

**INTEREST ARBITRATION**

**OPINION AND AWARD**

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IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**CITY OF GALESBURG**

("Employer," "City" or "Management")

AND

**PUBLIC SAFETY EMPLOYEES' ORGANIZATION**

("Union" or "PSEO")

ISLRB No. S-MA-03-197

Arb. Case No. 03/105

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**Before:** Elliott H. Goldstein  
Sole Arbitrator by stipulation of the parties

**Appearances:**

**On Behalf of the Employer:**

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Ancel, Glink, Diamond, Bush, DiCianni & Rolek

**On Behalf of the Union:**

Sean M. Smoot, Esq., Chief Legal Counsel  
Policemen's Benevolent & Protective Association

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\* As noted, this issue is now off the table, as I have adopted the Union's offer, by agreement of the City.

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## I. INTRODUCTION

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1, as amended, et seq., (hereinafter referred to as the "Act"), the City of Galesburg (hereinafter referred to as the "Employer," "City" or "Management") and the Public Safety Employees' Organization (hereinafter referred to as the "Union", "PSEO" or "Organization"), submitted their final offers in collective bargaining (Jt. Exs. 3 and 4) to this Arbitrator, sitting as Chairman and sole member of the Arbitration Panel selected to hear and decide this case.

A hearing was held at Galesburg City Hall on March 22 and 23, 2004, and a transcript of the record was made. Post-hearing briefs were filed pursuant to the Ground Rules and Stipulations of the parties (Jt. Ex. 6), and the timetable agreed to by the parties and approved by the Arbitrator at and following the hearing.

At the hearing, the parties were afforded full opportunity to present such evidence and argument as described, including an examination and cross-examination of all witnesses. As has become customary in the presentation of evidence in interest arbitrations in the State of Illinois, pursuant to the above-mentioned Act, much of the evidence came in by way of oral presentation by counsel for the respective parties, and their references to and explanations of statistical and other documentary evidence, as well as economic studies and data concerning this City and its stipulated comparables. (See Jt. Ex. 2, the list of comparables used

historically by the parties and agreed to as being proper for use in this matter, also).

Both parties also stipulated as to the three issues presented for resolution (see Jt. Exs. 3 and 4, the last offers of settlement on each of the issues). The parties agreed further that two of the three issues pending are economic in nature. They are wages and standby pay. Since the City has now accepted the Union's final offer, I adopt the Union's final offer, with the limitations set forth in my discussion of this issue in Section II, Background, below. The Union and City also agreed that the third issue, residency, is non-economic in nature as that term is used in the Act, but the parties both recognize that residency is a "hot button issue of extreme importance to both parties to this matter.

Last, the parties agree that pursuant to the Act, for the economic issues of wages and standby pay, I must select from the parties' "last best" final offers, but as to residency, I have an option to accept either party's final offer or to fashion my own award, based on the statutory criteria and my assessment of all the proofs presented ("conventional remedy selection").

References in this Opinion and Award to Joint Exhibits, City Exhibits, and Union Exhibits introduced at the hearing will be made, respectively, as follows: (Jt. Ex. \_\_\_\_); (City Ex. \_\_\_\_); and (Un. Ex. \_\_\_\_). References to the transcript of the testimony given at the hearing on March 22 and 23, respectively, will be made as follows: (Tr. I \_\_\_\_ ) and (Tr. II \_\_\_\_ ). References to source

documents will be made, illustratively, as follows: (Pekin Contract, Section \_\_\_\_\_).

## II. BACKGROUND AND FACTS

### A. General Observations And Findings

As the Employer was quick to point out in its brief, in my Opinion and Award in City of Burbank and Illinois FOP Labor Council, S-MA-97-56 (Goldstein, 1998), at pp. 10-11, I made the following observation:

Underlying this award, like any interest arbitration award, are some fundamental concepts. At its core, interest arbitration is a conservative mechanism of dispute resolution. Interest arbitration is intended to resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship. The traditional way of conceptualizing interest arbitration is that parties should not be able to obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise, the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort:

*'If the process [interest arbitration] is to work, it must [not] yield substantially different results than could be obtained by the parties through bargaining'. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the particular circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. (Emphasis added). Will County*

Board and Sheriff of Will County (Nathan, 1988), quoting Arizona Public Service, 63 LA 1189, 1196 (Platt, 1974); accord, City of Aurora, S-MA-95-44 at pp. 18-20 (Kohn, 1995).

Under this theory, there should not be any substantial 'breakthroughs' in the interest arbitration process. If the arbitrator awards either party a wage package which is *significantly* superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route and this defeats the purpose. Village of Bartlett, FMCS Case No. 90-0389 (Kossoff, 1990).

Because I still hold these opinions, I reiterate them here, because I, like the Employer, find these basic principles of critical significance in the resolution of this current dispute between the parties.

The Employer has also suggested, I recognize, that, in this case, this Union seeks breakthroughs in two areas: wages and term of agreement (a combined issue for arbitration purposes) and residency. It seeks these breakthroughs at perhaps the worst possible time for a city like Galesburg to deal with the consequences of a breakthrough award, the City also asserts. The Union's counter argument on wages is that the circumstances here are compelling, indeed. The Union also believes that the City has fallen far short of proving that its residency rule is the status quo, so that the "breakthrough" doctrine does not apply at all. Instead, says the Union, it has supplied convincing evidence that its residency is "more appropriate" than the current residency rule. At any rate, argues this Union, I have the authority to fashion a residency rule in my discretion that properly fits the

facts, since the parties agree that residency is a non-economic issue. I agree with the City on the wage issue, but disagree with it on the issue of residency. I find that residency should be expanded, but not "state-wide," as the Union demands, as will be developed in detail below.

**B. Galesburg's History of Pattern Bargaining**

In *Criteria in Public Sector Interest Disputes*, in ARBITRATION AND THE PUBLIC INTEREST, PROCEEDINGS OF THE 24TH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 161, 173 n. 18 (Gerald G. Somers, et al., eds., 1971), Arbitrator Howard S. Block stated that:

"[t]he underlying problem for management is to avoid a settlement figure with one group which arouses unrealistic expectancies among large numbers of other employees who are being pressured to go along with a uniform wage policy pegged at a lower figure."

The problem is compounded when one group seeks to attain by means of interest arbitration a settlement that breaks an historic pattern of settlements within the jurisdiction, a settlement which almost by definition the Union could not have attained in bargaining. The key issues in this arbitration require the Arbitrator to come to grips with this problem.

Where one party, in this case the Union, seeks to break out a settlement pattern (here, wages), many arbitrators hold that that party has the burden of justifying its position. In Village of Skokie and Skokie Firefighters Local 3033, Case No. S-MA-92-179 (1993), Arbitrator Neil Gundermann said at pp. 30-31:

"It is well settled in arbitral authority that where

there is a historical relationship in salaries between bargaining units, or parity as it is frequently referred to, the party seeking to disturb that relationship has the burden of persuading the arbitrator that there is good and sufficient reason for doing so."

This is especially true where the relationships are long-term, as Arbitrator Irwin Martin Liebermann noted in City of Chicago and Fraternal Order of Police, Lodge 7 (1989), at p. 22:

"The wage schedules of the uniformed employees of the City of Chicago have been identical for some 25 years. The Chairman of this Board has long been an advocate of the continuation of that parity. Furthermore, the parties them-selves have acknowledged the validity of parity as a general principle with respect to the City of Chicago and the uniformed employees. Thus, the conclusion as to where the parties might have been had the collective bargaining process been successful must be tempered with the concept of parity. There must be consonance with respect to those to factors."

Similarly, in Dade County, Florida, Arbitrator Lavine stated that:

"[w]age parity among Metropolitan Dade County employees is a historical fact. The Special Master is convinced that salary level relationships that have existed and have been accepted by unions over a period of some ten years must be maintained unless there is a compelling reason to do otherwise."

Metropolitan Dade County v. AFSCME Council 79, Local 121, Dec. No. SM-89-019 (1988).

The reason for placing the burden on the party seeking to disturb historical wage settlement patters and relationships was well articulated by Arbitrator Steven Briggs in Village of Arlington Heights and Arlington Heights Firefighters Association, Local 3105, Case No. S-MA-88-89 (1991), at p. 13:

"In general, interest arbitrators attempt to avoid rendering awards which would likely result in the

creation of orbs of coercive comparison between and among bargaining units within a particular public sector jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called 'me-too' clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want."

Accordingly, said Arbitrator Briggs, "[b]earing all of this in mind and emphasizing again the 'educated guess' nature of interest arbitration, I am very reluctant to grant to the Union in this case an arbitrated outcome which would take Arlington Heights Firefighters beyond what the FOP gained through 'voluntary collective bargaining.'" Id. Similar reasoning applies here.

**C. The Closing of the Maytag Plant and "Ability to Pay"**

The Employer has strongly argued that regard for the above principles is heightened "as the City of Galesburg moves closer to the impending economic crisis" about which there was much testimony at the hearing: the closing of the Maytag Plant, scheduled to occur by the end of 2004.

As Galesburg faces the loss of 1,600 Maytag jobs and a substantial number of other jobs as a residual effect of the Maytag closing, the City opines that this is simply no time for breaking old patterns and plowing new ground. Rather, this is a time for the City -- government and the governed, administration and employees -- to band together in an effort to survive a devastating blow to the local economy, the Employer suggests.

It is a time for prudence and caution, as the City and its unions await the full impact of the Maytag closing, in the expectation that they will have a full opportunity after January 1, 2005, to address in collective bargaining the shared problems that the closing will create.

It is also, to the City, a time to "insure that the results of the arbitration process help to maintain a unity of structure and purpose in order that the City and its unions can enter into the post-Maytag world in a spirit of cooperation and mutual problem solving," rather than "in an atmosphere in which the dominant themes are 'me-too' and 'catch-up' and 'how come he did better than me?'" The Union firmly believes however that the principle of comparability and the placement of this City at the bottom of the pile as to wages, if the economic data is properly considered, mandate a finding in its favor on all three issues, I note.

Given this reality, it is important to address and clarify the role of the third statutory criterion in this case, the Employer has suggested. "The interest and welfare of the public and the financial ability of the unit of government to meet those costs" is sometimes (simplistically and therefore erroneously) portrayed as an "ability to pay" criterion. Where the factor is cited by an employer in interest arbitration, some arbitrators have adopted a "sword and shield" analysis that draws its essence neither from logic nor the express language of the statute itself.

As the Employer has contended, under this formulation, the relative merit of two economic offers are judged on the basis of

the other seven criteria; if that judgment favors the Union's offer, the so-called "ability to pay" criterion is then analyzed to

determine if the employer has successfully raised an "inability to pay" shield precluding the awarding of the Union's offer.

While there are many problems with this approach, perhaps the biggest objection to it is that it does not draw its essence from the statute, I firmly believe. The third criterion is a compound criterion that speaks to the "interests and welfare of the public" as well as to the financial ability of the unit of government to meet the costs involved. There is nothing in the wording of the criterion, or in the remainder of the statute, that suggests that this criterion is to be applied differently from the other statutory criteria, and I am persuaded, at least in this specific case, that consideration of the interests and welfare of the public and of the financial ability of the unit of government must be given at the same time and in the same manner as the other statutory criteria.

As the City has also urged, this factor should be given such weight in my assessment of the instant dispute as is appropriate under the circumstances. And, given the unique situation of the Maytag closing, I find that this criterion of the interests and welfare of the public must be considered, not as a shield to the implementation of an award derived from the application of the other criteria, but in the first instance as a favor militating for or against a particular outcome. That is in many respects, my core ruling, at least to the wage issue, I firmly stress.

That having been said, I recognize that it is unusual for the third factor to be considered in its entirety, much less to be

given determinative weight. Perhaps that is because, in the usual interest arbitration cases, it is difficult to say that the interests and welfare of the public are better served by the cost-saving features of the employer's offer or by the enhancement of the salaries and benefits of the unit's employees, with the consequent effects on retention and morale, that may be afforded by the Union's offer, as the City itself concedes.

But I have also recognized in an earlier decision, Village of South Holland and Illinois FOP Labor Council, Case No. S-MA-97-150 (1999) that there are cases in which the evidence dictates not only that the interests and welfare of the public be considered, but that that factor be given substantial, and perhaps even determinative, weight. Like South Holland, this is one such case, I specifically rule.

**D. The Facts**

Galesburg is a city of 33,706 people located in western Illinois (City Exs. 1B, 18B). It has a council/manager form of government in which the Mayor serves as the chairman of the board of the legislative and policy-making body, the City Council, while the administrative functions of the City are delegated to the appointed City Manager (City Ex. 1C, Tr. II, at 343). The City has seven operating departments, including Administration, Finance, Law, Community Development, Public Works, Police and Fire Departments (City Ex. 1C), and employs 360 employees (City Ex. 15, p. 7). Three unions represent employees of the City: AFSCME Local 1173, which represents various employees in clerical and public

works classifications; the PSEO, which represents police officers; and International Association of Firefighters (IAFF) Local 555, representing Firefighters and Fire Captains (City Ex. 3A). The AFSCME unit contains 87 bargaining unit positions, while the PSEO represents 38 employees and the unit represented by Local 555 contains 44 employees (City Ex. 3B).

**1. A History of Uniformity of Wage Settlements**

On March 18, 1997, Arbitrator Martin H. Malin issued his Award in the last interest arbitration between these parties (City Ex. 9A). On pages 3 and 4 of that Award, Arbitrator Malin stated:

"The evidence presented on the wage issue fell into three categories: internal comparability, external comparability and cost of living. Concerning internal comparability, evidence (City Ex. 7) showed the base wage increases for this bargaining unit and four other groups: the AFSCME unit, the IAFF unit, non-union employees and management. In 1985, each group received a 3 percent increase. In 1986 and 1987, each group received 2 percent increases. In 1988, each group received a 4.5 percent increase. In 1989 and 1990, each group received 4 percent increases. In 1991, each group received a 4.5 percent increase. In 1992, police, fire and AFSCME each received a 3 percent increase, while non-union employees and management each received increases of \$1,000. In 1993, each group received a 3.5 percent increase. In 1994 and 1995, each group received increases of 3 percent.

"In 1996, non-union and management employees each received an increase of 2.875 percent, AFSCME received an increase of 2.85 percent and the IAFF received an increase of 2.75 percent. Corporation Counsel Richard Barber, who served as chief negotiator in bargaining with all three unions, testified that the firefighter contract settled first, at 2.75 percent. Later, the AFSCME contract settled at 2.85 percent and the City offered to increase the firefighter wage scale to make up the difference, but the union rejected the offer."

The document introduced as City Exhibit 7 in this proceeding

shows that the pattern found by Arbitrator Malin has continued to the present day: during the period 1998 through 2002, all groups received salary increases of 3.5% each year. Thus, at least since the year before collective bargaining became mandatory for police and firefighter units in Illinois, the percentage increases for all union groups have been the same every year except 1996, when the IAFF settled for .1 percent less than the increases granted to AFSCME and ultimately, by means of the Malin Award, to the PSEO, and then refused to accept the City's offer to extend to the IAFF unit the additional .1 percent that the others had received. As Arbitrator Malin observed, at page 8 of his Award: "In the instant proceeding, the evidence of internal comparability with respect to wages i[s] quite compelling." The uniformity of wage settlements over the last five years has done nothing to diminish the validity of that observation, I hold.

## **2. PSEO Unit: Wages and Wage Structure Bargaining**

In his 1997 Opinion and Award, Arbitrator Malin summarized the then-recent bargaining history with respect to wages and wage structure as follows:

"Prior to 1992, City employees had a six step salary structure. In 1992 negotiations the Union and the City agreed to a nine step structure for police officers hired on or after April 1, 1992. Under this structure, the first step was increased 5 percent, but increments between steps were reduced from 5 percent to 2.5 percent, with it taking eight years instead of five to reach the highest step. The parties also agreed to eliminate a 2 percent longevity increase after five years for new hires. As a quid pro quo, the City agreed to a one-time payment of \$550.00 to each member of the bargaining unit. In 1993 negotiations, AFSCME agreed to a similar structure containing eleven steps."

Per the Arbitrator's Award, salaries for the PSEO unit were increased by 2.85 percent for 1996-1997, and the parties agreed to another 2.85 percent increase (the same increase given to AFSCME, non-union and management employees) for 1997-1998 (City Ex. 7).

In 1998, the parties agreed to a five year contract calling for wage increases of 3.5% per year. Eric Poertner, chief labor representative for the Policemen's Benevolent Labor Committee and chief spokesman for the PSEO in the 2003 negotiations between the City and the Union, testified in this case that the City wanted the long-term agreement but that "[w]e were satisfied that 3.5% per year for what was almost -- at that time almost a year's worth of retroactivity and four years' worth of prospective wage increases would be more than sufficient to keep pace with cost of living and also assist us in keeping pace with our external comparables" (Tr. I, p. 90). Looking back to the agreement as to wages, Poertner testified:

"We were more than safe with the cost of living over that five-year period of time. I don't believe that we lost any ground amongst our comparables. We didn't gain any ground, either, but it didn't get any worse. Of course, from my perspective, it couldn't get any worse. We're almost dead last anyway." (Id.).

In the negotiations leading to this interest arbitration proceeding, the parties reached impasse over the amount of wage increases to be granted, when they would be granted, and the structure of the contract, I note. In December, 2002, the City Council approved changing the City's fiscal year, which had been April 1 through March 31, to the calendar year, with the change to

be effective January 1, 2004 (City Ex. 15, p. 3).

In bargaining with the City for the collective bargaining agreements to be effective April 1, 2003, the IAFF and AFSCME agreed to adjust the contract year so as to coincide with the new fiscal year by agreeing to a contract termination date of December 31, 2005 and to reopeners on wages and insurance and, in the case of the firefighters, hours of work and overtime, for the fiscal year beginning January 1, 2005 (City Ex. 4, pp. 34-35; City Ex. 5, p. 42). The PSEO, however, proposes no change in the contract year. Because term of contract and wages are a single issue for purposes of this arbitration, the selection by this Arbitrator of the Union's wage offer would mean that the fiscal year and the PSEO contract year would no longer be coterminous. This makes little sense, I am persuaded.

In addition, the Union proposed to continue the 3.5% wage increase sequence for another three years, through March 31, 2006 (Jt. Ex. 3). The City, on the other hand, proposed, in keeping with the terms agreed to with the IAFF and AFSCME, a 4% increase effective April 1, 2003, no increase for the 2004 fiscal year, and a reopener on wages (to go along with the reopener on insurance already agreed to by the parties - Jt. Ex. 5) effective January 1, 2005 (Jt. Ex. 4). Union chief negotiator Poertner explained the rationale for the City's proposal very well at the hearing:

"That the Council was extremely concerned with the -- not the current fiscal situation of the City but the near future financial situation of the City with the Maytag plant closing and with Butler Manufacturing. I think that word came down somewhere in the middle of our

negotiations that that was coming, too, and that the Council was okay with the 4% pay increase effective May 1, '03. That they felt like, you know, they knew they have the money for that but that they were concerned about what the impact of these plant closings were going to be and that, therefore, they wanted a wage freeze in the second year and kind of, I guess, kind of see where we're at and open the thing up for what would be the third year." (Tr. 1, pp. 91, 92).

### **3. Bargaining Over Residency**

The Act was amended to apply to police officers and firefighters effective January 1, 1986. It is the City's position that the parties had bargained over and reached agreement on the residency issue well before that date (City Ex. 35; Tr. I, p. 83).

Under the provisions of Section 4 of the IPLRA, the Employer reasons, residency with respect to these parties was "a mandatory subject of bargaining beginning with the first contract negotiated after the amendment of the Act to include police officers and firefighters." This was the collective bargaining agreement dated April 1, 1986 and covering the 1986-1989 contract term (City Ex. 36). Section 4 of the Act, the Employer goes on to argue, states in pertinent part:

"To preserve the rights of employers and exclusive bargaining representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of the Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours, or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act."

Public Act 90-385, effective August 15, 1997, amended Section 14(i) of the Act to eliminate (except for Chicago) the prior exclusion of residency requirements from the scope of matters that

could be the subject of an interest arbitration award, both parties acknowledge. After that amendment became effective, the record makes clear, the parties bargained over residency during the negotiations that led to the 1998-2003 contract and agreed to the additional language contained in Section 20.3 (Jt. Ex. 1, p. 31). That provision provides that the issue of residency could be raised by either party during the term of the Agreement, but could not be taken to arbitration. As Union witness Poertner explained:

"The City insisted that we not have any midterm arbitrations, so we came up with language that we have where we could continue to talk about it [residency], but we couldn't force the City to arbitrate at midterm either [the residency or the longevity spike] issue."

The significance of the fact that the parties bargained over residency in the negotiations leading to the predecessor contract to the City, is not only that no agreement was reached to change the City's current rule that all its employees are to reside within Galesburg's political boundaries, but that, in effect, the "status quo" was thus in fact negotiated at that time, if it was not indeed earlier established "when bargaining over residency occurred at the point when the law was that this topic was a mandatory subject of bargaining, but not one where interest arbitration could be obtained to resolve any impasse over it."

Thus, the Employer submits, in any event, changes to the current residency rule must be considered in the light of my predilection to avoid "breakthroughs" in bargaining unless "the evidence is clear the parties would have bargained such a change on their own." The testimony of all Employer witnesses called to

discuss residency, including the four elected officials who testified to their adamant opposition to any change and their firm belief that the vast majority of their constituents opposed the Union's demand for change in the residency rule, belies any claim the parties would ever bargain any change from the status quo, the Employer urges. In any event, the Union certainly failed in its burden to show a compelling need for a change in the existing contract language on residency, the City avers.

The Union, on the other hand, suggests that it is not its burden of proof to show a need for a change in the status quo on this issue, because there is no status quo on residency under the current contract. I am reminded that in Village of South Holland, supra, I held that a residency proposal presented after 1997 should be considered like a proposal in the parties' initial contract. Since the parties specifically agreed to leave this issue open in their last contract negotiations, the "breakthrough" only is inapplicable. Simply put, says the Union, the failure of give and take at the table in the current negotiations "cannot" be found to require maintenance of the status quo.

#### **4. The Maytag Closing and Attendant Economic Problems**

Maytag Refrigeration Products (formerly Admiral) was by far Galesburg's largest employer, employing over twice as many employees as the second largest employer in Knox County (City Ex. 1A). In October of 2002, Maytag announced that it would be closing the Galesburg plant in late 2004, resulting in the layoff of approximately 1,600 workers (City Ex. 10A). In a town the size of

Galesburg, the announcement sent shock waves throughout the community, the Employer suggests.

The timeline prepared by the Galesburg Register-Mail and presented as City Exhibit 10D is instructive, the City goes on to argue. The timeline shows that, during the 1980s, about 2,900 workers were employed at the then-Admiral plant, which produced an annual payroll of more than \$50 million. In 1988, Maytag announced additional expenditures on the Galesburg plant, bringing to \$50 million the money spent to upgrade the plant. By 1990, the plant employed nearly 3,000 workers with an annual payroll of \$70 million, and the plant had grown to 2.25 million square feet.

In November, 1999, Maytag announced plans to close its injection molded plastics department. Nevertheless, as of April of 2000, employment was still at about 2,450. In April, 2002, Maytag officials said that the Galesburg plant was not "competitively viable" but was attempting to address problems in its new labor contract. In August, 2002, 300 workers were laid off indefinitely, paving the way for the announcement on October 11, 2002 that the plant would be closed altogether by the end of 2004. Then, on September 26, 2003, the first round of layoffs began, resulting in the layoff of approximately 380 workers and eliminating the production of the Galesburg-designed-and-produced side-by-side Maytag refrigerators.

As soon as the plant closing was announced, concern was voiced over the residual impact of the plant closing on other employment in the area and on the local economy generally. As Chicago Tribune

staff writer James Miller wrote on September 1, 2003:

"For decades, growth-minded rural towns have vied to attract manufacturers by offering tax breaks and other incentives. The expansion strategy is based on what economists call the 'multiplier effect': When a new employer comes to town, the influx of new payroll money creates jobs throughout the local economy, as workers begin buying new homes, and other goods and services.

"Now, with manufacturers closing U.S. plants and switching production to cheap-labor sites in Mexico and China, the multiplier is working in reverse. The attribute that has long made manufacturing so attractive to communities -- its ability to spark an outside number of new jobs -- is magnifying the economic disruption caused by manufacturer pullouts." (City Ex. 10C).

Not long after the Maytag closing was announced, the Rural Economic Technical Assistance Center (RETAC) at Western Illinois University produced a study entitled *Maytag Plant Closure: IMPLAN Economic Impact Analysis on Knox County* (City Ex. 13A). The study projected the impact on Knox County using both the 1999 employment level for Maytag (2,450 employees) and the 2002 level (1,600 employees). Based on the 2002 employment level, the total employment loss projected for Knox County was 3,631, while the employment loss based on the 1999 employment level was projected to be 5,617. In either case, the City submits, simple mathematics shows that the multiplier is 2.7 -- that is, for every job lost by virtue of the Maytag closing, the total job loss will be 2.7.

It is the cumulative effect of the City's witnesses' testimony and the data presented that the manufacturing sector in Galesburg has been hard hit since 2000, as the City sees it. As City Ex. 12 shows, for example, the four largest manufacturing employers in Galesburg employed a total of 3,915 workers in 2000. As of the date of the hearing, 1,694 of those employees, or 43% of the 2000

total, had been terminated or laid off. By the time Maytag finishes the layoff of the remaining employees at the plant, the number laid off or terminated will have risen to 3,251 or 83% of the total 2000 employment of these four manufacturers, the City's projections established.

In fact, the situation may be even worse than portrayed in City Ex. 12, the City also reasons. In April, 2004, following the close of the hearing, Butler Manufacturing, the City's second-largest manufacturing employer, was acquired by BlueScope Steel, an Australian company. The day after the acquisition was announced, BlueScope announced that it was closing the Butler plant in Galesburg on the ground that it was too costly to operate. The closing will cost the jobs of another 300 workers (City Supplemental Exhibit A).<sup>1</sup>

In 1999, average unemployment in Galesburg was 4.4%, the record reveals. In 2000, it was 4.7%. In 2001, it was 5.7%. In 2002, average unemployment was 7.8%. In 2003, it was 8.1% with increasing unemployment -- from 7.6% in September to 9.8% in November -- during the last months of the year (City Ex. 11B). In 2002, Knox County was 29th among 102 counties in Illinois; in 2003, it had climbed to 18th, with an annual average of 8.3% (City Ex. 11C). As of November of 2003, Galesburg had the third highest

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<sup>1</sup> This Supplemental Exhibit, consisting of a published report in the Galesburg Register-Mail, is relevant under statutory factor number 7, IPLRA Section 14(h)(7), "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." I accept it as proper evidence under that statutory provision.

unemployment among the agreed upon comparables (City Ex. 11F), behind only Kankakee and Danville, two communities with traditionally high unemployment levels. The City insists this is not a situation "where the statistics lie," I note.

These numbers display the trend, but to the City, what it has to contemplate is plainly that "the worst is yet to come." In a CNN report in January of 2004, CNN predicted that the unemployment rate for the area would hit 20% (City Ex. 101), I am told by Management. Without the Butler closing, one might have questioned this projection; but with the Butler closing, the projection may vary well be accurate or even conservative, I am frankly convinced.

The plant closing situation necessarily impacts on the sources of revenue for the operation of City government, the Employer reasons. Realtors report that the number of listings of homes for sale have gone up, while showings have gone down (City Ex. 13B). The City Assessor is projecting a sharp decline in property values in 2004, by as much as 5%, the evidence of record reveals. In addition, he says that the multiplier will be 1.02 in 2004, even though Galesburg traditionally has received a multiplier of 1.05 every year since 1990 (Id.). This necessarily means either a less-than-traditional increase in property tax dollars or an increase in the tax levy on the remaining property taxpayers to make up the difference, the City concludes.

In addition, Maytag shortly before the hearing in this matter, requested and received a reduction in its property taxes. As a result, Maytag in 2004 paid approximately \$500,000 less in property

taxes, an amount that the City insists would have had to have been made up by other taxpayers in order to generate the same property tax money for the City and the City's schools (Tr. II, p. 387).

Given all these facts and projections, the City avers, a strong presumption of a reduction in tax revenue from property taxes is not illogical. These effects (other than the Maytag property tax decrease) were anticipated in the preparation of the 2004 City budget (City Ex. 15), the City notes. The budget includes no new tax revenues, and anticipates a 2.5% decline in sales and home rule sales taxes (City Ex. 15, p. 3).

According to the budget document, "[a]s the City experienced the drop in revenue sources, discretionary items were cut. As these items were cut, fixed costs such as personnel became a larger percentage of the budget. Contractual services, commodities, capital and other expenditures in the December 31, 2004 budget represent what Administration feels is absolutely necessary to maintain current service and staffing levels except where noted below" (City Ex. 15, p. 12). Indeed, an accompanying chart shows that personnel costs as a percentage of the General Fund have risen from 63.1% in 2001 to 69.8% for the 2004 budget.

The budget document also describes the Early Retirement Incentive (5 & 5) Program initiated in February, 2003 in accordance with Illinois Municipal Retirement Fund (IMRF) guidelines (City Ex. 15, pp. 14-18; City Ex. 17A, 17B). The net savings resulting from the implementation of this program, by virtue of not replacing retired personnel as a result of combining or eliminating their

functions, or replacing them with lower-cost personnel, is estimated at \$487,000 (City Ex. 15, p. 18).

But the options short of layoffs or interim funding of deficits with fund balances have almost been exhausted, the City concludes. As City Manager Gary Goddard testified:

"So we've hit just about all of those areas that we could think of as far as reducing expenditures and at least trying to maintain falling revenues." (Tr. II, at p. 346).

The Union's data and witnesses painted a drastically different picture from the data and projections just discussed. To the Union, simply put, the City of Galesburg is in "very good financial condition" (Un. Ex. 23; Tr. II, p. 367). The Union stressed that this City presented a balanced 2004 operating budget with no new tax revenues (City Ex. 15). Despite the good condition of the City's finances, the City attempted to present a "gloom and doom" picture for this Arbitrator based upon the fact that Maytag, the City's largest employer, is closing its doors by the end of 2004, the Union notes. The City argues that its desire to depart from its more than 10-year historical practice of offering a wage increase between 2.75% and 3.5% is somehow justified by its anticipation that the Maytag closing will decrease revenues and increase unemployment. However, the impact of the Maytag closing is purely speculative on the City's part, the Union argues.

Specifically, the Union contends that the City presented no evidence that all or even a majority of Maytag employees subject to layoff reside within the City itself. Further, the City failed to

demonstrate that any decrease in revenue would not be offset by the generation of new business revenue, it opines.

Second, the Union points out that the City has suffered through plant closings and layoffs in the past. Yet the City has maintained its financial health and provided wage increases for its employees, the Union observes. In 1993, for example, when the City's unemployment rate was at or about the present level, depending upon which City exhibit the Arbitrator cares to follow. the City agreed to a 3.5% increase for all employees, the Union contends (City Ex. 1A, 11A, 15 & 7). In other words, what the past indicates is that this City and its citizens have not only shown more resiliency than Management would like me to know about, the Union emphasizes, but that not all adverse economic circumstances have prevented the City from giving its employees needed pay raises.

The only area in which the City of Galesburg has demonstrated fiscal irresponsibility is in the administration of its self-funded health insurance program, the Union goes on to say. City employees suffered a drastic increase in health insurance premiums (\$71.00 increase for individual coverage and \$210.00 increase for dependent coverage) and deductibles (\$2,000.00 total for individual and \$4,000.00 total for family -- in network) in 2003, the Union also emphasizes.

During his introduction of exhibits, the City's attorney testified that the increase was necessitated because the City had not increased premiums over prior years, the Union stresses (Tr.

pp. 201-202). However, Human Resource Coordinator/Risk Manager John Guiste testified that the increase was required because of "two catastrophic illnesses that hit the plan and just totally wiped out that reserve [\$625,000.00] in two months. Employer witness Guiste stated he believed the reserve was wiped out in the year 2000 (Tr. p. 289). No doubt Management would like to shift the blame to the insurance industry, the Union opines.

In the interest arbitration hearing between these same parties in 1997, on the other hand, Arbitrator Martin Malin found the following:

"The City is self-insured. Human Resource Coordinator John Guiste testified that prior to 1996, the City purchased stop loss coverage limited to individual claims above \$100,000. The City has lowered its individual stop loss coverage to \$75,000 and **has also purchased aggregate stop loss coverage.** Mr. Guiste testified that the **City believes that these actions will reverse the plan's financial difficulties and that the City will not have to raise dependent premiums for two or three years.** (Tr. I, pp. 93-95)." PSEO and City of Galesburg, ISLRB Case No. S-MA-96-172 (Malin, 1997). (Emphasis Added). (City Ex. 9A).

The above finding was pivotal in Arbitrator Malin's Award giving the City its requested wage offer, but the Union in turn obtained its requested health insurance offer. In the instant hearing, according to Employer witness Guiste, the City did lower the individual stop loss coverage to \$75,000, but has never purchased any **aggregate stop loss** (Tr. II, pp. 320-324). This observation suggests that the answer to at least one of the City's problems is not Maytag's closing, but an error in economic judgment, the Union thus suggests.



It is no wonder that the reserve could be wiped out in such a short period of time, the Union continues. With no aggregate stop loss and more than 230 employees and dependents, the reserve can be wiped out in an instant, it submits. Still, the City expects its employees to bear the burden of the loss through increasing premiums and deductibles rather than doing the fiscally responsible thing -- purchasing aggregate stop loss protection, the Union further argues. The average salary for a Galesburg officer is \$34,426.00 (City Ex. 32A). Although the City's proposed salary increase would cover the increase in premiums of 2003, the increase comes nowhere near meeting the maximum yearly out-of-pocket expenses following the 2003 deductible increase (City Ex. 8A).

Turning to the facts favoring a wage increase, the Union says that productivity standards are frequently advanced for consideration by arbitrators in wage disputes. Elkouri & Elkouri, How Arbitration Works, 1133 (5th ed., 1997). The total crime index for Galesburg ranks fifth of eleven in comparison to the stipulated comparable communities (Un. Ex. 7). Yet, the City expends less on public safety than any other comparable, the Union argues (Un. Ex. 6). The Union therefore points out, as to "the interests and welfare of the public" statutory factor, that "the Galesburg police force is required to be as productive, if not more productive," than comparable community police forces while being paid less. Such productivity and dedication enhances the interest and welfare of the public by making Galesburg a safer community in which to live, the Union concludes.

No municipality, without proving inability to pay, has ever won a total wage freeze in interest arbitration, the Union strongly argues. While presenting no evidence other than mere speculation, this City is asking me to accept its offer of 4% for the contract's first year (which has already expired) and *nothing thereafter*. I should not be lured into breaking new ground based upon uncertainty and speculation as to whether or not the City will suffer negative cash flow problems in the future, the Union therefore concludes.

It is also important to this Union that, throughout the prior contract term, the City hovered at the bottom of the comparable list for wages. However, the prior contract's 3.5% yearly wage increase prevented the department's officers from falling any further behind the comparable communities, I note (Tr. I, pp. 90-91). The average wage increase received by the eight settled comparable police contracts for the year 2003 was 4.25%, not including the additional \$666.66 received by Kankakee, it also observes (Un. Ex. 8). For 2004, the average wage increase received by the five settled comparable police contracts was 3.526%. The Union's final offer of a 3.5% increase for 2003-2005 will keep the department on pace with those comparables having settled contracts, the Union also suggests.

Regardless of whether this Arbitrator accepts the City's wage offer or the Union's wage offer, the City's position will remain essentially the same (at or near the bottom) within the comparable rankings, the Union emphasizes. However, it is important to note how much the gap will increase in 2004 if the City's offer is

awarded instead of the Union's. In 2001, the gap between the City and its next highest comparable ranged between a few dollars and \$1,500.00 for all years of service except for four and seven (Un. Ex. 9A). The same trend continued in 2002 due to the department's 3.5% increase (Un. Ex. 9B).

Under both offers for the year 2004, the City will rank last among the comparables for all officers with two or more years of experience, the Union also points out. However, under the Union's proposal for officers with two or more years of experience, the minimum gap is \$206.36 and the maximum is \$4,505.59, with an average gap of \$1,320.25. Under the City's proposal, the minimum gap is \$1,551.27 and the maximum is \$5,702.97, with an average gap of \$2,675.07 (Un. Ex. 11).

Should this Arbitrator accept the City's wage proposal, the Union states, the department's wages will fall behind its nearest comparable, on average, more than twice than it would with the Union's proposal. Additionally, accepting the City's proposal will create an enormous wage disparity that will (1) change the City's relationship to the historic comparable communities; (2) place the Union in an untenable "catch up" position; and (3) create instability in the bargaining relationship. These observations suggest to the Union that external comparability demands the acceptance of its final offer; in other words, the answer to the City's problems is not to injure the interests of its loyal sworn officers.

In contrast to the wage ranking of its police employees, the City ranks in the mid-range for equalized assessed value of property (EAV) and third in total EXT with the third lowest ratio of EAV per \$1.00 EXT, the Union also says. This demonstrates a much higher cost of property ownership for the City's officers than for officers from a majority of comparable communities. Requiring "in-City" residency while paying low wages creates a double burden for those Union members desiring to own property. Those facts should lead to the conclusion that the Union's residency proposal is appropriate, I am told.

The Union recognizes that the City has argued that its wages compare more favorably to the comparable communities, when education incentives are taken into account (City Exs. 6-31). However, attempting this sort of comparison is like trying to compare apples and oranges, the Union insists. Of the comparables having education incentives, each is different (some better, some worse) from the incentive paid in this City, the Union suggests. Of the four comparables with no education incentive, two pay a higher base salary than the City, but two pay a lower base salary.

Additionally, in the City's exhibits for the year 2004 (City Exs. 27, 29 & 31), the City ranks several comparables below itself as "UNKNOWN" when their 2003 salaries were already above this City, the Union submits. Even with no increase in the 2004 salaries for those "UNKNOWN" comparables, the wages for the "UNKNOWNNS" will still be ranked above this City under either proposal, the Union concludes. Furthermore, in order to consider a total compensation

package, I would also need to consider insurance costs and benefits. The testimony was undisputed that this City has one of the most expensive insurance packages among the comparables (Tr. II, pp. 230-232), the Union then notes.

Finally, says this Union, the productivity level of the City's police department is in the upper half among its comparables (Un. Ex. 7). Productivity standards are frequently advanced for consideration by arbitrators in wage disputes, as noted above. Although the City's officers are paid less than the vast majority of their comparables, they continue to serve above and beyond the call of duty, the Union argues. The City benefits from the officers' dedication and productivity and should compensate the officers to the extent that they do not move farther behind their historic comparables, it concludes.

After reviewing the evidence, the City's position on this issue, while perhaps not unprecedented, is an unusual one. It concedes that the Union offer should be adopted, I note. The reason for this, says the City, comes not from the numbers, which on balance probably favor maintenance of the status quo. Only four of the comparable cities have a standby provision. Of those four, three (Kankakee, Pekin and Rock Island) pay standby pay at rates higher than the current rate paid by the City, but lower than the proposed Union rate while only one (Urbana) pays for standby at a higher rate than the Union has proposed (City Ex. 33A). Within the City, two units have standby pay -- the police and the AFSCME unit.

Standby pay for the AFSCME unit is \$75.00 per week, while police

officers (detectives) on standby receive \$70.00 per week (City Ex. 33B).

What tips the balance, in the mind of the City, is the testimony of Officers Kramer and Schwartz as to the restrictions on mobility and the duration of the restrictions that accompany standby status, it states. Having said that, the City fully realizes that the restrictions are what they are because certain now-retired detectives "messed it all up" (Tr. I, p. 153) for their successors by abusing the privilege that detectives formerly had to work out trades to enable them to attend special events outside the geographic area necessarily imposed by the 20-minute response time requirement (Tr. I, pp. 151, 153).<sup>2</sup> Nevertheless, the nature and duration of the standby restrictions being what they are, the City believes that the Union has justified its proposal to double standby pay from \$70.00 to \$140.00 per week.

One area of possible confusion needs to be clarified, although this may be more a matter for the parties in implementing the Award than for the Arbitrator in rendering it, the City notes. Present language (Jt. Ex. 1, Sect. 7.5) limits standby pay to detectives. The Union's standby proposal (Jt. Ex. 3) does not limit standby pay to detectives but extends it to any employee required to remain within a specific geographic area, respond to pager/cell phone/home

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<sup>2</sup> The City appreciates the candor of Detective Schwartz in admitting that restrictions on trading time are due to the actions of the detectives themselves, rather than to some fault on the part of police administration. The City also appreciates Detective Schwartz's testimony in explaining the difference between officers' on-call status for the 4th of July and the regular standby rotation

phone calls and be "fit for duty". The only types of standby or on-call status required of the City's officers that were the subjects of testimony were the regular rotation of standby on a weekly basis for detectives and the on-call status of police officers for the 4th of July.

Based upon the testimony of Detective Schwartz on cross-examination, it is clear that the only current practice to which the new language would apply is the regular rotational standby for detectives. According to Detective Schwartz, an officer placed on call for the 4th of July must be fit for duty at his designated response time (which is, of course, true for any officer who is reporting for duty at any time) but are not subjected to any geographic restriction prior to that time (Tr. I, pp. 154, 155). Because it is not the 7-day, 24-hour per day restriction as applies to officers on rotational detective standby, it seems quite evident that, based on current practice, officers placed on the 4th of July on-call status would not be eligible for standby pay under the Union's proposed new language, any more than they are eligible for standby pay under the present language.

As the City understands it, therefore, the change effected by the Union's proposed new language, other than the change in the dollar amount of standby pay, would be the potential for officers other than detectives to be eligible for standby pay should the Department ever decide to place officers other than detectives on standby status. Until or unless that happens, however, it is the

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for detectives.



City's expectation that standby pay would continue to be paid to detectives on rotational standby only, it concludes.

Based on these concessions in its brief, the Arbitrator will adopt the Union's proposal, as will be set forth below. Any issues as to its reach and application, as raised by the City, should be resolved by face-to-face bargaining, I hold.

It was upon these facts and arguments that this case came before me for resolution.

### III. PARTIES' FINAL OFFERS

#### Wages:

##### **Union Offer**

Effective 04/01/03 - 3.5% general wage increase  
Effective 04/01/04 - 3.5% general wage increase  
Effective 04/01/05 - 3.5% general wage increase  
(Jt. Ex. 3).

##### **City Offer**

Effective 04/01/03 - 4.0% general wage increase  
Effective 01/01/04 - 0.0% general wage increase  
Effective 01/01/05 - Reopener  
(Jt. Ex. 4).

#### Standby Pay:

##### **Union Offer**

Employees required to remain within a specific geographic area to respond for pager/cell phone/home phone and be "Fit for Duty" shall be paid \$20 per day for each day so assigned.  
(Jt. Ex. 3).

##### **City Offer**

Adopt the Union's final offer  
(See discussion and notes above)

#### Residency:

##### **Union Offer**

Employees covered by this agreement shall reside within the State of Illinois.  
(Jt. Ex 3).

##### **City Offer**

Existing contract language.  
(Jt. Ex. 4).

#### IV. CRITERIA FOR REVIEWING FINAL OFFERS AND BURDEN OF PROOF

The statute requires the Arbitrator to resolve economic and non-economic issues as follows:

As to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the 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 prescribed in subsection (h). Section 14(g) IPLRA, 5 ILCS 315/14(g).

As statutory criteria for the resolution of issues, Section 14(h) provides:

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 the 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:

- (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 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.

The parties have agreed that the issues of wages and stand-by pay are economic issues and residency is a non-economic issue. Under this statutory scheme, I must select the most reasonable of the parties' final offers, based upon the statutory criteria, on wages and stand-by pay, but I may fashion my own award as to residency, as already noted above.

**V. STIPULATED COMPARABLE COMMUNITIES**

The parties agreed and stipulated to the following historical comparable communities:

Alton	Normal
Danville	Pekin
DeKalb	Quincy
Granite City	Rock Island
Kankakee	Urbana

## VI. DISCUSSION AND FINDINGS

### A. The Wage Issue

#### 1. Background

This wage issue raises several questions, including the proper weight to be given internal comparability evidence; whether or not the contract structure as proposed by the Union is warranted; whether the economic climate for the City and its residents has relevance when a current inability to pay has not been directly raised by the City; whether the "interests and welfare" of the public is a separate and relevant consideration, apart from the inability to pay factor of the third statutory criteria set forth by the Act, as quoted above; whether these "interests and welfare" standards, if relevant, in fact strongly favor the City, as it insists; and whether or not the more usual standards of external comparability and the cost-of-living evidence favor the Union sufficiently to trump the other factors.

The Union believes that internal comparability evidence is normally given little weight by interest arbitrators or at least that wage parity is not to be given conclusive effect in evaluating differing and competing wage proposals. It also argues that its proposal for a three year contract term is virtually the industry standard and that I should affirm its contention that the fact that this Employer unilaterally changed its fiscal year does not preclude the Union's challenge to that change having controlling effect on the timing or direction of the contract under consideration here. It also contends that this City's cries of

future economic woe are speculative, at best, and that, at any rate, the better position is that criterion or standard 3 under the Act should be applied in a manner consistent with the "sword and shield" analogy noted above.

Alternatively, it asks that I affirm its position that the City has not conclusively demonstrated anything other than the fact that the City is currently in a sound financial position and has the ability to pay the Union's proposed wage increases. The Union concludes that both external comparability and the relevant cost-of-living data fully support its wage offer as being the more appropriate and reasonable "final wage offer."

The Employer disagrees with each of these propositions. It argues that internal comparability and the proven practice of parity in wage increases among the Union-represented and non-Union-represented employees is properly to be viewed as a critical statutory standard and that it has overwhelmingly proved parity has historically been given controlling weight by both the parties and the interest arbitrators faced with this issue in this jurisdiction and throughout the State of Illinois.

The Employer also suggests that the economic climate caused the other employees to accept the offer for wages this Union totally rejects. The Employer also asserts that it has shown its wage offer must be viewed in light of the term of agreement, since wages and term of agreement are in this case a single issue. The difference in fiscal year and "contract year" proposed by the Union is unreasonable on its face, this Employer submits. It also says

the external comparability and cost-of-living data proffered by the Union are, at best, inconclusive, I note.

Finally, this City urges that the real concerns over the economic future for the City, and the closely related issue of the "interests and welfare" of the public, under those unique but potentially horrific facts, demand that this Arbitrator break new ground and find the wage offer of the City more reasonable and appropriate than the Union's "kneejerk" demand for the "usual" three year, three and one-half percent per year "kicker". In this case, says the Employer, the statutory facts show that internal comparability and the interests and welfare of the public, plus the financial ability of this unit of government to meet the costs of the Union's pay demands in this economic context dictate that the City's single offer on wages, contract year, and contract structure must be adopted.

## **2. Internal Comparability**

As noted in the Background section of this Discussion, the City argues that the internal comparability evidence strongly favors the City's wage offer. It is the position of the City that the overwhelming evidence is that the wage settlements for all Union groups have been identical or virtually identical every year since 1985, the year before the Collective Bargaining Act was extended to police and firefighters. In addition, this uniformity has been established by free collective bargaining in every year except 1996, when Arbitrator Malin determined the amount of the pay increase for police officers by awarding the City's offer, I note.

Even in the Doering arbitration case (City Ex. 9B), the across-the-board percentage increases, in line with increases received by the other Union employees over the two year period covered by the agreement, were decided by the parties prior to arbitration, leaving it to the Panel to decide the other issues in dispute. Thus, over an 18 year period, the City and PSEO have freely agreed to wage increases in line with those granted to other Union (and non-Union) employees in every year except one. And that pattern of agreement includes the last five years covered by Joint Exhibit 1, I also find.

Additionally, as already noted, arbitrators are extraordinarily reluctant to disturb such a pattern where it is found to exist. In the Arlington Heights case, cited above, Arbitrator Briggs stated, at pages 21 and 22:

"The Arbitrator is convinced from the record that the Village's salary offer is the more appropriate, for several reasons. First, the salary increases negotiated by the parties themselves for 1988-89 and 1989-90 were arrived at through free collective bargaining. Obviously, then, they reflect increase that both parties deemed appropriate. Those increases are exactly the same as the ones negotiated between the Village and the FOP for Arlington Heights Police Officers, suggesting that the Union in this case felt comfortable with the wage levels of firefighters vis-a-vis those of police officers. Nothing in the record has convinced me of the need to alter that longstanding salary relationship. Indeed, granting the firefighters percentage increases higher than those negotiated by the FOP would quite likely instill in the latter the motivation to redress the balance during future negotiations. This produces a whipsaw effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability of the bargaining process."

(Footnote omitted). Accord, Village of Schaumburg and Schaumburg Lodge No. 71, Illinois FOP Labor Council, Case No. S-MA-93-155 (Fleischli, 1994). See also, Village of LaGrange and Local 1382, AFSCME (Fleischli, 1987) (Village's wage offer selected on internal comparability grounds even though both external comparability and cost-of-living considerations favored the Union proposal); City of Granite City and Granite City Firefighters Association, Local 253, IAFF, Case No. S-MA-93-196 (Edelman, 1994) (identical increases for police and firefighters every year from 1985 through 1992-93 evidenced "clear pattern bargaining").

The same concern is presented here. Given the long history of parity, the demands of the IAFF and AFSCME units in the reopener bargaining in 2005 are entirely predictable. Since the PSEO's offer over two years is three percent more than each of those units received, these two Unions are going to demand three percent in "catch-up" money before even talking about new money increases. Then, also, any new money increases granted to the other Unions will become part of a "catch-up" demand on the part of the PSEO when its contract expires in 2006, I also observe, as the Employer has suggested. As Arbitrator Briggs noted, "[s]uch circumstances do not enhance the stability of the bargaining process."

Stability is particularly important here, given the City's extremely uncertain economic environment, I am also persuaded. The facts as analyzed under this and other statutory criteria in this case do not warrant the extreme departure from the settlement pattern that the Union urges here, I thus rule.

**3. The Contract Structure Proposed by the Union is Also Unwarranted**

In this case, wages and term of agreement are a single issue.<sup>3</sup>

Therefore, if the Union's wage offer is selected, so, too, must its term of agreement be selected. The Union proposes increases of 3.5% per year for three years without adopting, as have the other two Unions, the City's fiscal year as its contract year. This contract structure is objectionable for a number of reasons.

First, a contract year different from the municipal fiscal year is not standard. On cross-examination, Union witness Poertner could not think of a contract in which the contract year was not also the fiscal year. He further admitted that all of the contracts that he serviced in comparable jurisdictions had contract years that were coextensive with fiscal years (Tr. I, p. 85).

Second, the standard practice of having a contract year that is tied to the municipal fiscal year derives much of its legitimacy, at least for police and firefighter contracts, from the statute. Under Section 14 of IPLRA, arbitration procedures must be initiated no later than 30 days prior to the commencement of a new fiscal year in order to preserve the arbitration panel's authority

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<sup>3</sup> In City of Crest Hill and MAP Chapter 15, Case No. S-MA-97-115 (1998), at p. 17, this Arbitrator said that "there must be some evidence of an agreement to split the wage issues to change what I have already held is the proper and required rule 'not to split the baby' over wages, but to choose from the parties' last, best offers... Because there is no evidence of mutual agreement, I do not believe that it would be appropriate to split the wage issues into separate economic issues, as MAP demands." Here, there is likewise no evidence of *mutual* agreement that would allow the Arbitrator to split the wage issue so as to rule on wages for each year separately or wages and contract term and structure

to award retroactive increases. IPLRA, subsections 14(a) and (j).

If the Union's proposal were adopted, that would mean that arbitration procedures would have to be initiated by December 1st of a contract year that would not expire until March 31.

Since Article XXV of the Collective Bargaining Agreement provides that renewal negotiations must be commenced by written notice at least 90 days prior to contract expiration (or approximately January 1st), the effect of adopting the Union's proposal would be to require the Union, if it desired to insure that an arbitration panel had all necessary authority, to request mediation prior to the date that it was contractually obligated to initiate negotiations. Since the purpose of arbitration is to resolve impasses in collective bargaining, it would stretch what is contemplated under the statutory procedure to approve a process in which a party literally is forced by the calendar to declare impasse before being required to initiate bargaining, I specifically conclude.

Third, adoption of the Union's proposal would interfere with the collective bargaining process in another way. Among the items agreed upon by the parties prior to arbitration was a reopener on insurance effective January 1, 2005. As the record indicates, health insurance costs are a big problem for both the City and its employees. In the proper circumstances, collective bargaining can be a flexible process whereby problems of this kind can be addressed and resolved, as the Employer suggests. But like many

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separately.

collective bargaining issues, the insurance issue requires give and take. Because insurance is an economic benefit, the give and take of collective bargaining often requires the ability to have proposals relate to other economic issues, primarily wages. Accordingly, the January 1 reopeners for the IAFF and AFSCME involve at least insurance and wages and, in the case of the IAFF, hours of work and overtime, as well. If this Union's proposal were adopted, the City and the PSEO would have reopener negotiations on insurance only, with wages having been set not only for 2004-2005, but for 2005-2006. The limitation of the reopener negotiations to insurance thus deprives the parties of much of the flexibility needed to address the issue properly, I hold.

**4. The Wage Structure Proposed by the City Makes Sense In Light of Its Purposes and the Economic Climate**

The City argues that its 4-0 reopener proposal had its genesis in the negotiations with the IAFF, and the Union did not contradict this claim. The City had proposed increases of 2% effective April 1, 2003 and 2% for fiscal 2004, effective January 1, 2004 to the IAFF, it asserts. The Firefighters' Union, however, wanted enough of a wage increase to offset the substantial increase in health care premium contributions that were to be required of employees electing health insurance coverage effective April 1, 2003. As a result, the City agreed to "frontload" the contract, giving the IAFF unit a 4% increase for 2003 and granting no additional increase for 2004 (Tr. II, pp. 202-203). The parties then agreed on a reopener for wages, insurance, and hours of work for the

fiscal year beginning January 1, 2005.

The wage structure thus agreed to by the IAFF and then AFSCME guaranteed that the employees in those units would receive net wage increases for 2003. It also had the additional result of signaling to the community that the City Administration and the City's Unions were aware of the impending economic crisis and were prepared to sacrifice along with other City residents, the Employer claims. Because the full impact of the crisis had not hit, a reopener was set for a time just after the last layoffs were scheduled to be made at Maytag, with the expectation that the parties would better be able to deal with the issue of wage increases, if any, for 2005 with the better economic information that would be available at that time.

The zero wage increase for 2004 is, of course, not easy for any Union to take. But one must remember that the zero is for nine months, because the 4% increase for 2003 necessarily had a 12 month effect. By the time this arbitration award is issued, the parties will already be in negotiations again, for wages and insurance if the City proposal is accepted, I note. There will then be an opportunity for the parties to address at the bargaining table any perceived inequities that may have come about because of the 2003-2004 wage determinations, I also reason.

**5. The Interests and Welfare of the Public Favor the City's Offer**

As noted above, "the interests and welfare of the public and the financial ability of the unit of government to meet those costs" is a single statutory criterion. The facts of this case

lend themselves to unitary consideration of this factor, I conclude, in line with the City's reasoning on this issue.

The City has had lead time in which to prepare for the impending crisis caused by the Maytag shutdown. The Administration and the City Council have done much in terms of cutting costs, short of layoffs, in order to prepare for the crisis, I note. Both the economic welfare of the City government and the interests and welfare of its citizens are advanced by insuring not only that the PSEO contract is reasonable in cost and duration, but that it fits within the model for contracts set by the IAFF and AFSCME contracts. The testimony of City Council members Wayne Allen, Bill Kendall, and Mayor Bob Sheehan seem to reasonably reflect the views of their constituents, the citizens and taxpayers of the City of Galesburg, I also conclude. As Bill Kendall said:

"[w]e've got a lot of people that aren't going to have jobs that don't feel that the police officers should get a 3.5% -- well, actually any increase from what they're telling me. They're not getting increases, and they don't understand why the police think they should, either." (Tr. II, p. 331).

Nevertheless, Kendall said:

"[w]e have the other two unions realize that we're going into some tough economic times, [and they have] made their proposals accordingly."

It is likely not to be just the workers being laid off from Maytag who are affected, I realize. The residual negative effects of the Maytag closing must have an effect on the City and its surrounding area, I am persuaded. Effects include, as Councilman Allen testified, layoffs among suppliers of the Maytag plant and

other major manufacturers in the City, such as Gates Rubber, with downturns in economic activity for virtually all businesses. Mayor Bob Sheehan, a small business manager himself, said that he and his business had to "just continue to be as good as we can and try to be as lean as we can and try to weather the storm. It's going to be worse before it gets better" (Tr. II, p. 391). He also said that the people of Galesburg that he talks to are very aware of the negotiations process and the issues involved, and that they have strong opinions. The thrust of the evidence in this regard is that the members of the public who have spoken to their elected officials have spoken overwhelmingly against the Union wage proposal.

While that fact is not controlling, by any means, in this case I would have to have blindness in not to understand the practical significance of the very real dilemma presented here. My conclusion, accordingly, is that the statutory criterion requiring me to consider the interests and welfare of the public, and not just pure ability to pay, strongly favors the City's "last, best offer" on wages, and I so rule.

Perhaps the major negative feature of the Union's proposal, from the standpoint of this statutory criterion, I further note, is the length of the guaranteed wage-increase contract. The Union proposes three years from April 1, 2003, with 3.5% increases each year. The proposal calls for a 3.5% increase for police officers for the proposed 2005-2006 contract year, thus locking in wages for a period of 15 months after the City proposes to take stock of the

economic picture and return to the bargaining table with all of its unions. Whether viewed from the subjective perspective of the taxpayers and citizens of the City, or from the objective perspective of the need to plan for worsening economic developments of unknown dimension and duration, the interests and welfare of the public and the financial ability of the unit of government to meet those costs are not well served by the Union's proposal, I find.

One important caveat should be noted. Standard 3 represents a criterion that is rarely applicable in the sense presented here, and thankfully so. The impact of this ruling, from the standpoint of precedent, might be overstated or misconstrued. This holding is very "fact specific", narrow and dictated by the extreme nature of the proven facts. The point is it should not be generalized to say I have granted an "out" to all governmental entities covered by the Act to divorce ability to pay from the interests and welfare of the public nor have I rejected completely the "sword and shield" analogy. I have not. The facts of this case are truly special and compelling, I find, and my rulings on this point must be calibrated and assessed with that in mind, I frankly state.

**6. External Comparability and Cost-of-Living Evidence are Inconclusive**

In City of DeKalb and DeKalb Professional Firefighters Association, Local 1236, Case No. S-MA-87-26 (1988), p. 26, this Arbitrator stated that "[i]t is not the responsibility of the arbitration panel to correct previously negotiated wage inequities, if any." That principle applies here, for as the wage comparison

exhibits prepared by both the City and the Union show, Galesburg ranks in the lower half of the wage rankings for the agreed comparison cities. But, as the Malin Award reflects (City Ex. 9A, pp. 5-6), this was true in 1995-96 and remained true under either offer, regardless of length of service, for 1996-97.

After the 1996-97 year, the City and the PSEO negotiated a five year agreement providing for wage increases of 3.5% per year, which Union representative Poertner said were "more than sufficient to keep pace with the cost-of-living and also assist in keeping pace with our external comparables" (Tr. I, p. 90). In retrospect, Poertner said, the Union neither gained nor lost any ground with respect to the comparables. Id. Since the same will be true regardless of which offer is selected in this proceeding, it cannot be said with confidence that external comparability favors either offer. Rather, any apparent advantage that the Union may achieve because of its 2004 offer is more than offset by the advantages of the City offer cited above, I hold.

Not the least of these advantages is the opportunity afforded to the parties to address wage sufficiency and wage equity concerns at the bargaining table. As Arbitrator Robert Perkovich said in City of North Chicago and Illinois FOP Labor Council, Case No. S-MA-96-62 (1997), at p. 11, "I believe that because the role of the interest arbitrator is to replicate the agreement the parties would have agreed to had they not utilized arbitration, any continuing march toward equality or comparability should be undertaken through bilateral negotiations."

The cost-of-living factor also does not favor either party. As City Exhibit 14 shows, the cost-of-living has increased at about a rate of 2% per year for the period since the expiration of the last collective bargaining agreement. The City's offer just about matches that rate over a 21 month span, while the Union's offer exceeds it by about 3% if one assumes that the same rate will be carried out for the remaining term of the second year of the Union's proposed contract year. Since exceeding the cost-of-living does not necessarily favor an offer, I cannot say that the Union's offer is superior with respect to this statutory factor.

Similarly, since I do not know what wage increase, if any, collective bargaining would produce for the first three months of 2005 under the City's offer, I cannot say with certainty how much, if any, the Union's offer actually does exceed the City's for the period April 1, 2003 through March 31, 2005. All that can be said with any confidence at all is that the City's offer does not necessarily result in the employees in this unit losing on the cost-of-living increases, I believe the proofs indicate.

**7. Conclusion: Wages**

An analysis of the statutory factors shows that internal comparability and the interests and welfare of the public and the financial ability of the unit of government to meet those costs strongly favor the City's proposal. In addition, practical considerations often articulated by arbitrators relative to encouraging and strengthening the bargaining process and to the objective of replicating the outcome that the parties would have

achieved if they had not resorted to arbitration weigh heavily in favor of the City's proposal. These considerations are not at all offset by other statutory factors or principles of arbitration. Accordingly, the City's offer on wages, contract year, and contract structure is hereby adopted.

**B. Residency**

**1. Background**

The sole non-economic issue before this Arbitrator is that of residency. The City's final offer is to maintain the city-limits residency requirements contained within Article XX of the Collective Bargaining Agreement (Jt. Exs. 1 & 4). The Union's final offer is residence within the State of Illinois. Since the issue is non-economic, as I have already explained, this Arbitrator may accept either party's offer as more reasonable or may fashion my own award based upon the evidence and exhibits submitted.

**a. Burden of Proof**

The City has attempted to convince me that the burden of proof in this case rests with the Union, due to the fact that the Union is trying to change the status quo of the residency requirement. The well-accepted standard in interest arbitration for changes in the status quo is to place the onus on the party seeking the change. In an early Illinois interest arbitration case, Arbitrator Harvey A. Nathan characterized the burden on the parties seeking the change as having to demonstrate, at a minimum:

- (1) That the old system or procedure has not worked as anticipated when originally agreed to, or;

- (2) that the existing system or procedure has created operational hardship for the employer (or equitable or due process problems for the union); and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address the problem. Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, pg. 52 (Arb. Nathan - 1988).

The same standard does not apply, however, to the instant case, I am persuaded. This is so because this is the first time the issue has been bargained over in the sense that in the predecessor contract, the parties "agreed to disagree". As the parties recognize, in 1999, I ruled that the status quo change factors do not apply to a residency question arising for the first time in negotiations after the Illinois General Assembly changed the main public sector bargaining law. Village of South Holland, Illinois, ISLRB Case no. S-MA-97-150, p. 57 (1999). The application of the Will County status quo rule, enunciated by Arbitrator Nathan, was limited in South Holland, based on my acceptance of that union's argument that the residency proposal "should be considered as if it had been presented as an issue for an initial collective bargaining contract."

In South Holland, I note that the union argued that the August 1997 amendment provided the first real opportunity for residency issues to be presented in negotiations. In that amendment, interest arbitrators under Section 14 of the Act were granted the authority to consider residency requirements in municipalities with populations under 1,000,000 persons. In South Holland, I found

that since this was the first bargaining between the parties since the change in the statute, the residency proposals should be treated as if they were made "in a first contract."

In the instant case, a residency provision similar to the present one has been contained in the parties' collective bargaining agreement since the 1986-1989 contract term (City Ex. 36). The earliest agreement between the parties on residency was a Memorandum of Agreement made by the parties for March 31, 1982 to March 31, 1983 (City Ex. 35). The predecessor collective bargaining agreement was entered into almost immediately after or contemporaneous with the change in the Act making residency a mandatory topic of bargaining subject to arbitration.

Since the parties were unable to resolve the residency issue for the 1998-2003 collective bargaining agreement, they agreed that the issue would remain open for negotiation during its term but that neither side could force this issue to interest arbitration until a new contract was negotiated (Jt. Ex. 1, Tr. I, p. 12; Tr. II, p. 361). Consequently, this is the first negotiating period within which the Union has had the opportunity to bring the residency issue to arbitration if negotiated to impasse, I specifically hold.

This Arbitrator recognized in South Holland that the "traditional way of conceptualizing interest arbitration is that parties should not be able to attain in interest arbitration that which they could not get in traditional collective bargaining

situations," and that "[t]here should not be any substantial 'free breakthroughs' that would not be possibly negotiable by the parties across-the-table...." Id. at pp. 41-42. I found, however, that South Holland was not a case where "'breakthrough' analysis controls the result, or where the failure of give and take at the table can be found to require maintenance of the status quo." Id. at p. 47.

The facts presented to this Arbitrator in South Holland were "simply unclear" about whether the pre-1998 residency changes in the collective bargaining agreement were made at arm's length and as tradeoffs between the parties or whether they occurred at the "largesse of Management." In any event, I determined that, due to the amendments to IPLRA in 1998, the residency proposals in South Holland should be treated as if the parties were making a new contract. Id. at pp. 46-47. This Arbitrator also held that there was "substantial inconsistency" between the Village reliance on the general principle that the Union offered no quid pro quo during negotiations and the Village negotiator's testimony at hearing that the residency rule was not "capable of alteration through the give and take of negotiations." Id. at pp. 55-56.

As in South Holland, there has been no clear evidence presented to this Arbitrator that any of the pre-1998 residency clauses in the Public Safety Employees' Organization collective bargaining agreements were made at arm's length or as a result of any tradeoffs between the parties. The residency clauses certainly could not have been changed in arbitration before the amendment to

the IPLRA. Before and after the IPLRA amendment, the Union made several efforts to negotiate expanded residency -- in negotiations for the 1998-2003 Collective Bargaining Agreement, during the pendency of the 1998-2003 Collective Bargaining Agreement and again in the current negotiations. That did not make the residency rule in place represent the "status quo," I hold. This is so, I reiterate, because Joint Exhibit 1, on its face, and Union witness Poertner's testimony, make it very plain that the parties in the past "agreed to disagree," I rule.

It also is clear from the testimony that the City would not accept any offer from the Union in exchange for expanded residency in the current bargaining, I hold. Alderman William Kendall was aware that the Union offered to accept a lower wage increase in exchange for expanded residency. When asked, "Would there be any economic proposal in your opinion that the police union could have made, for example to accept a wage freeze, for expanded residency that the Council would have looked favorably upon?", the Alderman responded, "I can't speak for the rest of the Council. I can only speak for myself, no." (Tr. II, pp. 338). Alderman Wayne Allen testified similarly (Tr. I, pp. 172-173). The mayor testified that he did not believe that the Council would have voted favorably for a proposal for lower wages in exchange for expanded residency (Tr. II, pp. 397-398). And the City Manager, Gary Goddard, testified as follows:

Q. You're aware that City Council members have testified in this proceeding?

A. Yes, I am.

Q. Both of them testified that essentially no price was enough for --

A. Right.

Q. -- them to agree to expanded residency?

A. I believe that's the case.

Q. And do you believe that's a consensus of the Council?

A. Yes, I do.

Q. Unanimous consensus?

A. Yes, I do.

(Tr. II, pp. 386-387).

In City of Rockford, this Arbitrator reiterated the position that neither party should get something "for free" or, without good cause shown, get a deal beyond what it could reasonably be expected to obtain if it could strike. City of Rockford, ISLRB Case No. S-MA-99-78, p. 47 (2000). The City argued in Rockford that the Union could not satisfy any of the requirements set forth in Burbank, supra, to change the status quo established by the "bargained" 1989 residency clause. But again, this Arbitrator found that there was no clear evidence that the 1989 residency clause was bargained at arm's length and that the Union could not have legally demanded any tradeoffs or concessions for its "agreement" to the 1989 residency clause. I held that the Union proposal should be treated just as if the parties "were making a new contract." Id. at p. 48.

In the instant case, the Union could not have legally demanded any tradeoffs or concessions for the City's strict residency

requirement contained in the previous collective bargaining agreements. When the Act changed to allow the Union to do so, the City was not willing to trade anything nor would the City accept any of the Union's concessions to expand residency. The City is attempting to maintain strict residency "for free," I am therefore persuaded. The City structured bargaining such that there was nothing the Union could offer as a quid pro quo, this record reflects. No effort was made by the City to present an offer for the Union to withdraw its bargaining demand or to request the Union to make a concession on the matter. Nor would the City ever indicate what amount of money or other compromise would have been acceptable to expand residency.

In City of Alton,<sup>4</sup> ISLRB Case No. S-MA-02-231 (Arb. Kossoff - 2003), a single issue residency case, the City argued that it received no quid pro quo in exchange for expanded residency. Arbitrator Sinclair Kossoff found that the City should have bargained the residency issue in such a way as to receive a quid pro quo if that was truly the City's goal. Arbitrator Kossoff stated:

"The City argues that the Union should not be permitted to achieve expanded residency without a quid pro quo. However, if the City wanted a quid pro quo, it should have bargained in a manner consistent with that goal. Mr. Poertner's and the mayor's testimonies make clear that the City was not interested in a quid pro quo. It wanted strict residency. It cannot now turn the tables and put the blame for quid pro quo being out of the

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<sup>4</sup> The Alton collective bargaining agreement was negotiated after the change in the Act with the residency provision left open by way of a reopener clause. The interest arbitration was mid-term after the reopener was triggered.

equation on the Union. Quid pro quo is out of the picture now because of the way the City structured the bargaining. Id. at p. 42, footnote 5.

In this case, particularly if the City feared the dire financial condition that it claimed at hearing, the City should have been more than willing to accept the Union's offer of lower wages in exchange for expanded residency, I conclude. There is no "breakthrough" argument here, I also conclude.

In addition to the South Holland, Rockford and Alton cases, other residency cases have followed the reasoning that the status quo rule should not apply to instances where the parties are bargaining residency for the first time following the amendment. See, e.g., Calumet City, ISLRB Case No. S-MA-99-128 (Briggs 2000); City of Lincoln, ISLRB Case No. S-MA-99-140 (Perkovich 2000); City of Nashville, ISLRB Case No. S-MA-97-141 (McAlpin 1999); City of Pontiac,<sup>5</sup> ISLRB Case No. S-MA-01-131 (Kohn 2003).

**b. "The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet Those Costs" (5 ILCS 315/14(h)(3) Supports the Union's Final Offer**

In assessing whether relaxing the residency requirement will be in the interest and welfare of the public, it is important for the Arbitrator to remember that the bargaining unit members and their families are also members of the public at large. Calumet

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<sup>5</sup> It should be noted that the City of Pontiac and the FOP had negotiated a contract in 1998 after the change in the Act. However, Arbitrator Kohn found that there had been no quid pro quo in exchange for the Union's relinquishment of its demand to alter residency in 1998 and thus the Union's burden should be no more onerous than demonstrating that its offer was more reasonable than the City's. Id. at p. 18.

City, ISLRB Case No. S-MA-99-128, p. 72 (Briggs 2000). Strong equitable reasons on behalf of the Union and the absence of any police operational arguments favor a change in the residency rule.

Arbitrator Briggs recognized that the "public interest" criterion set forth in Section 14(h)(3) applies to off-duty police officers and their families just as much as it does to others.

City of North Chicago, ISLRB Case No. S-MA-99-101, p. 13 (Briggs 2000). Members of the Galesburg bargaining unit testified without rebuttal about their concern for the well-being of their families.

Officer Curt Kramer testified in the current case that expanded residency is of particular importance to the members who have school age children:

"There's been occasions where the children of the criminals that we've arrested have harassed our children because of who we are and what we do.

"Also, when they reach the high school age, some of the children that they go to school with are also children that we are arresting, and they know -- we're not a large community. We're a small community. They know who our children are, and they know what their fathers do and their mothers do.

"In some cases, children of people we've arrested or children we've arrested verbally abuse our children."

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"My own children, for one, have been [harassed] for what I do. They have made fun of them because 'their father is a pig.' I've heard that." (Tr. I, pp. 110-111).

When asked on cross-examination if Officer Kramer had ever personally been assaulted in a restaurant or mall, he answered that he had on several occasions. In fact, the last time Officer Kramer remembered was when he was verbally accosted in a local Galesburg

restaurant in front of his wife and children (Tr. I, pp. 134-135).

Detective Robert Schwartz testified about a man breaking into his house while his daughter was home. Detective Schwartz had to fight the man in front of his children (Tr. I, p. 149).

As a result of their occupation and the requirement that they reside within the same community they police, it is common for the Galesburg officers to suffer from a certain "hypervigilance." Whether on-duty or off-duty, the officers claim they are constantly on the lookout for criminals and suspicious activities. There is no place to escape and no place to relax, the Union witnesses asserted. This hypervigilance places a persistent stress upon the officers and their relationships, the Union thus claims (Tr. I, pp. 112-114, 116-117).

It is also clear from the record that many of the officers came to the department from rural areas. They would like to have the opportunity to return to smaller communities or to the country surrounding Galesburg. It is important to some to put their children in smaller school districts and to others to own homes with surrounding acreage. Some officers' spouses work up to 45 miles away from Galesburg and it would promote equity within their relationship, not to mention lower child care cost, if the family could move somewhere equidistant from each spouse's employment. Additionally, officers can maximize their housing dollars by purchasing outside the City limits. (Tr. I, pp. 74, 98, 110, 112, 115-116, 148).

On the contrary, the City never raised any operational need issue in negotiations or produced any evidence to show that there is an operational need for requiring strict residency, I specifically hold. In fact, the only evidence presented by the City in opposition to expanded residency was the "public

perception" that employees of the City need to be taxpayers within the City. Alderman Wayne Allen testified that he does not know how many Galesburg residents he has spoken to, but they say they (the officers) need to live within the City (Tr. I, pp. 165-166). However, neither he nor the Council has conducted a poll or survey of the citizens regarding the issue. Nor has anyone from the City contacted other municipalities with expanded residency to see what effect, if any, such expansion has had within the municipality (Tr. I, p. 171).

Alderman William Kendall testified similarly to Alderman Allen. "The people feel that police officers are drawing a wage from the City of Galesburg. They should be living here in Galesburg and paying property tax here in Galesburg" (Tr. II, p. 332). Yet, the City Manager of Galesburg, Gary Goddard, does not pay property tax in Galesburg because he rents, not owns, his home (Tr. II, p. 382). Alderman Kendall also agreed that although the Council claims that strict residency is extremely important to them, the Council has not conducted any surveys or polls of public opinion on the residency issue and the Council has not explored the impact of expanded residency on any other municipalities (Tr. II, p. 340).

The Union presented credible concrete evidence in support of expanded residency under the "interest and welfare" statutory factor. The City presented no evidence that there is an operational need for continuing strict residency. The only evidence presented about "public opinion" was that of a smattering

of the 33,000 citizens of Galesburg from "coffee shop talk," as the Union has suggested. No polls or surveys were conducted to present empirical information to this Arbitrator and the City did not explore the impact expanded residency on other municipalities, I also emphasize.

c. **External Comparables (5 ILCS 315/14(h)(4) Support the Union's Final Offer**

In South Holland, supra, this Arbitrator recognized that "the usual interest arbitration case is such that the Neutral views and analyzes external comparability as a major factor, playing a crucial role in the Neutral's analysis. Id. at p. 43. In South Holland, however, the external comparable data revealed a "hodge podge" of municipalities' residency rules. No such "hodge podge" exists in the case before this Arbitrator. As opposed to the "hodge podge" of comparable communities that are offered in many residency interest arbitrations, all but two of the external comparables here support the Union's position on expanded residency. All ten comparable communities in this case are historical, having been used in two previous arbitrations involving the City's firefighters and police officers in 1994 and 1997 respectively (City Ex. 9A & 9B). All but two comparable communities (Granite City and Pekin) have residency requirement **beyond** the city limits (Un. Ex. 13; City Ex. 34 [City Ex. 34 is incorrect as to Danville]).

Of the two comparables with city limits residency, Granite City is currently in negotiations for a new collective bargaining

agreement. Granite City has previously represented to the Union that they would abide by the interest arbitration award issued in Alton which was for 15 miles from the police station (Tr. I, pp. 77-78).

Additionally, the testimony on this record indicated that none of this City's largest private employers require residency within the City limits, I also note. I find that the Union's claim that the statutory factor concerning external comparability favors it is correct.

**d. "Such Other Factors, Not Confined to the Foregoing, Which Are Normally or Traditionally Taken Into Consideration..." (5 ILCS 315/14(h)(8) do NOT Support the City's Final Offer**

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**i. Internal Comparability**

The City has argued that internal comparability again favors its position on residency because the City has not relaxed its strict residency requirement for any of its other bargaining units.

I believe arbitrators have been reluctant to place much weight on internal comparability arguments in residency cases, and for good reason.

Arbitrator Briggs recognized the necessity to break a pattern of internal comparability in police residency cases a few years ago. Calumet City argued that internal comparability supported its position in interest arbitration with the Calumet City police officers in 2000. The Clerk's unit (Teamsters Local 726) and the Street/Alley & Water unit (Teamsters Local 142) had voluntarily accepted a residency requirement at the bargaining table. The IAFF

had also agreed to a contractual residency clause. As to the maintenance of internal comparability, Arbitrator Briggs stated, recognizing the unique import of the residency issue for police:

"Ordinarily, the Neutral Chair would be unwilling to break such a pattern in interest arbitration. But this issue is different. The City's clerical employees and members of its Street/Alley & Water Departments do not arrest suspected criminals. They do not testify against such persons on a routine basis, as part of their jobs.

And Calumet City firefighters are not required as part of their profession to detain citizens, take them to jail, and contribute to their subsequent imprisonment. Obviously, then, such employees are not concerned about whether the criminal elements know what they do for a living and where they live. At least they are no more concerned about that issue than those of us in other occupational categories. In stark contrast to all other Calumet City employees, its police officers and their families are subject to reprisal at any time from persons who have demonstrated no respect for the law and little regard for human life."

Calumet City, Illinois, ISLRB Case No.S-MA-99-128, p. 72 (Briggs 2000). The City appealed Arbitrator Briggs' decision and the Appellate Court upheld his expanded residency award in Calumet City v. Ill. F.O.P., 344 Ill.App.3d 1000 (1st Dist. 2003). Arbitrator Sinclair Kossoff followed Arbitrator Briggs' reasoning in breaking the internal comparability in Alton and granting Alton police officers residency within 15 miles of the police department. City of Alton, ISLRB Case No. S-MA-02-231 (Kossoff 2003).

**ii. Other Residency Arbitration Awards**

To the Union's best knowledge and belief, there have been twenty-four interest arbitrations since the Act changed wherein an award was rendered regarding residency.<sup>6</sup> Two arbitration awards

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<sup>6</sup> Two awards were rendered prior to the Act change. Both

granting expanded residency, one to a firefighter union and one to a police union, have been upheld by appellate courts, Town of Cicero v. IAFF, 338 Ill.App.3d 364 (1st Dist. 2003) and Calumet City v. Ill. F.O.P., 344 Ill.App.3d 1000 (1st Dist. 2003).

Of the twenty-four awards, nineteen have expanded residency beyond city limits. The most recent award, City of Peoria, ISLRB Case No. S-MA-02-106 (Alexander 2004), was issued on March 15, 2004 and granted an expanded residency of a 20 mile radius from the police department for officers with five or more years of service.

The Peoria City Council rejected the arbitrator's award and the parties returned for a supplemental hearing on May 14, 2004. Arbitrator Alexander has issued her supplemental award reaffirming the original decision.

There are nineteen arbitration awards decided after the Act was amended showing that the prevailing trend is to expand residency requirements for public employees. The Union has cited several of these opinions throughout its brief, but would specifically call to the Arbitrator's attention Town of Cicero, ISLRB Case No. S-MA-98-230 (Berman 1998) and the supporting Appellate Court case; Calumet City, Illinois, ISLRB Case No. S-MA-

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involved the Village of Maywood. The firefighters lost in 1993 and again in 1996. Both arbitrators found that the Union was attempting to change a contractual provision which had been in the contract for 18-20 years. Just months after the passage of the Act change, Rockford firefighters arbitrated residency, but Arbitrator Briggs found that the issue had not yet been bargained fully so he ruled the parties were obligated to bargain the issue. In June 1998, Burbank police officers arbitrated residency, but agreed with the City to reserve the issue so the arbitrator did not rule on it. And in 2001, the Waukegan firefighters arbitrated a residency

99-128 (Briggs 1999) and the supporting Appellate Court case; City of Rockford, ISLRB Case No. S-MA-99-78 (Goldstein 2000); City of Marion, ISLRB Case No. S-MA-00-249 (Hildebrand 2001); Village of Cahokia, ISLRB Case No. S-MA-00-215 (Perkovich 2003); and City of Alton, ISLRB Case No. S-MA-02-231 (Kossoff 2003).

## **2. Conclusion: Residency**

I understand the City's position is that this Union bears a heavy burden in its efforts to change the existing residency rule, not only because of its perception that the Union's demand constitutes an attempt at a "breakthrough," but because of the concern of all the City's witnesses who discussed residency that a loosening of the current rule sends a terrible signal to all Galesburg's residents that City employees are demanding a right to "take out" on their City in a time of crisis. As the City suggests, perhaps the strongest argument for the status quo is the general perception, as reported by all the elected officials who testified, of a need for solidarity in the current economic crisis.

As Mayor Sheehan said, "a majority of people for various reasons want to make sure that Galesburg stays together." (Tr. II, p. 390).

I further recognize that I have accepted a somewhat similar contention in Village of South Holland, supra, at p. 44, when I specifically noted in that case the "significant social, philosophical and political consequences if the Village's current residency requirements are liberalized to permit any police officer  

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reopener clause, but not residency itself.



the ability to live within 20 miles of Municipal Hall, as long as the officer stays a resident of Illinois."

In South Holland, my concern was that such a determination to liberalize the residency requirement would be viewed as permitting "white flight." In this instance, the articulated concern by this Employer is that a similar ruling to liberalize the residency requirement generally would be viewed as permitting "blue flight," namely, the wholesale exodus of the rank and file of this City's police force in a time of need (Tr. II, pp. 392-393).

There is a significant difference in the two situations, as I see it. First, in South Holland, there was a long and proven history of racial profiling and, in fact, restrictions as regards minorities residing in that Village. Second, there was similar proof of a prior, long-standing refusal by the Village to hire African Americans as police officers or for any public employment jobs there.

That pattern was only broken in the late 1970s and 1980s, as a result of extensive and difficult litigation initiated both privately and by the United States Justice Department, who obtained as part of a consent decree to settle the litigation a three mile residency rule clearly intended to open up slots in the police force to minorities. That "status quo" reflected a considered judgment, approved by a federal court, that the residency rule in effect before the "three mile rule," i.e., as requirement that all Village employees live within its borders, had been a tool of segregation. The residency rule in South Holland was thus

specifically freighted with social, philosophical and political ramifications far beyond the concern of this City's officials that it is important to maintain "legal" requirement to "pull together" for all citizens and employees of the City in times of economic travail, I find.

I have carefully reviewed the arguments and testimony of this Employer that "the interests and public welfare" of the public are linked to the current residency rule keeping all City employees mandatorily domiciled in Galesburg for reasons similar to its related claim that wages should be frozen for a time, because of the impending economic crunch. I have accepted, at least to a substantial degree, this argument linking the wage issue to the lost jobs, lost income and likely lost business arising from the Maytag closing. I do not find persuasive the contention that public concerns over the Maytag closing require that "police officers ought to live and pay taxes in the City," as part of the "privilege" of being a public employee.

This last point highlights the problem with the City's argument on this point, I note. I can hardly be unaware of the economic problems now facing Galesburg. I also understand her elected representatives' opinion that the "general spirit and pride" of this City might be lessened if there were an exodus of the 38 patrol officers represented by this Union, or, more so, the 360 employees working for the City, in total. One problem with those opinions is that all the studies have shown that where residency rules are loosened, nothing like this "worst case"

scenario happens. The very economic forces pulling at Galesburg result in a practical limitation for prospective sellers of property, such as most of these officers, easily relocating their homes. This current market probably constrains quick and profitable property sales at present, I note, or at least that has been the case elsewhere, the empirical studies show.

More important, other factors influencing economic decisions, such as children's desire to stay in the same school; spouse's preferences and job locations for them, too; church, friendship and family ties, and simply habit and inertia, all act as brakes to a mass exodus, the experience of other communities in Illinois where residency rules have been loosened indicates. The City never refutes the Union's evidence on this point, I specifically find.

I am not clairvoyant. The change in residency may have unanticipated or unintended consequences. Still, the claim that modifying the residency rule by loosening it for these 38 employees is directly detrimental to "the interests and welfare" of the public is grossly overstated in this instance, I hold.

Perhaps most critical to my decision that the current rule should be liberalized is the fact that all the claims presented by this Employer going against modifying the current requirement for residency within the city limits are precisely the ones which originally motivated the creation of that sort of residency rule in the 1930s, when these rules became common, I note. Basic to the thinking that a public employee must reside in the City of his/her employment as a condition of employment is the idea that such

employment is a privilege granted with strings attached that are beyond those of other types of employment. As Mayor Sheehan said:

"I think it sets a good example for those employees to be in the City. We're employees of the City. We believe in the City. We're going to stay in the City. That's a good message and also a little bit there could be some resentment that we're paying you wages so you could live outside the City for whatever reason. Those are some of the comments I've heard." (Tr. II, pp. 392-393).

Counterbalancing such claims is the strong proof presented by the Union that external comparability favors some loosening of the current residency rule. Internal comparability is not compelling on this issue, I firmly believe. Contra, City of Macomb and Illinois FOP Labor Council (Malin, arbitrator). This is so because, by definition, the relatedness of the bargaining units as to this issue -- "me, too," is traditional for residency -- results in the fact that, almost per se, internal comparability exists no matter what the current residency rule is. The argument thus confuses independent and dependent variables. It is essentially circular, I hold.

One more point needs to be made. The Employer has stressed that the Union's proposal is not reasonable. I agree. If residency rested on a "last and best" offer choice, as economic issues do, this contention of Management would be extremely persuasive, I find. However, the Act is clear that I do have the authority to craft a reasonable residency requirement by virtue of the non-economic nature of this issue, and the parties know it. I therefore do not find this Union "abdicate[d] its responsibility to

prepare and present a reasonable proposal in the first instance..." (City's brief, p. 34).

Unlike some arbitrators, I do not see this issue as a "liberty" versus "general welfare" conflict. See Town of Cicero and Illinois Association of Firefighters, IAFF Local 71 (Berman 1999). What is clear to me is that the Union offered to trade wages for residency and the Employer said the residency issue could not be settled through give and take bargaining because it resisted any change as a matter of principle and politics. That realm is not mine to evaluate or consider, under these facts. Based on the statutory decisional standards, there is a basis for modification to a "reasonable residency rule," which I firmly believe I have crafted here.

**C. Standby Pay**

As the standby pay issue has been effectively mooted by the Employer's agreement to the Union's last offer, with the reservations set forth above, I adopt the Union's offer. I thus will proceed to issue the following Award.

## VII. AWARD

Using the authority vested in me by Section 14 of the Act and by the parties' Arbitration Agreement (Jt. Ex. 6):

(1) I select the Employer's last offer on the salary issue (Jt. Ex. 4) as being, on balance, supported by convincing reasons and as being more appropriate than the Union's Final Offer on Wages (Jt. Ex. 3) and as more fully complying with the applicable Section 14(h) decisional factors.

(2) In its Final Offer on Residency (Jt. Ex. 3), the Union proposed to restrict residency only to the area of the political borders of the State of Illinois. The City proposed to maintain the present residency requirement for patrol officers (Jt. Ex. 4), which means the requirement is for these patrol officers to make their residency and maintain their domicile within the City of Galesburg. The parties also stipulated that, since this issue is non-economic, I have a right to modify the offers and, in a sense, "write my own offer," based on the proofs presented and guided by and in compliance with the applicable Section 14(h) decision factors.

Accordingly, effective upon the issue of the Arbitrator's Award, the collective bargaining agreement shall be modified to provide that each patrol officer shall make his/her residence and maintain their domicile within a radius of twenty (20) miles from the municipal building located at 55 West Tompkins Street, Galesburg, Illinois, as long as the officer stays a resident of Illinois. This provision is found by me to be supported by the

convincing reasons discussed above, and made a part herein as if fully rewritten, and is more appropriate and consistent with the applicable Section 14(h) decisional factors than either the Union's or the City's final offers, I rule.

(3) As per the discussion in the Opinion above, incorporated herein as if fully rewritten, the Union's final offer as to standby pay is adopted.

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**ELLIOTT H. GOLDSTEIN**  
**Arbitrator**

Dated: January 27, 2005