pro quo* to obtain acceptable pension reform measures. However, because the TA was rejected and no pension reform will be included in the Contract, the Union contends that it will not receive the benefit of the bargain as agreed to in the TA.

The Union stresses that the City did not present the argument during negotiations that it has an inability to pay the requested wage increases. The Union argues that economies are improving. The Union cites to the Federal Reserve Bank of Philadelphia, *Survey of Professional Forecasters,* which identifies growth in the GNP to be at the rate of 2% in 2013, 2,8% in 2014, 3% in 2015 and 2.9% in 2016. The survey also believes that unemployment will fall to 7.1% in 2014, 6.6% in 2015 and 6.1% in 2016. Another view provided by the Congressional Budget Office sees

the budget deficit shrinking "to its smallest size since 2008."[6] On the local level, the Union points to the Federal Reserve Bank of Chicago's *Economic Outlook Symposium,*[7] which expects a rise in GNP for 2013 of 2.3%. The symposium also foresees rising housing starts and residential investments continuing at a strong pace in 2013. The pace of economic growth is forecast to move higher in 2014 with activity improving across many sectors of the economy.

Further, the Union stresses that the City has made substantial reductions in the local budget deficit and revenues are up. In the 2013 City Budget Overview, the Mayor said, "the City has closed a $635 million gap" and will increase police hiring guaranteeing 457 new recruits in the academy, "the most since 2006"[8] City revenues are expected to increase $40 million more than expected. With the improvement of both the national and local economies, the Union contends that the City has no basis to claim that it is unable to pay the Union's proposed wage increases.

The Union contends that by reducing its offer on Wages, the City is trying to send a message to the Union membership that its vote against pension reform in rejecting the TA will cost them in wages. The Union contends that the reduction of the proposed wage increases is intended as a punishment and is completely improper.

The Union cites to prior interest arbitration awards concerning the City of Chicago and the police units that demonstrate that the only cities in the country which have been found to be comparable to Chicago are New York and Los Angeles. In *City of Chicago and Fraternal Order of Police, Lodge #7,* (Briggs, 2002) the Award states:

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[6] Congressional Budget Office, The Budget and Economic Outlook: Fiscal Years 2013 to 2023 (February, 2013), www.cbo.gov/publication/43907

[7] Federal Reserve of Chicago, Economic Outlook Symposium, www.chicagofed.org/webpages/event/eos_series.cfm

[8] Budget of the City of Chicago, Overview 2013, www.cityofchicago.org/content/dam/city/depts/obm

> Chicago is a world class City comparable most directly to New York and Los Angeles. Smaller jurisdictions surrounding Chicago may have certain geopolitical similarities to it, but by almost any conventional method of external comparability they are birds of an entirely different feather. For example, population statistics alone highlight the gigantic chasm between the City of Chicago and its surrounding municipalities. The City holds fully one quarter of the State's population and has more residents than the next nine largest cities combined. In terms of size, economic and labor relations complexity Chicago is not like any other city in the Midwest…We place special emphasis on New York and Los Angeles when considering the external comparability factor. (Award at p. 23)
>
> *See Also City of Chicago and Fraternal Order of Police, Lodge #7* (Benn, 2009)

In the 2009 interest arbitration involving the City and the FOP, the FOP suggested appropriate comparables to Chicago should include Detroit, Houston, New York, Los Angeles, Phoenix, San Antonio, San Diego and Dallas. Arbitrator Benn's Award rejected the FOP's suggestion:

> In ordinary times, examination of the police contracts in those cities would be appropriate. However, based on when the contractual terms were formulated for most of those cities, clearly there is not yet a sufficient baseline formed by enough contracts negotiated after the downturn in the economy for me to make any 'apples to apples' comparisons.

The Union contends that it is clear that the most recent determination identifying comparable communities is the Briggs 2002 Interest Arbitration Award in which New York and Los Angeles were named as the relevant comparable communities. The relevant data showing wage increases for Sergeants for these communities is set forth below:

YEAR	NEW YORK	CHICAGO	LOS ANGELES	TA
2007	4.0%	1.0%	3.4%	N/A
2008	4.0%	3.0%	3.7%	N/A
2009	4.0%	2.0%	0.0%	N/A
2010	4.0%	1.0%	0.0%	N/A
2011	N/A	2.0%	3.0%	N/A
2012	N/A	1.0%	1.0%	2.0%
2013	N/A	N/A	4.0%	2.0%
2014	N/A	N/A	2.0%	2.0%
2015	N/A	N/A	N/A	2.0%
2016	N/A	N/A	N/A	1.0%

The Union contends that this chart demonstrates that from 2007 to 2010, Chicago lagged behind New York by almost 9%. From 2011- 2012, the Union fell behind Los Angeles by 1% and that gap widens by an additional 2% in the years 2013 and 2014 when compared with the TA. (Un. Ex. 15, 16)

According to the Union, if one considers the increased employee contributions to the Police Fund that the City will be seeking to obtain through legislation, the gap between Chicago and Los Angeles widens.

The table below compares the Union's Wage proposal for the Contract to the same data:

YEAR	NEW YORK	CHICAGO	LOS ANGELES[9]	UNION PROPOSAL
2007	4.0%	1.0%	3.4%	N/A
2008	4.0%	3.0%	3.7%	N/A
2009	4.0%	2.0%	0.0%	N/A
2010	4.0%	1.0%	0.0%	N/A
2011	N/A	2.0%	3.0%	N/A
2012	N/A	1.0%	1.0%	3.0%
2013	N/A	N/A	4.0%	2.0%
2014	N/A	N/A	2.0%	2.0%
2015	N/A	N/A	N/A	2.0%
2016	N/A	N/A	N/A	2.0%

The increased employee contributions for the Chicago Sergeants must also be factored into the Panel's Wage determination. While the Union contends that increased employee pension contributions are a certainty, the Union cannot predict the amount of said increases. The Union contends that if the Mayor obtains the legislation for increased contributions to the Pension Plans, the Union's wages will further lag behind L.A.

From July 2007 until May 2013, the CPI rose 10.2%.[10] The Union contends that as a result of the 9.5% wage increase over the course of the 2007-2012 Agreement, the Sergeants fell behind the rate of inflation. The Federal Reserve Bank of Philadelphia, *Survey of Professional Forecasters,* predicts inflation to average 2.3% annually over the next ten years. The Puget Sound Economic Forecaster expects the CPI to be 1.8% in 2013, 2.1% in 2014, 2.3% in 2015 and

[9] Raises are effective July 1and September 1 for 2011, July 1 for 2012, January 1 for 2013, July 1 and November 1 for 2013, and March 1 for 2014.
[10] Bureau of Labor Statistics, Consumer Price Index, Urban, not seasonally adjusted

2.6% in 2016.[11] Matching wage increases are necessary in 2014, 2015 and 2016 to allow the Sergeants to simply keep up with inflation. (Un. Ex. 20)

The Union argues that no internal comparables are available because no other police or fire unit within the City has reached a successor agreement with the City; therefore, that factor identified in the IPLRA is not applicable. The IPLRA also suggests a comparison with other internal employees generally. The Union contends that this language indicates that the legislature intended that when there are no employees performing similar services with whom a comparison can be made, it is proper to review the wages of other employees.

According to the Union, "other employees" includes the Chicago Public School Teachers, AFSCME Council 31, Teamsters Local 743, Unit II-SEIU, the Illinois Nurses Association and the Trade Unions. The Union contends that the contracts of these Bargaining Units are not helpful.[12] For example, the AFSCME, Teamsters', and Illinois Nurses Association contracts each expired in 2012 and have not been renewed. The remaining contracts' increases are set forth below:

YEAR	UNIT II- SEIU (Public Safety Employees)	CTU (Chicago Teachers Union)	COUPE (Trade Union Coalition)
2012	$500 Bonus	3.0%	1.5%
2013	1.5%	2.0%	2.0%
2014	1.5%	2.0%	2.0%
2015	2.0%	3.0%	2.0%
2016	1.0%	N/A	2.0%
2017	N/A	N/A	2.0%

The Union contends that the DRB should strongly consider the CTU agreement. The Union argues that the external comparables provide only partial data. The New York data ends

[11] www.seattle.gov/financialdepartment/cpi/forecast.htm
[12] All contracts can be found at:
cityofchicago.org/city/en/depts./dol/sup_info/city_of_chicago_collectivebargainingagreements

in 2010 and Los Angeles' data ends in 2014. The CPI provides information from 2007 to 2013, but the future is speculative. The Union argues that the most reliable information available is the July 1, 2012 - June 30, 2015 agreement between the CTU and the City, which is of similar duration as that of the Contract. The CTU agreement provides raises effective each year on July 1 in the amount of 3% for 2012, 2% for 2013, 2% for 2014, and 3% for 2015, which accumulates to 10% over four years.

According to the Union, applying the statutory factors to the City's Wage offer establishes that it is unreasonable and should be denied. A comparison of the City's proposal to the forecasted CPI data shows that the City's offer is below the forecasted CPI for the term of the agreement. The City's offer of 7.5% over four years as compared to Los Angeles' 10%, or the CTU's 10%, both over four years, demonstrates that the offer is unreasonable and must be rejected.

The statutory factors support the same wage package as that outlined in the agreement between the City and the CTU. The instant situation is unusual in that the most reliable internal comparable is one between a public safety unit and a non-public safety unit. In addition, the CTU shares similar pension issues with the Sergeants. The increased employee pension contributions that the City will legislatively impose upon the Sergeants will also be imposed on the teachers.

Therefore, the Union requests that its Wage proposal be implemented.

b. <u>The City</u>

The City urges the Board to adopt the City's final Wage offer because it is reasonable and supported by the statutory factors. The City claims that the Union's offer is excessive and fiscally irresponsible. First, the City notes that the wage increase provided for in the TA

included 9%, with 3% of that increase paid into the pension plan. Thus, the City's proposal is actually 1.5% more than the employees would have received under the TA.

The City suggests a review of the Sergeant's historical wage and benefits packages. Under Section 14(h)(5) and (6) of the IPLRA, the Board is charged with considering the Union's current overall compensation as well as the cost of living. A review of this compensation package reveals that Sergeants have historically received more lucrative benefits than most other sworn officer contracts in Illinois, including during a time of financial difficulties.

Between 1999 and 2012, Sergeants experienced a cumulative wage increase of 43.75%, which exceeded the cost of living during that same period. When compounded, Sergeants' wage increases between 1999 and 2012 total 54%, also exceeding the cost of living for that same period. (Er. Ex. 44-46)

In their initial 1999-2003 contract, the Sergeants obtained the benefit of the "me-too" clause, receiving the wage increases awarded by Arbitrator Briggs to the FOP in 2002. The average annual salary for Sergeants is currently $98,740. Previous Sergeant contracts have also included significant step increases and increases in other economic benefits such as duty availability, uniform allowance, quarterly differential, overtime, personal days, baby furlough days, holiday pay, tuition reimbursement, and health benefits. A Sergeant at Step 7 of the salary schedule currently earns a total compensation package of $148,854, a Step 9 Sergeant earns $157,887, and a Sergeant at Step 10 earns $162,995.

The City contends that its Wage offer is reasonable considering the City's financial condition and the state of the economy. Between 2008 and 2011, the main sources of the City's Corporate Fund revenue declined with the economy, while the City's personnel costs continued to rise. The City contends that while it has reduced the 2013 budget deficit, there still is a $338 million deficit. Projections estimate future budget gaps of over $300 million in fiscal years 2014

and 2015, and combined with the City's pension obligation in 2014 of $467 million and in 2015 of $1.2 billion, the City's economic situation is bleak. Although the City readily admits that it is not claiming an inability to pay, the value of its final Wage offer increases substantially in the context of these financial challenges.

The City contends that its Wage proposal of 1.5% for 2012 is consistent with the cost of living as defined by the Consumer Price Index for Urban Consumers for 2012. The Union's offer, at 2%, exceeds the cost of living. Beyond 2012, cost of living projections are speculative and recently have been revised downward. In May 2013, the Survey of Professional Forecasters projected that cost of living is expected to average 1.7% in 2013, down from 2.0% in its prior survey of February 2013 and to average only slightly better, at 2.2%, in 2014. (Er. Ex. 45, 47)

The City's final offer is progressive in terms of providing for both step increases and increases to base salary. During the term of the prospective Contract, 90% of the Sergeants at Step 7, 81% at Step 8, and 72% at Step 9 will be eligible for step increases, ranging between 3.14% and 3.31%, in addition to the City's final offer on Wages. These cumulative wage increases will not be offset by any significant economic concessions, other than those limited modifications proposed by the City.

The City contends that the Union's final offer regarding Wages fails to take into consideration the concessions that the City made on a number of operational issues. By rejecting the TA and submitting the issue of Wages to this Interest Arbitration, the Union attempted to "unravel the delicate balance reached in this package". The Sergeants have not properly substantiated its final offer on Wages, which the City argues is unwarranted in light of current economic conditions, the pension situation and the lack of any *quid pro quo*. The City proposes that the Board should not allow the Union to benefit from its rejection of the TA by

attempting to take advantage of the benefits of those operational changes in the TA without its concession on Wages.

The City contends that its Wage offer compares favorably to the compensation of sergeants in the relevant external comparable communities. The City contends, however, that comparisons to other major metropolitan areas are not realistic. External comparables are less relevant due to the fact that Chicago employs significantly more Sergeants than do other major metropolitan areas. Further, in some of the comparable communities, sergeants are often included in mixed bargaining units that are often composed of both subordinate and superior officers. (Er. Ex. 49, 50)

The parties did not review external comparables during negotiations. External comparables regarding Wages are relevant only to the degree to which comparables were considered by the parties during bargaining. As a general matter, arbitrators will not apply external comparables for the first time at interest arbitration. *See City of Elgin and Metropolitan Police Ass'n, Unit 54*, Case No. S-MA-94-94, at 6 (Briggs, 1995).

While the City contends that New York and Los Angeles are not comparable in that they do not compete with Chicago for manpower, the City's Wage offer nonetheless compares well with New York and Los Angeles. Sergeants in New York have not received a wage increase since 2011. Further, New York sergeants have agreed to a two-tiered wage schedule effective in 2008 for those sergeants newly-promoted in 2006. Sergeants in Los Angeles reached a successor collective bargaining agreement in 2011 in which they agreed to a 0% wage increase for 2011, 1% for 2012, 4% for 2013, and 2% for 2014. This contract represented the Los Angeles sergeants' first wage increases since 2008, and in exchange, Los Angeles secured extensive concessions in the amount of $300 million, including increased health care premiums. Further, Los Angeles sergeants can contribute more toward their retiree health care costs to avoid a

freeze of their retirement health care subsidy at current levels. The City's Wage offer and compensation package are superior to those provided to the sergeants in New York and Los Angeles. (Er. Ex. 49, 51, 52)

The City also contends that the internal comparables provide support for the City's final offer on Wages. The wages of the City's civilian bargaining units are less relevant in determining wage increases for its sworn workforce, because sworn personnel receive many additional forms of compensation. For these reasons, prior interest arbitrators have not generally compared the wage increase provided to sworn personnel with those of non-sworn employees.

However, even assuming *arguendo* that civilian contracts should be considered, other civilian contract settlements justify the City's final offer. Only Unit II has negotiated a successor agreement. In October 2012, the City and Unit II ratified a successor contract, which did not provide for any increase in 2011 or 2012, froze wage rates for full-time entry level employees, and provided for wage increases of 1.5% in 2013, 1.5% in 2014, 2% in 2015 and 1% in 2016. The City's final offer on Wages for the Sergeants is superior to any internal comparables. (Er. Ex. 53)

The City contends that its offer regarding Wages is similar to that reached by the parties at bargaining. Parties should not obtain in interest arbitration what they could not agree to during negotiations. Here, the Panel should accept the City's offer because of its resemblance to that reached by the parties themselves. Arbitrators have cautioned against the ramifications of awarding economic packages that do not resemble the outcome of collective bargaining:

> If an arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through the collective bargaining process, that party is not likely to want to settle the terms of its next contract through good-faith collective bargaining. The temptation and political pressures will be very great to try one's luck again in arbitration in hopes of getting a better deal than is likely available at the bargaining

table.

Teamsters Local Union No. 714 and County of Cook and Sheriff of Cook County, Case No. L-MA-95-001 at 24 (Goldstein, 1995)

Therefore, for all of the reasons mentioned above, the City's Wage proposal should be accepted.

2. <u>Age 55 Retiree Health Care</u>

CITY PROPOSAL	UNION PROPOSAL
Effective upon the final date of ratification of the collective bargaining agreement, each individual who avails him- or herself of the health care benefit provided for in the Memorandum of Understanding Regarding Retiree Health Care Benefits shall contribute to the cost of the benefit by contributing 2.00% of the annuity received from the Policemen's Annuity and Benefit Fund for the City of Chicago. This contribution requirement shall be applicable both to prospective retirees and to those individuals who were formerly members of the Sergeants' Bargaining Unit and are now receiving the health care benefit pursuant to the terms of the MOU. Effective July 1, 2014, all former Bargaining Unit members availing themselves of the benefit as of that date shall contribute three percent (3.00%) of the annuity then being received. Effective July 1, 2015, all former Bargaining Unit members availing themselves of the benefit as of that date shall contribute four percent (4.00%) of the annuity then being received. As the annuity payment increases the amount of the contribution shall be increased to keep pace with the 2.00/3.00/4.00% contribution requirement, whichever is then applicable, for as long as the individual is participating in the health care benefit.	On the Issue of Contributions to Health Care, if, and only if, the Dispute Resolution Board awards the City's Offer to require currently active Sergeants to contribute to the cost of their health care upon retirement, the Union's Final Offer is: Article 12 and the Memorandum of Understanding Regarding Retiree Health Care Benefits shall have the following additional language added: "No Sergeant will be required to contribute to the cost of the health care coverage provided to Sergeants who retire at age 55 or older until contributions are required to be made by employees represented by the Fraternal Order of Police, Lodge 7 and also employees represented by Local 2 of the IAFF."

a. <u>The Union</u>

The City's offer indicates that upon ratification of the Contract, each Sergeant who has already retired at the age of 55 or older, who utilizes the health care coverage provided by the City, shall now contribute 2% of his/her annual pension to the cost of the health care coverage, which will escalate to 4% by 2015. The City's offer also applies to currently active Sergeants who will retire after the effective date of the Award in this case.

In 2002, the City and the FOP negotiated an agreement that extended the coverage of the various insurance plans to officers who retired, or would retire, between the ages of 60 and 63. This contract provision placed officers who retired between the ages of 60 and 63 in the same health care plan as the active officers and provided the insurance plan at no cost to officers until the age of 65 when they would reach the age of full Medicare eligibility under federal law. When an officer reached the age of Medicare eligibility, the retired officer was covered by the plan in place for retirees at the cost of the plan at that time. According to the Union, this agreement allowed some senior officers to retire and therefore removed some of the City's highest paid employees from the payroll. At the same time, retiring officers received a substantial benefit of free health insurance for up to five years. This was a very popular benefit. In 2007, the FOP proposed reducing the eligibility age to 55 during negotiations for the 2007-2012 contract. At that time, it was agreed that the eligibility age would be reduced to 55.

This benefit also became a part of the 2007-2012 agreement between the Union and the City. According to the Union, the City's current offer to make both active and retired Sergeants contribute 2%-4% of their annual pension to the cost of this benefit is inequitable and the most significant breakthrough the City has ever sought. The Union strenuously argues that this request must be denied.

At the current time, Sergeants who have already retired, or who will retire prior to this Award, are entitled to free health insurance until they reach Medicare eligibility or cease to be a dependent, whichever comes first. Section 12 clearly establishes that if a Sergeant retires at 60, he/she is entitled to free health insurance until Medicare eligible, with the full cost paid by the City. The Union contends that the benefits applicable to retired employees are not a mandatory subject of bargaining, citing *Chemical Workers v. Pittsburg Plate Glass Co.*, 404 U.S. 157 (1971); *Exelon Generation Co. v. Local 15, IBEW*, 540 F.3d 640 (7th Cir. 2008). The Union contends that the issue of those employees who are already retired is a permissive subject and the Union cannot be compelled to bargain this issue to impasse or submit this issue to interest arbitration. When a party, such as the City, insists on bargaining a non-mandatory subject to the point of impasse, that party violates the IPLRA. *See City of Mattoon* 13 PERI 2016 (ILSLRB 1997). (Un. Ex. 2)

The Union contends that during negotiations that led to the TA, the City proposed that Sergeants who were already retired would also be required to pay the cost of their health care. However, this proposal was quickly abandoned during negotiations. The TA clearly indicates that retiree health care benefit contributions are limited to prospective retirees and not Sergeants who are already retired or who may retire prior to the instant Award. Thus, the Union contends that the issue of the cost of health care for officers who have already retired or who may retire prior to the instant Award is not properly before the DRB.

The Union further argues that current retirees are not members of the Bargaining Unit and have no representative in these proceedings. The Union contends that fundamental fairness and due process requires that the retirees receive notice of these proceedings and that they be given an opportunity to be heard. Because such notice has not been given and because

the DRB does not have jurisdiction, as identified above, the City's offers regarding changes to the benefits of current retirees must be denied.

The Union contends that the requirement to pay for health care prior to Medicare eligibility is a breakthrough item and as such Arbitrators Nathan's and Goldstein's breakthrough analysis must be applied to this offer to determine whether the City can sustain its heavy burden of changing the *status quo*. Under the tests identified by those Arbitrators, the question is whether the system of providing free health care benefits to those individuals who retired prior to Medicare eligibility has been successful in the manner in which the parties originally intended. The Union contends that the evidence has demonstrated that the free health care benefit has been beneficial to both parties as intended, in that senior Sergeants with higher salaries retired and received free health care until they were Medicare eligible. The test also asks whether there were operational hardships for the Department or equitable problems for the Union. There was no evidence presented of a hardship to either party. Both parties received what they intended to receive.[13] Because this program worked so well, the parties expanded its reach from individuals aged 60 to individuals aged 55.

During negotiations leading to the TA, the City indicated that it wanted active Sergeants to pay retiree health care contributions. The City offered the Union a *quid pro quo*. In return for the 2% contribution, the City would agree to increase the maximum pension from 75% to 80%. That agreement was rejected by the membership. The Union contends that the City now wants the benefit of that bargain without any *quid pro quo* to benefit the Union. The Union contends that the City's offer of a contribution at any level is an improper breakthrough and should not be allowed.

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[13] Arbitrator Benn discussed the parties expectations regarding this benefit in his interest arbitration award, *City of Chicago and Fraternal Order of Police, Lodge No*. 7 (Benn, 2007), "…the City may also realize substantial cost savings from the parties agreement concerning City-paid health care benefits provided to officers who retire on or after age 55. ..Those officers retiring are at the top end of the salary schedule"

The Union contends that adoption of this proposal would be contrary to the basic principles of interest arbitration. A breakthrough of this magnitude should never be the result of interest arbitration. While the contribution of 2% of an annuity might be a good idea, such good ideas should not be imposed in interest arbitration. In *City of Chicago and Fraternal Order of Police, Lodge No. 7,* (Benn, 2010), Arbitrator Benn noted, "the parties negotiated two new 'good ideas'- the schedule change and the health care provisions for officers retiring at age 55. These two accomplishments would *not* have been achieved through the interest arbitration process."

Further, the ramification of the DRB imposing this contribution upon current Sergeants when they retire leaves the Union as the only group of City public safety employees required to pay for this benefit, while every other public safety employee in at the City will continue to receive the benefit at no cost. Such a disparity is clearly inequitable. The Union indicated, "The DRB must realize that its decision on this breakthrough issue will be like a tsunami causing devastation and destruction beginning with the Sergeants' unit and sweeping through all the other units in the labor relations ecosystem."

For all of these reasons, the Union advocates that the City's proposal be rejected.

b. <u>The City</u>

The City urges that its offer on Retiree Health Care be adopted. According to the City, beginning with the 1999-2003 agreement, the Sergeants have had the benefit of Section 12(B), which allows Sergeants who retire to stay in the active employees' health care plan with the City paying the full cost until the Sergeant reaches Medicare eligibility. Thus, retired Sergeants need not pay the contribution all active employees are required to pay.

This benefit remained in the 2003-2007 contract. In 2010, during negotiations for the 2007-2012 contracts for all of the police unions, the City was facing difficult economic times. All the police unions negotiated an extension of the retiree health care benefit from officers retiring at age 60 to those retiring between 55 and 60. The implementation of this Age 55 Agreement resulted in a substantial number of retirements of senior officers. Because they were not immediately replaced, the savings to the City were significant. The agreement to allow officers to retire at 55 is set forth in the Memorandum of Understanding dated April 30, 2010. Paragraph D specifically indicates that the Memorandum of Understanding shall be subject to renegotiation by the parties beginning on or after June 30, 2012 as part of negotiations for a successor contract.

According to the City, Paragraph D of the Memorandum of Understanding is without precedent in the negotiation history. It is a truism that provisions of a contract are always open to renegotiation. The City therefore contends that the parties chose the specific language of Paragraph D based on an understanding that the issue of Retiree Health Care may be subject to change depending upon a number of different circumstances. The City contends that Paragraph D is a clear signal to all relevant bargaining units that the extension of this benefit to those retiring at age 55 was not set and could be modified or rescinded in 2012.

The City contends that circumstances have dramatically changed. Employer Exhibit 54 is a chart identifying 334 Sergeants who retired between 2007 and the present, and have not yet reached age 65:

Year	Number of Sergeants Retiring
2002	5
2003	10
2004	14
2005	14
2006	13
2007	17
2008	23
2009	15
2010	64
2011	78
2012	69

(Er. Ex. 54)

According to the City, 70% of the Sergeants who now receive free health care between the ages of 55 and 60 have retired since 2010. This group is not only substantially larger than those who retired between 2002 and 2009, but they will be receive the benefit for a period of five years longer than those who retired before 2010.

Further, the following chart compares the currently non-Medicare eligible Sergeants' payments to what they would otherwise have to pay under the *Korshak* Agreement:

COVERAGE LEVEL	*KORSHAK* COST	CURRENT AGE 55 BENEFIT
Single Coverage	$338/month	0
With Medicare Eligible Spouse	$485/month	0
With Medicare Eligible Spouse and Children	$594/month	0
With non-Medical Eligible Spouse	$753/month	0
With non-Medicare Eligible Spouse and Children	$862/month	0

The City has proposed that those individuals participating in the health care benefit for Sergeants aged 55-65 contribute 4% of their annuity. City Exhibit 54 also includes the amount of

the monthly annuity currently received by each of the retired Sergeants. Those who have retired since 2010, 70% of all current retirees between 55 and 65, have higher average annuities than those who retired before 2010. Most of the Sergeants that have retired since 2010 receive monthly annuities of $5,000-$6,000. The following chart identifies the amounts that retired Sergeants aged 55-65 would pay for health care pursuant to the City's current offer at the highest rate of 4% of their annuity:

COVERAGE LEVEL	*KORSHAK*	$5000 annuity	$5500 annuity	$6000 annuity
Single Coverage	$338/month	$200/month	$220/month	$240/month
With Medicare Eligible Spouse	$485/month	$200/month	$220/month	$240/month
With Medicare Eligible Spouse and Children	$594/month	$200/month	$220/month	$240/month
With non-Medical Eligible Spouse	$753/month	$200/month	$220/month	$240/month
With non-Medicare Eligible Spouse and Children	$862/month	$200/month	$220/month	$240/month

The City has offered to continue this benefit subject to a modest contribution for another four years until June 30, 2016. The City contends that better options would include termination of the benefit, or removal of these retirees from the active employees' plan and instead provide them with their own less expensive and less beneficial plan. However, the City proposes to maintain the benefit with only a modest contribution.

The City contends that it has proven that the City is experiencing great financial difficulties, both generally and regarding the impending increased actuarial pension payments. While the City is not claiming an inability to pay, it has shown that the pension plan is seriously underfunded. In order to somewhat defray that problem, the City is reasonably asking that future retirees who retire during the course of the Contract and current retirees under age 65

pay 2% of their annuity as of 2013, 3% of their annuity in 2014 and 4% of their annuity in 2015. Free health care for a period up to ten years is unheard of in today's world. It is very reasonable for retirees to pay a small portion of their annuity toward health care.

As to the Union's argument that the requirement for currently retired Sergeants is not a mandatory subject of bargaining, the City contends that case law provides that an agreement to bargain over retiree health care, including those already retired, is enforceable. The City contends that a series of decisions of the United States Court of Appeals for the 7th Circuit support the position that there is no entitlement by retirees to continued free health care and the City has the right to bargain over contributions to health care by retired individuals. *See Bidlack v. Wheelabrator Corporation*, 993 F.2d 603 (7th Cir. 1993) (*en banc*) *See also Rossetto v. Pabst Brewing Company*, 217 F.3d 539, 543 (7th Cir. 2000)

For these reasons, the City's proposal regarding Retiree Health Care should be adopted.

3. <u>Duty Availability Allowance</u>

The City has proposed the following regarding the issue of Duty Availability Allowance ("DAA"):

> Effective upon the final date of ratification of the collective bargaining agreement, this Section shall be modified to provide that Duty Availability Allowance shall not be payable for any period of time where the Sergeant was absent from work on account of a non-IOD injury or illness pursuant to Section 18.2 or any period of time where the Sergeant is on Limited Duty (Non-IOD).

The Union has requested that the *status quo* remains unchanged.

a. <u>The Union</u>

The Union requests that the status quo remains. The Union contends that an interest arbitration award should be a continuation of the bargaining process and should mirror as closely as possible what the parties would have agreed to had they been able to reach an agreement. The Union contends that the City's DAA proposal has no place in this interest arbitration because this proposal was never made during bargaining.

The Union argues that DAA has been included in contracts between the City and the FOP since the 1989-1991 agreement and between the City and the Sergeants since 1999. The Union contends that the purpose of the DAA has never been to reward a Sergeant for being available for duty or to insure that the Sergeant will be available for duty. In the 1992-1995 contract the parties agreed to jointly pursue legislation to make the DAA pensionable.

The wording of Section 20.13(A) has remained unchanged except for the negotiated increases in the DAA. In 1999, the Sergeants negotiated their first contract and the FOP DAA language was incorporated into the Sergeants' contract.

The Union contends that the DAA benefit has always been available to all Sergeants. The Union contends that after more than 14 years of the benefit remaining unchanged, it is clearly improper to propose that the benefit should now be withheld from sick and injured Sergeants and is a breakthrough proposal that should neither be considered nor granted.

The breakthrough analysis test established by Arbitrators Nathan and Goldstein confirms that the City's proposal should not be granted. The City cannot identify any evidence that the DAA is not being utilized in the way that the parties intended. There is no evidence that the DAA is causing operational difficulties for the Department and there is no evidence that the Union is resisting the proposed change at the bargaining table. The City has never raised this

issue at the table. See City of Chicago and Policemen's Benevolent and Protective Association, Unit 156 A, Sergeants, (Goldstein, 2005). (Un. Ex. 9-11)

The Union asks that the status quo remains.

b. <u>The City</u>

Currently, Section 20.11 of the contract provides for a quarterly payment of $805 as DAA. This is a benefit received by all Sergeants, whether they are on duty or unavailable. The City has proposed that the DAA shall not be paid for any period of time during which a Sergeant is absent from work due to an injury or illness that is not related to an Injury on Duty ("IOD"), or any period during which the Sergeant is working in a Limited Duty ("LD") capacity.

The City contends that this is a reasonable proposal. The City argues that there is no support to substantiate that the DAA is intended to be paid to every Sergeant. The City contends that its proposal is a modest expansion of the circumstances in which DAA is not paid to Sergeants, specifically for those who are not present for duty over the course of an entire pay period.

The City argues that since at least 1992, sworn personnel at all ranks who are not in a pay status for more than 50% of a given month do not receive DAA for that month. Sergeants have been deemed ineligible for the full DAA due to unpaid leaves of absence and/or disciplinary suspensions. According to the City, the current economic condition in conjunction with the pension crisis further justifies the need to scale back the DAA.

The City asks that its DAA proposal be accepted by the Board.

4. **Tuition Reimbursement**

The City is proposing a modification of Article 24 of the Contract regarding Tuition Reimbursement:

> A) Effective upon the final date of ratification of the collective bargaining agreement, the number of classes for which a Sergeant may seek reimbursement is capped at twelve (12), for the duration of the Sergeant's career.
>
> All classes for which a Sergeant has received reimbursement over the course of his or her career, including those taken prior to the final date of ratification, shall count toward the cap of twelve (12) classes.
>
> B) The amount of reimbursement shall be limited to fifty percent (50%) of the cost of the class.
>
> C) All other terms and conditions of Educational Reimbursement shall remain in force, except where modified by (A) and/or (B) above.

The Union proposes maintaining the *status quo*.

a. The Union

The Union contends that the *status quo* on Tuition Reimbursement remains.

The Union contends that according to statements made by the City during negotiations, the City's proposal was necessary because Sergeants were using the benefit in order to earn multiple advanced degrees. The Tuition Reimbursement Program has existed for over 25 years and has been included in every contract between these parties. There has never been a limit on the total number of classes a Sergeant could take during his/her career. Sergeants have always been eligible for tuition reimbursement for job-related classes or courses leading to any degree in any field.

The Union stresses that although any Sergeant may apply to participate in the Tuition Reimbursement Program, an application can be denied if the Sergeant's job performance is poor, if the Sergeant has a record of sustained infractions, or if the Sergeant is not in compliance

with various other aspects of Article 24's requirements including working for the City for two years after taking reimbursed classes.

The Union contends that the Department has mismanaged the Program. In January 2013, the City's Inspector General ("IG") issued a report of his audit of the Program. The audit revealed:

> • CPD failed to identify 15 former employees who owed the City $180,375 because they voluntarily terminated employment before completing their required service. Eight of these had been missed by CPD during its review of terminations and seven had not been identified because CPD staffs were 20 months behind in reviewing terminations.
>
> • CPD incorrectly accepted 6.2% of tuition reimbursement applications after the program deadline, and, equally concerning, an additional 49.2% of the audit sample could not be verified for timeliness because CPD administrators had not time-stamped the file documents.
>
> • CPD overpaid 3.1% of tuition reimbursements in the audit sample due to errors and lack of review.
>
> Although the audit did not look at terminations that occurred prior to January 2008, the IGO believes that is likely that other TRP participants who resigned prior to that were not identified by CPD.
>
> (Un. Ex. 14)

The Union does not agree with the City that the problems identified in the IG report can be addressed by limiting the number of hours or classes available for reimbursement, or by limiting the amount of reimbursement to 50%. The City's proposed changes are significant and clearly alter the benefit.

This proposal must be evaluated in the context of the breakthrough analysis. Clearly, the Program is not working as anticipated. However, the Union contends that the City's mismanagement of the Program is where the difficulty lies; the Program itself is not the problem. The existing safeguards are not being properly enforced. Finally, there is absolutely

no evidence that the Union has resisted the City's attempts to address these problems. The Sergeants bargained over the proposed change. The Union indicated at the table that the Department would have to demonstrate that it had attempted to cure the ills of the Program by using the tools already in place before the Union would consider changing the benefit.

The Union contends that a Sergeant cannot obtain a degree with a 12-course lifetime limit. The Union contends that these proposed changes constitute a major modification of the benefit and that the City is seeking a breakthrough which should not be allowed.

The Union asks that the *status quo* remains.

b. <u>The City</u>

Currently, the City provides tuition reimbursement to Sergeants for education subject to conditions set forth in Article 24 of the contract. Reimbursement is granted at 100% if a Sergeant receives an A, and at 75% for any other passing grade, and there are no limitations on the number of classes a Sergeant can take during his/her career within the requirements of Article 24. The City is proposing that the number of classes for which a Sergeant may seek reimbursement be limited to 12 for the duration of his/her career, and that reimbursement be limited to 50% of the cost of each class. Further, the City proposal suggests that the limit of 12 classes applies to Sergeants who have already taken classes and includes the classes already taken.

The City does not dispute that educational advancement benefits the Department. However, the City contends that the current circumstances require the proposed modifications. The eligibility requirements for promotion to the ranks of Sergeant and Lieutenant certainly diminish the need for this broad benefit. Promotion to Sergeant requires 60 semester hours or 90 quarter hours of credit from an accredited college or university. Thus, a Sergeant has already

completed approximately 50% of the courses needed for a Bachelors Degree, which is required for eligibility for promotion to Lieutenant. The City contends that currently, Sergeants are permitted to take unlimited courses toward multiple degrees. The City contends that this benefit is too broad in scope.

Between 2008 and 2013, the City paid $5.09 million in tuition reimbursements for Sergeants. The City contends that the City's financial condition justifies a reduction in this generous benefit and the Department will directly benefit from the limitation set forth in the City's final offer. No evidence has suggested that the proliferation of multiple advanced degrees furthers the goals of the Department, which is the basic purpose of tuition reimbursement. (Er. Ex. 53, 56-60)

Finally, Management and Labor Affairs Commander Donald O'Neill testified that an entire cottage industry has arisen as a result of the City's liberal tuition reimbursement policy for Sergeants. O'Neill testified that there are schools primarily devoted to educating members of the Department. He testified that the number of A grades in these schools is high, often leading to 100% tuition reimbursement. (Tr. 213)

5. **Quarterly Differential**

The City has made the following proposal regarding Quarterly Differential.

A) The amount of the Quarterly Differential, for each Step, shall be frozen at the amount in effect on January 1, 2012, and there shall be no further increases.

B) Effective upon the final date of ratification of the collective bargaining agreement, all newly-promoted Sergeants shall receive the Quarterly Differential applicable to Step 6 as of January 1, 2012, which amount shall

not thereafter increase. Incumbent Sergeants shall remain at the Step and dollar amount they were at as of the final date of ratification.

C) The Quarterly Differential shall not be payable for any period of time where the Sergeant was absent from work on account of a non-IOD injury or illness pursuant to Section 18.2 or any period of time where the Sergeant is on Limited Duty (Non-IOD).

D) In 2015 the City shall calculate, on a per Sergeant basis, the amount of Quarterly Differential not paid out in 2014 as compared to the amount paid out in 2013 by virtue of the operation of the provisions of (A), (B) and (C) above and contribute that sum directly to the Policemen's Annuity and Benefit Fund for the City of Chicago ("Police Pension Fund") for the purpose of providing additional support for the annuities and other benefits payable by the Police Pension Fund.

The payments referenced in this paragraph shall be credited to the City's Financing obligation under Section 168 of the statute governing the Police Pension Fund (40 ILCS 5/5-168) to the extent permitted under law. Under no circumstances shall the payments referenced in this paragraph be deemed to constitute employee "wages" nor shall they be deemed to constitute "contributions" by the members of the Bargaining Unit within the meaning of Section 168(a), and such payments shall have no effect on the amount of City contributions pursuant to the "multiplier" approach in Section 168(a). In 2016, the City shall calculate the amount of Quarterly Differential not paid out in 2015 as compared to the amount paid out in 2013 by virtue of the operation of the provisions of (A), (B) and (C) above and contribute that sum directly to the Police Pension Fund in the same manner as set forth in the preceding sentence.

The Union has proposed retaining the *status quo*.

a. <u>The Union</u>

The Union asks that the *status quo* remains.

The Union contends that the City's QD offer is similar in nature to its offer regarding DAA. The QD has been included in the parties' contracts since 1999. The City's offer is a breakthrough item and the City cannot meet its burden to change said item. If the City had evidence that the QD was not operating as expected or was creating an unforeseen hardship, the City would have brought this issue to the bargaining table. The Union contends that there is

no evidence that it has been resisting the City's efforts to address any problems with the QD because the current City proposal was never brought to the bargaining table.

Finally, the Union contends that the City's offer would seriously change a benefit that Sergeants have enjoyed for almost 14 years. The Union believes that this proposal is an attempt by the City to punish the Bargaining Unit for voting against ratification of the TA.

The Union asks that the *status quo* remains.

b. <u>The City</u>

In addition to their base salary, Sergeants receive a benefit known as the Quarterly Differential ("QD"). Under Section 26.2, the QD increases each year by the same percentage as the increase to the salary of the Sergeants. According to the City, this benefit was initially added in response to police supervisors' concerns that they were receiving less than adequate pay for working overtime.

The City proposes a freeze on the amount of QD in effect on January 1, 2012 for the duration of the Contract. The City also proposes that all Sergeants that are promoted after the date of ratification of the Contract shall receive the QD applicable to Step 6 as of January 1, 2012, and that the amount of QD will not increase after that date.

The City contends that the reduction of the QD is justified on the basis that the underlying purpose of the QD has ceased to exist, because Sergeants now earn overtime. The City's current financial condition, the negative economic outlook for the term of this Contract, and the magnitude of the City's 2014 and 2015 pension contributions require that the Board grant the change requested by the City.

X. The Union's Objections and City's Responses regarding DAA, QD and Tuition Reimbursement.

A. The Union

The Union contends that the City's proposals regarding DAA, QD and Tuition Reimbursement are "breakthrough" issues, and the City cannot meet its burden to prove that its proposals for these breakthrough issues should be accepted. The Union contends that according to a breakthrough analysis, a party that seeks to implement a new provision or make a major modification to a current provision must prove that the current system is broken and that the change is necessary to fix the problem. This burden is higher than when a party seeks to make a minor change to the current contract. Further, the Union stresses that interest arbitration is a fundamentally conservative process and that the Interest Arbitration Panel should not award anything that the parties could not have reasonably obtained during negotiations.

Regarding DAA, QD and Tuition Reimbursement, the Union contends that while the City has shown that it has undergone some serious economic problems, especially regarding the pension system, it has not shown that the these programs are broken. In fact, the City has not shown that there is any problem other than the fact that the City is in a financial crisis. In addition, the Union stresses that the City has not raised an "inability to pay" defense.

The City has offered vague arguments that DAA and QD each no longer serve a purpose and thus both should be diminished. The Union further contends that the City has mismanaged the Tuition Reimbursement Program, and the Union should not be responsible for agreeing to potential changes that the City claims are necessary to fix problems that the Union argues are a result of the City's incompetence. The Union strongly argues that the City has not met its

burden to show that these provisions should be changed and requests that the *status quo* remains.

The Union contends that the issues of Tuition Reimbursement, QD and DAA cannot be considered because they were not raised during bargaining. Under Section 28.3 (B) (6) of the contract, in order to raise an issue at interest arbitration, the matter must have been raised during bargaining. Tuition Reimbursement, QD and DAA were not raised during bargaining and therefore, the Panel does not have jurisdiction over these matters.

B. The City

First, the City argues that the issues of DAA and QD are properly before this Panel. While it is unclear if these were ever bargained during negotiations, it is clear that based on the Order of May 17, 2013, that the City had the right to raise three issues other than Wages and Retiree Health Care. The City, within its legal rights, raised the issue of DAA, QD and Tuition Reimbursement. This Order of May 17 trumps the provisions of 28.3 and therefore, these issues are ripe for the Panel.

The City asserts it has proven that the provisions of DAA, QD and Tuition Reimbursement require change. The City contends that it has proven that the underlying purposes of the DAA and QD no longer exist, and therefore they should be modified. Significantly, the City is not asking that the DAA and QD provisions be eliminated; rather, it is only asking for slight modifications in each.

The City contends that it has proven that current utilization of the Tuition Reimbursement Program is no longer consistent with the original intent of the Program. Rather, the excessive use of the Program has resulted in the completion of numerous academic

degrees that have nothing to do with the Sergeants' work in the Department. Again, the City is not asking that the provision be eliminated; it is asking to conform the provision to its original intention of reasonable reimbursement for tuition that is work-related or leading to a degree.

XI. DISCUSSION

A. Introduction

After a review of all of the evidence, stipulations, exhibits, testimony, pre-Hearing briefs and all of the factors contained in Section 14(h), the Panel is making the following determinations regarding the issues at hand:

Wages:

Wage Schedule for July 1, 2012 - June 30, 2016 Contract	
Date	**% Increase**
July 1, 2012	2.0%
January 1, 2013	2.0%
January 1, 2014	2.0%
January 1, 2015	1.0%
January 1, 2016	1.0%
TOTAL INCREASE = 8.0%	

> During the term of this Agreement, should there be enacted into law legislation pursuant to which Sergeants covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of Chicago or any successor pension fund in an amount above the amount of the current annual contribution of 9% of salary, the Union may reopen this Agreement solely on the issue of Wages for the purpose of renegotiating the base salary and percentage increases which shall be paid to Sergeants. The Union shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing, of its intent to reopen this Agreement. In the event this Agreement is reopened, the wages set forth herein will not be changed or reduced without the written consent of the Union. The parties shall have ninety (90) days to renegotiate the

base salaries and percentage increases. In the event the parties are unable to resolve the issue of base salary and percentage increases during the negotiation period, or within any mutually agreed to extension, the dispute shall be submitted to interest arbitration pursuant to Section 28.3 (B).

Retiree Health Care:

The terms of the April 30, 2010, Memorandum of Understanding Regarding Retiree Health Care Benefits shall apply to retirements occurring through December 31, 2013, except that the Filing Deadline provided for in Section B(2) of the Memorandum of Understanding, for 2013 only, shall be extended to October 21, 2013. However, an officer who retires pursuant to Section B(2) shall still be required to have an Effective Date of Retirement of November 1 through December 31, 2013.

Effective for retirements pursuant to Section B(2) occurring in 2014 and thereafter, the following changes to the Memorandum of Understanding shall apply: 1) the Effective Date of Retirement may be between May 1 through December 31, provided the officer files for retirement at least thirty (30) days prior to the Effective Date of Retirement; 2) the officer shall contribute to the cost of the benefit in the amount of 2.00% of the annuity received from the Policemen's Annuity and Benefit Fund of the City of Chicago. This contribution shall remain in effect until the employee no longer avails him/herself of the benefit or reaches the age of full Medicare Eligibility under federal law.

During the term of this Agreement, officers who retire pursuant to Section B(1) of the Memorandum of Understanding Regarding Retiree Health Care Benefits shall continue to receive the health care benefit as provided for in that Section.

Tuition Reimbursement:

The *status quo* shall remain.

Duty Availability Allowance

The *status quo* shall remain.

Quarterly Differential

The *status quo* shall remain.

B. <u>Analysis</u>

As noted above, the five issues before the Panel are as follows:

1) WAGES (Joint Issue)

2) RETIREE HEALTH CARE (Joint Issue)

3) DUTY AVAILABILITY ALLOWANCE (City Issue)

4) TUITION REIMBURSEMENT (City Issue)

5) QUARTERLY DIFFERENTIAL (City Issue)

The Union has asserted that the issues of DAA, QD and Tuition Reimbursement were not raised during bargaining and therefore, under 28.3(B)(6) of the Contract, cannot be considered in this Interest Arbitration. The City counters the Union's position by indicating that the Order specifying the rules for this Interest Arbitration is determinative and allows the parties to raise up to three issues beyond those of Wages and Retiree Health Care.

We find that we need not reach the question raised by the Union regarding the Panel's ability to consider these three issues. A review of the evidence on QD and DAA shows that these matters were not bargained for prior to the institution of the Interest Arbitration process and therefore are not ripe for determination by this Panel. With regard to Tuition Reimbursement, again, the Panel finds that this issue is also not ripe for Interest Arbitration. While the evidence from the City indicated the City's belief that the Tuition Reimbursement Program has problems on a number of fronts, the bargaining history of this proposal during 2012 indicates that, while it was discussed, the discussions were not of great length or detail and the evidence proffered in the support of the proposal was

insufficient to show that the issue was fully explored to the extent necessary for this Panel to resolve the question. Therefore, as to the issues of DAA, QD and Tuition Reimbursement, the status quo shall remain.

The Panel notes that the parties have discussed the relevance of the TA. It is well known that interest arbitration is an extremely conservative process in which parties should not be able to obtain what they not have obtained in bargaining. There is a general divergence of opinion regarding the value of a rejected tentative agreement. In the instant case, the City contends that the parties should adopt the TA because it was negotiated by the parties over a long period of time by experienced negotiators. *City of Waukegan and International Ass'n of Firefighters, Local 473*, Case No. S-MA-00- 141, at 66 (Hill, 2001); *City of Peru and Illinois Fraternal Order of Police Labor Council,* Case No. S-MA-93-153 (Berman, 1995); *City of Alton and International Ass'n of Firefighters,* Local No. 1255, FMCS No. 95-00225 (O'Reilly, 1995); *Village of Schaumburg and Schaumburg Lodge No. 71, Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-93-155 (Fleischli, 1994)

According to the City, Illinois interest arbitrators have concluded that the value of a rejected tentative agreement depends upon the circumstances surrounding the negotiations that led to it, the nature of the tentative agreement itself, and the reasons for its rejection. *City of Chicago and Fraternal Order of Police, Lodge 7* (Briggs, 2002) at 19- 20. The City contends that the facts of the instant case warrant the acceptance of the TA. The depth and integrity of the bargaining process between the City and the Sergeants has not been disputed. The City contends that the TA was rejected for reasons that were not substance-related. The City argues that an award different from the TA would undermine the bargaining process and would only encourage a party to subsequently reject an agreed-upon settlement, forcing interest

arbitration to obtain a "better deal". The City contends that the Panel should give great weight to the TA.

Conversely, the Union contends that while interest arbitration is generally intended to reach the conclusion that the parties would have negotiated, the TA in this case was overwhelmingly rejected by the membership of the Union. According to the Union, that rejection proves that the TA was not a true meeting of the minds. See *City of Waterloo and Illinois FOP Labor Council*, S-MA-97-198, (Perkovich, November, 1999); *Village of Oak Brook and Teamsters Local 714*, S-MA-96-73, (Benn,1996), *County of Sangamon and Fraternal Order of Police Labor Council*, S-MA-97-54 (Meyers, February, 1999); ("the tentative agreements cannot be given great weight, or even any weight at all, because they do not represent what the parties ultimately would have agreed to if they had successfully negotiated a complete agreement"); *City of Peru and Illinois FOP Labor Council*, S-MA-93-153 (Berman, March, 1995); ("tentative agreements are not among the factors listed in section 14 (g) of the Act"); *County of Ogle and Ogle County Sheriff and Illinois FOP Labor Council*, S-MA-03-051, (Goldstein, 2005).

After a review of all the facts of this case, the Panel finds that the TA should not be granted in its entirety as the City requests; however, the Panel does believe that substantial weight should be granted to the TA as it relates to the issues at hand. The parties, who were represented by experienced negotiators, worked diligently over a lengthy period of time that encompassed 22 bargaining sessions until the TA was reached. Based on the evidence, it appears likely that the TA was rejected in part due to increased contributions to the Pension Plan, an issue that is not before this Panel. While we do not find the TA to be determinative, it should be given substantial weight.

As recounted above, the evidence in this proceeding establishes that from the inception of negotiations, both parties acknowledged the reality of economic exigencies

affecting the City and the specter of a pension crisis which both parties foresaw as ultimately culminating in legislative changes at some point in the not too distant future. Both parties sought to protect their core interests and negotiated on that basis. The TA, though it was rejected by the membership, upon examination, did constitute a carefully balanced document that sought to protect, and indeed, did protect, the core interests as identified by the parties: an economic settlement that provided increases to employees without unduly threatening the health of the City, particularly in light of the pension crisis, stable, quality, affordable health insurance upon retirement; and sought-after operational gains for employees represented by the Union. These interests are mutual interests, as the evidence shows and as the TA acknowledged. The TA, as the City points out, also included the realistic promise of meaningful pension reform, something which this Panel is without authority to grant. But the Panel's inability to provide pension reform for either party (either in the form of increased employee pension contributions or raising the maximum pension to 80%) does not defeat the relevance and significance of the TA, broadly construed, as a guide to the appropriate resolution of the issues before the Panel.

Regarding Wages, the parties have proposed the following:

City Proposal		Union Proposal	
July 1, 2012	1.5%	July 1, 2012	3.0%
January 1, 2013	1.5%	January 1, 2013	2.0%
January 1, 2014	1.75%	January 1, 2014	2.0%
January 1, 2015	1.75%	January 1, 2015	2.0%
January 1, 2016	1.00%	January 1, 2016	2.0%
Total Increase	**7.5%**	**Total Increase**	**11.0%**

As noted above, the Panel is not constrained by the proposal of either party when determining Wages for the next Contract. The Panel is allowed to select the City's proposal, the Union's proposal, or a Wage schedule determined by the Panel. The total Wage package proposed by the Union is 11% and the City's proposal totals 7.5%.

TENTATIVE AGREEMENT

DATE	WAGE INCREASE
7/1/12	2%
1/1/13	2%
1/1/14	2%
1/1/15	2%
1/1/16	1%
Total Increase	9%

The TA called for a total wage increase of 9% with corresponding increases to the Pension Plan of 1% as of July 1, 2013, and additional 1% as of January 1, 2014, and an additional 1% as of January 1, 2015 for a total of 3%.

After considering the Wage proposals of both parties, the Panel finds that the appropriate wage increase shall be 8.0% total. This includes the following increases:

Wage Schedule for July 1, 2012 - June 30, 2016 Contract	
Date	**% Increase**
July 1, 2012	2.0%
January 1, 2013	2.0%
January 1, 2014	2.0%
January 1, 2015	1.0%
January 1, 2016	1.0%
TOTAL INCREASE = 8.0%	

There are a number of factors that are commonly used when reaching wage determinations in interest arbitrations in Illinois. These factors include external comparables, internal comparables, and the Consumer Price Index (CPI). In the instant case, the Panel has reviewed all three factors, and has ultimately decided that the best approach is to rely upon a combination of the CPI, the Tentative Agreement and prior Interest Arbitration Awards.

The Panel has first determined that there are no true external comparables. The parties agree that the only potentially relevant comparables are New York and Los Angeles. However, both parties have indicated that they do not believe that these cities provide an accurate comparison because too many differences between the external comparables, including geographical proximity, numbers of sergeants employed by the various departments, and the composition of each bargaining unit render the external comparables an imprecise measurement. Further, even assuming that these external comparables were to be used, they do not provide reliable current wage data for this Panel to make a determination.

The Panel notes that the most relevant internal comparables are those bargaining units comprised of law enforcement officers including the Police Officers, Lieutenants and Captains. However, none of these bargaining units have reached agreement on a current contract, leaving no apt comparison with these units.

The Union has relied upon the Chicago Teachers Union (CTU) contract that was recently negotiated. The Panel finds that this bargaining unit is not a reasonable comparable because the work of teachers is not comparable to that of the Sergeants. Teachers do not perform similar functions and have the ability to strike, and while their contract is instructive because both bargaining units are employed by the City and the CTU is the only major City bargaining unit to have reached a new contract for approximately the same period as that of the Sergeants, it is certainly not determinative. Non-Section 14 employees are simply not

sufficiently comparable to Section 14 employees in determining wages. *See City of Effingham*, S-MA-07-151 (McAlpin, 2009). This Panel finds that the CTU contract is not a relevant comparable for purposes of this Interest Arbitration.

Having found that the proposed external and internal comparables are of limited value, the Panel will now consider the Consumer Price Index. The relevant data below regarding the CPI is from the Survey of Professional Forecasters, which is affiliated with the Federal Reserve Bank of Philadelphia and is "the oldest quarterly survey of economic forecasts in the United States." The American Statistical Association and the National Bureau of Economic Research began conducting the survey in 1968, and in 1990, that responsibility was assumed by the Federal Reserve Bank of Philadelphia. The Third Quarter 2013 Report of the survey, released August 16, 2013, indicated past, present and projected CPI percentages[14]:

Year	Headline CPI
2012 (Actual)	1.7%
2013 (Projected)	1.4%
2014 (Projected)	2.0%
2015 (Projected)	2.2%
Total	7.3%

(City Ex. 45-47) *See CPI Detailed Report, Data for December 2012*, Bureau of Labor Statistics(Editors: Malik Crawford, Jonathan Church, Darren Rippy) at p. 1

The Panel notes that Core CPI excludes the categories of energy and food. In recent relevant interest arbitrations in which CPI was considered a central factor, the Headline CPI, which includes energy and food, was considered the more reliable calculation of CPI. *See City of Rock Island and Illinois FOP Labor Council*, S-MA-11-183 (Benn, 2013):

[14] www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters

* * * *

> For purposes of setting wage rates, I have found that "Headline" cost of living data to be a more reliable indicator. *See* my award *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 25:
>
> > With respect to the CPI, the Survey distinguishes between "Headline CPI" and "Core CPI" - the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion.
> >
> > (*Id*. at p. 15, fn 29)

As noted above, we have considered the TA and are according it substantial weight. For the period of the Contract, the parties agreed to an increase of 9%. Specifically, the TA called for the following increases:

DATE	WAGE INCREASE
7/1/12	2%
1/1/13	2%
1/1/14	2%
1/1/15	2%
1/1/16	1%
Total Increase	9%

Finally, we have considered what other Interest Arbitrators have awarded in the current economic climate. In *City of Chicago and FOP Chicago Lodge #7*, 2007 Interest Arbitration (Benn, 2010) Arbitrator Benn was presented with similar circumstances involving an ailing economy. In that case, Arbitrator Benn imposed a 10% increase over a period of 5 years, an average of 2% per year. Arbitrator Benn discussed the difficulty of predicting future economic conditions:

> For 2011, the Council of Economic Advisors forecasts a 1.4% increase in inflation. As we get further out into the future, no one can really expect that type of pinpoint accuracy for the end of 2011… the lack of pinpoint accuracy in forecasting is a fair conclusion particularly given the current state of the economy as it struggles with fits and starts to regain its footing.
>
> (*Id.* At. 43-44)

After a review of the various potential factors used to determine Wages, the Panel finds that a combination of Headline CPI, the TA and prior Interest Arbitration Awards are the most reasonable factors upon which to rely.

The fact of the matter is that the CPI predicts an increase of 7.3%. However, this is merely a prediction. An increase of this amount would keep Sergeants without any real wage increase. It would only keep up with inflation. In addition, we have the TA which called for an increase of 9%, almost 2% more than inflation and we note that the TA is being given substantial weight. It is clear to us that the parties intended that the Sergeants should not merely keep up with inflation, but rather that they were to receive some level of real wage increase. We find that the City's 7.5% wage offer, while slightly higher than the projected CPI, does not reach a level sufficient in light of the weight to be accorded by the TA. Finally, we have the recent Award by Arbitrator Benn under similar economic circumstances in which he awarded an average of 2% per year for five years. With that said, it appears that the most appropriate resolution of the matter is an amalgam of these three various approaches.

Based on a combination of all these approaches, the Panel has determined that the following wage increases will take place. The Panel orders an increase in wages of 2.0% on July 1, 2012, 2.0% on January 1, 2013, 2.0% on January 1, 2014, 1.0% on January 1, 2015, and 1.0% on January 1, 2016, a total of an 8% increase over the term of the Contract. As noted above, this amount is based on the CPI, the TA and prior Interest Arbitration Awards.

We note that the City's Final Offer of 7.5% was presented as recognition that in the absence of the promise of pension reform, the wage package must be reduced accordingly. But the Union counters that the General Assembly has no practical choice but to enact reforms of the pension system, reforms that likely will require Sergeants to pay more in the form of Employee Contributions. Thus, wages must be sufficient to protect Sergeants against that eventuality. We find that it is neither appropriate nor even possible to expect one party to bear all the risk of the vagaries of enacting or not enacting pension reform. Further, no one knows at this time what such reform, even if enacted, would look like.

Thus, the resolution of Wages will include a provision that will apply in the event that Sergeants, during the term of this Contract, are required to pay increased Employee Contributions. There will be a Reopener that will allow the Union to reopen the subject of wages in the event of increased Employee Contributions. If that occurs, the parties will negotiate in good faith. In the event that they are unable to reach agreement, the interest arbitration provisions of Article 28 will apply.

Therefore, the Panel orders that during the term of this Agreement, should there be enacted into law legislation pursuant to which Sergeants covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of Chicago or any successor pension fund in an amount above the amount of the current annual contribution of 9% of salary, the Union may reopen this Agreement solely on the issue of Wages for the purpose of renegotiating the base salary and percentage increases which shall be paid to Sergeants. The Union shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing, of its intent to reopen this Agreement. In the event this Agreement is reopened, the wages set forth herein will not be changed or reduced without the written consent of the Union. The parties shall have ninety (90)

days to renegotiate the base salaries and percentage increases. In the event that the parties are unable to resolve the issue of base salary and percentage increases during the negotiation period, or within any mutually agreed to extension, the dispute shall be submitted to interest arbitration pursuant to Section 28.3 (B).

Next, the Panel will consider the City's proposal regarding Retiree Health Care. The City has proposed that Sergeants between the ages of 55 and 65, who are either current or future retirees, shall contribute a progressively increasing amount of their annuities to offset the cost of health care until Medicare eligible. Specifically, the contributions increase from 2% in 2013, to 3% in 2014, to 4% in 2015. The City argues that it deserves this benefit because at the bargaining table, the Union acceded to the City's request that retirees begin to contribute toward the cost of their health care. The Union has objected on a number of grounds. First, the Union contends that because health care for current retirees is not a mandatory subject of bargaining, this issue cannot be forwarded to Interest Arbitration. Further, the Union considers the matter to be a breakthrough issue and argues that the City has not shown that the current system is broken.

The evidence shows that health care costs are rising at a rate that clearly exceeds inflation. The City is paying the entire cost of health care premiums for those Sergeants who retire between the age of 55 and the mandatory retirement age of 63, until reaching the age for full Medicare eligibility under federal law, which is currently 65. As the number of Sergeants retiring at a younger age increases, the health care costs to the City have experienced and will continue a proportional increase. Further, the City contends that in light of the significant cost that annuitants must pay for health care pursuant to *Korshak*, the City's proposed 4% maximum contribution is very reasonable.

As noted above, the Union contends that Retiree Health Care is a breakthrough issue that requires a heavy burden to prove that change is necessary. The Panel notes that the City has presented significant evidence to meet its initial burden to show that the system is no longer working. The City has shown that its health care costs have increased dramatically and this Panel finds that it is unreasonable to expect the City to continue to pay the entire cost of health care for those Sergeants who retire between the ages of 55 and 63.

The Panel notes that there are two distinct groups of Sergeants at issue. First, there are those Sergeants who are currently working and have not yet retired. The second group consists of retired Sergeants who, at the time of their retirement, had a contractual commitment of free health care until Medicare eligibility.

The Panel notes that there is a disagreement as to whether there is legal authority whether currently retired Sergeants can be required to pay amounts toward their health care. The Panel has determined that it need not reach this issue because as discussed below, the Award regarding Retiree Health Care will be limited to those Sergeants who are currently working and have not yet retired.

Regarding currently active Sergeants, the Panel has given substantial weight to the TA, in which it was agreed that future retirees would contribute 2% of their annuity toward their health care premiums in return for an increase in pension contributions, and the ability to earn a pension that was 80% of end salary. As noted above, an interest arbitrator should grant only what the parties would have agreed to in bargaining. In this case, the Panel must view the issue of Retiree Health Care through the lens of what occurred during bargaining.

The City's proposal of 2%, 3% and 4% progressive contributions is above the parties' agreement in the TA. The Panel finds that based on the TA, as well as other agreed-upon

provisions in the instant case, it is reasonable to require newly-retired Sergeants to pay a small portion of their health care costs.

Therefore, the Contract will provide that employees who retire on or after May 1, 2014 who are between the ages of 55-59 shall pay 2% of their annuity towards health care costs until they either choose not to be in the plan or reach the age for full Medicare eligibility under federal law. The proof as presented in this case shows that when the eligibility for the retiree health care benefit was reduced from 60 to 55, a significant number of additional retirements occurred and acceptance of free health care benefits took place. Therefore, by requiring those employees who retire between 55 and 59 to shoulder a modest portion of the cost of their retiree health care, the City will be able to moderate the cost of the benefit. In today's world, employer-provided free health care for any period, much less 10 years, is unheard of. The Memorandum of Understanding requires notice of intention to retire to be submitted by October 1. Because of the timing of this Award, the deadline will be extended to October 21, 2013 for the year of 2013 only. Sergeants retiring pursuant to Section B(2) of the Memorandum of Understanding in 2013 must retire between November 1, and December 31, 2013. For 2014, Sergeants will be able to retire as of May 1, 2014 with the caveat that an officer must give 30 days advance notice and that is also the earliest date that the 2% contribution will be imposed.[15] Further, any employee who retires after reaching age 60 shall not be required to contribute any amount of their annuity toward the cost of the benefit.

[15] We note that this originally was a part of the TA.

XII. AWARD:

For reasons stated in this Opinion and Award, the Panel finds that the following shall be incorporated into the July 1, 2012 - June 30, 2016 Collective Bargaining Agreement between the parties:

Wages:

Wage Schedule for July 1, 2012 - June 30, 2016 Contract	
Date	**% Increase**
July 1, 2012	2.0%
January 1, 2013	2.0%
January 1, 2014	2.0%
January 1, 2015	1.0%
January 1, 2016	1.0%
TOTAL INCREASE = 8.0%	

During the term of this Agreement, should there be enacted into law legislation pursuant to which Sergeants covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of Chicago or any successor pension fund in an amount above the amount of the current annual contribution of 9% of salary, the Union may reopen this Agreement solely on the issue of Wages for the purpose of renegotiating the base salary and percentage increases which shall be paid to Sergeants. The Union shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing, of its intent to reopen this Agreement. In the event this Agreement is reopened, the wages set forth herein will not be changed or reduced without the written consent of the Union. The parties shall have ninety (90) days to renegotiate the base salaries and percentage increases. In the event the parties are unable to resolve the issue of base salary and percentage increases during the negotiation period, or within any mutually agreed to extension, the dispute shall be submitted to interest arbitration pursuant to Section 28.3 (B).

Retiree Health Care:

The terms of the April 30, 2010, Memorandum of Understanding Regarding Retiree Health Care Benefits shall apply to retirements occurring through December 31, 2013, except that the Filing Deadline provided for in Section B(2) of the Memorandum of Understanding, for 2013 only, shall be extended to October 21, 2013. However, an officer who retires pursuant to Section B(2) shall still be required to have an Effective Date of Retirement of November 1 through December 31, 2013.

Effective for retirements pursuant to Section B(2) occurring in 2014 and thereafter, the following changes to the Memorandum of Understanding shall apply: 1) the Effective Date of Retirement may be between May 1 through December 31, provided the officer files for retirement at least thirty (30) days prior to the Effective Date of Retirement; 2) the officer shall contribute to the cost of the benefit in the amount of 2.00% of the annuity received from the Policemen's Annuity and Benefit Fund of the City of Chicago. This contribution shall remain in effect until the employee no longer avails him/herself of the benefit or reaches the age of full Medicare Eligibility under federal law.

During the term of this Agreement, officers who retire pursuant to Section B(1) of the Memorandum of Understanding Regarding Retiree Health Care Benefits shall continue to receive the health care benefit as provided for in that Section.

Tuition Reimbursement:

The *status quo* shall remain.

Duty Availability Allowance

The *status quo* shall remain.

Quarterly Differential

The *status quo* shall remain.

Steven Bierig

Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o=Steven M. Bierig Attorney Arbitrator Mediator, ou, email=arb438@comcast.net, c=US
Date: 2013.09.18 21:45:42 -05'00'

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Steven M. Bierig, Neutral Arbitrator
September 19, 2013

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Joseph Martinico, City Arbitrator
September 19, 2013

Concur_____

Dissent_____

_____

Sean Smoot, Union Arbitrator
September 19, 2013

Concur_____

Dissent_____