

Interest Arbitration
Illinois State Labor Relations Board

City of Rockford,
Fire Department,

Employer

and

City Fire Fighters, Local
413, International Associa-
tion of Firefighters,
AFL-CIO,

Union

ISLRB Case No. S-MA-06-103
Arbitrator's File 06-123

Herbert M. Berman
Arbitrator

Joel A. D'Alba, Esq.
Margaret Angelucci, Esq.
Asher, Gittler, Greenfield
& D'Alba, Ltd.
Attorneys for Union

Patrick W. Hayes, Esq.
Legal Director
City of Rockford
Attorney for City

October 21, 2008

Opinion and Award

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I. Statement of the Case

On or about October 31, 2005, the parties began bargaining on an agreement to replace their 1/1/03-12/31/05 agreement (Union Exhibit 3).¹ On August 29, 2006, the Union made a demand for compulsory interest arbitration (CX 2) under Section 14 of the Illinois Labor Relations Act (hereinafter "Act") (5 ILCS 315/14). Waiving the arbitration panel, the parties submitted their dispute to me for reso-

¹ In the remainder of this Opinion, I shall cite Union Exhibits as "UX ___," City Exhibits as "CX ___" and Joint Exhibits as "JX ___." I shall cite non-testimonial portions of the transcript as "Tr. ___." I shall cite testimony by surname and page reference, for example, "Corl 189."

lution. I conducted a hearing on November 14, 15 and 16, December 11, 12 and 13, 2006 and on January 4 and 5, 2007. The parties initially submitted more than 30 issues to me for resolution. In the end, the parties winnowed the issues down to the following:

1. Contract Duration (non-economic)²
2. Wages (economic)
3. Health Insurance (economic)
4. Death Benefit (economic)
5. Chiropractic Limit (economic)
6. Health and Safety Committee (non-economic)

To resolve these issues, I must also resolve the parties' differences on comparability.

Both parties have filed post-hearing briefs. The parties have also submitted post-hearing data designed to update information referred to in the course of the hearing. To the extent that I consider such data material and relevant, I shall consider it pursuant to Section 14(h)(7) of the Act.

II. Relevant Provisions of the Act

Section 14(h)

(h) Where there is no agreement between the parties, or where there is an agreement and the parties have begun

² At the parties' request I resolved the contract duration issue separately. On August 9, 2007, I issued an award holding that a three-year contract beginning January 1, 2006 and ending December 31, 2008 was appropriate.

negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (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 other-

wise between the parties, in the public service or in private employment.

III. Comparability

It's well-settled that "[t]he standards relied upon most frequently and given the greatest weight by interest arbitrators are: (1) comparability; (2) the cost of living; and (3) the ability to pay."³ Of these, "[t]he most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."⁴

In *City of Rockford/IAFF Local 413*, S-MA-97-199 (Briggs 1998) ("Rockford I") (UX 6), arbitrator Steven Briggs held that Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria and Springfield were comparable to Rockford. The Union maintains that the Briggs comparables remain appropriate. The City proposes to delete Aurora, Elgin and Joliet ("Riverboat Cities").

A. Summary of Arguments

1. The City

1. The City concedes that "arbitrators are hesitant to change historic comparables," but points out that "the Union has presented no evidence that comparables were even

³ Arvid Anderson, Loren Krause & Parker A. Denaco, "Public Sector Interest Arbitration and Fact Finding: Standards and Procedures," Tim Bornstein, Ann Gosline & Marc Greenbaum, eds., *Labor and Employment Arbitration* (New York: LexisNexis/Matthew Bender, 1997), Vol. II, chap. 48, §48.05[1], at 10.

⁴ *Ibid.*, §48.05[2], at 11. See also *City of Batavia*, S-MA-95-15 (Berman 1996), at 4.

discussed in this round of bargaining," and thus "at some point the actual...economic foundations of comparability must be addressed" (City Brief, 6).

2. The City cites "actual economic foundations" that, in its opinion, distinguish Rockford from the Riverboat Cities:

- A. The Riverboat Cities "have consistently out-paced Rockford"; Rockford is no longer "in the same economic league" (City Brief, 3).
- B. In a Report on Illinois Poverty issued by the State of Illinois in 2005, Winnebago County, which encompasses Rockford, was one of fourteen counties on the poverty "warning list" (City Brief, 3). Half of the Illinois counties were on the poverty "watch list" (City Brief, 3). None of the counties in which any of the Riverboat Cities is located made either list (City Brief, 3). More than 10% of Rockford families are below the poverty level, compared to Joliet at less than 8% and Aurora and Elgin at just over 6% (City Brief, 3).
- C. 8.7% of Rockford's wage earners made over \$100,000 annually compared to Aurora at 17.6%, Elgin at 13.6% and Joliet at 11.2% (City Brief, 4). The median household income of Aurora, Elgin and Joliet "is the highest among all the historic comparables while Rockford is seventh out of the eight" (City Brief, 4).
- D. The median home price in Rockford is \$93,600 compared to \$171,000 to \$191,000 in the Riverboat Cities, which are near the top of the list of the comparable cities proposed by the Union (City Brief, 4). Since 1990, median home values in Rockford have gone up about 170% compared to 270% in Joliet, 200% in Elgin, and 230% in Aurora (City Brief, 4-5). Rockford's growth in Equal Assessed Evaluation (EAV) from 2001 to 2005 is also low compared to EAV growth in the Riverboat Cities, the "top three in EAV growth":

Rockford	16%
Aurora	52%
Elgin	38%
Joliet	61%

E. From 2001 to 2005, Rockford's sales tax revenues grew by 11%, Joliet's by 17%, and Aurora's by 19% (City Brief, 5-6). Every city on the Union's list of comparables has enacted a home rule sales tax of at least 1.25%, but "Rockford cannot impose such a tax for general purposes" (City Brief, 6).

F. Riverboat gaming income in 2005 was \$13 million in Aurora, \$23 million in Elgin and \$31 million in Joliet (City Brief, 6). "Rockford's entire sales tax income for 2005 was only \$23 million" (City Brief, 6). "These revenue streams have destroyed the comparable economic picture between the Riverboat Cities and other historically comparable cities, including Rockford" (City Brief, 6). "Rockford cannot be expected to provide wages and benefits to its employees in comparison to the Riverboat Cities" (City Brief, 6).

2. The Union

1. In the current negotiations the City used a health-plan survey that included the three Riverboat Cities. Thus, the City's argument that the "arbitrator 'should give weight to'" its "'most recent exhibits'" is "an attempt to change historical, stipulated and agreed upon comparables" (Un. Brief, 5-6). On the basis of "historical comparables, the change sought by the Employer is unwarranted in the absence of new evidence supporting a change" (Un. Brief, 6, citing *University of Illinois*, S-MA-04-269 (McAllister 2006) and *Town of Haverstraw*, NY PERB 1(A) 2005-023, M005-004 (Prosper 2006)).

2. In an interest arbitration involving the City and the Policeman's Benevolent & Protective Association (PBPA), Unit 6, "the parties...stipulated that the communities determined to be comparable by Arbitrator Steven Briggs... should apply to this case'" (Un. Brief, 4, citing *City of Rockford and Policeman's Benevolent Association, Unit 6*, ISLRB Case No. S-MA-99-78 (Goldstein 2000)).

3. Although the parties reached agreement pending a second interest arbitration decision (ISLRB Case No. S-MA-00-069), the City asserted in its post-hearing brief (UX 66, at 3) that—

[T]here is no issue as to comparable communities because the parties have stipulated to the eight Illinois cities of Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria and Springfield.... These cities were determined to be the "historic comparables" based on the bargaining history of the parties as determined by arbitrator Briggs in the last interest arbitration.

4. In *Loves Park*, S-MA-04-175 (Simon 2006), arbitrator Barry Simon wrote, "[I]f arbitrators would consider only communities that had comparable wages, hours and conditions of employment, there would be no point in making such an analysis" (Un. Brief, 6).

5. Rockford "has simply not demonstrated any significant change in the economic environment, social, demographic characteristics or other criteria generally used to determine comparability. There has been no evidence offered

that the facts and circumstances considered by the parties when they agreed upon these comparables and which were confirmed by Arbitrator Briggs have substantially changed to warrant a change in comparables. This is especially true since the parties in their...2000-01 recent arbitration have stipulated to the same group of comparables" (Un. Brief, 6-7).

B. The Briggs Award

In Rockford I, at 5, arbitrator Briggs wrote:

The City rejects Aurora, Joliet and Elgin as comparables. It is inappropriate to include such "Chicago area cites," the City argues, because they enjoy the unique and lucrative economic activity of riverboat gaming, and have much higher median household incomes than [those] found in Rockford. Moreover, the City asserts that the Union has failed to provide any evidence suggesting that Rockford, Elgin, Joliet or Aurora are in the same local labor market.

Rejecting the City's argument, arbitrator Briggs found the Riverboat Cities comparable to Rockford. First, he pointed out, evidence "supported the Union's contention that its proposed comparables have been used by the parties historically," that it was "only in their most recent round of bargaining that the City objected to certain of them" (Rockford I, at 7). Second, arbitrator Briggs noted that "the parties have mutually embraced Bloomington and Champaign," cities that "would quite likely be excluded as com-

parables on the traditionally accepted arbitral criteria of size and distance," and therefore—

...the undersigned accepts them because the parties themselves have relied upon them historically. Such reliance has undoubtedly created in the minds of Rockford firefighters and management personnel a set of salary and benefit expectations based in part upon what has happened in Bloomington and Champaign. And those expectations have quite likely shaped the outcome of firefighter bargaining in Rockford over the years. The same may be said about Aurora, Joliet, Elgin and DeKalb. Even though those municipalities may not meet some of the criteria typically employed by interest arbitrators in the identification of comparable communities, the parties' historical reliance on those communities as benchmarks against which to compare their own negotiated wage and benefit package suggests that they would have influenced the outcome of negotiations for the contract at issue here. That factor is very important to the Arbitration Panel, for it is our job in these proceedings to generate an award which approximates as closely as possible what the parties themselves would have negotiated on their own. (Rockford I, at 8-9.)

Arbitrator Briggs had this to say about "gaming tax receipts" (Rockford I, at 9):

The City's concern about the gaming tax receipts received by Aurora, Joliet and Elgin is understandable. Such revenues could indeed permit those municipalities to pay more to their firefighters than might seem reasonable in Rockford. But that does not seem to have happened. As the Union correctly noted, gaming revenues typically are used by cities for capital expenditures. I am not convinced by the evidence in the record that gaming revenues in Aurora, Joliet and Elgin have artificially inflated firefighter salaries and benefits there. Besides, the City has adopted Peoria (also a riverboat gambling town) as one of its comparables, so the impact of gaming tax receipts is obviously not an automatic disquali-

fier.⁵ Finally, the Neutral Chair acknowledges the validity of the Union's argument that the gaming tax differential between Rockford and Aurora, Elgin and Joliet is generally balanced by Rockford's significantly higher sales tax revenue.

Arbitrator Briggs made the following comparisons between Rockford and other proposed comparable cities (Rockford I, at 8):

	Pop	Area sq. mi.	Miles from RF	Median HH Income	EAV	FD Ees
Rockford	143,000	53.3		28,282	1,373,227,381	236
Aurora	113,496	NA	66	35,039	1,346,710,032	154
Bloomington	57,757	20.0	136	29,354	841,148,209	72
Champaign	64,350	16.0	188	22,967	635,682,494	78
Decatur	94,081	45.5	170	25,451	556,819,371	NA
DeKalb	40,000	NA	44	25,387	285,689,763	46
Elgin	85,000	NA	48	38,554	1,031,837,767	103
Joliet	76,836	NA	81	30,967	783,760,269	130
Peoria	113,513	44.0	138	26,074	963,373,482	188
Springfield	107,000	60.0	197	27,995	1,247,438,809	188

C. Other Factors Cited by the City

An analysis relying on the Briggs factors omits other factors cited by the City in this proceeding:

1. median family income (CX 15);
2. per capita income (CX 16);
3. percentage of families below poverty level (CX 17);
4. population per bargaining unit member (CX 18);
5. revenue per bargaining unit member (CX 19);
6. total revenue (CX 20); and
7. sales taxes (CX 20).

⁵ The Par-A-Dice Hotel & Casino is not located in Peoria but in East Peoria, a neighboring but separately incorporated city.

I shall review this information.

1. Median Family Income

	December, 1998	December, 2000	December, 2005
Rockford	\$34,985	\$45,465	\$43,185
Aurora	39,941	61,113	58,218
Bloomington	38,677	61,093	62,932
Champaign	36,767	52,628	56,594
DeKalb	36,896	53,017	65,527
Elgin	41,190	58,404	55,366
Joliet	37,198	55,870	64,263
Peoria	34,003	46,882	58,267
Springfield	36,516	51,298	57,376
Mean Excluding Rockford	37,648	55,038	59,818
Mean Including Rockford	37,353	53,974	57,970
Median	36,896 (DeKalb)	53,017 (DeKalb)	58,218 (Aurora)

One factor stands out: Rockford has fallen far behind all the Briggs' comparables, not just the Riverboat Cities. Rockford's median family income of \$43,185 in December 2005 is 22% lower than that of Elgin, its closest comparable, 28% below the mean (excluding Rockford) and 26% below the median. The cities with the highest median family incomes in December 2005 are Peoria, Joliet, neighbor of the river casino town of East Joliet, Aurora, and the college cities of Bloomington and DeKalb.

2. Percentage of Families Below Poverty Level in 2000 (figures approximated from a graph prepared by the City)

Rockford	10.5%
Aurora	6.2
Bloomington	4.2
Champaign	8.1
DeKalb	9.0
Elgin	6.4
Joliet	7.8

Peoria	9.2
Springfield	9.2
Mean excluding Rockford	7.5
Median	8.1 (Champaign)

Here, it's difficult to conclude that, standing alone, Aurora, Joliet and Elgin, skewed the mean or median. Compared to the Riverboat Cities, Bloomington has a lower percentage of its population below the poverty level and Peoria a higher percentage of its population below the poverty level. It's impossible to know whether "riverboats," and their presumed ripple effect on revenues and employment, are the primary reasons for lower poverty rates. Bloomington, which does not have a riverboat, has the lowest poverty rate.

3. Population Per Bargaining Unit Member

	# in BU	Pop	FFs Per Capita	% of Rockford
Rockford	262	152,916	583.65	
Aurora	180	168,181	934.34	160%
Bloomington	94	74,975	797.61	137%
Champaign	103	71,568	694.83	119%
DeKalb	56	42,085	751.52	129%
Elgin	101	98,645	976.68	167%
Joliet	205	136,208	664.43	114%
Peoria	204	112,685	552.38	95%
Springfield	202	115,668	572.61	98%

I'm not sure what if anything, these statistics prove with respect to comparability. The ratio of firefighter payroll costs to total revenue might be a more accurate way to determine relative comparative labor costs of various fire departments.

4. Revenue Per Bargaining Unit Employee

	Fire BU	2005 Revenue	Rev Per BARGAINING UNIT Employee	% of Rockford
Rockford	262	\$ 77,209,190	\$294,691.56	
Aurora	180	133,203,760	740,020.89	251
Bloomington	94	53,093,174	564,821.00	192
Champaign	103	56,117,897	544,833.95	185
DeKalb	56	16,583,130	296,127.32	100
Elgin	101	74,472,933	737,355.77	250
Joliet	205	104,941,171	511,908.15	174
Peoria	204	86,618,186	424,598.95	144
Springfield	202	71,164,296	352,298.50	120

Rockford's revenue per bargaining unit employee (RPE) of \$294,691 is the lowest of all the comparable communities. The three Riverboat Cities have a much higher RPE than Rockford, but, with the exception of DeKalb, so does every comparable community, particularly Bloomington and Champaign. On this basis, there is simply no reason to eliminate the three Riverboat Cities from the list of comparables. Why not also remove Bloomington and Champaign, two college towns with a higher RPE than Joliet?

5. 2005 Total Revenues

	Total Revenue	Revenue Per Capita	Percent of Rockford's
Rockford	\$ 77,209,190	\$504.91	100
Aurora	133,203,760	792.03	157
Bloomington	53,093,174	708.15	140
Champaign	56,117,897	784.12	155
DeKalb	16,583,130	478.55	95
Elgin	74,472,933	754.96	150
Joliet	104,941,171	770.45	153
Peoria	86,618,186	768.68	152
Springfield	71,164,296	615.25	122

Once again, Rockford is near the bottom in the important measure of per capita revenue. At the top of the list are two Riverboat cities, Joliet and Aurora, and Champaign,

a college town. The other Riverboat city, Elgin, is right in the middle. No evidence or argument was advanced to show how the Riverboat cities are uniquely different in this respect from other comparable communities.

6. 2005 Sales Tax Comparison

	Total Sales Tax	Per Capita	% of Rockford's
Rockford	\$23,378,788	\$152.89	100
Aurora	35,999,422	214.05	140
Bloomington	27,634,769	368.59	241
Champaign	28,835,484	402.91	264
DeKalb	7,576,727	180.03	136
Elgin	16,968,335	172.01	113
Joliet	34,272,571	251.62	165
Peoria	43,712,355	387.92	254
Springfield	43,502,541	376.10	246

Again, Rockford does not do well. In the category of per capita sales tax, several non-riverboat cities—Bloomington, Champaign, Peoria and Springfield—fare better than all the Riverboat Cities; and it was not suggested that the former be eliminated.

D. Discussion and Findings

As noted, in Rockford I, arbitrator Briggs wrote that he was "not convinced...that gaming revenues in Aurora, Joliet and Elgin have artificially inflated firefighter salaries and benefits there," or that these cities "can reasonably be considered Chicago suburbs for commuting purposes and that the generally higher cost-of-living and salaries in Chicago may have helped shape firefighter

employment packages in those communities" (Rockford I, at 9).

For reasons they best understand, the parties have historically considered Aurora, Elgin and Joliet comparable to Rockford. In this proceeding, the City does not argue that the Riverboat Cities should be excluded on the ground that they are an integral part of greater Chicago. It is immaterial whether Riverboat Cities 40-60 miles from downtown Chicago are considered "suburbs," "exurbs" or "edge cities."⁶ It is material that the parties have traditionally considered these communities "comparable" to Rockford and that arbitrator Briggs endorsed this historical pattern. In any event, the City does not argue that the Riverboat Cities should be excluded because of their economic ties to Chicago but because Rockford has not matched their recent history of generating employment and tax revenues. Had the evidence demonstrated that the Riverboat Cities consistently outperformed other agreed-upon comparables with respect to the yardsticks traditionally used to determine comparability, I would agree that the time had arrived to exclude them. It did not. The "college towns" of Champaign,

⁶ As of 2004, the Chicago Primary Metropolitan Statistical Area (PMSA) had a population of 8.4 million and included the following nine Illinois counties: Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, Will. See Chicago, IL PMSA: Population and Housing Narrative Profile: 2004 American Community Survey.

Bloomington and DeKalb also consistently outperformed Rockford and, in many cases, some or all of the Riverboat Cities. And yet the City did not propose to exclude these college towns, which have, and to my knowledge, have always had, much smaller populations than Rockford and which, to my knowledge, have not relied on the sort of heavy industry that has fallen on hard times in Rockford. The day may come when equity requires the exclusion of the Riverboat Cities. But that day has not yet arrived.

I find Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria and Springfield comparable to Rockford.

IV. The Economic Issues

Section 14(g) of the Act instructs the "arbitration panel" to "adopt the last offer of settlement" on "each economic issue...which...more nearly complies with the applicable factors prescribed in subsection (h)." However, an arbitrator is not precluded from considering the "tandem relationship" of wages and health care benefits, as well as other related factors.⁷ Under Section 14(h)(6) of the Act, I'm instructed to consider "[t]he overall compensation presently received by the employees...."

⁷ See, for example, *Village of Lansing*, S-MA-04-240 (Benn 2007).

I shall review the evidence separately with respect to each financial issue, ultimately considering the issues in their totality when making my determinations.

A. Wages

1. Union Proposal

Effective January 1, 2006, all wage increases reflected in Appendix C shall be increased by 4.0 per cent.

Effective January 1, 2007, all wages and salaries reflected in Appendix C shall be increased by 4.5 per cent.

Effective January 1, 2008, all wages and salaries reflected in Appendix C shall be increased by 2.5 per cent. Effective July 1, 2008 all wages and salaries reflected in Appendix C shall be increased by 2.5 per cent.

2. Employer Proposal

January 1, 2006 - 3.5%
January 1, 2007 - 3.5%
January 1, 2008 - 4.0%

3. External Comparisons

The City argues that its 2007 final offer "is more closely aligned with the historical comparables," that the City's "final offer of 4% is what the parties would have reached if bargaining had continued," and that the Union's "final offer" of 5% "brings the overall package of the Union further from the average of the external comparables" (City Brief, 9).

Citing Union Exhibit 28(a)(1) (mislabeled Union Exhibit 26(a)(1)), the Union argues that the "City's wage

proposal is out of line with comparables" (Un. Brief, 18). The Union writes that the "percentage increases for 2007 in five of the seven comparables were four percent or more, and only...Peoria and Aurora had increases of 3.5 percent" (Un. Brief, 19). In 2006, according to the Union's calculations, "four cities had increases above the employer's 3.5 percent offer. The Elgin lieutenants' increase was 4.5 percent and the Elgin firefighters' increase was 3.75 percent" (Un. Brief, 19). The Union states that the "Employer's offer would place the 2007 top base pay at 94.43 percent of average, the lowest in the five-year period" and the Union's "offer...for 2007 would place top base pay at 95.80 percent of average which is certainly within the reasonable range of the five year cycle" (Un. Brief, 20).

The Union goes on to note that the Employer's offer would "pull...union salaries further below the average" in 2006, an "unacceptable" consequence according to arbitrator Briggs in Rockford I (Un. Brief, 21). In Rockford I, the top base pay awarded in 2006 was \$41,341, or 97.29 percent of the average of \$42,490 (Un. Brief, 21). In 2004 and 2005, top base pay in Rockford was 96.16 and 95.85 percent, respectively, of average (Un. Brief, 21). However, "the combined effect" of the City's offer "would bring top base pay to 93.03 percent of average" (Un. Brief, 21-2). Under

the Union's offer "the 2007 salary would be at 94.39 percent of average,...closer to where Arbitrator Briggs placed the wage increases" (Un. Brief, 22).

The City "strongly disagrees with the calculations of the Union" contained in Union Exhibit 28(a)(1) and suggests that this exhibit "includes figures that artificially inflate the average wage increases" for Elgin by including Lieutenants and for Bloomington by including Firefighter-Paramedics without factoring in their stipend (City Brief, 9). The City offered its own list of percentage increases. I have no way of deciding which list is accurate and which may be distorted.

In any event, here are the comparative salary exhibits (footnotes omitted):

(a) Union Exhibits and Tables

*Updated Percentage Salary Increases - Comparable Cities
(UX 28(a)(1))*

	2003	2004	2005	2006	2007
Aurora	9.83%	4.5%	3.5%	3.5%	3.5%
Bloomington	3	3	3	3.5	4 - 1/1 2 - 5/1 2 - 11/1
Champaign	4	3	3.5	3.5	
DeKalb	3.5	1.5, 3.5	1.5, 4	3.5	5
Elgin FF	3.25	5	4.25	3.75	
Elgin LT	3.25	5	4.75	4.5	
Joliet	4	4	4	4	4
Peoria	3.5	3.5	3.2	3.3	3.5
Springfield	3.35	1.5 - 3/04 0.74 - 9/04	3 - 3/05 .73 - 9/05	3 - 3/06 .73 - 9/06	3 - 3/07 1 - 9/07
Rockford	3.5	3.5	3 - 1/1 1 - 7/1		
Average w/o Rockford	4.18	3.92	3.94	3.72	4.6

Top Base Pay - 2003, 2004, 2005, 2006, 2007 (Un. Brief, 21, Table 2)

	2003	2004	2005	2006	2007
Aurora	59,233	64,227	67,169	69,520	71,953
Bloomington	47,795	49,229	50,705	52,480	56,783
Champaign	50,139	50,385	52,149	53,974	
DeKalb	55,118	57,903	61,122	63,260	66,423
Elgin	47,950	60,420	62,988	65,352	67,966
Joliet	63,000	65,051	67,653	70,359	73,173
Peoria	43,651	49,820	52,910	54,657	48,244
Springfield	50,016	50,386	52,277	53,845	56,420
Average	52,112	55,933	58,371	60,431	64,423
Rockford	49,989	53,784	55,951	Em: 57,909 Un: 58,189	Em: 59,935 Un: 60,808

Income Differential/Additional 34 Months for Rockford Firefighter to Reach Top Pay in 2007 (Un. Brief, 24, Table 3)

	2004 49-84 mos.	2005 49-84 mos.	2006 49-84 mos.	2007 49-84 mos.	Total Differ- ence
Comparable Average Top Base Pay	55,933	58,371	60,431	64,423	
Rockford Salary Differential	50,217	53,286	55,150	61,135	19,370

2006 - 10 Year Pay By Rank Order (Un. Brief, 26, Table 4)

Joliet	71,262
Aurora	70,215
Elgin	65,952
DeKalb	63,932
Peoria	56,843
Springfield	56,811
Champaign	56,672
Bloomington	56,154
Average without Rockford	62,230
Rockford - Employer	60,226
Rockford - Union	60,516

(b) City Exhibits

*Percent Wage Increases 2003-2007
Comparable Cities (CX 37)*

	2003	2004	2005	2006	2007
Aurora	9.80	3.50	3.50	3.50	3.50
Bloomington	3.00	3.00	3.00		
Champaign	4.00	3.00	3.50	3.50	
DeKalb	3.50	5.00	5.50	3.50	
Elgin	3.25	5.00	4.25	3.75	
Joliet	4.00	varied	4.00	4.00	4.00
Peoria	3.50	3.50	3.20	3.30	3.50
Springfield	1.50	1.50	3.50	3.70	4.00
Average	4.07	3.50	3.81	3.61	3.75
Rockford	3.50	3.50	4.00	3.25	3.75

*Longevity Pay
15-20-25 Year Firefighter - 2005 (CX 38)*

City	Years	Base	Percentage	Dollars
Aurora	15	67,169	1.50	1,008
	20	67,169	2.00	1,343
	25	67,169	2.50	1,679
Bloomington	15	50,706	9.00	4,564
	20	50,706	14.00	7,099
	25	50,706	14.00	7,099
Champaign	15	52,148	7.50	3,911
	20	52,148	10.00	5,215
	25	52,148	10.00	5,215
DeKalb	15	61,122	Flat	1,092
	20	61,122	Flat	1,512
	25	61,122	Flat	1,932
Elgin	15	62,988	Flat	900
	20	62,988	Flat	1,200
	25	62,988	Flat	1,200
Joliet	15	67,653	Flat	1,355
	20	67,653	Flat	1,807
	25	67,653	Flat	2,307

Peoria	15	52,910	6.00	3,175
	20	52,910	8.00	4,233
	25	52,910	8.00	4,233
Springfield	15	51,897	7.00	3,633
	20	51,897	9.75	5,060
	25	51,897	11.50	5,968
Rockford	15	55,952	6.00	3,357-4th of 9
	20	55,952	8.00	4,476-4th of 9
	25	55,952	10.00	5,595-3rd of 9

*Wage Rankings and Ratios of Comparable Cities
Top Step Firefighters (CX 39)*

City	12/31/00	% of Rockford wage*	12/31/05	% of Rockford wage	12/31/06	% of Rockford wage
Aurora	50,765	109%	67,169	120%	69,520	120%
Bloomington	43,455	93	50,706	91	52,481	91
Champaign	43,487	93	52,149	93	53,974	93
DeKalb	47,831	103	61,122	109	63,260	109
Elgin	52,027	112	62,988	113	65,352	113
Joliet	55,233	119	64,475	115	67,054	116
Peoria	44,447	96	52,911	95	54,657	94
Springfield	45,036	97	52,277	93	54,235	94
Rockford	46,532	100	55,952	100	57,910	100

*2005 Firefighter Wages - Comparable Cities
(Completed Years/Includes Longevity) (CX 40)*

City	5 yrs	6	10 yrs	11	15 yrs	16	20 yrs	21	25 yrs	26
	RRF	RRF								
Aurora	67,169	126	67,841	117	68,177	115	68,512	113	68,848	112
B'ton	53,241	100	54,255	93	55,270	93	57,804	96	57,804	94
Champ	53,452	100	54,755	94	56,059	95	57,363	95	57,363	93
DeKalb	61,374	115	61,794	106	62,214	105	62,634	104	63,054	102
Elgin	62,988	118	63,488	109	63,738	107	63,988	106	63,988	104
Joliet	64,475	121	64,475	111	65,830	111	66,282	110	66,782	109
Peoria	51,414	96	55,027	95	56,086	95	57,144	95	57,144	93
S'fld	53,715	101	54,761	94	55,937	94	57,374	95	58,289	95
Average	58,479		59,550		60,414		61,388		61,659	
R'ford	53,287		58,190		59,309		60,428		61,547	
Rank	6		5		5		5		5	

Another chart prepared by the City (CX 41) shows the comparative salaries of Drivers, Lieutenants and Captains at the top step without longevity. In relevant part, it makes the following comparisons:

	Driver		Lieutenant		Captain	
	2000	2005	2000	2005	2000	2005
Aurora	N/A	N/A	57,133	77,917	N/A	N/A
Bloomington	45,212	52,755	48,577	56,682	51,444	60,028
Champaign	46,152	55,426	51,687	62,333	57,104	73,550
DeKalb	N/A	N/A	52,684	67,295	58,972	75,290
Elgin	N/A	N/A	60,262	73,308	N/A	N/A
Joliet	57,588	71,035	64,333	78,121	70,822	86,130
Peoria	49,652	59,107	N/A	N/A	56,181	66,880
Springfield	48,190	56,067	N/A	N/A	51,562	60,132
Rockford	48,613	59,275	51,184	62,777	54,342	66,650
Rank	3 of 6	2 of 6	6 of 7	5 of 7	5 of 7	5 of 7

4. Internal Comparisons

The Police Benevolent and Protective Association (PBPA), Unit 6, represents Rockford's police Sergeants and Patrol Officers. AFSCME Local 1058 represents public works, clerical and 911 employees; AFSCME Local 1058B represents building inspectors and community development employees; and AFSCME Local 1058C represents head start employees (CX 26).

In November 2006, all three AFSCME units entered into successor agreements with the City. Units 1058 and 1058B agreed on a four-year contract providing for wage increases of 3.5% on January 1, 2006 and 2007, and 4% on January 1, 2008 and 2009. Unit 1058C agreed on a wage reopener in the then-unexpired contract which provided for wage increases of 3.5% in 2006 and 2007. PBPA, Unit 6 and the City have been without a contract since December 31, 2005; interest arbitration is pending.

The City points out that until "the most recent contractual cycle (2003-2005)," the "wages and health

insurance [were] the same" for all bargaining units, including the firefighters union (City Brief, 14). Recently, however, AFSCME Units 1058 and 1058B settled on four-year contracts that provided for higher employee health insurance premiums in 2007 through 2009 and Unit 1058C agreed to an increase in premiums for 2007. And "[w]hile the City has made the same base wage offer to the firefighters Union," it has proposed to "forego...any increases in health insurance costs for both 2006 and 2007" (City Brief, 14). Thus, the City argues, its final offer "represents a considerable economic advantage over the AFSCME groups" (City Brief, 14).

5. Cost of Living

The term of this contract will be January 1, 2006 through December 31, 2008. Accordingly, consistent with Section 14(h)(7) of the Act, I shall consider consumer price indices through September 2008—the latest index available at this time.

Generally, the CPI-U, the "consumer price index for all urban consumers," is considered the appropriate measure of cost of living increases. The CPI-W, the "consumer price index for urban wage earners and clerical workers," is a more specialized index and considered less suitable for

interest arbitration involving units of firefighters and police officers.⁸ I shall rely on the CPI-U.

From January through December 2006 the CPI-U rose 2.5%. From January through December 2007, the CPI-U went up 4.1% (UX 29L). Between January and September 2008 the index rose 3.65%.⁹

6. Discussion and Findings

The percentage wage increase proposed by the Union adds up to 13.5% or a compound value of 14.2% over three years. The City proposes an aggregate 11% wage increase over three years or a compound value of 11.4% over three years. Average top base pay for all firefighters came to \$60,431 in 2006 and \$64,423 in 2007. The City's offer would increase top base pay to \$57,909 in 2006 and \$59,935 in 2007. The Union's offer would increase top base pay to \$58,189 in 2006 and \$60,808 in 2007. The City showed that in 2005 Rockford wages ranked fifth of nine at 10, 15, 20 and 25 years of service and sixth of nine at five years of service (CX 40). In 2005, the City ranked the cities that provided top step wage information on drivers, lieutenants

⁸ The CPI-W covers about 32 percent of the total population; the CPI-U covers about "87 percent of the total population and include[s] in addition to wage earners and clerical worker households, groups such as professional, managerial, and technical workers, the self-employed, short-term workers, and retirees and others not in the labor force" (UX 29L, at 5.

⁹ See <http://www.bls.gov/cpi/>

and captains. Rockford ranked second in pay among comparable drivers, fifth among comparable lieutenants and fifth among comparable captains. According to City Exhibit 37, average percentage wage increases in the comparable cities in 2006 was 3.61%, ranging from 3.3% in Peoria to 4% in Joliet.¹⁰ Average pay in the comparable cities rose 3.7% in 2006 and 4.6% in 2007. As noted, the CPI-U rose 2.5% in 2006, 4.1% in 2007 and 3.65% between January and September 2008.

Internal comparisons are, of course, significant. AFSCME Units 1058 and 1058B agreed on 3.5% wage increases on January 1, 2006 and January 1, 2007 and 4% on January 1, 2008. Unit 1058C agreed on wage increases of 3.5% in 2006 and 2007. PBPA has been without a contract since December 31, 2005, and interest arbitration is pending.

The City's wage offer seems calculated to fall into line with other City bargaining units, and thus entitled to serious respect: "A well-established internal pattern generally is given greater consideration by arbitrators than external patterns."¹¹ As arbitrator Gil Vernon wrote in *City of West Bend, supra*, 100 LA at 1121:

¹⁰ I cannot independently verify the accuracy of competing City and Union exhibits. However, the differences are not substantial enough to affect my decision.

¹¹ Alan Miles Ruben, ed., *Elkouri & Elkouri: How Arbitration Works*, 6th ed. (Washington: Bureau of National Affairs, 2003), at 1422, citing

...where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables. The reasons for this are well known and relate primarily to the negative [e]ffect that breaking the pattern could have on the stability of bargaining and overall employee morale. A large equity factor exists when all but one group has accepted a uniform settlement. It would not be fair to grant a larger increase to a lone group unless truly justified. What constitutes an unacceptable disparity relative to the externals depends on the facts and circumstances of each case.

Comparing percentage wage increases is not necessarily the most accurate or equitable method of comparison. Obviously, the base to which the percentage increases are applied is significant. Moreover, firefighters and administrative and clerical employees in other Rockford bargaining units do not "perform similar services" (see §14(h)(4) of the Act).

I shall turn to the external comparables "of other employees performing similar services." As the City has pointed out, "Rockford is historically fifth of nine" among the comparable communities, and the City's offer maintains that ranking (City Brief, 10). The Union argues that even though the Employer's offer would maintain "the relative rank" of Rockford among its comparables, there's "a very

City of West Bend, 100 LA 1118 (Vernon 1993); *Oneida County*, 100 LA 581 (Flaten 1992).

wide range" of \$3706 between the fourth and fifth ranked cities; "probably for this reason," the Union suggests, Arbitrator Briggs "focused on a percentage of average analysis as a more informative way of determining the appropriate wage placement...for Rockford" (Un. Brief, 24-5). The Union then points out that the "Rockford 2006 offer would be 96.78% of average and the Union's offer...97.25% of average," thus bringing "pay closer to average" (Un. Brief, 25).

The Union's argument is cogent, and I respect arbitrator Briggs's well-reasoned analysis of external comparability. However, the critical factors of cost of living, and external and internal comparability, when considered together, favor the City's proposal. A total 11% (or 11.4% aggregated) wage increase over three years would track recent cost of living increases fairly closely, remain consistent with current internal comparisons and would maintain the same relative standing of Rockford among the comparable communities.

For the foregoing reason, as well as the fact that my adoption, *infra*, of the Union's proposal on Health Care, will have an obvious effect, within the meaning of Section 14(h)(6) of the Act, on "the overall compensation presently

received by employees,"¹² I adopt the City's proposal on wages.

B. Health Care

1. Union Proposal

The Union's complex proposal on health care is divided into discrete periods. The "pre-arbitration decision" proposal reiterates Article 16, Section 16.1 (paid premiums of employees) and Section 16.2 (liability and responsibility) of the 2003-2005 Agreement. I shall not reprint that offer here.

The Union's "post arbitration decision" proposal (Un. Brief, 34) modifies Article 16 as follows (deletions ~~struck through~~; additions in **bold print**):

16.1 - Paid Premiums of Employees

Upon the date of the Arbitrator's decision in the interest arbitration proceeding for the 2006-2008 collective bargaining agreement, employees who have single coverage shall pay ~~\$25.00~~ **\$15.00** per pay period (26 per year) and those with **single plus one shall pay \$30.00 per pay period** (26 per year) and those with **family/dependent coverage shall pay \$35.00** ~~\$45.00~~ **\$45.00 per pay period** (26 per year). The City agrees to pay the remainder of the cost of health and dental insurance under the City's designated health and dental plan adopted December 29, 2003, by Ordinance 2003-2004 for the employee and covered dependents, **except as the City's share of these costs is amended in this agreement.**

The City will continue to provide a preferred provider plan for employees. For services rendered by non-preferred providers, the co-payment percentages will be 60 percent City

¹² The term "presently" is ambiguous. It could mean "now" or "in a short while." Using either sense of the word, it seems reasonable to consider the impact of health care benefits on "overall compensation."

and 40 percent employee, of the first \$5,000 following satisfaction of applicable deductions.

The employee contributions, deductibles and maximum payments are stated in the box below.

PPO Plan 2007 and 2008	Annual EE Contribution with Dis- count	Payroll EE Contribution After Dis- count	Payroll EE Contribution w/o Discount	Annual Deductible	Annual Out- of-Pocket In-Network
Single	\$390	\$15	\$25	\$200	\$1000
Plus One	\$780	\$30	\$50	\$400	\$2000
Family	\$1170	\$45	\$75	\$600	\$3000

~~Deductibles for services by non preferred providers shall be \$150.00 per person per calendar year to a maximum of \$450.00 per family per calendar year.~~

Deductibles for services rendered shall be a maximum \$200.00 per person per calendar year, a maximum of \$400.00 for single + 1 or a maximum of \$600.00 per family per calendar year.

PPO in-network co-insurance is 90/10 of the first \$10,000 per person (\$1000) or \$2000 for single plus one or \$3000 for family. PPO out-of-network is 60/40 of the first \$5000 per person (\$2000) or \$4000 for single plus 1, or \$6000 for family.

Prescription drugs shall be paid for under the prescription benefit plan only. Medically necessary prescription drugs not available through the prescription drug plan will be payable at the in-network benefit level described in 16.2 (90/10 of the first ~~\$5000~~ \$10,000).

Employees shall be enrolled in a prescription card program, and shall be subject to the following conditions:

1. The employee co-pay for generic prescription medication and brand prescription medication where no generic equivalent is available shall be \$15.00 per prescription. Where the actual cost of the prescription is less than fifteen dollars (\$15.00) that actual cost shall apply.
2. The employee co-pay for brand prescriptions where generic equivalent is available shall be \$15.00

plus the price difference between the brand and generic equivalent. Where the physician mandates "no substitutions" only, the not-to-exceed \$15.00 co-pay shall apply.

3. The co-pay provisions apply to prescriptions in 30-day increments. Maintenance drugs/prescriptions may continue to be issued in 90-day increments; however, three (3) individual co-pays shall apply. Maintenance drugs/prescriptions issued in 90-day supplies via mail order shall be limited to two (2) co-pays as described in item 1 and item 2 above. Maintenance drugs are those as identified in the Medispan Master Drug List.
4. After a 90-day period has been reached on any prescription and it is determined that the prescription is eligible for mail order, the mail order program will be utilized. If an employee opts not to order through the mail-order program, the co-pay will be double the regular co-pay.

Prescription drugs shall be paid for under the prescription benefit plan only. Medically necessary prescription drugs not available through the prescription drug plan will be payable at the in-network benefit level described in 16.2 (90/10 of the first ~~\$5000~~ \$10,000).

The employee contributions for the PPO plan reflect a discount for participation in the wellness plan. PPO plan members not participating in the wellness plan will not be entitled to a discount. Wellness plan is mandatory for the HSA plan participants.

Employee contributions for the HSA plan are waived for 2007 and 2008. Deductibles for the HSA plan are shown in the chart below (HSA Plan) and will remain level for 2007 and 2008 subject to any change required by modification to federal regulations.

The City will continue to provide a preferred provider plan and may offer additional alternative plans, such as a Qualified High Deductible Plan (HSA). A Qualified High Deductible Plan (HSA) subject to federal regulation and its deductibles, out of pocket maximums, and other aspects of the plan may be altered pursuant to such federal regulations. The City will give notice of any mandatory HSA plan changes prior to implementation and will negotiate on any non-mandatory plan changes prior to making any change affecting

coverage, benefit levels or employee contributions. The City will negotiate with the Union the effect of any mandatory changes that may be required by federal regulations.

The employee contributions, deductibles and maximum payments are stated in the box below:

HSA Plan	Annual EE Contribution	Payroll EE Contribution	Annual Deductible In-Network	Annual Out-of-Pocket In-Network
Single	\$0	\$0	\$1500	\$3000
Plus One	\$0	\$0	\$3000	\$6000
Family	\$0	\$0	\$3000	\$6000

1. City will contribute \$750 to HSA accounts on Single coverage, and \$1500 to HSA accounts on Single Plus One and Family coverage on the first day of each plan year.
2. PPO Plan Participants in the wellness plan shall receive a bi-weekly Wellness discount of 40% reduction in employee contributions. Employees will be offered enrollment in the Wellness Program prior to any contributions of premiums.
3. The wellness plan does not include IHAP since IHAP participation is voluntary.
4. HSA network co-insurance is 80/20 of the first \$15,000; per person maximum out-of-pocket \$3000; single plus one or family, maximum out-of-pocket \$6000. HSA out-of-network co-insurance is 60/40 of the first \$15,000; per maximum out-of-pocket \$6000 single plus one or family maximum out-of-pocket \$12,000.

16.2 – Liability and Responsibility

- a. The payment of these benefits constitutes the sole liability and responsibility of the City with regard to the employee's insurance program. The City agrees to maintain substantially equivalent benefits during the term of this Agreement. The City further agrees to discuss proposed benefit changes with the Union before implementation. The Health Insurance Focus Group shall meet on a quarterly basis (at a minimum) and shall continue to review health insurance and health related issues and make recommendations to the City regarding the City's Health Plan. The Health Insurance Focus Group may request information about the operation of the City's health plan, and the City

shall provide such information in a timely basis. The Health Insurance Focus Group shall monitor the costs of health insurance benefits, review proposals of cost saving measures, review wellness programs that could lower medical costs, and make recommendations to the City.

- b. The City reserves the right to change insurance carriers, self-insure or implement cost containment features so long as the overall coverage available to employees employed on the date of this Agreement is substantially the same. Any changes in coverage shall be subject to collective bargaining negotiations and prior to any implementation of plan changes the respective bargaining units must notify the City of their acceptance of such changes or reach an agreement through collective bargaining with the City.
- c. In an effort to provide an insurance package that is financially responsible to the City and Union, the City will engage in competitive bidding with review and recommendations provided by the Health Insurance Focus Group of the proposed requests for proposals (RFPs) and any summaries prepared by the City of responses to the RFPs. The competitive bidding will cover the following services: the healthcare plan, including but not limited to: related network and the selection of service providers, healthcare consultants, third party administrators or other vendors for the PPO, mental health and substance abuse services for the PPO, utilization review services for PPO's medical reimbursement account and the dependent healthcare account, pharmacy services, dental and vision care benefits. The City shall develop the factors to be considered in evaluating the responsible bidders and shall inform the Health Insurance Focus Group of these factors.
- d. The City will offer a dual network option to employees through ECOH that will include the River Valley Plan (Rockford Health Systems) and ECOH Network (Swedish American Health Systems and OSF St. Anthony Medical Center). All services through these networks shall be 90/10 of the first ~~\$5000~~ \$10,000. Plan holders can enroll in only one of the two ECOH network offerings if choosing ECOH. No deductible is charged under ECOH network offerings within the specific network for which the employee is enrolled. Employees shall be

eligible to enroll in the River Valley Plan **during the normal enrollment periods.**

- e. Through the ECOH Network (Swedish American Health System and OSF St. Anthony Medical Center), inpatient and ancillary services prov[id]ed by OSF St. Anthony will be at 100% with no deductible. This shall become effective January 1, 2004.
- f. Where an employee receives a referral by the employee's ECOH primary care physician to an out-of-network provider whose services are located greater than a 50-mile radius from the City of Rockford, the co-pay shall be maintained at ninety (90) percent by the City and ten (10) percent by the employee, to the first ~~five thousand~~ **ten thousand** dollars (~~\$5000~~ **\$10,000**). ECOH covered employees requiring emergency services as defined by the City of Rockford Health Plan and are at a location more than 50 miles as described above, shall pay a co-payment percentage of eighty (80) percent by the City, twenty (20) percent to the employee, of the first five thousand dollars (\$5000).
- g. The lifetime maximum shall be ~~\$1,500,000~~ **\$2,000,000** per person. Employees shall receive two (2) free prophylaxis (teeth cleaning) per year.

16.3 – No Change

16.4 – No Change

16.5 – Wellness Plan

Within 60 days of the Arbitrator's decision in the interest arbitration proceedings for the 2006-2008 collective bargaining agreement, a wellness plan shall be established to invest in prevention through measurement, education and reward. This plan shall be offered to employees and their spouses.

The wellness program shall include the following:

- a. **Health Risk appraisal or assessment**

Early detection programs will include blood pressure, basic blood diagnostics, cholesterol and glucose tests.

- b. The employer shall provide to employees and their spouses the following optional elements:

Behavior and lifestyle counseling including nutrition, alcohol and tobacco.

- c. System of rewards:

The City shall offer additional rewards (to be determined in its discretion) through offerings unique to the HSA Plan participants.

- d. The Health Insurance Focus Group shall explore expansion of the wellness plan, subject to the City's approval of any cost issues. The group will also serve as a communication channel on plan changes and implementation.

2. City Proposal

2006 - no change.

2007 - no change

2008 - Effective January 1, 2008, the City of Rockford shall maintain a self-retained health plan for employees, subject to the following:

Paid Premiums of Employees

The City will continue the present health plan through the remainder of 2007. The City will continue to offer a Preferred Provider Plan (PPO). The City may offer additional alternative plans in the future, and will offer one such alternative for 2008, the Destiny Qualified High Deductible Plan (HSA). The Destiny Qualified High Deductible Plan (HSA) is subject to federal regulation; therefore, the City may be compelled to alter deductible, out-of-pocket maximums, and other aspects of the plan as such regulation(s) may indicate. The City will give notice of any mandatory HSA plan changes prior to implementation, but would negotiate on any non-mandatory plan changes prior to making any change affecting coverage, benefit levels or employee contributions.

The chart below shows the employee contribution rates per pay period for 2008. The employee contributions for the PPO plan reflect a discount for participation in the wellness plan for 2008. PPO plan members not participating in the wellness plan will be charged the full rate through 2008,

and a 10% premium surcharge thereafter. Wellness plan is mandatory for the HSA plan participants.

Deductibles for the HSA plan will be subject to any change required by modification to federal regulations.

City of Rockford Health Plan

PPO Plan 2007 and 2008	Annual EE Contribution with Dis- count	Payroll EE Contribution After Dis- count	Payroll EE Con- tribution without Discount	Annual Deducti- ble	Annual Out-of- Pocket In-Net- work
Single	\$494	\$19	\$25	\$300	\$1100
Plus One	\$988	\$38	\$50	\$600	\$2200
Family	\$1456	\$56	\$75	\$900	\$3300

HSA Plan	Annual EE Contribution	Payroll EE Contribution	Annual Deductible In-Network	Annual Out- of-Pocket In-Network
Single	\$0	\$0	\$1500	\$3000
Plus One	\$0	\$0	\$3000	\$6000
Family	\$0	\$0	\$3000	\$6000

1. City will contribute \$750 to HSA accounts on Single coverage, and \$1500 to HSA accounts on Plus One and Family coverage on the first day of 2008.
2. The wellness plan does not include IHAP since IHAP participation is voluntary.
3. The annual in-network deductible for the PPO is \$300 per person, not to exceed \$900 for the family.
4. In-network coinsurance is 90/10 for the PPO, 80/20 for the HSA. Out-of-network deductible and out-of-pocket are double the annual in-network amounts. Out-of-network coinsurance is 60/40 for both plans.

HMO

The City may offer an HMO to non-union personnel, or to employees by bargaining unit or individually. Knowing that regulation, cost, marketplace, and employee satisfaction change from time to time, the City may cease to offer an HMO. HMO Employee Contribution remains to be determined.

Fully Insured Option

The City may select a Fully Insured Option to non-union personnel, or to employees by bargaining unit or individually. Knowing that regulation, cost, marketplace, and employee satisfaction change from time to time, the City may cease to offer a Fully Insured Option. Fully Insured Option Employee Contribution remains to be determined.

Plan Options

The City may offer alternative plan options to other bargaining units. However, any plan option offered to non-union personnel shall also be offered to IAFF Local 413 union members on the same terms.

Rx

The City will institute a drug formulary for PPO Plan participants including an employee co-pay of \$15 for generic, \$30 for name brand drugs that are part of the formulary, and \$50 for name brand drugs not on the formulary list. Retail, mail-order co-pays will be double the above amounts.

The City may implement a "specialty pharmacy" program. Specialty medications include such things as biopharmaceuticals, blood derived products, complex molecules. Participants filling prescriptions for such drugs will do so through the City's specialty pharmacy program.

Dental

The City would immediately deploy a silent dental PPO in order to reduce costs and take advantage of provider discounts currently unrealized. The City may implement a dental PPO with decreased benefit levels for out of network services. Commencing in 2008, the Dental coverage would remain at 50% for non-preventative dental work, but the City would institute a \$100 deductible, not to exceed \$300 per family, and place an annual maximum on the dental of \$3000 per participant. Coverage for preventative dental care would remain unchanged. In addition, a lifetime orthodontia limit of \$3000 per participant will be instituted.

Voluntary Benefits

The City may offer employees access to an array of voluntary benefits. There may be a special voluntary benefits

enrollment. If so, it is expected that each employee will indicate in writing his or her interest in the voluntary benefit(s) being offered.

The Health Focus Group

The Health Focus Group shall explore expansion of the wellness plan, subject to the City's approval of any cost issues. The group will also serve as a communication channel on plan changes and implementation.

Wellness Plan

The City enjoys very low turnover of employees; therefore, the return on investment through prevention will be high. A wellness plan shall be established to invest in prevention through measurement, education and reward. The initial mandatory elements of the plan shall include:

1. Health Risk Appraisal or Assessment

- Early Detection Program, may include blood pressure, blood, cholesterol and glucose tests.

2. Additional Optional Elements May Include:

- Behavior and lifestyle counseling including nutrition, alcohol, and tobacco
System of rewards:

The City may also be entitled to offer additional rewards through offerings unique to the HSA Plan participants.

Enrollment

For 2008, employees shall receive a notice of default enrollment, which shall be enrollment in the PPO plan based on present enrollment, indicating their enrollment status, and the names of dependents included in the enrollment from present enrollment data. The employee shall have not less than 14 days to attend a group session on enrollment options, and/or shall submit change of enrollment forms for alternative coverage. All elements of the current City Health Plan not specifically addressed in this offer, would remain status quo.

3. City Exhibit 22

City Exhibit 22 shows that insurance "revenues" (premiums) rose from \$8.1 million (numbers rounded to nearest 100,000) in 2000 to \$16.1 million in 2005 and that insurance "expenses" rose from \$9.2 million in 2000 to \$16.8 million in 2005. Insurance costs rose from 0% of the City budget in 1995 to 8.6% of the budget in 2005. As the City puts it, the "shift of general fund expenses to health care from 2000 to 2005 in excess of revenue growth was \$2,833,033,...the equivalent of the entire capital equipment budget for the City's police, fire and public works departments" (City Brief, 19).

4. Arguments

(a) The City

1. Union witness Michelle Masters, a "retained health insurance expert," noted that "the City's employee premium and deductible contributions to health insurance are very low by public employer standards and extremely low by private employer standards"; and the Union president testified that "'we did need to contribute and recognized that healthcare costs were rising'" (City Brief, 18-19).

2. The "City's final offer would reduce premium contributions for single coverage from \$650 per year to \$494 per year, establish a plus one coverage for the employee and one direct family member, thereby adjusting

that premium from the present \$910 per year to \$988 per year, and increasing the family coverage from \$910 per year to \$1456 per year (City Brief, 19). The purpose of these changes are connected to pricing the access to health insurance coverage in a manner that relates to the impact on the cost to the employer, to engage employees in a consumer driven health plan and to adjust for the rising costs of healthcare" (City Brief, 19).

3. Citing "[t]he interests and welfare of the public and the financial ability of the unit of government to meet those costs" (§315.14(h)(3) of the Act), the City argues that its "financial ability to continue to pay these increasing costs without participation by the employees is at issue. ... Steep increases in health care costs need not bankrupt a public employer before the standard is met to provide limited and reasonable relief in the form of increased contributions from employees" (City Brief, 19, citing *Clinton County/FOP Labor Council*, ISLRB Case No. S-MA-05-026 (2005)).

4. A "near doubling of health care costs relative to the total City budget and the loss of capital equipment purchasing power are sufficient to justify the City's proposed increases, particularly when doing so will not

change the City's position on premium expenses among its comparable communities" (City Brief, 20).

5. The "contribution and deductible rate matrix," which includes the additional tier of "single plus one" to the options available "will assist in sensitizing the health plan consumers to the true costs of health care, and will promote more discerning choices on the employees' part" (City Brief, 20).

(b) The Union

1. The City's "offer provides for mid-term unilateral changes and prevents the Union from having a role in any mid-term changes" (Un. Brief, 41). The "employer leaves employees with no definite assurance as to what will be contained within the plan and allows for no collective bargaining role" (Un. Brief, 41-2). "Such an offer is a non-mandatory subject of bargaining over which the arbitrator does not have jurisdiction" (Un. Brief, 42). It amounts to a "waiver by the Union of its statutory right to bargain" (Un. Brief, 43). It "'clearly and explicitly give[s] the city the right to unilaterally implement the policy at issue'" (Un. Brief, 44). If adopted, the City proposal would require the Union to waive a statutory right to bargain; thus, it's a permissive subject of bargaining (Un. Brief, 44).

2. The Act "requires mid-term bargaining over mandatory subjects of bargaining, and the Employer's proposal does not provide for the Union to have a right to bargain mid-term over such subjects" (Un. Brief, 44).

3. An employer subject to the Act commits an unfair labor practice by making a unilateral change during the term of the labor contract; the union has a right to mid-term interest arbitration (Un. Brief, 45, citing *Illinois Department of Central Management Services v. ILRB*, 373 Ill.App.3d 242, 869 N.E.2d 274 (4th Dist. 2007), petition for leave to appeal denied, 9/26/07).

4. The "open ended" contract language the City proposes "is not appropriate for one business partner interacting with another because it defies the fiduciary responsibility to assure a mutual undertaking that is clear and ascertainable, prior notice of the changes and a mutual discussion of the changes" (Un. Brief, 43).

5. ILRB Regulations provide that an award "shall not consider an issue" to which one party, in good faith, has objected; and the Union has objected in good faith to that portion of the City's proposal that would permit it "to engage in unilateral changes to the health care plan and...to cease offering changes..." (Un. Brief, 45).

6. A "large majority of the comparables require notice, bargaining, discussion with the union and do not provide for...contingent arrangements" (Un. Brief, 46, citing Union Exhibits 8, 9, 10, 11, 12, 14 & 16).

7. In contrast to the City's proposal, the "comparables' collective bargaining agreements either prohibit unilateral action to terminate benefits and modifications of plans or carriers or are constrained by 'substantially the same' clauses, notice provisions and bargaining with the union" (Un. Brief, 47).

8. Through its "contingent offer," the City asks "the arbitrator to waive bargaining on these [health care] issues" (Un. Brief, 47). The City's offer is "inadequate": it reserves the right to "terminate benefits, cease offering benefits, and even not offer...benefits" provided for in the contract (Un. Brief, 47, citing *Village of Lansing (Police)*, S-MA-04-240 (Benn 2007)).

9. The City's reservation of the "right to make unilateral changes without consulting with the Union or providing for arbitration are simply unwarranted and are a reason to reject [its] proposal" (Un. Brief, 48). No "reasonable union would enter into a collective bargaining contract or be able to ratify a collective bargaining agreement with such open ended provisions" (Un. Brief, 48).

10. "Also troublesome" is that "the City is retaining a right to 'offer a HMO to non-union personnel, or to employees by bargaining unit or individually'" [underlining in original] (Un. Brief, 49). The "individual offer constitutes unlawful direct dealing with employees" and "could constitute an attempt to bypass the Union and enter into individual contracts, a strategy that connotes individual direct dealing and which has long been anathema to the principles of collective bargaining" (Un. Brief, 49, citing *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944)). No "comparable contract...provides for such a wide ranging right..." (Un. Brief, 49).

11. As the City and its employees "are essentially partners in paying for the health care services," the City "has a fiduciary obligation to obtain the best possible prices for health care" (Un. Brief, 49). "By not engaging in competitive bidding, the Employer is not exercising prudent fiduciary responsibility to assure the best possible price" (Un. Brief, 50, citing *Village of Niles (Fire)* (Hill 2003)). The "City's renewal of ECOH without competitive bidding was not only inconsistent with the current practices in comparable cities but also with major public employers and governmental units in Rockford" (Un. Brief, 53, citing UX 61).

12. The "Union's proposal does not provide for a right to file grievances to challenge the City's selection of one bidder over another"; it "seeks competitive bidding to assure financial responsibility" (Un. Brief, 55).

13. The "Employer's proposal violates the collective bargaining agreement in seeking an unprecedented health care surcharge," added "to each premium to reduce an accumulated \$2.8 million deficit in the City's internal health insurance fund" (Un. Brief, 58). This "charge to employees to reduce the accumulated deficit from prior fiscal years is undoubtedly one of the fundamental changes sought by the Employer in this round of negotiations, and it is an accounting device to reconcile internal balances in the absence of any formal documentation" (Un. Brief, 59).

14. The City's "acknowledgement of an employee responsibility to repay the City to reduce the deficit" is evidence of a contract violation: the surcharge "has a retroactive impact because it seeks to collect from employees additional amounts of money that have been recorded as an excess of expenditures over revenues in the City's Health Insurance Fund," thereby forcing employees "to pay back the General Fund for [earlier] health care expenses... the City had a contractual obligation to pay" (Un. Brief, 59). This "retrospective collection is inconsistent with

the collective bargaining agreement's insurance clause requiring the employees to pay a designated amount of money per year" and the Employer "to pay the remainder" (Un. Brief, 59-60). The surcharge "is an invalid attempt to reduce the Employer's remainder clause obligation" (Un. Brief, 60). A "major [change] in funding...should be done at the bargaining table" (Un. Brief, 60).

15. Employer and employee contributions to the Health Insurance Fund from 2002 through 2007 as a percentage of total payment were as follows:

	2002	2003	2004	2005	2006	2007
Employer	78.7	76.8	75.8	75.8	77.0	84.2
Employees	4.5	3.6	6.3	6.3	5.5	5.1

In the "key years" of the expansion of the deficit, no surcharge was added (Un. Brief, 61). Employee "contributions did not go up [in] direct proportion to the increases in the negative fund balance for the years 2000 to 2005" (Un. Brief, 62).

16. As the Employer was contractually obligated "to pay the remaining expenses in each fiscal year," the "deficit is the result of inadequate Employer contributions to the Health Insurance Fund" (Un. Brief, 62). Now it "improperly" seeks "to recover that deficit from the employees" (Un. Brief, 62). Although Employer contributions were "essentially static" in 2002 and 2003, the Health Insurance Fund deficit decreased from \$2.35 million in 2002 to \$1.63 mil-

lion in 2003, and the City "did not increase its premiums to pay down the deficit" (Un. Brief, 62). In 2004, expenses went up from \$12.5 million to \$15.5 million but the City "appropriated only \$13,239,146 in its initial budget estimates" (Un. Brief, 63). The City "also appropriated an insufficient amount to cover 2005 expenses" (Un. Brief, 63). In 2007, the Health Insurance Fund deficit "decreased by almost \$800,000...without...the cost savings devices proposed by the Employer..." (Un. Brief, 63). With this deficit reduced "in 2006 by over 28.5%, it is exceedingly unfair for the Employer to suggest that the employees pay a surcharge calculated many months ago based on a higher deficit and before the financial results of 2006 were actually disclosed" (Un. Brief, 63).

17. For 2008, the City proposes a 60% increase in family contributions by employees—from \$910 to \$1456 per year (Un. Brief, 66). This would be "the largest increase these employees have ever...experienced"; when "combined with...deductibles," the cost to employees would be "unprecedented" (Un. Brief, 66).

18. In 2004, deductibles were eliminated to encourage firefighters to use the plan's primary care physicians (Un. Brief, 67). This "major change in the health plan...was designed to control costs" and improve the quality of

health care (Un. Brief, 67). The evidence does not indicate how bringing back deductibles "would benefit the plan or affect the use of the primary care physicians" (Un. Brief, 67). In a typical two-parent family with two young children additional health care costs would come to \$1446, excluding hospital co-payments up to \$3300 (Un. Brief, 67). The figure of \$1446 "represents the new \$900 deductible...and the \$546 increase in annual contributions" (Un. Brief, 67). Based on the current base of \$910 without deductibles, costs would go up to \$2356, or more than 150% (Un. Brief, 68). At the same time, the City proposes "increased pharmacy payments"—all "above average for the comparables" (Un. Brief, 68, citing UX 30(b)(2)).

19. The proposed changes in "deductibles, employee contributions and co-payments far exceed any of the changes in the comparables between 2006 and 2007" (Un. Brief, 68, referring to tables 8-12 at Union Brief 69-73).

20. Comparing Rockford to its comparables, "total compensation...in 2006 would be 95.78% of the average and drops to 91.6% of the average in 2007" (Un. Brief, 73). "For 2007, the Union's offer would be 92.9% of the average" (Un. Brief, 73). Without "a pay increase to compensate for the health care increases, the Employer's proposal does not

leave much to compensate for non-health care increases measured by the CPI" (Un. Brief, 73).

21. There's a "tandem relationship between wage increases and health care increases" (Un. Brief, 73). In *Village of Lansing*, S-MA-04-240 (Benn 2007), arbitrator Edwin Benn "awarded higher wage increases in conjunction with significant employee insurance concessions" (Un. Brief, 74). Here, the City "seeks massive changes without leaving much of employee income to be spent on non-disposable or non-discretionary matters" (Un. Brief, 74).

22. Rockford "is seeking a massive increase in health care contributions and deductibles at a time when none of its consultants are using projections or trend numbers of no more than 10%, but the actual experience in 2006 was 3.24% over the expenses of 2005" (Un. Brief, 74). In 2008, employees "are being asked to pay 60% more than they were paying in 2006 and 2007 in employee contributions alone" (Un. Brief, 74).

23. The Employer proposes a lifetime maximum benefit of \$1.5 million but the "average lifetime maximum benefit among the comparable towns is \$3 million" (Un. Brief, 74).

24. The "Employer has not seriously pursued cost-saving measures" (Un. Brief, 75). "No alternative costs saving measures, including competitive bidding, were implemented

by the Employer after it received numerous requests from the Union for engaging in such a strategy, nor did the Employer and its vendors seek changes" (Un. Brief, 75).

25. Without "affording the Union an opportunity to even make recommendations on how savings could be achieved, the City is simply asking employees to continue to pour money into a health care system that could be reformed, improved and provide further cost efficient benefits for the employees" (Un. Brief, 77).

26. The "Employer offers no quid pro quo for health care changes" (Un. Brief, 78). Tacitly recognizing employees' "below average wage level," the parties have not agreed to "sizably" increase employees' health care payments (Un. Brief, 78). The Employer's proposal would have "employees... pay more for health care," forcing them "further below the comparables if the wage increases are not kept up," and a "quid pro quo is necessary" (Un. Brief, 80). However, the Employer unfairly "seeks to expand... health care payments without a concomitant sizable increase" in below-average wages (Un. Brief, 78, citing *Sauk County*, 114 LA 828 (Vernon 2000); *Labor Association of Wisconsin*, WERC Case 100, No. 42429 (Kerkman 1991)).

27. The "three major bargaining units with the City currently do not have the same health plan arrangements"

(Un. Brief, 80). The health care plan negotiated with AFSCME, the only union that has reached agreement with the City, does not contain a "fourth year and increases in payment obligations for 2007," although, unlike the Employer's proposal here, it "does provide for increases in employee contributions and deductibles for 2007" (Un. Brief, 80).

28. There's a "lack of uniformity for an entire contract cycle between the two unions" (Un. Brief, 81).

29. Citing "administrative burden," arbitrators have relied "upon internal comparables as a basis for awarding similar health plans to multiple bargaining units of the same employer," but the City "has given up the possibility of such uniformity by having a January 1, 2007 employee contribution for AFSCME and non-represented employees that is more than \$1000 higher" than the City's offer to the fire union (Un. Brief, 81). "[C]omputer systems should easily accommodate different levels of employee deductions" (Un. Brief, 81).

5. Discussion and Findings

If the competing offers were limited to 2006 and 2007, my task would be far easier. The hitch is the City's proposal for 2008. Although Section 14(h)(1) of the Act permits me to consider "the lawful authority of the employer," prudence suggests that it is best that, absent need, I not address the Union's argument that the City's offer contains

a "non-mandatory subject of bargaining." I shall, however, address the Union's argument that the City proposal should be rejected because in 2008 it would "allow...the employer to engage in unilateral changes to the health care plan and further allow...the employer to cease offering changes that may have been unilaterally adopted" (Un. Brief, 45).

The City's proposal for 2008 is subject to conditions and contingencies:

1. The City "may offer [my italics] additional alternative plans."
2. The City "would negotiate on...non-mandatory plan changes" before making any change "affecting coverage, benefit levels or employee contributions."
3. The City "may offer an HMO...to employees by bargaining unit or individually" and "may cease to offer an HMO."
4. "HMO employee contribution remains to be determined."
5. The "City may select a Fully Insured Option... to employees by bargaining unit or individually" and "may cease to offer a Fully Insured Option."
6. The City "may implement a 'specialty pharmacy' program."
7. The City "may implement a dental PPO with decreased benefit levels for out of network services."
8. The City "may offer employees access to an array of voluntary benefits."
9. The City shall establish a "wellness plan" that "may include" "[b]ehavior and lifestyle counseling."

The City's offer respecting 2008 is open-ended. If adopted, it would permit the City to (1) offer employees a wide variety of health insurance options at an unspecified cost to them; and (2) make changes in coverage, benefit levels or employee contributions, subject only to open-ended negotiations. In such negotiations, the Union could neither prevent nor modify changes the City might wish to implement. Unsuccessful negotiations resulting in impasse would not be subject to interest arbitration, presumably leaving the City free to unilaterally implement any change it had proposed. In short, the City would relieve itself of the burden of bargaining either to agreement or to impasse culminating in arbitration.

I do not doubt the City's good faith. Nevertheless, I must conclude that, in part, the City's health care proposal for 2008 is illusory. It would permit the City a degree of unfettered discretion with respect to the nature, cost and types of health care options available to employees.

There may be precedent for open-ended health plans of the sort proposed by the City for 2008. But none of the comparable cities, with the possible exception of Springfield, has established open-ended health insurance whose benefits would be determined at the employer's discretion:

1. Aurora Contract (UX 8: Article XIV, §G). "[A]ny anticipated change of insurance benefits...shall be communicated to the Union; and subject to negotiation and *mutual agreement* [my italics] of the parties."
2. Bloomington Contract (UX 9: Article 17(d) & (e)). The Employer may "negotiate the benefits available" under medical and dental insurance should benefits exceed 150% of the average paid out over the past five years.
3. Champaign Contract (UX 10: Article 18, §18.3). The City may "determine the nature and extent of the group health insurance benefits and...change such benefits at any time," provided that "the level of benefits shall remain substantially the same to those in effect" when the contract was signed. Any dispute between the parties "may be subject to arbitration."
4. DeKalb Contract (UX 11: Article IV, §4.3(A)). The city may change insurance carriers "or otherwise provide for hospital and medical coverage, so long as the coverage (level of benefits) remains equal to or greater than the plan presently carried."
5. Elgin Contract (UX 12: Article 16). The city may change insurance carriers, self-insure, or implement cost containment features "so long as the overall coverage available...is substantially the same."
6. Joliet Contract (UX 14, Article XXI, §21.1). The City must provide and pay for group insurance benefits for permanent full-time employees. The "benefits of...coverage shall not be less than those agreed to...and described...."
7. Peoria Contract (UX 15, Article 17). No provision on health insurance, the "subject of health insurance" having been deferred to "the City of Peoria Joint Labor/Management HealthCare Committee by separate agreement."
8. Springfield Contract (UX 16, Article XI, §11.1). Bargaining unit employees receive the same health care insurance benefits as other employees of the city. Benefits are provided through self-insurance

or under a group insurance policy or policies selected by the City. The City will not change the "existing health insurance program with regard to premiums or coverage" without giving the Union "reasonable advance written notice" and consulting with the Union.

With the exception of Springfield, none of the comparable cities has the unilateral authority to change or eliminate benefits. And the City of Springfield is constrained to some degree by the requirement that, at least initially, it provide bargaining unit employees the health insurance benefits provided to other employees.

The City has demonstrated the impact of rising health care costs "relative to the City's revenue growth" (City Brief, 19). And I applaud the City's efforts, through its proposal, to "engage employees in a consumer driven health plan and to adjust for the rising costs of health care" (City Brief, 19). Nevertheless, without some brake on the City's ability to modify the benefits and the cost of the benefits it offers, the concept of "collective bargaining" on this critical issue is jeopardized. I do not suggest that the Union could not have waived its right to negotiate, in whole or in part, on health care or that the Union could not have simply accepted the City's open-ended proposals. But an arbitrator should not make that decision. An arbitrator should not require a union to give an employer the authority to make a change "affecting cover-

age, benefit levels or employee contributions" subject only to open-ended negotiations that would not, in the end, preclude it from making the change it has proposed. "Negotiations," even if not constrained by impasse arbitration or some other mechanism to preclude arbitrary or one-sided decision-making, can act as a brake. Without the political and moral suasion of negotiations, there would be no constraint on the City's discretion. The obligation to "negotiate" is a constraint and gives the Union an opportunity to muster persuasive and political forces to its side. Nevertheless, in the end, that opportunity is insufficient. I sympathize with the City, and if I had the authority to modify the City's proposal or to combine elements of both proposals, I might be inclined to do so. But I cannot.

The City has suggested that "steep increases in health care costs need not bankrupt a public employer" (City Brief, 19). But the City has not explicitly pleaded "poverty" or suggested, consistent with the constraints of Section 14(h)(3) of the Act, that it cannot meet the costs of the Union's proposal on health care.¹³ The economic

¹³ A "'demonstrated inability to pay is viewed as a limiting factor to support an award less generous than otherwise indicated by the comparability data'" (*Village of Justice/MAP, Chapter 60*, S-MA-96-65 (Berman 1997), at 17, citing *City of Rock Island/Rock Island Fire Fighters Union*, S-MA-91-64 (Berman 1992)). And as noted in Alan Miles Ruben, ed., *Elkouri & Elkouri: How Arbitration Works*, 6th ed. (Washington: Bureau of National Affairs, 2003), at 1431: "Employers who have pleaded

consequences of both proposals cannot be fully demonstrated at this moment. A statistical analysis, taking demographic and actuarial factors into consideration, may be of assistance, but neither party has undertaken the difficult task of trying to chart the comparative costs over time of the various plans in the comparable cities. I do suggest that it's likely that health care costs will continue to rise faster than, for example, the CPI indices. But no actuarial or statistical method was suggested that would permit me to predict the future cost of the City's proposal: it leaves so much to the discretion of the City that the types and costs of future insurance cannot reasonably be predicted.

In these difficult economic times, there is much in the Union's offer that seems problematic. Without question, it will increase the City's costs (and of course reduce cost to employees). By requiring the City to engage in competitive bidding "with review and recommendations provided by the Health Insurance Focus Group," it might be said to infringe upon the City's authority to choose an insurer. It introduces a "wellness plan," which, even if a reasonable

inability to pay have been held to have the burden of producing sufficient evidence to support the plea."

idea, might result in time-consuming and presumably costly discussion.

Were I free to pick and choose, I might mix and match City and Union proposal—selecting elements from each that most closely matches statutory standards. But I do not have that discretion. I must accept one proposal in its entirety and reject the other in its entirety. I may only “adopt the last offer of settlement” on health care that, in my opinion, “more nearly complies with the applicable factors prescribed....” Both proposals are complex, multi-faceted and multi-layered. In a sense, each combines economic and non-economic considerations.

Keeping all these considerations in balance, and consistent with Sections 14(h)(4), (6) and (8) of the Act, I adopt the Union’s proposal on health care.¹⁴

C. Death Benefit

1. Union Proposal

Effective January 1, 2006, the City shall provide, at no cost to the employee, a death benefit in the amount of \$10,000 for each employee who dies while employed by the City.

¹⁴ I have referred to Section 14(h)(6) in connection with my discussion of wages. It plays a corresponding role here. Section 14(h)(8) of the Act, the “catch-all clause,” permits an arbitrator to weigh unusual factors that do not fall within the usual bounds of interest arbitration. Giving the City almost unlimited discretion to establish or terminate particular health care programs is inconsistent with the concept of collective bargaining.

2. City Proposal

1. Union would withdraw the proposed retroactive death benefit and the City's proposed life insurance benefits as follows would be implemented:
 - Life Insurance – Effective 1/1/2008
2. The City will offer a group life plan that includes a guaranteed \$25,000 to all employees.
 - Supplemental Life Insurance – Effective 1/1/2008
3. The life insurance plan will include, at employee expense, optional group term life in increments of \$10,000 to a maximum of \$300,000 of which \$150,000 will be issued without evidence of insurability. (This option will be subject to change after the initial open enrollment period, based on offerings to the City.)
 - Accidental Death and Dismemberment – Effective 1/1/2008
4. The insurance plan would include AD&D benefit in the amount of \$50,000.

3. Arguments

(a) The City

1. The City's proposal "better represents the conclusion that the parties would have reached" had negotiations continued (City Brief, 27).

2. Until January 1, 2007, only the "police union and AFSCME 1058 were provided a \$10,000 [death benefit] self funded by the City" (City Brief, 27). In November 2006, AFSCME and the City agreed on the death benefit, a life insurance product, the City now offers to Local 413 (City Brief, 27).

3. The City's offer "provides the better coverage [and] options and [it] represents the industry norm regarding life insurance products versus self-insured programs" (City Brief, 28). First, \$25,000 is better than \$10,000 (City Brief, 28). Second, unlike the benefit proposed by the Union, the City proposal "allows the employee to increase coverage" (City Brief, 28). Third, as shown by Union Exhibit 41, comparable cities provide a death benefit through life insurance rather than through a self-insured fund (City Brief, 28).

(b) The Union

1. The "Union seeks the same death benefit given to other City employees" (Un. Brief, 83).

2. The City proposes that "it will offer a group life insurance plan and the life insurance will include an optional group term benefit and the plan would include AD&D benefits [underlining in original]" (Un. Brief, 83). However, "[n]o such compelling language with designated benefits appears in key components of the health insurance plan involving HMO, fully insured option, specialty pharmacy programs and alternative plan options," a "distinction... critical to the Union's opposition to the Employer's health insurance proposal" (Un. Brief, 83).

3. The City's offer is contingent on the Union's withdrawal of its "retroactive death benefit," and "[n]o final

offer should be contingent upon the other party withdrawing a proposal" (Un. Brief, 83-4, citing *Village of Elk Grove Village*, ISLRB Case No. S-MA-93-231 (Nathan 1994)) as follows:

Of course, the problem here is that the Village is attempting to negotiate with the panel. The offer the Village makes here should be made to the union. It is inappropriate, i.e., if you accept our offer on one issue, we would concede on the other. While we believe that either party may concede on any issue at any time, even after an award has been delivered, it is inappropriate to make a conditional settlement of an issue after its final offer has been submitted.

4. The firefighters' union proposes the same death benefit that has been provided to police officers since January 1, 1999 (Un. Brief, 84). The AFSCME agreement, effective July 1, 2001 also provides the same death benefit proposed here (Un. Brief, 84). "There is no good reason and...no reason offered by the Employer to reject the Union's proposal" (Un. Brief, 84).

5. The Union "attempts to eliminate disparity" (Un. Brief, 85). "Six of the eight comparable cities provide... life insurance" (Un. Brief, 85). "Peoria's benefit is \$9000, Joliet and Champaign each have \$10,000 benefits, and DeKalb and Elgin have \$50,000 and \$10,000 respectively" (Un. Brief, 85).

4. Discussion and Findings

The City proposes that the "Union...withdraw the proposed retroactive death benefit and the City's proposed life insurance benefits as follows...be implemented." Citing *Village of Elk Grove Village, supra* at 61, the Union argues that I should reject the City's final offer because it is "contingent upon the other party withdrawing a proposal." On its face, this argument appears reasonable. On analysis, however, it falls apart. The City's offer is not truly "contingent." Although the language proposed by the City may be phrased as a "contingency," in effect, the City asks me to accept its proposal and reject the Union's proposal. Adopting the City proposal automatically rejects the Union proposal. No contingency is involved.

The Union argues that there's no reason to delay the death benefit until January 1, 2008. The City argues that the death benefit it proposes is more generous than the benefit proposed by the Union. The City also notes that as of January 1, 2007, the AFSCME unit and the City's non-union employees were not self-insured.

The Union's primary objection to the City's more generous proposal—that its benefits would be delayed—are moot. Internal comparisons, as well as the fact that most of the comparable cities provide third-party life insurance

rather than a self-insured benefit, favor the City's proposal. I adopt the City's proposal on the death benefit.

D. Chiropractic Limit

1. City Proposal

Chiropractic treatment would be subject to a \$1500 annual limit.

2. Union Proposal

Effective January 1, 2008, the City shall cap the annual limit on Chiropractic to \$1500 per covered member. This limit shall only apply to Chiropractic manipulation performed in a Chiropractic Office, and not other services, including physical therapy, performed in a Chiropractic Office. A \$1500 limit shall increase each year by an amount equal to the annual wage increase awarded to bargaining unit members pursuant to the collective bargaining agreement.

3. Arguments

(a) The City

1. The City's final offer "most represents the conclusion the parties would have reached had negotiations continued," and the "expert witness of the Union provides the evidence that is most persuasive" (City Brief, 25). Michelle Masters testified, at page 1646 of the transcript, that "the industry norm and standard for limits on chiropractic care is \$1500" (City Brief, 26). The Union would "enhance the benefit beyond the industry norm" (City Brief, 26).

2. The Union offers no evidence to support its position that "the \$1500 should only apply to 'manipulation' services provided by the chiropractor" (City Brief, 26).

(b) The Union

1. The Union's proposal to increase the \$1500 chiropractic limit "each year based upon the annual wage increase...is a sort of inflation adjustment..." (Un. Brief, 95-6).

2. Although Masters testified that "a \$1500 limit would be an appropriate cap for Rockford," a "year from now a \$1500 cap with no adjustment for inflation might not be as reasonable" (Un. Brief, 96).

3. The Union's proposal to apply the cap of \$1500 to "manipulation" but not "physical therapy" performed in a chiropractor's office is consistent with Masters' testimony that "health care consultants often recommend a separation of these issues because, 'We don't want to limit true physical therapy versus what can be an overutilization of chiropractic services at times'" (citing Masters 1673) (Un. Brief, 96). The "unintended consequence of the Employer's proposal" would be to confuse manipulation and physical therapy "for an employee in need of and receiving physical therapy" (Un. Brief, 96).

4. Discussion and Findings

The City maintains that the Union is trying to enhance the chiropractic limit of \$1500 per member its expert witness Michelle Masters described as the industry norm (City Brief, 26). The City also argues that the Union offered no evidence to support its position that the \$1500 limit should apply only to "'manipulation' services" (City Brief, 26).

The Union notes that "both parties seek an annual limit on chiropractic care of \$1500 per member," except that the Union would increase "this amount each year based upon the annual wage increase awarded to bargaining unit members under the collective bargaining agreement" (Un. Brief, 95). The Union also argues that the distinction it draws between chiropractic services and physical therapy, even if both are offered "in a chiropractor's office," is supported by Masters' testimony that "health care consultants often recommend a separation of these issues because, 'We don't want to limit true physical therapy versus what can be overutilization of chiropractic services at times'" (Un. Brief, 96).

Neither party offered comparative statistics regarding dollar limits on chiropractic services generally or on separating physical therapy from chiropractic services. In large part, both rely on Masters's testimony. It's

possible, as the Union suggests, that since physical therapy is covered by "normal insurance," the City's proposal could have the "unintended consequence" of limiting physical therapy performed in a chiropractor's office to \$1500. On the other hand, since physical therapy is covered by separate insurance, there would seem to be no sound reason to carve out physical therapy performed by a chiropractor. Should there be confusion between chiropractic manipulation and physical therapy performed by a chiropractor, the solution would seem obvious: Have physical therapy performed by a physical therapist and chiropractic manipulation performed by a chiropractor. It's likely that chiropractors and physical therapists (as well as insurers), have established the ways and means to separate their activities. And while the inflation of fees in the medical and similar fields is clearly an issue, I find no basis, either by way of comparative data or otherwise, to include a cost-of-living adjustment for this small area of medically related services.

I adopt the City's offer on chiropractic limit.

**V. Non-Economic Issue: Safety, Health and Clothing
(Article 4, §4.8)**

A. Current Contract

Article 4 (Working Conditions), Section 4.8 (Safety, Health and Clothing) provides:

The City and the Union agree that protecting the safety and health of employees in their work demands the highest concern of the Fire Department. In order to promote this concern among all Employees, as individuals and as members of companies, the City and Fire Department urge every Employee to suggest methods of improving safety and health in working and living conditions of employment. Captains and Lieutenants are empowered to accept all such suggestions and to implement them to the extent possible within their own jurisdictions. The City agrees the Union shall appoint a Safety, Health and Clothing Committee consisting of 3 persons in the unit. The City shall appoint up to 3 persons to serve on this Safety, Health and Clothing Committee. The Committee shall discuss and recommend minimum acceptable standards for all clothing, personal protective gear, or safety devices worn or used by firefighters during duty hours. It is not the intention of either party to reduce current minimum safety standards. The Chief or his designee shall take under consideration all recommendations of the Committee and will establish all minimum standards in these areas. These minimum standards shall apply to: station clothing, turnout pants and coats, boots, helmets, gloves, air masks, goggles, and other personal protection items deemed by the City to be worn by the Union members while on duty.

B. City Proposal

The City proposes no change in Article 4, §4.8 of the Agreement.

C. Union Proposal

The Union makes the following proposal (no deletions; additions in **bold print**):

The City and the Union agree that protecting the safety and health of employees in their work demands the highest concern of the Fire Department. In order to promote this concern among all Employees, as individuals and as members of companies, the City and Fire Department urge every Employee to suggest methods of improving safety and health in working and living conditions of employment. Captains and Lieutenants are empowered to accept all such suggestions and to implement them to the extent possible within their own jurisdictions. The City agrees the Union shall appoint a Safety, Health and Clothing Committee consisting of 3 per-

sons in the unit. The City shall appoint up to 3 persons to serve on this Safety, Health and Clothing Committee. The Committee shall discuss and recommend minimum acceptable standards for all clothing, personal protective gear, or safety devices worn or used by firefighters during duty hours.

The Committee will make recommendations on any possible hazards to a safe and healthy job assignment or workplace that is brought to its attention. The Committee will review any accidents or injuries in the Department to better determine the reasons why the problem occurred and to provide any recommendations to prevent a similar event from occurring in the future. Names of employees will be redacted from such reports, and the members of the Committee will follow applicable HIPAA rules and regulations to preserve the privacy of such employees. The Committee will also review the types, condition, use and availability of apparatus, equipment and protective clothing with the goal of improving safety and operations within the Department. The Committee will make periodic inspections of Fire Department facilities, apparatus, protective equipment, protective clothing, and other equipment on a semi-annual basis.

It is not the intention of either party to reduce current minimum safety standards. The Chief or his designee shall take under consideration all recommendations of the Committee and will establish all minimum standards in these areas. These minimum standards shall apply to: station clothing, turnout pants and coats, boots, helmets, gloves, air masks, goggles, and other personal protection items deemed by the City to be worn by the Union members while on duty.

D. Arguments

1. The City

1. To "prevail," the Union "must demonstrate that the current language is not accomplishing its intent, and that the proposed change will resolve that problem" (City Brief, 29). The Union did not make a case (City Brief, 29). Testimony presented by the Union "actually establishes that the Committee did function in the manner intended but that

most recently it had stopped operating to its potential" (City Brief, 29).

2. "To the degree that the Union has an issue with the Committee, they have chosen to address it in the wrong forum" (City Brief, 29). If the Committee "is not...accomplishing its original intent," the "Union should have pursued other avenues of resolution" (City Brief, 29). The "remedy" is the "grievance process" (City Brief, 29).

3. The City "expressed concerns that the additional language" proposed by the Union "was intended to put the Union in a better position to grieve capital equipment purchases rather than safety issues" (City Brief, 30). Union president DiLonardo "did not deny that the language was for that purpose, but indicated he could bring equipment concerns to management attention anytime" (City Brief, 30).

2. The Union

1. Currently, the Agreement does not "facilitate the parties' joint interest in preserving the health and safety of bargaining unit members" (Un. Brief, 86). The Union proposes to "allow the...Safety Committee to recommend for possible hazards" (Un. Brief, 86). To "make educated recommendations the Union has proposed that the Committee review accidents and/or injuries," and thereby be enabled "to form an opinion about whether a particular piece...of equipment

...is experiencing problems and make recommendations to the Department to address those concerns" (Un. Brief, 86). The Union has made its "proposal...even more reasonable" by offering "to protect confidential information" (Un. Brief, 86).

2. The City "has provided absolutely no evidentiary justification" for rejecting the Union's proposal to "expand the Safety Committee's scope of review," especially since the Union "is entitled to such information" under the Act and such information is "open to public review under the Illinois Freedom of Information Act" (Un. Brief, 87). "If the information is relevant and necessary for the Union to represent the interests of its membership, it makes...no sense to reject the Union's proposal" (Un. Brief, 88).

3. The only issue is "whether access to the information is 'relevant and necessary' to the representation of bargaining unit employees," and to meet that test the Union need show only "'the probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities'" (Un. Brief, 88).

4. "Information concerning terms and conditions of employment is presumptively relevant," and "health and

safety concerns clearly implicate terms and conditions of employment" (Un. Brief, 88).

5. The "Union's proposal merely memorializes already existing statutory obligations," and when it is "placed in the context of the applicable factors set forth in 14(h) of the Act, it is clear that the Union's proposal is the more reasonable one" (Un. Brief, 91).

6. The Union does not seek "to invade the authority of the chief to have final authority on the implementation of health and safety committee recommendations" (Un. Brief, 94).

E. Discussion and Findings

The Union argues that the change it proposes would "satisfy the parties' mutual interest in employee safety by allowing the joint labor-management Safety Committee to recommend for possible hazards and/or threats to the health and safety of bargaining unit members" (Un. Brief, 86). Not only does the proposal "protect confidential information," the Union maintains, the Union would be "entitled to such information" under Sections 10(a)(1) and (4) of the Illinois Labor Relations Act and the information is reviewable by the public under the Illinois Freedom of Information Act (Un. Brief, 86-7).

The City argues that the Union did not establish "why a language change was necessary" (City Brief, 29). The evi-

dence did not establish, the City maintains, that the Union grieved any issue it had respecting the Safety Committee (City Brief, 29). Citing the testimony of Union President E.J. DiLonardo (DiLonardo 425-30), the City "expressed concerns that the additional language was intended to put the Union in a better position to grieve capital equipment purchases rather than safety issues" (City Brief, 30).

DiLonardo's testimony on the Union's rationale for the language change is of interest (DiLonardo 427-28):

Q. ...the ambit of the Committee would now be expanded to all Fire Department facilities, apparatus, and other equipment, which is everything else, other than personnel protective gear, the Health and Safety Committee existing contract language addresses? Is that fair to say, that the language gives the Committee quite a broad license beyond what it has now?

A. In the sense that now it's written rather than just assumed or the past practice.

Q. And we know from our budget discussions, as well as discussions at the table, that equipment, fire apparatus, is a very difficult topic for us to successfully improve on right now, given our budget issues?

A. Correct.

* * *

Q. So that you can understand the Administration's natural inherent suspicion of this clause as it relates to giving the Firefighters Union a tool to argue or grieve the condition of the engines, the quints, the ladder trucks, their age, the maintenance issues related to them that it doesn't presently have in its contract, this would create that forum?

A. I believe that we don't need contract language to bring the Employer poor equipment, poor working conditions,

the status of a fire station. I think we're charged with that responsibility.

And maybe [if] we [had] been more diligent, some of the stations might not be in the shape that they're in and we might have pursued replacing equipment.

I sympathize with the Union's desire for a forum in which to discuss "possible hazards" and review "accidents or injuries." As the City notes, however, the Safety Committee as it now stands offers that forum. More significantly, from the City's perspective, the Union also seeks to have "[t]he Committee...review the types, condition, use and availability of apparatus, equipment and protective clothing." Obviously, as the Union points out in its post-hearing brief, it already has the legal and contractual right to request and receive information on, and talk to the City about, "apparatus, equipment and protective clothing" (Un. Brief, 91). The question is whether explicitly incorporating this right into the Agreement would be equitable or mischievous. Would it permit the Union to more easily pursue legitimate concerns about health and safety without having to resort to the cumbersome machinery of litigation? Or would it simply "put the Union in a better position to grieve capital equipment purchases," something within the City's inherent authority?

It's difficult to make a finding on this topic within the framework of Section 14(h) of the Act. No comparability

data was produced, and the evidence did not establish how, if it all, employees' "overall compensation" might be affected by rejection, adoption or adaptation of the Union proposal. I shall turn to the catchall language of Section 14(h)(8). Among the "normal and traditional" factors taken into consideration in collective bargaining in both the private and public sectors are the relationship of the parties and the sometimes competing, sometimes shared, interests of union and employer, employee and management. Often a balance must be struck—a balance that recognizes the needs of all. As this is a non-economic issue, I have the discretion to strike that balance.

It's understandable that the Union does not wish to be shut out of discussions about equipment. Outdated, inadequate or poorly maintained equipment is an obvious concern. On the other hand, I recognize that the City would not want to have to bargain over its authority to purchase or refrain from purchasing capital equipment.

With the foregoing considerations in mind, I modify Article IV, Section 4.8 of the current Agreement (UX 3) by adopting the Union proposal, as modified below, and inserting it as paragraph 2 of Article IV, Section 4.8 (additions to the Union proposal are underlined):

The Committee will make recommendations on any possible hazards to a safe and healthy job assignment or workplace

that is brought to its attention. The Committee will review any accidents or injuries in the Department to better determine the reasons why the problem occurred and to provide any recommendations to prevent a similar event from occurring in the future. Names of employees will be redacted from such reports, and the members of the Committee will follow applicable HIPAA rules and regulations to preserve the privacy of such employees. The Committee will also review the types, condition, use and availability of apparatus, equipment and protective clothing with the goal of improving safety and operations within the Department; provided, however, that neither the Union nor any bargaining unit employee shall have the right to file a grievance respecting the type, condition, use and availability of apparatus or equipment used or purchased by the Employer. The Committee will make periodic inspections of Fire Department facilities, apparatus, protective equipment, protective clothing, and other equipment on a semi-annual basis.

VI. Summary

- A. Wages. I adopt the City proposal.
- B. Health Insurance. I adopt the Union proposal.
- C. Death Benefit. I adopt the City proposal.
- D. Chiropractic Limit. I adopt the City proposal.
- E. Health and Safety Committee. Article 4, Section 4.8 is amended as set forth above.



Herbert M. Berman
Arbitrator

October 21, 2008