

**INTEREST ARBITRATION  
ILLINOIS STATE LABOR RELATIONS BOARD**

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS  
Local No. 1255**

and

**CITY OF ALTON, ILLINOIS**

**ILRB No. S-MA-06-006  
Firefighters**

**OPINION AND AWARD  
of  
John C. Fletcher, Arbitrator  
December 20, 2007**

**I. Procedural Background:**

This matter comes as an interest arbitration between the City of Alton (“the Employer” or “the City”) and the International Association of Firefighters, Local 1255 (“the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The bargaining unit represented by the Union consists of approximately 62 line firefighters who serve the City of Alton. This dispute arises from the parties’ impasse in the negotiation of the Collective Bargaining Agreement (“CBA”) effective April 1, 2007. Pursuant to the impasse issue of contract duration described herein below, the expiration date of the contract is in dispute in this case. The parties present a number of “stipulations and ground rules”, which appear in Section V of this Award.<sup>1</sup>

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<sup>1</sup> Joint Exhibit 4.

A hearing before the undersigned Arbitrator was held on August 22, 2007 at the City of Alton Municipal Building, commencing at 9:00 a.m. The parties were afforded full opportunity to present their cases relative to the impasse issues below, which included written and oral evidence in the narrative, and also examination and cross-examination of witnesses. Thereafter, the parties were invited to offer such arguments as were deemed pertinent to their respective positions, and the record was held open for submission of post hearing briefs. At the hearing, the Union was represented by:

J. Dale Berry, Esq.  
Cornfield and Feldman  
25 East Washington Street  
Chicago, Illinois 60602-1803

Counsel for the Employer was:

Timothy E. Guare, Esq.  
Stephanie E. Jones, Esq.  
Hodges, Loizzi, Eisenhammer, Rodick & Kohn  
3030 Salt Creek Lane, Suite 202  
Arlington Heights, Illinois 60005

Post-hearing briefs were filed with the Arbitrator and exchanged on November 10, 2007.

The record was declared closed on that date.

## **II. Factual Background**

The City of Alton is described as a "historic, racially diverse industrial city on the Mississippi River northeast of St. Louis, Missouri."<sup>2</sup> The record establishes that all the City's regular full-time employees are either Civil Service employees or mayoral appointees. Generally, City supervisors and managers, including the City's Fire Chief, are appointed by the

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<sup>2</sup> City brief at page 31.

Mayor of Alton. Remaining members of the City's workforce are hired through the City's Civil Service system, and are subject to "Civil Service Rules" as set forth in relevant part in City Exhibit 1 of this record.

Currently, the City employs sixty-two "line" firefighters and a deputy fire chief, all of whom are represented by the Union for purposes of collective bargaining. (Tr. 196, 216.)<sup>3</sup> Presently, the Department maintains a four-shift schedule, attendant to which firefighters are normally assigned to work one 24-hour shift every four days. In other words, Alton firefighters work one day (24 hours), and then have three days off. (Tr. 196.) Under this present schedule, Alton firefighters are also required to work one additional shift every twenty-eight days. (Tr. 197.) As a general rule, the Department schedules seventeen firefighters on every shift, though there may be as few as thirteen on duty at any given time because of injury/illness and vacation absences. (Tr. 196.) Off-duty firefighters are subject to call as emergencies warrant. (Tr. 199).

### **III. Bargaining History of Alton Firefighters**

The parties' incumbent collective bargaining agreement expired on March 31, 2007.<sup>4</sup> On December 14, 2006, the parties began negotiating for a successor contract, at which time the Union presented initial bargaining proposals on approximately twenty-three economic and non-economic issues.<sup>5</sup>

With respect to prior bargaining history relevant to this case, the record establishes that all but two matters in the incumbent agreement, in effect from April 1, 2004 to March 31, 2007, were resolved through bargaining. The sole exceptions, the record demonstrates, were issues relating to the representation status of the City's Deputy Fire Chief, and residency for

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<sup>3</sup> As previously stated, the City's Fire Chief is appointed by the Mayor, and thus is not represented by the Union for purposes of collective bargaining.

<sup>4</sup> Joint Exhibit 1, City Exhibit 8.

<sup>5</sup> City Exhibit 9.

firefighters. (Tr. 120.) The matter concerning the Deputy Chief was submitted to, and ultimately resolved by, the Illinois Labor Relations Board. The remaining outstanding question with respect to firefighter residency was submitted to Arbitrator Peter R. Meyers for resolution pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314, and his subsequent Award dated April 5, 2005 is referenced extensively herein below.<sup>6</sup>

The collective bargaining agreement preceding the 2004-2007 contract, was in effect between April 1, 1999 and March 1, 2004.<sup>7</sup> It is not disputed that all matters relative to the 1999-2004 agreement were resolved by the parties at the bargaining table.

The collective bargaining agreement in effect from April 1, 1996 to March 31, 1999, was the subject of Arbitrator Milton Edelman's interest arbitration award dated December 17, 1996.<sup>8</sup> The now contentious matter of firefighter residency was not submitted to Arbitrator Edelman for reasons stated herein below, and thus, Arbitrator Meyers was the first to address it as an impasse issue in the context of compulsory interest arbitration. Arbitrator Edelman's award, however, is germane to the case at bar to the extent that the parties' field of historical external comparables, also referenced extensively in this record and considered by Arbitrator Meyers in 2005, was established therein.

With respect to bargaining of the April 1, 2007 contract at issue in this case, the record establishes that the parties met and discussed the Union's proposals on December 14, 2006<sup>9</sup>, and again thereafter on February 28, 2007<sup>10</sup>, April 24, 2007<sup>11</sup>, June 7, 2007<sup>12</sup>, and August 1, 2007.<sup>13</sup>

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<sup>6</sup> City Exhibit 7.

<sup>7</sup> City Exhibit 5.

<sup>8</sup> City Exhibit 23.

<sup>9</sup> City Exhibit 9.

<sup>10</sup> City Exhibit 10.

<sup>11</sup> City Exhibit 11.

<sup>12</sup> *Id.*

<sup>13</sup> City Exhibit 12.

In the end, every issue save the four herein before the Arbitrator, were resolved in the context of bilateral good faith bargaining.

With respect to the genesis of mandatory bargaining on the subject of residency, the record establishes the following pertinent history. As of August 15, 1997, before the parties' 1999-2004 collective bargaining agreement was negotiated and implemented (and after Arbitrator Edelman's award was published), the Illinois legislature amended Section 14 of the Act to remove residency requirements from the list of topics excluded from the scope of mandatory bargaining. According to the record, neither party proposed to relax the City's residency requirement for firefighters during bargaining for the 1999-2004 collective bargaining agreement. However, during contract re-openers in 2001 and 2002, the Union did raise the issue of the City's residency requirement. At that time, the evidence establishes, the City declined to bargain on the matter because residency requirements were already the subject of a pending interest arbitration with police officers represented by the Policemen's Benevolent and Protective Association (hereinafter "PBPA"). Though Arbitrator Sinclair Kossoff's subsequent 2003 ruling relaxed the City's residency requirements for police officers, Arbitrator Meyers ruled in 2005 to preserve them for firefighters on the basis that patrol officers and firefighters were not similarly situated with respect to that particular issue. Accordingly, City residency requirements dating back to 1972, later preserved by Arbitrator Meyers and again at issue as an impasse item in this proceeding, have remained unchanged throughout the course of these parties' collective bargaining history.

#### **IV. Statutory Authority and the Nature of Interest Arbitration**

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. In relevant part, they state:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

- (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.

As was recently observed by this Arbitrator in cases involving the County of Cook/Sheriff of Cook County and certain bargaining units of Fugitive Investigators and Correctional Officers, a number of well-established principles should (and will) serve as underpinning for this interest arbitration award. First, it is now essentially settled that interest arbitration in general is intended to achieve resolution to an immediate impasse, and not to usurp, or be exercised in place of, traditional bargaining. Some arbitrators have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through "normal" negotiations. Otherwise, as some have reasoned, the entire collective bargaining process could be undermined to the extent that at the first sign of impasse, parties might immediately resort to interest arbitration.<sup>14</sup>

At least in theory, then, there should be no substantial "breakthroughs" in the interest arbitration process, and the Arbitrator understands conventional wisdom on this point. Obviously, the bargaining process itself should be protected to the extent that tractability as opposed to intransigence is encouraged, because in the end, last best offer interest arbitration, even at its best, can only produce a silhouette of what might have been achieved through creative and bilateral navigation through difficult waters.

Having said that, the Arbitrator observes that in this case, the parties have resolved the majority of outstanding issues relative to a contract commencing April 1, 2007. In point of fact, the real bone of contention here appears to be the sole issue of firefighter residency, even though

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<sup>14</sup> "If the process [of 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..." See; 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 pages 18-19 (Kohn,1995).

three additional issues remain unresolved as well. At arbitration, Union counsel explained, “[Residency] is a very difficult issue between the parties. It’s been the subject of a previous interest arbitration. It’s been the subject of an interest arbitration with the police. The parties’ inability to agree on this item is probably the reason we’re here.” (Tr. 14.)

While the record does demonstrate that good faith bargaining did occur prior to this proceeding, the fact that three issues are herein before the Arbitrator on the coattails of the residency issue is particularly troubling. It does indicate to the Arbitrator, that the bargaining process so carefully protected by this and other arbitrators, was actually undermined by the availability of last best offer arbitration. In other words, Union counsel clearly stated that the issue of residency “is really why we’re here”, yet three additional issues are presented. Interestingly, as analyzed in depth below, the record indicates that the parties are not all that far apart on any of the other three. In any event, this suggests to the Arbitrator that he must be duly mindful of his sole obligation to resolve all four outstanding issues pursuant to established statutory criteria on the evidence alone, and not be swayed to grant either party an advantage as a result of this arbitration that they would not likely have achieved on their own.

The Arbitrator is entirely aware of his previous criticism of this “crystal ball” approach to interest arbitration, which directs an arbitrator in this forum to avoid an outcome significantly different from that which would likely have resulted from bilateral collective bargaining. Obviously, there is a patent element of circuitousness in this line of thinking that cannot be ignored, for had the parties been able to agree on the outstanding issues, they would not have invoked interest arbitration in the first place. However, this is “perfect world” thinking, and cannot be applied with any degree of certainty under these particular circumstances. Union counsel so much as confessed that there are three issues herein before the Arbitrator that the

parties would likely have resolved on their own, had the matter of residency not been so contentious a subject. This is duly noted, because the prior interest arbitration before Peter Meyers concerned the sole matter of residency. Thus, Arbitrator Meyers was free to focus on the main issue without any concern that his decision could adversely impact the bargaining relationship between these parties. In other words, it is clear that the parties were at true impasse in that case before arbitration was invoked. Now, unfortunately, the privilege of arbitration under the Act, it appears, has at least to some extent undermined the bargaining relationship between these parties.

As previously observed, without a “crystal ball”, it is somewhat difficult to discern which proposal the parties “would likely have achieved on their own”. When all is said and done, though, “last best offer” arbitration is the only self help alternative available to the parties under applicable Act provisions when bargaining issues cannot be resolved. Even then it is risky at best, because the Arbitrator has no authority to assemble a “fruit basket” of elements from each party’s proposal on economic issues, and only limited ability to fashion solutions on non-economic issues in light of an “arbitrary and capricious” standard of review. It should thus be exercised with due consideration as an extension of the bargaining process and not a replacement for it. On this point, there is cause for some concern in this particular record.

Holding the above truth (that the Arbitrator does not have a crystal ball and that there is a hint of possibility that the parties were not at true impasse on all the issues at bar), it is also important to note that it is not entirely impossible to depart from the *status quo* through the process of interest arbitration. Here, three tests noted by Arbitrator Harvey Nathan in Will County Board and Sheriff of Will County and AFSME, Local 2961; S-MA-88-9 (1998) and cited by the City in this case, once again prove particularly useful. Arbitrator Nathan reasonably

concluded that in order to obtain a departure from the *status quo* through interest arbitration, the party seeking the change must, at a minimum, demonstrate the following:

- That the old system or procedure has not worked as anticipated when originally agreed to;
- That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
- That the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems.

According to Arbitrator Nathan, then, it is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. The practical application of Arbitrator Nathan's logic is particularly germane to this case, as it was to Arbitrator Meyers, because the Union argues with respect to the issue of residency, that this "special burden" is only relevant if the parties have negotiated the *status quo*. In other words, intimates the Union, the bargaining process is not at risk in interest arbitration if the arbitrator is asked to depart from *status quo* on issues that were never agreed upon by the parties in the first place. Conventional wisdom says this is true, at least the first time around. Thereafter however, as will be discussed in more detail below, there is a reliable basis for attributing "negotiated" weight to arbitral precedent to the extent that circumstances and evidence have remained essentially unchanged.

Arbitrator Raymond McAlpin, also cited by the City, had this to add:

[W]hen one side or the other proposes[s] significant changes to the status quo, there is a special burden placed on that party. When one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This panel recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. The party desiring the change must show that:

- There is a proven need for the change

- The proposal meets the identified need without imposing an undue hardship on the other party
- There has been a *quid pro quo* offered to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision<sup>15</sup>

The Arbitrator takes special note here, that Arbitrator McAlpin makes no distinction between a negotiated collective bargaining agreement (or provision) and a mandated or arbitrated one. He simply states that when terms of an existing agreement are departed from, a higher standard of proof is necessary in order to protect and encourage integrity in the foundational bargaining process. Arbitrator Meyers departed from this logic (or lack of distinction anyway) when he concluded in the last interest arbitration involving these parties, as did Arbitrator Kossoff in the police arbitration discussed in more detail below, that because the issue of residency was not subject to negotiation prior to 1997, no “special burden” to demonstrate need to depart from the *status quo* was required on the part of the Union. In the end, the answer lies somewhere in the middle, because this Arbitrator agrees with others who have ruled on the subject after Arbitrator McAlpin, that “negotiated” weight should be given to existing collective bargaining provisions resolved as impasse issues in interest arbitrations, whether or not the parties ever successfully bargained over them. Actually, Arbitrator Kossoff later reasoned in pertinent part as follows:

I think that it is one thing to award (a contract term) when the issue is presented in arbitration for the first time, and quite another to do so in an arbitration for the contract immediately succeeding the contract for which (the same contract term) was denied in arbitration. Arbitrator Nathan’s [prior] decision, I believe, must be given the same weight as if the parties had voluntarily negotiated exclusion of discipline from their 2003-206 contract. Otherwise, arbitration has little meaning and the parties are encouraged to ignore direct collective bargaining and, instead resort to arbitration every contract. What one

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<sup>15</sup> County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council; LLRB Case No. L-MA-96-009 (McAlpin, 1998.)

arbitrator fails to give, another will be free to bestow, and the parties will be relieved of any burden of showing changed circumstances from the prior arbitration. There will be no predictability because everything is up for grabs when the contract expires... one of the principles is that when a contract term is negotiated or awarded in arbitration, the party desiring a significant change must provide compelling evidence of the need for change.<sup>16</sup>

Arbitrator Kossoff's logic makes much sense, in the Arbitrator's view, because to think otherwise, as he has observed, would produce three untenable results.

First, little or no meaning would come out of any interest arbitration process, if either party were permitted to revisit particularly contentious issues repeatedly (on the very same basis) without any additional burden to address the merits of the arbitrator's preeminent reasoning. After all, that very reasoning (and the arbitrator's accompanying binding decision) was, at least in theory, originally seen by the parties as the sole remaining option for resolution. Obviously, then, the entire dispute resolution process under the Act would be irreparably harmed if impasse arbitration meant nothing more than repeated statutorily sanctioned visits to the well (with nothing in hand but the same old bucket) in hopes that it might eventually bring forth water.

Second, the collective bargaining process, which interest arbitrators from time immemorial have endeavored to protect, would be significantly jeopardized as well. Indeed, there would be no need to hammer out tough issues at the table, if the inevitable "dice rolling" of interest arbitration (necessarily attendant to handing control over to an outsider with no particular interest in the matter other than to view evidence in the context of statutory criteria), could be viewed as just another day at the casino where some days (or arbitrators) are more generous than others.

Third, there would always be temptation on the part of advocates to rely exclusively upon arbitration decisions favoring the merits of their respective positions. In other words, there

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<sup>16</sup> City of Rock Island and IAFF, Local 26, ILRB No. S-MA-06-142 (Kossoff, 2007).

would be no impetus for counsel to give prior decisions (favorable or unfavorable to their cases) the binding weight they deserve under the statute.

In any event, this Arbitrator finds the guidance of Arbitrators Nathan, McAlpin and Kossoff (among others) on this subject to reasonably supplant the "crystal ball" approach. The Arbitrator will thus examine each of the parties' proposals on the issues at bar in the context of the above "tests" where applicable, and equally importantly in light of promulgated proofs and relevant arbitral precedent as to each of the stipulated issues below.

**V. The "Ground Rules and Stipulations" of the Parties**

1. The parties hereby waive the tripartite panel format set forth in Section 14(b) of the Act, and the Sole Arbitrator in ILRB Case No. S-MA-06-006 is John C. Fletcher. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those issues submitted to him.
2. The hearing in this case will be convened on August 22, 23, 2007 at 10:00 a.m. and, if needed, at such other dates and times as may be necessary to conclude the hearing. The hearing(s) will be held in Alton, Illinois. The parties waive the 15 day hearing requirement of Section 14(d) of the Act.
3. The evidentiary hearings shall be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by the parties.
4. The parties agree that the arbitration hearing involves "collective negotiating matters between public employers and their employees or representatives", and, therefore, is not subject to the public meetings requirement of the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.*
5. All sessions of the hearing will be closed to all persons other than the Arbitrator, court reporter(s), representatives of the parties, including negotiating team members, witnesses, members of the bargaining unit represented by Local 1255, and the management staff of the City.
6. The parties agree that the following package of information shall be submitted by stipulation to the Arbitrator at the commencement of the hearing.
  - a) The April 1, 2004 through March 31, 2007 contract between IAFF Local 1255 and the City of Alton (Joint Exhibit 1);

b) All agreed to changes in said Agreement, as initialed or signed off by the parties in the collective bargaining negotiations preceding the arbitration hearing (Joint Exhibit 2);

c) Each party's Last Offer of Settlement on each of the economic and/or non-economic issues to be considered and decided by the Arbitrator (Joint Exhibit 3). Last Offers of Settlement are to be exchanged by the parties at a mutually agreeable time and place on or before August 20, 2007, subject to the provisions and process set forth in Section 14(g) of the Illinois Public Labor Relations Act.

7. The party with the most issues as to which it is the moving party shall proceed with its case-in-chief as to such issues. The other party shall then proceed with its case-in-chief as to the issues as to which it is the moving party. Once both parties have presented their case-in-chief, both parties may present rebuttal evidence and/or witnesses.

8. The Arbitrator shall base his findings and decision upon the factors as applicable, as set forth in Section 14(h) of the Illinois Labor Relations Act.

9. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract prior, during, or subsequent to the arbitration hearing.

## **VI. Outstanding Issues**

Pursuant to the above stipulations, the record indicates that the parties remain in dispute as to the four issues now before the Arbitrator. The Arbitrator adopts conventional wisdom that proposals with respect to general wage increases should, absent agreement between the parties to the contrary, be considered as total "wage packages". In this case, the Union presents a three-year wage package (the term it proposes for this contract) in two parts consisting of across-the-board 3.5% general wage increases for the years 2007, 2008, and 2009, and additional 1.5% "equity" increases in each of the same three years. As in the previously cited Cook County Fugitive Investigators case<sup>17</sup>, it appears that the Union has promulgated its wage proposal as such, in hopes that the Arbitrator will, at the very least, take what he finds reasonable and discard the rest. Conventional wisdom on the subject, as this Arbitrator has repeatedly affirmed, militates against such an approach. Thus, while the Union's wage proposal has not been

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<sup>17</sup> Cook County/Sheriff of Cook County and Illinois FOP, ILRB Case No. L-MA-05-007 (Fletcher, 2007).

presented as two separate issues as in the Fugitive Investigators case, the Arbitrator will not consider its two components separately. In other words, the Arbitrator is convinced that the Union's wage proposal should be viewed in its entirety; that is a proposal for 5% wage increases in each of the three years of its proposed 3-year term. Thus, the outstanding issues to be decided by the Arbitrator are:

1. Contract Duration or Term
2. Wages
3. Longevity Premiums
4. Firefighter Residency Requirements

## **VII. External Comparables**

In this case, the parties urge the Arbitrator to consider each of the above four issues in the context of both internal and external comparables. Certainly in cases like this it is a statutory custom to do so when appropriate, and thus the matter requires little particular discussion unless the parties are in dispute as to whether historical comparables remain appropriate, or they wish to establish comparables for the first time. In this case, some discussion is necessary, because the Union attempted, for the first time at arbitration, to depart from the field of external comparables established by Arbitrator Edelman in 1996 (and later considered by Arbitrator Meyers in 2005). The City strenuously objected to the Union's last-minute departure, and the parties subsequently agreed to present post-hearing argument relative to the issues of wages, term and longevity premiums in the context of the six communities recognized by Arbitrators Edelman and Meyers as comparable to Alton.<sup>18</sup> However, the Union

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<sup>18</sup> Here, the Arbitrator notes that while the Union stipulated to this particular concession, subsequent post-hearing analysis of comparable data excluded the city of Edwardsville. The Union offered no explanation as to why Edwardsville was excluded. In the end, however, the omission, whether intentional or accidental, was of little import to the Arbitrator's analysis of relevant data.

“reserved the right” to pursue the matter of firefighter residency within the framework of an “expanded” field of comparable communities.

Specifically, the Union argued, a “wider lens is needed” relative to consideration of the non-economic issue of firefighter residency. The Union maintained that when municipalities outside Madison and St. Clair Counties were analyzed in terms of relevant financial and demographic data, it was discovered that they “matched up” more closely with Alton than did several of the historical comparables. Because the issue of residency is a matter of “fundamental rights”; that is the Arbitrator is being asked to consider the extent to which an employer may restrict an employee’s choice of where to live and raise his or her family, the widest possible view should be taken, the Union argued. There is “strong evidence”, the Union maintained, that for many employees, this is an overriding concern which transcends major economic issues such as wages. Thus, the Union insisted that the merit of the City’s position on this issue should be evaluated in terms of the “broadest comparable group within the labor market.”<sup>19</sup>

The Union further argued that there is evidence in the bargaining history of the City and its police officers, that residency developments beyond the provincial confines of Madison and St. Clair Counties have been recognized and applied to the residency dispute. While this is true to a degree, the Arbitrator notes that even though Arbitrator Kossoff ruled to relax residency requirements for Alton police officers in 2003, he ultimately reasoned with respect to the “wider lens” theory in pertinent part as follows:

The Union contends that labor market comparability should not be given the same weight in an arbitration regarding residency as in one where economic issues are being litigated. See, for example, the decision of arbitrator Martin H. Malin in Illinois Fraternal Order of Police Labor Council and City of Macomb, ILRB Case No. S-MA-01-161 (2002), at page 15, where he stated, “The factors that an arbitrator traditionally would consider in determining comparability when economic issues are in dispute are not necessarily the most significant factors for

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<sup>19</sup> Union brief at page 44.

a dispute over residency..." Arbitrator Malin, however, qualified that statement with the following assertion on the same page:

That is not to say that where residency is one of multiple [of] issues in dispute the arbitrator should develop separate comparability criteria for residency than for the other issues. Nor is it to say that an arbitrator should ignore a previously established set of comparable communities that formed the baseline against which the parties negotiated...

Arbitrator Berman in Town of Cicero, ILRB Case No. S-MA-9230 (1999), at pages 25-27, also argued for using different communities as a comparison in a non-economic residency case than where the interest arbitration is limited to economic issues.

This arbitrator agrees with the following statement by arbitrator Steven Briggs in City of North Chicago and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-99-101 (2000), at page 8, where he rejected the union's position that a separate group of comparable communities should be used for determining the residency issue than for a second issue before him in the case:

Moreover, the Arbitrator is reluctant to adopt a supplemental set of external comparables to be applied selectively and exclusively to one issue. Doing so in these proceedings might inappropriately encourage parties elsewhere to propose different sets of comparables for different issues. To the extent that interest arbitrators allow that to happen, the result might not only fragment the bargaining process, it might also unduly complicate and prolong subsequent interest arbitration proceedings.

Residency was first raised by the Union as an issue in the 1999 negotiations where it was one of a number of issues, both economic and non-economic. If the parties used comparable jurisdictions in evaluating each other's bargaining proposals, it is not likely that they would have used a separate set of comparables for different issues. The fact that they were able to reach agreement on the other issues but not residency is not a justification for using a separate set of criteria for determining comparable jurisdictions in deciding the residency issue than would be applicable for economic or other non-economic issues. Moreover, as a practical matter, whatever selection of jurisdictions is made in this proceeding is likely to carry great weight in future negotiations or interest arbitrations where issues other than residency will separate the parties. The jurisdictions in this case should therefore not be selected in an atypical manner. In addition, as arbitrator Briggs observed, setting a precedent of using different comparables for different issues is likely to complicate and even fractionate future

bargaining. The arbitrator does not agree to a different method of selection of comparable jurisdictions in this case than would apply generally.<sup>20</sup>

This Arbitrator finds Arbitrator Kossoff's (and Arbitrator Briggs') reasoning eminently sound, and he thus adopts it in response to the Union's suggestion in this case that communities other than those already established for purposes of external comparability on the economic issues be considered for purposes of external comparability on the issue of residency alone. Certainly there is little doubt that finding in favor of the Union on this point could, and likely would, frustrate future collective bargaining and interest arbitration processes in general. Moreover, permitting "issue oriented" comparable analysis into this (or any record) would specifically negate the inherent value of comparables (for better or worse) as a functional statutory criteria, because the inevitable pursuit of favorable comparables for each individual issue would effectively demolish any (however imperfect) common ground upon which arbitral resolution of contentious issues could be reasonably constructed. In this regard, then, the Arbitrator sees little value (and more harm) in distinguishing between economic and non-economic issues with respect to comparables.

Thus, and for all the foregoing reasons, the Arbitrator concludes that the communities relevant to all four issues in this case for purposes of external comparability, shall be the recognized historical comparables of:

Belleville  
Collinsville  
East St. Louis  
Edwardsville  
Granite City  
Wood River

### **VIII. Internal Comparables**

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<sup>20</sup> City of Alton and Policemen's Benevolent and Protective Association, Unit 14, (Kossoff, 2003) at pages 12-13 .

The parties are in essential agreement as to which groups are internally comparable for purposes of analyzing the issues herein before the Arbitrator. They are:

- Alton police officers represented by PBPA
- City clerical workers represented by AFSCME
- City maintenance and other workers represented by the International Brotherhood of Teamsters.

The Union argues, however, that the Arbitrator should consider Alton police officers as preeminently comparable to members of the firefighter bargaining unit, noting that wages and benefits between employees of the two groups have been in virtual lockstep parity for a number of years. Moreover, the Union observes with a particular eye on the issue of residency, police and firefighters are generally spoken of in the same breath with respect to important issues of employment.

While the Arbitrator does not disagree with the Union in an extremely general sense, he is compelled to note that even between police and firefighters, one size does not necessarily fit all. Certainly, due consideration will be given to the statutory criterion of internal comparability in the Arbitrator's analysis which follows. However, the Arbitrator recognizes and affirms the following principle as established in County of Sangamon and Sangamon County Sheriff and Illinois FOP Labor , ILRB Case No. S-MA-97-54 (Meyers, 1999):

... the fact that one bargaining unit receives (a particular) benefit does not establish that it must be extended to this bargaining unit in the interests of parity.

This record establishes, as will be discussed in detail below, that Arbitrator Meyers again held to this particular view with respect to internal comparability, in denying relaxation of residency requirements to this bargaining unit in 2005, even though Arbitrator Kossoff had already done so in an interest arbitration involving the City and Alton police officers.<sup>21</sup> This

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<sup>21</sup> See; City Exhibit 18, *Kossoff* (2003).

Arbitrator recognizes the importance of internal comparability in this case, and as stated above, will give it due consideration under the statute (where such consideration is warranted and appropriate) in each of the four issues at bar.

**IX. The Issues**

**Article XXVI – Duration and Renegotiations**

The Union's Final Proposal

The Union proposes a three-year agreement effective April 1, 2007 through March 31, 2010. (As to term, the Union's proposal represents the present *status quo*.)

The City's Final Proposal

The City proposes a four-year agreement effective April 1, 2007 through March 31, 2011.

The Position of the Union:

At the outset, the Union argues that because the City has proposed a four-year contract and an accompanying four-year wage proposal (as opposed to the Union's three-year proposals for each), it has unlawfully combined the issues of term and wages. In other words, the Union argues, the Arbitrator is bound to consider them inseparably, because he cannot, pursuant to applicable case law, "cherry pick" from wage proposals absent the parties' express permission to do so.

The Union acknowledges that at the close of the hearing in this matter, the Arbitrator afforded counsel for both parties an opportunity to address the wage/term conflict to the extent that the Union was invited to submit a wage proposal wage for a fourth year (should the Arbitrator decide in favor of the City on the issue of term alone), and the City was permitted to split its existing (last best) four-year proposal into two parts; a three-year package to match the Union's three-year last best offer for the years 2008, 2009, and 2010, and an additional separate proposal for 2011.

As the parties noted, the Arbitrator was faced with similar circumstances in the Cook County Fugitive Investigators case, supra. However, in that case the union conceded to accept the Joint Employer's wage offer for the fourth year (if a four-year term was granted by the Arbitrator), and thus the Arbitrator was free to consider the merits of each parties' three-year proposals without running afoul of case law prohibiting "cherry-picking".<sup>22</sup>

In this case, the record shows, the City merely resubmitted its last best offer in two parts. The Union, however, declined to submit a wage proposal for a fourth year, arguing that, "[T]he City's final offer modifies its offer as to term contrary to §14(g) by splitting off its wage offer effective April 1, 2010 and merging it with the fourth year of its offer as to term. This is not a clarification and the Union has not stipulated to this modification. Accordingly, the Arbitrator is without authority to grant the City's offer as to term." (Emphasis added.)

Because the Union ultimately declined to submit a wage proposal for a fourth year, it is interestingly the Union, and not the City (which invited the Arbitrator to fully consider both parties' proposals for the first three years by splitting its last best offer into two parts) attempting to handcuff the issues of term and wages together. In truth, had the Union ever honestly viewed them as separate issues (for it was argued at page 10 of its post-hearing brief that "the City's final offer on the issue of term of the agreement reflects an impermissible combination of two of the items in dispute: wages and term"), and further had the Union rightfully discerned this Arbitrator's authority (indeed his statutory obligation) to decide each of the issues (term and wages) on their own merits, it would have had everything to gain and nothing to lose by either

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<sup>22</sup> In *Fugitive Investigators*, the Arbitrator observed, "The Union acknowledges that it has not proposed general wage increases for fiscal year 2008, because it urges the Arbitrator to adopt a three-year contract term. Here, then, "The Union concedes that if the Arbitrator selects a four-year term for the agreement, the numbers proposed by the Joint Employers in the fourth year will be adopted." (Reference to union brief at page 24.) See also; Id. at page 58. ([T]he Union has conceded that "if the Arbitrator selects a four-year term for the agreement, the numbers [4.75%] proposed by the Joint Employers in the fourth will be adopted.")

submitting a fourth year wage proposal or conceding to the employer's fourth year wage proposal (as did the Cook County Fugitive Investigators bargaining unit, supra) if a four-year contract was adopted, or in the alternative asking for a wage reopener for the fourth year if its three-year wage proposal was granted with the City's four-year contract term.

In declining to do so, the Union has attempted to force the Arbitrator into the exact labyrinth it accuses the City of doing. In other words, if a three-year contract is awarded, the Union argues, its' wage proposal should be accepted because, barring the ability to split off the fourth year of the City's last best offer on wages, there is only one three-year wage proposal on the table... the Union's. Conversely, the Union intimates, if the Arbitrator adopts a four-year contract term, there is only one four-year wage proposal on the table... the City's. In the end, this is simply incorrect thinking on the part of the Union, because the City agreed to split off the fourth year of its wage offer, thereby facilitating fair consideration of both wage proposals (at least for the first three years) independent of the issue of contract term.

The Arbitrator will accordingly opt for the fairest route, and is convinced that his doing so will not defy well-settled prohibitions against "cherry-picking" from wage proposals. The Arbitrator remembers his responsibility to facilitate future collective bargaining by not affording either party an undue advantage, and further to view this proceeding as an extension of the bargaining process and not a replacement for it. To that end, the Arbitrator will not be "stratagized" into chaining contract term and wages together when one of the parties has endeavored to aid rather than impede an outcome which, perhaps in a perfect world, the parties themselves might eventually have come to. It is thus his decision to first evaluate the parties' respective arguments with respect to contract term alone, and then to consider each of the parties' respective wage proposals pursuant to established statutory criteria and the evidence. If

a three year term is awarded herein below, the parties' three-year wage proposals will be analyzed. If a four-year term is awarded, the parties three-year wage proposals will be similarly analyzed, and the City's fourth year proposal will be mandated in the absence of a comparable offer from the Union.

As to its bid for a three-year contract, then, the Union argues that statutory factors 14(h) 4 and 8 support its position. In particular, the Union argues, all five (Edwardsville not included) externally comparable communities have three-year contracts with their firefighters.<sup>23</sup> Moreover, the Union argues, the *status quo* in terms firefighter contract duration in Alton is also three years, as the incumbent contract (which expired on March 31, 2007) was in effect for three years.

As to internal comparability, the Union points out that all other incumbent City collective bargaining agreements have three year terms.<sup>24</sup> In this case, as in others generally, the Union maintains, longer term contracts should not be imposed when there is no compelling reason for doing so. Such contracts, the Union opines, restrict bargaining rights because they postpone regress through the negotiations process, and this, the Union further maintains, runs contrary to principles set forth in §2 of the Act. "A three year term will afford the parties sufficient 'breathing space' before the next round of negotiations", the Union argues.

Thus, and for all the foregoing reasons, the Union urges the Arbitrator to maintain the *status quo* of a three-year contract term.

The Position of the City:

As to the issue of term, the City argues that relevant Section 14(h) criteria support the City's proposed four-year contract. In particular, the City maintains, "Interests and Welfare of

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<sup>23</sup> Union Exhibit 9R.

<sup>24</sup> See; AFSCME (City Exhibit 16b), IBT (City Exhibit 17b), and PBPA (City Exhibit 19b).

the Public/Ability to Pay” are impacted by the term of the parties’ contract in this case, and its position is favored in context of this particular criterion. The City notes that Article XXVII, Section B of the parties’ contract provides that the party seeking to open negotiations for a new agreement is required to provide written notice to the other by November 1<sup>st</sup> preceding the expiration of the Agreement.<sup>25</sup> The City argues that by the time a decision has been rendered in this case, it will be past November 1, 2007. (Obviously, the Arbitrator observes, this is already true.) Thus, the City maintains, if the Union’s proposed 3-year term is adopted, the parties will have less than two years of repose before bargaining must begin anew. The parties need time away from the table, the City submits, because negotiations this time around were “filled with an extraordinary amount of strife.”<sup>26</sup>

The City notes that the parties’ incumbent agreement was executed on January 14, 2005 (nearly one year after its predecessor agreement had already expired), and even then, the residency issue submitted to Arbitrator Meyers remained unresolved until much later.<sup>27</sup> “It is not difficult to imagine the burden of attorney’s fees and other stresses that the City and the Department incurred as a result of the non-stop (and, ultimately unmeritorious) combativeness of the Union,” the City argues. In this significant respect, the City maintains, the circumstances in this case are similar to those set forth in Village of Lansing and Illinois FOP Labor Council, Lodge 218; ILRB Case No. S-MA-04-240, wherein Arbitrator Benn concluded in pertinent part as follows:

This relationship needs stability which will be given by an April 30, 2009 expiration date. The parties had been in negotiations leading up to this proceeding for an inordinate amount of time after the last contract expiration of April 30, 2005. ... As I stated at the hearing, with the Union’s proposed 3-year expiration date, what the union is proposing – and this happens – is a contract that

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<sup>25</sup> Joint Exhibit 1, page 38.

<sup>26</sup> City brief at page 74.

<sup>27</sup> As previously noted, Arbitrator Meyers’ award was issued on April 5, 2005.

expires and then you'll take a deep breath and you'll be looking at each other again. That result must be avoided. Further, with the shorter expiration date sought by the Union, the terms imposed by this Agreement will have insufficient time to be in place for the parties to determine whether further changes are needed. The Village points to one of my prior awards in Village of Algonquin and MAP, S-MA-95-85 at p. 34 (1996):

'The purpose of a longer agreement is to provide stability. From a practical standpoint, the longer agreement allows the parties to go about their business without having to spend enormous amounts of time and money devoted to negotiations and interest arbitrations.'

...[T]he underlying logic for requiring the element of stability and bringing the negotiation process to an end for a period of time expressed in *Algonquin* is applicable here. These parties need to be away from the bargaining table for a while.<sup>28</sup>

Similarly, the City argues, the parties here (or at least the City), need repose and stability. The City further submits that the public would be best served by a longer contract term, inasmuch as a four-year agreement would conserve financial resources (attorneys' fees) best put to other uses consistent with the public good.

The City also argues that internal comparability "strongly favors" its proposed four-year contract term. It is true, the City acknowledges, that the incumbent contract had a term of only three years. Moreover, notes the City, the incumbent agreements for PBPA (Patrol Officers), AFSCME (Clerical Workers) and Teamsters (Public Works) also have three year terms running from 2004 to 2007.<sup>29</sup> However, the City argues, it is not the City's historical pattern for firefighters (or for any of the City's other bargaining units for that matter) to have three year contracts. Quite to the contrary, the City notes, all of the City's unions' prior agreements (including the predecessor firefighters' contract) ran for five years between 1999 and 2004.

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<sup>28</sup> City Citation No. 21.

<sup>29</sup> City Exhibits 16a, 17a, and 19a.

Accordingly, the City reasons, the “average” contract term over the last eight years has been four years, which is exactly what it proposes here.

Additionally, the City notes, the only employee group with at tentative contract commencing in 2007 (the newly-formed Police Lieutenants’ bargaining unit represented by the PBPA), has agreed to a four-year contract. The City argues that none of the other internally comparable bargaining units have reached new agreements as of yet, and this suggests that they are waiting to “whipsaw” the City based upon the Arbitrator’s decision in this case.

The City also argues that the evidence does not establish a “completely uniform pattern of contract term” among externally comparable communities either. In support, the City submits the following proof:

	<u>Prior Agreement</u>	<u>Incumbent Agreement</u>
Belleville	2002-2005 (3 yrs.)	2005-2008 (3 yrs.)
Collinsville	2002-2005 (3 yrs.)	2005-2008 (3 yrs.)
E. St. Louis	2002-2006 (3.5 yrs.)	2006-2009 (3 yrs.)
Edwardsville	2000-2004 (4 yrs.)	2004-2008 (4 yrs.)
Granite City	2002-2004 (2 yrs.)	2004-2007 (3 yrs.)
Wood River	2002-2005 (3 yrs.)	2005-2008 (3 yrs.)

While the City recognizes that the average as established above more closely resembles the Union’s proposed three-year term proposal, it “can hardly be said that the comparables are truly “similarly situated” to Alton absent a showing that they, too, have had “persistently frictious and expensive labor relations.”<sup>30</sup>

CPIU data also favors a longer contract term, the City argues, on the basis of evidence that cost of living increases over the last several years have, on average, been well below wage

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<sup>30</sup> City brief at page 78.

increases proposed for the next four years. Moreover, the City argues, nothing suggests that this is likely to change.<sup>31</sup>

Analysis of overall compensation also favors a four-year term, the City argues. Specifically, the City explains, the Union has already agreed to a 4-year program of changes in health insurance co-payments, the last “step” of which occurs on May 1, 2010.<sup>32</sup> If the Union’s three-year proposal is adopted, the City accordingly argues, the new agreement will expire on March 31, 2010, prior to the scheduled effective date of the last agreed-upon set of changes. Arbitrator Benn also addressed this situation in *Lansing*, the City notes, and rejected the Union’s bid for a shorter contract as follows:

... with the shorter expiration date sought by the union, the [insurance] terms imposed by this agreement will have insufficient time to be in place for the parties to determine whether further changes are needed.”

Similarly, the City submits, this Arbitrator should not nullify the parties’ agreement with respect to health insurance by adopting a proposal as to contract term which does not fully protect those commitments in 2011, and/or which might result in retraction of an attendant *quid pro quo* in the future.

For all the foregoing reasons, the City urges the Arbitrator to adopt its proposal for a four-year contract term.

Discussion:

As set forth herein above, the matter of contract duration should be, and is, resolved based upon the parties’ respective arguments and proofs relative to applicable statutory criteria, and not in the context of their respective wage proposals. For all the reasons which follow,

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<sup>31</sup> Here, the City notes that even if an argument could be made that a 4<sup>th</sup> year poses greater risk of inflationary exposure, the City’s offer of 3.5% in the 4<sup>th</sup> year exceeds all but 3 of the 17 one-year inflationary rates reported for the St. Louis MSA over the last nine years, and thus provides substantial assurance that the Union will not lose ground to inflation solely as a result of an award of a four-year contract. (City Exhibit 38A.)

<sup>32</sup> Joint Exhibit 2, City Exhibit 13.

then, the Arbitrator is convinced that the City's proposal for a four-year contract should be adopted under these particular circumstances.

First, the Arbitrator recognizes that a four-year contract departs from the present *status quo*. However, as demonstrated by the City, these parties do not have a long history in light of which adoption of a four year contract could be viewed as meaningful abandonment of an established pattern of bargaining. The record establishes that the prior agreement between these parties, as were the agreements of every other internally comparable group, was a five-year contract. Thus, the parties have not demonstrated any particular determination to maintain a pattern as to contract term to the extent that other matters demanding the Arbitrator's reasonable consideration of an alternative (such as agreed upon health insurance reforms for 2011) should be minimized or ignored.

The Arbitrator also takes note of the fact that the ink on this contract would barely have time to dry before negotiations for a successor contract would have to be initiated, if the Union's proposal for a three-year contract were adopted. Moreover, there is evidence that the bargaining relationship between these parties had been recently strained and continues to be contentious. In principle, as Arbitrator Benn noted in *Lansing*, these parties need to be away from the bargaining table for a while. Obviously, the Arbitrator cannot guarantee that by adopting the City's proposal for a four-year contract, time will heal whatever wounds are present. However, he is persuaded that the collective bargaining process would best be served by a break. Moreover, a longer term would certainly promote better understanding on the part of both sides as to the practical impact of this successor Agreement in its entirety, and this would definitely enhance rather than stifle chances of dynamic (and successful) future bargaining.

There is also evidence in this record that the Union has already agreed to certain contract provisions that would be rendered null and void should this agreement, which is already nearly one year in arrears, cover only three years. The Union did not discuss the potential conflict of its three-year proposal with agreed-upon fourth year provisions for which, most certainly, there was *quid pro quo*. Thus adopting a three-year contract now, could have a domino effect on the fundamental construct of this Agreement. Given that there is no compelling reason to award a three-year contract in the absence of strong historical and/or internally comparable support for doing so, the Arbitrator will not take that chance.

As to the matter of comparables, the Arbitrator ascribes more weight to internal comparables on this issue than external comparables. Certainly, if Alton firefighters were at an outrageous disadvantage in terms of contract duration as compared to those in externally comparable bargaining units, the Arbitrator would be duly compelled to conclude otherwise. However, there is no such evidence in this record. In fact, among the comparable external bargaining units, there is a lack of historical pattern as well.

Though necessarily connected with wages, the Arbitrator also finds that CPI-U data also favors a four-year contract, at least to the extent that projected increases in the local cost of living are not likely to exceed 3.5%. As stated herein above, a four-year contract mandates four years of wages. Because the Union declined to submit a fourth-year wage proposal, the City's 3.5 % offer for the year 2010-2011 must be adopted.

Thus, the foregoing findings establish that the City has both statutory and evidentiary support for departing from this particular "*status quo*". The City's proposal for a four-year contract term is therefore adopted, and the Arbitrator's Order to that effect follows.

### **Order**

For the foregoing reasons, the *status quo* will not be maintained. The City's proposal for a four-year collective bargaining agreement is accordingly adopted.

#### **Article XIV – Salaries**

##### The Union's Proposal

The Union proposes "general wage increases" of 3.5 % per year in each of the three years from 2007-2008, 2008-2009, and 2009-2010. The Union also proposes an "equity adjustment" of 1.5 % per year in each of the same years. The Union does not propose a wage adjustment for a fourth year.

##### The City's Proposal

The City proposes wage increases on the following schedule for a three-year collective bargaining agreement:

4/1/2007	3.5%
4/1/2008	3.0%
4/1/2009	3.0%

The City also proposes the following wage increase for the year 2010-2011 should the Arbitrator adopt its proposal for a four-year contract term:

4/1/2010	3.5%
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##### The Position of the Union:

At the outset, the Union argues that its proposal will ensure that firefighters' salaries will be maintained in close relationship with those of Alton police officers. The Union argues that there has been an historic dollar-for-dollar salary parity between Alton firefighters and Alton police officers for many years.<sup>33</sup> In fact, the Union argues, maintenance of salary parity between these two groups was both recognized and preserved by Arbitrator Edelman in the parties' 1996 interest arbitration.<sup>34</sup> In adopting the Union's proposal to maintain strict parity with police, the Union notes, Arbitrator Edelman explained in pertinent part as follows:

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<sup>33</sup> See Union Exhibit 24.

<sup>34</sup> City Exhibit 23.

... In its brief the City continues to recognize the importance of the pattern bargaining connection between these two public safety groups, and is willing to accept it as a determining factor. This settles the matter. The firefighter-police wage relationship is of paramount importance.

The record before the Arbitrator in this case, the Union notes, establishes that the City and the police bargaining unit entered into a mid-term agreement whereby the base salary in all ranks was increased to reflect the two hours of regular overtime already being assigned. In other words, the parties (the City and PBPA) agreed to restate base police salaries to the extent that the two hours per week of regular overtime that police officers were already working, were rolled into their regular salaries. This, the Union argues, effectively increased base salary schedules for police to the extent that wage uniformity with the firefighters bargaining unit was destroyed. This unacceptable breach in historical parity, the Union reasons, will be further exacerbated by future general wage increases (though comparable between the two groups in terms of percentage) being applied to the higher base salaries of police officers. Thus, the Union urges, the 1.5 % "equity adjustment" over and above its proposed "general increase" will help restore the internal parity historically recognized between the parties and carefully preserved by Arbitrator Edelman.

The Union also argues that comparison with externally comparable bargaining units also favors its petition for an overall 5% wage increase (3.5% general wage increase plus 1.5% equity adjustment increase). The Union cites Exhibit 14 R in support, which sets forth increases (in terms of percentage) received by firefighters employed in comparable communities between 2006 and 2007. The average among them, the Union observes, is 3.37 %. Thus, the Union concedes, the parties are in agreement as to the first year of the proposed contract, as they have each proposed 3.5 % general wage increases for the same period. Thereafter, the Union notes, the parties depart. The Union maintains that the City's proposed 3.0 % increases for the next

two years are “likely to be below the average” given available statistical data for externally comparable communities. Thus, the Union reasons, its proposal of 3.5% across the board is closer to the “going rate”.<sup>35</sup>

The Union further argues that proposed “equity adjustments” are needed to improve this bargaining unit’s standing relative to firefighter bargaining units in externally comparable communities. In support, the Union cites a number of exhibits which support its position that Alton firefighters are below average in terms of current earnings, anticipated earnings, and overall compensation. In particular, the Union cites Exhibit 16R, which “analyzes career earnings based on the value of wage schedules and longevity pay systems in effect for comparable firefighters for the base line year of 2006”, and concludes based upon that evidence that Alton firefighters “consistently rank 4<sup>th</sup> or 5<sup>th</sup> among the comparables.”<sup>36</sup> The Union further cites Exhibits 17R and 18R, which demonstrate the impact of the Union’s combined wage and equity adjustments in terms of Top Base Salary and Career earnings, and argues that even then, Alton firefighters are among the lowest ranked as compared to members of externally comparable bargaining units. Thus, the Union reasons, the combined wage increases proposed here are both warranted and appropriate, in that they would “bring [Alton firefighters] close to the mid-range of the comparable group.

The Union cites a number of prior arbitration awards supporting “catch-up” increases like the “equity increase” it proposes here.<sup>37</sup> The Union also cites this Arbitrator’s Cook County Fugitive Investigators case referenced above, wherein he adopted the union’s proposal for a 2%

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<sup>35</sup> Union brief at page 29. The Union also concedes that, “There are no wage increases reported among the comparable communities for years after 2007 to date.

<sup>36</sup> The Arbitrator takes judicial note, however, of evidence that the Union’s analysis may not necessarily have been an “apples to apples” one. Specifically, the record demonstrates that different bargaining units among the parties’ recognized external comparables, include different items in their basic wage schedules. In some cases, holiday pay and various premiums are included, for example, and some are not. Thus, it is possible that the Union’s data may not clearly represent reality in terms of actual earnings comparison.

<sup>37</sup> See e.g; Village of Skokie and IAFF Local 3033, Gundmann (July, 1993).

“parity increase” to bring the salaries of Fugitive Investigators and EM Investigators into alignment.<sup>38</sup>

The Union also argues that the City is financially healthy, and as such cannot claim inability to pay as an excuse for not granting larger than pattern wage increases.<sup>39</sup> In support, the Union cites Exhibits 10 through 12, which demonstrate the “continuing financial strength of the City”. The Union also cites Union Exhibit 13, a release in connection with the sale of general revenue bonds in 2006, which stated in pertinent part as follows:

Alton 's financial position is solid, with strong reserve levels and a large general fund balance. The City ended the fiscal 2005 march 31 with an increase in general fund balance of \$235,665 bringing the total to roughly 17.4 million or a very strong 76.9% of expenditures and net transfers...

Finally, though the Union acknowledges prior arbitration awards declining to adopt “catch-up offers” in favor of preserving stability in the collective bargaining relationship, it submits to this Arbitrator that in this case, it is the City’s proposal, and not the Union’s, which would disrupt a long-established relationship of parity between police and firefighters. Indeed, the Union argues, “[T]he City cannot cite to the Arbitrator any case in which the significant factors of average wage increases, maintenance of parity, external disparity and financial resources combine so synergistically to favor the Union’s offer as they do here.” Thus and for all the foregoing reasons, the Union urges the Arbitrator to adopt its last best wage offer.

The Position of the City:

At the outset, the City defends the structuring of its wage proposal in two parts; the first for a three-year contract term, and the second for the fourth year attendant to the issue of contract

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<sup>38</sup> Here, the Arbitrator points out that the “parity increase” referenced by the Union above was awarded to restore parity that the record plainly demonstrated was always intended by the parties, as opposed to establishing parity which the Union encourages here. Moreover, that comparison was an internal one, for which there was significant reliable evidence in terms of bargaining history.

<sup>39</sup> Union Exhibit 1R.

term. The City cites arbitral precedent for doing so, and argues that it has neither submitted a revised proposal after the stipulated deadline, nor impermissibly “split the baby” in terms of wages. Instead, the City argues, the Union attempted to do so by presenting its wage proposal in two separate demands for “general wage” increases and “equity” increases. “The Union’s ‘fragmented’ 5% proposal components truly presents ‘alternative’ wage increase proposals in a clear attempt to end-run the ‘last offer’ requirements of Section 14(g)”, the City maintains. This, the City argues, should not be permitted. Had the Union felt a 5% increase per year was appropriate in its own right, the City maintains, it should just have “bitten the bullet” and proposed it. The City “has every confidence that the Arbitrator will not be taken in by the Union’s ‘fragmenting its proposal into two separate components in the hope that the Arbitrator will be fooled by the smaller numbers, or at least will take what he finds reasonable and discard the rest.’ (*Fugitive Investigators*, supra.)”<sup>40</sup>

As to the Union’s arguments with respect to statutory criteria, the City first “makes no claim of strict ‘inability to pay’”.<sup>41</sup> The City accuses the Union of “obsessing” over ending fund balances allegedly demonstrating that the City is well in position to meet the demands of higher overall wage increases. However, the City argues, even assuming the Union’s contention with respect to the City’s “piggy bank” is true (which the City says it is not), there is no arbitral authority for distorting this statutory criterion to the extent that “profit sharing” or windfall wage increases based solely on the fortuitous financial health of their employer should be mandated.

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<sup>40</sup> Illinois FOP Labor Council and Sheriff of Cook County (*Fugitive Investigators*); ILRB Case No. L-MA-05-007 (Fletcher, 2007).

<sup>41</sup> City brief at page 88.)

Second, the City argues, cash reserves cited by the Union in support of its argument on this point, are not available for discretionary spending.<sup>42</sup> The City cites an undocketed lawsuit filed by the Trustees of the firefighter's pension fund, which accuses the City of under-contributing to the fund. The cost of defending the suit alone will be extravagant, the City maintains, and this does not even take into account the potential impact of an adverse decision on the City's cash position. Thus, the City concludes, the record establishes that the interests of the public (in terms of the City's financial health) would best be served by adoption of the City's wage proposal.

As to external comparability, the City again submits that the Union's wage demand should be analyzed in its 5% per year entirety, and should not be split into "general" and "equity" components. In doing so, the City argues, the Arbitrator will perceive no pressure on the basis of external comparables to adopt the Union's proposal. Of the City's six comparables, the City argues, five are under contract with their firefighters for 2007, and of those five municipalities, four communities (Collinsville, East St. Louis, Edwardsville and Wood River) are increasing wages by 3.5%, and the fifth (Bellville) is increasing wages by just 3.0%. Accordingly, the City observes, while both parties' "across the board" increase proposals allow the bargaining unit to keep pace with the external comparables for 2007, the City's proposal more closely conforms to the norm.

As of the date of the hearing, the City further notes, none of the externally comparable communities have achieved wage commitments for 2008 and beyond, so there is no real guidance on the basis of external comparability as to those years. However, the City argues, looking at the "out years" of the new Agreement (2008 and beyond), the City's four-year average

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<sup>42</sup> The City argues that it maintains a reserve of \$6 million approximating 3 months of City bills, and also an additional \$2 million for the City's current month's bills. Thus, the City argues, its actual cash position in terms of funds available for "discretionary spending" is substantially less favorable than the scenario presented by the Union.

increase is 3.25% as opposed to the Union's general wage proposal of 3.5% . Thus, reasons the City, the two offers would be relatively close but for the Union's additional proposed "equity" adjustment, and there is certainly no external pressure to adopt that.

The City further argues that, even if the Union is slightly behind externally comparable bargaining units in terms of earnings, this situation did not come about overnight, and it is not the Arbitrator's responsibility to rewrite history.<sup>43</sup> Moreover, the City argues, the record demonstrates that Alton firefighters have ranked competitively with respect to mean earnings as compared to those of external bargaining units for many years, and more so after 2006 when their work week was reduced from 52 hours to 48 hours.<sup>44</sup>

The City also argues that its wage proposal is supported by the criterion of internal comparability. At the time of the hearing, the City argues, only the newest bargaining unit of Police Lieutenants had settled their new agreement. The wage package negotiated for that group, the City argues, is nearly identical to the one proposed here, except that the wage increases for the last two years of the contract are reversed in order. In other words, the City notes, the Police Lieutenants are receiving their second 3.5 % one year earlier (and receive 3.0 % in the final year). However, the City explains, this was a concession granted by the City in response to an "expeditious and amicable settlement."<sup>45</sup> To date, the City notes, none of the other internally comparable bargaining units have settled, presumably because they are awaiting the outcome of this process and will likely make "me too" demands once the Arbitrator's award is issued. Thus, the City maintains, the Arbitrator should refrain from adopting a proposal that would "go boldly where no other bargaining unit has gone." Specifically, the City argues, there is no internal

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<sup>43</sup> In support, the City cites City of DeKalb and DeKalb Professional Firefighters Association, Local 1236, ILRB Case No. S-MA-87-26 (Goldstein, 1988), and City of North Chicago and Illinois FOP Labor Council, ILRB Case No. S-MA-96-62 (Perkovich, 1997).

<sup>44</sup> City Exhibit 33.

<sup>45</sup> City brief at page 98.

precedent for general wage increases other than those offered here, and certainly, the City insists, there is no cause for awarding a full 5% per year increase for 2007 and beyond.

As to parity with police officers in the context of the Union's proposed "equity" adjustment, the City argues that the Union's demands are based upon benefits which were granted to other employees under different circumstances and for different considerations. Specifically, the City argues, the patrol officers merely had their regular overtime pay rolled into regular wages, and thus, they are earning no more in terms of overall compensation than they did before the mid-term adjustment. The City also acknowledges that certain educational premiums have elevated the earnings of certain police groups (the Lieutenants in particular) over those of comparably placed firefighters. However, the City argues, firefighters are working fewer hours now than they were when parity was first established with police officers. Moreover, the City argues, the education premiums negotiated with Police Lieutenants represented a *quid pro quo* for making a bachelor's degree mandatory as opposed to optional.<sup>46</sup>

The statutory criterion of "Cost of Living" also favors its wage proposal, the City argues. City Exhibits 38A (CPIU data for the St. Louis Area) and City Exhibit 38B (comparable data for the Midwest Urban Region) demonstrate that the City's wage proposal more closely complies with this criterion, especially if the Arbitrator considers the Union's wage proposal in its entirety (5%). In support, the City argues that inflation (or increase in the CPI-U) is presently 1.8 % for the period ending June 30, 2007 for the St. Louis MSA. In order to verify that the low rate of inflation was not a "fluke", the City explains, an eight-year review of similar data was

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<sup>46</sup> Here, the City acknowledges that as of the date of the Lieutenants' agreement, all Alton police lieutenants already had bachelor's degrees. However, the City notes, the degree is now mandatory rather than optional for future members of the bargaining unit. Moreover, the City argues, firefighters were offered similar premiums for mandatory education levels, and the Union declined to consider them.

conducted, and the average CPI-U increase since 1999 was found to be 2.5%.<sup>47</sup> Thus, the City reasons, while both parties' proposals exceed present and anticipated CPI-U increases, the City's proposal more closely complies with this statutory criterion. The same holds true when both proposals are viewed over the life of a three-year Agreement, the City maintains.<sup>48</sup> Accordingly, the City maintains, there is no legitimate basis for any assertion on the part of the Union that firefighter wages have lost ground to inflation (or will lose ground to inflation) to the extent that a full 5% increase is warranted.

Overall compensation also favors the City's position with respect to wages, the City argues. Though evaluation of overall earnings of Alton firefighters as compared with those of their external counterparts is akin to "herding cats", the City argues, record evidence demonstrates that Alton firefighters fare well in the analysis of regular "big ticket" pay items such as base wages, holiday benefits, rank premiums, longevity premiums, certification premiums and education premiums. Moreover, the City argues, Alton is much more generous in its subsidy of employee health care as compared to externally comparable communities.<sup>49</sup> Accordingly, the City argues, analysis of overall compensation also "overwhelmingly favors" the Arbitrator's adoption of the City's wage proposal.

As to "other" factors which impact firefighter earnings, the City argues that there are none which should disturb the bargaining unit to the extent that the Union's 5% wage proposal should be adopted. Overall, the City argues, working hours have been reduced for Alton firefighters, and "runs per shift" and "runs per year" remain for the most part fairly constant.<sup>50</sup>

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<sup>47</sup> City Exhibit 38A.

<sup>48</sup> Id.

<sup>49</sup> City Exhibits 32, 33, 37B.

<sup>50</sup> City Exhibits 5 and 8.

For all the foregoing reasons, the City urges the Arbitrator to adopt its proposal as to wages for a four-year contract term.

Discussion:

As has been repeatedly noted by this Arbitrator, comparability is perhaps the most crucial of statutory criteria applicable to the issue of wages, for it is upon this foundation that assessment of additional factors such as cost of living, wage patterns and employer makes sense. Here, both parties relied upon both internal and external comparables in defense of their respective positions, and in the end, the Arbitrator is persuaded that the City's last best offer is more supported by the evidence. Had the Union not proposed the additional 1.5% across the board "equity" increases in addition to proposed general wage increases, both offers, with the exception of the absence of a fourth year proposal in the Union's submission, would have been quite close. However, the Arbitrator concurs with the City that the Union indeed attempted to end-run the last best offer requirement by essentially presenting the Arbitrator with two potential scenarios (in reality three) by fragmenting its proposal into two pieces.

The Union's approach, in the Arbitrator's opinion, represented not one last best offer, but a veritable buffet of options from which he was asked to select. Interestingly, both parties viewed the fragmenting of the Union's wage proposal in only two ways, when, if each element truly functioned separately (as the Union appears to argue), it could have produced three outcomes. The Arbitrator's first option, of course, would have been to adopt a straight across the board 3.5% "general wage" increase and ignore the proposed 1.5 % "equity" increase. The second option, of course, would have been to combine "general wage" and "equity" increases. There is, however, a third option, and this is where the Union's belief that the two elements could or should function independently (were the Arbitrator inclined to "take what was

reasonable and discard the rest”) breaks down. That is, the Arbitrator could, under this fragmented wage proposal, theoretically have selected only the equity increase and left the general wage increase behind. That is not to say any reasonable person under these present circumstances would have done so, but the structure of the Union’s wage proposal here does present a certain amount of danger associated with “optioning out” last best offers. It is obvious that the Union could not have proposed either a 5% across the board increase or a 3.5% increase, because that would have constituted more than one “last best offer.” Nor could the Union have proposed a 3.5% increase or a 3.5% increase *plus* a 1.5 % increase, for that would have amounted to the same thing. Thus, the Union truly did try to end-run the statute by presenting its last best offer in pieces, no doubt hoping that the roll of the dice would come up sixes.

Clearly, if the role of the interest arbitrator is to facilitate the extended bargaining process, he must know what it is each of the parties truly wants, and then carefully weigh those “wants” (last best offers) against the evidence and applicable statutory criteria. When within a last best offer there are “options”, particularly on economic issues where an arbitrator is barred from fashioning his own remedy absent the parties’ express authorization to do so, it speaks with clarity on an important point with respect to the pre-occurring bargaining process and the parties’ understanding of the real purpose of interest arbitration.

Fragmented offers, such as the one the Union has presented here, suggest to this Arbitrator that bargaining on the issue was not taken as far as it could have gone before invoking arbitration. In other words, split offers like this one [however illegally] empower an arbitrator (a neutral outsider with little vested interest in the matter outside statutory criteria) to fashion his own solution from among a number of allegedly acceptable “options”. Certainly, this is a negotiator’s or mediator’s particular calling, and not an arbitrator’s. In other words, creativity

belongs at the bargaining table, and absent agreement there, the parties are statutorily commanded to bring to the arbitrator their last and best offers. Here, the Union has, albeit technically, offered good, better, and best (1.5% alone, 3.5% alone, or 3.5% *plus* 1.5% [5%]).

In the end, the Arbitrator is convinced that the Union proposed 5% wage increases, because of its vigorous advocacy for across the board 1.5% “equity adjustments” in addition to, and not in lieu of, 3.5% general wage increases. (Clearly, the Union did not urge the Arbitrator to consider proposed “equity” increases independent of general wage increases, though as previously noted he could technically have done so.)

Analysis of this record, then, demonstrates that the City’s proposed increases of 3.5%, 3.0%, 3.0% and 3.5% are more appropriate than the Union’s straight 5% proposal. Both internal and external comparability demands such a conclusion. Certainly, from a percentage standpoint, the Union is hard-pressed to defend a 5% “across the board” wage increase. The record establishes that of the City’s six externally comparable communities, five are under contract with their firefighters for 2007. Four of them, (Collinsville, East St. Louis, Edwardsville and Wood River) are increasing (or have increased) wages by 3.5 %, and the fifth (Belleville) is increasing (or has increased) wages by only 3%. Moreover, in terms of dollars earned, which the Arbitrator is convinced are more accurately depicted by the City’s evidence, demonstrates that Alton firefighters, while ranking fourth or fifth in terms of annual and career earnings, still compare competitively with members of other comparable bargaining units.<sup>51</sup>

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<sup>51</sup> See, e.g., City Exhibits 34A-35E. The record demonstrates that a meaningful dollar for dollar comparison of these externally comparable bargaining units was difficult at best, because there are many supplemental factors which impact base earnings within each of them, and those factors (as they impact wages) are expressed differently in their respective collective bargaining agreements. Indeed, Counsel for the City equated the task of putting together an equitable analysis of external earnings to “herding cats”. The Arbitrator understands the difficulty here, and appreciates the City’s effort to round up the tabbies anyway. However imperfect the system or method of analysis, external comparability remains among the most important of criteria with respect to wage issues, and thus, as this Arbitrator has repeatedly observed in other interest arbitrations, evidentiary accuracy is of paramount significance in his quest for fair and defensible results.

As to the other crucial matter of internal comparability, the Arbitrator duly notes what the Union has termed “lockstep” comparability between firefighters and patrol officers prior to the wage re-opener for police in 2006. At that time, the Union contends, police were effectively granted a wage increase (when their regular overtime hours were rolled into base earnings and a higher expressed monthly rate resulted), and this “lockstep” parity was destroyed. Thus, the Union argues, its proposed 5% increase would bring these two groups closer to their historical equality. As the City points out, however, actual earnings of police officers did not change; they were merely “reclassified”. Thus, if the Arbitrator adopted the Union’s proposal, firefighters would in effect receive a raise, and still qualify for whatever actual overtime they worked. Moreover, because the police have not reached agreement on their new contract as of yet, a larger than pattern wage increase for firefighters here would actually set up disparity in the wage pattern the parties have historically agreed upon. The record clearly establishes that the reorganization of police wage schedules was never intended to, nor did it, afford patrol officers any additional regular earnings.<sup>52</sup>

The Arbitrator’s conclusion on this matter is not contraindicated by Arbitrator Edelman’s reasoning in 1996 either. In that case, Arbitrator Edelman ruled to adopt the Union’s proposal in order to maintain historical parity with police with respect to patterned percentage wage increases. However, it must be noted that Arbitrator Edelman did not address the matter of actual earnings in his award with this bargaining unit. Thus, theoretically, police working two hours of regularly scheduled overtime in 1996, were already receiving greater overall regular compensation than firefighters because of regularly scheduled overtime, even though their patterned wage increases were identical in percentage and their stated base wages were the same.

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<sup>52</sup> The arbitrator recognizes that overtime accrued by police officers over and above their regularly scheduled two hours of overtime is naturally being paid at a higher rate. There is no evidence in this record as to how this actually impacts the overall earnings of police officers as compared with firefighters in this bargaining unit.

As to the Union's reference to this Arbitrator's ruling to restore wage parity between Fugitive Investigators and EM Investigators in the Cook County Sheriff's Department, it must be noted that circumstances in that case were quite different. First this record establishes that no fresh earnings disparity between police and firefighters resulted from the 2006 reclassification of regular police overtime pay. There is no dispute in this record that police are earning exactly the same amount in terms of regular wages as they did before, so they were not, in fact, given a wage "increase". Second, in the Cook County Sheriff's case cited by the Union, this Arbitrator ruled to restore parity between EM Investigators and Fugitive Investigators because Arbitrator Yaffe, in rightly correcting a wage relationship between the large Correctional Officers bargaining unit and Court Services Deputies, had no choice but to give this "windfall" raise to the very small number of EM investigators grouped with Correctional Officers for purposes of collective bargaining. At no time did this Arbitrator ever suggest that Arbitrator Yaffe "got it wrong" when, as a result of his award, EM Investigators received a larger than pattern increase as a byproduct of his meaning for Correctional Officers. The record in that case clearly established that because of the way the Correctional Officers bargaining unit was (and is) constructed, Arbitrator Yaffe had no choice but to grant a "windfall" wage increase to the EM Investigators as a result of his remedying a wage problem for the remainder (and lion's share by far) of the bargaining unit. This Arbitrator subsequently ruled to restore parity between the two investigator groups (which had been deliberately established by the parties and subsequently preserved by several arbitrators). There is no such pressure here, because, as previously noted, the Union in this case asks for an increase in earnings (without working any additional time) in order to "catch" up with police who never received a raise in the first place.

Internal comparability also mandates that the City's proposal be adopted because the newly formed Police Lieutenants' bargaining unit, also represented by PBPA is the only City bargaining unit to have a tentative collective bargaining agreement through 2011. The record establishes that the Police Lieutenants have agreed to a 3.5%, 3.0%, 3.5%, 3.0% wage pattern for the years 2008-2011. In this case, the City proposes to defer the second 3.5% wage increase until the fourth year of the contract (3.5%, 3.0%, 3.0%, 3.5%). The City explains that the slightly more favorable arrangement with the Police Lieutenants was driven by the amicable bargaining relationship between the parties, and expeditious handling of negotiations for the new contract. This small concession, in the Arbitrator's view, does not represent a significant departure from what is likely be a pattern proposal elsewhere in the City, and in any event does not damage the appropriateness of the City's overall proposal as compared with that of the Union.

The record further indicates that CPI-U data favors the City's proposal over that of the Union. There is ample evidence to suggest that the pattern proposed by the City more closely resembles reasonable anticipated increases in the local cost of living. Moreover, given historical data for the St. Louis region and the Midwest as established in this record, the Arbitrator is satisfied that Alton firefighters will not lose ground in terms of earnings relative to the cost of living over the life of the contract.

Thus, the Arbitrator is satisfied that arbitral precedent (*Edelman*) supports internal parity with other City bargaining units (Police Lieutenants) for purposes of general pattern wage increases, and further that the City's wage proposal satisfies statutory criteria relating to internal comparability, overall compensation, and cost of living. As such, the Arbitrator does not find it

necessary to analyze the City's "ability to pay" (or lack thereof) in any detail, because, in light of the above, this particular factor is irrelevant.

Thus, for all the foregoing reasons, the City's wage proposal is adopted. The Arbitrator's Order to that effect follows.

### **Order**

The City's wage proposal is adopted.

### **Article XV – Longevity Pay**

#### The Union's Proposal

Effective 4/1/07 increase longevity steps as follows:

+2% at 22 years.<sup>53</sup>

#### The City's Proposal

The City proposes to maintain *status quo*.

#### The Position of the Union

The Union maintains that its offer with respect to longevity benefits "represents a modest improvement in the existing longevity benefit that will mitigate disparity in Alton firefighters' career earnings as compared with those in externally comparable bargaining units. The Union submits that its proposal is supported by evidence already presented in this record with respect to proposed wage increases. Specifically, the Union proposes to improve the longevity schedule to the extent that 2% of the 2½% increase paid at twenty-five years under existing contract provisions be moved up to the 22<sup>nd</sup> year of service, with the remaining ½% payable upon 25 years of service. The Union acknowledges that its proposal does not increase the overall

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<sup>53</sup> The Union is not proposing to alter the 14% cap on longevity premium after 25 years of service. (Tr. 14.) Thus, it is understood that the remaining .5% (needed under this proposal to achieve the 14% maximum) should be awarded at 25 years of service as it is currently.

longevity benefit of 14% as set forth in Section 3 of Article XV. However, the Union contends, the record demonstrates that between years 20 and 25 years of service, Alton firefighters lag significantly behind similarly situated members of externally comparable bargaining units in terms of overall earnings.<sup>54</sup>

Thus, the Union argues that the statutory factor of external comparability favors advancing scheduled longevity increases, and accordingly urges the Arbitrator to adopt the above proposal.

#### The Position of the City

The City urges the Arbitrator to maintain the *status quo* with respect to longevity increases. The current schedule, the City argues, was designed specifically to create a slight “disincentive” to remain on the payroll after retirement eligibility (20 years of service per the *Illinois Pension Code*). The Union’s proposal to insert a 2% incremental increase after 22 years of service would defeat that purpose, the City says.

The City further argues that the present longevity schedule was negotiated, and as such the Union bears a “special burden” pursuant to established wisdom, to demonstrate a compelling need to depart from the *status quo*. The City contends that while at hearing the Union addressed the matter at length in the context of its “expanded” list of comparables, the six agreed upon historical comparables create no particular pressure to increase longevity compensation. The existing 14% maximum longevity allowance, the City argues, is already the second highest payment plan among them.<sup>55</sup>

As to internal comparability, the City notes that Alton firefighters’ relative rank among other bargaining units has remained unchanged with respect to longevity since at least 1999.

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<sup>54</sup> Union Exhibit 16R.

<sup>55</sup> Revised City Exhibits 32 and 33.

Only the police officers represented by the PBPA have longevity steps for years 21 through 24, the City notes. However, the City argues, the firefighter "step down spike" provisions are more favorable than those of PBPA represented police officers.

As to other criteria such as CPI-U, the City argues that whichever of the two wage plans is adopted in this case, Alton firefighter wages will still exceed CPI-U rates even without the instant proposed longevity schedule change.

For all the foregoing reasons, then, the City urges the Arbitrator to maintain the *status quo* with respect to longevity benefits.

#### Discussion

In this particular case, the parties have a negotiated provision which one party seeks to change. These are precisely the circumstances under which it is appropriate to view the evidence and the parties' respective contentions in the context of Arbitrator Nathan's instruction; that is, the party seeking the change must, at a minimum, demonstrate that "the old system or procedure has not worked as anticipated when originally agreed to; the existing system or procedure has created operational hardships for the employer or equitable or due process issues for the Union; or finally that the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems." Arbitrator McAlpin further instructed that, "When one side or another wishes to deviate from the *status quo* of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need..." When all is said and done, the Arbitrator is not persuaded that the Union has satisfied this well-established burden on the issue of longevity benefits.

It is not entirely clear to the Arbitrator why the Union elected to take this particular item to impasse arbitration, when the record is entirely void of any evidence that the present schedule

of longevity increases “no longer works as anticipated” or that the bargaining unit has been unduly exposed to “equitable or due process” issues because of it. Instead, it appears that the Union is strictly seeking to improve the position of this bargaining unit in terms of overall compensation, and while the Arbitrator is certainly not surprised, this particular goal is not germane absent a showing that, pursuant to applicable statutory criteria, a departure from the *status quo* with respect to this particular issue is needed to correct an inadequacy in negotiated terms. While the potential for *quid pro quo* in the context of bargaining on this issue is not lost on the Arbitrator, only one conclusion can be drawn in this setting with respect to these two proposals; the Union has made no showing of defect in the present *status quo*.

For all the foregoing reasons, then, the record establishes that the *status quo* should be maintained. The Arbitrator’s Order to that effect follows.

#### **Order**

The City’s proposal is adopted. The *status quo* with respect to Longevity Pay is maintained.

#### **Article XXII – General Provisions (Residency)**

##### The Union’s Proposal

The Union proposes to modify the residency rule to allow bargaining unit employees to reside within a geographic area within the State of Illinois defined by the following boundary:

“Within fifteen (15) miles from either Fire House.”

##### The City’s Proposal

The City proposes to maintain the *status quo*.

##### Background:

With respect to the issue of residency, the record in this matter demonstrates that the City has historically required its employees to reside within the City’s corporate limits. In fact, before

1972, only City residents could even apply for employment with the City. As a result of litigation, however, the City entered into a consent decree in 1972 requiring revision of Section 6.03 of the City's Civil Service Rules to allow non-residents to apply for employment in the City's Police and Fire Departments. Thus, Section 6.03 of the Civil Service Rules now states:

Applicants for examination must be citizens of the United States and residents of the City of Alton at the time of application. Applicants for the positions of Police Officer and Firefighter may reside outside the City Limits at the time of initial application and testing procedures but must establish residency within the Corporate City limits within ninety (90) days of certification to the given position.<sup>56</sup>

Section 1-11-17 of the City Code further states in pertinent part:

All employees of the City shall be required to maintain their lawful residence within the corporate limits of the City of Alton, Madison County, Illinois. From and after his or her first date of employment with the City, a newly hired individual shall be required to establish his or her permanent residence within the City within ninety (90) days. Failure to establish his or her residence within the city as aforesaid, or to maintain his or her residence within the city thereafter, shall require the immediate termination of the employment of the subject individual...<sup>57</sup>

The record establishes that the parties' collective bargaining agreements over the years have not specifically addressed the issue of residency as a contractual provision, and this, presumably is because the matter was not, as explained herein above, subject to compulsory bargaining until 1997. Instead, the parties' contracts have incorporated language affirming the City's residency requirements, and thus Article XXII, Section 1A (Rules and Regulations) of the incumbent Collective Bargaining Agreement states:

It is agreed by both parties to abide by the present rules of the Civil Service Commission of the City of Alton, Illinois (including all amendments) providing they do not conflict with the terms of the Agreement or employee rights under the Illinois Statutes. The City agrees to make available a current copy of the Civil Service Rules and the City Code to the Fire Fighters Local #1255.<sup>58</sup>

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<sup>56</sup> City Exhibit 1.

<sup>57</sup> City Exhibit 2.

<sup>58</sup> Joint Exhibit 1, City Exhibit 8.

Accordingly, the record demonstrates, members of this bargaining unit have been, and continue to be, required to abide by residency requirements as established under the Civil Service Rules because nothing in these parties' prior contracts has expressly mitigated the City's authority to strictly enforce them.

After 1997, as set forth herein above, the matter of firefighter residency became a matter of mandatory bargaining, and the Union first challenged the issue during negotiations for their 2004-2007 contract. Importantly, the matter had already been challenged by police officers represented by PBPA during bargaining for their predecessor agreement, and on September 17, 2003, Arbitrator Sinclair Kossoff issued his Decision and Award on the sole issue of residency. After exhaustively analyzing pertinent record evidence specific to that particular bargaining unit and dispute, Arbitrator Kossoff adopted the police union's proposal, albeit with some modifications, to allow the City's police officers to live outside the City's corporate limits. He reasoned in pertinent part as follows:

With an exception to be discussed below, the City's argument that the Union is proposing the abolition of an historic status quo and should not be awarded a "breakthrough" benefit is similar to the argument of other municipal employers in residency cases since the 1997 amendment of the Act to permit an arbitration award on the issue of residency for municipalities with a population under 1,000,000.

Certainly the majority opinion among arbitrators who have considered the question is that the existence of a longstanding in-city residency requirement does not make residency a "breakthrough" issue requiring an "extra burden of proof" when raised by a union for the first time following amendment of the Act. Arbitrator Goldstein, for example, in Village of South Holland, *supra*<sup>59</sup>, stated:

... I am convinced that given the amendments about residence made to the IPLRA in 1998 [*sic*, 1997], this proposal should be treated as if the parties were making a new contract. Thus, although Management argued bargaining should be relevant to the current case, I hold instead that the genesis and evolution of

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<sup>59</sup>Village of South Holland, ISLRB Case No. S-MA-97-150 (Goldstein, 1999).

the Village's uniform residency rules are much more probative, when connected with the claimed political realities and when considered under the rubric of criterion 3. This is not a case where the "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, I hold.

Arbitrator Steven Briggs held similarly in City of Calumet City<sup>60</sup>, *supra*;

It is important to recognize that there really is no negotiated status quo on this issue. The residency requirement was imposed unilaterally by the City, and until January, 1998 it was an issue considered to be a non-mandatory subject of bargaining. Thus, it was only in the most recent round of negotiations (i.e., for the successor to the 1996-1999 Agreement) that the City had a statutory obligation to discuss the Union's desire to amend the residency rule. There is no longstanding record of agreement between the parties requiring Calumet City police officers to live within City limits. The residency requirement was initially imposed unilaterally by the City, and it has been unilaterally administered by the City for nearly all of its 30-year existence. That background falls well short of comprising a longstanding negotiated history which should not be disturbed in interest arbitration proceedings. Accordingly, the Neutral Chair does not view the Union's final offer (or the City's for that matter) as reflective of a "breakthrough".

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The City contends, however, that the present case is different from the cited cases because the Union ... agreed to a new contract in 1999, after the effective date of the amendment of the Act, without negotiating a change in residence. This, the City contends, made the present residency rule a negotiated status quo.

With regard to the question of negotiated status quo, the City would apply a mechanical rule. If there were negotiations between the parties after the effective date in 1997 of the amended act permitting arbitration of residency, then whatever residency rule is in effect between the parties on residency on the date the new contract was signed, whether specifically negotiated or not, becomes the negotiated status quo. This arbitrator does not agree to such a mechanical approach...

Arbitrator Kossoff ultimately ruled to relax strict residency requirements for City of Alton police officers, concluding in part as follows:

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<sup>60</sup> Calumet City and Illinois FOP Labor Council, ISLRY No. S-MA-99-128 (Briggs, 2000.)

The arbitrator finds that the Union has sustained its burden of proof to show that the police officer bargaining unit should be granted expanded residency. Criteria (3) and (8) of Section 14(h) of the Act both favor a holding in favor of the Union on the residency issue. As for (3), the interests and welfare of the public, the arbitrator is persuaded that the requirement that all police officers reside within the city of Alton after hire has resulted in a decline in the quality of a significant number of applicants for employment. This is borne out by the fact that the department discharged one-third of the new police officers hired the past five and one-half years for performance reasons. The arbitrator finds that with expanded residency the City would have had a pool of better candidates to pick from and would also have had a much better chance of recruiting experienced officers from other police forces. The interests and welfare of the public are adversely affected when the quality of police department applicants declines as a result of restrictive residency requirements for employment.

With regard to criterion (8), "other factors," the arbitrator finds, for the reasons stated above in the section headed Officer Safety, that the current strict residency rule is detrimental to the safety of the police officers and their families. As stated above, the evidence establishes that Alton police officers have valid concerns for their own and their families' safety as a result of being required to live within the Alton city limits and that permitting them to live outside the city would contribute to their safety and likely reduce the amount of vandalism and attempts to intimidate them to which they and their families are exposed.

Finally for the reasons discussed above under the headings Response Time and Economics the arbitrator finds that there are no operational reasons favoring adoption of the City's proposal...

Thus, with Arbitrator Kossoff's above reasoning in hand, the parties to this interest arbitration entered into negotiations for the 2004-2007 contract, and, predictably, the Union proposed to relax residency requirements for Alton firefighters under a variety of scenarios in accordance with his decision. According to evidence not in dispute, the City rejected each of the Union's proposals, insisting instead that the *status quo* be maintained. Having thus reached impasse on the matter, the parties submitted it as a sole issue to Arbitrator Peter Meyers pursuant to Section 14(h) of the Act. Arbitrator Meyer's subsequent Decision and Award is particularly germane to the issue herein before the Arbitrator, because the Union presents essentially identical arguments in the instant record.

First, as to external comparables, Arbitrator Meyers determined that the six historical comparables named by Arbitrator Edelman in 1996 were appropriate for purposes of comparison on this issue.

Second, Arbitrator Meyers determined, as did Arbitrator Kossoff in the 2003 *PBPA* case, that the Union was not operating under any particular “special burden” to demonstrate that departure from the *status quo* was necessary, because the *status quo* in place was unilaterally imposed by the City rather than negotiated between the parties.<sup>61</sup>

Third, Arbitrator Meyers ruled that the Union had offered sufficient *quid pro quo*, even though the evidence demonstrated that the City remained impassive to the Union’s proposals for any relaxation of residency requirements. Consideration of *quid pro quo* is not particularly germane here, though the Arbitrator will hereinafter discuss the Union’s “eleventh-hour” counter-proposal which was later evidently withdrawn. Thus, the Union’s initial proposal has been submitted to the Arbitrator as the Union’s “last best offer”.

With respect to statutory criteria relative to the public’s interest and welfare, Arbitrator Meyers was persuaded in the City’s favor, noting that, “Obviously, the public is served if the City is able to attract and retain high quality personnel in its Fire Department.” However, Arbitrator Meyers found a lack of evidence in the record before him that the City had any difficulty whatsoever in doing so. The evidence before Arbitrator Meyers instead demonstrated that the City was able to attract so many quality applicants, that there were consistently more qualified applicants than there were vacancies in the Department.<sup>62</sup> Arbitrator Meyers contrasted that evidence with proof before Arbitrator Kossoff that the Police Department was not faring

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<sup>61</sup> City Exhibit 7 at pages 11-13.

<sup>62</sup> Arbitrator Meyers noted that of the thirty-three firefighters hired between October 17, 1994 and the date of hearing, twenty-nine remained in the Department, and three of the four no longer employed had voluntarily resigned rather than been dismissed for failing to meet standards.

nearly so well. In that case, noted Arbitrator Meyers, the evidentiary record demonstrated that the City had significant difficulty attracting qualified police candidates, and moreover police officers were leaving the Department because of the City's strict residency requirements. There was, concluded Arbitrator Meyers, an obvious lack of similar evidence relating to the recruitment and retention of qualified firefighters in Alton.

Arbitrator Meyers was also persuaded that the City's residency requirement additionally served public welfare interests by facilitating quicker emergency responses on the part of off-duty firefighters. Arbitrator Meyers acknowledged that strict residency requirements did not necessarily guarantee that off-duty firefighters would be able to respond more quickly. However, he ultimately determined that they were likely to offer some benefit, even if not as much as the City suggested.

As to the matter of internal comparability in the wake of Arbitrator Kossoff's decision, Arbitrator Meyers observed that the City's police officers were (and remain) the only employees of the City of Alton (thus subject to the Civil Service Commission's rules) who are not required to reside within the City's Corporate limits. Arbitrator Meyers recognized that the newly relaxed residency requirement for the City's police officers "may be viewed as the beginning of a trend toward relaxed residency requirements for all of the City's employees." Nevertheless, Arbitrator Meyers concluded that evidence of such a trend was not significant enough to rule for the Union absent other compelling reasons to change the policy. All in all, then, Arbitrator Meyers held that internal comparison within the City of Alton still favored the City's position.

As to external comparisons, Arbitrator Meyers found that they "clearly favored" the City's position as well, in that none of the comparable communities had residency requirements as flexible as those proposed by the Union.

As to the “quality of life” arguments posed by the Union, Arbitrator Meyers concluded that close analysis of crime and school statistics failed to demonstrate that Alton was a “bad place to live and raise one’s family.” On this point, Arbitrator Meyers observed a strong departure from evidence submitted to Arbitrator Kossoff by the PBPA. In that case, noted Arbitrator Meyers, the police union submitted unchallenged evidence that police officers and their families had become targets for local criminals. However, Arbitrator Meyers reasoned, because no such concerns confronted firefighters, in the end, the quality of life issues raised by the Union were insufficient to overcome the fact that two of the three relevant statutory criteria (public welfare and comparability) clearly favored the City’s position.

Arbitrator Meyers ultimately denied the Union’s petition to depart from the *status quo*, in conclusion citing Arbitrator Nathan as follows:

...[I]nterest 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 that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the 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 peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.<sup>63</sup>

The Arbitrator necessarily reviewed Arbitrator Meyer’s decision in some detail (as he did Arbitrator Kossoff’s) because, as previously noted, it is upon this history that the parties now argue their respective positions on the issue of firefighter residency. It is important to note, however, that this case differs from Arbitrator Meyers’ on one crucial front; that of the Union’s burden to demonstrate need to depart from the *status quo*.

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<sup>63</sup> 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 (Kohn, 1995).

As previously established, Arbitrator Meyers followed Arbitrator Kossoff's prior reasoning that because the issue of residency had been unilaterally imposed by the City, and thus had never been bargained over, the Union as the moving party had no particular obligation to "provide strong reasons and a proven need" to depart from the *status quo*.<sup>64</sup> This Arbitrator does not disagree. Now, however, Arbitrator Meyers' decision is "on the books", and, in accordance with City of Rock Island (Kossoff, 2007); supra, his decision with respect to residency should be given the same weight in this forum as if the parties had voluntarily (and successfully) negotiated the issue. Accordingly, the Union is obligated in this case to demonstrate at a minimum, that, "the old system or procedure has not worked as anticipated, the existing system or procedure has created operational hardships for the employer or equitable or due process issues for the Union, and/ or the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems."

The Position of the Union:

For reasons previously stated, the Union's arguments will be analyzed in the context of the parties' historical external comparables. It is, however, noted that the Union references "cultural changes" favoring expansion of formerly restrictive residency rules in general. Nevertheless, the Union argues, the same is true among the traditional comparables. Collinsville, the Union argues, has expanded the residency area and dropped the five-year service requirement. East St. Louis still has residency requirements, the Union argues further, but is lax in enforcing them. In Belleville, the Union notes, strict residency requirements are

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<sup>64</sup> McAlpin, supra.

relaxed for employees with more than 20 years of service. Thus, reasons the Union, “change has occurred in Metro East and will continue to occur...”<sup>65</sup>

The Union also contends that Arbitrator Meyers’ award cited extensively herein above is “flawed” in a number of ways. In particular, the Union argues that Arbitrator Meyers improperly relied upon Arbitrator Kossoff’s observation in Village of Bartlett (1990) that, “Most arbitrators are of the opinion that contract changes of a fundamental nature... should be left to the parties themselves and free collective bargaining.”<sup>66</sup> Arbitrator Meyers’ logic was circular, the Union maintains, in light of evidence that the City Council remained virtually immovable on the subject of residency and thus bargaining was likely to be fruitless. (“Essentially the City let the Union know that it would not move on the residence issue unless it was forced to do so.”) Thus, the Union reasons, were this Arbitrator to consider Arbitrator Meyer’s decision as “precedent”, “[H]e would apply a standard that would represent nothing short of an abdication of the role assigned to the interest arbitrator under Illinois law.”<sup>67</sup>

The Union also argues that Arbitrator Meyers afforded little weight (if any) to the fact that strict residency requirements otherwise applied to all workers employed by the City of Alton were relaxed for police officers represented by PBPA by Arbitrator Kossoff in 2003. Arbitrators, the Union submits, generally view police and firefighter bargaining units to be strong and relevant internal comparables, and in Alton, that association is particularly close. In support, the Union notes that Arbitrator Edelman adopted the Union’s wage proposal in 1996 on the sole basis of long-established internal parity between police and firefighters in Alton, and accuses

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<sup>65</sup> Union brief at page 54.

<sup>66</sup> City Exhibit 7, ref;

<sup>67</sup> Union brief at page 62.

Arbitrator Meyers of patently departing from that tenet in denying firefighters relaxed residency requirements pursuant to Arbitrator Kossoff's decision in his arbitration with police.<sup>68</sup>

The Union further argues that Arbitrator Meyers failed to give any weight to firefighters' liberty interests under Section 14(h)(8) of the Act. The Union argues that, "[A]rbitrators and employers have generally come to recognize employees' interests in choosing where they wish to live and raise their family as a fundamental right."<sup>69</sup> Clearly, the Union maintains, Arbitrator Meyers failed to duly consider that fact, because his only discussion of the matter was in the context of "evidence relating to quality of life issues." Even then, the Union argues, Arbitrator Meyers gave that evidence "short shrift."<sup>70</sup> The Union rejects Arbitrator Meyer's conclusion that firefighters and police officers were situated differently as to matters of safety because police officers had become "targets of local criminals." "There is no question that these are real concerns of police officers," the Union agrees. "It is a valid reason to recognize their interest in establishing residences outside of city limits. However, a desire to escape retaliation from criminal elements is not the be all/end all reason for determining where people choose to live and raise their family."<sup>71</sup>

In support, the Union cites the testimony of firefighter Jeff Manns, who explained to this Arbitrator that he had purchased property outside city limits, and would have relocated his family there but for the City's strict residency requirements and Arbitrator Meyers' defense of them.<sup>72</sup> Different people have different interests, the Union maintains. Thus, the Union argues,

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<sup>68</sup> See also; City of Blue Island and Blue Island Professional Firefighters Association Local 3547, ILRB Case No. S-MA-01-190 (Hill, 2002).

<sup>69</sup> Union brief at page 65.

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> Firefighter Manns testified that he purchased a vacant lot approximately 11.2 miles from Station 1 in anticipation of a favorable ruling from Arbitrator Meyers consistent with that of Arbitrator Kossoff in the police arbitration. Firefighter Manns explained the he was "frustrated" by the fact that an Alton police officer already lived "two doors

to say that the choice of where to live is not available to firefighters because their jobs do not involve contact with criminals “is to vitiate the intent of the 1997 amendments (making residency a mandatory subject of bargaining) and to restrict the ability to expand residency rights to police officers only.”<sup>73</sup>

As to the present, the Union argues that there are four “substantial reasons” for this Arbitrator to modify the “non-negotiated, arbitrarily imposed, *status quo* as to residence for Alton firefighters. First, the Union argues, evidence as to comparability has changed in favor of the Union’s offer since the Kossoff and Meyers awards. On the basis of its “expanded comparability group,” the Union argues that external comparison “overwhelmingly favors the Union’s position.” Moreover, the Union argues, among the Metro East comparable group of six, four of the six do not currently have city limits residency requirements. In any event, the Union argues, given the fact that this is an issue of “fundamental rights”, any “deficiencies” in external comparability should be viewed as minimally significant.

Second, the Union argues, comparison of Alton firefighters with other employees in private employment under factor 14(h)(4)(B) further supports the Union’s proposal. The Union argues that the City’s reference to residency relaxation as a “cultural breakthrough” presumes “a level of arrogance that matches the attitudes expressed by employers when they required their employees to live in company towns.”<sup>74</sup>

Third, the Union argues, the Union has reduced its proposal to the extent that the proposed radius is 15 miles around the City, rather than the 30-mile radius proposed to Arbitrator Meyers. The Union observes that Arbitrator Meyers’ chief concern in reaching his decision was

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down from his lot.” (Tr. 98.) The Union thus argues that Arbitrator Meyers’ “indifference” has placed Firefighter Manns “in a bind.”

<sup>73</sup> Union brief at page 66.

<sup>74</sup> Union brief at page 69.

the prospect of delays in emergency response time. Even Arbitrator Meyers agreed, the Union argues, that while the benefit of the residency could be recognized in this regard, it was not as significant as the City suggested.

The Union also argues that emergency callouts are rare, and cites evidence documenting that over the last thirteen years (excepting the arson team), there have only been seventeen callouts.<sup>75</sup> Even more significant, the Union argues, is the fact that only five involved fires in Alton, whereas eight others involved mutual aid calls to surrounding communities.

The Union also implies that, from a practical standpoint, relaxation of residency for police has proven to be a non-issue for the City, because, as City Exhibit 22 demonstrates, fully five years after Arbitrator Kossoff's award, only about one-third of Alton's police officers have relocated outside city limits.

Lastly, the Union argues that the parties' bargaining history on this issue demonstrates that the attitude of the Alton City Council "remains intransigent", and thus there is no prospect of a voluntary settlement between the parties on the issue of residency. Even Arbitrator Meyers recognized in his award that the City was not willing to "move on the residency issue unless it was forced to do so", the Union notes, and nothing has changed. The Union does acknowledge some movement on the part of the City just prior to arbitration, but calls it too little too late. Because this is essentially a philosophical issue when all is said and done, the Union argues, and because the parties are never likely to agree on it, this arbitration is "the only self-help alternative available to the Union."<sup>76</sup> In further support, the Union cites Arbitrator Barbara Doering in City

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<sup>75</sup> Union Exhibit 30.

<sup>76</sup> Citing *Cook County Fugitive Investigators* (Fletcher) at page 18.

of Urbana and IAFF Local 1147, wherein she concluded in part that divergence on issues of strong philosophical difference may be unresolvable except through arbitration.

Thus and for all the foregoing reasons, the Union urges the Arbitrator to depart from the “non-negotiated” *status quo* on the issue of residency and adopt its proposal.

#### The Position of the City

At the outset, the City argues that the Union, as the party seeking to depart from the *status quo*, bears the traditional “breakthrough” burden on the issue of residency. In support, the City cites, among others, Village of Lansing and Illinois FOP Labor Council, *supra*, wherein Arbitrator Benn concluded in pertinent part that:

...The statutory requirement that residency can be resolved through these interest arbitration proceedings nevertheless results in the same principles concerning changes to the *status quo* and application of burdens – specifically that the burden is on the party seeking the change to demonstrate that the change is necessary.

The City also urges the Arbitrator to give significant weight to Arbitrator Meyers’ prior decision in the matter of residency for Alton firefighters; indeed the “same weight as if the parties had voluntarily negotiated” the matter to a successful conclusion.<sup>77</sup> Thus, reasons the City, the instant outcome should be the same because the Union failed to demonstrate that any of the factors considered by Arbitrator Meyers a mere two years ago have changed to the extent that his decision is no longer relevant. In this case, the City argues, the Union essentially abandoned meaningful argument on the subjects addressed by Arbitrator Meyers, and instead focused on the “liberty interests” of Alton firefighters. Even on this point, the City argues, “it is ludicrous to suggest that those “liberty interests” arose only after Arbitrator Meyers’ award.<sup>78</sup> Moreover, the

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<sup>77</sup> City of Rock Island, (Kossoff); *supra*.

<sup>78</sup> City brief at page 40.

City argues, the Union failed to demonstrate that since Arbitrator Meyers' decision, the City has 1) refused a sufficiently valuable *quid pro quo*; 2) has unreasonably resisted the Union's attempts at bargaining; or 3) has granted relaxed residency to other similarly situated groups without a *quid pro quo*.

The City anticipates that the Union will focus on the City's alleged unwillingness to bargain on this issue, and in rebuttal points out that between December 14, 2006 (when the Union's initial proposals were presented) and August 1, 2007 (the eve of arbitration), the Union made absolutely no move to moderate their first (and final) residency demand. In contrast, the City argues, the record establishes that as early as April 24, 2007, the City offered to relax residency requirements to the extent that firefighters with more than 20 years of service would be permitted to relocate outside city limits. The City argues that that door was held open to the Union through the end of the parties' "last ditch" meeting on August 1, 2007 with "no harsh concession" demand.<sup>79</sup> The City calls its offer "monumental", on the basis that Alton has never voluntarily granted relaxed residency requirements for any group of city employees.

The City further argues that statutory criteria also favor the *status quo* on this issue. The City continues to "firmly believe" that concerns expressed to Arbitrator Meyers with respect to emergency response time and the negative economic impact on the community that relaxed residency requirements might pose are valid to this day. In virtually every residency arbitration involving protective service personnel, the City notes, the issue of "response time" has come to the fore. Here, the City argues, the uncontested testimony of Chief John Sowders articulated a premise which, for most people is self-evident, i.e., that in order to be effective, fire departments must have the ability to respond to emergencies as quickly as possible. Clearly, the City argues,

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<sup>79</sup> The City acknowledges that a proposal that the Union accept the 4-year wage proposal of Police Lieutenants was tied to its proposed relaxation of residency requirements.

the Union's final proposal (up to 15 miles from one or the other of the City's two fire stations) would "telescope" potential response times and would thus have an "obvious and profoundly detrimental effect" on the City's ability to provide resources in second and subsequent alarm situations.

The Fire Department's ability to respond to mutual aid situations, the City argues, would also be adversely affected by relaxation of residency requirements. The City is not persuaded by the Union's argument that such emergencies are relatively rare, because, obviously, they could occur with unexpected frequency at any point in time. Arbitrator Meyers appropriately appreciated that fact, the City argues, and so have a number of other arbitrators.<sup>80</sup>

The economic standing of the community would also be adversely affected by the "exodus" of this group of highly-paid Alton citizens, the City argues, and the record further demonstrates that residency requirements have not harmed its ability to attract and maintain qualified workers.<sup>81</sup> The City notes that of the thirty-nine firefighters hired by the City since 1994, thirty-five remain on the payroll at present. Of the four who are not still employed by the Department, explains the City, three voluntarily resigned during their probationary period. Thus, the City reasons, history does not support any inference that the residency requirement has created a "revolving door" of employees who are not fit for duty. Moreover, the City notes, neither do the above statistics indicate that the City's residency requirements are driving out firefighters who are unhappy about being forced to reside in Alton. Instead, the City argues, the record establishes that no firefighter who has left the City's employ since 1993 did so because of

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<sup>80</sup> See, e.g.; Village of Maywood and Illinois Firefighters' Alliance, ILRB Case No. S-MA-92-102 (Wolff, 1993).

<sup>81</sup> City Exhibit 47B, indicating that since 1994, the City has consistently had more qualified applicants than vacancies in the Fire Department.

the residency requirement. (Tr. 100-101.) That evidence, the City maintains, is distinctly different from proofs before Arbitrator Kossoff in the police case.

With respect to external comparables, the City argues that the evidence is much the same now as it was before Arbitrator Meyers. Not only have residency requirements in the recognized externally comparable communities not changed, the City notes, they still overwhelmingly support the City's proposal to maintain *status quo*. Of the six stipulated communities, the City argues, three of them require in-city residency for all firefighters, and a fourth (Bellville) requires in-city residency until employees have completed twenty years of service (the minimum service required for pension eligibility). Moreover, the City argues, no "comparable community" has a residency rule even close to what the Union is petitioning for here. Of the two communities with slightly more relaxed residency requirements, the City notes, Collinsville requires its firefighters to live within the jurisdictions they serve, and Edwardsville requires firefighters to live either in the city or not more than four miles from the fire station if outside city limits.<sup>82</sup>

As to internal comparability, the City argues that the overwhelming majority of all Civil Service employees are members of one or another of the City's four bargaining units (police, firefighters, public works and general service employees), and all but Alton police are subject to the same in-city residency requirements. Moreover, the City notes, the City Council enacted an ordinance in 2000 requiring mayoral appointees to live within city limits.<sup>83</sup> In the case of police, the City argues as it did before Arbitrator Meyers, that they are not "similarly situated" to firefighters, and thus this particular internal comparison is of little value. The City recalls the

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<sup>82</sup> City Exhibit 31.

<sup>83</sup> City Exhibit 2, Tr. 118.

basis for Arbitrator Kossoff's decision to relax the residency requirement, and re-argues that it does not apply to firefighters.<sup>84</sup>

Interestingly, the City observes, the Union does not really contest Arbitrator Meyers' conclusion that the record failed to demonstrate that Alton was a "bad place to live and raise one's family" to the extent that firefighter "quality of life" is being adversely affected more now than it was then. Instead, the City notes, the Union appears to argue that firefighters' "liberty interests" should trump all other statutory criteria, Arbitrator Meyers' conclusions, and the competing interests of the City. On this point, the City notes that while indeed residency requirements mandate fewer options for firefighters as to where they will reside, they have not been imposed on Alton firefighters; instead firefighters have voluntarily come to them as a condition of their employment. Thus, the City argues, every firefighter in the Department has already weighed his or her interests and exercised his or her "liberties" by accepting employment.

For all the foregoing reasons, then, the City urges the Arbitrator to reject the Union's proposal to relax residency requirements for firefighters, and thus maintain the *status quo*.

#### Discussion

After carefully examining the extensive record on this particular matter and weighing the arguments of the parties against statutory criteria and applicable case law, the Arbitrator is persuaded that the *status quo* should be maintained as to the issue of firefighter residency. When all is said and done, the Union's case, though once again passionately articulated, is a trip down

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<sup>84</sup> In that case, Arbitrator Kossoff found that the interests and the welfare of the public were being adversely affected because the quality of Police Department applicants was declining as a result of the restrictive residency requirements for City employment. Second, he also credited record evidence that Alton police officers had valid concerns about personal safety.

memory lane. While this was not automatically fatal, in the Arbitrator's view, the Union was nevertheless subject to a higher burden of proof in light of Arbitrator Meyers' conclusions a mere two years ago. In other words, the Arbitrator affirms Arbitrator Kossoff's ruling in City of Rock Island; supra, that Arbitrator Meyers' award should be given deference equal to that of a negotiated *status quo*. The Arbitrator is not impervious to the Union's true statement that the issue of residency has never, in fact, been negotiated. However, because it is now a mandatory subject of bargaining, and because an arbitrator has already ruled on the essential merits of the Union's case in this record, putting the parties back to ground zero in terms of history (which he would do by ignoring the binding impact of Arbitrator Meyers' ruling absent successful appeal on the grounds that it was arbitrary and/or capricious), would be tantamount to rendering the entire purpose of interest arbitration useless. As already stated herein above, such disregard on the part of this Arbitrator, or any arbitrator under identical circumstances, would promote a practice of "arbitrator shopping" until the party petitioning for departure from the *status quo* was finally satisfied with the outcome, after which the "loser" could do the same. Clearly, this practice was never contemplated under the Act, given the final and binding nature of arbitration and statutory guidance as to how the arbitrator should reasonably (if not always absolutely perfectly) discern what the "natural extension of the bargaining process" should produce.

Thus, the Arbitrator is satisfied that the Union was, in fact, obligated to satisfy a "special burden" to demonstrate that the system in place no longer works the way it was intended (or at the very least that present circumstances are different from what they were before Arbitrator Meyers), that there is a presence of fundamental "equitable or due process" issues impacting the Union, and/or that the City has resisted attempts at the bargaining table to address the Union's

contentions. Upon the whole of this record, the Arbitrator is not persuaded that the Union satisfied its burden to demonstrate any of the three.

First, as to whether or not the “old system or procedure” no longer works, the statutory criteria under the Act are helpful, though for the most part the “old system” is working exactly as it did when Arbitrator Meyers first considered it. Also, just as Arbitrator Meyers concluded, this Arbitrator finds that public interests and the general welfare of the City still favor the City’s proposal to maintain the *status quo*. Certainly, at the very least maintaining the Department’s present ability to respond to emergencies is notable. The degree to which that is important, is actually of little value to this Arbitrator, however, unless circumstances have changed since Arbitrator Meyers first addressed the fundamental merits of this particular argument. This record establishes no such change except for the fact that the Union now proposes a 15 mile radius rather than a 30 mile radius.

The record further fails to establish that the essential vitality of the Fire Department has changed since Arbitrator Meyers examined the Union’s arguments relative to the Kossoff arbitration with police. Specifically, this record continues to demonstrate a great deal of stability in this bargaining unit, with very few vacancies, and a large number of qualified candidates waiting in the wings. Though Firefighter Manns testified as to his frustration with the present strict residency requirements, he also clearly stated that he loves his job. (Tr. 99.) He gave no clear indication that he intends to leave it, and moreover, the Union failed to show that other firefighters are “jumping ship” because of the residency issue alone. Therefore, the Arbitrator is not at all persuaded that conditions in the bargaining unit have deteriorated since Arbitrator Meyers addressed the issue of residency in 2005.

Circumstances with respect to internal and external comparables have also remained essentially unchanged since Arbitrator Meyers' 2005 award. Specifically, the record establishes that none of the historically comparable communities have significantly changed their residency requirements, and Arbitrator Meyers concluded that evidence with respect to this criterion strongly favored the City. As to internal comparability, the record here establishes exactly the same circumstances as those considered by Arbitrator Meyers. Arbitrator Kossoff's decision in the police arbitration was already on the books by that time, and Arbitrator Meyers referenced it extensively throughout his discussion. Moreover, the Union presented absolutely no evidence that any other City bargaining unit has since achieved relaxation of residency requirements. Thus, internal comparability still, overall, favors the City's proposal to maintain *status quo*.

The Union does argue in favor of "liberty interests" in this record, and thus focuses more strongly on new philosophical considerations as than the more practical matters of emergency availability and the like. The Arbitrator is not entirely unsympathetic on this point, but the Union's essential assertion of "free agency" runs head-on into itself when taken to its logical conclusion under these particular circumstances. Not one member of this bargaining unit, as the Arbitrator sees it, has had a gun put to his or her head along with a Civil Service mandate to seek (and/or retain) employment in Alton, where strict residency rules have been in place and enforced for many years. Moreover, the record in this case fails to demonstrate that the numerous other qualified candidates on the City's "waiting" list have been forced in a similar manner. In other words, the rules have not changed for the worse in the middle of the game. The City's strict residency requirement was (and is) a well-advertised condition of employment, and each of the complainants in this case accepted that condition at some point in time in exchange for his or her gainful employment. In its essence, this is a clear demonstration of

freedom of choice. The City is thus correct in observing that firefighters in the current employ of the City have never been barred from “deciding where to live and raise their families.” Indeed they were initially (and certainly are now) free to live wherever they choose; it is still a free country. However, the moment they voluntarily entered the City’s employ, they obviously “decided to live and raise their families” in Alton in light of pre-existing residency requirements.

In the end, then, the Union cannot effectively argue that the City’s residency requirement has intruded upon the fundamental liberties of firefighters. Certainly, the Arbitrator recognizes that the Union is seeking a more spacious cage (fifteen additional miles around) than the one into which firefighters voluntarily walked when they were hired, but that is a matter for bargaining and not one of fundamental human rights. Authority in the employer-employee relationship is simply a given, and thus we all decide what we can live with and what we cannot when we agree to work for an employer in exchange for a paycheck. Granted, the very existence of the collective bargaining process is designed to keep subject relationships equitable and fair, so the Union does enjoy contractual and statutory protection from unilateral changes in the middle of the game. However, that is not what is happening here. In this case, the Union simply wants more freedom than it has now (as opposed to the gain of a fundamental human right that has been trampled upon by the City), and thus, any assertion of need to depart from the *status quo* must be substantiated by credible evidence differing from that already tackled by Arbitrator Meyers. Importantly, as demonstrated by Arbitrator Kossoff, it is not impossible to do just that. Upon the whole of this record, however, the Arbitrator finds no such substantiation.

As to the Union’s contention that the City remained intransigent on the subject of residency during bargaining, the Arbitrator is not convinced that this is true in the sense intended by Arbitrator Nathan. Certainly it is obvious that the Union was not satisfied with the City’s

offer to relax residency requirements for firefighters eligible for retirement after twenty years of service. However, the reality that the City made an offer on the subject and then left the door wide open for discussion thereafter, is very different from an obdurate refusal to consider anything other than the *status quo*. Moreover, the record establishes that the City extended this offer as early as April, 2007, and it was thus the Union who steadfastly held ground throughout the entire bargaining process with respect to maintaining its initial proposal. Interestingly, the record does establish that there was some type of proposal tendered by the Union bargaining team on August 1, 2007 (the parties' final meeting), which it, according to City counsel, thereafter instructed the City to "forget". This assertion was not effectively rebutted by the Union at the hearing before the Arbitrator. Instead, the Union permitted reference to the "phantom" offers in order to rebut the City's contention that it had remained immovable on the subject of residency throughout the entire bargaining season.<sup>85</sup> In the end, though, the Union's last best offer is identical to its initial proposal, and this does tend to bear witness to a degree of reluctance on the part of the Union to engage in genuine good-faith bargaining on this subject. Thus, the Arbitrator is not convinced that the final standard of proof as dictated by Arbitrator Nathan (that the party desiring to maintain the *status quo* resisted bargaining) was established in this record.

Although for all the foregoing reasons the Arbitrator is satisfied that the present *status quo* should be maintained, he is encouraged by evidence (however frail) that the parties might entertain good faith bargaining on the subject of firefighter residency in the future. Obviously it is an issue of significant importance to the Union, because it was the sole issue brought to Arbitrator Meyers in 2005, and was, according to undisputed evidence in this record, the catalyst

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<sup>85</sup> Union Exhibits 27 and 28.

for this interest arbitration. Perhaps the Arbitrator's prior adoption of the City's four-year term proposal will first restore some balance to this bargaining relationship, and then afford the parties additional time to think creatively about residency and get this issue resolved at the table where it belongs. One can hope, anyway.

For all the foregoing reasons, then, the Arbitrator is convinced that the *status quo* should be maintained. The Arbitrator's Order to that effect follows.

### **Order**

The City's proposal is adopted. The *status quo* shall be maintained.

### **X. Conclusion and Award**

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.



John C. Fletcher, Arbitrator

Poplar Grove, Illinois, December 20, 2007