

**BEFORE  
EDWIN H. BENN  
ARBITRATOR**

**In the Matter of the Arbitration**

**between**

**NORTH MAINE FIRE PROTECTION  
DISTRICT**

**and**

**NORTH MAINE FIREFIGHTERS, LOCAL  
2224, IAFF**

**CASE NO.:** Arb. Ref. 08.385  
(Interest Arbitration)

**OPINION AND AWARD**

**APPEARANCES:**

For the District: John H. Kelly, Esq.  
David T. Zafiratos, Esq.

For the Union: Lisa B. Moss, Esq.  
Martin P. Barr, Esq.

Date of Award: September 8, 2009

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## **I. BACKGROUND**

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act (“Act”).<sup>1</sup> The employees involved in this dispute are all full time sworn personnel employed by the North Maine Fire Protection District (“District”) in the rank of Lieutenant and below including: Firefighter, Firefighter/Paramedics, Lieutenants and Lieutenant/Paramedics.<sup>2</sup>

The most recent collective bargaining agreement for those employees between the District and the North Maine Firefighters, Local 2224, IAFF (“Union”) was a two year contract covering the period January 1, 2006 through December 31, 2007.<sup>3</sup>

## **II. THE PARTIES’ FINAL OFFERS**

Prior to the hearing and through the negotiation process, the parties resolved many issues. The parties remained apart on three issues: wages, uniform allowance and insurance.<sup>4</sup>

The parties’ final offers for the disputed issues are as follows:<sup>5</sup>

### **A. Wages**

#### **1. District**

The District proposes the following wage increases:<sup>6</sup>

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<sup>1</sup> 5 ILCS 315/14.

<sup>2</sup> Prior Agreement at Article 2.

<sup>3</sup> *Id.* at Article 17.

<sup>4</sup> At the commencement of the hearing, the parties were at impasse over a fourth issue concerning longevity pay. However, during the hearing, the District agreed to accept the Union’s offer concerning longevity pay (to be kept as in the prior Agreement). Tr. 83-84; District Brief at 1; Union Brief at 2.

<sup>5</sup> District Exhs., Tabs 3, 4, 6; Union Exh. 2, Tab 6.

<sup>6</sup> District Exhs., Tab 3; District Brief at 7.

Date	Increase
1/1/08	3.5%
1/1/09	3.0%
1/1/10	3.0%

## **2. Union**

The Union proposes the following wage increases:<sup>7</sup>

Date	Increase
1/1/08	3.5%
1/1/09	3.5%
1/1/10	3.5%

## **B. Uniform Allowance**

### **1. District**

The District seeks to maintain the existing contract language concerning uniform allowance.<sup>8</sup>

### **2. Union**

The Union seeks to add certain items of clothing to those already provided to employees by the District and to have each employee receive \$150.00 for shoes over the life of the Agreement.<sup>9</sup>

## **C. Insurance**

### **1. District**

The District seeks to have single employees continue to pay nothing for insurance. Employee plus spouse and employee plus children coverage would be a flat \$25.00 per pay period for 2008, 5% for 2009 and 7.5% with a cap of \$48.00 per pay period for 2010. For family coverage, the cost to the employee

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<sup>7</sup> Union Exh. 2, Tab 6; Union Brief at 26.

<sup>8</sup> District Exhs., Tab 6; District Brief at 15-16.

<sup>9</sup> Union Exh. 2, Tab 6; Union Brief at 34-36.

under the District's proposal would be \$30.00 per pay period for 2008, 5% for 2009 and 7.5% with a cap of \$63.00 per pay period for 2010.<sup>10</sup>

## **2. Union**

The Union seeks to maintain current language in the Agreement with the only change to update the contract language to reflect the change of years.<sup>11</sup>

### **III. DISCUSSION**

#### **A. The Statutory Factors**

Section 14(h) of the Act sets forth the factors to be considered in these cases:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the 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 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.

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<sup>10</sup> District Exhs., Tab 4; District Brief at 12.

<sup>11</sup> Union Exh. 2, Tab 6; Union Brief at 13-14, 19-26.

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

... 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). The findings, opinions and order as to all other issues shall be based upon the applicable factors presented in subsection (h).

The issues in dispute are economic.<sup>12</sup> Therefore, based on the factors set forth in Section 14(h) of the Act, Section 14(g) provides that this is a final offer arbitration — *i.e.*, I am constrained to select either the District's or the Union's last offer for each issue in dispute in this case. I have no authority to impose an award different from one of the presented offers on an issue.

**B. The Use Of Comparables In This Case**

Section 14(h)(4) of the Act lists "... comparable communities ..." to be considered by interest arbitrators in these disputes as one of "... the following factors, as applicable ...." In the past, comparability has been given great weight by the arbitrators (including this arbitrator) for deciding these kinds of disputes. When the comparability factor is considered and the comparable communities are established, it is often easy to determine how the wage and benefit offers for employees in dispute compare to similarly situated employees in other comparable communities. And with the weight comparability has been given, naturally, in this case the parties have placed great emphasis upon comparisons of their offers to the wages and benefits of other fire protection districts they view as "comparable" to the District.<sup>13</sup>

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<sup>12</sup> Tr. 16.

<sup>13</sup> See District Brief at 2-5, 8-11, 14-16; Union Brief at 6-12, 18-31, 34-35.

The parties agree that the fire protection districts of North Palos, Leyden and Homer are comparable to the District.<sup>14</sup> However, the parties differ on consideration of other fire protection districts as being comparable to the District. The Union seeks to add the fire protection districts of Bensenville, Palos Heights, Wood Dale, Palos and West Chicago as being comparable to the District, while the District seeks to add the fire protection districts of Palatine Rural and Roberts Park as being comparable.<sup>15</sup>

I need not decide which of the other disputed fire protection districts asserted by the parties are comparable to the District.

In two cases issued this year, I have had to address the application of the statutory factors in Section 14(h) to interest arbitrations which were in progress at the time the economy crashed in the fall of 2008. *See State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-262* (January 27, 2009) (“ISP”) and *County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-08-010* (March 23, 2009) (“Boone County”). ISP and Boone County were “transition” cases — *i.e.*, cases which began before the economy crashed but had to be decided in a new and very bleak economic situation which faced the country during the latter part of 2008 and the first quarter of this year.

In those two transition cases, I found that it just did not make sense to compare collective bargaining agreements from other communities which were negotiated before the economic downturn to determine economic benefits for employees in dispute when the economy had so drastically changed for the

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<sup>14</sup> District Brief at 2; Union Brief at 8.

<sup>15</sup> District Brief at 8; Union Brief at 8.

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worse. It made more sense in those transition cases to focus on the realities of the economy as they existed at the time the decisions were made. See *e.g.*, *Boone County* at 13-14, 24-25.

It should appear obvious that the interest arbitration provisions of the Act may not be that well-equipped to address establishment of economic provisions in collective bargaining agreements in these volatile, uncertain and unstable economic times.

The problem stems from Section 14(g) which requires interest arbitrators to select one of the economic offers with no discretion for modification, as exists with non-economic offers. Again, Section 14(g) provides that "... [a]s 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)." With an economy in free-fall, unemployment marching steadily upward, credit markets frozen, businesses laying off or closing, revenue streams diminishing, government intervention programs of massive proportions seeking to prevent further harm and not knowing whether, when or to what degree those programs will succeed in stopping the blood-letting, how am I as an interest arbitrator rationally supposed to set the economic terms of a multi-year collective bargaining agreement which the parties unsuccessfully attempted to reach before the economy crashed with the added requirement that my hands are tied by Section 14(g) and I can only select one of the parties' economic offers? The task becomes particularly difficult for interest arbitrators when, in the past, heavy emphasis has been placed on economic settlements in comparable communities and in this transition period, comparisons end up being made to contracts which were negotiated before the current economic crisis.

\* \* \*

In this climate, the FOP's arguments concerning comparability cannot change the result. In the past, external comparability has been a factor given great weight by interest arbitrators, including this arbitrator. But the statute does not require that one factor always be given greater weight than another. Section 14(g) makes that clear — "... 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)." In my opinion, in these uncertain and volatile economic times — at least for now in these transition cases where the economy crashed during the proceedings — cost-of-living considerations and changes that have occurred are more "applicable" and must be given greater weight than comparability.

As in *ISP*, the short answer to the FOP's reliance upon the jurisdictions it selected for comparison purposes is that even assuming those jurisdictions are valid comparables (an issue I need not decide), the picture created by contracts in other jurisdictions which were negotiated in better economic times than the present circumstances should not be given as much weight as they have in the past. Given the current circumstances — again, for now in these transition cases — those comparisons are the proverbial "apples to oranges". But in any event, on balance, given the extraordinary circumstances which are present in this transition case as a result of the current economic conditions, the comparability factor in

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Section 14(h)(4) must yield to the other factors cited above — specifically, the cost-of-living and changes factors specified in Sections 14(h)(5) and (7).

While *ISP* and *Boone County* were transition cases, this is not. The hearing in this matter was on February 25, 2009. The parties thus presented this matter *after* the economy went into free-fall and the parties structured their final offers and arguments accordingly.

But the problems with comparability as they existed in *ISP* and *Boone County* still remain at this time. Putting aside whether the fire protection districts relied upon by the parties are, in fact, comparable to the District, the contracts from those other districts presented by the parties at the hearing appear, for the most part, to have been resolved and made effective *before* the economy crashed:<sup>16</sup>

District	Duration	Signature/Effective Date
North Palos	2007 (unspecified) - 12/31/09	12/06
Leyden	01/01/08 - 12/31/11	03/11/08
Homer	05/01/07 - 12/31/10	04/18/07
Bensenville	01/01/08 - 12/31/10	(not known)
Palos Heights	01/01/09 - 12/31/09	(not known)
Wood Dale	06/01/07 - 05/31/11	09/18/08
Palos	06/01/05 - 04/30/09	(not known)
West Chicago	06/01/08 - 05/31/12	2008 (unspecified)
Palatine Rural	04/21/08 - 12/31/11	04/21/08
Roberts Park	09/01/08 - 08/31/11	2008 (unspecified)

But the important point is that, as of this writing, it cannot be said that the economy has recovered in any sense to now allow “apples to apples” comparisons to be made for the offers made by the parties and the terms of contracts in fire protection districts negotiated or implemented before the economy crashed.

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<sup>16</sup> Union Exh. 4; District Exhs., Tabs 7-11. Wood Dale’s effective date is established as September 18, 2008. See the Illinois State Labor Relations Board website (which lists interest arbitration awards) <http://www.state.il.us/ilrb/subsections/pdfs/IntArbAwardSummary.PDF> which shows an interest arbitration award issued that date by Arbitrator Winton in Case No. S-MA-07-260.

In *ISP and Boone County* decided in January and March 2009, the economic situation presented was an over 30% drop in the in the stock market since commencement of the proceedings; frozen credit markets; companies going out of business or cutting back operations with resultant massive layoffs; commencement of government bailouts and stimulus packages in efforts to get the economy moving; national unemployment rates moving from 6.2% in August 2008 to 8.1% in February 2009 (the highest unemployment rate since December 1983 and the worst since the passage of the Act); State of Illinois unemployment rates moving from 6.7% in August 2008 to 7.9% in January 2009 (the highest since April 1993) and forecasts that the economy was just going to keep getting worse,<sup>17</sup>

As of this writing, there are some signals that perhaps the economy is beginning to turn around. The strongest signal has been the growth in the stock market. *See Boone County* at 8:

... [O]n October 1, 2008 — the date of the hearing — the Dow Jones Industrial Average (“DJI”) had already begun its slide, but was at 10,831. On the trading day before the issuance of this award [March 20, 2009], the DJI stood at 7,278 — a 33% decrease since the hearing.

When this case was heard on February 25, 2009, the DJI stood at 7,271. On September 8, 2009 — the trading day of the issuance of this award — the DJI stood at 9,497 — a 31% *increase* since the date of the hearing.<sup>18</sup> Recent news reports similarly relate signs of the beginning of a very slow and sputtering recovery:<sup>19</sup>

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<sup>17</sup> *ISP* at 7-10; *Boone County* at 8-11.

<sup>18</sup> DJI history can be found at <http://www.google.com/finance?client=ob&q=INDEXDJI:DJI>.

<sup>19</sup> <http://www.nytimes.com/reuters/2009/08/20/business/business-uk-financial.html>;  
Healy, *Manufacturing grows After 18 Weak Months*,  
<http://www.nytimes.com/2009/09/02/business/economy/02economy.html>; Johnson, *U.S. Private Job Losses Fall, Factory Orders Rise*,  
<http://www.reuters.com/article/topNews/idUSWEN302320090902>.

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... [E]conomists forecast it [the economy] is recovering more robustly than expected .... [and t]he U.S. economy is expected to return to growth in the current quarter ...

\* \* \*

After 18 months of layoffs, plant shutdowns and other declines, the country's manufacturing sector grew in August, offering another piece of evidence that the economy was pulling out of recession.

\* \* \*

Tentative signs of recovery were also evident in data that showed U.S. factories saw an increase in new orders in July for the fourth straight month, though the rise was smaller than economists had expected.

Major U.S. stock indexes slipped, though, as economists had expected the data to paint an even brighter picture of the U.S. outlook, while U.S. government bond prices rose.

Wall Street rallied aggressively over the summer on signs that the economy was pulling out of its worst recession in 70 years, but investors have since grown more cautious.

"We're in the process of turning around, with the economy shifting from contraction to expansion, but the turn is happening slowly," said Mike Moran, chief economist at Daiwa USA in New York. "It's not going to be a V-shaped recovery."

Those clinging to hopes of recovery have latched onto evidence that the rate of job losses is slowing. ADP Employer Services said Wednesday that U.S. private employers cut 298,000 jobs in August, below the 360,000 seen in July.

\* \* \*

#### FED MORE OPTIMISTIC, CONSUMERS STILL LEERY

Minutes from the Federal Reserve's most recent policy meeting, released Wednesday, showed that central bank officials think the risk of a relapse for the U.S. economy have been "considerably reduced."

But the minutes showed the Fed also expects recovery to be slow and was "most likely" to hold benchmark interest rates at very low levels for some time.

\* \* \*

The U.S. manufacturing sector, while much smaller than the consumer-driven services sector, has been showing steady signs of improvement.

Data this week showed the sector grew for the first time in 19 months in August, and a report Wednesday showed new orders at U.S. factories rose 1.3 percent in July.

\* \* \*

House prices plunged over the past three years, marking the market's worst crash since the Great Depression, but the view that the worst is over is gaining traction.

Notwithstanding some positive signs, the unemployment situation remains very bleak. National unemployment figures as discussed in *Boone*

*County* showed an increase from 6.2% in August 2008 to 7.6% in January 2009.<sup>20</sup> As of July 2009, the national unemployment rate increased to 9.4%.<sup>21</sup> At the State level, it is worse. Again, as discussed in *Boone County*, the State of Illinois unemployment rate showed an increase of 6.7% in August 2008 to 7.9% in January 2009.<sup>22</sup> As of July 2009, the State of Illinois unemployment rate increased to 10.4%.<sup>23</sup> Thus, as bad as those numbers were when *ISP* and *Boone County* issued, the national unemployment rate for the period January - July 2009 showed a further increase of 1.8% and the State of Illinois rate for the same period showed a further increase of 2.5%. In terms of numbers and not percentages, the Bureau of Labor Statistics ("BLS") recently reported that "[i]n July [2009], total nonfarm payroll employment decreased by 247,000 over the month and by 5,740,000 from a year earlier."<sup>24</sup> We have a long way to go to get to a meaningful recovery.

Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in

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<sup>20</sup> *Boone County* at 10.

<sup>21</sup> <http://www.bls.gov/news.release/empsit.nr0.htm>.

<sup>22</sup> *Boone County* at 10.

<sup>23</sup> <http://www.ides.state.il.us/economy/cps.pdf> (most recent news release).

<sup>24</sup> <http://www.bls.gov/news.release/pdf/mmls.pdf> (most recent news release) [emphasis added].

other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for “apples to apples” comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.

Instead of relying upon comparables, in *ISP* and *Boone County*, I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index (“CPI”).

According to the BLS, the monthly cost of living changes for January through July 2009 are as follows:<sup>25</sup>

**CPI Changes From Preceding Month**

							<b>Compound Annual Rate 3- mos. Ended 7/09</b>	<b>Unadjusted 12-mos. Ended 7/09</b>
<b>1/09</b>	<b>2/09</b>	<b>3/09</b>	<b>4/09</b>	<b>5/09</b>	<b>6/09</b>	<b>7/09</b>	3.4	-2.1
0.3	0.4	-0.1	0.0	0.1	0.7	0.0		

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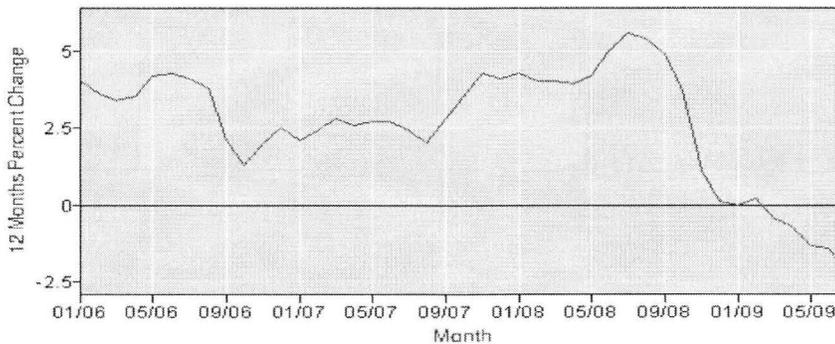
<sup>25</sup> <http://www.bls.gov/cpi/cpid0907.pdf>.

Additionally, the BLS cost of living figures show the following 12 month changes since the commencement of the predecessor Agreement (effective January 1, 2006):<sup>26</sup>

**CPI 12 Months Percentage Change**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	An- nual	Half 1	Half 2
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2	3.8	2.6
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8	2.5	3.1
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8	3.4	3.4
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1							-0.6	

Graphically, from the BLS databases, the above 12 month percentage changes in the CPI show:<sup>27</sup>



The cost of living numbers are obvious. Since January 2009 there has been no meaningful upward movement in the cost of living. When monthly comparisons are made to the same month in the previous year there has been no change (January) or trending downward movements (March through July). This factor therefore favors a lower economic increases in interest arbitrations.

However, all employers may not have been adversely affected by the recession. As the Union argues:<sup>28</sup>

<sup>26</sup> <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>.

<sup>27</sup> *Id.*

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... [U]nlike municipalities, the District is not reliant upon sales tax revenue as a funding source. As a result, it is better able to weather the recent financial storm. Moreover, the record is curiously devoid of any budget information. At the conclusion of this proceeding, we knew nothing about the District's financial status except that its estimated revenues from 2008 through 2009 have substantially increased (Dist. Ex. Tab 1 at 10). The CPI and recent economic downturn is not persuasive evidence to form a basis to reject Local 2224's offer on wages.

However, according to the Illinois Department of Revenue ("IDR") and using a 0.1% CPI computation for 2008 as determined applicable by the IDR, taxing bodies subject to the Property Tax Extension Limitation Law ("PTELL") will use the 0.1% CPI for computing 2009 property tax extensions, which are to be received in 2010 — which will not be substantial amounts of revenue for the District.<sup>29</sup> According to the IDR:<sup>30</sup>

The department has received many inquiries regarding what Consumer Price Index (CPI) "cost of living", or inflation, percentage to use in computing the 2009 extensions (taxes payable in 2010) under PTELL.\*

\* \* \*

... That amount is ... 0.09%, which is rounded to a 0.1% CPI.

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Using that calculation, the District multiplied its total all funds (\$4,397,500) by the current tax cap amount (4.1%), yielding a new capped amount of \$4,577,800.<sup>31</sup> Factoring in the 0.1% CPI allowance under PTELL yields \$4,582,368, which, according to the District "... means the District's property tax extension for 2009 will increase by a mere \$4,578."<sup>32</sup> And, as presented by the District, to realize significant increases in property tax revenues for 2010, there will have to be new growth which increases equalized as-

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[continuation of footnote]

<sup>28</sup> Union Brief at 32-33.

<sup>29</sup> District Exhs., Tab 1 January 20, 2009 memo from Jo Ellen Mahr, Property Tax Division, Illinois Department of Revenue).

<sup>30</sup> *Id.* at 1.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* See also, District Brief at 5.

sessed valuations, but there are no properties within the District on the tax rolls which could be developed in the near future.<sup>33</sup> Therefore, the low cost of living figures do adversely impact the District.

With the analysis of turning away from comparing the District to other comparable districts whose contracts were negotiated before the severe economic downturn, but placing more emphasis on the cost of living and the current state of the economy, I can now turn to the parties' economic offers.

### **C. Resolution Of The Disputed Issues**

#### **1. Wages**

The Union sees wage increases of 3.5% effective January 1, 2008, January 1, 2009 and January 1, 2010.<sup>34</sup> The District offers wage increases of 3.5%, effective January 1, 2008, and 3.0% effective both January 1, 2009 and January 1, 2010.<sup>35</sup>

First, the obvious. The District's offer for 3% wage increases each year — although slightly lower than the Union's offer in the second and third years — still significantly outpaces the current cost of living numbers from BLS.

Second, the bottom line here is that this is not a case where the District is seeking give backs or one where the parties are substantially far apart on their wage offers. Here, the parties are only .5% apart in the last two years of the Agreement (3.5% sought by the Union as opposed to 3.0% offered by the District in each of the last two years). Under the circumstances and particularly given the emphasis that I believe for the time being must be placed on the cost of living and the current status of the economy as opposed to use of com-

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<sup>33</sup> Tr. 94; District Brief at 5.

<sup>34</sup> Union Exh. 2, Tab 6; Union Brief at 26.

<sup>35</sup> District Exhs., Tab 3; District Brief at 7.

parables, the District's offer is the more reasonable under the relevant statutory factors.

Third, in *ISP* I discussed which I believe to be a rational way for parties to negotiate contracts in these most difficult economic times. *ISP* at 21 [footnote omitted]:

Perhaps a cautious and practical way to approach negotiations and interest arbitrations in these uncertain and changing times is for parties to negotiate reopeners on economic items or to tie reopeners to triggers in the out years of agreements — *i.e.*, if changes in the cost-of-living or insurance costs occur, the parties have the option to reopen agreed upon provisions mid-term during the period of a contract. With negotiated reopeners, the parties can then assess the situation as the economy changes rather than project years out into the future with fixed obligations having no idea what the economic conditions will be. For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers. Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14(g). The parties did not do that in this case — indeed, given the timing of events in this case, the parties could never have expected this to happen.

While the parties did not agree to that type of reopener process and because I do not have the authority in a final offer interest arbitration to impose that process upon the parties, I cannot structure an award setting contract terms with reopeners. However, the practical effect in this case will have the same result.

This contract will expire December 31, 2010. The parties will be back at the bargaining table in the not too distant future and will be able to address economic issues taking into account the realities of the economic recovery as they exist at that time. That is the point of structuring contracts in this economy with reopeners. While not having reopeners, that result achieved through reopeners will still be accomplished with a December 31, 2010 expiration date.

The District's offer on wages is therefore selected.

## **2. Uniform Allowance**

The existing contract language for uniform allowance is as follows:

### **Section 7.11 Uniform Allowance**

All uniforms and protective clothing except for; belts, shoes, socks, and undergarments, with the exception of T-shirts, and other such items, required to be worn by employees shall be provided by the District. All such provided uniforms and protective clothing shall remain the property of the District and shall be returned in a serviceable condition upon termination of employment.

Employees shall be allowed to wear navy blue (for firefighter) and white (for Lieutenant) t-shirts that bear the IAFF logo, on the chest of the t-shirt in accordance with the uniform policy at the expense of the employee.

The Union seeks to amend Section 7.11 in relevant part to add certain items to be provided by the District and to provide a monetary payment for shoes:<sup>36</sup>

All uniforms and protective clothing except for; ~~belts, shoes,~~ socks, and undergarments, with the exception of T-shirts, and other such items, required to be worn by employees shall be provided by the District. All such provided uniforms and protective clothing shall remain the property of the District and shall be returned in a serviceable condition upon termination of employment. Effective January 1, 2008, belts, winter hats, and firefighter job shirts shall be added to the quartermaster plan. The District shall also provide such employee with \$150.00 for shoes over the life of this Agreement.

The Union's offer to change the uniform allowance provisions cannot be adopted for several reasons.

First, the main focus of the Union's argument is a comparability analysis.<sup>37</sup> According to the Union, "[a]doption of the Union's proposal is warranted by comparison with the comparable communities."<sup>38</sup> For reasons discussed *supra* at III(B), for the present time, comparability cannot be given the kind of weight it has received in the past.

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<sup>36</sup> Union Exh. 2, Tab 6; Union Brief at 34-36 [added language underscored, deleted language stricken].

<sup>37</sup> Union Brief at 34-35.

<sup>38</sup> *Id.* at 34.

Second, the Union seeks to accomplish two changes with its offer: (1) add certain clothing items to those already provided by the District and (2) provide for a \$150 allowance for shoes. The adding of the monetary allowance in addition to the providing of uniform items is a breakthrough. That change may not be a significant monetary change, but nevertheless, it is a significant change in the overall process of how uniforms are provided to employees.

Interest arbitration is a conservative process and is one that frowns upon breakthroughs unless the party seeking the change can demonstrate that the existing system is broken. Nothing has been shown to be broken about the uniform allowance procedure. Further, given that the Union's main emphasis seeks the change on comparability grounds which is a factor to which I am unable to give substantial weight, I cannot, at this time, find that the existing system for providing uniforms should be changed.

The District's offer of no change to Section 7.11 is therefore adopted.

### **3. Insurance**

The District seeks to have single employees continue to pay nothing for insurance. Employee plus spouse and employee plus children coverage would be a flat \$25.00 per pay period for 2008, 5% for 2009 and 7.5% with a cap of \$48.00 per pay period for 2010. For family coverage, the cost to the employee under the District's proposal would be \$30.00 per pay period for 2008, 5% for 2009 and 7.5% with a cap of \$63.00 per pay period for 2010.<sup>39</sup> The Union seeks to maintain current language in the Agreement with the only change to update the contract language to reflect the change of years.<sup>40</sup>

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<sup>39</sup> District Exhs. 1, Tab 4; District Brief at 12.

<sup>40</sup> Union Exh. 2, Tab 6; Union Brief at 13-14, 19-26.

The District is seeking to make the change here. It therefore has the burden to demonstrate the need for the change.

To support its position, the District makes a comparability argument — again, one to which I cannot give much weight in this case.<sup>41</sup>

But here, the Union argues that as a result of changes in plans, the District has realized savings in its insurance costs.<sup>42</sup>

As the District points out, I have recognized that employee sharing in the cost of insurance is well accepted.<sup>43</sup> And, I have incorporated into these decisions the fact that insurance costs have been increasing. *See e.g., City of Chicago and FOP Lodge 7 (2005) at 14:*

... as I have unfortunately had to observe before, in the current economic climate collective bargaining between employers and unions on health care issues is most difficult. “Insurance costs are skyrocketing which makes bargaining on this issue border on the impossible.”

The national trend underscores the reality that employer health care costs are soaring at alarming rates and are being shifted to employees.

*See also, County of Effingham and AFSCME Council 31, S-MA-03-264 (2004) at 18:*

Presently, because of spiraling costs, insurance is simply a nightmare and at a crisis level for employers, employees and unions. To meet this national problem, sharing by employees in premium costs has become quite common.

Finally, *see Village of Lansing and Illinois FOP Labor Council, S-MA-04-240 (2007) at 23-24* discussing those awards.

The District argues for adoption of its proposal because “... it is more reasonable to require a modest employee contribution for insurance, as the

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<sup>41</sup> District Brief at 14-15.

<sup>42</sup> Union Brief at 16-25; Union Exhs. 25-33.

<sup>43</sup> District Brief at 15.

District has proposed, than to require an employer to cover the entire cost of insurance for its employees on its own.”<sup>44</sup>

At the hearing, the following testimony given by Chief Richard Dobrowski addresses the District’s justification for the increases it seeks, specifically for 2010:<sup>45</sup>

Q. ... Can you tell us how you calculated those numbers?

\* \* \*

A. What I did was assumed a 15 percent increase across the board for all the insurances and then figured in the 7.5 percent on that for those three categories.

Q. Why did you pick a figure of 15 percent?

A. Because I thought that that would be a reasonable estimate of what the health insurance certainly could go up. We already had bumps of 18 percent, 18 and a half, and as low as two. So it’s kind of what I figured as “safe” to make an assumption on.

Chief Dobrowski made a guess — an educated one, perhaps — but nevertheless, a guess based on assumptions he felt were “safe” due to “... bumps of 18 percent, 18 and a half, and as low as two.” Putting aside the Union’s assertion that there have been savings realized by the District through its change of plans, with the burden on the District, the type of “... ‘safe’ ... assumption ...” made by Chief Dobrowski is not enough to justify the change in insurance sought by the District. In the end, the District’s proposed increases are based only on a “guess”.

This is very similar to *Boone County* where the underpinning for the insurance change sought by employer was an “educated guess”.<sup>46</sup> That type of educated guess caused me to reject the employer’s proposed changes for insur-

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<sup>44</sup> *Id.*

<sup>45</sup> Tr. 103.

<sup>46</sup> *Boone County* at 27.

ance.<sup>47</sup> The same logic holds here. The Union's proposal on insurance is adopted.

**IV. AWARD**

The new Agreement shall have the following terms:

1. Wages (District's offer):

Date	Increase
1/1/08	3.5%
1/1/09	3.0%
1/1/10	3.0%

Wages are fully retroactive for all employees on the payroll on or after January 1, 2008, hour for hour for all hours paid.<sup>48</sup>

2. Uniform Allowance (District's offer):

*Status quo.*

3. Insurance (Union's offer)

*Status quo* (but updating the contract language to reflect the change of years).

4. All tentative agreements on other issues reached by the parties are incorporated into this award.

5. With the consent of the parties, I will retain jurisdiction to resolve disputes, if any, concerning the drafting of language for inclusion in the new Agreement or other disputes which may arise from the implementation of this award.



Edwin H. Benn  
Arbitrator

Dated: September 8, 2009

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<sup>47</sup> *Id.* at 27-28.

<sup>48</sup> Tr. 17-18; Union Exh. 6 (retroactivity as agreed by the parties).