

INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL
("Union", "FOP" or "Bargaining Representative")

AND

CITY OF BELLEVILLE
("Employer", "City", or "Management")

Case No. S-MA-08-157

Arbitrator's Case No. 09/025

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:

Richard V. Stewart, Jr. Esq., Staff Attorney Illinois FOP
Labor Council

On Behalf of the Employer:

Karl R. Ottosen Esq., Ottosen, Britz, Kelly, Cooper &
Gilbert, LTD.

TABLE OF CONTENTS

I. PROCEDURAL BACKGROUND 1

II. II. FACTUAL BACKGROUND 3

 A. The Parties 3

 1. The City of Belleville 3

 2. The Union 3

III. STIPULATIONS OF THE PARTIES 4

IV. THE PARTIES' FINAL PROPOSALS 6

 A. The Union's Final Proposal 6

 B. The City's Final Proposal 8

V. RELEVANT STATUTORY LANGUAGE 9

VI. EXTERNAL COMPARABLES 11

VII. INTERNAL COMPARABLES 22

VIII. OTHER FINANCIAL CONSIDERATIONS 23

IX. DISCUSSION AND FINDINGS 30

 A. Economic Issue No. 1 - Wages 30

 B. Economic Issue No. 2 - Retroactivity 46

 C. Non-Economic Issue No. 1 - Residency 49

I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the City of Belleville ("the City" or "the Employer") and the Illinois Fraternal Order of Police Labor Council ("the Union" or "FOP") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit represented by the Union in this case, when fully staffed, consists of approximately sixty sworn Police Officers and nine Police Sergeants (hereinafter "officers" and/or "sergeants") employed by the City of Belleville. (Tr. 76). This dispute arises from the parties' impasse in negotiations for a successor to the Collective Bargaining Agreement in effect from May 1, 2005 to April 30, 2008.¹

The record establishes that on January 2, 2008, approximately four months before the above-noted labor contract expired, the Union served the City of Belleville with a Formal Notice of Demand to Bargain a successor to that Collective Bargaining Agreement. The record is silent as to the number of negotiating sessions which followed, but there is no dispute that counsel for the Union filed a demand for compulsory interest arbitration with the Illinois Labor Relations Board on March 12, 2009.² Pursuant to the stipulations of the parties which are set forth in Section III of this Award, three issues, two of which are considered "economic" under the Act, remained

¹U. Ex. 2.

²U. Ex. 6.

unresolved and are thus before the Arbitrator for final and binding determination.

The hearing before the undersigned Arbitrator was held on November 23, 2009 at Belleville City Hall, Mayor's Conference Room, Belleville, Illinois commencing at 10:30 a.m.³ The parties were afforded full opportunity to present their cases as to the impasse issues set out hereinbelow, which included written and oral evidence in the narrative. A 74-page stenographic transcript of the hearing was made, and thereafter the parties were invited to offer such arguments as were deemed pertinent to their respective positions.

At the hearing, the following individuals were present:

For the City:

Karl. R. Ottosen, Attorney
Mark Eckert, Mayor of the City of Belleville
William Clay, Chief of Police
James Schneider, Director Human Resources

For the Union:

Richard V. Stewart, Jr., Attorney
David Nixon, Field Representative
John Hunter, Local Bargaining Team
Robert Thomason, Local Bargaining Team
Mark Kroenig, Local Bargaining Team
Mark Stuhlsatz, Local Bargaining Team

Post-hearing briefs were exchanged on February 8, 2010, and the record was, by agreement, left open for reply briefs and pertinent rebuttal argument. Final correspondence from the parties was received

³The Exhibits introduced at the November 23, 2009 hearing will be cited in the following manner: Joint Exhibits as "Jt. Ex. ___", Union Exhibits as "U. Ex. ___", and District [Employer] Exhibits as "Er. Ex. ___", respectively.

by the Arbitrator on May 10, 2010, and the record was thereafter declared closed.

II. **FACTUAL BACKGROUND**

A. **The Parties**

Illinois Fraternal Order of Police Labor Council, the Union in this matter, (hereinafter sometimes referred to as "the Union," "FOP," or "bargaining representative") is a labor organization within the meaning of Section 3(i) of the Act. It also is the exclusive bargaining representative, within the meaning of Section 3(f) of the Act, for all sworn Police Officers and Police Sergeants employed by the City. The other party in this matter, the City of Belleville, is an "Employer" within the meaning of Section 3(o) of the Act.

1. **The City of Belleville**

The City of Belleville is located in southwestern Illinois. According to 2000 census and 2008 Financial Report data made a matter of record in this case, the City of Belleville has a documented population for purposes of this arbitration of 41,410. Median home value in Belleville is \$70,500 and the Median Household Income is \$35,979.⁴

2. **The Union**

The Union represents the City's sworn police officers and police sergeants for purposes of collective bargaining, as already noted. The record further establishes that, with respect to the impasse issues of residency and wages, there are nine members of this

⁴U. Ex. 30.

bargaining unit with twenty or more years of full-time service. Twenty-eight members of this bargaining unit have between eight and nineteen years of full-time service, and thirty-two members of the bargaining unit have fewer than eight years of full-time service.

III. STIPULATIONS OF THE PARTIES

The City of Belleville ("Employer," "City," or "Management") and the Fraternal Order of Police Labor Council stipulated that the following are the economic and non-economic issues in dispute:

Economic Issues:

1. Wages
2. Retroactivity

Non-Economic Issues:

1. Residency

In addition to the foregoing, the parties entered into several pre-hearing stipulations that are provided in relevant part⁵ below:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Employer and exclusive representative.

2. The parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring

⁵ The actual text of the stipulations can be found in FOP Book 1, Tab 1.

the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the Arbitrator has the authority to award wage increases and any other forms of compensation fully retroactive to May 1, 2008, May 1, 2009, and May 1, 2010 on all hours paid. Both parties waived any defense, claim, or right to challenge the arbitrator's authority to make the award retroactive.

4. The parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be secured by the Employer for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the parties.

5. The parties agreed that all tentative agreements would be incorporated into the Award.

6. The parties agreed that final offers would be simultaneously exchanged at the beginning of the hearing. Thereafter, such final offers could not be changed except by mutual agreement of the parties. The parties agreed that the Arbitrator would adopt either the final offer of the Union or Employer as to each of the two economic issues.

7. The parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. Additionally, the Arbitrator shall issue his award within sixty (60)

days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.⁶

IV. THE PARTIES' FINAL PROPOSALS

A. The Union's Final Proposal

Economic Issue #1 - Wages

The Union proposes the following wage increases:

Effective May 1, 2008:

- 3.25% across the board increase on all wage scales.
- 0.25% equity increase for all steps of less than 15 years for the Day Watch Patrol, Night Watch Patrol and Juvenile & Detective wage scales.
- \$500 across the board equity increase for all Sergeant wage scales.

Effective May 1, 2009:

- 3.00% across the board increase on all wage scales.
- 0.25% equity increase for all steps of less than 15 years for the Day Watch Patrol, Night Watch Patrol and Juvenile & Detective wage scales.
- \$500 across the board equity increase for all Sergeant wage scales.

Effective May 1, 2010:

- 3.00% across the board increases on all wage scales.
- 0.25% equity increase for all steps of less than 15 years for the Day Watch Patrol, Night Patrol, Night Watch Patrol and Juvenile & Detective wage scales.
- \$500 across the board equity increase for all Sergeant wage scales.

⁶Un. Ex. 1 contained in FOP Book 1, Tab 1.

Economic Issue #2 - Retroactivity

The Union proposes to maintain the *status quo*.⁷

Non-Economic Issue #1 - Residency

The Union proposes to include the following Section 16.05 language:

Due to the noted safety concerns for City police officers and their families, which increase proportionally with the officer's length of service, it is hereby determined that an exception to the City-wide residency requirement for all employees shall be made as follows:

As a condition of employment, all employees shall be required to reside within the corporate limits of the City of Belleville. All new employees shall have 15 months from their date of hire to comply with the residency requirement. Employees with eight (8) or more years of full time service as a police officer for the City shall be allowed to reside within St. Clair County. "Years of full time service" in the preceding sentence shall mean that period of seniority earned from an employee's actual date of hire with the City, or the date of hire with the City which has been adjusted by legal authority; whichever provides the greater number of years. Notwithstanding the foregoing, no employee shall be subjected to a more restrictive residency requirement than the restriction in place on their date of hire.

Any employee with less than 20 years of full time service as a police officer at the time he or she elects to reside outside the City limits, shall not be permitted to drive a City vehicle to and from work without the express written permission of the Police Chief with the approval of the

⁷ It is noted that the parties' current contract is silent as to who will be entitled to receive retroactive back pay as a result of this Award. The Union argues that this very issue was addressed and resolved by Arbitrator Herman Torosian in a grievance arbitration between these parties under the prior contract, and as such, the "*status quo*" urged in this interest arbitration is the interpretation of existing language is as set forth in Arbitrator Torosian's decision in that matter. See; Illinois Fraternal Order of Police Labor Council v. City of Belleville, (Torosian, February 2, 2002). The City of Belleville, though, failed to submit a last best offer on this economic issue. (See Employer Exhibit 1, Final Offers, on CD-ROM). It did however argue at hearing and in its post-hearing brief (see pp. 7-8) that this issue specifically concerns two former employees who left for employment elsewhere, and not two other employees who retired or the one employee who left on disability retirement.

Mayor. In addition, such officer shall not be eligible for any City employee discount for City services including but not limited to park and recreation facilities, library services, and YMCA memberships.

B. The City's Final Proposals

Economic Issue #1 - Wages

The City proposes the following wage adjustments and increases:

Effective May 1, 2008:

- 3.25% across the board increase for all wage scales.
- 1.00% equity increase for all steps of less than 15 years for the Day Watch Patrol, Night Watch Patrol and Juvenile & Detective wage scales.
- \$500 across the board equity increase for all Sergeant wage scales.

Effective May 1, 2009:

- 0.00% (zero percent) wage increase for all wage scales.
- \$500 across the board equity increase for all Sergeant wage scales.

Effective May 1, 2010:

- 2.50% across the board wage increase for all wage scales.

Economic Issue #2 - Retroactivity

As previously noted, the City presented no formal "last best offer" in pursuit of amending or adding to existing contract language governing the economic issue of who will (or will not) be entitled to retroactive back-pay as a result of this Award. The City argued its position that two police officers who left the employ of the City on a voluntary basis after the expiration of the parties' current contract should not be awarded retroactive pay. However, the City proffered no official proposal, final or otherwise, as to attendant changes in existing contract language that should be made to accommodate that argument.

Non-Economic Issue #1 - Residency

The City primarily proposes to maintain the *status quo*.

In the alternative, the City further proposes that if the Arbitrator finds that relaxing existing residency restrictions in whole or in part is appropriate, the following language should be added to Section 16.05 of the Agreement:

"Any employee with less than 20 years of full time service as a police officer at the time he or she elects to reside outside the City limits, shall not be permitted to drive a City vehicle to and from work without the express written permission of the Police Chief with the approval of the Mayor. In addition, such officer shall not be eligible for any City employee discount for City services including but not limited to park and recreation facilities, library services, and YMCA memberships. The 'non-resident officer' base pay for any employee with less than 20 years of full time service as a police officer at the time he or she elects to reside outside the City limits shall be 1.0% less than the 'resident officer' base pay for the period of time the employee resides outside the City. Should an employee move back into the City before retirement, he or she must reside in the City for at least two full years before the effective date of requirement in order for the employee to be paid at the 'resident officer' base rate of pay."

V. RELEVANT STATUTORY LANGUAGE

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

5 ILCS 315/14(g)

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

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

- (1) The lawful authority of the Employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

VI. EXTERNAL COMPARABLES

The parties are not in agreement with respect to externally comparable communities. On the whole, the City relies nearly exclusively upon Arbitrator Marvin Hill's 2002 opinion as set forth in a prior interest arbitration involving the City of Belleville and its firefighters. See Union Exhibit 11. In that decision, in relevant part, Arbitrator Hill concluded as follows:

As noted, the Administration submits that the most appropriate comparable communities are: Alton, Carbondale, Danville, Galesburg, Granite City, Pekin, Quincy, and Urbana. The Union's list contains Alton, Collinsville, East St. Louis and Granite City.

While not dispositive in the issue before me (hours of work), the Employer makes the better case with respect to comparables. Its proposed list of home rule communities south of Interstate 80 with population, area, EAV, budget and department size is more appropriate with its specific sampling than the limited labor market sampling of the Union's. Indeed, as argued by the Administration, five (5) communities not on the Union's list have equal or more "matches" than the Union's most evenly matched community.

The City submits that it is appropriate to review interest arbitration decisions which have included Belleville in the arbitrator's final list of comparable communities. In this regard, Arbitrator Milton Edelman in City of Granite City Firefighters Association, Local 253, S-MA-93-196 (1994) considered a stipulated list including the following: Alton, Belleville, Carbondale, Danville, DeKalb, Galesburg, Kankakee, Moline, Normal, Pekin, Quincy, and Urbana. Eleven of these communities are found on the City's comparable community list (excluding DeKalb and Kankakee) while only two of the thirteen are on the Union's list. Similarly, in City of Rock Island and Rock Island Firefighters, Local 26, S-MA-91-64 (1992), Arbitrator Herbert Berman accepted the Employer's list of Alton, Belleville, Danville, Galesburg, Granite City, Moline, Normal, Pekin, Quincy, and Urbana, as comparable to Rock Island. Only Carbondale and Champaign from the City's list were omitted in Rock Island, while only Alton and Granite City from the Union's list here were found appropriately included as comparable communities in that case.

All factors considered, I find the Administration's list as more appropriate than the Union's proposed benchmarks.

In the instant case, the City of Belleville once again proposes that the following municipalities be considered by the Arbitrator for purposes of external comparability under applicable statutory criteria: Alton, Carbondale, Danville, Galesburg, Granite City, Pekin, Quincy and Urbana. Its current contentions track Arbitrator Hill's analysis. It urges that its comparables are "several large municipalities south of interstate 80" that might fairly be considered "a local labor market" argument (see City's post-hearing brief, p. 1), but also a cluster of municipalities comparable in population, ERV, and the remaining factors commonly utilized to assess comparability. The City reasons the totality of the factors that should be considered, as well as Arbitrator Hill's above-quoted reasoning, fully support its comparability universe set out immediately above.

Conversely, the Union proposes that the municipalities of Alton, Collinsville, East St. Louis, Edwardsville, Fairview Heights, Granite City and O'Fallon are the only municipalities that should be considered the "group of external comparables." Distinguishing Arbitrator Hill's 2002 arbitration decision (Union Exhibit 11), the FOP stresses that other communities in the recognized "Metro-East" metropolitan statistical area is the Alton, Collinsville, East St. Louis, Edwardsville, Fairview Heights, Granite City and O'Fallon as most comparable to Belleville have gone to interest arbitration and there is "extensive arbitral authority that defines a proper

construction of external comparables to Belleville that spell out its appropriate comparability universe."

Indeed, says the FOP, Belleville has been both named and accepted in many decisions subsequent to Arbitrator Hill's 2002 decision, i.e., Alton, Collinsville, East St. Louis, Edwardsville, Fairview Heights, Granite City and O'Fallon as most comparable to Belleville as the "proper" externally comparable universe, the FOP submits.⁸ The critical factor is geography, it urges. Thus, the Union's list reflects the key idea that the "Metro-East" statistical area is the controlling labor market, the Union claims. The Union further strongly contends the reverse must also be true; that is, those communities not recognized as part of Metro-East statistical area also must be considered part of the relevant local labor market, I am told.

The Union further argues that "local labor market", while certainly a pre-eminent factor to be considered in this case, is not the only reason the Union's list of comparables should be adopted. In each and every "contact point" (analytical factor), the Union states, the City of Belleville "is at least within 50% of the average among its proposed comparables."⁹ These factors are "population, median home

⁸The "Metro-East" statistical area consists of St. Clair, Madison, Monroe, Clinton, Bond, Jersey, Calhoun and Macoupin counties, the Union avers. The conclusion of the specific municipalities located in these counties as comparables is reflected in the following: City of Alton and Policemen's Benevolent and Protective Association, Unit 14, ILRB Case No. S-MA-02-231 (Kossoff, 2003); City of East St. Louis and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-06-066 (Briggs, 2008). (U. Ex. 37 and 39).

⁹Union Ex. 10 and 11.

value, median household income, median family income, per capita income, number of housing units, and EAV (Equalized Assessed Valuation)."¹⁰

In response, the Employer maintains that the Union in the instant matter frames the issue almost exclusively on its "local labor market" argument. Arbitrator Hill in the cited City of Belleville, Firefighter's arbitration (Union Exhibit 11) rejected the local labor market as controlling. Arbitrator Hill found that the Employer's proposed comparables "more accurately reflected the Illinois Public Labor Relations Act's statutory requirements." (City brief, p. 2). The Union offered nothing of substance to counter the findings of Arbitrator Hill, the Employer reiterates. Thus, the whole comparability issue is smoke and mirrors, the City suggests.

While the Union's proposed comparables are perhaps geographically more closely aligned with Belleville, the City again concedes, but there are "many other factors which impact true comparability for statutory purposes in interest arbitrations," it stresses. That being said, the City then suggests that, "Rather than spend pages and pages arguing the pros and cons of each side's position, the City submits that both the Union's and the City's proposed comparables could all be put into one pool without any significant impact to the outcome of the issues before the Arbitrator. Here, however, the most important issues presented to the Arbitrator

¹⁰ Id.

are internal comparability and timing of collective bargaining in the comparable communities."¹¹

The City argues that internal comparability and not external comparability should be the main focus of the Arbitrator's assessment of the "last and best," final offers on wages, in large part because of the hard economic times (the "great recession," some have called it). See County of Boone and Illinois FOP Labor Council, Case No. 8-MA-08-025 (Benn, 2009) and State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-252 (Benn, 2009). Even if a traditional analysis of all statutory factors is applied in this case, unencumbered by an recognition of the change in economic conditions in late 2007 and early 2008, the Employer argues, the end result would be the same-- Management has carried the day in proving that its offer is consistent with the range of increases being granted in the Metro-East area for wage increases to police officers, as well as the wage increase percentages in Illinois for "employees performing similar services."

The FOP's use of the average increase, not use of a ranking of wages and total compensation, is naïve and unknowing at best, adds the Employer, and, at worst, an obvious manipulation of the published interest cases. Since the 2008 recession, the City argues, several interest arbitrators faced with pre-2008 external and internal comparables have adopted the idea of external comparability with jurisdictions which bargained during better economic times "should not

¹¹ Employer post-hearing brief at p. 2.

carry much weight." See citations immediately above. The place to look in both the internal and external comparative analysis of wages and benefits must be the contracts negotiated during the current recession, if external comparability even has significance now, the Employer avers, and not any labor contracts negotiated before the Spring of 2008.

Having examined the record thus far with particular respect to the statutory criterion of external comparability, the Arbitrator is persuaded that both the groups of external comparables are appropriate choices on the majority of fronts. On this, the Arbitrator is guided by Arbitrator Edwin Benn, who published certain useful guidelines in A Practical Approach to Selecting Comparable Communities in Interest Arbitrations Under the Illinois Public Labor Relations Act, Edwin Benn (1998), Chicago Kent College of Law Institute for Law and the Workplace, Vol. 15 Lead Articles, Issue 4.

Once again, how to construct the universe of external comparability has now been considered numerous times by the arbitrators working as interest arbitrators under the Act. While there are permissible variations, the ground rules are recognized and ascertainable, I stress.

In relevant and helpful part, Arbitrator Benn advised as follows:

From a practical standpoint, the determination of whether two communities are "comparable" is important and most difficult. First, the Act does not define "comparable communities." There is no legislative history concerning what the drafters intended when they used that phrase. Nor is there any judicial guidance. Arbitrators are therefore left to their own devices to discern how to determine comparability.

Second, the notion that two communities can be truly "comparable" may not be realistic. As I observed in my award in Village of Streamwood; "It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a "true 'comparable' is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards 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."

... This article offers one arbitrator's thoughts on a practical and reasonable method for making these difficult comparability determinations.

To begin the analysis, the parties' lists of comparables are first examined to determine if there are communities over which the parties are not in dispute.. If a contested community has sufficient contacts in terms of the identified factors with the range of agreed upon comparables, then it is reasonable to conclude that the contested community is also comparable to the community subject to the interest arbitration. Conversely, if the contested community does not have sufficient contacts with the agreed upon range of comparable communities, then it is reasonable to conclude that the contested community is not comparable. (Emphasis added).

Obviously, the question here is, "How is Arbitrator Benn's instruction" useful when the parties have proposed comparables based on "local employment market" (the Union) or on similarities of size, EAV, location south of Interstate Route 80 etc., plus use in the current negotiations (the Employer)? In this case, the solution is a relatively simple one. Once again, I acknowledge that accurate comparables are "the traditional yardstick for looking at what others

[in the relevant marketplace] are getting and that in turn is of crucial significance in determining each parties' respective final offers. . . ." However, "[t]he particular facts must always be reviewed, in the appropriate context." Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35. That is the critical point--context is everything, in my opinion.

Moreover, in my view, what can be drawn from Arbitrator Benn's logic in this particular case is the reality that no two proposed "comparables" can be truly comparable (identical) in each and every way. Indeed, Benn observed that, "The notion that two municipalities [or proposed comparable groups] can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn, tilts more towards hope than reality." Thus, for better or worse, as Arbitrator Benn notes, it is up to me to decide (on the basis of proffered proofs) which, if any, of the proposed comparables has a sufficient number of "useful contacts" with the parties in this case so as to render them substantively similar for purposes of statutory comparison under the Act.

Again, it is well-settled that in normal times, relative standing among externally comparable employee groups, particularly with respect to wages, is a major statutory criterion in interest arbitrations under the applicable statutes. In the instant case, though, the City expended little effort specifically defending its list of proposed external comparables because it is willing to assume, arguendo, that the external comparables should make little real

difference in this case. It argues that the extreme change in economic conditions since early 2008 overrides the usual significance of external comparables and supports its action in calling for a wage freeze on the specifics of the City of Belleville's economic circumstances, I note.

However, the Employer does attempt to utilize some comparisons to external comparables, too, I also recognize. For example, the Employer places emphasis on the fact the City of Belleville is the largest in population among the Union's proposed comparables at 39% above the average. The Employer also strongly argues that the Union's group of "comparable communities" for wages and benefits paid to employees doing similar work is significantly skewed by the fact that the majority of the Metro-East grouping have experienced rapid growth recently, while the City of Belleville has remained static in its population. (U. Exs. 30-32).

To the City, those last factors, when coupled with the struggling economy in general, and Belleville in particular, must result in the conclusion that the timing of collective bargaining, a factor undisclosed on this record, and internal comparability must make the 14(h)(4) external comparability immaterial to the current case. Consequently, the Employer argues that "the Union's and the City's proposed comparables would all be put in one pool without any significant impact on the outcome of the issues before the Arbitrator," (City post-hearing brief, p. 2).

I understand that the thrust of the Employer's argument is that the economy is in shambles. It argues that the City of Belleville, as

all other governmental units, is in serious financial straits and face enormous deficits. In making this argument, this Employer relies upon several recent arbitration awards issued in 2008 and 2009. Typical is an interest arbitration award, issued by Arbitrator Edwin Benn on January 27, 2009. Arbitrator Benn's arbitration involved the State of Illinois and Teamsters Local 726, as representative of a bargaining unit of 266 Master Sergeants in the Illinois State Police force (Case No. S-MA-08-262), and articulates the best reasoning concerning interest arbitration practices in these tough times..

Arbitrator Benn in State of Illinois, supra, devoted a substantial portion of his analysis to the "economic free-fall" which occurred during the pendency of his case. He noted the "worst unemployment rates in Illinois since June, 1993. . .;" the cost of gasoline; that "the news keeps getting worse;" and so on and so forth. Benn even drew attention to massive layoffs at Home Depot, Caterpillar, Sprint, Nextel and Texas Instruments. See also my decision in Metropolitan Alliance of Police, Chapter 471 and Forest District of DuPage County, FMCS Case No. 091103-0042-A issued on December 10, 2009, at pp. 32-34 where I cited with approval some aspects of Arbitrator Benn's above-noted interest arbitration decision and Benn's later decision in County of Boone and Illinois FOP Labor Council, supra, Case No. S-MA-8-025 (March 23, 2009).

The result of the Employer's pooling of the comparables has put this Interest Arbitrator in something of a quandary. The Employer speaks of the overall pool, then made no use of that large pool in analyzing the data on wages, I find. An integral part of the process

of making a comparison in "comparable communities" under the rubric of Section 14(h)(4) of the Act is to compare "apples to apples" as much as possible, these parties certainly know. The Employer attempted to provide the Arbitrator with a detailed analysis of both parties' proposals as compared to wages and increases secured by external bargaining units it contends are comparable to the Belleville police unit.

The City thus submitted an extensive spreadsheet of wage data on CD-ROM, which tried to compare the City of Belleville with similarly situated bargaining units in communities it proposes are internally comparable pursuant to Arbitrator Hill's analysis referenced above. However, in my judgment, the Employer's data was not summarized in such a way as to facilitate clear recognition of where Belleville police officers actually rank among the City's proposed external comparables communities at the present time, and with each passing year of the new contract, as to wages, I find.

On the other hand, the Union's comparisons are only to its universe of comparables, plus the City's grouping, following Arbitrator Hill. It, too, did not evaluate the entire pool, and it used only comparable averages, not rankings of the specific comparable communities, I find. Frankly, the lack of congruence between the parties' final and best offers for the overall or combined pool is not surprising. It is not unusual in interest arbitration for parties to choose for comparison purposes those communities supportive of their respective positions.

Certainly, that appears to be the case in this current arbitration, with respect to the main economic issue of the wages of the patrol officers and sergeants in this bargaining unit. In essence, the broader universe of all the proposed comparables would be the best choice, but the parties' evidence only makes use of the two separate proposed groups of comparables. The parties' arguments on the Union's claim for a need for "catch-up" will be assessed using the two discrete groups of comparables, I thus rule.

VII. INTERNAL COMPARABLES

In support of wage freezes in the second year of this instant contract, the City submitted five new Collective Bargaining Agreements which it contends sustain its wage offer in this case on the basis of internal comparability. Specifically, the City claimed that the following new internal contracts favor its final wage proposal with police officers represented by the Union in this case:

1. Belleville Public Library Fund and American Federation of State, County and Municipal Employees, Local 1765 (effective May 1, 2009 through April 30, 2012).
2. City of Belleville and International Union of Operating Engineers, Local 148 (effective May 1, 2009 through April 30, 2012).
3. City of Belleville and Laborers International Union of North America, Local 459 (effective May 1, 2009 through April 30, 2012).
4. City of Belleville and Teamsters, Petroleum and allied Trades Local 50 - Clerical Employees (effective May 1, 2009 through April 30, 2012).
5. City of Belleville and Teamsters, Petroleum and Allied Trades Local 50 - Parks & Recreation Maintenance Workers (effective May 1, 2009 through April 30, 2012).

Reflecting the terms of each of the above contracts, the City contends, the record establishes that at least five other unions other than the FOP have accepted wage freezes effective May 1, 2009. Such a freeze is just as the Employer proposes here, Management maintains. Importantly, however, the Union argues, the record also demonstrates that those bargaining units "received something for it," and that "something" was paid health insurance premiums. The City's final offer for this bargaining unit, the Union stresses, does not include full payment of employee health insurance premiums. This difference is of critical significance to the proper resolution of this case, I am told by the FOP.

Thus, the Union argued, while the City argued that "internal comparability should be the "lead factor of consideration by the Arbitrator in this case," it offered this bargaining unit "worse" than what was extended to its own internal comparables. In other words, the Union asserts, the City urges a wage freeze in 2009 for police officers without the *quid pro quo* offered the other unions in the form of paid health insurance premiums. This clear inequity, the Union observes, makes the City's reliance on internal comparability an "apples to oranges" argument, and consequently should be rejected by me out of hand.

VIII. OTHER FINANCIAL CONSIDERATIONS

The City argued that there are other "financial considerations" which must be taken into account in these present times. As of the date of the hearing in this case, according to the City's evidence, approximately seven months into the relevant fiscal year, utility

taxes were at 42% of budget; state income taxes were at 44%; sales taxes 50%; telecommunications taxes 48%; and total revenues were at 44% of budget. Total expenses, on the other hand, were at 53% of budget.¹² The obvious conclusion here, is that expenditures are exceeding revenues in terms of relative rate, says this Employer. Though there is evidence that the City experienced strong growth through 2007-08 during the time the firefighters' Collective Bargaining Agreement was negotiated, the City explained, the City's sales tax declined by 8% the following year. Sales tax revenues have continued to decline since, the City further states.

Similarly, the City argued, there is reason to believe that sales tax revenues will stay on a downward trend in the future. In support, the City explained that a local auto dealer was forced to close its doors in early 2010 as a result of the present crisis in the auto industry. That dealership alone, the City explained, generated annual sales tax revenues of \$400,000.00. While there is evidence in this record that the auto dealership in question was subsequently successful in reinstating the franchise, there is no real disputing the fact that resulting sales tax revenues will not be realized during the lifetime of this contract.

Furthermore, the City explained, a second auto dealer recently lost a product line representing approximately 20% of its annual sales. Local building permits are down 32%, and the City's income tax revenue is tracking approximately \$1,000,000.00 below budget

¹² Er. Ex. 2, pages 1, 2, and 20 of the Budget Comparison Analysis dated November 23, 2009.

expectations, the City argued. Other revenues are down as well, the City submitted, and nationally, the news is no better. In October, 2008, the City noted, it was announced that fifty million Social Security recipients would not receive benefit increases in 2010. This, the City argued, is likely due to the very small .1% CPI-U increase in 2008. On average, the City explained, the average CPI-U nationally from 1991 through mid-2009 was 2.3%. Thus, the City argued, the Employer's more conservative wage proposal is supported by the present economic reality.

In the parties' predecessor or expired Labor Agreement (the "current Agreement"), the City noted, wage increases effective May 1 of each year were 3% across the board. This preceding contract also provided for wage increases even more favorable than that in terms of the average COI-U index of 2.3%. Now, the City notes, in the face of the worst recession in decades, the Union proposes greater increases in wages than the bargaining unit received in the last three years when the City was experiencing more favorable economic times. This, the City submits, is unreasonable.

In response, the FOP notes that among the factors set forth in Section 14 of the Illinois Public Labor Relations Act ("Act") some are more relevant in some cases than in others. See, generally, Nathan, "Arbitral Standards for Deciding Non-Economic Impasse Issues," 21 Illinois Public Employee Relations Report No. 1 (2004). In the present case, the traditional economic factor of "ability to pay" (Section 14(h)(3) of the Act) is not significant because the City has

not established any inability to pay, based on the record evidence in this case.

The Union also stresses that, essentially, the City is claiming that they cannot afford the Union's Final Offers. As far as an inability to pay goes, it is generally recognized that the ability to pay component of Section 14 is an Employer shield to an otherwise appropriate pay increase, supported by the comparables and cost of living, but simply beyond the jurisdiction's means to pay. Should the Arbitrator determine that the City has an ability to pay, the Arbitrator must grant the most appropriate pay increase, it adds. The most appropriate pay increase is clearly the FOP's final offer, submits the FOP.

The Union discounts the City claim that it is seeking "zero" in the second year because the income tax and sales tax receipts are down and the City relied on those sources of revenue heavily.¹³ According to figures presented by the City, sales tax receipts as of November 23, 2009 were \$1,974,003.30.¹⁴ November 23, 2009 was almost 7 months into the fiscal year. In Fiscal Year 2009, the City took in \$6,959,551 in sales tax.¹⁵ However, the sales tax receipt contained in the audits are a combination of sales tax and home rule tax receipts.¹⁶ The Home Rule tax receipts as of November 23, 2009 were \$1,200,000.¹⁷

¹³ Tr. 50; pp. 17-18.

¹⁴ City of Belleville Budget Comparison Analysis, p. 1, line 01-00-34500.

¹⁵ FOP, Book 2, Tab 58.

¹⁶ Tr. 66, p. 17 through Tr. 67, p. 1.

¹⁷ City of Belleville Budget Comparison Analysis, p. 1, Line 01-00-34900.

So as of November 23, 2009 the total sales tax receipts were \$3,174,003.30. This figure does not include any sales tax that will come in from the holiday season.

A thorough examination of the Budget Comparison Analysis shows that there are no property taxes levied for the general fund, the FOP concludes.¹⁸ This is a political choice made by the City, it suggests. There is another revenue source available to the City, says the FOP.¹⁹ The City chooses not to utilize it. While the FOP certainly understands that choice, the City cannot place the burden of that choice solely on its employees, the FOP also argues.

The City's "evidence" is clearly not sufficient to establish a genuine inability to pay, the FOP further contends. The City only provided the Arbitrator with unaudited financial information, the FOP thus is quick to point out.

The Audited Financial Statements show a different story, reasons the FOP. As of April 30, 2009 the ending general fund balance was \$2,864,695.²⁰ In 2003, the ending Fund Balance was \$2,370,757; a \$493,938 increase.²¹ In 2009, the City's revenue stream was \$21,709,015 (a \$4,112,106 increase).²² 2009 expenditures amounted to

¹⁸ See, City of Belleville Budget Comparison Analysis, pp. 1 and 2. See also FOP Book 2, Tab 61.

¹⁹ See, FOP Book 2, Tab 62 and Tab 63.

²⁰ See, FOP Book 2, Tab 55.

²¹ Id.

²² Id.

\$23,169,272.²³ Since 2003, expenditures have increased only \$3,091,971 (a net difference of \$1,020,135). Despite the fact that the Employer has argued the fact that expenditures exceeded revenue in 2009 and that money had to be transferred into the general fund, the simple fact is that this City has consistently transferred money into the general fund since 2003.²⁴ Thus, there is nothing new in that being necessary, it argues.

Additionally, says the Union, expenditures exceeded revenue in the City of Belleville in 2003, 2004, 2006, 2007 and 2008 as well.²⁵ In each of those years the Police Officers received salary increases, the FOP goes on to say.²⁶ In sum, asserts the FOP, the City has \$2,781,900 in cash and investments.²⁷ In 2008, the City had had \$2,603,984 in cash and investments.²⁸ Given the economic times, the FOP applauds the City for not losing cash and investments when so many others were, but that \$2,781,900 is liquid, it notes. It is obvious that the City could liquefy and pay off current debt with if they had

²³ Id.

²⁴ Id.

²⁵ FOP, Book 2, Tab 55 and 60. Figures for 2005 were not made available to the FOP and therefore an analysis of those figures could not be done.

²⁶ FOP, Book 2, Tab 60.

²⁷ FOP, Book 2, Tab 57.

²⁸ Id.

to do so, the FOP opines. Their current liabilities are only \$1,207,790. The City can pay off its debt twice over, it suggests.²⁹

Ultimately what would be helpful in analyzing the City's Fiscal condition would be a discussion and analysis by the City of its budget using accepted accounting principles, the Union maintains. Several years ago the Governmental Accounting Standards Board (GASB) issued Statement No. 34.³⁰ GASB's mission is to:

establish and improve standards of state and local governmental accounting and financial reporting that will result in useful information for users of financial reports and guides and educate the public, including issuers, auditors, and users of those financial reports.³¹

Statement No. 34 was effective for government audits of fiscal years ending after June 15, 2003 for governments with a total annual revenue of \$10 million or more but less than \$100 million.³²

The Statement was developed to make annual reports easier to understand and more useful to the people who use governmental financial information to make decisions (or who may do so in the future); legislators, their staff, and others who provide resources to governments; and citizens groups and in the public interest. [Emphasis added]

Yet there is no Management discussion and analysis in any of the City's audits, the FOP notes. This leaves us only the number themselves. From these, the FOP claims that the City is certainly not

²⁹ Id.

³⁰ See, Overview Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements--and Management's Discussion and Analysis--for State and Local Governments. <http://www.gasb.org/repmode/oview34.pdf>.

³¹ <http://www.gasb.org>.

³² Overview: Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements--and Management's Discussion and Analysis--for State and Local Governments, p. 3.

in dire straits. The General Fund is in the black.³³ The liquidity ratio of the General Fund in Belleville is 2: it can meet its obligations, the FOP stresses.³⁴

There is no ability to pay defense to the appropriate pay increases sought by the FOP, the Union concludes. At best the City may have difficulty paying. However, a difficulty paying does not rise to the level of an inability to pay.³⁵ The City's fiscal condition is healthy. The City has the ability to pay. What it lacks is the desire, the FOP finally suggests.

IX. DISCUSSION AND FINDINGS

A. Economic Issue No. 1 - Wages

In a nutshell, the two wage proposals before the Arbitrator differ in one particularly crucial way: the City proposes an across the board wage freeze in the second year of the contract, while the Union proposes a 3% increase.

On inspection, the Union's proposal is not quite as favorable as the City's in the first year of the contract, in that the Employer offers a 3.25% wage increase across the board along with a 1% equity increase for all officers with fewer than 15 years of service. The City's offer also includes a \$500 rank equity increase for sergeants. In the first year of the contract, the Union, on the other hand,

³³ FOP Book 2, Tab 21.

³⁴ FOP Book 1, Exhibit 25. See also Government Accounting Standards Board website for an explanation of liquidity ratios. http://www.gasb.org/users/eca_part_iii.ppt

³⁵ See, City of Lebanon and the Illinois Fraternal Order of Police Labor Council, S-MA-08-137 (Arbitrator James Murphy, September 8, 2009).

proposes an identical increase of 3.25% across the board, and a smaller .25% equity increase for officers with fewer than 15 years of service. The Union also proposes an identical \$500 rank differential for sergeants.

It is also important to note that the City's proposal overall is loaded on the front end. In year two, there is a divergence between the two offers, i.e., what is really the substantive issue in this case, the City's offer indeed again is a wage freeze. That freeze is apparently based on the idea that a cautious and practical way to approach negotiations and interest arbitration in these uncertain and changing times is for the parties to "freeze wage increases," as was done with the internal comparables cited by this Employer, to give needed breathing space to the Employer. The parties can then assess the situation as the economy changes rather than project years out in the future with fixed obligations beyond the revenue and income of the City of Belleville, the City says.

To some extent, the City's argument on this point overlaps internal comparability, because any assessment of the propriety or reasonableness of the City's year two wage freeze offer has meaning only in the context of the bargaining history and negotiations with all the City's represented work force, it insists. "Economic free-fall" and inability to pay are really tied to the wage freeze too, because all factors are tied to "the interests and welfare of the public," the Employer urges. See Section 14(h)(3).

For the second year of the contract, the Union proposes the aforementioned 3.0% across the board wage increase, along with another

.25 equity increase for officers with fewer than 15 years of service. The Union also proposes an additional \$500 equity increase for sergeants. In contrast, the Employer proposes no wage increase except for an additional \$500 rank differential for sergeants.

In year three of the contract, the Union proposes wage increases identical to those it submitted for year two of the contract. In contrast, the Employer offers a straight 2.5% across the board wage increase, with no additional equity increases for sergeants or for employees with fewer than 15 years of service.

The City's arguments in support of its wage proposal are short and to the point. First, the City submits, the Employer's proposal immediately accomplishes the needed 1% "catch up" for police officers with fewer than fifteen years of service, and further provides for a 3.25% increase effective May 1, 2008 across the board. This offer, the City argues, will favorably impact a majority of this bargaining unit. Moreover, the City argues, the additional \$1000.00 increase in sergeant's pay over the life of the contract also addresses an area in which the City's salary structure is low compared to its external comparables. Also important, the City argues, is the fact that it incorporates an appropriate rank differential as also provided in the City's most recent firefighter contract. Neither party's proposal, the City submits, significantly changes the City's overall compensation ranking as compared to other municipalities.

Hence, the City reasons, this is not a case about which party's offer is more appropriate given a set of comparable communities with contracts negotiated in similar economic times. Rather, the City

submits, "The real issue is which of the proposals given the current economic realities, internal comps and the variances in timing of negotiated contracts, internally as well as externally, is most appropriate."

Importantly, the City also contends, it cannot afford to mirror the internal comparables of the firefighter and police clerical contracts' overall increases negotiated in 2007. The City cannot now add money to the lower steps of the patrol officer salary schedule and address the sergeant rank differential and give a pay increase in year two, also, without reducing services and employees. Accordingly, the Employer urges the Arbitrator to adopt the wage proposal as presented by the City as its last best offer.

The FOP's arguments are more detailed and place much more reliance on external comparability. To this Union, over the course of the three-year contract, it argues, Belleville police officers "will fall further behind the average of proposed externally comparable bargaining units than they were at the expiration of the existing contract." In point of fact, the Union argues, the City's final wage offer over the course of the contract would precipitate a 2.25% to 5.0% loss from the comparable average.³⁶

The Union further asserts that the City's CPI-U data is faulty and also erroneously applied in this case, noting in particular that it fails to take into account the relative effect of inflation on the buying power of a dollar. Looking at current bargaining unit wages

³⁶ Tables 9 and 10, Union brief at page 20. See also; U. Ex. 45, 47, 50, and 52.

relative to changes in the purchasing power of a dollar since the last increase, the Union reasons, it is clear that an immediate wage increase of 3.81%, just to keep up with documented increases in the present cost of living, is warranted. Thus, the Union maintains, the City's offer of 3.25% over the first two years of the contract falls far short of the mark and should be rejected.

Since neither external comparability nor cost of living data supports the City's final wage proposal, the FOP further suggests, there is nothing in this record, including the City's alleged unfavorable "fiscal condition" contention, which supports rejection of the Union's final wage offer. The Union goes on to exhaustively explore what it believes is the City's overall positive financial position with respect to cash on hand, cash flow, investments, and sales and Home Rule tax receipts, as set out above.

Based on this analysis, the Union concludes that the City is "liquid," despite Management's claims that expenditures are consistently exceeding budgeted revenues at the present time. In other words, the Union avers, there is no legitimate inability to pay defense against the "appropriate pay increases sought by the FOP."³⁷ The Employer's reliance on Section 14(h)(3), the financial ability to pay factor, in point of fact rests on the phrase in that standard to the effect that "the interests and welfare of the public" must be considered by an interest arbitrator.

³⁷ Union brief at page 24

Yet there are no compelling reasons established on this record for this Arbitrator to see this case as one where I must look only to the essentially political issue of the interests and welfare of the citizens of Belleville, as I see it. I am reminded by the Union that Section 14(h)(3) has been properly characterized as a "shield to protect the fiscal integrity of a municipality," not a sword to overcome all other statutory factors when the economy takes a downturn. In this specific case, the Employer seeks to spread the nonsense that there is an inability to pay the Union's final offer in wages, when the facts of record completely belie this argument, the Union concludes.

At worst, the Union goes on to concede, the City may have difficulty paying for needed increases for its police force, but this fact simply does not rise to the level of an inability to pay,³⁸ it stresses. Indeed, says the FOP, the City's fiscal condition is healthy, overall, the above-explained financial data reveals. This Employer has the ability to pay wage increases proposed by the bargaining unit under the applicable statutory criteria, it concludes. What the City lacks, the Union submits, is the desire to do so.

For that and all the foregoing reasons, then, the Union urges the Arbitrator to accept (and thus adopt) its final wage proposal as reasonable and fully supported by the record.

For reasons which follow, I am persuaded by the City that the Union's final wage proposal is not, overall, the more reasonable of

³⁸ See; City of Lebanon and the Illinois Fraternal Order of Police Labor Council, S-MA-08-137 (Murphy, 2009).

the two "last best" offers. Clearly, the Union relies primarily on wages paid to similarly situated law enforcement personnel employed in proposed externally comparable jurisdictions within the instant labor market. While the City has, as previously noted, proffered a different list of external comparables, there are two communities (Alton and Granite City) in common on both lists, but their police contracts were negotiated and signed during more favorable economic times, I find. Alton police officers reached final agreement with the City of Alton on June 4, 2008 for a Collective Bargaining Agreement effective April 1, 2007 to March 31, 2010.³⁹ Granite City police reached final agreement with the City of Granite City on December 18, 2007 for a Collective Bargaining Agreement effective May 1, 2007 to April 30, 2010.⁴⁰

Even with that said, I find that Belleville police officers and sergeants do not fare particularly negatively as compared with Alton and Granite City police under the City's proposed increase for 2008, which loads the front end of the contract with equity increases for bargaining unit members with fewer than 15 years of service and also includes a rank differential for sergeants. The comparative analysis provided by the Union indicates that Belleville police officers are presently only behind their counterparts in Alton and Granite City if they have fewer than 15 years of service. Accordingly, I note, the City of Belleville's final offer for the first year of the contract

³⁹ U. Ex. 76.

⁴⁰ Union Exhibit 82.

duly incorporates a necessary 1% "catch-up" increase for this particular group of employees.

It must also be said that, while the City of Belleville may lag slightly behind some of the other externally comparable communities proposed by the Union, it is certainly not the case with all of them. Also important is the fact that neither party saw fit to rank the City's relative standing among its external comparables for each year, I again note. In analyzing both three-year wage packages in the context of the Union's proposed comparables, including Alton and Granite City which also appear on the City's list of proposed comparables, the Union's evidence demonstrates that in the first year of this contract, 2008, the two proposals do not differ significantly in terms of variance from the comparable average across the board, I stress. That is of some real significance, I conclude.

In 2009, that, of course, changes in light of the City's proposed wage freeze as compared with the Union's proposed wage increase of 3.25% across the board. Predictably, too, that relative variance continues into 2009 with the City's proposed across the board increase of 2.5% as compared with the Union's proposed 3.0% increase. Nevertheless, even at their worst, both parties' respective offers, in total, keep the City of Belleville well within 10% of the average among the externally comparable communities proposed by the Union, I hold.⁴¹

⁴¹ Union Ex. 46, 47, 48.

Turning to the other statutory factors, I again emphasize that not all of these standards are equally important in every case. In this case, as the City has argued, consideration of other statutory criteria is important in determining which of the two proposals is more reasonable, and internal comparability is particularly relevant. An arbitrator, in evaluating compensation, must consider not only external comparability, but where the parties have been (bargaining history) and what is a reasonable adjustment in compensation in light of internal comparability, not just the external universe, I find.

The real sticking point in this contract, as I see it, is the fact that the City proposes no increase at all in the contract year of 2009. This is principally consistent with contracts already in place with a number of the City's other collective bargaining entities, though the Union expressly rejects the notion of true internal comparability on information that the City also agreed in at least some of those cases to pay employee health insurance premiums. Obviously, the Union asserts, this was *quid pro quo* for zero wage increases in 2009, where no such *quid pro quo* was offered to police officers.

On this question however there are two essential truths which, I find, represent the nub of the wage dispute before me. First, for the Union's position with respect to a manifest lack of authentic internal comparability to prevail, there must be reliable evidence in this record that the City actually offered to pay employee health insurance premiums in other bargaining units in express response to its proposal to the other unit to accept "zero percent" wage increases in 2009. I

stress that there is no direct evidence of the bargaining history of the internal comparables, only the end result--the Collective Bargaining Agreements entered into evidence.

I understand that an additional factor in an assessment of the overall compensation received by the employees under consideration (Section 14(h)(6)). To some extent this overlaps comparability because any assessment has meaning only in terms of what other employees are receiving. This Arbitrator interprets subsection 6 of the standards as an assessment of bargaining history, the experience of these parties in achieving the present wage and benefit structure. The assessment of compensation is a reference to what the parties have negotiated, under what circumstances and over what time period. The Arbitrator in evaluating total compensation, aside from comparability, must consider where the parties have been and what is a reasonable adjustment, if any, in that total compensation. What is not mandated by Section 14(h)(6), though, is my guessing about bargaining history of other groups of employees, or the precise deals cut, based on a comparison of overall compensation comparability, I hold.

Obviously, there is a direct correlation between take-home pay and employee-paid health insurance premiums, and that is what the Union presumably relies on here as proof positive of a genuine *quid pro quo*. However, as anyone who has engaged in this process knows, open issues of an economic nature are handled in literally countless ways. Thus, for the Union to promulgate what is essentially a "disparate treatment" argument where health insurance premiums are concerned, there must be proof that this is really so.

In this record, there is no bargaining history representative of what occurred between the City and the other units with respect to resolution of outstanding economic issues, I reiterate. Moreover, nothing in this record establishes that the other unionized groups in Belleville have identical overall compensation as to all health and welfare and pension programs, for example. Perhaps they do and perhaps they do not. Nevertheless, for the Union to prevail in its quest to exclude internally comparable wage offers because of the health insurance issue, there must be proof of a true *quid pro quo* that was not offered to the FOP under these similar circumstances, I rule. That is really a central finding in this case, I stress.

Even then, it does not automatically stand that the Union would win on this point, given my statutory obligation in this forum, and here is where the second "truth" must be stated. Interest arbitrators are essentially obligated to attempt to replicate the results of arm's length bargaining between the parties and to do no more. See Arbitrator Nathan's discussion of the nature of the interest arbitration process in Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, pp. 51-52 (1988). I have routinely accepted those principles over the years. See my decisions in City of Burbank and Illinois Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Association Unit 54 and City of Elgin, ISLRB Case No. 8-MA-00-102 (2002) at pp. 95-97.

This neutral accordingly finds that much of the Union's reliance on the City's alleged fiscal liquidity is factually irrelevant to the

resolution of this dispute. The issue is not a straight inability to pay contention by the City; it is much more, I realize. See the cited awards by Arbitrator Benn relied on by the City so strongly in this case. Despite these citations, I am unwilling to accept the premise that all statutory factors set out in Section 14(h) go by the wayside, because these are bad times. All factors must still be considered, because that is my job, I point out. The context of the discussion may have changed because times are hard. 3% to 4% increases each year are no longer common, as I understand it from my review of the published police and fire wage increase data. The rules of the game and the frame of analysis have not changed, in my view, and that makes the parties' posture in this case difficult, I frankly state.

As noted above, this Arbitrator is not authorized to interject himself into what are political questions of overall allocation of resources, and/or potential supplies of revenue. I cannot order the City to raise taxes, though in fact there is some evidence that this has already "reluctantly" been done in response to budget shortfalls. This is simply not the function of an interest arbitration panel, as I understand it. Instead, economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer, I emphasize. Thus, while the Union asserts that the City is wrong in lacking a "desire" to allocate funds in a manner more favorable to its particular economic interests here, it is not within my statutory obligation, or jurisdiction for that matter, to direct the City otherwise, I would finally suggest.

Important too, once again, I find, is the fact that other interest arbitrators have, in recent months, rightly recognized the volatile nature of the present economic landscape and its impact on the tenor of collective bargaining over economic issues in particular. Indeed, doing otherwise would manifestly ignore the specific context in which earlier bargaining and impasse occurred in the first place. Since we as interest arbitrators are constrained to award last best offers on economic issues which most closely align with what successful negotiations might have produced, context simply cannot be ignored no matter what the discrete statutory criteria reveal, I also realize.

As I have done so often before in this setting, I yet again still note that *accurate* comparability is indeed the "traditional yardstick" used in measuring the viability of last best offers, in that the relevant marketplace is closely examined for purposes of comparing what other similarly situated employee groups are receiving from their respective (and ostensibly analogous) Employers. However, the particular facts must always be reviewed in their appropriate context. (Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35). That is the critical point here--context is everything, in my opinion.

Additionally, the "cost of living" as measured by the U.S. Department of Labor's Consumer Price Index is a relevant factor (Section 14(h)(5)). The CPI is not a precise measurement of what particular employees are paying to live, but is a gauge of relative changes of an artificial benchmark. It is a measure of inflation (or

deflation) and establishes a context for the need to change terms and conditions of employment.

The CPI favors the Employer's argument that its wage offer is the more reasonable under these specific circumstances, I hold. There is no pressing need for wages to be raised to counteract inflation, in my judgment. "Constant dollars" are important construct for fair comparisons of the impact of fluctuations in the CPI, as the Union has argued. But still, strictly speaking, the Union attempts to use those constant dollars to make external comparability analysis fair and realistic. The problem is the CPI standard is not designed for that purpose, but to see how these particular bargaining unit employees fare in terms of their specific buying power. The failure of the Union to show any evidence that these patrol officers and sergeants are paid measurably less than at the start of the existing labor contract, or over the course of its terms, in constant dollars, results in the CPI benchmark establishing stability in buying power, not decline, I hold.

What the City proposes in the obvious alternative, is to front-load the contract with a 3.25% wage increase for 2008 (which is exactly what the Union seeks in that year), and also add a 1% "catch up" increase for police officers with fewer than 15 years of service (which exceeds what the Union has proposed). Rather than suggesting a wage reopener in the subsequent two years of the contract, the City then proposes to essentially freeze wages in the contract's second year (in opposition to the Union's bid for an additional 3.0% across

the board increase) in direct response to fiscal hardship which it cited as its motivation here. The real question is "so what?".

I want to be very careful in placing limitations on what I am saying in the instant case. I emphasize that I have carefully analyzed the evidence on external comparability contained in this record. I have not woodenly said that because the overall economic situation is difficult, or the City of Belleville feels that heat, external comparability is of critical significance, in my view. There is however nothing in this award that establishes that "external comparability" automatically equates with a knee-jerk rejection or acceptance of a wage freeze in a specific wage proposal, especially when the "freeze" involves one year of a three-year contract. That is the core of this case, I hold.

As noted, Management's proposal is "front-end loaded." The freeze then is for 2009, the facts show. As for 2010, the City's wage proposal lags behind that of the Union by one-half of one percent, and even then, Belleville police officers, cumulatively, stay well within 10% of the average among the Union's proposed external comparables without ever taking into account the full 1% "catch up" increase offered by the City for 2008.⁴² The Union therefore has failed to prove that a wage comparison with the external comparables shows these bargaining unit employees will be paid measurably less than other persons in these comparable municipalities doing the same work, even with the wage freeze. This determination that external comparability

⁴²U. Ex. 48.

does not demand "catch-up" here is the critical finding of fact to contradict the Union's arguments, not the generalized "economic woes" relied upon by the City, I find.

On the other hand, the internal comparables and Section 14(h)(3) and its "general interest and welfare" standard do permit the import of overall economic considerations, at least to the extent that this Employer, as a public entity, is entitled to consider getting the most "bang" for its "taxpayer buck." The City has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends. In this case, the statutory factors by which I am guided do not favor the Union's last and best final wage offer as the most appropriate, I therefore am finally convinced, based on my careful review of all these factors.

In sum, then, as the Employer has suggested, this is not a case where the wage issue exclusively centers on which party's offer is more appropriate given a set of comparable communities with labor contracts negotiated in similar economic times. Rather, the real issue is more complex, as I see it. The timing of the negotiation of the majority of the "comparable labor contracts" is not clear--whether pre or post recession, I stress. The internal comparables since the Spring of 2008 have included a 2009 wage freeze, uniformly. The internal "comps" where no such freeze was negotiated by the fire and police clerical units were before this "great recession," I note. The City in its current offer to the patrol offices and sergeants adds money to the lower steps of the patrol officer salary schedule. In

addition, the sergeant rank differential is addressed with added dollars, too.

Based on all these considerations, I hold that the City's wages offer is most reasonable and I adopt it for the pay increases for 2008, 2009, and 2010.

B. Economic Issue No. 2 - Retroactivity

The economic issue of "Retroactivity" relates solely to whether or not former bargaining unit members who left the employ of the City voluntarily during the period when retroactivity applies are entitled to such retroactive back-pay as a result of this interest arbitration. The record establishes that the parties are in agreement and have stipulated that retroactive back pay and any other forms of compensation should be awarded to all current bargaining unit members on all hours paid for the relevant time period, and also to any bargaining unit members who retired or went on disability after May 1, 2008 for whatever time for which each is entitled. According to the evidence, five bargaining unit members have left the employ of the City since that date. Two retired, one went on disability, and two voluntarily separated from the Department to seek employment elsewhere. Thus, for purposes of this arbitration, the economic issue of Retroactivity impacts only two employees; those who left the employ of the City on a voluntary basis after May 1, 2008, I find, as the parties stipulated on this record.

It is also important, indeed, in the end, crucial, to note that the current Labor Agreement is silent as to the issue of retroactive back pay. However, the record further establishes that the precise

matter of who is entitled to retroactive back pay under the current contract's terms was addressed and resolved in a grievance arbitration before Arbitrator Herman Torosian in 2002, I note. In relevant part, Arbitrator Torosian ruled that employees who left the employment of the City after the expiration of the prior Collective Bargaining Agreement and before the execution of the new contract were entitled to retroactive pay. In relevant part, he reasoned:

Because the contract, retroactively, applies to all work performed during its coverage, it applies to all those who performed work during its term; even those who left the employment during the hiatus period.⁴³

There is no dispute that, prior to Arbitrator Torosian's award, there was no established practice with regard to retroactive back pay under these particular circumstances. Arbitrator Torosian's ruling in the 2002 case just cited interpreted the then-existing contract language to mean what he said.

Under basic arbitration precepts, Arbitrator Torosian's ruling became part of the parties' contract, I rule. See Labor Arbitration Law and Practice In a Nutshell (Nolan, Dennis, West Publishing Co., 1979) at p. 159 (a "prior award on the same issue between the same parties" must be viewed as having become part of the contract; it may be changed through negotiation, but otherwise the earlier award must be presumed to "accurately state [the parties'] intentions."). That finding is particularly important in this interest arbitration,

⁴³ Illinois Fraternal Order of Police Labor Council v. City of Belleville. (Torosian, February 2, 2002).

because the Union proposes to maintain *status quo* to the extent that existing contract language, or, more accurately, the interpretation expressed in Torosian's Opinion and Award, as it relates to this specific issue, should go unchanged.

In other words, the Union argues that the question of retroactive back pay under existing language has already been resolved, albeit in grievance and not interest arbitration. Thus, by natural extension, maintaining the contract just the way it is necessarily must mirror Arbitrator Torosian's conclusion on this issue.

The City, on the other hand, argues that the two employees who voluntarily separated from the Belleville Police Department during the duration of the parties' existing labor contract, one of whom did so "under a cloud", should not receive back pay. However, it is important that I note an important truth here. This is an economic issue, and thus, rather than simply arguing its position, as would have been appropriate in a grievance arbitration, the City was statutorily bound to submit a "last best offer." See Section 14(g) of the Act. The City was therefore obligated to present modified contract language which altered the *status quo* clearly established by Arbitrator Torosian, I stress. The failure of the City to present contractual language in this regard has effectively left me with nothing to rule on in this particular matter, as I see it. Thus, I have no choice but to decide in favor of the Union that the *status quo* be maintained, and I so rule.

Based on these conclusions, the Union's proposal for retroactivity, i.e., *status quo*, is adopted as the most appropriate, I find. I therefore rule in favor of the Union's proposal that the contract remain unchanged.

C. Non-Economic Issue #1 - Residency

As set forth herein above, the Union proposes to relax the present negotiated *status quo* residency requirements to the extent that City police officers with eight or more years of full time service will be permitted to move outside the corporate limits of the City of Belleville, I note. At present, only police officers with twenty or more years of full-time service may do so. The Union further proposes to limit City residency benefits (such as library access, parks access and YMCA memberships) accordingly, presumably in recognition of the obvious loss of City tax dollars upon an officer's relocation outside City limits.

I take special note of the fact that the existing residency provisions between the parties effectively represent the *status quo* on this issue and have been negotiated terms in the current contract. This ordinarily would be important because conventional wisdom on the subject of departing from *status quo* in interest arbitrations instructs that an interest arbitrator may depart from it when; 1) there is a proven need for the change; 2) the proposal [to depart from *status quo*] meets the identified need without imposing an undue hardship on the other party; and 3) there has been a *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision. See

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

Also important, Arbitrator McAlpin, in so instructing, made no mention as to whether or not it was germane that the *status quo* under consideration on any particular issue (and residency specifically in this case) related to an economic or non-economic provision. And, as will be developed below, I am one of the group of Arbitrators who believe that the statutory factors contained in Section 14(h) of the Act apply with equal force to economic and non-economic issues. Similarly, I find the way proposals that are in the nature of the *status quo* must be evaluated is identical for economic and non-economic issues.

After careful consideration and review, I find that the evidence is that both the Employer and this Union are now effectively demanding changes in the *status quo* by virtue of their final offers, as set forth above in Section IV. As the Union notes, in the City's final offers, page 1, it states that it is proposing "essentially *status quo*." However, on page 2 of this final offer, this Employer further states that:

In the event the Arbitrator finds that there should be a change to the current residency requirements and officers with less than 20 years of service are to be permitted to reside outside the City, the Employer proposes the following additional restrictions be required (Emphasis added).

The City then goes on to make certain proposals for change in the *status quo* which are primarily non-economic, but which also clearly provide some modifications to now-existing economic benefits

such as the ability for a patrol officer to drive a City-owned vehicle to and from work. To Management, this "alternative" final offer is a minor tweaking of the *status quo* that the parties negotiated for the "residency footprint" set out in their predecessor Labor Agreement. The first is potential changes in the ability to drive a City vehicle to and from work, as already noted, along with the removal of eligibility with discounts for certain City or public organization membership.

The second change proposed by the City, however, is that there be a financial penalty of one percent in a patrol officer or sergeant's base pay for those employees with less than 20 years seniority who choose to reside outside the City limits. This "penalty clause" for the exercise of the rights granted under the proposed new Section 16.05, were the Union's offer on residency to be accepted, as I understand Management's position, is to be specifically restricted to those officers with less than twenty years' service. The Employer sees this part of its "alternative proposal" to the *status quo* as a permissible variation in the range of contractual options in this specified situation. Maybe so; maybe not. What is evident, in my judgment, is that a pay reduction for the exercise of a residence change by some bargaining employees, but not all, is a very significant change in the *status quo*. Indeed, the pay reduction is more burdensome for the affected employees because Management's proposal makes the length of time the pay cut is to continue indeterminate, I also find.

The third change is the *status quo* that the City proposed as an alternative to the *status quo* is that the full base pay for a "resident officer" could only be re-established by an officer with less than 20 years of service who could move outside the City limits by that officer again becoming a City resident at least two years before retirement for purposes of calculating final base pay for retirement benefit calculations. Again, these conditional contractual changes in the residency requirements would only come into play if this Arbitrator reduces the current "20 years of service rule exception," the City's general "City limits" requirement, I understand. Still, this part of the City's alternative proposal is a significant change in the *status quo* represented by the current terms of Section 16.5 of the parties' labor contract, I hold.

The Union's proposal on residency certainly is a change in the *status quo*, too. Its final offer is to change the exception for employees with 20 or more years of full-time service as a police officer for the City to be able to reside in St. Clair County rather than the City limits to eight or more years of full-time service as a police officer with this City. It also would require, as Management now has proposed in its final offer, the removal from eligibility for certain discounts now provided City employees generally by the City or by certain other service organizations, as well as a potential change in the ability to drive a City vehicle to and from work, I note.

Additionally, the Union proposes that certain introductory language be added to Section 16.05, the current contractual residency requirement, reflecting that there is an exception to City limits

residency for City police officers based on their safety concerns as a police officer for this City. This is no more what the City represents it understands in the *status quo*, the City urges.

As was recently observed by Arbitrator John C. Fletcher, in City of Alton and Associated Firefighters of Alton, Local 1255, ISLRB Case No. S-MA-06-006 (issued December 20, 2007), at p. 7, in discussing the applicability of the important standards in interest arbitrations brought under the Act:

"A number of well-established principles should (and will) serve as underpinning for this interest arbitration award. First, it is now essentially settled that interest arbitration in general is intended to achieve resolution to an immediate impasse, and not to usurp, or be exercised in place of, traditional bargaining. Some Arbitrators have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through "normal" negotiations. Otherwise, as some have reasoned, the entire collective bargaining process could be undermined to the extent that at the first sign of impasse, parties might immediately resort to interest arbitration."

I completely agree with this baseline precept, and will do my best to adhere to the goal of not short-circuiting the parties' bargaining process in my decision in the instant dispute. Any fair analysis of the residency issue must begin with the idea that I have been engaged to mimic what the parties would have negotiated had the process in this case worked, and not to grant "free breakthroughs" the parties likely never would have negotiated on their own.

If this requires a "crystal ball," an idea which Arbitrator Fletcher, among others, has real trouble with (City of Alton), S-MA-06-006, 2007, at pp. 8-9), so be it. All the Illinois interest

arbitrators at this point in time know what our authority is and that it should be exercised "with due consideration as an extension of the bargaining process and not a replacement for it." *Id.* at p. 9. The whole job is to try to fashion a solution on the non-economic issues in light of the facts presented, the proposals the parties actually tendered, and the statutory criteria. If it is difficult to discern which proposal the parties "would likely have achieved on their own," it still is my obligation to solve the bargaining impasse in a way that does not undermine the bargaining relationship by giving either party "free goods," I stress.

It is also clear from the parties' briefs that they well know my adherence to the principle that there should be no substantial "breakthroughs" from a negotiated *status quo* as a result of the interest arbitration process. Again, in an early Illinois interest arbitration case, Arbitrator Harvey A. Nathan characterized the burden on the parties seeking a breakthrough as having to demonstrate, at a minimum:

- (1) That the old system or procedure has not worked as anticipated when originally agreed to, or;
- (2) that the existing system or procedure has created operational hardship for the employer (or equitable or due process problems for the union); and
- (3) that the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address the problem. Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, p. 52 (Arb. Nathan - 1988).

It is also evident from the submitted post-hearing briefs that the parties know that I fully accept Arbitrator Nathan's reasoning as set out immediately above, namely, the Will County *status quo* rule. I

firmly believe these standards set out by Arbitrator Nathan in 1985 have become the conventional wisdom on this point. See, my decisions in the City of Burbank and Ill. Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Ass'n. Unit 54 and City of Elgin, ISLRB Case No. S-MA-00-102 (2002), at pp. 95-97. Obviously, the bargaining process itself must be protected to the extent that negotiations across the table, as opposed to a race to an interest Arbitrator, is encouraged. Interest Arbitrators such as myself must be mindful of the high standards necessary for a conclusion that a deviation from the *status quo* is required when the parties themselves could not negotiate such a breakthrough in good faith bargaining, I emphasize.

This Union has vigorously attempted to convince me that it is not seeking a breakthrough on the residency issue in this case. First, it claims that both the City and the FOP in the instant dispute have presented final offers that do in fact change the *status quo* of the current residency requirement. This is so, I am reminded, because the Union is currently demanding a provision providing only for eight or more years of services to be able to reside in St. Clair County. Changes in the residency provision, too, have been presented by Management as an alternative to the *status quo*, if I reduce the 20 years or more service requirement in the current Section 16.05. These are substantive changes, too.

The Employer sees its proposals on residency as two independent items, one requesting the maintenance of the *status quo*, while the

second, subordinate proposal is only to be triggered if I were to decide some change in Section 16.05's current terms is warranted. However, when I review the history of Section 16.06 and the current posture of the parties, it seems to me that the Union is correct that Management's posture should more appropriately be construed as alternative proposals; one of which clearly represents substantive and important changes in the *status quo*, in the same vein as the Union's final offer on residency. Thus, the breakthrough doctrine does not apply for purposes of this issue, I hold.

Equally significant, the parties have stipulated that the residency issue, I again stress, is non-economic. As the parties have also agreed, under the Act, for a non-economic issue, I have the authority to either accept either party's offer as more reasonable, based on the statutory criteria set out in Section 14(h) of the Act, or I may fashion my own award based upon the evidence and exhibits submitted. I have at times exercised that discretion in other cases involving residency, e.g., The City of Galesburg, ISLRB Case No. S-MA-03-197 (2005), at pp. 74-75.

I understand of course that the Union is attempting to now convince me that some aspect of the pending residency issue in this case has been transformed into an economic issues. This is due to the fact that both the Union and Employer have proposed changes that would have a direct monetary impact on the noted pre-existing benefits if either or both final offers on residency were to be adopted, the Union urges. The result is a transformation of the residency issue to an economic from a non-economic question, it says. Thus, the rules of

Section 16(g) of the Act should squarely place the Employer's "alternative" final offers in the realm of "illegal" offers, the Union asserts. The Employer's offers thus cannot properly be considered by me in resolving the current residency issue, the Union thus specifically contends. I disagree.

First, I understand that at least some interest arbitrators and scholars seem not precisely sure whether the statutory criteria set forth under Section 14(h) of the Act apply with the same force to non-economic issues as to economic ones. As should be evidenced from several of my earlier interest awards, I however subscribe to the position that the statutory factors are fully applicable and should be applied with the same care and precision to the non-economic issues as to the issues the parties agree to be economic. Second, as I stated in City of Elgin and PBPA Unit 5, S-MA-00-102 (2002), if I did not apply the statutory factors to non-economic issues, "frankly, I do not know what an arbitrator would base a decision on, aside from his or her personal philosophy as to politics and economics." Id. at p. 87.

All of this is my way of explaining that I do find the residency issue to be non-economic, despite the Union's best efforts to avoid its stipulation to that effect, after-the-fact. In this case, the City by virtue of its "alternative" residency proposal has done more than tinker at the edges of the *status quo*, I am convinced. It has proposed a specific penalty for any officer with less than 20 years of service as a police officer with the City who would move outside the City limits. The Union has proposed elimination of discounts on some services currently available to officers who reside in Belleville and

a potential change in the ability of non-resident officers to use City vehicles to drive to and from work.

My conclusion, still, is that residency, even in this circumstance, should be regarded as a non-economic issue. I emphasize that my reasoning is that the primary characteristic of the rule--and its impact--has been traditionally thought of as a non-economic, non-direct cost item to the City. Not all situations which prompt Management to regard residency rules as important are totally divorced from economic factors. Not all reasons for this Union to demand liberalization of the residency rule are free of economic impact, too, no doubt. But the "cost calculation" to the City's revenues does not come into play from a strict or liberal residency rule, I hold. In other words, the residency issue at its core is a non-cost item to the City, even at the periphery. The parties may have put dollar calculations in play, but not to cost out the value of the contractual package, I hold.

The significance of these determinations relate not only to the inapplicability of the breakthrough doctrine for this specific residency question, but also to the fact that I have the ability to engage in "conventional" interest arbitration and modify the last offers of both parties to reflect what they should have negotiated across the table. There is also the fact that the Employer's "alternative offers" do not preclude my consideration of what this City has in fact proposed concerning the residency dispute in part because of the non-economic nature of residency, I rule.

Turning specifically to the last item, the Union's contention that Management's alternative offers are, under Section 14(g) of the Act, absolutely void, I find that line of argument unconvincing in this particular case. Unlike the Village of Elk Grove and MAP, Chapter No. 141, S-MA-91-11 (decided by me on February 28, 1996), relied upon by the Union here, the alternative offers are not "last and best," based on the parties' ground rule stipulations, I stress. In Elk Grove Village, on the other hand, the alternative offers were supposed to be "last and best," I also point out. However, I still find the Elk Grove Village decision has some relevance. In that case, I was unwilling to grant the Employer a default judgment. In the current case, I will not grant to the FOP a default judgment due to the fact of the alternative offers made by the City. Under my ability to frame an appropriate contractual provision in accordance with what the parties should have negotiated, I rule, I am not obligated to grant this Union a "gotcha." Simply put, the "cure" is to disregard the penalty pay reduction aspects of the Employer's residency offer, I hold, as being inappropriate here, and I so rule.

Moreover, despite Management's indirect argument to the contrary, external comparability can and often should play an important role in interest arbitration, even on such issues as residency, I hold. See City of Southfield, MI, 78 LA 153, 155 (Rounell, 1982). See also my discussion in City of Elgin, supra, S-MA-00-102 (2002) at pp. 87-88. This factor favors the Union, I find. Specifically in this case, with regard to external comparability, the facts as they were characterized by the Union are

accurate. All police officers for the Alton Police Department may live within 15 miles of the police station. All police officers in Collinsville may live anywhere in Madison or St. Clair Counties. While the contract applicable to police officers in East St. Louis is silent on residency requirements, counsel for the FOP testified without contradiction that East St. Louis police officers live outside the City limits of East St. Louis, Illinois. Additionally, the record evidence reveals that in Edwardsville, all officers may reside anywhere in Madison County. All officers in Fairview Heights must reside within 30 minutes of the police station, the evidence or record reflects. In Granite City, a "mutual" comparable municipality, officers with more than 10 years of service may reside anywhere in Madison County. Finally, in O'Fallon, there is no residency requirement. The point is that in at least the local labor market, Belleville's residency rule is very stringent.

It is also evident from this record that residency has been a "hot button" issue from the point of view of both this City and FOP bargaining unit. As the Union has correctly argued, what the *status quo* is in the instant case is not typical of most residency disputes. There is no absolute residency requirement. Officers with more than 20 years of service may reside anywhere in St. Clair County. During the last round of negotiations, the FOP agreed to lower percentage wage increase in exchange for a change in residency more liberal than what applies to most City of Belleville employees. In the contract prior to the current one, the FOP and the City of

Belleville negotiated larger pay increases, with no change in the residency rule, but residency was very much in play then, too.

It is also very important that the only meaningful change that is currently sought by the FOP is a reduction in the number of years of service that are required. The FOP is not looking to expand or gain any geographical area or to "change the residency footprint," as that term is used in other jurisdictions. The FOP is not seeking to wipe out a residency requirement. Thus, this proposal is not inherently unreasonable, I am convinced, especially given the bargaining history just described. Compare my decision in Village of Matteson and Local 3086, IAFF, issued on May 13, 2008 at pp. 71-74.

The statutory criteria of the public interest and welfare is much more a mixed bag, the record seems to demonstrate. The Union discussed concern with off-duty incidents involving patrol officers and their families. Through bargaining, these parties have recognized that City of Belleville police officers and their families have genuine safety concerns that increase proportionally with the officer's length of service--or at least the City has been convinced to accept that theory as effectively embedded in the current residency provision. This is the reason that there is an exception to the residency requirement, the City in its brief and its final offer basically concedes, as I see it. The present currency of bargaining unit members' concern was supported by the testimony of Union witness and Sergeant Harris, who had gang symbols painted in the front of his house. Sergeant Harris currently has more than 11 years of service as

a police officer with this City, the record reflects. The importance of residency to this bargaining unit is clear, I find.

On the other hand, in this particular case, no Management representative directly testified to any operational advantages flowing directly from the City's current policy on residence. That makes sense, given the number of currently eligible officers who are not required to reside within the City's boundaries, i.e., nine officers. Only one of the eligible employees in fact resides in St. Clair County outside the City of Belleville boundaries, the record shows. Consequently, the more normal claims of a "mass exodus" potential or of geographic realities that might impede the performance of safety services for this community do not apply in this specific case, I am persuaded.

Equally significant to my decision that the current residency rule should be liberalized is the fact that the Employer, in its post-hearing brief, forthrightly stated that "the City understands that the Arbitrator may find some loosening of the residency restrictions is appropriate. Whether the wages offered by the City and the current economy has anything to do with the decision of residency is left to the Arbitrator, of course. However, the Union's wage proposal does not in any manner support the changes sought in the residency restrictions." The Employer's post-hearing brief, p. 9. (Emphasis mine). My response to this partial concession by Management concerning the posture of the case is that, from the standpoint of my analysis, the fact of an anticipated liberalization of residency is thus acknowledged by this Employer.

Again, this is because the City has essentially recognized that across-the-table negotiations would have had that loosening result, most probably, absent the Employer's steadfast commitment to a second year wage freeze for this bargaining unit, I suggest. That observation by the City itself suggests the answer to the residency issue: some liberalization is demanded if the interest arbitration process is to calibrate to the parties' likely bargaining results, had impasse over dollars not occurred, I hold.

Basic to my thinking is that it is not my job to short-circuit the parties' bargaining process, I again stress. Any fair analysis of the residency issue must begin with the idea that I have been engaged to mimic that the parties would have negotiated had the process in this case worked, as I have already stated above. I emphasize that it is my take that a reduction in the amount of time for a police officer employed by this City to become eligible for the exception to the general residency rule likely would have been negotiated, absent the parties' inability to agree on wages in the current economic fix.

One more point needs to be made. The Act is clear that I do have the authority to craft a reasonable residency requirement by virtue of the non-economic nature of this issue, and the parties know it--in fact they stipulate to that very fact. Based on the statutory decisional standards, there is a basis for modification to a reasonable residency rule, which I find to be as follows:

Due to the noted safety concerns for City police officers and their families, which increase proportionally with the officer's length of service, it is hereby determined that an exception to the City-wide residency requirement for all employees shall be made as follows:

As a condition of employment, all employees shall be required to reside within the corporate limits of the City of Belleville. All new employees shall have 15 months from their date of hire to comply with the residency requirement. Employees with twelve (12) or more years of full time service as a police officer for the City shall be allowed to reside within St. Clair County. "Years of full time service" in the preceding sentence shall mean that period of seniority earned from an employee's actual date of hire with the City, or the date of hire with the City which has been adjusted by legal authority; whichever provides the greater number of years. Notwithstanding the foregoing, no employee shall be subjected to a more restrictive residency requirement than the restriction in place on their date of hire.

Any employee with less than 20 years of full time service as a police officer at the time he or she elects to reside outside the City limits, shall not be permitted to drive a City vehicle to and from work without the express written permission of the Police Chief with the approval of the Mayor. In addition, such officer shall not be eligible for any City employee discount for City services including but not limited to park and recreation facilities, library services, and YMCA memberships.

X. AWARD

Using the authority vested in me by Section 14 of the Act:

(1) I select the City's last offer on Economic Issue No. 1 with respect to Wages as being, on balance, supported by convincing reasons and also as more fully complying with all the applicable Section 14 decisional factors.

(2) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 2 with respect to Retroactivity because it represents the *status quo* and is most reasonable under the statutory criteria.

(3) As per the discussion in the Opinion above and incorporated herein as if fully rewritten, on the Non-Economic Issue

No. 1 with respect to Police Residency, I award the following provision as appropriate and consistent with the Section 14(h) statutory factors:

Due to the noted safety concerns for City police officers and their families, which increase proportionally with the officer's length of service, it is hereby determined that an exception to the City-wide residency requirement for all employees shall be made as follows:

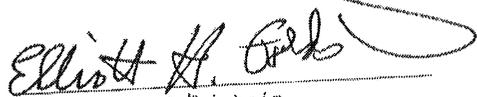
As a condition of employment, all employees shall be required to reside within the corporate limits of the City of Belleville. All new employees shall have 15 months from their date of hire to comply with the residency requirement. Employees with twelve (12) or more years of full time service as a police officer for the City shall be allowed to reside within St. Clair County. "Years of full time service" in the preceding sentence shall mean that period of seniority earned from an employee's actual date of hire with the City, or the date of hire with the City which has been adjusted by legal authority; whichever provides the greater number of years. Notwithstanding the foregoing, no employee shall be subjected to a more restrictive residency requirement than the restriction in place on their date of hire.

Any employee with less than 20 years of full time service as a police officer at the time he or she elects to reside outside the City limits, shall not be permitted to drive a City vehicle to and from work without the express written permission of the Police Chief with the approval of the Mayor. In addition, such officer shall not be eligible for any City employee discount for City services including but not limited to park and recreation facilities, library services, and YMCA memberships.

(4) Additionally, as per the parties' stipulations as set forth above, at p. 5, I incorporate all tentative agreements made by the parties in their pre-arbitration negotiations into this Opinion and Award.

IT IS SO ORDERED.

Date: August 26, 2010



Elliott H. Goldstein
Arbitrator