

IN THE MATTER OF ARBITRATION)	Case S-MA-08-221
)	
BETWEEN)	Marvin Hill, Jr.
)	Arbitrator
CITY OF CANTON, IL)	
)	
and)	Re: Successor Labor Agreement
)	
IAFF LOCAL 1897)	Hearing Days: March 6 & 25, 2009
_____)		

Appearances

For the City: **Bruce Beal, Esq.**
Claundon, Kost, Beal & Walters, LTD.
121 W. Elm Street
P.O. Box 400
Canton, IL 61520

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

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

This interest arbitration proceeding was convened on March 25, 2009, where both parties stipulated at the time of the hearing to the following issues for resolution:

Non-Economic Issues

1. Section 24/Method of Reviewing Discipline and Discharge under the parties' collective bargaining agreement.
2. Section 28/Temporary Appointment of Firefighter employees (use of part-time employees)(now settled by the parties).

Economic Issues

1. Section 11.1 Insurance – Amount of Firefighter Co-Pay for Insurance Premiums.
2. Section 12.1 Life Insurance and Retirement Insurance for Retired Employees.
3. Section 12.3 Retired Employees – The Amount of Premium Co-Pay for Retired Employees for Healthcare.
4. Section 12.4 Insurance Coverage for Disabled and Deceased Employees and their Families (R. 140-142; 162-163).
5. Wages to be Paid Bargaining-Unit Employees.
6. Kelly Days
7. Longevity Pay

Prior to the formal hearing, a mediation session was held on March 6, 2009 at Canton, IL.

II. DISCUSSION

Significant in the final resolution of this interest arbitration is the mediation efforts undertaken by the undersigned Arbitrator. With agreement of the parties, some of the issues addressed in mediation are analyzed based on where the parties landed in mediation sessions. One example is the parties' dispute and eventual agreement regarding the Administration's health insurance proposal – the so-called "80/20 split" – which shifts major health insurance costs to the bargaining unit, both active and retired. To this end the Union believes that the adoption of its offer as to the remaining issues in dispute is necessary to produce a result that is equitable and balanced (*Brief for the Union* at 5-6). Here, the parties agreed that the Union's proposal to reduce the work week by scheduling a Kelly Day every 30th shift would be included within the parties' dispute as to the appropriate *quid pro quo*. (See, *Brief for the Union* 7-8). Other issues would be treated on their own.

A. Statutory Criteria

This dispute involves 7 *economic* issues and one non-economic issue. The Act restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the

parties. 5 ILCS 315/14. There is no Solomon-like “splitting of the child.”¹ As to non-economic issues, however, the Arbitrator’s discretion is not so limited. Section 14(g) of the Act reads:

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

5 ILCS 315/14.

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the costs of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

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

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

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

B. Comparative Bench-Mark Jurisdictions

While initially there was some difference in the proposed bench-mark jurisdictions, the parties were ultimately able to agree to a set of comparable communities based on the ones awarded by Arbitrator O’Reilly in a prior interest arbitration. The revised list includes the following bench-mark jurisdictions:

**Centralia
Charleston
Dixon
East Moline
East Peoria
Jacksonville
Kewanee
Lincoln
Macomb
Monmouth
Taylorville**

C. Non-Economic Impasse Items

Section 24 – Discipline

Both parties agree that employees should have the right to grieve all disciplinary actions to an impartial arbitrator based on a “just cause” standard. Their disagreement is limited to the *procedure* by which this substantive right is to be implemented (*Brief* at 46).

Position of the Union. The Union’s final offer provides a mutually exclusive option between appeals to the Fire and Police Commission (the “Commission”) or the grievance arbitration process under the parties’ collective bargaining agreement. *Id.* This system is referred to as a “two-track” procedure. Thus, when disciplinary suspensions in excess of 30 days or termination are effected by management, the choice as to which track is to be followed (“Commission” or Arbitration) must be made *prior to any hearing*. The Administration’s final offer would establish a procedure where disciplinary action would first be heard by the Fire and Police Commission and then would be subject to review through the grievance arbitration procedure by “the Union *or employer.*” (*Brief* at 47). The Union rejects such an approach.

In support of its proposal the Union makes the following points:

The Union’s “two-track” approach is supported by the great weight of precedent among external comparables. There is no comparable community, argues the Union, that provides for the procedure proposed by the City where the Employer may invoke the grievance arbitration procedure to dispute a decision of disciplinary action made by its own Board of Fire and Police Commissioners (*Brief* at 48). Under the Union’s final offer a *mutually exclusive* option between appeals to the Commission or the grievance procedure. (*Brief* at 46).

There are at least four (4) reasons for awarding the Union’s procedure in preference for the procedure proposed by the Administration.

1. The Union’s procedure affords Firefighters the opportunity to obtain an evidentiary hearing before an impartial arbitrator as to the “just cause” of disciplinary action imposed by the Employer while still respecting the allocation of disciplinary power between the Commission under the Municipal Code.
2. A “two track” approach is consistent with the better weight of arbitral authority. The prevailing view of interest arbitrators, according to the Union, is that it is reasonable to require an election of alternatives as a condition for appealing discipline through the grievance procedure (*Brief* at 52). In the Union’s opinion, “the inherent delay and expense of conducting two processes are a reason that both employers and unions currently find little difficulty in reaching agreement on this approach.” (*Brief for the Union* at 56).
3. The Board is not an “impartial body” as that term is generally understood under the parties’ grievance arbitration procedure (*Brief* at 57). The Union submits that the

Board is not an autonomous body, but is in fact an instrumentality of the City and hence an arm of the Employer. *Id.* There is simply nothing in the statutory appointment procedures to safeguard the Administration from appointing political cronies who perceive their interest as doing the bidding of the Mayor and Fire Chief. *Id.*

4. The arbitration of disciplinary matters based on the “just cause” standard embodies necessary additional elements of due process not recognized by Fire and Police Boards (*Brief* at 58-60).

Position of the Administration. Recognizing that both parties have proposals to change the current discipline language, management submits that the election to use the Board of Fire and Police Commissioners is entirely left with the Union or the employee, with the Employer having no say in the matter (*Brief for the Employer* at 5). The Employer’s proposed change would initiate the review process in a much more simple fashion than that proposed by the Union (*Brief* at 5). **The Employer would give the Union the right to initiate the review of any discipline under Article 17 of the parties’ collective bargaining agreement (the grievance procedure) or with the Canton Fire and Police Commission. After the Commission makes its decision, the Union or the Employer can seek to have that decision reviewed under the grievance procedure leaving to either the Employer or Union the option to choose this review. There would be no Employer option of review under the Union’s proposal (*Brief* at 5-6).** Because this represents the Union’s exercise of a request due to a new statutory change in the Public Labor Relations Act, there understandably are no other cases out there that have decided the issue. Therefore, this issue is one of first impression for the undersigned Arbitrator (*Brief* at 6).

The Employer’s final proposal allows either side to choose a disciplinary review under a “just cause” standard which is the standard more commonly used for review of discipline in employment settings. It also allows either party to seek a review of a Fire and Police Commission decision should they elect to do so. That, says the Administration, would allow for a more fair and impartial review of the Commission’s decision should either party elect to do so (*Brief* at 7). The Union’s proposed change is more of a “breakthrough” in the contract’s disciplinary procedure. Under traditional “breakthrough analysis,” they have not offered any evidence for a need in the change nor a *quid pro quo* for their proposed change and for those reasons alone their request should fail. Management’s final offer gives a simple option to the Union for their path of review and then an election can be made by either party to review the Commission decision with the grievance procedure should the Union follow that route.

Analysis and Award. Without question, the Union advances the better case regarding the non-economic issue of disciplinary review. To this end the following table as offered by the Union is telling:

Municipality	Grievable Discipline	Employee Choice	
Centralia	Yes	Yes	Employee Option
Charleston	Yes	Yes	Employee Option
Dixon	Yes	No	Grievance/Arb Only
East Moline	Yes	No	Grievance/Arb Only
East Peoria	No	No	Commission Only
Jacksonville	Yes	Yes	Employee Option
Kewanee	Yes	Yes	Employee Option
Lincoln	No	No	Commission Only
Macomb	Yes	Yes	Employee Option
Monmouth	Yes	Yes	Grieve Commission Decision
Taylorville	Yes	Yes	Employee Option
Canton (Union)	Yes	Yes	Employee Option
Canton (City)	Yes	Yes	Grieve Commission Decision

Of the eleven (11) external comparables, nine (9) afford employees the right to grieve disciplinary action through the grievance procedure (all but East Peoria and Lincoln). Among these communities, six provide for a mutually exclusive option between the fire and police commission and grievance arbitration. Two (Dixon and East Moline) provide for appeals to grievance arbitration only. One (Monmouth) provides for a right to grieve disciplinary action decided by the fire and police commission through the grievance/arbitration process but only for “the firefighter with the consent of the union . . .” **Significantly, there is no comparable community that provides for the procedure proposed by the Administration where the Employer may invoke the grievance arbitration procedure to dispute a disciplinary action made by its own Board of Fire and Police Commissioners.** On external criteria only, the Union makes the better case.

Additionally, I credit the Union’s argument regarding the *quality* of the decision making in terms of evaluating whether to contest a dismissal by having an option to take the case to an arbitrator or hire a lawyer and go before a commission (R. 40). In a bad case, where the Union may not want to expend the funds for an arbitration, but the employee wants his day in court, the Commission is a better option. In the Union’s words: “We just think our option procedure is much clearer in terms of the waiver of rights than what the City has.” *Id.*

For the record, I will not fail to award a policy or provision simply because no other comparable has adopted it. Still, when one party is seeking something that has not been agreed to in any other community, that party bears a heavy burden in showing that the other side is being unreasonable in not agreeing to what it proposes. The Employer’s proposal is not only inconsistent with the external bench-mark jurisdictions agreed to by the parties, it goes against the prevailing view of arbitrators requiring an election of alternatives as a condition for appealing discipline through the

grievance procedure. I agree with Arbitrator Neil Gundermann's analysis in *Village of Skokie & Skokie Firefighters Union Local 3033* (1993). In that case the Employer attempted to exclude discipline from the scope of the grievance/arbitration procedure. In ruling for the Union (partially), Arbitrator Gundermann observed "at a very minimum an employee should be afforded the option of exercising his contractual rights to the grievance and arbitration procedure or his statutory right to a hearing before the fire and police commission." *Gundermann* at 77. Significantly, Arbitrator Gundermann, citing Arbitrator Steven Briggs, rejection any notion of "forum shopping." In his words: "The only way such a result would occur would be if one procedure or the other were perceived by employees as more just. Clearly, if one of them were, it should be favored by employees and management alike." *Id.* Similarly, in *City of Markum*, Arbitrator George Larney accepted the Union's position that an employee disciplined should have the option of either the Fire and Police Commission or the grievance and arbitration procedure.

The real issue, of course, is not whether an employee will be accorded an option through the contractual grievance procedure, but whether management will be accorded the option of appealing the commissioners its appoints if it is not pleased with the result, thus potentially causing the union to twice defend the same action.

As a general proposition management does not "grieve" through the grievance procedure. Management "acts" with respect to the fact presented. If the Union has issues with what management does, it files a grievance. It is never the other way around.² Management does not file grievances against the Union. The City and its Administration (Fire Chief) elects to assess discipline against a Firefighter when appropriate. If the individual or his representatives have an issue with what management does, the Union can file a grievance *or pursue the matter before the Commission*. Granting management the right to appeal to an arbitrator an order of a Commission – a Commission unilaterally appointed by management – makes little sense. As noted by the Union, the inherent delay and expense of conducting two processes are a reason that both employers and unions currently find little difficulty in reaching agreement on this approach. (*Brief for the Union* at 56).

On all fours the Union makes the better case. The Union's final offer on this issue is awarded.

D. Economic Impasse Items

1. Overview – Wages and the Administration's "80/20" premium split – the "800 lb gorilla" in the room

² It is never the other way around in the private sector except, maybe, when the lawyers don't know what they are doing. When management has access to the grievance procedure, it effectively precludes getting a Boys Markets injunction against the Union in a no-strike situation. Courts will mandate that management exhaust the grievance procedure *before* listening to arguments than an injunction is appropriate. Thus, it is rare when management ever has access to the grievance procedure. And why would it? Management acts and the Union grieves. Any other alternative makes no sense, at least legally and operationally.

The dispute between the parties is unusual in that the parties have agreed to a contract term of three (3) years and as to the amount of the general *increase* to be effective during each year of the contract term: 4.0% effective 5/1/09, 7.0% effective 5/1/10 and 4.0% effective 5/1/11 (see, *Brief for the Union* at 6). The impasse arises from the fact that the Employer has tied these increases to proposals that shift the cost of health insurance from the City to active and retired employees. The Administration has described the relationship between its wage offer and its insurance proposals as “4, 7, 4 with the insurance that we have, or 4, 3.5 and 4 without the insurance.” (R. 6). As characterized by the Union, “the Employer’s proposal as to insurance reflects both a change in the formula for determining the amount of employee contributions as well as a large increase in the amount of employee contributions.” (*Brief* at 6-7). This increase results from changing the formula from a percentage of base salary to a percentage of premium amount. Under the predecessor collective bargaining agreement the employees paid 3.0% of base salary towards the cost of premiums (UX 10; R. 148). The City now proposes to change that to an “80/20 split” based on premium costs only (*Brief* at 7).

The Union has opposed the Administration’s proposals both because it represents (1) a change in the formula and (2) the formula produces an increase in the amount of at least 86% (UX 9; R. 142-145; *Brief* at 7). In the Union’s view, the 3.5% *quid pro quo* offered by the City in the second year of the agreement is unacceptable. Nevertheless, as a result of mediation efforts by the Arbitrator, the Union has agreed to treat the wage and insurance issues as a single item and to focus the dispute upon the amount of *quid pro quo* to be paid by the City in consideration for the health insurance it is proposing (*Brief* at 7). The parties further agreed that the Union’s proposal to reduce the work week by scheduling a Kelly Day every 30th shift would be included within the parties’ dispute as to the appropriate *quid pro quo* (*Brief* at 7).

The Administration is proposing changes in the contribution rates for retired and disables Firefighters as well. The parties’ dispute as to these proposed changes are a consequence of the fact that the change in the formula the City proposes for active employees is also extended to contribution rates to be paid by retired and disables employees. As acknowledged by the Union, these items will be addressed separately after the discussion of the wage/health insurance contribution/Kelly Day *quid pro quo* discussion is completed (*Brief* at 8).

2. Items 1 & 2 – Health Insurance Premiums/Wages

Position of the Union. It is the Union’s position that the arguments underlying the City’s health insurance proposal are “feeble” (Mr. Berry’s words; *Brief* at 9). Support is based primarily upon consideration of internal comparability and the fact that the City has been able to obtain the agreement of other City unions to its proposal. Beyond internal comparability, the City can muster precious little to warrant the proposed change. When the City’s proposals are considered in relation to “breakthrough analysis,” cost considerations, magnitude of proposed change and the

The City's health insurance offer deconstructs major elements of the original bargain struck in 1993 between the parties which gave the City a breakthrough on employee health insurance contributions. The Firefighters' contract effective May 1, 1993, was the first City contract requiring any employees to pay toward the cost of health insurance (*Brief* at 17). To obtain a "percentage of salary" formula, the Union granted a significant concession to the City in the form of reducing the vacation schedule for new employees (*Brief* at 18). According to the Union, it is more than likely that increases in health insurance premiums will exceed general wage increases over the long term (*Brief* at 21). In the Union's words: "Implementing the City's 80/20 split is like placing an albatross around the neck of Firefighters that must be carried forward by both active and retired Firefighters." In order to reconstruct a new equitable bargain, the *quid pro quo* awarded should include not only the Union's offer as to Kelly Days but the Union's proposed modification of the longevity step benefit. "Without this modification, the present value of the benefit will not be sustained and retirees will be denied any *quid pro quo* and the City will accordingly be granted a windfall." (*Brief* at 22).

Position of the Administration. *Insurance.* Liking insurance and wages (*infra*), the Administration points out that insurance represents one of the largest costs for the Employer, second only to wages, and is a cost that the Employer unfortunately has very little control over. To this end the Administration acknowledged that in pre-arbitration conferences traditional "breakthrough" analysis would be applied, in this case requiring the Arbitrator to determine (1) a demonstration that the existing language is unworkable and inequitable; (2) that there is an equivalent buyout or *quid pro quo*, and (3) there is a compelling need. Management asserts that factors (1) and (3) are easily established from the facts of record (*Brief* at 9).

Looking at external comparables, one can readily see that employees of the Canton Fire Department are paying considerably less for their insurance coverage than other surrounding areas. That is because their co-pay on the insurance premium is at a percentage of their base pay. *Id.* Since this was negotiated in 1993, employees have received wage increases but the corresponding percentage of that increase doesn't increase the co-pay for the insurance by an appreciable amount since it is tied to such a low percentage of annual increases (1.2 to 3.0% of the employee's base pay). The need to change is evidenced by the huge increase in premiums. If changes are not made to the parties' collective bargaining agreement, the Employer will find it has to bear most of any insurance increases because the employee's portion of the premium co-pay is so small (*Brief* at 10). Therefore, as expressed by this Arbitrator at the hearing, the sole issue to resolve is whether the *quid pro quo* is enough to satisfy the breakthrough analysis. *Id.*

As an important part of this analysis, it should be noted that the internal comparables are identical to the Employer's proposal for this unit. In the Administration's view, there is no compelling reason here why this bargaining unit should not be treated like other bargaining units in the City of Canton who have already agreed to the 20% co-pay of the premium (*Brief* at 11). Not only are the other bargaining units paying 80/20, but non-bargaining-unit members are also paying the

bargaining history that produced the existing health insurance agreement, its vitality withers (*Brief* at 9). Because of the Administration's weak arguments in support of a change, a greater amount of *quid pro quo* is required to ensure a fair exchange. *Id.*

To this end the Union advances the following arguments:

The City's offer is not supported by a need to compensate for increased premium costs. When the Employer's new 80/20% formula is considered, the employees' share of costs is increased dramatically from \$136,631 to \$290,829 or 112.85% (*Brief* at 12). At the same time, the City's costs actually declined by 8.1%. *Id.* The City has simply not made the case for a compelling financial need to drastically alter either the formula or the existing cost sharing between the City and Firefighters based on previously-negotiated contracts. (*Brief* at 11-12; Attachment 1). Supporting this, the Union asserts that the parties' experience here tracks the experience of the parties in City of Decatur. In the final analysis management's claims were exaggerated and, in direct consequence to the union-driven efforts to require competitive bidding of the TPA contract, the claims paid by the city under its self-insured program actually declined (*Brief* at 12). The City of Canton has simply not made the case for a compelling financial need to drastically alter either the formula or the existing cost sharing between the City and the Firefighters based on previously-negotiated contracts. *Id.*

Granting the City's proposal to change the formula for determining employee health insurance costs represents a "breakthrough" gain for the City. (*Brief* at 13). The Union points out that the established formula based on percent of salary was negotiated for the contract effective May 1, 1993. *Id.* This is a favorable formula in that it produces a comparatively slow escalator for increasing employee contributions. There is no question, says the Union, that changing the formula from a set percent of salary (3.0%) to a percent of premium ("80/20") reflects a strategic gain for the City on a long term basis. *Id.*

The City's health insurance offer violates the arbitral rule of granting "great leaps forward" to parties seeking to catch up in interest arbitration. (*Brief* at 13). In the Union's eyes, the City is realizing a net increase of 107.5% in employee contributions to health insurance premium costs. At the same time it is reducing its share from 90.4 to 80 percent (*Brief* at 13-14). This shift surely qualifies as a "great leap." (*Brief* at 14). While the Administration may very well make a reasonable argument for "catching up" to the contribution rates paid by Firefighters in external comparable communities, the imposition of a formula that results in a 112% increase in employee costs can in no way be described as a gradual or incremental movement toward the average (*Brief* at 15-16). The 3.5% *quid pro quo* offered in 2010 by the City is wholly deficient when compared to the *quid pro quo* offered and awarded by this same Arbitrator in East Moline (2008 & 2009). When one considers that the City's offer also impacts its costs for retiree health insurance, the City's 3.5% *quid pro quo* here is even more deficient than the *quid pro quo* offered in City of Decatur, a net salary difference of 2.2% (*Brief* at 16-17).

same 20%, all effective May 1, 2009, the same implementation date proposed for this bargaining unit as well. *Id.*

The Administration notes that it is paying the Firefighters a 7.0% package, a full percent more than they offered the other two (2) bargaining units. The Employer has essentially guaranteed that no one will receive less than a 3.5% increase effective May 1, 2009. That offer is in light that the Administration is currently experiencing negative inflation, which in the month of March, was negative .7% for the Midwest region (*Brief* at 11). Unlike the situation in the Decatur case, here, in Canton, everyone has always been under the same health plan, had the same co-pays for insurance premiums, and participated in the same insurance committee for recommended changes in the insurance plan. If the Arbitrator were to grant the Union's proposal, that would constitute a deviation from the longstanding past practice of the City and all of its bargaining units. Therefore, the City urges adoption of its final offer that is warranted under the breakthrough analysis that would traditionally be applied to this situation (*Brief* at 13).

Wages. The Administration submits that both parties' proposals are identical, calling for a fiscal year 2008 increase of 4.0%, a fiscal year 2009 increase of 7.0% (with no person receiving less than a 3.5% increase after the impact of the insurance change is added to their base pay), and a 4.0% increase in fiscal year 2010 (*Brief* at 17). These, says the City, are generous wage offers and equal to or exceed those that have been awarded to other comparable jurisdictions. In addition, 3.0% constitutes the quid pro quo that was offered by the Employer for the change in the insurance provisions which was a full percent more than that offered to the other bargaining units when their change was negotiated. *Id.*

Analysis and Award. **The Administration's final offer on wages and insurance is awarded.** The City gets its preferred "80/20" split on health insurance premiums for active employees (and others, see discussion *infra*), and the Union is awarded a 4.0% salary increase effective 5/1/09, 7.0% effective 5/1/10 and 4.0% effective 5/1/11. And unlike the other bargaining units, the Firefighters receive a guaranteed 3.5% wage increase (R. 131). As noted by Mayor Kevin Meade, "the other two [units] got a 6.0% increase this year that we're going to the 20% [co-pay], but there was no guarantee of a minimum increase to the other two bargaining units" (R. 131).

Q. [By Mr. Beal]: So the offer that you have on this table is better than the one you gave to the other two unions?

A. [By Mayor Meade]: Significantly, yes (R. 132).

In awarding this "composite" of insurance co-pays and wages, the parties' efforts to reach an accord and their expectations in this respect is really controlling. Especially noteworthy is the Union's recognition that what the other bargaining units accomplished favors the Administration's

concern that the Firefighters should also reach an accord. I agree.³ Again, the main stumbling block here is the *quid pro quo* regarding Kelly Days and the Union's proposed modification of the longevity step benefit (*Brief for the Union* at 22).

3. Item #3 – Kelly Days

Position of the Union. The Union asserts that awarding its offer as to Kelly Days – four (4) Kelly Days for each bargaining-unit employee⁴ – is a necessary element to reconstituting a fair and equitable bargain for awarding the City's Health Insurance/Wage offer.

The Union's offer proposes to reduce the average work week from 56 hours to 54.28 by scheduling a Kelly Day every 30th shift (Brief at 23). Analysis of the bench-mark jurisdictions indicates that all the external comps with the exception of Monmouth have Kelly Days. *Id.* The average for the comparable group is 2,759, which reflects an average of 6.79 Kelly Days. Canton's annual scheduled hours put them at a ranking of 11 of 12 below the average. The discrepancies are mitigated only marginally when total time off is considered, with an average for the comparable group at 2,460 while Canton's total is 2,556 (*Brief at 24*). This puts Canton ranking at 9 of 12 and 3.5% below the average. *Id.* Canton Firefighters' Kelly Days off will reduce their hours of work to the average of 2,460. *Id.* The Union's proposal would still leave Canton last among departments that have comparables and ahead of only Monmouth which does not have any (*Brief at 25*).

Internal Comparisons with the Police Department supports the Union's Kelly Day offer. The Union points out that in Canton patrol officers also enjoy a benefit of an additional 12 days off which are characterized as "stress days." (*Brief at 26; UX 3*). These days were originally called "Kelly Days" in Canton. However, when the Union sought to reference these as a support for their proposals for Kelly Days, the name in later contracts was changed from Kelly Days to Stress Days. The fact that patrol officers in Canton enjoy additional days off over and above vacation days is a factor that supports the Union's Kelly Day offer (*Brief at 26-27*).

³ Unlike the situation in the *Decatur* case, where uniformity has never been the rule, all City employees at Canton have been under the same health insurance plan:

Q. [By Mr. Beal]: Have all of the City employees been under the same health plan traditionally?

A. [By Mayor Meade]: Traditionally, yes.

Q. Is that the case now?

A. Yes. (R. 129).

⁴ There are 121.67 scheduled shifts on a 24/48 schedule. Each of the three shifts works an average of 121.67, which means that two shifts work 122 and one works 121. "So when you get the number of Kelly Days you divide the 121.67 by the schedule. That's four into 121.67, roughly. Thirty (30) into 121.67. That produces 4." (R. 14).

Awarding the Union's Kelly Day offer is a necessary step towards reconstituting an appropriate quid pro quo for the change in the health insurance contribution formula. A key concession made by the Union to achieve its percent of salary formula was acceptance of the City's demand for a one week reduction in vacation benefits for the Firefighters hired after May 1, 1993. The Union has sought to eliminate this disparity in every contract since 1993 without success (Brief at 27). The Union's Kelly Day offer eliminates the so-called vacation disparity. Id. The Union's Kelly Day offer leaves the vacation schedule as is but restores a time off benefit sacrificed by the Union when it secured its preferred health insurance formula based on percentage of salary. It is thus strongly supported by both internal and external comparables (Brief at 28).

The City has greatly exaggerated the costs of implementing the Union's Kelly Day offer. The Union's proposal would provide four (4) Kelly Days per Firefighter and would thus require an additional 60 slots per year. The aggregate number of slots for existing vacation, personal and Kelly Days would total 270 slots or roughly 75% of the 365 slots available for scheduling time off (Brief at 28-29). The Union submits that Chief Cremer's analysis regarding the number of slots required – 124 slots per shift – is flawed (Brief at 29-31). In the Union's view, its Kelly Day proposal can be accommodated within the available slots with 27 slots to spare (Brief at 31).

The Union's Kelly Day offer is supported by other concessions to the City's staffing needs. The Union submits that the TA'd agreements include two provisions that involve concessions by the Union that mitigate overtime costs (Brief at 31). The first is the Union's agreement to allow the Fire Inspector to be reassigned to fill potential overtime vacancies during the day. The other is in Article 28, where the City is able to save overtime costs on making a temporary appointment of a part-time Firefighter when a full-time Firefighter will be incapacitated for a period longer than 30 days (Brief at 31). Absent the Union's consent, the City has no management authority to make these kinds of temporary appointments under the Municipal Code (Brief at 32).

The Union's Kelly Day offer is supported by factor 14(h)(6) overall compensation. When major streams of cash and time off benefits are considered, Canton Firefighters' overall compensation puts them at a ranking of 7 of 12, and 3.69% below the average (Brief at 33).

Position of the Administration. The City asserts that the Union's Kelly Day proposal – one day off every 30th shift – will cost Canton four days per shift for a total of twelve days (Brief at 20).

Management maintains that this proposal is a breakthrough proposal. Not only did it come late in the negotiation process, but it seeks to make a major change to the number of days that the employee works with no corresponding change in pay and no compelling need to make that change. In the Employer's view, Kelly Days are about money more than they are about hours of work. *Id.* Further, in order for the Union to make a requested change of this magnitude, it must demonstrate a need for the same and give a corresponding *quid pro quo*. *Id.*

A Kelly Day every 30th shift is equal to four (4) days during the year for each employee (*Brief* at 21). According to the Administration's numbers, five members on each shift equals 20 days per shift. Each Kelly Day is likely to be an overtime day since it exceeds the number of slots available on each shift (121). An overtime day currently costs the Employer \$900, which would cost the City for all four of the Kelly Days the Union is requesting a total of \$10,800 (3 shifts at 4 extra slots per shift x \$900 per slot)(*Brief* at 21). This represents a 1.3% increase in the contract.

Addressing the Union's Exhibit 6, purporting to show that there is no cost to the City, the City claims the Union is incorrect. The Union, argues management, neglects to include 27 holiday slots, 15 birthday slots and 55.38 sick leave slots (*Brief* at 22).

Finally, Kelly Days would restrict what the Chief could do within the Department. Although it only amounts to four additional days per year per employee, many times the shift is running at its minimum and if a Kelly Day is taken it would restrict special duty assignments or seminars that could be assigned to employees simply because it would cost too much money to send them on those programs (*Brief* at 23).

Analysis and Award. In arriving at a decision regarding Kelly Days as part of a *quid pro quo* for the composite wage and insurance package, I credit the Union's argument that it is more than likely that increases in health insurance premiums will exceed general wage increases over the long run. Thus, moving from a 3.0% charge to an "80/20" *premium* split in one fell swoop is a serious hit for the bargaining unit. I credit the Union's numbers that in 2010 despite a 4.0% general increase, the net salary is reduced to an average of 2.76% for the unit as a result of the increased health insurance premiums (see, *Brief for the Union* at 21).

Regardless of whether Kelly Days are considered a "breakthrough" benefit,⁵ for the following reasons, the Union's provision for Kelly Days is awarded:

1. *The external bench-mark jurisdictions supports the Union's position.* Independent of any *quid pro quo* considerations, external considerations favors the Union's position.

Significantly, all the *external comparables* include Kelly Days. The average for the comparables is 2,759, which reflects an average of 6.79 Kelly Days. Canton's annual scheduled hours

⁵ While debatable, the better view is that the addition of Kelly Days is not a new benefit. What is at issue is hours of work. The average workweek is 56 hours. The schedule that is operative at Canton is 24/48, or one on, two shifts off. One can increase or decrease that schedule. In other words, you can increase it by scheduling more shifts on (East Moline), or you can reduce the schedule by scheduling more shifts off (Kewanee). "So in terms of the classic Harvey Nathan analysis of *Will County*, it's not a breakthrough if it increases an existing benefit or decreases an existing benefit. It's only a breakthrough if it creates an entirely new benefit." (R. 29-30). "Now, we happen to call those Kelly Days, but these could be off days. They could be anything. The point is, it's increasing or decreasing the scheduled time off and it's decreasing the average workweek. I don't think it's a breakthrough. I never thought it was." (R. 30).

places them at a ranking of 11 of 12 and more than 5.5% below the average. Indeed, the Union's proposal would still leave Canton last among departments that have comparables and ahead of only Monmouth which does not have any Kelly Days. I see no valid reason why Canton should continue to occupy this ranking. The externals favor the Union.

2. *The internal comparables, which the Administration relies on to justify an 80/20 split, favors awarding Kelly Days.* Also supporting the Union's final offer independent of any consideration of a *quid pro quo* for the "80/20" split is this: *Internally*, the police unit enjoys a benefit comparable to Kelly Days. Canton Patrol Officers receive an additional 12 days off (one Sunday off per calendar month) characterized as "Stress Days." (R. 21). As noted by the Union, "whether they are called Stress Days or Kelly Days, the fact that patrol officers in Canton enjoy additional days off over and above vacation days is a factor that supports the Union's Kelly Day offer." (*Brief* at 27).

3. *The Union's quid pro quo argument vis-a-vis the 80/20 split supports awarding its final offer.* The Union's argument that its Kelly Day offer leaves the vacation schedule "as is" but restores a time off benefit sacrificed by the Union when it secured its preferred health insurance formula based on percentage of salary in 1993 is well taken. The disparity is still there, in the Union's eyes.

4. With respect to the Administration's cost arguments, valid to be sure under the Act's criteria, the Union's proposal would provide four (4) Kelly Days per Firefighter/year and, crediting the Union's numbers, would require an additional 60 slots per year (see, *Brief* at 28-29). According to the Union, the aggregate number of slots for existing vacation, personal and added Kelly Days would total 270 slots, or 75% of the total 365 slots available for scheduling time off. (R. 32). While the parties are not in agreement regarding the procedure for calculating slots, I find that the number of slots needed per shift is closed to 90, not the 124 as maintained by Chief Bonnie Cremer. Mr. Berry's analysis used *actual days Firefighters are entitled to*, and I hold this "the better algebra." (R. 123). With the Union's Kelly Day proposal there is still a buffer of approximately 95 slots (R. 33). Admittedly, there will be 60 or more days where Firefighters are going to be off, but that is within the buffer already scheduled. The Kelly Day impact is arguably minimal. *Id.*

5. Finally, I credit the Union's arguments regarding bargaining concessions that will mitigate overtime costs. Allowing the Fire Inspector to be reassigned to fill potential overtime vacancies during the day, although limited to 12 hours per month, is still a benefit to the City regarding overtime costs. (R. 117-118). Also, the Article 28 concession where the City will save overtime costs on making a temporary appointment of a part-time Firefighter when a full-time Firefighter will be incapacitated for a period longer than 30 days permits temporary appointments earlier when it was determined that the employee would be off for 30 days or longer. Every day of such substitution saves the City \$900 in overtime costs (*Brief for the Union* at 31-32; R. 109-115).⁶

⁶ Q. [By Mr. Berry]: But you would agree that to the extent that you can use these temporary appointees that reduces your overtime costs?

A. [By Chief Cremer]: Yes. (R. 115).

For the above reasons, the Union's final offer on Kelly Days is awarded.

4. Items #4 & #5 – Retirement Insurance

Retirement Insurance is covered under Article 12 of the parties' collective bargaining agreement (JX 1). The Administration is proposing major reductions in health insurance benefits *for retirees*. As explained, *infra*, the Union has accepted some aspects of the City's proposal (Section 12.3, Retired Employees), while rejecting other portions (Section 12.4, Disabled Employees)(*infra*; *Brief for the Union* at 35-37).

Position of the Union. The Union points out that the City's final offer proposes a change in the existing language affecting Sections 12.1, 12.2, 12.3 and 12.4. Its offer adds a new section 12.6 which makes the changes it is proposing effective May 1, 2008 (*Brief* at 33). All in all, the Administration is proposing major reductions in health insurance benefits for retirees.

Background. To this end the Union notes that in Canton retiree health insurance is a mandatory subject of bargaining, and this is so because the Union and the City had negotiated and made agreements with respect to retiree health insurance prior to the effective date of the Act. Accordingly, under the second paragraph of Section 4 Management Rights of the ILRA, such agreements as to subjects that might otherwise be permissive subjects of bargaining are mandatory subjects of bargaining (*Brief* at 34; UX 13; R. 88-91; 154). As such, the Union's bargaining rights are greater than those members of other bargaining units where retiree health insurance is permissive and the right to bargain is limited to effects only (*Brief* at 34). Accordingly, the so-called "price" for reductions gained by the City should be higher than the price paid by jurisdictions where the issue is permissive. *Id.*

The City's proposal changes affects two different categories of retired employees: (1) Section 12.3 employees who retire regularly after May 1, 2009, and (2) Section 12.4 employees who are disabled employees (*Brief* at 35).

Section 12.3, Retired Employees. The Union points out that under the predecessor collective bargaining agreement retired employees' contributions toward health insurance premiums was 3.0% of their base salary, thus tracking the formula applied to active employees who paid 3.0% of their base salary. The City's new offer is a bookend to its offer for active employees, a major change in both formula and the amount to be paid. It provides that retired employees will pay the same amount as paid by other active employees. **Thus, the formula is not tied to their salary amount but is tied to the premium amount. In the Union's view, the total amount represents a massive increase. The Union has accepted this change with one caveat: That the City's language be supplemented with the following qualifying condition: "Any increase in contribution provided for under this section [above the 3.0% base pay] shall not go into effect until and unless the**

increased contribution rate is made applicable to all City personnel (i.e., bargaining unit and non-bargaining unit)." This is necessary, says the Union, because of ambiguity in the record as to some non-bargaining-unit employees (*Brief* at 36; R. 86-87; 137-138).⁷ Adding the Union's proposed language would ensure that the City's professed commitment to uniformity is adhered to prospectively (*Brief* at 36).

Section 12.4, Disabled Employees. Under the predecessor collective bargaining agreement disabled officers are entitled to the same premium payment as regular retired Firefighters. The first of the last four sentences of Section 12.2 states as follows: "Premium payment shall be for the retiree, retiree spouse and dependent children." The City's proposal seeks to modify this condition in two ways. *First*, it provides that for employees hired after May 1, 2008 and retirees or "are otherwise disabled as that term is defined in 40 ILCS 5/4-112 shall be entitled only to the continuation benefit coverage provided under 215 ILCS 5/367 (j) . . ." A *second* condition is that within the same group of employees who are "disabled off duty," such retirees shall be responsible for 75% of the premium payment for both single and family coverage. (*Brief* at 37). This, argues the Union, is a drastic reduction in the previous benefit which was 3.0% of pension amount; but it is a further reduction beyond the 80/20 split that will be paid by active employees under the City's new formula effective May 1, 2009.

According to the Union, the Administration's offer is flawed. The first sentence relating to employees who are "otherwise disabled" is in direct conflict with the Safety Employee Benefits Act, 820 ILCS 320/1 *et seq.*, providing that an employee who is totally disabled or killed in the line of duty is entitled to receive the "entire premium of the employee's health insurance plan for the injured employee, the injured employee's spouse and for each dependent child of the injured employee." (*Brief* at 37-38). The first sentence limits the health insurance benefit only to the rights afforded under 215 ILCS 5/367(j). This provision gives regularly retired employees the right to continue as a participant in the plan but it requires the employee to pay 100% of the premium. This conflict, maintains the Union, cannot be ameliorated by the Mayor's expressions of general intent (*Brief* at 38).

Position of the Administration. The Administration submits that as a practice, *all* City employees and retirees have been under the same health insurance program (*Brief* at 14). All retiree changes in benefits have been negotiated as part of the contract as far as health benefits are concerned (R. 132). Therefore, based upon past history the Unions have always received "two bites of the apple" when it came to making any corrections or changes to the health plan. *Id.* As a practice, no unilateral changes have ever been made by the City as it pertains to retired employees (*Brief* at 15). In Section 12.3 the language merely attempts to require retired employees, who retire after May 1, 2009, to pay the same premium pay as other active employees of the City for single and dependent

⁷ Q. [By Mr. Berry]: What is the reality with respect to retirees who are non-bargaining unit people who are going to pay the 80/20? What's going to happen with them when they retire in terms of insurance?

A. [By Mr. Beal]: That hasn't been decided by the City yet. (R. 86).

coverage. *Id.* The Administration notes that both the AFSCME and the Police contracts have the exact same provisions under Sections 12.1 and 12.3 and they were negotiated as part of their collective bargaining agreement. *Id.*

With respect to Section 12.4, management asserts that just like the retired employees, their provisions are negotiated each time a contract comes up for renewal. The provisions of 12.4 in no way tries to denigrate the application of that statute, in the Administration's view (*Brief* at 16). There are employees, however, who may be disabled in ways other than suffering a "catastrophic injury . . . in the line of duty." Those employees would be covered by Section 12.4 while those who are injured in the line of duty would be covered by the Public Safety Employee Benefits Act. Furthermore, Section 12.4 also seeks to change the contribution amount for those individuals hired after May 1, 2008 and retiring after May 1, 2008, or who are disabled, as that term is defined under 40 ILCS 5/4-112, off duty after May 1, 2008. *Id.* The new rate is equal to 75% of the premium. Management submits that it is not attempting to address those injured "on duty" because they are covered by the Public Safety Employee Benefits Act. The Police contract has the exact same provision in its new contract language with slightly different implementation dates.

In conclusion, the Administration asserts it is not attempting to eliminate the application of the Public Safety Employee Benefits Act. It is merely trying to supplement the provisions of that Act for areas that have no application otherwise under that Act. It requests language that is already in the Police contract. Sections 12.1 and 12.3 are in the AFSCME collective bargaining agreement and, thus, the Employer requests the same provisions in the Firefighters' contract (*Brief* at 17).

Analysis and Award. The Union's final offer regarding Article 12, Retirement Insurance, is simple and reads as follows:

Section 12.3(b) Insurance of Retired Commissioned Officers after May 1, 2009

Any increase in contribution provided for under Section 11.1 above the 3.0% of employee's base pay shall not go into effect until and unless the increased contribution rate is made applicable to all City personnel (i.e., bargaining unit and non-bargaining-unit).

The Administration has acknowledged that the language of Section 12.3 merely attempts to require retired employees, *who retire after May 1, 2009*, to pay the same premium pay as other active employees of the City for single and dependent coverage. *Id.* Citing *internal* criteria, the Employer points out that both the AFSCME and the Police contracts have the exact same provisions under Sections 12.1 and 12.3 and they were negotiated as part of their collective bargaining agreement. *Id.* The Union has accepted the Employer's "80/20" health insurance premium split. (*Brief for the Union* at 36).

As noted, I cannot pick and choose language with respect to economic items. I am okay with the Administration's language *with the Union's addition*, but legally I cannot append it, as requested by the Union. For the record, however, I am awarding the Employer's position on Section 12.3 with the Union's "caveat" provision regarding applicability to all retired employees made part of this record.⁸

Section 12.4. For the reasons outlined by the Union regarding Section 12.4, Disabled Employee and Spouse of Deceased Employee, I, too, believe the Administration's offer is "fundamentally flawed" relating to employees who are "otherwise disabled." I also find that the intent of the Administration was not to circumvent the statute.⁹ This leaves me with the Draconian option of either awarding the Union's proposal which appears to be the "*status quo*" with respect to "disabled employees," or the City's proposal which clearly effects the parties' intent of uniformity and, thus enact the "80/20" split, but is problematic with respect to external law. Normally, I would just go ahead and award the Union's provision, leaving it to their honor to reach an accord with the Administration on the 80/20 split. However, knowing that if the Administration attempted to contradict the Safety Employee Benefits Act the Union would react with a lawsuit, I'm awarding the City's final offer, leaving it to the parties to clean up the language.¹⁰

5. Item #6 – Longevity Benefit

Position of the Union. The Union maintains that Section 4.1(b) of the predecessor collective bargaining agreement provides for a longevity benefit payable to employees who have accrued at least 20 years of service. Appendix B, Step A provides for an additional \$6,000 "annually"

⁸ Significantly, Counsel for the Administration conceded there is no "me too" provision in the other contracts providing that "if we don't get it done with fire, they don't have to do it? No, there is no such agreement." (R. 96).

⁹ So there is no misunderstanding, I credit the Administration's intent not to implement a system inconsistent with the state statute. As promised by the Mayor:

Q. By the language that we have in our final offer [§12.4], you're not intending to violate any provisions of the state statutes, are you?

A. No.

Q. So if the state statute required that premiums be paid to those injured in the line of duty by the City, it's not your intent to change that?

A. No. (R. 133).

Although I am not remanding this item, the parties need to address this anomaly in bargaining.

¹⁰ I understand I'm on thin ice in awarding a position I find Draconian leaving it to the parties to "clean up the language." On balance, however, the Union's "non-uniformity" alternative is no less selection worthy. This is truly a case where I could fix the problem if the statute allowed me to do so.

for eligible employees and Step B \$7,200 “annually.” This provision was established as part of the *quid pro quo* when the Union and the City agreed to establish employee contributions towards the cost of health insurance. The Union points out that the dispute between the parties centers upon the language of Section 4.1(b)(4), which provides that employees move to Step A or B will receive the salary for a maximum period of 30 days.” (*Brief* at 39). This provision has been administered without incident since 1993.

The City’s position, notes the Union, is to continue the same language without change. The Union’s offer provides for modifying the maximum payment period from 30 days to one year (*Brief* at 39). The Union’s proposal also limits the effective period during which the longevity payments the employee would be eligible to receive the eligible payments to the period between 20 and 30 years of service. The \$7,200 payment would not be effective until the completion of 25 years of service. The existing language provides for no such limitation (*Brief* at 39).

Extending the period of eligibility to a year would potentially raise the costs to a full \$6,000 (*Brief* at 39). The Union’s reason for proposing the change is not to increase the City’s costs. It is put forward to preserve the pension value of the longevity steps as originally intended (*Brief* at 40).

Changes in the interpretation of “pensionable salary” necessitates the Union’s offer in order to preserve the benefit as it was intended. In the Union’s view, this is the most opportune time to revise the language to ensure the preservation of benefits. This is particularly the case when the City will receive an award which drastically increase retirees’ health costs (*Brief* at 41). The problem with the 30-day payment has been that it was always vulnerable to the Department of Insurance rule requiring “lump sum payments to be prorated over 12 months.” Given recent precedents that Union’s offer must be favored as a measure that will preserve the parties’ intent and correspond with the prevailing interpretation of pensionable salary (*Brief* at 43). In the Union’s view, it is state law that preempts the City’s offer. *Id.*

The additional annual salary costs associated with awarding the Union’s offer represent an appropriate quid pro quo for the increased costs that will be imposed upon retirees by the awarding of the City’s 80/20 health insurance formula. Preserving the longevity step at full value addresses the *quid pro quo* deficiency for retirees (*Brief* at 44). In the Union’s view: “An award that will give the City the benefit of the 80/20 formula for retirees but also the opportunity to as some later date during the contract term either at its own initiative or as a result of an audit reduce the longevity benefit 91.6% would be inequitable in the extreme.” (*Brief* at 44-46).

Position of the Administration. The Administration maintains that the real issue under the wage proposal is Section 4.1 which provides for an early retirement to Firefighters with 20 or more and 30 and more years of service (*Brief for the Employer* at 18). Unlike the AFSCME bargaining-unit employees, whose retirement is based upon a 5-year average of wages, the pension for Firefighters and Police Officers is determined by the amount of pay *on the last day of employment*.

Therefore, a mere spike in the employee's pay with a corresponding exit in employment will assure the Firefighter or Police Officer a pension salary much higher than that which they enjoyed for most of their last few years of service (*Brief* at 18). In Canton's case, the spike is \$6,000 for the year if 20 years of service is achieved and \$7,2000 for the year if 25 years of service is achieved. This provision, argues the Administration, was originally implemented and agreed upon as part of the 1993 collective bargaining agreement changes when the City first negotiated the insurance premium co-pay at a percentage of base pay. *Id.* This early retirement incentive, along with (1) a percentage of base pay for holidays, (2) a pick-up tax for pension contributions allowing both the City and employee to make their pension contributions free from any income tax, and (3) an additional step in the pay plan, constituted the whole package the City gave the Union in exchange for the 1.2% of the base pay as their co-pay for insurance premiums. *Id.*

There is a significant difference between the current language of the retirement incentive and that which the Union requests. Under the current collective bargaining agreement, they would have a maximum of 30 days to elect retirement at which time if they fail to do so they would go back down to their previous base step. Under the Union's final offer, employees would have the option of staying an entire year. That could cost, potentially, the City \$5,500 for someone with 20 years of service and \$6,600 for someone with 30 years of service if they were to remain employed for the entire year (*Brief* at 18-19; R. 72).

When the City gave its package to the Union in 1993 the Administration never expected to have to pay for an entire year but just for 30 days. Since the negotiation of that provision the Union claims that the Department of Insurance has found the spike to be "non-pensionable." In other words, it will not be considered as part of an employee's salary and, therefore, the benefit is lost.

The City asserts that this issue is something that should be negotiated at the table and not something that should be achieved through arbitration. The Employer has already given a significant increase in wages to the employees as a "*quid pro quo*" for the insurance premium "80/20" co-pay change and the City should not have to give this additional increase for pension eligibility as well. The Employer's contract proposal for wage and benefit increases is already very rich and this would make it even richer (*Brief* at 19). Thus, the Union's longevity request should be denied and the *status quo* awarded. *Id.*

Analysis and Award. Without doubt, the hardest cases arbitrators decide are those where both parties are right or both parties are wrong. And so it is with respect to longevity at Canton. If insurance and wages are the "800 lb gorilla" in the room, the offspring brother in the corner is clearly longevity.

The problem for the parties with respect to longevity is that exogenous variables may potentially impact the value of the benefit negotiated by the parties. Specifically, in this case, there is a provision in the insurance code providing that lump sum payments be *prorated* over 12 months

(R. 166). Thus, when a Department of Insurance Director declares the benefit is to be prorated, this has the effect of devaluing this benefit by dividing by 12 (R. 167). As stated by Mr. Berry: "So all we're trying to do – to talk about savings, all we're trying to do is restore the original intent which was to make this a pensionable amount." (R. 167). "Theoretically it does have an additional cost but we think that this additional cost is necessary to modify this to implement the original intent." (R. 167).

I credit the Administration's argument regarding the "spike" that is possible under the Union's proposal. In the Employer's words: "When the City gave their package to the Union back in 1993 they never expected to have to pay for an entire year but just for 30 days." (*Brief for the Employer* at 19). More importantly, Counsel for the Administration has noted that the City has not yet received any notice that the current spike is not pensionable (R. 168). Further, and contrary to the Union's view, until the Department of Insurance takes action, why not let this sleeping dog lie? (cf: *Brief for the Union* at 44).

At the same time the Union's point that, perhaps, some language must be crafted that will preserve the parties' intent and correspond with the prevailing interpretation of pensionable salary (*Brief* at 43), especially when the "hit" retirees will take regarding the implication of an "80/20" premium split. Alas, I see this as a matter for negotiations, especially absent any external guidelines or comparables. Hopefully, the equities involved can be balanced at the bargaining table rather than through an interest arbitrator.

For the above reasons, I am remanding the longevity issue back to the parties for consideration within the next 15 days. Absent an agreement, a one-page decision will be issued and appended to this opinion.

VI. AWARD

Non-Economic Item

1. Section 24/Method of Reviewing Discipline and Discharge under the parties' collective bargaining agreement. Union's final offer.

Economic Items

1. Section 11.1 Insurance – Amount of Firefighter Co-Pay for Insurance Premiums. Employer's final offer.
2. Section 12.1 Life Insurance and Retirement Insurance for Retired Employees. Employer's final offer.
3. Section 12.3 Retired Employees – The Amount of Premium Co-Pay for Retired Employees for Healthcare. Employer's final offer with Union's "caveat" language made part of record.
4. Section 12.4 Insurance Coverage for Disabled and Deceased Employees and their Families (R. 140-142; 162-163). Employer's final offer (with a strong plea to "clean up" the language).
5. Wages to be Paid Bargaining-Unit Employees. Employer's final offer.
6. Kelly Days. Union's final offer.
7. Longevity Pay. Remand to parties for 15 days.

Dated this 20th day of July, 2009,
at DeKalb, IL.



Marvin Hill, Jr.
Arbitrator