IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

CITY OF LOCKPORT

-and-

METROPOLITAN ALLIANCE OF POLICE CHAPTER #75

ILLINOIS LABOR RELATIONS BOARD, CASE NO. S-MA-08-277

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1. The Arbitrator, Aaron S. Wolff, was designated by the parties pursuant to their Agreement.

2. A Hearing was held on October 15, 2008 at the City Hall of Lockport, Illinois.

   Appearances for the Employer were:

   Nicholas E. Sakellariou, Esq. — McKeown, Fitzgerald, Zollner, Buck, Hutchison & Ruttle, Attorney

   Appearances for the Union were:

   Mr. Joseph R. Mazzone, Esq. — Attorney for MAP

3. There was a transcript of the hearing. Post-hearing briefs were received on February 4, 2009.

4. Subject matter of award: Best Last Offer interest arbitration as to non-economic issue of residency and economic issues of wages, length of contract, compensatory time, vacations, holiday pay and health care.

5. Summary of Award: The City's proposals are accepted as to contract term, wages, compensatory time, vacations and holiday pay. The Union's proposals are accepted as to health care and residency.

INTEREST ARBITRATION FINDINGS, OPINION AND AWARD

Preliminary Statement

This is an interest arbitration pursuant to the Illinois Public Labor Relations Act [the "Act" or "IPLRA"]. The parties to this proceeding are the City of Lockport [the "City," "Lockport" or "Employer"] and the Metropolitan Alliance of Police [the "Union" or "MAP"]. The parties have had a collective bargaining relationship since about 1992, but never before 2008 did they fail to agree on all the terms of their labor contracts. When their last collective bargaining agreement, from July 1, 2004 to June 30, 2008 [the "CBA;" CX 1, p. 3],[1] expired they reached tentative agreements on all but the following seven issues: (1) Section 5.1 Compensation and Specialty Pay, (2) Section 5.10 Compensatory Time, (3) Section 7.1 Vacation Eligibility and Allowances, (4) Section 8.2 Holiday Pay, (5) Section 15.1 Hospitalization, (6) Section 23.1 Residency Requirement, and (7) Section 24.1 Termination. The parties agree that all of the issues are economic except for "Residency" which is non-economic. [T. 3]

The IPLRA [5 ILCS 315 et seq.] provides in §14(g) that "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel,[2] more nearly complies with the applicable factors prescribed in subsection (h)." The §14(h) factors are as follows:

(1) The lawful authority of the employer.

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[1]The evidence was presented at the hearing, the transcript of which is cited as "T.," through the parties' counsel. Exhibits were received with "Tab" numbers. Those presented by the City are cited herein, e.g., Tab 1 as "CX 1," etc. and those by the Union as "UX 1," etc. The City's and Union's post-hearing briefs are cited as "CB" and "UB," respectively

[2]The parties designated the undersigned as sole arbitrator.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

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

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

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

The City covers 7 square miles in Will County and had a population of 24,405 in 2007 which was up from 15,395 in 2000. As a non-home rule municipality, the City is subject to the Illinois Governmental Tax Cap provisions, which limits the real estate tax levy to the Consumer Price Index [CPI] or 5%, whichever is less. On the other hand, home rule municipalities are not limited to statutorily authorized revenue sources and caps in their ability to generate revenue.

The City has a mayor and aldermen form of government and employs a City Administrator to operate its day-to-day operations. The City has a total of 101 full time employees. The Police Department consists of the chief, two lieutenants, six sergeants and 31 patrol officers. Only sergeants

and officers are in the bargaining unit.

With respect to the important factor of "comparable communities," the parties have agreed upon six: Lemont, New Lenox, Shorewood, Mokena, Crest Hill and Romeoville. The City would add a seventh, Channahon.[3] The Union would add four: Frankfort, Oswego, Plainfield and Woodridge. The City deems the Union's add-ons less appropriate for these reasons [CB 9]:

> Two of the Union's comparable are not located within Will County. Woodridge is located in DuPage County and Oswego is located in Kendall County. Woodridge's population exceeds Lockport's by approximately 10,000 people. Based on its population, Woodridge is a home rule municipality. Woodridge's sales tax revenue is more than double that of Lockport's. Oswego's sales tax revenue is almost two and one-half time that of Lockport. Oswego's median household income is seventeen thousand dollars ($17,000.00) greater than that of Lockport. Oswego, based on its population, is a home rule municipality.
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> Within Will County the Union presents Plainfield and Frankfort. Plainfield's population exceeds Lockport by almost eleven thousand persons. Based on its population, Plainfield is a home rule municipality. Plainfield's median household income is twenty-three thousand seven hundred dollars ($23,700.00) greater than that of Lockport. Plainfield's sales tax revenue is more that double that of Lockport. Frankfort's median household income is twenty six thousand two hundred dollars ($26,200.00) greater than that of Lockport. Frankfort's median house cost is almost one hundred forty thousand dollars ($140,000.00) greater than that of Lockport. Frankfort's sales tax revenue is 2.8 million dollars greater than that of Lockport.

The Arbitrator notes, however, that with respect to the City's choice of Channahon, that its annual sales tax revenue of $16.514 million was more than eight [8] times greater than Lockport's $1.989 million and more than double second place Romeoville's $7.138 million. [CX 11] For this reason it is my intent to give full weight to the agreed upon comparables, but limited weight to the add-on comparables to the extent aspects of them seem pertinent.

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[3]While the Union did not agree to Channahon, it offered no evidence during the hearing or argument in its brief as to why it was not comparable.

Discussion

1. The Wage and Contract Term Issues.

The Union has proposed a two year contract and its final offer on wages is based on such term. The City has proposed a three year contract and its final offer on wages is over three years. This is like a case of the "tail wagging the dog." If I resolve the contract term as three years, the Union's wage proposal cannot be accepted. If I find the appropriate contract term is two years, the City's wage proposal cannot be accepted. Therefore, it seems prudent to first resolve the term issue.

The current [expired] CBA is for four years ending June 30, 2008. [CX 1] The record does not indicate the length of any of its prior agreements; but the Union offered no evidence of any prior agreement of less than three or four years. Of the six agreed upon comparables five have four year terms and one [Shorewood] has a three year term. Three of the add-on comparables [Channahon, Frankfort and Oswego] have three year terms.[4] Based on the comparables and the parties' history, there is no evidence to support a two year contract term. In its brief, the Union states only [UB 25]:

> A two-year contract would keep Lockport competitive with the comparable communities. Since there is such a disparity in wages, it would be risky to enter into a three-year deal. Finally, with the nature of the economy, it would be necessary to review what has transpired over the two years and see if anything needs to be addressed.

This argument is not persuasive. In any event, as indicated below, I find that the City's three year wage proposal is fair, reasonable, more nearly comports with and is supported by the comparables and other factors and will keep Lockport wages competitive. First, it may be noted that in the last year of the current contract, 2007-08, Lockport's patrol officers' salaries were fully

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[4] Although I make some reference to Oswego, it should be noted that the "agreement" furnished indicates that it was made without benefit of union representation and covers captains as well as sergeants and patrol officers. The length of the contracts in the remaining two add-ons, Plainfield and Woodridge, do not appear in the record.

competitive with the agreed on comparables. At $46,870 it was exceeded only by two of the agreed comparables, Romeoville and Shorewood, and was higher than Mokena, Lemont, Crest Hill and New Lenox. Of the five add-on comparables, it was higher than three of them [Oswego, Frankfort and Channahon]. While the Union claimed that "top pay" was "severely wanting," it acknowledged that its proposed "start pay" is "pretty competitive." [T. 29]

The Union's final two year wage offer is as follows[5]:

Patrol

	7/1/2007	7/1/2008	7/1/2008	7/1/2009	7/1/2009
	Current	MBEA	5%	MBEA	5%
start	$46,870		$49,214		$51,674
after 1 year	$50,353	$50,853	$53,396	$53,896	$56,590
after 2 years	$53,263	$53,763	$56,451	$56,951	$59,799
after 3 years	$56,163	$57,163	$60,021	$61,021	$64,072
after 4 years	$58,732	$59,732	$62,719	$63,719	$66,905
after 5 years	$61,463	$62,963	$66,111	$67,611	$70,992
after 6 years	$63,532	$65,032	$68,284	$69,784	$73,273
after 7 years			$70,537	$72,287	$75,901

Sergeants

start	$67,008	$68,508	$71,933	$73,433	$77,105
after 1 years	$69,392	$70,892	$74,437	$75,937	$79,733
after 2 years	$71,426	$72,926	$76,572	$78,072	$81,976
after 3 years	$73,632	$75,132	$78,889	$80,389	$84,408

[5]The Union's explanation of the MBEA or "Market Based Equity Adjustment" will be discussed later. In effect, the Union added an MBEA, ranging at various steps from $500 to $1750, to a prior year salary and then added 5%. [UX 7]

The City's three year wage proposal is as follows:

Patrol	7/1/08 to 6/30/09	7/1/09 to 6/30/10	7/1/10 to 6/30/11
Start	$48,160	$49,484	$50,721
after 1 year	$51,738	$53,160	$54,489
after 2 years	$54,728	$56,233	$57,639
after 3 years	$57,707	$59,294	$60,777
after 4 years	$60,347	$62,007	$63,557
after 5 years	$63,154	$64,890	$66,513
after 6 years	$65,279	$67,074	$68,751
after 7 years	$68,383	$70,434	$72,195
after 8 years		$73,604	$75,444
after 9 years			$78,839
Sergeant			
Start	$71,383	$76,104	$80,839
after 1 year	$72,811	$77,626	$82,456
after 2 years	$74,267	$79,179	$84,105
after 3 years	$75,752	$80,762	$85,787
after 4 years	$77,267	$82,377	$87,503
after 5 years		$84,025	$89,253
after 6 years			$91,038

As noted above, each party has increased the number of steps to top pay for patrol officers: the Union increased it from seven to eight steps while the City increased it to ten steps.[6] Thus, at least as to officers, both parties recognize that some increase in the number of steps is reasonable. As to sergeants, the Union did not increase the steps to top pay but the City increased it from four to seven steps. Apart from Romeoville and Lemont it does not appear that sergeants are represented in any of the other comparables. For both officers and sergeants, Romeoville has nine steps plus a

[6]"Steps" include the start year; thus a start salary with 9 annual increments is counted as ten steps.

tenth one in twenty years while Lemont has nine steps for both classifications. For officers, New Lenox, Plainfield and Woodridge have ten steps; Channahon has nine ; Mokena and Shorewood have eight; Crest Hill and Oswego have seven and Frankfort has six steps. Based on these external comparables and the fact that the Union recognizes that some increase in steps for officers is warranted, I find that the City's proposal in this respect is reasonable and supported by all of the comparables.

As to top step pay for sergeants, the only agreed comparable contracts submitted are for Romeoville and Lemont; and they, as noted above, have nine or ten steps. The contracts for the other agreed comparables do not include sergeants in the bargaining unit. Lemont's separate contract for sergeants has nine steps. However, in the Union's presentation [UX 3, p.6; T. 17-19], it is said that Frankfort and Mokena have six steps, Woodridge has ten steps, Crest Hill has three steps that are spread over 14 years in blocks of four or five years; and Plainfield has three steps, step 2 between years two and five and step 3 over five years. On this record I find that the City's proposal to increase the steps for top pay of sergeants from four to seven years is reasonable and supported by the comparables. Moreover, in light of the contract term resolution of three years, I could not accept the Union's wage proposal in any event.

As to the dollars and cents of the wage proposals, the City's offer is also more reasonable and supported by the comparables as well as by the Consumer Price Index [the "CPI"] and other factors, including other forms of compensation discussed later. The City's officer starting salary for 2008-09 is $48,160 which is $1,054 less than the Union's proposal of $49,214. However, the average of the starting salaries of the six agreed on external comparables is $47,531. Thus, the City's offer is above that average and would rank Lockport third among the comparables. Even if the Union's offer could

be accepted at $49,214, it would rank second ahead of Shorewood only by $96.00.

A similar analysis of the top wage step for these comparables in 2008-09 reveals that the City's offer of $68,383 would rank Lockport's officers in fifth place, but only $101 out of third place Mokena.

The City also calculated how much each current officer [including the several sergeants] would receive over the life of its three year wage proposal. [CX 5][7] It shows that thirteen of them would receive total increases of 24%; ten would receive between 25% and 28%; nine would receive 21% to 23%; and one would receive 19%.

The City made a similar calculation of the costs and percentage increases for the same officers and the several sergeants based on the Union's two year wage proposal. [CB, Ex. B] It shows that in the first year three members would receive increases of 5% to 7%; and all the others would receive increases ranging from 10.8% to 12.6%; and that as a whole their average increase would be 10.83%. Similarly, as to the second year of the Union's two year proposal, these employees' average increase would be 9.90%. Whether the Union's proposal is based on what it calls a "Market Based Equity Adjustment" plus 5%, the proposal still equals about a 10% increase in each of the two years. Considering the wages of the comparable communities, as well as that the annual CPI for 2007 was 3.3% and 4.5% for the first half of 2008 [CX 21],[8] the City's proposal for a three year contract with annual increases of 7.37%, 7.97% and 7.45% and an average of 22.79% over all three years is more reasonable and more in accord with the applicable factors than the Union's two year proposal.

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[7]CX 5 lists 33 employees with various "titles" besides Sergeant and Patrolman such as "Detective Sergeant," "Investigation, "DARE" and "Traffic."

[8]These CPI figures were for "All Urban Consumers" in the "Chicago-Gary-Kenosha" area. [CX 21]

At the hearing the Union sought [T. 27-29] and in its post-hearing brief seeks [UB 17-18] a "market based equity adjustment" ["MBEA"] which, the Union says, has been utilized "by agreement or even through arbitration" in order to avoid "a large percentage increase." Thus, in its Final Offer it added an MBEA at various steps of $500 to $1750 for patrol officers and $1500 for each step for sergeants. However, the Union offered no specific instance where this was done in arbitration or under what specific circumstances it has ever been done. Further, since the Union acknowledges that, based on the comparables its start pay is "pretty competitive," I can find no basis for applying an MBEA. Rather it seems appropriate to consider the total percentage increase being sought; and here the Union has not established by comparison with the comparables or the CPI that patrol officers should receive about a 20% wage increase over the life of the two year term it requested.

The internal comparables do not suggest or require a different conclusion. The City has only one other collective bargaining agreement. It is with its Public Works Department and the International Union of Operating Engineers. That contract also expired in 2008 and the parties are still in negotiations. [T. 68] The City's non-represented employees received a 5% increase for the fiscal year beginning July 1, 2008. [T. 107-08]

One other factor to consider with respect to the wage issue is that there has been a change in circumstances since this case was initiated in June 2008. The national economy has moved into a deep recession and the cost of living is not likely to increase by much over the life of the new contract. But, in any event, the Union's two-year wage proposal cannot be accepted since the term of the new contract will be three years. Finally, as indicated above, I find that the City's wage proposal is fair, reasonable and more in accord with the applicable factors.

2. The Compensatory Time Issue.

The current CBA provides:

Section 5.10. Compensatory Time:

> An employee may request compensatory time off in lieu of pay at the sole discretion of the Chief of Police. This time and one-half provision does not apply to the time off under the holiday benefit. All requests for compensatory time off must be submitted in writing no later than twenty-four (24) hours in advance of the effected shift with the approval of the Chief of Police or his designee. The parties further agree that compensatory time shall be used in no less than eight (8) hour increments unless otherwise approved by the Chief of Police or his designee. Compensatory time may be taken in lieu of "guaranteed holiday pay," but only for eight (8) hours and not for the time and one-half.
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> When an officer requests compensatory time off, the requests shall be granted on a first-come / first-served basis, manpower allowing. Requests for compensatory time off shall not be unreasonably denied.

The City seeks to maintain the *status quo*.

The Union seeks to amend the first paragraph of §5.10 as follows [Bold to be added and underlined deleted]:

> **Officers shall be allowed to accumulate up to one hundred and sixteen (116) hours of compensatory time. At the employee's discretion, and up to the maximum permitted,** an employee may request **to receive overtime pay (each hour of overtime pay equals one and one-half hour of compensatory time) as** compensatory time. off in lieu of pay at the sole discretion of the Chief of Police. This time and one-half provision does not apply to the time off under the holiday benefit. All requests for compensatory time off must be submitted in writing no later than twenty-four (24) hours in advance of the effected shift with the approval of the Chief of Police or his designee. The parties further agree that compensatory time shall be used in no less than eight (8) **one (1)** hour increments unless otherwise approved by the Chief of Police or his designee. Compensatory time may be taken in lieu of "guaranteed holiday pay," but only for eight (8) hours and not for the time and one-half.

The essence of §5.10 is to permit an employee who works overtime to request that, in lieu of being paid for the overtime, that the employee be allowed compensatory time instead at the rate of 1½ hours for each hour of overtime worked up to the maximum of allowed compensatory time.

In its proposed changes to §5.10, the Union seeks to allow three things: [1] to codify at 116 hours the maximum amount of compensatory time that can be accumulated as provided for under City Ordinance, §36. 23[9]; [2] to give the employee the sole discretion in exercising a compensatory

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[9]As noted above, the Union's Final Offer was for a maximum of 116 hours, but the Ordinance's maximum is actually 128 hours and, at the hearing, the Union adopted the larger number. [T. 78]

time request, i.e., to remove the chief of police's discretion in granting it; and [3] to give officers the right to exercise compensatory time in increments of one [1] hour instead of eight [8] hours. [UB 21-22; T. 40-46]

The City responds that "While it is difficult for [it] to argue that the compensatory time cap found in the City Ordinance should not be incorporated into the Agreement, the remainder of the Union's proposal for this section is not supported by any of the exhibits or testimony." [CB 21]

The present language of §5.10 is what the parties agreed upon and the Union has not offered compelling reasons for changing it. There is no evidence that the chief has abused his discretion, acted unreasonably or arbitrarily in granting compensatory time requests. The City Ordinance that the Union wishes to adopt in part as to the cap, also provides that employees who work overtime "are to be paid overtime rates at time-and-a-half, or comp time as may be mutually agreed upon by the employee and department head***." [CX 9] The requirement of supervisory discretion is found in most of the external comparables: Lemont [officers, CX 15,§31.2; sergeants, CX 16, §31.2], Mokena [CX 17, §16.9], New Lenox [CX 18, §5.4], Shorewood [CX 20, §12.8], Plainfield [UX 8, §7.8.1, and Woodridge [UX 8, §8.7].

In its brief, the Union states [UB 22]:

> There is ample support among the external comparables for adopting the Union's offer on using 1-hour increments instead of 8-hour increments of compensatory time. Regarding the change to a 1-hour increment, the Union's comparables are as follows: Shorewood, Woodridge and Lemont has no restriction; Crest Hill has 1 hour increment and Plainfield has a 2 hour block of initial usage and can be added with additional 1 hour block. Furthermore, the Lockport Department of Public Works also has a 1-hour increment.

However, I can find nothing in the Lockport Dept. of Public Works contract that specifically mentions or allows one hour increments of compensatory time; but it does require mutual agreement of the employee and supervisor for compensatory time off. [CX 10, UX 8,§8.5] On the other hand, Crest Hills' contract states [UX 8, CX 14]: "Compensatory time off may only be taken in minimum one (1) hour increments, except upon written approval of the Chief of Police or his designate. The request for compensatory time shall not be unreasonably denied." Also, Plainfield has this provision [UX 8]:

> Compensatory time may be used in a minimum initial block of two (2) hours, with additional one (1) hour increments. The shift supervisor may approve compensatory time

absence from work if it does not interfere with the supervisor's judgment as to necessary staffing levels for that particular shift. [§7.8 (2)]

On this record, I find that the Union's request on this issue lacks sufficient support. Further, I find persuasive the City's argument that allowing officers to obtain compensatory time in increments of one hour instead of eight is likely to cause scheduling problems and expense for a police force that is scheduled 24 hours a day and seven days a week. Accordingly, the Union's proposal must be rejected and the City's *status quo* position is adopted. However, if the City is willing, as it indicated it was, there is no reason why contract language could not be added to show, as the City Ordinance does, that 128 hours are the maximum comp time that may be accumulated.

3. The Vacation Issue.

The City wants to maintain the *status quo* on this issue. The Union proposes several changes in Article VII VACATION, §7.1, ¶¶ D & E. Those paragraphs are set forth below. The underlined parts are what the Union would delete and the **bold** face parts are what the Union would add.

Section 7.1. Eligibility and Allowances.

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D. In establishing employee vacation schedules, the Chief of Police shall consider both the employee's preference and the operating needs of the department.

All vacations shall be established no later than March 15. Schedules shall be prepared and posted on or before April 1. Requests for changes in vacation schedules as initially established shall be allowed at the discretion of the Chief of Police **manpower allowing.**

When an officer requests to change a scheduled vacation, the requests shall be granted on a first-come / first-served basis, manpower allowing. Requests for changes in scheduled vacation shall not be unreasonably denied.

Employees will be permitted, if provided that by so doing there are no conflicts with other employees scheduled vacations, to take their vacation in a maximum of four (4) three (3) day segments and the balance of the officer's vacation in five (5) day segments. To minimize work disruption in cases of conflict over vacation schedule, the employee with the most seniority will receive preference.
Officers will be allowed to use vacation time in three (3) one day increments from January 1st through November 30th.

E. No salary payment shall be made in lieu of vacation earned but not taken, except in the following situation:

(1) Where employee resigns in good standing;
(2) the death of a permanent employee;

(3) when an employee requests to work his vacation time, and then, only if the Chief of Police in his sole discretion authorizes him to do so, **upon written request to do so to the Chief of Police or his designee (such request shall not be unreasonably denied),** and only when an employee has earned a minimum of three (3) weeks vacation time in a calendar year. Two (2) weeks is the maximum that will be allowed to be sold back. The request by employee must be in writing and **It** is understood that under no circumstances shall the employee be paid time and a half if the employee works in lieu of taking part of his vacation. The example for sell back is as follows:

Earned Vacation	Sell Back Maximum
3 weeks	1 week
4 weeks	2 weeks
5 weeks	3 weeks

The Union's first proposed change is to eliminate the Chief's discretion as to whether an employee may alter the employee's initial vacation selection and permit the change if "manpower would "allow***" it and it would not be reasonable to deny it. As the Union stated its purpose [T. 47]: "we are seeking to change paragraph D to allow officers to change vacation schedule requests, manpower allowing." The Union also noted that there have been no problems or grievances in this respect, and that the Chief has been very cooperative and a fair administrator. The requests are "typically done when manpower allows." [*Id.*] The Union understood that under its proposed language, the Chief could still deny a request but if the denial was unreasonable, it could be grieved. [T. 48]

The second part of the Union's proposal relates to ¶ E and an employee's request to work during his vacation and thereby earn his salary for working and for vacation. Under ¶ E such written requests are within the "sole discretion" of the Chief. The Union would eliminate "sole discretion" and provide that the written request "shall not be unreasonably denied." In support of its proposal, the Union stated that in comparable towns the contracts contain no "language that gives the chief

sole discretion to decide anything. It's all done by manpower levels***." [T. 49][10]

The City says that a third aspect of the Union's proposal is to allow officers "to take vacation in single-day increments." [CB 23] The Union did not mention this in its brief [UB 22-23] or in its original presentation at the hearing [T. 47-50], but one of the officers later stated: "we're only allowed three one-day [vacation] segments throughout the whole year." [T. 86] This is what the last sentence of ¶ D [*supra*, p. 12] says. If that paragraph is not stricken as the Union proposes, officers will still be allowed to take vacation time in three one-day segments.

The City's "conclusion" as to the Union's vacation proposal is as follows [CB 23-25]:

> The Union's first change seeks to allow changes in vacation scheduling by completely eliminating the language "at the discretion of the Chief" and changing it to "manpower allowing." [CX 9]. The Union further asserts that this is complying with all other comparables. [T. 47]. However, none of the comparables say that rescheduling vacation is granted automatically, manpower allowing. All of these contracts require cooperation or the Chief's discretion. The Union's proposal would allow an officer to decide that day that he would like to take vacation. The Union has failed to show how this change in the *status quo* can be implemented, with what notice it is to be done, etc. In view of the comparables, the Union's proposal does not seem to be well thought out.
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> Additionally, the Union proposes to eliminate the Chief's discretion in buying back vacation time. The Union has failed to meet its burden in justifying this change in *status quo* and in fact agrees that there have been no problems in the administration of this provision. [T. 47]. In fact, many of the comparables cited by the Union do not allow any buy-backs of vacation time, let alone without the Chief's discretion. Unused vacation time is considered forfeited. (See, Crest Hill, Mokena, New Lenox, Romeoville). Again, this proposal is not well thought out. This proposal ignores whether or not the funds would even be available for a buy back. When budgets are made, any given employee, with vacation time, is budgeted for 52 weeks of work. If an employee works 52 weeks and also is paid for unused vacation, that additional compensated vacation time is outside the regular budget. Besides budgetary issues, the Chief may determine that an employee should take time off for vacation so he or she is not

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[10]The comparables suggested are: Crest Hill, Frankfort, Lemont, Lockport Public Works, Mokena, New Lenox, Plainfield, Romeoville, Shorewood & Woodridge. [UX 9] The above statement as to a chief's discretion appears reasonably accurate in the excerpts included [illegible] as to Crest Hill, Frankfort, Lemont and Mokena, but is not clear or not accurate as to the other listed communities.

overworked. The Union's proposal would take away that ability. Finally, the Union presented no evidence that this existing section was abused or in any way not working.

The Union's final change to this provision would eliminate the grouping of vacation time into three day and five days segments. However, during the Union's presentation at the hearing, the Union seemed to be requesting one-day vacation increments. Again, the Union has presented no evidence indicating there is a problem with the *status quo* or of any abuse of the current language or a change in circumstances justifying this request.

After careful review of this issue, I find that the Union has not made out a case for altering the Vacation article and, therefore, the City's *status quo* request is adopted.

4. The Holiday Pay Issue.

The City seeks to retain the *status quo*. The Union proposes that Section 8.2, Holiday Pay, be amended as follows [**Bold** to be added and underlined to be deleted]:

Those employees who are not scheduled to work on a holiday as listed in Section 8.1 will receive eight (8) hours guaranteed holiday pay for the holiday at the regular rate of pay except under the following conditions:

(1) If an employee fails to work on a regularly schedule shift on a holiday, immediately prior to or following a holiday the employee will not receive eight (8) hours guaranteed holiday pay, except that if the time off prior to or following a holiday is authorized, for example, bereavement leave, leave of absence, military leave, vacation, personal day, or if the employee utilizes sick leave and brings in a doctor's note concerning said sick leave, then the employee shall receive his eight (8) hours guaranteed holiday pay.

(2) When a holiday occurs during an employees vacation or regularly assigned day off, the employee will be guaranteed holiday pay which is eight (8) hours straight time or be given eight (8) hours compensatory time **at the officer's discretion up to the maximum permitted in Section 5.10**. at the sole discretion of the Chief of Police.

(3) Where employees are scheduled and required to work on a designated holiday, the employee, in addition to being paid guaranteed holiday pay, shall be paid at the rate of one **two** and one-half (1/2) times the employee's regular hourly rate of pay for all scheduled hours worked on said holiday. **Should an officer be required to work overtime on a holiday, then that officer shall be compensated at two and one half (2 ½) times his/her regular hourly rate of pay for all overtime hours worked on a holiday.** Guaranteed holiday pay shall be paid only once in a twenty-four (24) hour period designated as a holiday.

The Union's goal regarding §8.2 is two-fold: [1] under ¶2 it wants to remove the Chief's discretion and leave it to the officer to decide whether to receive holiday pay or compensatory time in situations when the holiday falls on the officer's regular day off or during a vacation period; [2] when an officer works more than eight [8] hours on a holiday, the overtime should be paid at 2½ times his hourly rate. Currently, in the latter situation the officer is paid overtime for the first eight hours plus holiday pay which amounts to 2½ times the hourly rate, but after eight hours, the rate paid drops to time and one-half.

In support of their positions, both parties rely on the comparables. On the first issue as to the Chief's "discretion," the City states [CB 26]:

> Of all the comparable communities submitted by both the City and the Union, Channahon [CX 13, Sec. 10.3], Crest Hill [CX 14, Sec 8.2], Lemont Patrol [CX 15, Sec. 18.1], Lemont Sgt. [CX 16, Sec. 18.1] Mokena [CX 17, Sec 9.2], Romeoville [CX 19, Sec. 18.8], Frankfort [UX 10], Plainfield [UX 10] and Woodridge [UX 10] do not permit any employee discretion in determining to "bank" a holiday which occurs on the employee's day off or during the employee's vacation. They all call for payment for the holiday pay.
>
> Of the two communities which permit some sort of alternate use of the holiday, none of the methods used are similar to that proposed by the Union. New Lenox [CX 18, Sec. 11.2] allows the employee to elect straight time pay or another day off (not a compensatory time bank), <u>to be used by mutual agreement between the employee and the Chief</u>. Shorewood [CX 20, Sec. 14.3] allows the employee to elect said holiday pay as monetary compensation or a "due day" (not a compensatory time bank) to be used <u>by mutual agreement between the employee and the Chief</u>.. [Emphasis in original]

On this "discretionary" issue, the Union offered no evidence during the hearing [T. 50-52] and no argument in its brief [UB 23]. The City's concludes that [CB 28]: "The Union has failed to present any evidence that there has been a problem with the Chief's exercise of his discretion. The Union has failed to meet its burden to show that there is a problem with the *status quo*." I concur in the City's conclusion and adopt its proposal on this issue, not to alter the *status quo*.

With respect to the second issue as to overtime pay on worked holidays, some of the external

comparables support the Union and some the City. The Crest Hill, Lemont, Mokena and Romeoville contracts provide for double time and one half [2½] pay for all hours worked on a holiday. In Woodridge, officers who work 8 hours on a holiday are paid 2½ times their hourly rate and double time for hours worked in excess of 8. In Plainfield officers apparently are paid 1½ times their hourly rate for "all hours worked on a holiday, but double time for hours in excess of regularly scheduled work hours. In Channahon, Frankfort, New Lenox, and Shorewood, employees who work a holiday are paid time and one half for such hours plus holiday pay.

The internal comparable shows that the City's Public Works employees receive double time and one-half for all hours worked on a holiday beyond their normal 8 hour work day. That contract provides [CX 10, p. 27]:

> Section 17.2: Holiday Pay. Where employees are scheduled and required to work on a designated holiday, employees shall be paid the regular eight (8) hour rate plus time and one-half rate during the period considered the normal working hours. Any other overtime on the holiday outside the normal working hours shall be paid an additional rate at double time and one-half. For example, if the normal rate of pay is $10 an hour and the normal work day is 7:30 a.m. to 3:30 p.m., then the rate of pay for the period of 7:30 a.m. to 3:30 p.m. is $15 per hour, plus eight hours straight time. The rate of pay for any other period is $25 an hour.

In support of its position, the Union contends that "none of the comparables decrease an officer's pay for working overtime on a holiday," while noting that the City's Public Works employees are paid double time and one-half. [UB 23]

On the other hand, the City would distinguish the Public Works employees in that they don't usually work on holidays while some police officers are always so scheduled due to the nature of police operations and the former employees receive the higher overtime rate only on holidays worked "which fall outside of what would be their regular working hours." [CB 27] Further, the City observes [CB 28]:

> The external comparables **** vary from mirroring the *status quo*, to an intermediate benefit increase, to comparing with the Union's position. While the Union seeks to increase this benefit, they have shown no compelling reason for such increase. Although the comparables vary, they include the *status quo*. The

factoring of the overall compensation provided for this unit, when compared with the comparables and when compared with the proposed wage increases by both the City and the Union, does not support an increase in this benefit.

I am persuaded that the internal comparable is distinguishable in that police officers are necessarily and regularly scheduled every day of the year and around the clock, while the public works employees normally work a standard five day, 8-hour week; and they would not usually expect to have to work on holidays. I also find that the external comparables do not provide a clear basis for altering the *status quo*. Only four of the eleven cited comparables support the Union's request for double time and one-half after eight hours.[11] Considering also the substantial pay increases the officers are receiving and the fact, as noted next, that they will not have to pick up part of the cost of health insurance, I find that no basis for increasing holiday pay has been established and that the City's proposal to maintain the *status quo* is adopted. The issue is best left for future bargaining.

5. Health Insurance.

On this issue, the Union seeks the *status quo* while the City wishes to change it. Like every thing else in the current CBA and prior ones, all of the contracts terms were negotiated by the parties themselves. From the beginning, the City has paid the full cost of medical insurance premiums, the officers none of it. As the City explains the current insurance provisions and its proposed changes [CB 29-30]:

> Under the Section 15.1 of the expired agreement, the City has an obligation to provide employees and their families with major medical, dental and prescription benefits. The cost of said plans is to be born solely by the City. However, without additional bargaining with the Union, the City has the right "...to change the level of benefits or deductibles, insurance plans to include HMO, PPO etc, so long as any such changes are applicable to all other employees of the City of Lockport."
>
> To its current ability to change benefits, deductibles and plans the City's proposal at interest arbitration is to include the ability for the City to also change employee premium contributions. However, the City's proposal continues to maintain the limitation found in the expired agreement that such a change to premium contribution can only be implemented if it is also applicable to all other employees of the City of Lockport.

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[11]The material supplied as to Oswego says nothing about holiday pay or overtime on holidays.

In addition to the requirement that any such premium contribution changes be applicable to all employees, the City's proposal also provides for additional limitations. First, in order to maintain a plan which guarantees no employee premium contribution for these bargaining unit members in the event that premium contributions are generally required, the Employer's proposal also adds an HMO plan option where these bargaining employees would still not make any premium contributions. Consequently, members of this bargaining unit choosing the HMO plan, would not have any premium contributions, even if premium contributions were required of the remainder of City employees.

Second, if premium contributions are generally required and if there are PPO options offered, at least one PPO plan would have caps on the premium contributions for members of this bargaining unit, as shown (per pay period – 26 annual pay periods) on page five of Employer Ex. Tab 4 [CX 4]:

	Single Coverage	Dependent Coverage
Year 08-09	$15.00 (Not retroactive)	$30.00
Year 10-11	$15.00	$30.00
Year 11-12	$20.00	$40.00

While there may be other PPO options without caps, the contract would guarantee this bargaining unit at least one PPO plan with caps on it.

The City's proposal on health care is a significant departure from prior agreements under which the entire employee health care costs were paid by the City. Insofar as the record shows, this is the first time the City sought to bargain in a provision that required the employees to pay part of those costs. The Arbitrator is aware that medical costs and insurance for them has been increasing, but the record does not show how much they have increased for the City in recent years. It shows only what the City's insurance costs are for all City employees for the year July 1, 2008 to June 30, 2009, and they are substantial, approximately $93,766 a month. [CX 7] Nonetheless, the change requested by the City would significantly alter the *status quo* as to the payment of medical insurance and would be a "breakthrough"[12] without offering a *quid pro quo* or showing a compelling need to alter the long-standing contract provision that it will pay the cost of employee medical insurance.

While the City's proposal offers a free HMO and a capped PPO, it does not argue that this amounts to a

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[12] *City of Kankakee & Illinois Fraternal Order of Police Labor Council*, ISLRB Case No. S-MA-99-137 (2000).

quid pro quo and I cannot find that it does. Although there are many differences between HMO's and PPO's, in general, HMO's are less expensive with more restrictions; while PPO's are more expensive with less restrictions. HMO members must choose a primary care doctor that participates in that HMO and must see that doctor before being able to be referred to a specialist. Such restrictions do not apply in a PPO. Not surprisingly, most of the City's employees have opted for a PPO under the current CBA.

The record shows that of about 105 City employees, 75 [71%] of them currently have opted for the City's current PPO and only about 30 [29%] opted for the HMO. [CX 7] This is understandable since a PPO, unlike an HMO, permits the employees and their families to continue to use their own doctors and are not limited to the doctors who would be or are within the offered free HMO. Employees [and their dependents] with long-term relationships with their doctors could be forced to change their primary care doctor to one in an unnamed free HMO unless they agreed to pay for a portion of the PPO premiums.

Absent a meaningful *quid pro quo* or showing of a compelling need to alter the long-standing contract provision that it will pay the full cost of employee medical insurance, the City's request to change the *status quo* cannot be granted. The issue is best left to the bargaining table where the parties, until now, have been able to resolve all issues. Accordingly, the Union's *status quo* proposal on health care is accepted.

6. Residency.

The positions of the parties on this issue are stated succinctly in their briefs as follows:

> The City: The Employer is seeking to maintain the status quo which, by City Ordinance, requires that City Police Officers maintain their principal places of residence within ten (10) miles of the corporate boundaries of the City. [CX 8]. The Employer knows of no compelling reason to change this. The Police Department operates 24 hours a day, 7 days a week and has minimum staffing levels required for public safety. Having officers close by further enables this requirement. [CB 38]
>
> The Union has not provided any evidence of a problem with the ordinance as it exists. In fact, [UX 2] Median Home Costs, shows that Lockport has among the lowest cost housing of any comparable. Therefore, finding housing in Lockport or within the current residency limits, is not a problem. No evidence to the contrary was introduced by the Union. It may be that somebody would like to live outside the current limits, but there is no evidence that any employee cannot find affordable housing within the current limits. Therefore, the Employer is

seeking to maintain the *status quo*. [CB 39]

MAP: The Union has requested the issue of residency to be codified in the collective bargaining agreement. Currently, police officers are required by Lockport Ordinance §31.04 to maintain a residence within 10 miles of the corporate boundaries of the city. The Union is seeking to expand the mileage limitation to 25 miles to incorporate certain municipalities that have more favorable housing. [T. 59]. The City only argues that there is no evidence that police officers can not find housing within 10 miles of the corporate boundaries. [T. 100].

When it comes to the issue of non-economic issues, such as residency, comparability is a critical factor. *See, Village of Alsip*, S-MA-03-235 (2004). *See also, City of Blue Island*, S-MA-00-0138 (2001) (The issue of external comparability the case is clearly made in favor of the Union's final offer.); *Village of Cahokia*, S-MA-00215 (2002) (External comparables clearly favors the Unions final offer). In the instant case, these Union comparables, Oswego, Plainfield, Shorewood, Crest Hill and Lemont do not have a residency requirement; Romeoville and Frankfort have 25-mile limitations and Woodridge has 30-mile limitation. Furthermore, all other Lockport employees outside the police department do not have a residency requirement. Since the City has presented no contrary comparables, the Union respectfully requests the residency requirement to be expanded to within 25 miles to corporate boundaries. [UB 24-25]

This is not a residency issue wherein employees are required to live within the city/village limits. By City ordinance, police officers must maintain their principal residence within ten [10] miles of the City's corporate boundaries. [CX 8; T. 58] The Union proposes to extend that limit to 25 miles and codify it in the CBA.

The evidence on this issue, apart from the comparables is as follows [T. 58-60]:

MR. MAZZONE: ***
****one of the reasons we want to expand the mileage from the ten from the city limits to 25 miles from the police department as it now incorporates certain municipalities that have more favorable housing.
OFFICER VITACO: Correct.
MR. MAZZONE: Those would be?
OFFICER VITACO: Yorkville, Morris, Mokena, Wilmington.
MR. MAZZONE: This would not significantly impact a response time by patrol officers. This is rural area. Multi-lane highways access these other towns we've talked about, Morris, Yorkville, et cetera.
We have several officers who want to relocate but cannot because of the ten-mile restriction.
OFFICER VITACO: Correct.
MR. MAZZONE: And would relocate if they're allowed to get into a more reasonable housing market.
OFFICER VITACO: A hundred percent.
MR. MAZZONE: Housing in Lockport like a lot of the areas around here has become expensive because of the growth of the southwest *** area..

***

MR. MAZZONE:
*** And conversely, while housing has been taking a dump in terms of the general market or news reports, it's still quite expensive to buy a new house because most of the housing in Lockport are new sub-divisions. Yorkville, Morris, Wilmington, these are old established communities where you can still get reasonable value

for a good sizable house.

Lockport would require location to a new subdivision which would be premium cost and unattainable on the wages currently paid to patrol officers.

With respect to the comparables, of the six that are agreed upon, four have no residency requirements [Crest Hill, Lemont, New Lennox and Shorewood.]. The other two, Mokena and Romeoville, have limits of 25 miles from the police station or headquarters. The additional comparable proposed by the City, Channahon, has no residency requirement. Of the three additional comparables proposed by the Union, Oswego has no limitation, while Frankfort and Woodridge have limits of 25 and 30 miles, respectively.

Based on this record, I find that the Union's request is reasonable and supported by the comparables and other evidence. I have also taken into account, pursuant to factor seven,[13] that during 2008 and up to the present time, the real estate market has been declining nationwide and the remaining period of this three-year contract may be the most propitious time for employees to find housing at the most reasonable prices available during the recent past.

Accordingly, the Union's proposal is adopted: Residency requirements for employees shall be within the City limits or within a twenty five (25) mile radius of the police station.

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[13](7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. [*supra,* p. 1]

Award

For the reasons set forth in the Opinion, which Opinion is incorporated by reference in this Award, and based on all the statutory and contractual factors that are pertinent and the record as a whole, the Arbitrator finds as follows:

[1] The City's Final Offer as to a three year contract term is accepted;

[2] The City's Final Offer as to wages is accepted;[14]

[3] The City's Final Offer for the *status quo* on compensatory time is accepted;

[4] The City's Final Offer for the *status quo* on vacations is accepted;

[5] The City's Final Offer for the *status quo* on holiday pay is accepted;

[6] The Union's Final Offer for the *status quo* on health care is accepted; and

[7] The Union's Final Offer for extending the limits on residency is accepted.

Aaron S. Wolff, Arbitrator

Entered at Highland Park, Illinois
this 28th day of April, 2009.

[14]The parties agree that the wage proposal will be retroactive to July 1, 2008. [T. 25-26]

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

CITY OF LOCKPORT

-and-

METROPOLITAN ALLIANCE OF POLICE CHAPTER #75

ILLINOIS LABOR RELATIONS BOARD, CASE NO. S-MA-08-277

SUPPLEMENTAL OPINION AND AWARD

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1. The Arbitrator, Aaron S. Wolff, issued an Interest Arbitration Award on April 28, 2009.

2. Subsequently, the parties invested the Arbitrator with jurisdiction to resolve several issues as to retroactivity and other aspects certain pay provisions.

Appearances for the Employer were:

Mr. Nicholas E. Sakellariou, Esq. — McKeown, Fitzgerald, Zollner, Buck, Hutchison & Ruttle, Attorney

Appearances for the Union were:

Mr. Joseph R. Mazzone, Esq. — Attorney for MAP

3. The parties submitted their positions by letters dated October 23 and 29, 2009.

4. Subject matter of award: [1] whether "2080" hours should be added to the Agreement's Wage provision; or [2] whether the maximum of 128 hours should be added to the Compensatory Time provision; and [3 & 4] whether the pay for Officers in Charge and Extra Duty Details should be retroactive?

5. Statement of Award:
[1] The Union's request to add "2080" to §5.1 is denied.
[2] The Union's request to add to §5.10 that the maximum compensatory time is 128 hours is denied.
[3] The Union's request that OIC pay be deemed retroactive to July 1, 2008 is granted.
[4] The Union's request that Extra Duty Detail pay be deemed retroactive is granted, but only to December 5, 2008, not to July 1, 2008.

SUPPLEMENTAL INTEREST ARBITRATION OPINION AND AWARD

Preliminary Statement

On April 28, 2009, I issued the following Award in this case:

[1] The City's Final Offer as to a three year contract term is accepted;
[2] The City's Final Offer as to wages is accepted;[1]
[3] The City's Final Offer for the *status quo* on compensatory time is accepted;
[4] The City's Final Offer for the *status quo* on vacations is accepted;
[5] The City's Final Offer for the *status quo* on holiday pay is accepted;
[6] The Union's Final Offer for the *status quo* on health care is accepted; and
[7] The Union's Final Offer for extending the limits on residency is accepted.

By letter dated August 14, 2009, the parties advised that they "have agreed to confer jurisdiction upon [me] to clarify several issues regarding" the award, and that they are "working on a method by which to provide [me] with the issues and their respective positions on the matters."

By letter dated October 23, 2009, the City advised that there were four issues being raised with respect to: [1] Section 5.1– Compensation and Specialty Pay; [2] Section 5.10– Compensatory Time; [3] Section 18.2– Extra Duty Details; and [4] Section 5.11– Officer In Charge. The City's letter also set forth its positions on these issues. By letter dated October 29, 2009, the Union responded and set forth its position on these issues.

Discussion

[1] Regarding Section 5.1, the City states in its letter:

> The Union has demanded that the term "(2080 hours)" be added next to subsection (1) "Base Pay" found in the second paragraph of Section 5.1. This term was included as part of the Union's final offer with respect to wages. The Employer's final offer with respect to the language for Section 5.1 **** maintained the status quo on this issue and did not add that term.
>
> The Arbitrator's Award accepted the Employer's final offer as to wages, which did not include the

[1]The parties agree that the wage proposal will be retroactive to July 1, 2008. [T. 25-26]

addition of this term.

It is the Employer's position that Award does not provide for the addition of this term.

In its responsive letter, the Union states:

The Union believes that it is imperative that there be some definition to the annual salaries stated within the exhibits tendered by the Union and the City to you and for purposes of determining overtime pay and other compensation which is calculated on an hourly basis. The City's position was that its final offer did not include the "2080 hours" and therefore that additional term should not be included in the final award. The Union would argue to you that the City has not stated to you that the hourly rate is not calculated by the salary being divided by 2080, it is not saying that the 2080 is a mistake or somehow prejudicial, economically or otherwise, to its final position and, has provided no substance to its request that the 2080 hours not be added next to subsection (1) "Base Pay" found in the second paragraph of Section 5.1. On the other hand, to prevent the future ability of either party to manipulate the hourly rate, it would seem that since the "2080" is an accurate number and is the number by which annual salaries are divided in order to arrive at an hourly rate, that it should be included as a matter of course so that the contract and the compensation package will be as clear as it possibly can be.

My conclusion is that although an hourly rate would normally be determined by dividing an annual salary by "2080," the normal hours in a 40 hour week for 52 weeks, and while the "2080" was requested by the Union in its final Offer, that offer was not accepted and the requested addition of "2080" cannot be added now. The Arbitrator also notes that in the prior contract [2004-08] the "2080" figure was not included in either §5.1 or in the salary schedules set forth in Appendix A.

[2] Regarding Section 5.10 Compensatory Time, the City states in its letter:

The Union has demanded that compensatory time maximum of 128 hours found in the City's Ordinance be added to the successor agreement.

The Union's final offer had proposed that change to this section along with other language changes. The Employer's final offer proposed that the status quo be maintained.

The Arbitrator's Award accepted the Employer's final offer of status quo on this section, although the Arbitrator did comment that if the City was willing, that Ordinance limitation maximum could be added to the successor contract.

The Employer did not elect to include this language and its inclusion is not mandated by the Award.

In its responsive letter, the Union states:

As regards the language requesting 128 maximum, which is found in the City's ordinance, it is the Union's recollection that the City agreed that if the Arbitrator had no problem with that language the City would include it. Now in its position statement the City has taken the position that it does not now "elect"

to include this language and takes the position that its not mandated by the award. We will leave the positions of the parties, as portrayed in the transcript, and ask the Arbitrator to award the 128 maximum to be included in the contract.

In the Union's final offer on this issue, I noted in the prior Award, pp. 10-11:

> In its proposed changes to §5.10, the Union seeks to allow three things: [1] to codify at [128] hours the maximum amount of compensatory time that can be accumulated as provided for under City Ordinance, §36. 23; [2] to give the employee the sole discretion in exercising a compensatory time request, i.e., to remove the chief of police's discretion in granting it; and [3] to give officers the right to exercise compensatory time in increments of one [1] hour instead of eight [8] hours. [UB 21-22; T. 40-46]
>
> The City responds that "While it is difficult for [it] to argue that the compensatory time cap found in the City Ordinance should not be incorporated into the Agreement, the remainder of the Union's proposal for this section is not supported by any of the exhibits or testimony." [CB 21]

In rejecting the Union's final offer, I noted at p. 12, "[h]owever, if the City is willing, as it indicated it was, there is no reason why contract language could not be added to show, as the City Ordinance does, that 128 hours are the maximum comp time that may be accumulated." While I invited the City to do what it indicated it might do, I did not mandate that it do so and cannot do so now.

The third and fourth issue here arise out of one or more grievances filed by the Union after the prior Award issued. As explained in the Employer's letter of October 23:

> The Union had filed a separate grievance over the effective date of the following two economic issues. The Union's letter of June 22, 2009, demanding retroactivity over Extra Duty Detail pay and Officer In Charge (OIC) pay is attached as Exhibit A. Instead of submitting these issues to a different arbitrator, the parties agreed to have the Interest Arbitrator determine the effective date of these items in the context of the Interest Arbitration.
>
> [3] Section 18.2 Extra Duty Details; and
>
> [4] Section 5.11– Officer In Charge.

Since the Union's response to these two issues is covered together, the City's positions will also be set out together.

As to Section 18.2, the Employer's position is as follows:

Extra duty details are off duty work of a security nature engaged in by the Officers for which the City is reimbursed by the entity seeking the detail. This work is covered by Article XVIII, Section 18.2 of the Agreement.

During the course of the negotiations, the parties reached a tentative agreement on Section 18.2 to increase the amount charged by the City to the entity for the detail and to increase the amount paid to the Officer. As a tentative agreement had been reached, the issue of Extra Duty Detail pay was not presented to the Interest Arbitrator by either party. At the request of the Union, while the negotiations and the interest arbitration decision were still pending, the City implemented the new rates in December, 2008. ****

The Union is now demanding that the rate increase be implemented retroactively to July 1, 2008. The Union's theory is premised on the second paragraph of Section 5.1. The entire Section 5.1 of the successor agreement is set forth below for convenience:

Section 5.1. Compensation and Specialty Pay:

Compensation and specialty pay of the Police Officers of the City of Lockport shall be paid according to Appendix A attached hereto and by reference incorporated herein. Said compensation shall be effective July 1, 2008 for all employees employed as of the date of the adoption of this agreement or employees who retired after June 30, 2008 and before the adoption of this agreement. All retroactive pay shall be distributed to the officers in a lump sum on or before thirty (30) days after the date of execution of this agreement.

The parties agree that all compensation receipts for employees covered by this Agreement shall be itemized to reflect the following categories:

(1) Base Pay;
(2) Overtime;
(3) Court Time;
(4) O.I.C. Pay;
(5) Holiday Pay; and
(6) Extra Duty Details.

The Union's theory is based on the fact that Extra Duty Detail Pay is referenced, in the second paragraph of Section 5.1, as an item which must be itemized in payroll receipts. Apparently, the Union then concludes that because the wage award was retroactive (retroactivity on the wage schedule was presented by both parties in their final offers), that Extra Duty Detail pay should also be retroactive to July 1, 2008.

The Union's theory is misplaced for multiple reasons.

1) The issue of retroactivity for Extra Duty Detail pay was never presented to the Interest Arbitrator as an open issue by either party. Also, Extra Duty Detail pay is not listed as a Specialty Stipend in Appendix A. The only issue of retroactivity for compensation presented to the Interest Arbitrator was the wage schedule of Appendix A. (Note that none of the Specialty Stipends actually listed in Appendix A were increased, so there was no issue of retroactivity involved.)

2) Section 5.1 does not govern the effective date of Extra Duty Detail pay. The first paragraph of Section 5.1 applies retroactivity only to the compensation and specialty pay of Appendix A. Appendix A does not list Extra Duty Detail pay as part of the Appendix. The second paragraph of Section 5.1 merely identifies all items which must be listed in the employee's compensation receipts.

3) Extra Duty Detail pay is set forth in Section 18.2 of the Agreement as a separate economic item. The effective date of this provision is governed by the language found in Article XXIII, Termination, which, absent any other specific retroactive language applicable to a particular section such as the wage schedule, provides that for the general effective date of the Agreement. Article XXIII provides that the "...Agreement is effective as of the day after it is executed by both parties." That effective date would be after the Interest Arbitration Award when the entire agreement is adopted by both parties, not retroactively to July 1, 2008.

4) The correspondence between the parties implementing the new Extra Duty Detail pay rates so that they would be in effect during the holiday season, prior to the Interest Arbitration Award and prior to final adoption of the successor agreement, also shows that the intent of the parties was not to make the increase in rates retroactive to July 1, 2008.

5) Section 18.2 also increased the rate which the City charges an entity for extra detail work. The fact that the City could not return to entities for which work had already been performed and now ask them to pay the higher rate, also supports the Employer's position that this provision was not retroactive to July 1, 2008.

As to Section 5.11, the City's position is as follows:

Officer In Charge (OIC) pay is granted to an officer when the officer is placed in charge of a shift in lieu of the regularly schedule supervisor.

During the course of the negotiations, the parties reached a tentative agreement to reduce the time threshold that an officer must serve in that capacity to receive the extra pay of $25.00, from eight hours or more to four hours or more. As a tentative agreement had been reached, that issue was not presented to the Interest Arbitrator by either party.

The Union is now demanding that the rate increase be implemented retroactively to July 1, 2008. Just as with Extra Duty Detail pay, the Union's theory is premised on the last paragraph of Section 5.1.

Again, the Union's theory is based on the fact that OIC pay is referenced as an item which must be itemized in payroll receipts. Apparently, the Union then concludes that because the wage award was retroactive (retroactivity on the wage schedule was presented by both parties in their final offers), that OIC pay should also be retroactive to July 1, 2008.

The Union's theory is misplaced for multiple reasons.

1) The issue of retroactivity for OIC pay was never presented to the Interest Arbitrator as an open issue. Also, OIC pay is not listed as a Specialty Stipend in Appendix A. The only issue

of retroactivity for compensation presented to the Interest Arbitrator was the wage schedule of Appendix A. (Note that none of the Specialty Stipends actually listed in Appendix A were increased, so there was no issue of retroactivity involved.)

2) Section 5.1 does not govern the effective date of OIC pay. The first paragraph of Section 5.1 only applies retroactivity to the compensation and specialty pay of Appendix A. Appendix A does not list OIC pay as part of the Appendix. The second paragraph of Section 5.1 merely identifies all items which must be listed in the employee's compensation receipts.

3) OIC pay is set forth in Section 5.11 of the Agreement as a separate economic item. The effective date of this provision is governed by the language found in Article XXIII, Termination, which, absent any other specific retroactive language applicable to a particular section such as the wage schedule, provides that for the general effective date of the Agreement. Article XXIII provides that the "...Agreement is effective as of the day after it is executed by both parties." That effective date would be after the Interest Arbitration Award when the entire agreement is adopted by both parties, not retroactively to July 1, 2008.

The Union's response to issues [3] and [4] is as follows:

Currently there are grievances pending over the effective date for retroactive payment on two (2) economic issues, namely: Section 18.2, Extra Duty Details and Section 5.11, Officers In Charge (OIC). It is the position of the Union that the Arbitrator awarded the City's position on compensation. That compensation package is contained in Section 5.1 entitled "Compensation and Specialty Pay." The compensation package includes base pay, overtime, court time, OIC pay and extra duty details.

The Union agrees with the City that the change in Officer in Charge pay was changed from "eight (8) hours or more" to "four (4) hours or more." Secondly, as regards Extra Duty Details, by agreement that was also increased during the course of negotiations.

It is the Union's position that both Section 18.2 and Section 5.11 are contained as descriptive and inclusive titles in Section 5.1, Compensation and Specialty Pay, and that when this Arbitrator ordered that the City's position on Section 5.1 Compensation and Specialty Pay, was awarded, that any and all benefits contained within Section 5.1 should and ought to be retroactive to July 1, 2008.

I am not persuaded by the City's argument that these two pay provisions may not and have not become effective because §23.1 provides that the "Agreement shall become effective as of the day after it is executed by both parties." There clearly seems to have been delay in executing the new contract and it may not have been signed yet since the copy the City sent me with its letter is only an unsigned "draft copy" dated "this ___ day of ___, 2009." Under the City's argument it would not have to pay the higher agreed upon rates for OIC or Extra Duty pay until the successor agreement has been

duly executed; and that could be more than a year after the stated starting date of the successor contract, July 1, 2008. Further, if the successor agreement was not effective as of December 2008, why did the City begin to pay the new rate for Extra Duty Detail in December 2008?[2]

Granted, reasonable minds could differ over resolution of these two pay issues. However, I am quite confident that if the issue of retroactivity of these pay provisions had been raised in the prior Award I would have ruled that pay thereunder should be retroactive to July 1, 2008. The OIC pay and the Extra Duty pay are both listed under §5.1, "Compensation and Specialty Pay." While they are not shown in Appendix A, which lists the annual salaries for patrol officers and sergeants as well as certain stipends, they clearly are additional compensation and taxed just like ordinary wages. I did rule that wages will be retroactive to July 1, 2008 [Award, p. 23, fn. 23] and the City did not then indicate any disagreement. [T. 25-26]

However, a distinction must be made as to Extra Duty Pay. The Union did not alert the City that this compensation should be deemed retroactive until it sent the City a letter by facsimile on December 5, 2008. [Exhibit B to City's Letter of October 23, 2009] Prior to that date, if there were any Extra Duty assignments, the Employer would now have to pay out more than it received from the entity that requested an Officer's services. Further, in its letter of December 5, 2008 the Union only asked that "the City of Lockport immediately implement the extra duty detail rate of $45.00 per hour

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2 Moreover,§23.1 is headed "Termination" and is concerned primarily with when and how the contract shall end or be renewed. The City quotes part of the first sentence of §23.1 but omits the last part: "and shall remain in force and effect until June 30, 2011." I do not believe that the parties intended to treat this section as a limit on retroactiveness of benefits, rights or obligations. If it were so considered, then it could be argued that benefits such as vacation and holiday pay, even seniority rights, would be lost during the hiatus between when new contract terms were agreed upon or arbitrated and when the contract was actually executed.

being charged for contractual extra duty details *** result[ing] in officers being paid $40.00 per hour as their actual rate for every hour worked on an extra duty detail." Accordingly, Extra Duty Details compensation will be retroactive only to December 5, 2008.

Award

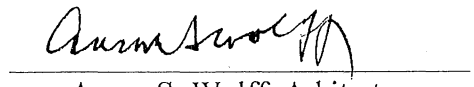
For the reasons set forth in this Supplemental Opinion, which Opinion is incorporated by reference in this Award, the Arbitrator finds as follows:

[1] The Union's request to add "2080" to §5.1 is denied.

[2] The Union's request to add to §5.10 that the maximum compensatory time is 128 hours is denied.

[3] The Union's request that OIC pay be deemed retroactive to July 1, 2008 is granted.

[4] The Union's request that Extra Duty Detail pay be deemed retroactive is granted, but only to December 5, 2008, not to July 1, 2008.



Aaron S. Wolff, Arbitrator

Entered at Highland Park, Illinois
this 18th day of January, 2010.