

IN THE MATTER OF INTEREST)	
ARBITRATION)	
)	
CITY OF EAST MOLINE, IL)	Marvin Hill, Jr.
)	Arbitrator
)	
and)	Hearing Days: September 4, 5, 10;
)	October 24; November 3, 4, 5, 2008
IAFF LOCAL NO. 929)	Mediation Days: August 4; September 11
)	December 2, 2008
)	

Appearances:

For the City: James Baird, Esq.
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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

This proceeding was a long and very arduous process comprising many days of hearing and at least three mediation sessions with the parties' representatives and two remands. While some issues were resolved, most remain in dispute.

Introduction. The City of East Moline ("City" or "Employer" or "Administration") is an Illinois municipality with a population in excess of 20,333. The City is approximately nine miles in size and employs about 170 employees. Of those employees, approximately 32 are in the IAFF

Unit, 38 police employees are represented by the Fraternal Order of Police (FOP) and 67 employees in other city departments, including Public Works and Clerical, that are represented by AFSCME Council 31, Local 1234.

The City operates three separate fire stations with a fourth in the planning stage. The City's professional firefighter complement consists of a Fire Chief (1), four (4) Captains and six (6) Lieutenants (the Union alleges 4 lieutenants in unit by ordinance), with the remaining 22 employees serving as firefighters or firefighter paramedics. The City's current firefighter minimum manning level is seven (7) sworn personnel per shift.

Bargaining History. The City has had a long bargaining history with its sworn police officers below the rank of Captain, represented by FOP Local 96. The Union's most recent two contracts are contained in the record. The two most recent AFSCME contracts are also contained in the record. Significantly, the City's most recent contract with AFSCME was a result of an interest arbitration award by Arbitrator Edwin Benn. In that award, Arbitrator Benn ruled on, *inter alia*, the issues of wages, health insurance, retiree health contributions and certain other operational issues.

The City has had a bargaining relationship with the Union, covering Fire Department personnel, continuously since before 1986, when the Illinois Public Labor Relations Act (IPLRA) was made applicable to sworn fire personnel. Over the years, firefighter work schedules and staffing levels have regularly been discussed in negotiations between the parties. In that respect, the parties' disagreement over the current work schedule is not new.

The Schedule. Prior to 1985, non-supervisory employees of the Fire Department worked a unique, 1-day-on, 3-day-off work schedule. That schedule gave rise to an average hourly work week for bargaining-unit personnel of approximately 42 hours. In 1985, as a result of negotiations between the City and the Union, the Firefighters agreed to a concept identified by Attorney J. Dale Berry as "Reverse Kelly Days," then called "Denny Days" (after then-Mayor Denny Jacobs). Under that work schedule, employees would work one 24-hour shift on duty, followed by three 24-hour shifts off duty, except that each firefighter would return to work every 24 calendar days, working thirteen (13) 24 hour extra days per year. As a result of this change, the parties also agreed to a minimum shift manning number of seven (7) firefighters or firefighter/paramedics on shift at any one time.

All of these work schedules are and have been accomplished by the use of a four-platoon system. Under such a system, two (2) slots are typically available for paid time off, such as vacations and the like. Significantly, the utilization of the one-on, three-off work schedule, with four separate platoons, gives rise to an average firefighter work week of 48 hours including the extra days.

The record indicates that for many years, the City has been attempting through contract

negotiations to convince the Firefighters to agree to a more traditional work schedule of three platoons, or 24-hours on, 48-hours off, with an average work week approximating 56 hours. Until now, the Union, for its part, at least in the eyes of the Administration, has continuously declined to change the work schedule or, since 1986, to add to the length of the average work week

The parties' current discussion regarding starting an ambulance service. Counsel for the Administration has declared that the City has made the decision to operate an ambulance service, effective May 1, 2010 *provided the City's final offer is awarded* (Tr. 370). However, if the Union's final offer on Hours of Work is accepted, there will be no ambulance service operated by the City, according to the Employer (*Brief for the Employer* at 10). The City has advised that "neither the City, nor any other reasonable employer, would ever pledge to enter a new business enterprise, invest hundreds of thousands of dollars in new equipment, and hire and train new employees, on the hope that some sort of satisfactory start-up 'deal' can be negotiated with the Union, or 'won' from a second arbitrator if talks with the Union break down." *Id.* Right or wrong, I credit the City's argument that an ambulance service will not be effected if its final offer on hours is not accepted.

* * *

Authority for a draft award. With approval of both partisan panel members, the undersigned Arbitrator continued efforts to mediate the conclusion of a successor collective bargaining agreement. When further mediation efforts proved unsuccessful, the panel agreed to modify the ground rules to provide that post-hearing briefs would be received on January 21, 2009. The parties further agreed that after briefs were received, the Arbitrator would issue a "short, written draft award" on all outstanding issues using discretion regarding the amount of explanation. Upon receipt of the draft award, the parties would then be free to continue their negotiations in a final attempt to reach accord on a collective bargaining agreement. Failing that, the parties agreed that the Arbitrator would "complete" an award and transmit a final, signed copy to the parties.

Consistent with the above authority, a draft award was issued on February 6, 2009, with the objective of providing the framework of a successor collective bargaining agreement. Unfortunately, after scheduling a bargaining session on March 3, 2009, the Union canceled, moving the matter back to the undersigned Arbitrator for final resolution.

II. ISSUES FOR RESOLUTION

According to the City, and in contrast to the Union, five (5) economic issues are submitted for resolution: (1) Hours of Work, (2) Health Insurance, (3) Wage Scale, (4) Acting Out-of-Rank, and (5) Paramedic Stipends. As correctly pointed out by the Union, the "800 pound gorilla" in the room is "Hours of Work," an item itself driven by considerations relating to the parties' desire to establish an ambulance service (*Brief for the Union* at 3).

The Union maintains there are six (6) economic issues for resolution. According to the

Union, "rank differential" should be separated from wages, thus making the number of unresolved economic issues six.

For purposes of this draft award, five economic issues are considered. Rank differential is included in the "wages" issue.

III. DISCUSSION

As noted, this dispute involves five *economic* issues.¹ The Act restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child."² As to non-economic issues, 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:

¹ During the hearing, numerous issues were withdrawn from arbitration, and this is recorded as part of a tentative agreement which is made part of this record.

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

- (A) In public employment in comparable communities.
- (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the costs of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions; medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

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

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

B. Comparative Bench-Mark Jurisdictions

In Paragraph 8 (¶8) of their Ground Rules and Stipulations the parties agreed that the following bench-mark jurisdictions would serve as comparables for purposes of evaluation the parties’ final offers:

- | | |
|--------------|--------------|
| Belvedere | Charleston |
| Collinsville | Freeport |
| Galesberg | Jacksonville |
| Kankakee | Lincoln |
| Macomb | Matton |

(JX 3, ¶6).

The above jurisdictions are adopted as the relevant bench-mark jurisdictions in this award.

C. Resolution of the Issues

(1) Hours of Work

Background. Significantly, after all proceedings have been completed and all mediation sessions held, both the City and the Union now appear to agree on at least three important concepts concerning the “Hours of Work” issue. As argued by the Employer:

First, both sides agree that the City’s fire staffing should and must be increased. The parties are in disagreement as to how to accomplish this.

Second, both parties now agree that the provision of an ambulance service by the City is an important way to raise departmental revenues, which can then be used to pay for increased departmental staffing. Both sides testified that it is error for the City to allow an outside concern to profit from the provision of ambulance transport services when those funds could be obtained by the City and used to increase staffing within the Department. In Union counsel’s words, “Everybody’s for an ambulance” (R. 119), and “We want the ambulance, get the ambulance” (R. 119). The Union acknowledged that the City’s decision to establish an ambulance service is a progressive step which can potentially be a “win-win” result for both the City and the Union (*Brief for the Union* at 38).

Third, both parties agree that if the City is to provide an ambulance transport service (ATS), then firefighter platoons should be changed from the current four-platoon system to a more workable and economical three-platoon system. Indeed, the final proposals tendered by *both* parties propose the three-platoon system, effective May 1, 2010, with Union counsel pointing out that “We’re going to a three-platoon schedule.” (R. 505)(*Brief for the Employer* at 7-8). **Once the Union moved from a four-platoon to a three-platoon schedule and incorporated this in its final offer, the analysis focuses on the particulars of the parties’ proposals. A so-called “breakthrough” analysis – which would focus on a four-platoon versus a three-platoon system – is arguably misplaced. What’s before me is the viability of two proposals, both adopting three-platoon schedules. The question is what three-platoon schedule makes economic sense and is operationally viable given the Administration’s decision to enter into the ambulance business.**

* * *

The City initially proposed to move to a three-platoon system in May of 2009. However, after bargaining-unit members expressed the need for more time to arrange for personal matters such as childcare, significantly, and to the Administration’s credit, the City proposed a change to the three-platoon system, *which will become effective on May 1, 2010.* The timing factor favors the Administration’s case.

In addition, the City initially proposed that each employee work week would be increased from an average of 48 hours to an average of 53 hours, noting that eight of the ten external comparables (Belvidere, Charleston, Freeport, Galesburg, Jacksonville, Lincoln, Macomb and Mattoon) worked an average work week at least that long (CX 53; R. 239). However, in its Final Offer, the City has changed its position, and now proposes that the average workweek be 52.5 hours, the same as Kankakee, with employees receiving a “Kelly Day” off work every seventeenth (17th) shift. Also, because the City’s proposal calls for employees to be paid hour for hour for their increased work week, the average wage for each bargaining unit member will be increased in excess of an additional \$5,500 per employee.

Clearly, the parties’ disagreement in this case involves one key area of concern. That is, whether, in order to provide an ambulance service and help increase staffing, employee work hours (and pay) should be increased to an average of 52.5 hours per week, as proposed by the City, from the current 48 hours per week, as proposed by the Union. The Union submits that the City’s offer impacts many more benefits and working conditions than the length of the work week. According to the Union, “increasing the average work week from 48 hours to 52½ is equivalent to eliminating 10 Kelly Days per year (*Brief for the Union* at 16). In the Union’s view, there is no precedent for an award ordering a change in the *status quo* of this magnitude. *Id.*³

The Union proposes in its final offer that: (1) employees move from a four to a three-platoon system, with a work schedule of 24 hours on and 48 hours off, but with a Kelly day every seventh (7th) shift, with an annual work year of 2,503, for an average work week of 48 hours;⁴ and (2) that four new firefighter paramedics be hired by the Department. The Union also proposes that (3) vacation time be converted from weeks to hours, and (4) each shift will be provided with a minimum of one (1) slot/day plus all unused Kelly day slots in which members of the shift shall be allowed to schedule off their accrued vacation time. Finally, the Union asserts (5) in the event that the City terminates the ATP, the Union would have the option to reinstate the previous four-platoon work schedule upon 30 days’ notice to the City.

In response to the City’s contention that the Union’s plan will require about \$360,000 in

³ The Union, of course, ignores the fact that the City is compensating the Firefighters for the extra hours. In addition, the City’s offer, and this award specifically, contains a more than adequate *quid-pro-quo* for the change – a change that the Firefighters have already conceded when it submitted a final offer with a changed schedule. Absent the hours award, it is not all clear that the Firefighters would receive a reduced contribution insurance package, an increased wage package, acting-up pay, and a paramedic stipend *tied to a percentage of salary!*

One aspect that went unexplored was a two-tier work schedule allowing Firefighters who desired a three platoon system to elect this track, and those Firefighters that desire to retain the four platoon schedule to retain this schedule. This is the utility of sitting down to bargain on remand, a course of conduct that was not pursued.

⁴ Of note is this: Not only has the Union moved from a four to a three-platoon schedule, in its remand proposal the Union offered to increase the average hours of work from 48 to 50.5 hours (*Brief for the Union* at 37). The concession was insufficient for the City. The Administration’s offer in remand continued to demand a 52.5 hour work week. An accord somewhere between 52.5 and 50.5 should have been possible. While the Union points the finger at the Administration for “stonewalling,” I find it noteworthy that it was the Union who canceled the March 3rd bargaining session, forcing the matter back to me.

start-up costs for four persons, while the City's plan will only require approximately \$89,000 start-up costs for one person, the Union proposes a different solution which it asserts "will work." In the Union's view, the extra \$286,000 start-up costs incurred by the City's hiring and training of four new paramedics (at a time when ambulance revenues are not forthcoming) can be reduced or eliminated *by the Union*. To this end the Union submits that the parties can negotiate some sort of temporary staffing system with the Union, whereby the Union will provide qualified paramedics at reduced rates and/or less expensive conditions of employment, so that the City's start-up costs will not exceed the \$89,000 the City has projected under its proposal. The Union's proposal further provides for a second Arbitrator to rule on whether the Union has met its obligations to reduce the City's start-up costs to \$89,000 or less, if the Union and the City cannot reach agreement in such negotiations. Apparently, under the Union's final proposal, if the Union has met such obligation, then the Union's temporary staffing proposals will be accepted by the second Arbitrator. On the other hand, if the Union's proposals are not accepted, then the second Arbitrator will award the City's proposals. Thereafter, once the second Arbitrator's award is received, the City would then be in a position to buy its ambulances, seek the necessary hospital approvals, train existing staff, and finalize the details of its new ambulance transport business. This, says the City, is not workable.

While the Union clings to the argument that the City's start-up costs are only \$89,000, the Administration counters that the Union's numbers are not only incorrect, they are "ludicrous." In Chief DeFrance's view:

Start-up salaries in the training, that is the fire academy and the paramedic training, your [the Union's] proposal is \$220,000, okay? That is money you have to have before the \$242,000 you are talking about for operating a system for hiring the guys that . . . I mean because I have that lag time. It is basically almost like you have got to hire them twice. You got to have them on board for all this time before you can start generating revenue, and we have to got to pay for that. We have got to have the cash flow. The cash flow and pay rates are cost, and we are not going to recoup the time that they were not generating revenue. (R. 312).

Furthermore, Chief DeFrance testified without contradiction that the difference of start-up costs between the Union's proposal and the City's proposal is "in the neighborhood of \$115,000 to \$150,000 difference." (R. 384).

This is not a case where the Arbitrator misunderstood the numbers to create an erroneous depiction of the differences in start up costs, as alleged by the Union in its Draft Ruling Response (*Response at 2*).

* * *

External analysis favors the Administration's final offer on hours. A "before and after" snapshot clearly favors the Administration's position on hours. At the onset of current negotiations, East Moline employees had the second most favorable work schedule of all the external comparable

communities in terms of (1) average work week and (2) annual hours worked (*Brief for the Employer at 38*). East Moline Firefighters will maintain their favorable comparability rank of second place for the first two years of the successor collective bargaining agreement. The annual hours under the City's proposal will be 2,739, well within the comparable parameters (*Brief at 39*).

To illustrate: The so-called "before" picture (ranked from the fewest hours to the greatest hours worked) reads as follows:

Community	Work Schedule	Work Period/ Kellys	Average Work Week	Annual Hours	Union Uses
Collinsville	24-72	28 days	42.00	2,192.00	2,184.00
East Moline	24-72	29 days	48.00	2,496.00	2,496.00
Kankakee	24-48	24 days/16th	52.50	2,739.38	2,730.00
Charleston	24-48	27 days/18th	52.88	2,759.67	2,750.00
Freeport	24-48	27 days/18th	52.88	2,759.67	2,760.00
Galesberg	24-48	27 days/18th	52.88	2,759.67	2,760.00
Jacksonville	24-48	27 days/18th	52.88	2,759.67	2,760.00
Lincoln	24-48	27 days/18th	52.88	2,759.67	2,760.00
Macomb	24-48	27 days/18th	52.88	2,922.00	2,760.00
Belvidere	24-48	21 days/none	56.00	2,922.00	2,922.00
Mattoon	24-48	28 days/none	56.00	2,922.00	2,672.00
Average Excluding East Moline				2,733.04	
Average Excluding East Moline and Collinsville (as outlier)				2,793.49	

(*Brief for the Employer at 37*).

In the third year of the contract (the "after" picture), East Moline moves to 2,739.39 annual hours with a Kelly day every 16th shift. As noted by the Administration, "in this comparison, the numbers used for average weekly hours worked, and annual hours worked, have been taken from the Union's official 'Mathematical Factors for Data Analysis.'" The hours number 2,739.39 drops East Moline's Firefighters to a tie for second place, still *working* the second fewest hours per week (52.5) or per year (2,739.38). They will be in a tie with Kankakee for the second most favorable work schedule of the 10 agreed-upon comparable communities.

I credit the City's data that its proposal is approximately 5.29% above the average while the Union's proposal is 6.55% above the average (*Brief for the Employer at 41 & 42*). All in all, the City's proposal will maintain the Firefighters relative position as working the second fewest hours (2,739.38) relative to the bench-mark jurisdictions.

Viability of Proposals. The Union's proposal is premised on a model that is problematic under the evidence record. As argued by management, the Union's plan would not be adopted by an employer intent on minimizing its risk regarding an ambulance transport company. Many of the problems are outlined by the Administration in its *Brief* at 49-50. I find particularly valid the City's argument that the Union's plan leaves the process of start-up costs to "reopener" negotiations, and

if agreement is not reached, to an arbitrator's decision (*Brief* at 50). To this end the declarations by Arbitrator Harvey Nathan, in *Franklin County*, S-MA-99-46 at 28-29 (2000) are instructive:

The arbitrator is very reluctant to select a final offer which requires additional interest arbitration. There is an implied suggestion that collective bargaining cannot work, which, of course, is contrary to the intentions of the bargaining statute. The parties should be encouraged to negotiate and not encouraged to avoid hard bargaining by rushing to an outsider to determine the terms and conditions of employment. . . .

The Union's proposal will not resolve its dilemma. It only inserts yet another procedure to delay the ultimate result. Interest arbitration is itself a lengthy and time-consuming process. Indeed, a mid-term interest arbitration could well delay serious bargaining for the next contract. Moreover, the Employer may need to make adjustments, as the Agreement allows it to, while the parties are litigating the last mid-term alteration. The parties could find themselves in a morass of litigation when they should be at the bargaining table.

I also find the Administration's assertions with respect to timing persuasive (*Brief* at 51). Under the Union's proposal, the parties would be within 120 days to begin negotiations over the "procedures, temporary staff, and working conditions," including any proposed cost-saving ideas the Union may tender. If agreement cannot be reached, the parties are in arbitration. **This step is simply not realistic given the enormity of the present venture of the Administration – de novo start up of an ambulance service.**

Then there is this: The City's position is that it will not hire additional personnel to staff the ambulance program beyond the one necessary to bring staffing to 33, which will produce staffing levels of 11 men per shift (EX 4). **The Union's proposal requires that four (4) additional firefighter/paramedics be employed.** I am entitled to take judicial notice of all things known to reasonable people. This includes the task awaiting the Administration of hiring four additional personnel to work at East Moline. Even using the Union's numbers (i.e., that the cost of increasing hours and adding one firefighter is equal to the cost of maintaining the current hours and adding four new Firefighters), the staffing requirement alone (one additional firefighter/paramedic) favors the Administration's final offer.

Compensation relative to the bench-mark jurisdictions. The Union submits that the City's proposal will degrade the Firefighters' relationship to the external firefighters in terms of total compensation (*Brief for the Union* at 33). The City asserts that its proposal brings East Moline closer to the average of the comparables than does the Union's proposal and, as such, the factor of "total compensation" must be found in the City's favor (*Brief* at 54). The fact that the City is willing to pay Firefighters at their straight-time hourly rate for the extra 243 hours of work they will

be required to perform if its offer is adopted favors the Administration's proposal.⁵ While the Union asserts that this distorts "breakthrough analysis," as already noted what is before me are two proposals *both of which require a three-platoon schedule*. One proposal increases hours from 2,496 (current contract) to 2,739.38 (City) and another to 2,504.57 (Union). **If there is a "breakthrough," both parties have proposed one (see, *Brief for the Employer* at 55). I find no authority for the argument that a "transition rate" should at least compensate the firefighters for the extra hours added to their regular work schedule at the overtime rate (see, *Brief for the Union* at 34).**

The slot issue. I agree with the Union that the availability of vacation slots (for selecting vacation time off) may turn out to be a problem for the parties under the Administration's final offer. As pointed out by the Union: "Under the City's proposal not only are the vacation slots reduced in total number but it is contemplated that all time off whether Kelly Day, personal day or sick day must be compressed within two slots in order to maintain the 9-man minimum." (*Brief* at 35). As noted in the draft award, the availability of vacation slots favors the Union's position and, accordingly, this could have been addressed on remand. This matter is left to the parties' representatives to sort out.

The Union's argument regarding the absence of an enforceable commitment to the ambulance service is without merit. The Union points out that the City's original last offer presented at the outset of the hearing contained no enforceable commitment to maintain an ambulance service (*Brief for the Union* at 39). To this end the Union notes that the only reference to the ambulance service is in the facing page of Attachment 1 which merely states that the City "intends to reorganize the Fire Department for the purpose of providing an ambulance service and increasing the available staffing for response to fires." (*Brief* at 39-40). On the last day of the hearing the City offered an "olive branch" to the Union regarding the Union's concerns. Specifically, additional language was offered to the effect that contract modifications would not become effective until "the implementation of the City based ambulance transport system." Further, the Union's language would be adopted: "in the event the City terminates the City based ATP the previous contract's four platoon work schedule should be instituted as soon as possible." *Id.* at 41. The City appropriately responds that this is a classic "red herring." (*Brief* at 58). It offers no less than nine (9) reasons why the Union's argument should not be credited (*Brief* at 58-59).

As I expressed at the hearing and during mediation sessions, the parties are not engaging in an academic exercise regarding the implementation of an ambulance service. **The Union cannot have it both ways by asserting the infirmity in the Administration's offer and, at the same time, refusing to allow the Administration to draft an amendment that would satisfy those concerns. This is arguably a case where the process of interest arbitration is ill-suited to**

⁵ The City calculates that its proposal results in an additional \$5,523.39 on average that it will be paying to the bargaining unit (*Brief* at 57). The Employer also points out that this is not the entire *quid pro quo*. Additional benefits include: (1) added vacation time through a favorable conversion formula; (2) increased time off slots for Firefighters in the summer months; (3) a new holiday, Thanksgiving; and (4) reduced insurance contributions from bargaining unit members (*Brief* at 57-58).

address all possible problems and contingencies that may emerge in the adoption of an ambulance service.⁶ To the extent there is an infirmity here, on remand the parties were given the opportunity to address the Union's concerns.⁷ Again, a meeting did not take place.

(2) Insurance

The City's Final Offer. The City has proposed to increase employee contributions toward premium costs from the current 10% to 13%, effective January 1, 2009; 15% effective January 1, 2010; and 18% effective January 1, 2011. (JX 5(B)). Both parties agree that retiree and surviving-spouse insurance should be raised in the same percentages as the employee premiums are raised, with the proviso that employees retiring with thirty or more years of service at age fifty or older may continue health insurance coverage at a premium rate, which is 3% less than the most recent retiree rate in effect. (JX 5(A)(B)). These changes should become effective January 1, 2009.

The Union's Final Offer. The Union has proposed to increase employee contributions toward premium costs from the current 10% to 15% effective May 1, 2008; 18% effective May 1, 2009; and 20% effective May 1, 2010. (Brief at 63). Additionally, the Union has linked its insurance proposal to its holiday pay proposal which modifies the current language to provide that each shift employee shall receive eight hours of holiday pay for each of the eight recognized holidays. This pay shall be added to each employee's paycheck for the pay period in which the holiday occurs. (UX 5(B)). The Union proposes that these changes become effective May 1, 2008.

Key Differences Between The Two Proposals. Neither the Union nor the City have proposed changes in insurance benefit levels. While both parties agree that insurance premiums must be raised, the Union has proposed an insurance package that raises the employee premiums *higher* than the insurance package that the City proposed. The parties also disagree over the effective date of the changes in the insurance premiums. The City proposes that the changes in insurance contributions be effective January 1, 2009, while the Union proposes a May 1, 2008 effective date.

Finally, in the Administration's view, the Union's proposal has been inappropriately linked as an impermissible package proposal with holiday pay. (Brief for the Employer at 61;

⁶ One is reminded of the "parade of horrors" often explored in a second-year constitutional law class. It is rare where one cannot think of everything that can go wrong in selecting a decision-tree path. As a general proposition, interest arbitration is suited to deciding whether a unit is to be awarded 3.5% or 4.0%. It is not set up to deal with the specifics of operational decisions by a public employer and whether anything can be done to ensure that an employer will adopt a particular method of operation. The point is this (and as I said in mediation): The Union's concerns regarding any guarantees are indeed valid, but arbitration is not the end-all tool to alleviate what can go wrong.

⁷ I agree with the analysis of Arbitrator Berman in *City of Rockford and Firefighters Local 413*, Case S-MA-06-103 (2008), on "open ended" awards that would leave the City free to unilaterally implement a wide variety of changes. I don't see East Moline's ambulance proposal as an "opened ended" situation comparable to *Rockford*.
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73). According to the Employer, “this kind of melding of the issues is not allowed in Illinois interest arbitration.” (*Brief* at 73). Although this is disguised as a *quid pro quo* offer, the Union’s holiday pay add-on will ultimately cost the City \$60,139 (CX 2, Health Tab 6; *Brief* at 61); thereby eviscerating any cost savings that the City may have gained from the Union’s insurance proposal.

Analysis and Award. As indicated below, internal comparability shows the City’s insurance proposal more closely resembles the other represented and unrepresented East Moline employees. Indeed, the Union’s proposal is significantly higher than both the FOP and the AFSCME contracts for both 2008 and 2010.

Internal Comparables – Insurance Contribution

Year	IAFF Union Proposal	IAFF City Proposal	AFSCME	FOP	UNREPRESENTED
2008	15%	10%	10%	13%	18%
2009	18%	13%	13%	18%	18%
2010	20%	15%	18%		18%
2011		18%	18%		18%

(CX 2 Health Tab 4.)

The City advances the better argument with respect to the internal criterion.

External Comparables. As shown in the following chart, the external comparables clearly show that an increase in employee contributions is warranted.

External Comparables – Insurance Contribution

Community	Employee Contribution
Lincoln	100%
Jacksonville	59.27%
Charleston	43.42%
Galesburg	34.12%
Collinsville	25%
Macomb	25%
Kankakee	20%
Freeport	16%

Community	Employee Contribution
Mattoon	15%
Belvidere	9%
Average	34.68%
Average without Lincoln and Belvidere	29.72%

(CX 2 Health Tab 5.)

At a 10% employee contribution rate, the City currently ranks well below the average for employee insurance contributions. Indeed, the current 10% contribution rate puts them in a tie for 1st with Belvidere. **However, and a fact that arguably escapes the Firefighters, the Administration is willing to remain significantly below the average in return for its proposal on hours of work.** The Union's proposal (15% in 2008, 18% in 2009, and 20% in 2010), while moving the City closer to the average contribution amount among external comparables (34.67%), is high in its costs *because it is tied to its holiday proposal*, which will cost more than the concessions that the Union is willing to make in its insurance contribution proposal.

On balance, I credit the Administration's position, especially when the Firefighters tie insurance to a *quid-pro-quo*, in this case holiday pay. I find that internal and external comparability favors the Administration's insurance proposal. The Union's proposal is mitigated by the impact of its holiday pay proposal, which diminishes any cost savings the City would otherwise gain from the Union's insurance proposal (but not by much, at least if the Union's numbers are credited)(*Brief for the Union at 65-66*).

For the above reasons, the City's insurance proposal is awarded.

(3) Wage Scale

The City's Final Offer. The City has proposed to increase firefighter base pay to 4.0% effective May 1, 2008; 4.0% effective May 1, 2009; and 3.75% effective May 1, 2010. The Administration will also increase rank differential from \$2,500 to \$3,250 for Lieutenants, and from \$5,000 to \$6,500 for Captains. (JX 5(A)). Consistent with the *status quo* between the parties, the City has proposed a fixed dollar amount increase in rank differential of \$3,250 for lieutenants and a fixed dollar amount increase of \$6,500 for Captains. (JX 5(A)). Contrary to the Union's position, the City asserts that rank differential should *not* be considered as an issue separate and apart from wages. In support, the City cites numerous arbitral authority for the proposition that economic issues such as wages and equity adjustments should not be fractionalized (*Brief at 78-19*).

The Union's Final Offer. The Union has proposed to increase all steps of the salary schedule by 3.5% effective May 1, 2008; by 3.5% effective May 1, 2009; and by 3.5% effective May 1, 2010. (JX 5(B)). Further, in a departure from the *status quo* between the parties, the Union proposes that

rank differential for lieutenants increase to 10% above base firefighter pay at the seven-year top step and that rank differential for captains increase to 15% above base firefighter pay at the seven year step. (JX 5(B); *Brief for the Union* at 48). The Union submits that the salaries paid to East Moline's Fire Lieutenants and Captains are substandard and require an equity adjustment (*Brief* at 48). Here the Union notes that the existing differential represents a percentage differential of only 5.1%, less than half the average and places East Moline's ranking at 9 of 11. The Fire Captain's condition is not so extreme, but their salaries still place them more than 3% below the average differential of 13.33%. It ranks them 3 of 5 with comparable ranks. (*Brief* at 49).

Key Differences Between The Parties' Proposals. As with Insurance, and as an added incentive for its hours of work proposal, the City has proposed a wage increase that is more favorable to its employees than the Union's proposal. (JX 5(A)(B)). Also, the City, consistent with arbitral authority, has included rank differential *as one issue under its wage proposal*. As outlined above, the Firefighters have proposed a less favorable wage increase relative to the City and has separated rank differential from its wage proposal. Further, the Union has proposed not only increasing the *rate* of the rank differential, but also changing *status quo* by altering its proposed increase from a flat rate to a percentage of firefighter and lieutenant salary. This change in *status quo* not only requires a breakthrough analysis (in the Administration's view), which the Union cannot sustain, but would ultimately cost the City \$54,458 more than the City's proposal.

Analysis of Proposals and Award. There are two groups of City employees that can be used to measure the internal comparability of the wage proposals: (1) the FOP bargaining unit and (2) the AFSCME unit. The City has a history of maintaining internal comparability with respect to employees' wage increases as shown in the following chart detailing the wage increases over the past ten years.

Internal Comparables – Wage Increases

Year	AFSCME	FOP	IAFF
1999	3.25%	3.75%	3.5%
2000	3.75%	3.25%	3.75%
2001	3.25%	3.75%	3.25%
2002	3.5%	3.5%	3.75%
2003	3.25%	3.4%	3.25%
2004	3.0%	2.99%	3.0%
2005	2.9%	2.77%	2.7%
2006	2.5%	2.5%	2.5%

Year	AFSCME	FOP	IAFF
2007	2.6%	4.0%	2.6%
2008	4.0%	4.0%	4.0% (City proposal) 3.5% (Union proposal)
2009	4.0%	4.0%	4.0% (City proposal) 3.5% (Union proposal)
2010	3.75%		3.75% (City proposal) 3.5% (Union proposal)

(CX 2 Wages Tab 2; JX 5(A)(B).)

Consistent with its past practice, the City's wage increase proposal is in line with both of the internal comparables. Further, the City's wage proposal exceeds the Union's wage proposal, which is considerably lower than both of the internal comparables.

External Comparables. As demonstrated below, the average salary increase in the comparable communities was 3.3% in 2008. Only two other communities, Belvidere and Collinsville, have 2008 wage increases that are equal to or that exceeded the City's proposed 4% wage increase.

2008 Wage Increases – External Comparables

Community	Date	Increase
Belvidere	5/1/2008	4.0%
Kankakee	5/1/2008	3.5% est
Collinsville	5/1/2008	5.0% est
Jacksonville	1/1/2008	3.5%
Freeport	5/1/2008	3.0%
Macomb	5/1/2008	3.0%
Lincoln	5/1/2008	3.0% est
Galesburg	1/1/2008	2.0%
Charleston	5/1/2008	3.0%
Mattoon	5/1/2008	3.0%
Average		3.3%

(CX 1 Background Tab 15(B).)

The Union's proposed 3.5% increase is admittedly closer to the average increase for the comparable communities. However, the City's more significant wage increase is offered as a *quid pro quo* to offset the impact of its hours of work proposal. Unlike the Union, I find no problem with the City's rationale.

Furthermore, the Union's wage proposal, which appears to be in line with the external comparables, is deceiving because the Union has proposed an excessive increase in rank differential. The Union proposes to raise the rank differential for lieutenants to ten percent of base firefighter pay at the seven-year step, and to raise the rank differential for captains to fifteen percent of base firefighter pay at the seven-year step. This proposed percentage increase in rank differential – above and beyond the increases they have proposed of 3.5% each year – would give the Lieutenants a 13.85% wage increase and the Captains a 19.03% raise. This would rank the City well above external comparables in terms of wage increase. Such a vast increase is not necessary; the City's rank differential proposal already places East Moline in the top three amongst the comparable communities for lieutenants and in the top four for captains.

The following table is instructive and illustrates the point:

Rank Differential - Lieutenants

Rank	Community	Top Pay 1st Supervisory Rank Above firefighter
1	Belvidere	\$71,497
2	Kankakee	\$67,312
3	East Moline	\$64,014
4	Freeport	\$63,708
5	Mattoon	\$62,553

Rank	Community	Top Pay 1st Supervisory Rank Above firefighter
6	Jacksonville	\$59,677
7	Charleston	\$58,775
8	Collinsville	\$58,382
9	Galesburg	\$54,903
10	Macomb	\$54,747
11	Lincoln	\$51,539

(JX 5; CX 1 Background Tab 13.)

Rank Differential - Captains

Rank	Community	Top Pay 1st Supervisory Rank Above firefighter
1	Kankakee	\$74,556
2	Belvidere	\$74,433
3	Freeport	\$68,208

Rank	Community	Top Pay 1 st Supervisory Rank Above firefighter
4	East Moline	\$67,264
5	Jacksonville	\$66,036
6	Macomb	\$60,293
7	Collinsville	\$59,901
8	Lincoln	\$52,512

(JX 5; CX 1 Background Tab 13).

Moreover, calculating rank differential as a percentage of base pay does not compare with the external comparable communities. Only one other external comparable, Lincoln, uses a percentage increase in its rank differential. All of the other comparables base their rank differentials on a straight dollar increase for ranks above firefighter. Using the Employer's data, calculating the rank differential as a percentage of base pay will result in a compounding effect with each annual wage increase, the rank differential will in turn increase, costing the City \$85,958 over the life of the contract.

In summary, I agree with the Union's analysis that there is a need to maintain rank differential between firefighters and their company officers. Support for this can be found in *City of Decatur* (September 19, 2008), *City of Urbana S-MA-97-245* (1998), and *Village of Skokie* (2007), all decisions awarding rank differentials (See, *Brief for the Union* at 50-52). At the same time, management has advanced the better case with respect to wages and rank differential *as a single item*.

The City's final offer on wages is awarded.

(4) Acting Out-of-Rank Pay

The City's Final Offer. The City's offer is to effect the *status quo*. That practice is to compensate Lieutenants who "act up" in the absence of a Captain. It does not compensate Firefighters who serve as a senior Firefighter in charge of a station with no assigned Lieutenant.

According to the Administration, "a careful reading of the Union's final proposal on the acting out-of-rank pay issue makes clear that 'employees assigned to act in a higher rank shall be paid to differential equal to the differential between the pay of the acting employee's rank . . . and the pay for the higher rank in which the employee is acting . . .'" (March 24, 2009 Response to the Union's March 18th Response to Draft Ruling). In the City's view:

Apparently, the employer did not properly concentrate on the phrase assigned to act in the higher rank, when it costed the Union's proposal.

As the witnesses testified, the senior firefighter from Station 21 (where no lieutenant is normally assigned) responding to a fire as the first responder is "assigned" by departmental SOP's to take command of the fire scene. Accordingly, then, under the Union's proposal, the senior firefighter performing this duty would be paid out the out of rank differential for such assigned time. In addition, the time the senior firefighter spends with the follow-up paperwork, which such senior officer is also "assigned" to prepare as the officer in charge, he would likewise be compensated for such time. However, because the senior firefighter at Station 21 is not otherwise "assigned" to perform duties (Chief DeFrance: ". . . nobody acts up to lieutenant. There is not specific documents assigned to the duties." R. 516 & R. 253), then it is incorrect to cost the Union's proposal by including such "unassigned" time.

To this end, the Administration's argument that the one year cost for acting up pay would be \$6,000 per year for the life of the collective bargaining agreement is credited. This amount would cover the times in which a Firefighter is *assigned* to act as Lieutenant when responding to an emergency or filling out follow-up paper work out of Station 21, or is *assigned* to take over the full duties of a lieutenant as one of the other two stations.

The Union's Final Offer. The Union proposes that employees *assigned* to act in a higher rank shall be paid a differential equal to the differential between the pay of the acting employee's rank (Firefighter seven-year step or Lieutenant salary) and the pay for the higher rank in which the employee is acting (Lieutenant or Captain) as applicable, for all hours worked in the higher rank. (JX 5(B)). Compensation would be at the rate of the rank differential between Firefighter and Lieutenant for all hours worked in the higher rank (*Brief* at 52).

Key Differences Between The Two Proposals. Because of the lack of need, the City submits that it has never paid acting out-of-rank pay to firefighters acting as lieutenants and it proposes to

continue this practice in the new contract. The Union proposes to change the language of the expired contract to include acting out of rank pay for *any* employee *assigned* to a higher rank – firefighters acting as lieutenants and lieutenants acting as captains upon assignment by the Administration. Under the Union's proposal, these employees will be paid at a rate equal to the difference between the pay of the acting employees rank and the pay for the higher rank in which the employee is acting. The cost of the Union's proposal is calculated at \$18,470, equivalent to a 1.2% wage increase (an amount that the City now agrees with).

Analysis and Award. The Police Department currently pays \$1 an hour over an officer's rate of pay for any patrolman working out of classification. While this is identical to the current provision in the parties' contract for lieutenants acting as captains, and the reason the Employer's *status quo* position, as part of the total compensation package, the Union's proposal is awarded.

As noted by the Union, normal staffing of a fire company includes a company officer. Thus, the issues of acting pay arises when the regularly scheduled company officer is absent from regular duty. Union Exhibit 14(R) and 15 analyze East Moline's practice in relation to the practices followed in comparable departments. **Without exception, all departments pay firefighters acting in the capacity of the rank above acting pay.** The average compensation is \$42.24 for a 24 hour shift. East Moline's hourly rate, based on the Union's wage offer for 2008, the acting pay rate would be a few cents over \$2.00/hour.

I note that with the implementation of the three-platoon system the number of officers needed will be reduced to nine. Thus, the Union's concession allows the City to staff all three companies with an officer by promoting one more officer, which the City has indicated it plans to do (*Brief for the Union* at 55). Accordingly, with these officers in position the number of acting needed would be reduced to just the times when the regularly-assigned officers were off on scheduled leaves. Clearly, when employees accepts higher levels of responsibility and judgment they should be compensated.

For the above reasons the Union's proposal is awarded.

(5) PARAMEDIC STIPENDS

The City's Paramedic Stipend Proposal. Status Quo.

The Union's Paramedic Stipend Proposal. The Union proposes to increase the paramedic stipend from \$1,100 to \$1,500, effective May 1, 2008; and to increase the stipend to 3% of Firefighter base salary (7-year step) effective upon the implementation of the City-based ALS ambulance transport program. This would not occur under either the Union's or the City's proposal until May 1, 2010.

Key Differences Between the Proposals. Using the Employer's numbers, the Union's proposal will result in \$36,799 in increased costs for the City over the life of the contract. This is equivalent to an additional .8% wage increase *per year* for the bargaining unit. On the other hand, the City's proposal will add no additional costs over the life of the contract.

Analysis and Award. The City's final offer does not address the paramedic pay issue outside of its hours of work proposal at all. A stipend of \$1,100 puts East Moline paramedics at a ranking of 7 of 11 and more than 60% below the average. Notably, East Moline paramedics are paid less than EMT-Banquet Steadies in Mattoon who are paid \$1,320. When paramedic to paramedic comparisons are made the average increases to \$2,985. That puts East Moline last and more than 170% below average. The Union's proposal brings East Moline paramedics up to \$1,500 and a tie with Belvidere at the bottom.

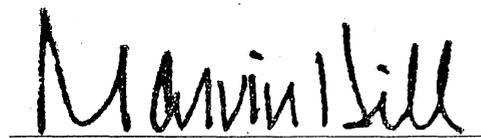
I agree with the Union's position on the paramedic stipend. The Union's proposal is modest particularly since the implementation of an ambulance transport system would greatly increase firefighters' workloads. As argued by the Union, the City's indifference to paramedic stipends as a component of compensation cannot be squared with its professed commitment to establishment of an ambulance service (*Brief* at 60).

For the above reasons, the Union's final offer on paramedic stipend is awarded.

IV. AWARD

- (1) Hours of Work – City Final Offer
- (2) Insurance – City Final Offer
- (3) Wage Scale – City Final Offer
- (4) Acting Out-of-Rank Pay – Union Final Offer
- (5) Paramedic Stipend – Union Final Offer

Dated this 27th day of March, 2009, DeKalb, IL



Marvin Hill, Jr.