IN THE MATTER OF ARBITRATION	)	
	)	
BETWEEN	)	**Marvin Hill, Jr.**
	)	**Arbitrator**
CITY OF DECATUR, IL	)	
	)	**FMCS Case No. 07-0302-02060-A**
and	)	**Successor Labor Agreement**
	)	
IAFF LOCAL 505	)	
	)	

Appearances

For the City: **Jill D. Leka, Esq.**
Seyfarth Shaw, et al.
131 South Dearborn, Ste 2400
Chicago, Illinois 60603

For the Union: **J. Dale Berry, Esq.**
Cornfield & Feldman
25 East Washington Street, Ste 1400
Chicago, Illinois 60602

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The City of Decatur (hereinafter the "City" or "Employer" or the "Administration") is a municipality with a population of 77,836, located in central Illinois. At the time of the hearing, the City had approximately 550 employees, including 116 fire employees. The International Association of Firefighters, Local 505 ("IAFF" or "Union") represents 108 bargaining-unit employees below the rank of Battalion Chief, including three (3) Fire Inspectors, 21 Captains, 21 Lieutenants, and 63 Firefighters. The bargaining unit works in three shifts, 24 on, 48 off (24/48). The City also employs 155 police officers who are represented by the Police Benevolent and Protective Association Labor Committee (PBPA). AFSCME represents 180 non-supervisory, non-sworn employees. The remaining 102 employees are not represented by a union.

The IAFF has represented the City's Fire Department employees since the 1930's. In 1986, the same year the Act became applicable to Firefighters, the parties resorted to interest arbitration. The record indicates that 1986 was the only other time these two parties have used interest arbitration to conclude a successor collective bargaining agreement. In 1986, Arbitrator Howard Elgit established Peoria, Rockford, Springfield, Champaign, Urbana, Bloomington, Pekin, Galesberg, Danville, and Quincy as the comparable external communities (CX 7 at 9). These cities were selected "on the basis of the fact that in terms of geography, size, and/or economic status they appear to us to be comparable to Decatur." *Id.* In 1993, Arbitrator Robert Perkovich, in an arbitration between the City and the police unit (PBPA), affirmed the selection of these for claim processing. At that time, all City employees were covered by a traditional indemnity plan with a 90/10 co-insurance (CX 54). Relevant history of the parties' insurance provisions, and subsequent revisions, is outlined in the text of this decision. In no uncertain terms the parties' dispute as to the City's proposal to eliminate Firefighters' health and insurance benefits secured by Article 16 is at the center of this dispute. It is, as appropriately stated by the Union, "the 800 pound gorilla in the room." (*Brief for the Union* at 125).

With respect to comparables, the parties are not in agreement as to the relevant bench-mark jurisdictions for comparability purposes. The Union has proposed 12 comparable communities; the City 11 (discussed, *infra* 8-11).

Prior to the evidentiary hearings, the parties exchanged their respective "last offers" on July 13, 2007. These offers are in the record respectfully as JX 4A (Union) and 4B (Employer). "Final" offers were exchanged on December 4, 2007. Several of the items put into dispute based on the parties last offers have been settled and removed from arbitral consideration. These items are: contract term; holiday pay; sick leave/good attendance incentive; promotions; disability application; drug testing; station bidding; vacation selection; and EMT stipend (partial).

Pursuant to the provisions of the Illinois Public Labor Relations Act (IPLRA, hereinafter the "Act" or the "statute"), the parties selected the undersigned Arbitrator to decide five (5) economic issues that remain in dispute: health insurance, wages, longevity pay, rank differential, and EMT stipend. Hearings were held at Decatur, Illinois on July 17, 18; September 10; October 3; and November 27, 2007 and on January 30 and March 27, 2008. [1] The parties appeared through their representatives and entered exhibits and testimony. Post-hearing briefs were filed on August 19, 2008. The record was closed on that date.

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[1] The Firefighters assert that the parties reached impasse on November 15, 2006. Arbitration was not commenced until July 17, 2007. The delay was the City's fault, according to the Union (*Brief for the Union* at 131).

II. POSITION OF THE UNION

The Union's final offer on five (5) economic issues is summarized as follows:

UNION ECONOMIC ITEMS	UNION OFFER
1. Salaries – Article 7, Exhibit B	Increase all steps of the salary schedule (Exhibit B) in effect on 5/1/05 as follows: a) Effective 5/1/06, +3.50%; b) Effective 5/1/07, +3.65%, c) Effective 5/1/08, +3.65%; d) Effective 5/1/09, +4.0%; All as described in "***Exhibit 1***".
2. Health Insurance Benefit – Article 16, Appendixes E, F	Maintain *status quo* as to Article 16 language and Appendix F, PPO-Plus health benefit; Modify existing language as to employee contributions to premium costs by increasing existing $23.00 as follows: Effective 5/1/07 - $30 Effective 5/1/08 - $40 Effective 5/1/09 - $50 Eliminate CCM indemnity option (Appendix E) and related language; Provide for reopener for either party to negotiate additional high-deductible options including a high-deductible HSA option; All as described in **"Exhibit 2".**

3.	EMT-I Stipend – Article 7, §7	Increase EMT-I stipend to the following amounts: Effective 5/1/08 - +1% to 2% Effective 5/1/08 - +½% for each re-certification to a max of 1% re-certification pay. All as described in "***Exhibit 3***".
4.	Lieutenant Rank Differential – Article 7,§6 Exhibit B	Increase top step (Step G) of Lieutenant pay grade (20) from 10.3% to 13% by granting an equity adjustment of 1.35% effective 5/1/08 and 1.35% effective 5/1/09 and make appropriate adjustments in contract language for Captains, as described in "***Exhibit 4***".
5.	Longevity Pay – Article 7, §3	Effective 5/1/06 increase longevity pay schedule as follows: After 20 years - +1% to 10% After 25 years - +12% (*status quo*) As described in "***Exhibit 5***".

III. POSITION OF THE ADMINISTRATION

The Administration's final offer is summarized as follows:

EMPLOYER ECONOMIC ITEMS		EMPLOYER OFFER
1.	Salaries	5/1/06 – 4.5% (retroactive to May 1, 2006) 5/1/07 – 4.5% (retroactive to May 1, 2007) 5/1/08 – 4.0% 5/1/09 – 3.5%
2.	Health Insurance	5/1/06 – 4/3/07 Plan: Current PPO & CMM Plans Contributions: Employee: $0/month Family – $23/month (PPO) – 10% of premium (CMM) 5/1/07 Plan: Current PPO & CMM Plans Contributions: (Effective May 1, 2007 for all employees on payroll on effective date of collective bargaining agreement) Employee – $60/month (PPO) – 10% of premium (CMM) Family – $150/month (PPO) – 10% of premium (CMM) 1/1/08 – 4/30/09 – Plan: New three-tier plan (elimination of CMM plan) Contributions: Employee – $60/$40/$25/month (Tier 1 & 2 & 3) Family – $150/$108/$70/month (Tier 1 & 2 & 3) (See attached benefit levels for Tiers 1, 2 &3). 5/1/09 on – Plan: three-tier plan (plus 4th tier with High Deductible/HSA with deductible

		not greater than $2,500 employee (3x for family); and $6,000 maximum out-of-pocket (3x for family). HSA administrative costs and contributions to be borne by the employee. Benefits and contributions for 4th tier implemented only after notice to and, Upon request, discussion with and input from the Union. Contributions: Employee/Family – Tier 1 = 15% up to a maximum of $89 for single and $267 for family; Tier 2 = 15% up to a maximum of $64 for single and $192 for family; and Tier 3 = 10% up to a maximum of $41 for Single and $124 for family (development of 4th tier premium and contributions developed consistent with methodology used for Establishment of three-tier program).
3.	EMT-1 Pay	Increase to 1 & ½ percent January 1, 2008 and 2.0% May 1, 2009 for all EMT-Is and EMT-Ps licensed and functioning as EMT-I or EMT-P.
4.	Rank Differential	*Status Quo*
5.	Longevity Pay	*Status Quo*

IV. DISCUSSION

As noted, this dispute involves five (5) *economic* issues. The Act restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child." [2] As to non-economic issues,

[2] *Cf.* 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

however, the Arbitrator's discretion is not so limited. Section 14(g) of the Act reads:

> As to each economic issue, the arbitrator panel shall adopt the last offer of settlement which, in the opinion of the arbitrator panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
>
> 5 ILCS 315/14.

The eight factors specified in Section 14(g) of the Act are as follows:

(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 costs of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable."

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue.

A. COMPARABLE BENCH-MARK JURISDICTIONS

The parties are not in agreement as to the comparable bench-mark cities. The parties are, however, in agreement as to six (6) cities as comparables:

Bloomington
Champaign
Normal
Peoria
Rockford
Springfield

The City has proposed five (5) additional cities which the Union disputes as relevant comparables:

Danville
Galesburg
Pekin
Quincy
Urbana

The Union proposes six (6) additional communities (*Brief* at 103) which are disputed by the Administration:

Alton
DeKalb
Granite City
Kankakee
Moline
Rock Island

In support of its comparables, the Union points out that all of its comparables correlate at a higher level than Peoria and Rockford, two comparables agreed to by the parties. Attached to

its *Brief* is Appendix G showing the following cities and how they rank as comparables when selected criteria are used:

Department	Population	Employees	25% match for industrial EAV	Revenue per capita	Per Capita Income	Sales Tax per capita	Matching milage to farthest agreed union comp Rockford 168 miles	Matches
Decatur	81,860	113	7.45%	656	19,009	251	0	7
Danville	39,127	58	9.38	709	16,476	136	73.33	6
DeKalb	45,003	55	7.61	687	16,261	88	144.51	5
Moline	43,768	70	2.04	1,110	21,557	217	139.52	5
Kankakee	27,491	51	7.02	975	15,479	236	105.20	5
Alton	30,496	64	4.46	1,006	16,817	179	93.27	4
Galesburg	32,809	48	4.41	770	17,214	141	106.46	4
Pekin	33,500	51	2.21	731	19,616	168	62	4
Rock Island	39,684	60	9.77	1,004	19,202	61	143.27	4
Granite City	30,796	52	22.43	914	17,691	109	101.77	4
Urbana	36,590	50	1.57	845	15,969	109	43.86	3

* * *

In *Macon County Board and AFSCME, Council 31 and Local 612*, S-MA-94-70, Arbitrator Peter Feuille stressed geography and size in selecting comparables. His reasoning is instructive in this case:

> I selected 12 comparison counties from the Union's comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St, Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). **It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions.** Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. *Feuille* at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995), likewise found geographic proximity and local labor markets as primary considerations in selecting comparables:

> The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is

made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.

It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That principle has been upheld again and again by interest arbitrators and there is no need to discuss it al length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defines that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as "just too far away to be meaningful for comparison purposes." Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, "as being outside of the local labor market in which Mt. Vernon competes for police officers." *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in City of Springfield & IAFF, Local 37, S-MA-18 (Berman, 1987), at 26, "[d]etermining comparability is not an exact science." Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:

> The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

Thus, in selecting a comparability group, the arbitration panel should look to "those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace." The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources. *Kohn* at 7.

* * *

As I held in *Town of Normal & IAFF 2442* (2007), applying the above principles, and conceding that this analysis is anything but an exact science, I find six (6) criteria noteworthy in selecting comparables: travel distance, population, number of sworn personnel, *per capita* income, general fund revenue/*capita*, and sales tax/*capita*. I also credit the Union's argument regarding EAV as an important criterion in selecting comparables, especially in those cities with a high industrial base.

Arbitrator Charles Fischbach, in *City of Du Quoin & IL FOP* (2008), S-MA-04-075, observed that "external comparability is a crucial factor in interest arbitration because it often receives the most attention from the parties." *Fischbach* at 23. I submit that the attention is often disproportional to its importance in selecting final offers. Clearly, with the exception of Urbana, there is a basis in fact for including all the comparables submitted by both parties. To this end, I have made extensive reference to both parties' comparables in generating this opinion and award.

B. ECONOMIC ISSUES

1. Health Insurance

While the Act provides that as to each economic issue the Arbitrator is to rule on an item-by-item basis, I have informed the parties that health insurance and wages are to be considered *in tandem*. As recognized by the parties, this is an appropriate accommodation to the reality of this specific dispute (*Brief for the Union* at 8; *Brief for the City* at 60). The Union would not expect to retain its health insurance benefit and receive the City's wage offer (4.5%, 4.5%, 4.0%, and 3.5%). Conversely, the City would not reasonably expect to be awarded its health insurance offer and the Union's wage offer (3.5%, 3.65%, 3.65%, and 4.0%), 1.7% *less* than the City's offer, a unique but not unexpected circumstance where management is seeking a significant change in existing benefits (*Brief for the Union* at 7). The central question before the undersigned Arbitrator (but not the only question) is the value of the exchange proposed by the City. The Union posed the question this way: "Should the Arbitrator award the City's wages and eliminate the Firefighters' existing health insurance benefit over the Firefighters' objections?" (*Brief* at 8).

a. **The Union's rationale in support of its health insurance provision**

The Union generated a 140-page brief (plus a supplemental folder with at least an additional 100 plus pages of materials and cases), of which 100 pages in the brief is addressed to the health insurance issue, making a Cliff Notes summary of its position and rationale difficult, if not impossible. A fair summary of its position is as follows:

(1) The City has wholly failed to establish *any* compelling need to eliminate the Firefighters' existing PPO-Plus benefit ("PPO") or to justify imposing the massive cost increase on Firefighters required if the City's offer is adopted. To this end, the City's financial health is good, the costs of the health insurance coverage provided to employees are "mid pack," and the City's recent total program costs have not been "catastrophic" and are likely to be reduced in 2008 (*Brief* at 13-23).

(2) Awarding the City's offer will not only take away existing benefits, but will restructure the benefit balance between the Firefighters and the City and degrade the Firefighters' relationship with comparable Firefighters. Awarding the City's new formula would further increase dependent costs to $3,312 per year, an increase of 1,200%. The increase for comparable communities is only 44.37%. The effect of the City's offer would be to drop Decatur Firefighters six ranks to 8th and place their health insurance contribution 4.8% *below* the average (*Brief* at 24-25).

An additional factor is that the City's offer on individual coverage is a "breakthrough" in the sense that it is establishing an obligation to pay costs for single coverage *when none currently exists*. The City's offer is even more aggressive in that effective 2009, it converts the flat dollar contributions to 20% of the premium. The City is seeking to have the Arbitrator award a change that it did not achieve even with the PBPA police unit (*Brief* at 26). Also, the City is seeking large increases in deductible amounts and maximum out-of-pocket expenses (*Brief* at 27-28). Drug costs are also adversely affected (*Brief* at 29). In the Union's words:

> The City's offer is extraordinary not only in the magnitude of the changes which it seeks to achieve in one contract, but in the number of components impacted by the changes it seeks to impose. As such it falls well beyond the pale of what most arbitrators would consider reasonable movement even in circumstances where there is justification for movement. (*Brief* at 30).

(3) The City's offer would seriously aggravate Decatur Firefighters' already inferior overall compensation (*Brief* at 32-36). In the Union's view, the City's effort to implement its new health insurance benefit only aggravates Decatur's Firefighter's deficiency in overall compensation.

(4) The City's health insurance offer is a reach for a colossal breakthrough (*Brief* at 37-56). As such, and citing arbitral authority, the party seeking to change the *status quo* must meet the following three-part test: (1) a demonstration that the existing language is unworkable or inequitable; (2) that there is an equivalent 'buyout' or *quid pro quo*; and (3) there is a compelling need (*Brief* at 38). According to the Union, the criteria would apply because the City's health insurance proposal is extreme mandating a great balance alteration between the parties.

Supporting this argument are the following points asserted by the Union:

(a) Article 16 of the parties' collective bargaining agreement and its associated appendices E & F are the product of more than a quarter century of negotiations and bilateral settlements. Contrary to the position advanced by the City, the Union has not been rigid regarding the Employer's efforts to effect change. The Union notes that it would consider modifications of the existing PPO – Plus plan if the City would consider implementing an HSA option for employees (*Brief* at 52). The City never responded to the Union's proposal, in its opinion.

(b) The City's offer asks the Arbitrator to force the sale of Article 16 "for little more than a song and change" (*Brief* at 53). Here, the Union rejects the City's contention that its wage offer is a fair *quid pro quo* for establishing a change in insurance. The aggregate increase over four years offered by the City is 16.5%. The Union's offer totals 15.8%, a difference of 1.7% over four years (*Brief* at 53-54). In terms of the parties' bargaining history, this percentage does not even compensate Firefighters for the 2.0% they gave up to maintain the 100% premium contribution of the City in 1983. According to the Union, "the *quid pro quo* offered by the City is in fact *zero*." (*Brief* at 54).

(5) The City's offer asks the Arbitrator to impose language that takes away the Union's right and the City's obligation to bargain as to a mandatory subject of bargaining: The costs and scope of health insurance benefits offered to Firefighters (*Brief* at 56-79). In the Union's view, the Arbitrator has no authority to award the City's final offer – a key element of which is deleting the protective language of §3(a). The effect of this deletion is to allow the Employer to change co-pays, deductibles, out-of-pocket max and the level of benefits during the contract term without affording the Union prior decisional bargaining (*Brief* at 57). Proposals that limit the right to bargain to merely impact or effect can prevail only when the subject is a permissive subject of bargaining. In the Union's words:

> In concrete terms, what the City seeks to obtain here is to substitute for the protective language of §3(a) and the Union's statutory right to bargain as to mid-term changes in mandatory subjects of bargaining, a puny opportunity to receive "notice," perhaps a power point presentation as to changes and the opportunity for "input." This new paradigm for health insurance, in sum and substance, is described in the plain language of the City's offer relating to the establishment of an HSA health plan option. The City's offer contemplates that benefits and contributions for a "fourth tier" (HSA) would be ". . . implemented only after notice to and upon request, discussion with and input from the Union." Terms such as "discussion" or "input" are not synonymous with negotiations or bargaining. The Union's health insurance reopener is consistent with its statutory rights. (*Brief* at 60).

According to the Union, the City's offer is beyond the lawful authority of the employer because it presents language which effectively converts a mandatory subject of bargaining into a permissive subject of bargaining without the Union's consent (*Brief* at 63).

The Union further asserts that the City's interest in administering a health insurance program with a design that is uniform as to all City employees cannot trump the Union's statutory right to bargain (*Brief* at 64). Other important reasons to distinguish Decatur Firefighters from other bargaining units where consideration of uniformity was given controlling weight by some arbitrators include:

(a) With Blue Cross/Blue as the TPA the City's health insurance claims are projected to decline (*Brief* at 66).

(b) Continuing the existing plan for Firefighters will not increase administrative costs. *Id.*

(c) The City's self-insured arrangement facilitates its ability to custom design plans for its employees (*Brief* at 67).

(d) The bargaining history as to the police- and fire-bargaining units demonstrate that the settlements between these two units as to the subject of health insurance have never been uniform (*Brief* at 68-79). Adopting the City's offer will not result in a uniform health insurance benefit between the police and the fire bargaining unit (*Brief* at 69). All in all, the City's *quid pro quo* is substandard to the *quid pro quo* established by the City's previous settlements with the Firefighters (*Brief* at 71).

(6) Recent settlements made among comparable Firefighter bargaining units demonstrate Firefighters' capability "to negotiate their way through the health insurance thicket." (*Brief* at 80). The Firefighters point out that with the selection of Blue Cross/Blue Shield as the new TPA health insurance costs for 2008 are significantly lower for the first six months of the year as compared to 2007 and

are very likely to be less over the full year. *Id.* Further, recent settlements among comparable communities, particularly Champaign, Peoria, Kankakee, and Granite City, indicate that a bargain can be reached as to the subject of health insurance (*Brief* at 81).

(7) The interests and welfare of the public are well-served by preserving the Union's bargaining strength on the subject of health insurance (*Brief* at 92-102).

* * *

In summary, the Union maintains that because the parties' dispute as to health insurance is the 800 pound gorilla in the room, it is important that the determination of each of these three items not be overshadowed or influenced by the health insurance item. Section 14(g), the Union points out, provides that after considering applicable §14(h) factors, the arbitrator shall adopt the final offer as to "each economic item." (*Brief* at 125). The Union has emphatically rejected the City's wage offer and its putative *quid pro quo* component, and the City should not succeed on its insurance & wage offer simply because its total final offer includes monies which could serve as an acceptable *quid pro quo*. *Id.* According to the Union, "this position is demonstrated by the fact that the Union's wage offer is 1.7% less than the City's offer. The Administration health insurance offer must stand or fall on its own terms. If the Arbitrator were to believe that the quid pro quo component of the wage offer was deficient, he is not authorized under the Act to sweeten the quid pro quo by fashioning a package that includes some or all of the other economic items by granting some or all of the other economic items proposed by the Union (*Brief* at 126).

In no uncertain terms, the Firefighters assert that the bargaining unit would not have reached the agreement the police did on health insurance if they were free to strike (*Brief* at 130). Here, the Union submits that unlike the police unit, the Firefighters have demonstrated a much more intense concern with building and preserving the health insurance benefit memorialized in Article 16 of the collective bargaining agreement. *Id.* The opposition by the Firefighters to the City's three-tier health insurance proposal is sufficiently intense that there should be no question of the Union's willingness to engage in a strike to protect and achieve its bargaining position. This commitment should be recognized in the interest arbitration process. The right answer in Decatur is to award the Union's final offer on health insurance (*Brief* at 136).

b. <u>The Administration's health insurance proposal</u>

The Administration, of course, asserts that its final offer on health insurance should be adopted for numerous reasons not endorsed by the Firefighters. Like all employers, the City maintains that it has had to cope with skyrocketing health insurance costs for several years. To help control costs, the City devised a new three-tiered health insurance program that allows employees to choose the level of insurance they feel is appropriate for their needs. Today, the City points out, the Firefighters are the only City employees who are not included in the three-

tiered insurance plan (*Brief for the Employer* at 34). In order to maintain both parity with the internal comparables and consistency with the external comparables, and because the City should not be forced to maintain an outdated insurance plan that would apply to only one employee group, its plan should be awarded by the undersigned Arbitrator. *Id.*

In support of its proposal, the Administration advances the following arguments:

(1) Health-insurance plan changes are required

While the Administration acknowledged that it has provided a tremendous health insurance benefit to Firefighters, it argues that "this benefit has come at a steep price," which is increasing (*Brief* at 34). Indeed, the increased cost of health insurance for all employees has outpaced the inflation rate by several percentage points (*Brief* at 34; CX 82).

(2) The City's proposed plan changes: (a) elimination of the CMM Plan, (b) creation of a three-tiered PPO Plan, (c) implementation of a new prescription drug benefit, and (d) increased employee premium contribution

The City asserts it has taken a gradual, step-by-step approach to fixing the health insurance problem. To this end, it has proposed a solution noted by Gallagher Benefit Services where the City shifted a limited amount of cost to the employees, educated the employees regarding healthcare costs, implemented plan designs changes that allow employees to choose the appropriate risk level for their needs, and implemented wellness benefits and health credits (*Brief* at 35). Accordingly, the City's final proposal incorporates the following aspects into its final offer: (1) the elimination of the comprehensive major medical plan (CMM), (2) creation of a three-tiered PPO Plan, with varying levels of deductibles and increased out-of-pocket maximums, (3) implementation of a new prescription drug benefit (where prescription drug expenses will no longer count toward an employee's accrual of out-of-pocket expenses), and (4) increased employee premium contribution, the final component of the City's effort to fix the health insurance problem. (*Brief* at 36-38). The City acknowledged that its three-tier plan is "new" (*Brief* at 39 n.19).

(3) The Union's proposed plan changes

According to the Administration, the Union's response to the current health insurance crises has been to do virtually nothing, other than label it as a problem created by the City that the Administration must deal with (*Brief* at 40). While the Union ultimately conceded in its final offer that the CMM Plan should be eliminated, at no point during negotiations were they willing to consider *any* changes to the benefits in the PPO-Plus plan (*Brief* at 40).

(4) Internal comparability compels the selection of the City's health insurance plan

The Administration asserts that in this case it merely asks the Firefighters to agree to a health insurance plan that mirrors the plan that is already in place for all of the City's non-represented employees, all of the Decatur Police Officers, and all of the City's employees represented by AFSCME (as of May 12, 2008)(*Brief* at 40). [3] Thus, the Administration merely seeks to maintain internal comparability with respect to its health insurance (*Brief* at 41-42).

(5) External comparability favors the selection of the City's final offer

Under the Administration's proposal, the amounts that would be paid by the Firefighters for Tier I family coverage ($150)(CX 78) would rank fourth (4th) among the comparable communities and would be over $100/month cheaper than the average amount paid (*Brief* at 43-44). In addition, the City's proposal to base employee contributions on a percentage of the total premium follows the trend established by the comparable communities, either explicitly of through the adoption of a "me too" clause in their bargaining agreements. In those communities, as the total premiums increase, the employee's portion increases as well (*Brief* at 44). According to the City, its package is competitive with the benefits offered in the comparable communities in every respect (*Brief* at 46). Because Firefighters in the comparable jurisdictions typically pay more toward their insurance premiums to receive benefits that are quite similar to the benefits offered under the City's proposal, the external comparability factor favors the adoption of the City's proposal (*Brief* at 46; CX 71-80).

(6) Breakthrough analysis is inappropriate for evaluating the parties' proposals

The City is not seeking a "breakthrough." (*Brief* at 47). According to the Administration, its health insurance proposal is no more of a "breakthrough" than the Union's proposed increase in the EMT stipend (*Brief* at 47). In the view of management, "a change in the amount of money the employees or City is required to pay for health insurance premiums, or even a change in the plan benefits, is not a breakthrough. Rather, as insurance costs have increased, it is appropriate to reconsider how much the employees are required to pay for this benefit, and whether the City should pay any more for this benefit than it already does." (*Brief* at 47). Far from a "breakthrough" proposal, the City's offer brings employees back in line with what is done not only in the comparable jurisdictions, but also with what is done by all employees across the country. As such, there is no need to conduct a "breakthrough" analysis.

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[3] As acknowledged by the Administration, the City imposed the three-tier plan on AFSCME employees on May 12, 2008 (CX 130). It did declare an impasse. (*Brief for the Employer* at 41).

(*Brief* at 48).

With respect to the Union's Article 16 argument, management asserts Article 16 is a relic of a 1986 bargaining agreement that should have no impact on the instant dispute, in the City's view (*Brief* at 48).

Alternatively, even if a breakthrough analysis were applied, the Administration's proposal should be adopted (*Brief* at 48). The system is broken, argues management. Further, the City has offered a substantial wage increase that satisfies the *quid pro quo* requirement (*Brief* at 50-51). Using the City's comparables, its wage proposal results in net salaries (wages minus insurance contributions) dropping just one rank – from 2d to 3rd – under the City's offer (*Brief* at 52). Also, the Police and AFSCME plans indicate that the Employer's proposal would have been adopted outside of interest arbitration (*Brief* at 53). Thus, the City's offer should be awarded.

(7) The selection of Blue Cross/Blue Shield as the third-party administrator is a red herring

It is unclear, says the Administration, how the selection process has anything to do with the arbitration proceedings. To this end the Administration devotes considerable space to the entire selection process. To the extent relevant in this proceeding, the arguments will be addressed in the opinion.

For the above reasons, the City requests that its insurance proposal be awarded.

* * * *

c. Applying the statutory criteria, on balance the Union advances the better argument on health insurance, and for the following reasons its health insurance proposal is awarded

This was a long and arduous proceeding characterized, at times, with many heated exchanges between the parties. The paper record comprises three full file boxes of exhibits & briefs. Most mediation efforts with respect to major issues (insurance) were totally unproductive. Clearly, I could write a book mirroring the parties' briefs and articulate every reason for my rulings, but the parties have asked for an opinion and not a book. [4] Accordingly, what follows are the *major* reasons for issuing the award. As such, not every argument advanced by the

[4] *Cf.* "If they'd ask me, I could write a book." *I Could Write A Book*, from *Pal Joey* (1940), music by Richard Rodgers, lyrics by Lorenz Hart.

parties' in their lengthy briefs, while considered in reaching the award, is addressed in the written opinion.

1. The Administration argument that "breakthrough analysis" is inappropriate in evaluating the parties' insurance offers is <u>not supported by the evidence record and arbitral precedent</u>

In *Village of Skokie & IAFF*, American Arbitration Association Case No. 51 390 01383 06 (2007), I wrote the following:

> In today's market, for example, it is not unheard of for Unions to take less salary up front, and agree to a very long-term contract, in order to "lockup" their insurance. **Thus, one reason interest arbitrators are reluctant to order changes in the *status quo* is that a party may have paid dearly for such a benefit by forgoing salary or another benefit.** See, e.g., *City of DeKalb* (Goldstein, June 9, 1988) (where the Arbitrator stated: "Interest arbitration . . . is designed to merely maintain the *status quo* and keep the parties in an equitable and fair relationship, according to the statutory criteria."); *Village of Arlington Heights and IAFF* (Briggs, January 29, 1991)("Interest arbitration is artificial. It is a substitute for the real thing – a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . <u>*the party wishing to change the status quo must present compelling reasons to do so.*</u>" (*Briggs* at 12, Emphasis added)); *Will County and MAP, Chapter 123* (McAlpin, October, 1998)("When one side wished to deviate from the *status quo* . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.").
>
> The point I'm making is this: I don't see either offer – close by all accounts – as resulting in a big "make up" increment for the Union. What the Employer's offer does is to maintain a comparable place that the parties negotiated over many years. And when considered with the rest of this award (specifically, EMT paramedic stipend, acting-up pay, vacation conversion, *infra*), the package is more than competitive and, more important, arguably reflective of the position the parties would have placed themselves if left to their own devices.

Also relevant, and documented in the *Skokie* decision, are the following declarations made by arbitrators who have addressed their function in a dispute such as this:

> Citing numerous arbitration awards, the Administration counters by asserting that a party should not use arbitration to "catch up" where the change in position is the product of voluntary collective bargaining between the parties, and that interest arbitrators will reject a union argument that it has fallen in relation to the internal or external comparables that have occurred through prior voluntary agreements of the parties. (*Brief for the Employer* at 8-10).
>
> Wisconsin Arbitrator Edward Krinsky, in *Village of Greendale, Wisconsin*, Decision No. 30432-A

(2003), considered a "catch-up" argument and found that arbitration was not the forum for correcting wage deterioration that was the result of bargaining:

> The Association presented data showing that deterioration of Greendale's wage position relative to the comparables has occurred since at least 1991. The arbitrator is not persuaded of the need to review those figures. As the Village has emphasized, the Agreements which were bargained during this period were voluntary agreements, not the result of arbitration. Thus, to the extent that there has been wage deterioration, it is something which the parties realized, or should have realized was occurring when they mutually arrived at their settlements. The Association's arguments are not persuasive that arbitration should now be used to begin to correct the results of years of voluntary bargaining. *Krinsky* at 8.

Arbitrator Krinsky is not alone in his thinking. More at home, Chicago Arbitrator Elliott Goldstein voiced the same thought and analysis in *City of DeKalb*, Case S-MA-87-76 (1988):

> [I]t is a central purpose of the act to encourage the parties to engage in genuine arms-length collective bargaining. It is not the responsibility of the arbitration panel to correct previously-negotiated wage inequities, if any. The concern of the panel and its authority to evaluate comparisons is limited to the current agreement. This is because the parties themselves had control over the salaries and benefits previously negotiated. They alone decided whether the "disparity" in either base pay or overall compensation between the FOP and IAFF was a pertinent consideration in their deliberations; and, if so, whether the agreed-upon salaries and overall compensation would meet, exceed or fall below either FOP of the AFSCME unit. The chair must presume that in the past the parties reached agreement in good faith and considered all the factors they believed pertinent. Otherwise, this interest arbitration would be relitigating the issues of 1975 – long before the statute itself was passed.

Arbitrator Goldstein further addressed the nature of interest arbitration in *City of DeKalb*, *supra*, and had this to say:

> Interest arbitration . . . is designed to merely maintain the *status quo* and keep the parties in an equitable and fair relationship, according to statutory criteria.

* * *

Going beyond negotiations to catch up or give either party a breakthrough is contrary to the statutory scheme and undercuts the parties' own efforts, in rather direct contravention of the collective bargaining and negotiations process itself. *Goldstein* at 8-9.

In *Village of Elk Grove & Metropolitan Alliance of Police No. 141* (1996), Mr. Goldstein elaborated on the issue of the proper use of comparables in the face of a wage demand. His reasoning is particularly instructive in the present case:

> As will be developed below, I thus agree with the Village's view that the process of bilateral wage and benefit establishment via collective bargaining over a period of seven years or longer is relevant and must be considered. It also represents sufficient time to have determined where arms-length collective bargaining had placed this community as compared to any other group of communities. Three separate sets of bargaining negotiations over wage rates have been held, I note, albeit these were with the FOP as the incumbent union, and not the current incumbent, the MAP chapter, which is the moving party on the economic issues, at least, in this interest arbitration, I of course recognize.

Considering all the relevant factors, it also appears to this writer that Management is generally correct on the question of the proper way to use comparables in this particular and in many ways unique case. **What has gone before must mean something not only as regards the "historical" comparables used for negotiations for the bargaining-unit employees, but also regards the additional issue of where, in relative terms, the earlier bargaining had placed Elk Grove Village on a whole range of issues bargained for in the past along the external market comparisons.** To do anything else would give unique advantage to MAP as the new incumbent Union; additionally, such a result is nowhere mandated by any provisions of the Act I could find. *Goldstein* at 46 (emphasis mine).

What I find significant in Mr. Goldstein's ruling is that he took this position (correctly, I believe) with respect to a *successor* police union (MAP), even though that union had nothing to do with the prior collective bargaining agreements. Mr. Goldstein astutely concluded:

> The single fact of a change in Union representation cannot recreate the entire process, as I have indicated above, and that critical conclusion obviously shapes many of the determinations that are to follow, I specifically note. *Goldstein* at 47.

* * *

The relevance of the above decisions is clear. The changes the City seeks in one fell swoop in the insurance program – a program that was reached through prior negotiations – are extraordinary. This is not just a case where the Administration seeks an increase in employee premiums only. The Employer is also seeking increases in deductible amounts and maximum out-of-pocket expenses (see, *Brief for the Union* at 27-28). The following chart summarizes the impact for the Union's comparables:

	Decatur current rank	**Decatur current relative to average**	**2009 rank**	**Relative to average**
In network deductible – single	6	+8%	10	-57%
In network deductible – family (Un Ex. 15G)	8	-25%	13	-70%
Out-of-network deductible – employee	3	+68%	10	-33%
Out-of-network deductible – family	5	+86%	11	-25%
Family – maximum	10	-30%	12	-53%

out-of-pocket				
Total family – annual (premium plus mx option)(UX 15C)	5	+46%	12	-39%

The only out-of-pocket component not adversely impacted is co-insurance levels where Decatur's 80/20 split already places them at the bottom.

The point is this: The impact of the City's insurance offer on the bargaining unit is significant. This case is not an employer moving from a 90/10 to an 80/20 co-pay, or a union requesting another Kelly Day or an increase in an EMT stipend. Clearly, what the Administration proposes in this proceeding justifies a "breakthrough" analysis. To hold otherwise would be to ignore all arbitral precedent regarding such a wholesale change and to throw common sense out the window.

2. The parties' long-term bargaining history warrants applying a breakthrough-type analysis

The present insurance package at Decatur did not appear out of whole cloth. It was the result of arms-length negotiations between the parties for years, dating back to the 1970's. **As stated by Chicago Arbitrator Elliott Goldstein, "what has gone before must mean something."** *Village of Elk Grove* (1996). Indeed, effective May 1, 1982, the Administration was obligated to pay 100% of the cost of health insurance, *a result of prior negotiations*. In the successor collective bargaining agreement, the City took the position that in order to maintain 100% contribution, the bargaining unit would have to forgo any wage increase. Significantly, the police unit was made the same offer. The Firefighters accepted a zero percent increase to retain the City's 100% health insurance contribution. In contrast, the police unit took the 2.0% wage increase and accepted the City's reduction in health insurance contributions (R. 107-108; *Brief for the Union* at 48-19). The Firefighters effectively paid for their insurance by agreeing to a zero increase. The *raison d'etre* for requiring a breakthrough- type analysis for effecting a significant change in the *status quo* is that a party may have paid dearly in the past for the item at issue. The evidence record indicates that this in fact is the case at Decatur. The parties' bargaining history favors the Union's position (more on this later). At minimum, the parties' history indicates they have been able to reach an accord on insurance and payment issues.

3. Any argument that the Union has been unreasonably recalcitrant with respect to change in the health insurance provision is not supported by the evidence record

The City asserts that the Union has been recalcitrant and non-responsive to its plea for relief from rising costs in its health insurance plan. Here the Administration submits "had the Union bargained at all regarding the insurance proposal, as the police did, the City position with Fire might have been different." (*Brief for the City* at 9 n.4). The City also argues that "the Union's response to the current health insurance crises has been to do virtually nothing, other than label it as a problem created by the City that the City must deal with." (*Brief* at 40). Thus, the City maintains that the result it desires should be imposed through the interest arbitration process.

The Union's response to this claim is well taken. In relevant part counsel submits that it is the City who has not bargained in good faith. The Firefighters, through Union Counsel Dale Berry, makes the point as follows:

> **In a lame attempt to satisfy one of the prongs of the breakthrough test, the City claims that the Union has been rigid and has stonewalled the City's bargaining efforts. The facts are to the contrary.** The Union's final offer, both in terms of wage increases and increases in premium contributions and its agreement to eliminate the CMM plan, represent concessions that are consistent with its bargaining history with the City and appropriately calibrated. Actually it is the City that has from day one projected a rigid insistence that the Union "fall in line" and acquiesce to its position. **The City has consistently demanded that the Firefighters mimic the agreement obtained with the police.** The City has never been willing to entertain any proposals to modify the three-tier plan it unilaterally implemented for the non-represented employees. Adam Ruderman further testified that even when the possibility of modifying the plan design was raised by a member of the blue ribbon panel, the City Manager's representative Jerry Bauer stated it was not on the table (Tr. 175-176). This conclusion is further reinforced by Union Exhibit 20. This document was a letter sent to Wendy Morthland, Corporation Counsel, following the mediation session between the City and the Firefighters. At this session, the Union introduced the concept that it could possible consider modifications of the existing PPO Plus plan if the City would consider implementing an HSA option for employees (Tr. 131-134). Attached to the letter were recent agreements that had been reached in Belvidere, Dixon and Northlake, whereby modifications of health insurance benefits were agreed to in conjunction with the establishment of an HSA option. **Neither Ms. Morthland or any other City representative ever responded to the Union's proposal** (Tr. 137-140). (*Brief for the Union* at 51-52' emphasis in bold mine).

As a first-hand observer and part of the mediation process (numerous times), I concur with the Union's assessment. Once the police unit "set the table" on insurance – a totally new program, to be sure – alternative options arguably were effectively off the table.[5] The absence of *serious* bargaining favors the Union's case, at least in the situation where the Employer is urging that a significant change in the *status quo* should be imposed by a third party. Without doubt,

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[5] Once the City concluded an accord with the police on health insurance, arguably the City's hands were effectively tied since any significant deviation from the police deal would have all kinds of negative ramifications with the other employee groups. Notwithstanding the City's declarations to the contrary, the Firefighters never viewed the Administration's offer as an "incremental approach." What is clear is that the parties put themselves in the position they now find themselves occupying and, as I said in the *Skokie* case, this has to mean something. Again, the City's health insurance plan is new. It is not a plan it has attempted to impose time and time again on the fire unit. Moreover, the parties are soon going to be back in negotiations as the agreement will expire in a little over a year. Similar to the situation in *Lansing* (where the parties finally moved off an eight-hour working schedule), it is inevitable (my view) that the three-tier plan will be a reality at Decatur. At this stage of the dispute, however, the matter is best left to the parties' resolution through bargaining rather than arbitral fiat.

there may come a point in the parties' bargaining history where the Administration can legitimately advance an argument that notwithstanding reasonable efforts to conclude an accord – an accord that arguably has support with respect to internal comparability – the Union's recalcitrance prevents city-wide uniformity. But this is not the case in 2008.

Further, the Union, in recognition of the realities in health insurance costs, has offered a plan that increases employee contributions toward the cost of premiums from the current $23/month to $30/month, effective May 1, 2007; $40/month effective May 1, 2008; and $50/month effective May 1, 2009. Significantly, these are larger numbers than were agreed over the 2004-2006 predecessor contract. Additionally, the Union's offer eliminates the CCM indemnity option as proposed by the Administration. In response to the City's *new* three-tier high deductible structure, the Union proposes a reopener to provide for either party to negotiate additional high-deductible options including a high-deductible HSA option (see, *Brief for the Union* at 9-10). Again, this is not a case where the Union clings to the past without recognizing the problems faced by the Administration. At the very least, I find no evidence that it is the Union that has been "the problem" concluding a successor collective bargaining agreement and, therefore, this should be held against awarding their final offer on health insurance.

4. The *quid pro quo* offered by the City in exchange for moving to a new health insurance plan is inadequate

The aggregate increase over the four-year term offered by the Administration is 16.5%. The Union's final offer for the relevant time period is 14.8%, making the City's offer a mere 1.7% over four years. As correctly noted by the Union, the 1.7% difference does not even compensate Firefighters for the 2.0% they gave up to maintain the 100% premium contribution of the City in 1983 (*Brief* at 54).[6] Although I don't see what the City is doing as "a condemnation proceeding" at a sale price set by the Administration, a "sale" it is. Moreover, it is a substantial reduction of an *existing* benefit and an *established structure*, thus warranting applying a traditional "breakthrough" analysis.

Also, while the wage increase offered to the Firefighters for the first three years matches the overall wage increase provided to the police, as noted by the Union, the police settlement has two additional improvements that are not offered to the Firefighters (*Brief* at 70). The settlement enhanced a time-off holiday benefit and also improved the value of sick-leave payout for officers at retirement. As summarized by the Union:

> The Arbitrator cannot ignore the fact that the Firefighters are starting from a higher level as to both rights and benefits on health insurance. Thus, the City is seeking to obtain a greater reduction from Firefighters than it obtained from the police and it is offering less to accomplish this than it has agreed to pay the police

[6] The effects are still felt. The 2.0% that did not go into the base in 1983 is compounded ever time a wage increase is given. It also affects every single benefit that computes from the base. What the parties' did in 1983 was significant and while not dispositive it matters in resolving this case.

officers. Moreover, while the bargaining history demonstrates that the Firefighters have been willing to negotiate progressive modifications in Article 16 (see 1996), when it has done so it has required the City to pay a higher price for these changes than what the City offers have and what it paid police.

5. The City's claim regarding its overall financial health is problematic

While the Administration has not entered an inability-to-pay argument, and actually acknowledged that it is not in "dire financial straits," it advances a position that skyrocketing health insurance costs have forced it to move toward a three-tier program. (*Brief for the Employer* at 6-8). According to the Union, the evidence is to the contrary. In the Union's words:

> The more accurate conclusion however is that the documents demonstrate that the City's financial condition is healthy. The City entered fiscal year 2006/2–7 in a very positive condition. At that time the total general fund revenues were "9.4 million more than last year at this time." Moreover, the beginning fund balance increased by almost two and a half million over 2005 to 6.291 million (Union Ex. 21). The City's financial condition improved during the year to the point that in November 2006 the City manager proposed a reduction in the annual property tax rate from 1.27 to 1.24 per hundred dollars of assessed property values (Union Exh. 27). Moving to a more current financial information, the 2007/2008 fund balance report shows a beginning fund balance for May 1, 2007 of $5.6 million. This budget document also projects that the net balances for all finds will increase from 149.5 million to 172.110 million (Union Exh. 22, past practice. XV. XVI). These are very robust and healthy numbers. (*Brief for the Union* at 15).

I also credit the Union's arguments regarding the comparison of premium costs, an index of costs of health insurance benefits. Here, a study of Union Exhibits 15(A) - (D) shows, more or less, that the City's costs are indeed "mid-pack," regardless of the comparable groupings (*Brief for the Union* at 16-17). Here, the averages are as follows:

Plan type	**Total cost – Average of Union comparables**	**City cost**	**percentage**	**employee cost**	**percentage**
Average PPO	484.06	435.67	90%	47.68	9.0%
Decatur current	**400**	**400**	**100%**	**0**	**0**
relation to average	21%	9%	-10%		
rank	3	5	8	1	1
Decatur proposed PPO 5/07	400	340	85%	60.00	15%
relation to rank	21%	28%	6%	-21%	-37%
rank	3	3	5	8	9
Decatur proposed 3 tier 1/2008	409.90	349.00	85%	$60	15%
	18%	25%	6%	-21%	-37%
rank	5	3	5	8	9

Decatur proposed 3-tier 11/09	460.00	368.00	8-%	92.00	20%
relation to average	5%	18%	13%	-48%	-53%
rank	6	4	3	11	11

(UX R 15(A))

The city cost numbers of dependent coverage (PPO) are as follows:

Average (union's comparables)		**$1,149.16**	**81.25%**
(based on projected 13.2% average increase among comparables for 2007)			
Decatur current	PPO	1,177.00	98.00%
Relation to average		-2.37%	-17.10%
Rank among group		10	12
Decatur proposed '07	PPO	1,050.00	88.00%
Relation to average		9.44%	-7.68%
Rank		5	5

(UX R15(D))

While the numbers look better with respect to dependent coverage, the Union's argument that the City's numbers are "mid pack" is supported by the evidence record, at least when its comparables are used.

Finally, I find that the selection of Blue Cross as the new TPA is likely to have a favorable effect on the City's overall costs. As argued by the Union, after applicable reductions and adjustments, the City's paid claims for the first six months of 2008 has been $1,729,297. If the average for the period 1/1/08-6/30/08 is continued through the rest of the year, the City's covered claims liability, excluding $369,576 of employee-paid costs for co-pays, etc., will be $2,118,873, or $4.24 million on an annualized basis. The difference in discount rates for Blue Cross *versus* Consociates is significant and favors the Union's arguments.[7] I credit the Union's assertions that the City's health insurance costs are going down "and it is happening without the three-tier plan upon Firefighters." (*Brief* at 24).

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[7] To this end the Union submits:

> One fact that cannot be denied is the difference in Blue Cross/Blue Shield's discount rates. The significance of this can be quantified if we simply apply Blue Bross/Blue Shield's 43% to the 2007 total claims of $7,731,631, which were basically produced by Consociates' 31.67% for PPO claims. The differential is 11.31%. This produces additional savings of $875,994 and would have reduced 2007 total claims to $6.856 million.

(*Brief for the Union* at 22).

6. Internal comparability between Firefighters & Police & AFSCME

The Administration maintains that internal comparability favors awarding its proposed health insurance plan. While acknowledging that it unilaterally imposed the plan on AFSCME after declaring an impasse (*Brief* at 9),[8] and asserting the non-represented employees and police unit are under the same plan, the Administration submits that "the Union has not offered a 'compelling reason why [it] should not be treated like other [City] bargaining units." (*Brief* at 41).

How significant is internal comparability as a criterion in interest proceedings? In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that "the factor of internal comparability alone required selection of the Village's insurance proposal." Arbitrator Goldstein stressed that arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits." In *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996) (unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such a health insurance, it "takes very compelling evidence" in the form of external comparisons to justify a deviation from that past practice.

Arbitrator Fleischli's analysis was adopted by Arbitrator Steven Briggs in *City of Elmhurst & IAFF 3541* (1997), a case included in the City's packet of relevant cases. Citing the Elmhurst decision, Arbitrator Briggs stated:

> The City argues that heavy if not exclusive emphasis should be placed on the internal comparability factor. It cites other interest arbitration awards, including one issued by the undersigned, where arbitrators have given primary weight to the internal comparables in upholding consistency of employee contributions toward benefit costs. That principle has been cited time and again as a circumstance compelling enough to justify changing the status quo with regard to a bargaining unit out of sync with others and with non-represented employees in a particular jurisdiction.
>
> It is important to note, however, that interest arbitrators have not given exclusive, controlling weight to the internal comparability factor on benefit cost issues. *Briggs* at 28.

Significantly, Arbitrator Briggs, in ruling for the Union, found that the Employer's final offer "would not bring the IAFF unit completely parallel to other Elmhurst employee groups on the health insurance issue." *Briggs* at 29.

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result), the late Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v. Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

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[8] This, of course, has generated unfair employment practices from both parties before the Illinois Labor Relations Board (UX 57).

> Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.** *Id.* at 791 (citations omitted; emphasis mine).

One change the Administration did not achieve with the police, a change it wants awarded in this proceeding, is that effective 2009, a flat-dollar contribution is converted to 20% of the premium. The City is not only asking for Firefighters to pay for single coverage where none currently exists, *but it is asking for a change that it is not in the police contract.* [9] Although the Administration asserts this is because of the duration of the collective bargaining agreement with police, there is no guarantee that a future police contract will end up like the fire agreement if the City's position is upheld. I also note that the AFSCME situation is still the subject of litigation.

Overall, I agree with the Administration that internal criteria favors a uniform insurance benefit (assuming the AFSCME matter is resolved in the Administration's favor), although the fact that the police contract does not move to a percentage of premium in 2009 favors the Firefighters' final offer. Further favoring the Union is a study of the negotiations that produced the 2004-2006 collective bargaining agreement. Given the 2003 experience with claims, the City successfully achieved an increase in the employee contribution for the PPO from 0 to $22 for police, effective May 1, 2004. For the Firefighters, the change went from 0 to $22, effective January 1, 2005 (the settlement provided for a $1.00 increase to $23, effective May 1, 2005). AFSCME employees did not see any change from the 100% contribution until May 1, 2005 when the $23 amount was effective. Significantly, the non-represented employees were given a pass on any increased costs for the years 2004 and 2005. Unlike AFSCME and the police, the City had total control over the non-represented employees. Unexplained is why they were given a pass. The variance (police in 2009 and non-represented employees in 2004 & 2005) works against the City's argument that internal comparability mandates selection of its offer. The internal criterion is never dispositive in an interest arbitration, especially when the employer is a

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[9] One of the cases submitted for consideration by the Administration was Arbitrator Feuille's decision is *Macon County Board & Macon County Sheriff vs. AFSCME 612* (1994), S-MA-94-70. In that case the City was requesting an employee increase in co-pay premiums from 12% to 25%. Unlike Decatur, no other changes to the insurance program were at issue. The Arbitrator agreed that the employer's offer was supported by internal comparability, reasoning that "internal comparability is often the primary decision factor on the health insurance issue." *Feuille* at 30. While I agree with the *dicta* offered by Arbitrator Feuille, and generally agree that internal considerations often trump other criteria, especially with respect to insurance, in *Macon County* there was no evidence of bargaining history (and other factors noted in my opinion) similar to Decatur. In short, Decatur is not *Macon County*. Indeed, Arbitrator Feuille pointed out that "neither proposal is seeking to establish some sort of pioneering insurance agreement." *Feuille* at 31. See also Arbitrator Feuille's decision in *City of Peoria & IAFF 544* (1992).

self insurer and can effect variances in insurance programs, as this employer has done in the past. Contrary to the position of the City – that it "seeks to maintain its tradition of strong internal comparability"(*Brief* at 9) – the evidence record reveals numerous instances where the insurance plans of the employee groups varied.[10] On balance, however, the "internal criterion" marginally favors the Administration's argument.

7. External analysis – Union position: The City's final offer aggravates Decatur's already inferior compensation position relative to the comparables

Especially relevant to the resolution of insurance dispute is an analysis of how the City's proposal will effect the historical compensation rankings of the bargaining unit. The Union asserts that as to most of the components Decatur Firefighters rank sixth (6th) and relatively close to the average (UX 2R; *Brief* at 33). With respect to total payments (i.e., total compensation), the unit ranks 6% below the average and 11th with respect to total cash payments, resulting in an overall compensation ranking of 12th using its bench-mark jurisdictions and 6.31% below the average (UX 2R; *Brief* at 33). The Union's proposal maintains its ranking of 12th in overall compensation but would reduce its relation to the average to -7.82% (UX 2CR; *Brief* at 33). The Union's point that the massive cost shifting associated with the City's efforts to implement its new health insurance benefit can only aggravate the unit's deficiency in overall compensation is valid. *Id.*

What of the City's argument that implementation of its proposals would have little or no effect on the unit's rankings among the City's comparables? There is no debate that a Firefighter will earn more in base salary under the Administration's wage offer than under the Union's proposal. Additionally, a Firefighter's new take-home pay (without overtime, longevity bonuses, EMT stipends, and any other benefits) will be marginally higher under the City's proposal than it would be under the Union's proposal (*Brief for the Employer* at 51). The infirmity in this analysis is that it does not take into account the numerous changes in nature of the plans' benefits (i.e., increases in deductibles, maximum out-of-pocket expenses, new prescription co-pays, etc.). Arbitrator Herb Berman, in *City of Batavia & IL FOP Lodge 224* (1996), recognized the difficulty in comparing different insurance plans as follows:

> Because of many differences, tangible and intangible, among health insurance plans, including differences in coverage, out-of-pocket costs (deductibles, co-payments and maximum limits), claims adjustment policies and practices, and health provider acceptability, it is difficult to compare different insurance plans. In the end, an inexpensive policy that does not cover the cost of treating a particular

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[10] In addition to the examples already cited, in 1998 the AFSCME-represented employees agreed to eliminate the CMM option because of the rising costs associated with that plan. It was not until 2006 that the CMM option was eliminated for the non-represented employees (*Brief for the Employer* at 5). Other employees who were eligible and elected to participate in the CMM Plan paid 10% of their dependent insurance premiums. *Id.* The point is this: There is sufficient variation between groups of employees at Decatur to seriously question whether there is "strong internal comparability" as argued by management.

catastrophic illness could bankrupt the injured employee. *Berman* at 39.

The Union has pointed out that the Administration's own Exhibit 92 shows that, effective 2009, it will have shifted the cost from $276 for dependent coverage to $3,120 on premiums alone, a shift of $2,844. The employees' reluctance to give up its insurance for 1.7% over the relevant time period is understandable. Still, these are the numbers:

City of Decatur
Health Insurance
Employee Dependent Cost Comparison 2009

Municipality	**2007**	**2009**	**Difference (from 2007)**
Decatur – Union	**$276**	**$600**	**$324**
Rockford	910	1,124	214
Danville	1,020	1,200	180
Pekin	900	1,296	396
Springfield	1,804	2,476	672
Peoria	2,374	2,933	619
Decatur – City	**276**	**3,120**	**2,844**
Champaign	3,450	4,262	812
Galesburg	3,570	4,410	840
Normal	4,655	5,218	563
Urbana	4,488	5,545	1,057
Bloomington	4,626	5,715	1,089
Quincy	8,654	8,221	-424

I am on record as observing that today increased cost sharing in insurance is the name of the game in labor negotiations. The reality of the matter is Employers will continue to press labor organizations for a larger contribution rate in the future. At the same time, employees (with exceptions) will resist such proposals. Management has asked the Union to undertake a major hit in moving from $276 to $3,120, an increase of $2,844. None of the comparables comes close! Relative to the past, the number is high. And again, there is no guarantee as to what the numbers will be for police in 2009. The Union's position, on the other hand, is low ($276 to $600). It will be difficult, if not impossible, for this trend to continue. Given this evidence record, however, I resolve the external criterion in the Union's favor, but barely.

8. The Union's argument that the City's health insurance proposal involves a waiver of a mandatory item of bargaining and, thus, the <u>Arbitrator is without power to award the City's final offer</u>

Considerable space and follow-up letters was devoted to the argument that the City's final

offer on health insurance involves a waiver of a statutory right, a permissive subject of bargaining (*Brief for the Union* at 56-64). The Union's argument – that decisions with respect to changes in co-pays, deductibles, etc. cannot be unilaterally made – is noteworthy and, in relevant part, is summarized as follows:

> In concrete terms, what the City seeks to obtain here is to substitute for the protective language of §3(a) and the Union's statutory right to bargain as to mid-term changes in mandatory subjects of bargaining, a puny opportunity to receive "notice," perhaps a power point presentation as to changes and the opportunity for "input." This new paradigm for health insurance, in sum and substance, is described in the plain language of the City's offer relating to the establishment of an HSA health plan option. The City's offer contemplates that benefits and contributions for a "fourth tier" (HSA) would be ". . . implemented only after notice to and upon request, discussion and input from the Union." Terms such as "discussion" or "input" are not synonymous with negotiations or bargaining. The Union's health insurance reopener is consistent with its statutory rights.
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> * * *
>
> The City's offer is beyond its lawful authority because it presents language which effectively converts a mandatory subject of bargaining without the Union's consent. **The Arbitrator has no authority to impose such language on the Union or mandate a waiver of its statutory right to bargain.** (*Brief* at 60-63).

On August 20, 2008, the City executed a response brief because it "had no prior notice that the Union would raise an argument regarding the authority of the Arbitrator to award the City's proposal that had never been raised during negotiations, mediation, or arbitration." *Id.* at 1. In the words of the Administration:

> [T]he Union argues that the Arbitrator had no authority to award the City's final proposal regarding health insurance. The Union begins its argument by correctly noting that the language currently found in Article 16, Section 3(a) of the contract will be removed from the new bargaining agreement if the City's proposal is adopted. As discussed in the City's brief, this section of the agreement is no longer needed because it deals exclusively with the CMM Insurance Plan – a plan that both parties have agreed will no longer be offered to the firefighters (City Brief at. 48).
>
> The Union then takes a leap and concludes that without Section 3(a), the City will be allowed to "change co-pays, deductibles, out-of-pocket max and the level of benefits during the contract term without affording the Union prior decisional bargaining." (Union Brief at 57). Nothing could be further from the truth. The City's proposals do not include contract language that would allow mid-term modifications without bargaining. **Instead, the City's insurance proposal clearly sets forth the precise benefits that will be provided to the firefighters during the life of the collective bargaining agreement**.
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> * * *
>
> Clearly, the City's proposal would not permit mid-term modifications without bargaining with the Union. But even if the Union's argument had a scintilla of truth to it, the argument has already been waived by the Union, and must not be considered by the Arbitrator. The Union **never** questioned the legality of the City's proposal during negotiations, mediation, or arbitration. *Id.* at 1-2.

In further support of its argument the Administration maintains if the Union felt the City was committing an unfair labor practice, it should have filed a complaint with the Labor Board. The six-month statute of limitations for filing such a charge has long-expired in this case.

Furthermore, if the Union wanted to challenge whether the City's proposal was a mandatory subject of bargaining, it had an obligation to file a request for a Declaratory Ruling with the General Counsel for the Labor Board to obtain such a ruling. This it did not do. *Id.* Finally, the Union as part of its ground rules agreed that the Arbitrator has authority to rule on all mandatory issues before him. The ground rules also note that either party has the right to contest in an appropriate forum that a final offer is not a mandatory subject of bargaining. Again, in Illinois the appropriate forum that a final offer of the other party is not a mandatory subject of bargaining. According to the City, "the Union has clearly waived its disingenuous argument that the Arbitrator has no authority to award the City's proposal." *Id.*

On August 22, 2008, the Union, through counsel, filed a response to the City's reply. In a nutshell, the Union submits that its position as to the Arbitrator's lack of jurisdiction to impose a waiver of its right to bargain "is grounded upon the arbitrator's lack of jurisdiction to award a permissive subject of bargaining. It is axiomatic that jurisdictional issues cannot be waived and are always timely." On the merits, the Union submits that the City's assertions in ¶5 of counsel's letter stating that the City's proposal "would not permit mid-term modifications without bargaining with the Union," while welcome, cannot serve to amend or modify its final offer. As stated by the Union: "This language is nowhere in the language of its offer and the City cannot now seek to improve it with post-hearing declarations."

* * *

In a prior interest arbitration between *IAFF 2340 and Village of Elk Grove* (Case No. S-MA-04-262)(2005) an issue arose regarding the meaning and application of the Employer's proposal. The Union insisted that a provision would result in a bidding system that was disputed by the Administration. The Village was represented by Ted Clark of Seyfarth Shaw, the same firm representing the City of Decatur. A majority of the Board correctly sustained Mr. Clark and held that a party is entitled to define its own proposal unless, of course, the clear meaning of the language means something other than is being urged by the other side.

I credit the Administration's argument based on two considerations. First, the City has executed documents as part of this record indicating that it is not advancing a proposal that is permissive in nature, although one can conclude otherwise based on the "code words" used by the City (see, August 20, 2008 reply from Jill Leka). These documents have been referenced in this proceeding and incorporated into the record. Second, and equally important, I credit the Administration's argument that the matter should have been disclosed in prior meetings with the City if the Union in fact believed there was a jurisdictional problem with respect to the City's final offer.

* * *

In *City of Aurora & IAFF 99* (Kohn, 1995), S-MA-95-44, one of 17 decisions provided by the Administration as a supplement to its post-hearing brief, Arbitrator Lisa Salkovitz Kohn considered Aurora's proposal to increase the length of time in the first two steps of the salary

structure for firefighters hired *after* the effective date of the contract. The record indicated that the Aurora firefighters' maximum base salary was "approximately average for the comparison group, although they have the lowest starting rate." *Id.* at 18. In rejecting the City's final offer, Arbitrator Kohn had this to say regarding the City's burden when requesting a change in benefits:

> **When one party proposes to modify a benefit, that party bears the burden of demonstrating a need for a change.** *Village of Elk Grove & Elk Grove Firefighters Association, Local 2298, IAFF, supra* at 67. Here, the City offered no reason to lengthen the time period for Steps A and B from six months to 1 year, other than the fact that its police officers have accepted this change, albeit only for the duration of the current contract, and the City, having imposed it on their executive and exempt employees, now intends to seek this extension from all other bargaining units. **However, a "break-through" of this sort is best negotiated at the bargaining table, rather than being imposed by a third-party process.** *Kohn* at 19 (emphasis in bold mine).

I view the Administration's health insurance proposal as much more of a change in the *status quo* than the change proposed by Aurora. Like the situation in *Aurora*, the City of Decatur has urged its final offer be awarded because the police agreed to it and the City has imposed it on its unrepresented employees (and, of course, AFSCME). Arbitrator Kohn rejected Aurora's offer, reasoning that "a breakthrough is best negotiated at the bargaining table," a position endorsed by the better weight of arbitral authority. Similarly, as articulated in the opinion, the parties' bargaining history, the *de minimis quid pro quo* offered (a mere 1.7% over four years), and the paucity of serious bargaining on health insurance supports the Union's final offer.

A final note: As the parties know, I do not have the statutory authority to construct a tailored resolution of this issue, borrowing elements from each of the parties' offers. Alas, one offer or the other must be selected without any cutting and pasting. This was unfortunate. There were numerous ways to cut and paste this proposal that arguably would have served the interests of both parties (eliminating, for example, the 2009 percentage-based-premium-contribution portion of the City's proposal applicable to the fire unit, upping and lowering some other co-pays and deductibles, and adding a high-deductible option, an option that the Firefighters wanted). Certainly, there were models from other bench-mark jurisdictions that are relevant templates. On balance, the Union's final offer on health insurance is less Draconian than the Administration's proposal and, for the reasons cited, is awarded in this proceeding.

2. General Wage Increase

The parties' wage proposals, and effective dates, are as follows:

Date	City's Proposal	Union's Proposal
5/1/06	4.5%	3.5%
5/1/7	4.5%	3.65%

5/1/08	4.0%	3.65%	
5/1/09	3.5%	4.0%	**Difference**
TOTAL[11]	16.5%	14.8	1.7%

* * *

Aside from the arguments advanced by the Union demonstrating the flaws and deficiencies in the City's health insurance proposal, the Firefighters make two additional points in favor of its wage proposal:

(1) The Union's final offer on wages provides for increases that are in line with the amounts agreed to among the comparable communities (*Brief* at 109).

(2) Cost-of-living considerations support the Union's wage offer (*Brief* at 109-111).

The Administration's stated *quid pro quo* for its insurance offer is its wage offer. It is, argues the City, "a generous wage package to help the Firefighters defray the increased cost of their insurance premiums under the City's insurance proposal." (*Brief* at 60). In fact, the Administration's wage offer is nearly two percentage points larger (1.7% to be exact) than the wage proposal submitted by the Union (*Brief* at 60).

* * *

As recognized by the Administration, "the issues of wages and health insurance are inextricably tied to one another in this case." (*Brief* at 60). Given my decision on health insurance, the Union's wage proposal is awarded. [12] Also, not having entered an inability-to-pay defense, I find no infirmity with respect to the ability of the City to fund the insurance and wage proposals, or any other proposal for that matter. [13]

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[11] I calculate totals different from the Administration's totals. See, *Brief for the Administration* at 61.

[12] Given the structure of the parties' final offers, I am assuming full retroactivity for all wage offers even though the City did not specify retroactivity for the May 1, 2008 increase (understandable since final offers were exchanged in December 2007 and it could not be anticipated that this proceeding would go beyond May 1, 2008). Also, and consistent with the thinking of Arbitrator Peter Feuille in *City of Peoria & Peoria Firefighters, IAFF Local 544* (1992), I am also assuming full retroactivity for the increase in employee contributions. See, *Feuille* at 33.

[13] As correctly pointed out by Arbitrator David Youngerman in *City of Herrin & IL FOP* (1997), S-MA-118:

> It is not an interest arbitrator's task to make political decisions as to how the City should allocate or spend its funds. Rather, an Arbitrator's inquiry is limited by statute to "the financial ability of the unit of government to meet"

3. EMT-I Stipend

The differences in the parties' proposals are not significant, a 1/2% increase in 2008 and a maximum of 1.0% in re-certification pay.

The Union proposes to increase the amount of the EMT-I stipend, effective May 1, 2008, from the current 1% to 2%. In addition, effective May 1, 2008, Firefighter EMT-I's or P's would receive re-certification pay in the amount of 1/2% for each re-certification to a maximum of 1.0% re-certification pay. The Firefighters' offer also provides that Firefighters who are not functioning as EMT-I's or P-s but maintain their certification would be eligible to sign up and serve as "fill in EMT-I's on an ad hoc basis." Specific language to implement the Union's offer is part of the Union's final offer as Exhibit 3 (*Brief for the Union* at 112).

In support of its final offer the Union argues that its offer is supported by workload and productivity improvements negotiated by the parties under the terms of the new collective bargaining agreement (*Brief* at 113). Here, says the Union, the staffing reductions are in excess of 100% with no change in service calls (*Brief* at 114). The Union notes that the workload and productivity considerations are greater here than they were in either the Urbana (Hill) or DeKalb (Goldstein) cases.

The Union also submits that external comparability considerations support its final offer (*Brief* at 116). It further maintains that its offer is supported by overall compensation factors (*Brief* at 117; Un. Ex. 2R).

The Administration's final offer proposes that Firefighters assigned as EMT-I's or P's would receive an increase to 1.5% effective May 1, 2008 and to 2.0% effective May 1, 2009. The City currently pays fire employees a 1% stipend if they are licensed as an EMT-I or an EMT-P (JX 1, Art. 7). In support of its position the City submits that Decatur Firefighters have a comparability low EMT work load. The ratio of EMS runs to fire runs indicates that Decatur requires a smaller percentage of its Firefighters to be EMT-qualified than the comparable jurisdictions (*Brief* at 68). It is to be expected, therefore, that the Decatur Firefighters would have a lower EMT stipend than the stipend offered in the comparable jurisdictions (*Brief* at 69).

The Administration further asserts that its stipend proposal is competitive with the stipends offered in the comparable communities (*Brief* at 69). Just because the money is available does not warrant selection of the Firefighters' final offer on this issue, the City asserts.

* * *

Citing my decision in *Village of Skokie* (1977) regarding paramedic workloads, as measured by the number of EMS runs, the Administration asserts that Decatur requires a smaller

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the cost differences between the Union and City's final offers.

percentage of its Firefighters to be EMT-qualified than the comparable jurisdictions and, as such, a smaller differential is warranted. Since 2001, Decatur's ratio of EMS to Fire-Runs has steadily decreased (CX 25; *Brief* at 69). It is to be expected, therefore, that the unit would have a lower EMT stipend than the stipend offered in the bench-mark jurisdictions (*Brief* at 69).

I also credit the Administration's argument that the City's EMT proposal is competitive with the stipends offered in the comparable communities (*Brief* at 69). Indeed, using the Union's numbers, and before any increase in base wages is factored in, the City's stipend will increase to $1,012 on May 1, 2009. As such, under the City's proposal the EMT-I stipend will be higher than the average stipend in the Union's comparables, even though the City's runs-ratio indicates a lower than average incentive would be justified.

What of the Union's arguments regarding training requirements? (*Brief for the Union* at 117). I credit the Administration's argument that the parties knew when they first negotiated the EMT stipend in 2001 that training requirements would be increased. As such, the new training requirements had already been proposed and were public information. Second, EMT training requirements are established on a state-wide basis. Decatur's training requirements are identical to the training requirements in all of the comparable jurisdictions. Third, the City, not the employees, pays 100% of the training costs for obtaining and maintaining EMT certification. In fact, the City pays Firefighters overtime pay if the training is not conducted during the Firefighters' normally scheduled shift.

Finally, I credit the Administration's position that simply because the number of EMT's has decreased does not mean that EMT's are entitled to a higher stipend. Again, while the number of EMT's has decreased, so has their workload. Thus, they are not entitled to a higher stipend simply because there are fewer EMT-I's. (*Brief for the Employer* at 71).

The City's position is awarded.

4. <u>Rank Differential</u>

The Firefighters' final offer proposes to increase the rank differential between a top-step Firefighter to top-step Lieutenant from 10.3% to 13.0% in two steps: a 1.35% increase effective May 1, 2008, and a 1.35% increase effective May 1, 2009 (*Brief* for the Union at 118; *Brief for the City* at 61). The Union's proposal would maintain the existing rank differential between top-step Lieutenant and Captain at 10.25%, increasing the difference between a Firefighter and Captain to 24.58%.

In support of its position the Firefighters assert that the salaries paid to Decatur's Fire Lieutenants and Captains are substandard and require an equity adjustment (*Brief* at 119; Un. Ex. 4 & 4A; R. 47-51). The Union points out that Decatur's rank differential of 10.26% ranks them 11th (using the Union's bench marks) and more than 4.4% below the average (*Brief* at 19). The

Decatur Captain's salary places them at a similar disadvantage but to a lesser degree (*Brief* at 120). The Union's proposal for a two-step increase of 3.0% will bring Decatur Fire Lieutenants to the average and Captains perhaps 1.0% above the average. In a circumstance where Decatur's total compensation is as deficient as it is in relation to the comparable departments, this, says the Union, is a fair result (*Brief* at 120). The Union concludes by asserting that the City's position is wholly indifferent to this inequity which was at least recognized by the employers in Urbana (Hill) and Skokie (Hill)(*Brief* at 123).

The City's final offer is to maintain the *status quo* with a 10.3% pay differential between Firefighters and Lieutenants (*Brief* at 15 & 61).

Addressing rank differential, longevity, and EMT Stipend, it asserts that the Union has recognized that it cannot get an above-market wage increase through the front door (at least without agreeing to the City's insurance proposal). Accordingly, the Union seeks an additional above-market wage increase "through the back door" (*Brief* at 61). Here, the Administration points out that the Union's longevity and rank-differential proposals, by themselves, would cost the City an extra $208,527 during the four-year collective bargaining agreement (CX 107; CX 110; *Brief* at 61). This, says the City, is the equivalent of an extra 3.24% pay raise before the potential cost of the Union's EMT stipend proposal is added in. In the Administration's opinion, the comparability data does not justify the Union's request for a back-door pay raise and, accordingly, its proposals must be rejected.

Addressing rank differential, the Administration calculates that the Union's proposal, by itself, would cost the City an additional $125,068 during the term of the proposed four-year contract (CX 110). Both *internal* and *external* data support the maintenance of the current rank differential (*Brief* at 61-63).

* * *

Internal Comparability Considerations. Internal comparability favors the Administration on this issue. Asserting that the Firefighter-Lieutenant rank differential is a close match with the police officer-detective rank differential, the City maintains that its final offer is supported by internal comparability (*Brief* at 62). Using its numbers and its assumptions (CX 108), the rank differential for the Firefighters is 10.25% while the differential for police is slightly lower at 10.0%. *Id.* The lieutenant-Captain differential (10.2%) is a little less than the detective-sergeant differential of 11.6%. *Id.* Without a second look, these numbers would favor the Administration's proposal.

External comparability. Both sides assert external comparability favors selection of its proposal. Asserting that it is difficult to compare external comparability "if the data only compares the Firefighters with the next highest ranked bargaining unit employees," the City compared the total rank differential between the lowest and highest-ranked bargaining-unit members, typically lieutenants and captains (*Brief* at 62-63). The Administration submits the average rank differential between firefighters and captains is 19.9% (CX 109). Only two

comparable communities have higher rank differentials, Champaign (41%) and Peoria (26.4%). Decatur's current rank differential is 21.6% is better than the average rank differential and exceeds the rank differential in eight of the comparable communities (*Brief* at 63). The Administration goes on to assert:

> Even using the Union's questionable methodology for comparing rank differentials with the external communities, we see that Decatur's Lieutenants compared to the first rank above firefighter in the Union's comparables is ranked #7 out of 13 communities – right in the middle of the pack – in 2005, 2006, and 2007 (UX 4 (1-3) R). Using the City's comparables, Decatur's lieutenants are ranked #5 out of 11 communities in both 2007 and 2008 – again, right in the middle of the pack (UX 4 (4-5) R). Similarly, the Captains are ranked #6 using the Union's comparables, and #4 using the City's comparables (UX 4 (1-5) R).
>
> In addition, the lieutenants' pay scale is competitive with the pay scale offered in the City's proposed comparable communities. Under the City's base wage proposal, the lieutenants will be ranked fourth or fifth amongst eight comparable communities at the five, ten, fifteen, and twenty-five year service levels (CX 40). Thus, they receive a wage package that is in the middle of the pack of comparable communities.
>
> Therefore, because the lieutenants' rank differential and their wage scale does not lag behind that offered in the comparable communities, there is no reason to further increase the rank differential, and the Union's offer should be rejected.
>
> (*Brief for the Employer* at 63).

The Union's position is opposite the Administration's and, to this end, the Union submits numerous revised exhibits regarding Firefighters vs. Lieutenants and Captains (UX 4 & 4A). Using a base-line year of 2005, the Union asserts:

> [T]he Lieutenant's 2005 base salary of $57,313 is substantially below the average salary for comparable Lieutenants by -2.79%. This places Decatur Lieutenants at a ranking of 7th. When the percentage of rank differential is calculated, the average rank differential is 14.64%. Decatur's differential of 10.26% ranks them 11th and more than 4.4% below the average. The Decatur Captain's salary places them at a similar disadvantage but to a lesser degree. The actual salary puts them -1.84% below the average and with a percentage rank differential of more than 4% below the average of 25.61%. These deficiencies place Decatur's Lieutenants and Firefighters relationship to the average at a negative 42.7% and 18.83% respectfully. * * * The Union's proposal for a two-step increase of 3% will bring Decatur Fire Lieutenants to the average and Captains perhaps 1% above the average. In a circumstance where Decatur's total compensation is a deficient as it is in relation to the comparable departments, this is a fair result.

The Union goes on to advance an argument using the City's comparables:

> As to the City's comparables, Decatur's Lieutenants rank 5th, 11.03% above the average. The rank differential for the City's comparables is 14.17%. Thus, Decatur Lieutenants are almost 4% below the average. This deficiency puts their relationship to the average at a -38.16% and gives them a ranking of 10. * * * Decatur's Lieutenants and Captains are in a more adverse condition compared to the City's comparables than they are with respect to the Union's comparables.
>
> (*Brief for the Union* at 120-121).

With respect to the City's argument that the Engineer's rank should be treated as the first rank in the departments that have them (*Brief* at 121), the Union maintains this is a "red herring." The Engineer's rank is not a company-officer rank and the duties of an Engineer are entirely different than company officers. *Id.*

Addressing the City's comparison of police officers and police detectives (as a relevant bench-mark for firefighters and lieutenants), the Union submits the comparison is invalid:

> Police detectives are special assignments and do not compare to the relationship between firefighters and their company officers. The City has also distorted the salary relationships by again including 48 hours of holiday pay to bump up firefighters' salaries. Police officers' holiday benefit is a time off benefit. They receive time off with pay for 13 recognized holidays. This benefit was clearly enhanced by giving them time and a half when they are scheduled to work on Thanksgiving and Christmas Day under the terms of the new contract.
>
> (*Brief for the Union* at 122).

* * *

The Union advances the better case.

Based on the Union's "differential analysis" as outlined in Exhibit # 4(1)R – 4(5)R, the 2005 average percentage difference is 25.61% (percent difference from Firefighter top base). Compared to Decatur's 21.56%, the unit is 18.83% below the average, giving it a rank of 6th. The number is 14.64% (average) with respect to the 1st rank above Firefighter, for a ranking of 7th (UX # 4(1)(R)). Similar figures are observed for fiscal years 2007-2008 among the union's comparables (UX # 4(A)(R)):

Municipality	**2007 1st rank above Firefighter**	**% differential**	**2008 1st rank above Firefighter**	**% differential**
Normal	58,047	12.0%	60,392	12.0%
Rock Island	54,572	7.51	56,452	7.51
Moline	76,641	21.55	77,650	21.55
DeKalb	73,132	10.10	76,057	10.10
Rockford	67,249*	12.20*	69,603*	12.20*
Kankakee	59,954	10.56	61,753	10.56
Granite City	59,717	14.0	61,438	14.00
Alton	51,420	15.03	52,963	15.03
Peoria	73,621	26.40	76,197	26.40
Bloomington	59,839	9.59	61,935*	9.59
Champaign	66,612	19.53	69,110	19.53
Springfield	64,898	16.18	67,169*	16.18

* estimated based on projected general wage increase of 3.5%

Decatur proposal	**61,484**	**10.26%**	**63,728**	**11.61%**
Average	**63,642**	**14.55**	**65,893**	**14.55**

Relation to average	-3.51%	-41.91%	-3.40%	-25.41%
Rank	7	10	7	9

The Union's offer of a two-step increase of 3.0% is fully supported by external benchmark jurisdictions and will bring Decatur's Firefighters to the average (the Captains fare somewhat better). Considering the Union's average wage increase of 3.5%, 3.65%, 3.65% & 4.0%, I don't see the differential relationships as being altered by these numbers.

The Union's final offer is awarded.

5. Longevity Pay

Currently, after five (5) years of service the Firefighters receive a 2% longevity bonus; a 4.0% longevity bonus after 10 years; 6% after 15 years; 9% after 20 years; and 12% after 25 years (JX1; CX 107). Under the Union's proposal, the 20-year longevity bonus would increase to 10%.

The Union's final offer is to adjust the Firefighters' longevity schedule by adding one additional percent at the 20-year step. This modification would not bump up the 25-year step which would remain at 12% (*Brief* at 124).

In support of its offer the Union submits that external comparisons of longevity schedules and total compensation warrants acceptance of its offer (*Brief* at 124; Un. Ex. 5, 5A, 5B, 5C, 5D). At the 20-year step of the longevity scale Decatur's rank falls to 9th compared to a ranking of 5th in the 25- and 30-year steps (*Brief* at 124). However, when this asymmetry is considered in the context of Decatur Firefighters' overall deficit in total compensation, the Union believes that the "modest tweak" proposed is warranted (*Brief* at 124-125).

The City's final offer is to maintain the *status quo*. Under the Union's proposal – a 20-year longevity bonus of 10% – the City would spend an additional $83,459 during the four-year contract (CX 107; *Brief* at 64). In the Administration's opinion, the comparability data, both *internal* and *external*, does not justify the Union's longevity proposal (*Brief* at 64-65).

* * *

The City has carried the day regarding internal comparability as a criterion for selection of its final offer on longevity. Citing the police officers' longevity, the City proffers the following comparative chart:

Years of Service	Longevity Pay Police	Longevity Pay Fire
5-10	2%	2%
10-15	4%	4%
15-20	6%	6%
20-25	9%	9%
25+	12%	12%

(CX 102).

Chicago Arbitrator Elliott Goldstein, in *Village of Skokie*, S-MA-89-123 (1990), has commented on the importance of internal comparability with respect to longevity pay:

> Substantial evidence of a real need for an increase would be required for me to override the long-standing policy of maintaining the longevity pay program as a uniform benefit for both the police and firefighter bargaining units. *Goldstein* at 72-73.

I agree with the City on the longevity issue. The Union's proposal, as written, would unjustifiably break internal comparability and provide Firefighters with a 10% longevity bonus with 20 years of service.

Addressing external comparability, and using the Administration's bench marks, the longevity bonus at the 20-year mark is mid-pack:

Community	Rank	20-year longevity pay
Normal	1	20 %
Bloomington	2	14
Danville	3	13
Urbana	4	12
Champaign	5	10
Springfield	6	9.75
Decatur (status quo)	**7**	**9.0**
Pekin	8	8.7
Peoria	9	8.0
Galesburg	9	8.0
Rockford	9	8.0
Quincy	10	4.0%

(CX 103)

I also find it significant that under the Union's proposal, the City will incur an additional liability of $83,459 under the term of the successor collective bargaining agreement (see, *Brief for the City* at 64).

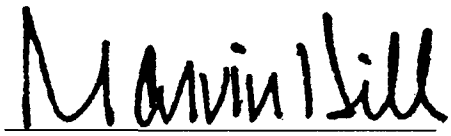
For the above reasons, the Administration's final offer is awarded.

V. AWARD

For the reasons articulated in the above opinion, including all relevant statutory factors set out in Section 14(h) of the Act, including the parties' stipulations, external and internal comparability, cost-of-living, the overall compensation presently received by the bargaining unit, and all other relevant factors argued by the parties in their post-hearing briefs, the following award is entered:

Insurance	**Union Final Offer**
Wages	**Union Final Offer**
EMT Stipend	**City Final Offer**
Rank Differential	**Union Final Offer**
Longevity	**City Final Offer**

Dated this 19th day of September, 2008 at DeKalb, IL



Marvin Hill, Jr.
Arbitrator