



Employer has a workforce consisting of approximately thirty full-time employees and a number of part-time employees in the police, fire, streets, sewer, public property and clerk departments. Certain employees in the streets and sewer departments are represented by a local union of the Laborers' that was recently certified and negotiations for a first contract are underway. All other employees, but for law enforcement employees as described below, are not represented for the purposes of collective bargaining.

The Employer's police department consists of thirteen police officers all of whom were hired between 1987 and 2008. In fact, eleven of those officers were hired since 2001. In the past five years only two officers found their employment severed when they resigned, one in 2006 and the other in 2007. Finally, the department includes a Chief and two sergeants, both of whom have been represented by the Illinois Council of Police since October of 2007. Negotiations for this bargaining unit have not yet resulted in an agreement.

The Union herein was certified as the exclusive bargaining representative of the police officers on October 13, 2005 and it demanded bargaining for a first contract four days later. The parties thereupon commenced bargaining and, despite extensive negotiations both with and without mediation, they were unable to reach a collective bargaining agreement.

Prior to the certification of the various unions as described above, the Employer had a benefits ordinance that set forth the benefits for all employees. However, certain employee groups complained about the level of benefits and the Employer undertook a wage and benefits survey for those groups. Subsequently, after other employee groups also complained, the Employer expanded that survey to study their wages and benefits as well. In that survey the Employer compared itself to what it believed to be comparable communities at that time<sup>2</sup>. Ultimately the Employer concluded that the wages and benefits of all of its full-time employees should be adjusted.

By this time the Employer and the Union herein had already commenced negotiations. The Employer notified the Union of its survey and the conclusions it had drawn and the Employer adopted changes that became effective on January 1, 2008. More specifically, those changes included increases to the amount of sick leave, vacation, and personal days, expanded coverage to funeral leave, an increase in the call back minimum from one hour to two hours, granting unpaid leaves of absence, implementation of a Family and Medical Leave policy, and increases to holiday pay as well as making holiday pay uniform across employee groups. Finally, the ordinance provided that employees would begin paying a portion of health care insurance and that their contribution would increase on January 1, 2009.

To assist the parties in reaching a voluntary bilateral agreement the parties conducted a hearing before this arbitrator on the issue of external comparability. As a

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<sup>2</sup> As noted above, the current population of the Employer is on or about 8,336. However at the time of the survey its population was on or about 5,300.

result, I issued a comparability order finding the following communities appropriate for the purpose of external comparability: Rockton, Roscoe, Harvard, Marengo, and Rochelle.

### THE ISSUES

#### a. General

Under governing state law I am to follow certain factors in resolving this interest dispute. Those factors include:

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 employer to meet those costs;
4. external comparability in public and private employment;
5. the cost of living;
6. the employees' present overall compensation;
7. changes in any of the following categories 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 resolution of interests disputes.

Moreover, it is well-settled that the statute makes no effort to rank these factors in terms of their significance and thus it is for the arbitrator to make the determination as to which factors bear most heavily in any particular dispute. (See, e.g., *City of Decatur*, S-MA-29 (Eglit, 1986).

In reaching my conclusions set forth below I have considered all of the above-mentioned factors in keeping with Arbitrator's Eglit's well-founded observation.

In addition, the Employer argues that because the Union's final offers represent breakthroughs from the status quo the Union bears the burden of proof that the status quo should be disturbed only if there is a compelling justification. The doctrine upon which the Employer relies is of course routinely adopted by interest arbitrators. However, the threshold issue is what constitutes the "status quo" and that issue must be answered before the heightened burden can be assessed.

Arbitrators have long held that the rationale for placing a higher burden on a party seeking a breakthrough is because any significant change to wages, hours or terms of conditions of employment should be obtained in bargaining. Thus, if a party fails to achieve that goal in bargaining and then seeks to have the breakthrough foisted upon the other party in arbitration it should meet a higher standard. However, that rationale is not applicable when the "status quo" was not the product of bilateral negotiations and many arbitrators have declined to hold a party to the higher standard when the change is one to wages, hours, and terms of conditions of employment that were unilaterally imposed.

(See e.g.s, the many awards from interest arbitrators, including myself, on the issue of residency, an issue that was subject to interest arbitration only after an amendment to the categories of mandatory bargaining and that were, therefore, unilaterally imposed by employers prior to the amendment). Here the Employer contends that the "status quo" is its benefits ordinance, described above. However, that view of the "status quo" fails for the same reason as attempts by employers to characterize as the "status quo" in residency cases their residency ordinances before employers were compelled to bargain over that issue. For the reason then, I do not regard the "status quo" as the Employer's benefits ordinance and thus do not regard the Union's final offers as breakthroughs<sup>3</sup>.

#### b. Wages

As noted above, this interest dispute involves the resolution of a first contract between the parties and thus implicates not only their bargaining history and the relationship of the wages and benefits of the bargaining unit employees *vis-à-vis* those of police officers in comparable communities, but also what transpired before the Union was ever certified.

With regard to that last point both of the parties appear to concede that the officers in this bargaining unit did in fact lag behind police officers in other communities and the record reflects that consistent with that recognition the Employer made efforts both before and during negotiations with the Union to remedy that shortfall. Thus, the threshold issue is whether to accept the Employer's final offer which continues to remedy that shortfall or to accept that of the Union which also continues to remedy that shortfall, but does so in a more dramatic fashion.

On this point it is useful to consider the interest arbitral precedent on the issue of "catch-ups," i.e., an effort to bring, by way of interest arbitration, employees to a comparable level of wages. In that regard it is safe to say that most, if not all, arbitrators, including this one, view "catch-ups" with disfavor as they do not necessarily replicate what the parties would have adopted had they bilaterally agreed to a contract and because a determination in interest arbitration by definition eliminates any *quid pro quo* that might have been secured had the party objecting to the "catch-up" ultimately agreed to the demand. (See e.g., *City of North Chicago*, S-MA-96-62, (Perkovich, 1997)<sup>4</sup>.

In the instant case the Union's final offer implements a "catch-up" by way of a restructuring of the pay steps, a \$1,000 lump sum bonus in lieu of retroactivity, and wage increases that far exceed the percentage wage increases that were provided by the

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<sup>3</sup> In addition, the benefits ordinance was devised after a survey of external comparables as determined when the Employer's population, and presumably other factors related to population (e.g. tax revenues), was substantially smaller.

<sup>4</sup> Although the Union did not explicitly address the propriety of granting "catch-ups" in interest arbitration there is no doubt that it knows that its final offer can be characterized as such. For example, the Union argues that in 2006 and 2007 up to the point of three years of service bargaining unit employees were "dead last in salary rankings" (emphasis in original) with the comparable communities, that both it and the Employer recognize the salary deficiency as "an illness that needs to be cured," and that the Employer's final offer "will narrow the gap but not nearly as quickly or as significantly" as that of the Union.

externally comparable communities. On the other hand, the Employer's final offer also addresses the historical wage inequity by way of a restructuring of the pay steps and moreover, by wage increases, but wage increases that are more consistent with those of the comparable communities<sup>5</sup>.

As noted above, another of the statutory factors is that of the cost of living. On this point the Union argues that between 2006 and 2008 there was an aggregate increase to the cost of living of 11.27% and that between that same period of time the bargaining unit employees' wages rose by 11%. With regard to the cost of living for the remaining years of the parties' agreement, 2009-2011, the Union points out the inexact science of predicting that figure and thus in light of that fact, as well as the near correlation between the cost of living and bargaining unit salary increases in the prior years, it is the Union's view that the cost of living analysis favors neither of the two competing final offers. The Employer on the other hand relies on predictions that the percent change in the CPI for the years 2009-2011 are to be between -0.7% and 1.4%.

On this point I certainly can agree with the Union that predictions to the percent change in the CPI is a less than exact science, especially in years to come. That however does not mean that they are to be ignored. Thus, because the Employer's final offer compares more favorably with that predicted percentage change, I find that the cost of living factor augurs favorably for the Employer's final offer.

Finally, the record evidence clearly shows that the Employer has not suffered from high turnover or has had problems recruiting police officers, factors that might lead one to adopt a "catch-up" offer. (See e.g., *City of North Chicago, supra*)

Thus, external comparables, the cost of living, and the absence of turnover lead to favor the Employer's final offer on wages.

The only remaining dispute on the issue of wages is the Union's final offer that employees' should receive a \$1,000 bonus in lieu of retroactivity. The Union argues that adopting this provision of their final offer is warranted in light of the fact that retroactivity is not only a normal consequence of many collectively bargained agreements, but that it is also awarded frequently by interest arbitrators. Conversely, the Employer contends that the matter is just a variation on the theme of an excessive "catch-up" and that there are no external comparables that have provided employees such a benefit.

On this point I must find for the Employer. I agree that the bonus is part and parcel of the Union's version of the acceptable "catch-up" and that it is therefore to be treated in the fashion described above. Moreover, I also note that before and during negotiations, and for a period in part to be covered by this agreement, the Employer did in fact provide wage increases to the bargaining unit.

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<sup>5</sup> The Employer's final offer does not provide for any bonus as does the Union's, but it points out that before and during negotiations it did provide pay increases to the bargaining unit despite the absence of a collectively bargaining agreement. I discuss this issue in particular in more detail *supra* at page 5.

In sum, I find that in light of the fact that the Employer's final offer goes some distance toward addressing the historical wage disparity with police officers in comparable communities, because it does so much more consistently with the wage increases given in those comparable communities and more consistently with the cost of living, I must adopt its final offer rather than that of the Union<sup>6</sup>.

#### c. Holidays

On this issue the parties agree that Good Friday should be added to the list of holidays in their agreement but disagree to the extent thereof. More specifically, the Union's final offer is that Good Friday should be regarded as a full holiday and the Employer contends that it should be regarded as a half-holiday.

In support of its final offer the Union asserts that determining what would constitute a half-holiday, especially in the law enforcement context, would be "...a confusing concept, to say the least" and that the external comparables support its final offer. The Employer on the other hand argues that it has been "successfully managing the half holiday calculation for years" as holidays for other employee groups have been so computed.

I find that the ease or difficulty of computing the half holiday is of no consequence. Moreover, it is, at least not explicitly, one of the factors that the statute commands that I consider. Rather, the one factor applicable to the issue herein, that of external comparability is useful and an examination of that factor weighs in favor of the Union. More particularly, two of the external comparables (Rochelle and Marengo) currently provide eleven full holidays and the remaining two (Roscoe and Rockton) provide only ten and eight respectively. Moreover, none of the external comparables provides a half holiday in any way, shape or form.

In other words, the Union's final offer, unlike that of the Employer, will allow a holiday benefit exactly like two of the external comparables while the Employer's will provide a holiday benefit that is unlike any of the external comparables<sup>7</sup>.

Thus, I adopt the Union's final offer on the number of holidays,

#### d. Holiday Pay

On this issue the parties are again very close. They agree that if an officer does not work on a designated holiday he or she is to be paid 8.4 hours of work at the straight time rate. They differ however as to the compensation for an officer who does in fact

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<sup>6</sup> This conclusion also compels a rejection of the Union's offer for the \$1,000 bonus as the parties did not sever this issue from that of the wage issue and because I do not have the authority to myself since it is an economic issue.

<sup>7</sup> I am mindful of the fact that the Employer's final offer is entirely consistent with the internal comparables. However, in light of the fact that external comparables more closely recreate the Employer's labor market I find that they are of greater value, not only with respect to this issue, but also with respect to all issues in dispute.

work on such a day, with the Union proposing that the officer receive 8.4 hours at the straight time rate plus 8.4 hours at time and one-half while the Employer proposes that the officer receive only double time for the time worked. In other words, the Union's proposal would result in 26.4 hours of compensation and the Employer's proposal would result in 25 hours.

Again, the only applicable statutory factor is that of external comparability. Using that analysis the record shows that in three of the five comparable communities (Marengo, Rochelle, and Roscoe) officers receive holiday pay if they do not work a designated holiday and if they do, they are compensated with holiday pay and time and one-half for the hours worked.

Thus, external comparability weighs in favor of the Union and I adopt its final offer on this issue.

#### e. Vacation Scheduling

On this issue the parties disagree as to the manner in which increments of vacation days can be used. The Union proposes that vacation days requested after December 1<sup>st</sup> can be taken in a minimum of one hour increments "as long as manpower and operational needs are met" and the Employer proposes that those days can be taken in four hour increments but that they may be taken in a minimum of one hour increments "as long as manpower and operational needs are met via regular manpower."

Interestingly, both parties argue that the external comparables support their final offers. However, the Employer also contends that the Union's proposal contains too much ambiguity to support its adoption.

First, I turn to the issue of external comparables. The Union cites the fact that only one of the external comparables, Rochelle, requires that time off be taken in increments in excess of one hour. However, it's comparison to the communities is not between "apples and apples," but rather is between "apples and oranges" in that the Union compares its final offer against the use of compensatory time and personal days off as well as vacation days. The Employer's comparability analysis however compares the incremental use of vacation days only and that analysis shows that in three of the five comparable communities (Rochelle, Rockton, and Roscoe) employees are allowed to use vacation days in increments of at least one half workday<sup>8</sup>.

Moreover, I find that the Employer's language, at least on a relative basis, yields more certainty for the phrase "as long as manpower and operational needs are met" is not qualified in any way in the Union's proposal. Thus, unlike the Employer's final offer, one is left to ponder whether, for example, that language would or would not be met by the use of call-backs or overtime. Thus, the interests of labor stability favor the Employer's final offer.

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<sup>8</sup> There are no such limitations on the incremental use of vacation days in Harvard and Marengo.

Accordingly, because the Employer's final offer comports more favorable with the external comparables and because it has the greater potential for achieving labor stability I adopt the Employer's proposal on this issue.

f. Inoculations

On this issue the parties' differences relate to the amount of cost the Employer will bear for inoculations and the circumstances under which the Employer will be required to bear that cost. More specifically, the Union proposes that the Employer pay all expenses for inoculations for an employee or members of his or her household when "such become necessary as a result of said employee's exposure to contagious diseases...where said officer has been exposed to said disease in the line of duty. The Employer on the other hand proposes to limit its cost only to "reasonable expense" in connection with those same inoculations and places the role of deciding when the inoculation is "necessary as a result of the officer's exposure to contagious diseases" on itself or when such inoculations are recommended by the Illinois Department of Health. In addition, the Employer proposes an escape clause, if you will, whereby it would not be obligated to pay for even the "reasonable" expenses if those expenses have been covered by Workers' Compensation or the employee's health insurance when the inoculations are for members of the employee's household.

The Union begins its argument by citing the fact that law enforcement officers are, unlike other employees, particularly susceptible to infections and viral diseases because of their work. Moreover, it cites statistics as to the frequency of such diseases in the geographic area in which the Employer resides. The Union's second argument in support of its final offer is that one of the four comparables, Roscoe, covers full expenses for such inoculations.

Because only one of the four comparables is at all applicable on this issue the external comparability analysis is of little help. Thus, the only real issue is whether the other provisions that the Employer has proposed are reasonable and, as described below, I find that they are.

First, the Employer's provisions that it will pay for expenses for inoculations when recommended by the Illinois Department of Public Health is, in my view, reasonable in that it allows for payment when there might be, for example, a public health crisis. Second, with regard to the other provisions of the Employer's final offer relating to those instances where the inoculations would be paid by Workers' Compensation or the employee's health insurance, these provisions are reasonable in that they would prevent double coverage. There remains then the issues who should determine whether the inoculation for the officer was "as a result of...exposure to contagious diseases in the line of duty" and whether payment for those inoculations should be in full or only for "reasonable" costs. In my view leaving this conclusion to the Employer is proper knowing that, because this is a collectively bargained provision it is subject to the grievance and arbitration procedure either as to whether the costs of the inoculation was

“reasonable” and/or whether the exposure requiring the inoculation was in the line of duty.

g. Travel Reimbursement

On this issue the parties agree that employees who are required to attend training or are required to travel on business for the Employer when no Employer owned vehicles are available should be reimbursed for their costs at the IRS per mile rate. They disagree however whether that amount should be reduced by the “mileage that the officer would have incurred if commuting from home to headquarters.” The Employer so proposes and the Union objects.

The Union objects to the Employer’s proposal on the basis that there will be no financial hardship to the Employer if there is no such adjustment and that the Employer’s offer “could result in officers actually owing...money<sup>9</sup>.” The Employer on the other hand cites to case law that stands for the proposition that an employee’s commute time is not “compensable” under the Fair Labor Standards Act and argues that by extension his or her costs should not be as well.

I can understand the rationale for the Employer’s proposal but also am mindful that the issue herein is not one of “compensation,” but one of costs that an employee was forced to bear at the Employer’s behest. Moreover, the fact of the matter is that three of the five comparable communities have addressed this very issue and they have done so in the same fashion as the Union<sup>10</sup>. Thus, in keeping with the idea that the terms and conditions of employment should reflect the relevant labor markets including comparable communities, I must find for the Union.

Thus, the Union’s final offer on this issue is adopted.

h. Health Insurance Coverage<sup>11</sup>

In the Union’s final offer it proposes that the Employer “shall provide health insurance,” language which in its post-hearing brief it summarizes as “the medical insurance now in effect will continue,” but that the Employer shall retain the right to change insurance carriers provided that any changes to coverage and benefits in such a case will remain “substantially similar.” The Employer’s final offer is that employees “shall be eligible to receive the same insurance coverage and benefits at the same cost and same terms and conditions applicable to non-bargaining unit employees.”

<sup>9</sup> The Union however cited no examples of employees who have or might be in such a conundrum.

<sup>10</sup> The agreements in the other two communities do not address the issue at all.

<sup>11</sup> The parties disagree whether health insurance coverage and health insurance benefit contributions by employees are separate issues. Interestingly however, they did not argue the point in their post-hearing briefs. However, it is not uncommon in bargaining that parties often agree as to coverage but do not agree as to the amount, if any, that employees should pay toward the premium. Thus, in those cases, the issues are discrete. More importantly however, in the instant case the parties have treated the issues differently, for example using the external comparables on these two subjects discretely rather in the conjunctive. Thus, they themselves seem to implicitly acknowledge that they are two separate issues and I so hold.

It too provides that it shall retain the right to change insurance carriers but it sets the standard for any resulting changes to coverage as "relatively similar." Moreover, the Employer's final offer contains an acknowledgement by the parties that the insurance carrier may make changes to benefits "over which the parties have no control and which may not be relatively similar" and that in such instances those changes would not be a violation of the collective bargaining agreement.

The Union opposes the Employer's final offer deeming it a waiver of its right to bargain over the issue of medical insurance coverage. I however fail to see any such waiver especially when the Union in its final offer agrees with the Employer that the status quo as to medical insurance shall prevail but disagrees only as to the standard to be utilized if the status quo is changed with a concomitant change to carriers.

In support of its final offer the Employer, as it has on numerous other issues, relies on internal comparability. However, not only are they less persuasive than the external comparables, as discussed *supra* at footnote 6, but in addition there is no record evidence that the benefits ordinance makes any reference to the standard to be used in assessing changes that might arise in the event the Employer changes insurance carriers.

It appears then that the fulcrum point will again be the external comparables. In only four of the five comparable communities is the issue of a change to coverage treated and of those four one use the "substantially similar" and one uses the "relatively similar" standards. Of the remaining two, one uses "comparable coverage" (which seems to me to be analogous to "relatively similar") and one uses the status quo as to coverage, or "...coverage...shall be at the minimum as is... in existence at the time of the signing of this Agreement," which appears to me to be analogous to the "substantially similar" standard. Thus, the external comparables are of little use.

However, the external comparables are clear on one point. None of them contain the language that the Employer seeks with regard to the degree of control the Employer has over changes that a carrier might make, whether any such changes may not be "relatively similar," and that any such changes are not a violation of the Agreement. Thus, because this is an economic offer and I am compelled under the statute to accept only the Union's or the Employer's final offer in its entirety, the external comparables as described above weigh heavily unanimously against the Employer's offer.

I therefore adopt the Union's final offer on the issue of health insurance coverage.

i. Employee Payments Toward Health Care Premiums

Historically all of the Employer's employees were covered by the same health care plan and they paid toward the cost of family coverage only and did so at the sum of \$36.83 per month. In 2004 or 2005 the Employer switched to the Illinois Local Government Health Plan, a plan negotiated between the State of Illinois and the American Federation of State, County and Municipal Employees. Under that plan HMO coverage (the choice of almost all employees) for both single and family coverage was

provided at no cost to employees but for those choosing PPO coverage there was a charge representing the difference in the cost of the two coverages. As part of the 2007 benefits ordinance described above, employees were required to pay, for the first time, for HMO coverage in the amount of 5% of the difference between the cost of single and family coverage while the charge for those employees choosing PPO coverage remained the same. In 2008 the charge for HMO coverage for single and family coverage rose to 10%.

On this issue the parties differ as to the cost payable by unit employees for health insurance premiums in final two years of their Agreement. In the Employer's final offer it proposes that in the first of those two years employees pay 3.5% of the premium for single coverage and 8% of the premium for dependent coverage, rather than a percentage of the difference between those types of coverage. In the last year of the Agreement the Employer proposes that these percentages increase, respectively, to 7% and 10%. The Union on the other hand proposes that for single coverage in both of those years the Employer continue to pay the entire cost and that for dependent coverage the cost to employees equal that of all other employees but not to exceed 12%.

The external comparables are of much use in this case as is, for reasons described below, the internal comparables. With regard to the former, the evidence shows that in two of those communities, Marengo and Harvard, employees pay, respectively, 35% and 20% of the difference between single and dependent coverage and moreover, in one of those communities, Harvard, employees pay 20% of the premium for single coverage. In Rochelle, where employees pay nothing toward single coverage, employees pay 20% of the premium for dependent insurance. Thus, although neither of the final offers compare equally or near equally with those three, it is clear that the Employer's proposal is closer and still represents a savings for bargaining unit employees on a comparative basis. With regard to charging employees for the single premium and moving away from a percentage of the difference between that coverage and dependent coverage, three of the five comparables charge for single coverage and two charge employees a percentage of the premium rather than the difference between coverage costs.

I have held with respect to other issues that where external comparables compel a conclusion inconsistent with the internal comparables that the former deserve greater weight. However, here the internal comparables yield the conclusion, as do the external comparables, that the Employer's offer is the more reasonable of the two. Moreover, arbitrators have held that health insurance "is not an issue that is somehow unique" to any one bargaining unit and therefore "it is most usefully addressed from a Citywide perspective. See e.g., *City of Peoria*, S-MA-92-67, pages 31-32 (Feuille, 1992).

Thus, I adopt the Employer's final offer on this issue.

j. Rate of Sick Leave Accrual

Here the parties agree that employees who have completed one full month of continuous service shall accrue sick leave up but not exceeding a total of 640 hours at any one time. They disagree however with the rate at which that leave shall be accrued with

the Union proposing 8.4 hours for each completed month of service and the Employer proposing 5.6.

Here the external comparables are useful in that three of the five communities provide for an accrual rate of 8.4 or 8.5 while the other two provide for a rate of 6 and 5. Thus, the Union's final offer compares more favorably than that of the Employer.

Again however, the Employer relies on internal comparability and again, in addition to the reason stated before, I find that internal comparability is inapplicable. Moreover, the Union points out that throughout the parties' Agreement they have used the 8.4 measure and not only does the Employer concede that point but it notes that they did so "in light of the fact that officers work more annual hours per year the civilian employees." Thus, it seems to me, that if the parties themselves agree that police officers deserve different treatment I am hard pressed to rely on internal comparability to impose a contract clause that would not treat them differently.

I therefore adopt the Union's final offer.

k. Hours of Work – Work Day/Work Schedule

On this issue the parties' differences relate to whether or not they should codify the current work schedule into the Agreement and how the possibility of any changes to the work schedule should be treated.

On the first point both parties agree that there is no inclination on the part of either to seek changes to the work schedule. Thus, the Union asserts that with respect to this issue "the language itself is not of great concern." In addition, it asserts that it would "find acceptable language that 'maintains the existing patrol work schedule' without specifying the actual starting and ending hours for each shift," noting that the parties have agreed that this issue is non-economic in nature. Similarly, the Employer asserts that "(a)t the end of the day, neither the City or the Union proposes to eliminate the 12 hours schedule or rotation" and the "bone of contention" is the second issue described in the paragraph above.

Thus, since the parties seem to agree that the current 12 hour schedule and rotation is appropriate, and because the issue is non-economic in nature, I find that the parties' contract language on this issue should read as follows:

The 12 hour schedule and rotation in effect as of the date of the interest arbitration award in this matter shall remain in effect subject to the rights and obligations set forth below with regard to changes thereto.

It is that very subject to which I turn now.

On that issue the Union proposes to limit the Employer's right to change the work schedule and/or rotation to only those instances where there is an emergency while the Employer proposes that so long as there is a bona fide operational need it may do so. Similarly, the Union wishes to obligate the Employer to bargain over the decision and the effects of any such change while the Employer wishes to limit its bargaining obligation to effects bargaining.

In reviewing the external comparables I find that the Union's proposal must be rejected. Only in one of the five is the Employer's ability to change the work schedule limited to emergencies<sup>12</sup>. In Harvard, the standard is that no "arbitrary and capricious" changes will be made, in Rochelle there is no standard as the parties there agreed to three options that the Employer may choose from in the event of a change, and in Rockton the parties did not address the issue. Moreover, in none of the five comparable communities have the parties attempted to deal with the bargaining obligation of the parties regarding any such changes and thus, relatively speaking, the Union's proposal is far more expansive than that of the Employer.

In sum the external comparables favor the Employer's proposal in that the Employer's standard for making changes is more like that of three of the four comparable communities and because the Employer's proposal regarding bargaining over any such changes is less expansive than that of the Union.

Thus, I adopt the Employer's final offer on this issue.

#### 1. Just Cause

On this issue the Union proposes in its final offer that the parties' collective bargaining agreement include a provision that would require just cause for suspension and discharge. The Employer disagrees.

In support of its final offer the Union relies on the fact that all of the external comparables have such a provision. In reply the Employer concedes that fact but asserts in its post-hearing brief that an arbitrator "should be reluctant to force that standard on an employer who is not voluntarily willing to accept it." I find that I must reject the Employer's argument because it completely undermines the role of interest arbitration in the resolution of bargaining disputes whose duty is to compel a final offer on one "who is not voluntarily willing to accept it," particularly in those instances where that party completely rejects the final offer of the other.

The Employer's final objection to the provision is that under the Board of Police and Fire Commissioners Act the standard of "cause" is already in place. That is of course true, but it does not outweigh, in my opinion, the fact that five of five external comparables still have a just cause provision in their agreements.

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<sup>12</sup> I am mindful, as the Union points out, that in Marengo that same standard was agreed to by the parties. However, that agreement is distinguishable in my view because it applies only if the employer there has made two changes before.

In light of the foregoing I hereby adopt the Union's final offer on this issue.

m. Forum for Review of Discipline

Here the Union proposes that employees may choose between appealing discipline to either the Board of Police and Fire Commissioners or to independent arbitration. The Employer on the other hand proposes that their recourse be limited to the former.

In support of its final offer the Union relies on Section 8 of the Illinois Public Labor Relations Act, the decision in *City of Decatur v. AFSCME*, 122 Ill.2d 353, and the awards of interest arbitrators in *City of Highland Park*, S-MA-98-219 and *Village of Shorewood*, S-MA-07-199. The Employer on the other hand points out that Section 8 of the Act, as held in the cases cited by the Union, applies only when the parties have a just cause provision in their Agreement and instead relies on the external and internal comparables<sup>13</sup>.

In *City of Highland Park, supra*, Arbitrator Benn, reaffirming his award in *City of Springfield*, S-MA-89-74 (1990), held that because Section 8 of the Act provides that "(t)he collective bargaining agreement...shall contain a grievance resolution procedure which shall...provide for final and binding arbitration of dispute concerning the administration or interpretation of the agreement..," he was compelled to adopt an arbitration procedure proposal when the parties contract contained a provision governing to discipline and discharge. Moreover, he found that he was so obligated despite the fact that the comparables might lead to a different conclusion. Thereafter, the state of the law was such that there was a distinction on this issue between home rule and non-home rule communities such that a binding arbitration provision would not always be required. However, in August of 2007 that distinction was eliminated when the Illinois General Assembly revised the Board of Fire and Police Commissioners Act to permit non-home rule communities to bargain over an "alternative or supplemental form of due process based upon impartial arbitration" and in the *Village of Shorewood* case, *supra*, Arbitrator Wolff adopted the rationale of Arbitrator Benn with regard to a non-home rule community.

In light of the evolution of the law and interest arbitration awards described above, and in light of the fact that I have ordered that the Union's final offer with regard to just cause for suspensions and discharges be adopted, I find that the Union's final offer on this issue must be adopted and I so rule.

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<sup>13</sup> The Employer also relies on the interest arbitration awards in *Northlake Fire Protection District*, S-MA-03-074 and *Village of Deerfield*, S-MA-07-148 where provisions similar to that proposed by the Union herein were rejected. I however find that these two cases are easily distinguishable. In both cases the parties had prior collective bargaining agreements that did not contain the clause in question. Thus, that formed the status quo and the arbitrators in those cases held the Union to the higher "breakthrough" standard. In both cases, the unions therein failed to meet that standard.

AWARD

1. The parties' tentative agreements are hereby adopted.
2. The Employer's final offer on wages is hereby adopted.
3. The Union's final offer on holidays is hereby adopted.
4. The Union's final offer on holiday pay is hereby adopted.
5. The Employer's final offer on vacation scheduling is hereby adopted.
6. The Employer's final offer on inoculations is hereby adopted.
7. The Union's final offer on travel reimbursement is hereby adopted.
8. The Union's final offer on health insurance coverage is hereby adopted.
9. The Employer's final offer on health insurance premiums is hereby adopted.
10. The Union's final offer on rate of sick leave accrual is hereby adopted.
11. The Employer's final offer on work day/work schedule is adopted as revised.
12. The Union's final offer on just cause is hereby adopted.
13. The Union's final offer on forum for review of discipline is hereby adopted.

**DATED: August 20, 2009**



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**Robert Perkovich, Arbitrator**