

SUPPLEMENTAL AWARD OF ARBITRATOR

In the Matter of the
Supplemental Interest
Arbitration

between the
City of Ottawa

and the
Policemen's Benevolent Labor
Committee

Supplemental
Opinion and Analysis,
Findings of Fact, and Award
by
Arbitrator
Peter Feuille
in
ILRB No. S-MA-08-289

Date of Award: November 20, 2009

APPEARANCES

For the City:

Mr. Keith R. Leigh, Pool, Leigh & Kopko, Attorney
Mr. Don Harris, City Treasurer
Mr. Robert Eschbach, Mayor
Mr. Dale Baxter, Commissioner

For the Union:

Mr. Sean Smoot, PBLC Attorney
Ms. Teresa Heisel, PBLC Representative
Ms. Kasey Greenwald, Intern
Mr. Randy Baxter, President
Mr. Jeff Bangert, Vice President
Mr. Barry Baxter, Bargaining Team
Mr. Mike Chatham, Bargaining Team
Mr. Dave Gualandri, Bargaining Team
Mr. Darrin Schmitz, Bargaining Team

INTRODUCTION AND BACKGROUND

The City of Ottawa ("City," "Employer") and the Patrolmen's Benevolent Labor Committee ("Union") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2006-08 CBA covering the bargaining unit of sworn police officers including the ranks of patrol officers, corporals, and sergeants that expired on April 30, 2008 (Union Exhibit 37 ("UX 37")). During their negotiations the parties reached agreement on many issues, but were not able to reach agreement on all issues. Accordingly, they invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," "Act"). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the individual Arbitrator, and in June 2008 the Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter. Additionally, the parties waived the Act's requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator's appointment, and the parties agreed to extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter.

By mutual agreement, the parties scheduled an interest arbitration hearing to be held on December 3, 2008, in Ottawa, IL. At this December 3, 2008 gathering there were extensive pre-hearing discussions by the parties' representatives, and the parties allowed me to be present during these discussions. These discussions resulted in an agreement on the remaining unresolved

issues. The parties asked that their resolution of these issues be read into the record and then issued as an agreed award. Accordingly, the Arbitrator and the parties' representatives convened the hearing on December 3, 2008 in Ottawa and confirmed for the record the terms of their agreement, which hearing was stenographically recorded and a transcript produced (Union Exhibit 25 ("UX 25")). As a result, it was not necessary for the Arbitrator to identify the economic issues in dispute, or to direct the parties to submit their last offers of settlement on each economic issue, or to make written findings of fact based upon the factors specified in Section 14(h) of the Act. In addition, it was not necessary for the parties to submit post-hearing briefs.

This agreed Award was issued on February 18, 2009, and it included the six issues upon which the parties had agreed in their December 3, 2008 negotiations (UX 26). One of these six issues was the In-Service Training Incentive, which was specified in the Award (in its entirety) as follows:

"3. In-Service Training Incentive (Article 20, Section 2)

Article 20 is the "Education and Training" article. Section 2 addresses the in-service training process and specifies the pay rates designed to give officers an incentive to pursue in-service training. Section 20.22 contains a total of five paragraphs. The parties have agreed to revise the fourth and fifth paragraphs in this section to read as follows:

Section 20.2 In-Service Training Incentive

[The first three paragraphs in Section 20.2 shall continue unchanged from JX 1.]

"Effective January 1, 2009, all employees who attain or have attained 600 hours of in-service shall receive a pay incentive of 2% of his base wage. All employees who attain or have attained 900 hours of in-service training shall receive an additional pay incentive of 2% of his base wage. All employees who attain or have attained 1200 hours of in-service training shall receive an additional pay incentive of 2% of his base wage. All employees who attain or have attained 1500 hours of in-service training shall receive an additional pay incentive of 2% of his base wage.

All of the above in-service training pay incentives shall be cumulative, making a total possible in-service training pay incentive of 8% of base wage. The number of in-service training hours shall be cumulative from an employee's first date of service. Said pay incentive shall be included in an employee's hourly rate. " (UX 26, pp. 5-6)

Additionally, this Award incorporated by reference the tentative agreements reached by the parties during their negotiations prior to December 3, 2008 (UX 26, 9-10).

Consistent with Section 14(n) of the Act, the Award was submitted to the Ottawa City Council for approval. On March 10, 2009 the Council timely rejected three of the six terms addressed in the Award as well as three additional terms the parties had agreed to earlier (prior to December 3, 2008) in their negotiations (UX 27).¹ On March 25, 2009 the City Council timely issued its "Reasons for Partial Rejection of Award" (UX 28).

Consistent with Section 14(n) and (o) of the Act, the parties then moved forward with the instant supplemental arbitration proceeding, which proceeding the Act mandates be held whenever a public employer's "governing body" - in this instance, the Ottawa

1. The three terms in the Award rejected by the Council were In-Service Training Incentive (Section 20.2), Discipline (Article 8), and Fire and Police Commission (Article 21) (UXs 26, 27, 28). The three tentative agreements reached earlier that the Council rejected were Funeral Leave (Section 12.2), Limited Duty (Section 12.5), and Promotions (Article 28) (UXs 26, 27, 28).

City Council - rejects one or more of the terms in a Section 14 interest arbitration award. The supplemental arbitration hearing was held and completed on June 17, 2009 in Ottawa, and this hearing was stenographically recorded and a transcript produced. The parties subsequently submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs on September 14, 2009 the record in this matter was closed.

THE ISSUE

After the City Council's rejection of six employment terms in March 2009, the parties' representatives reached agreement on all five of the noneconomic items involved in the Council's March 2009 rejection of terms, and the parties reached this agreement prior to the June 17, 2009 supplemental hearing (Transcript, pages 8-9 ("Tr. 8-9")).² At this June 17 hearing the parties agreed that only one substantive issue remained unresolved to be addressed in the instant proceeding - the In-Service Training Incentive (hereafter "training incentive") in Article 20, Section 2 ("Section 20.2") of the CBA (Tr. 12). The parties agreed that this one remaining unresolved issue is an economic issue within the meaning of Section 14(g) of the Act (Tr. 8), each party timely submitted its "last offer of settlement" (or "final offer") on

2. All references to the transcript ("Tr.") will refer to the transcript of the supplemental arbitration hearing held on June 17, 2009. All references to the transcript of the original arbitration hearing held on December 3, 2008 will be referred to as "UX 25."

this issue, and Section 14(g) of the Act commands that I select one or the other of these two final offers without modification.

STATUTORY DECISION CRITERIA

Section 14(g) mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) contains several criteria that arbitrators must use when making decisions on each of the issues submitted to them for resolution in arbitration disputes. These criteria, in their entirety, are:

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

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

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

benefits received.

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

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

The Act does not require that all of these criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of these criteria should be weighed. We will use these criteria to select one of the two final offers on the training incentive issue presented in this proceeding.

ANALYSIS, OPINION, AND FINDINGS OF FACT

There is some pertinent background information that needs to be presented in order to fully understand the context within which this dispute exists. First, the original arbitration proceeding and this supplemental arbitration proceeding address only the CBA for the one-year contract period May 1, 2008 through April 30, 2009 (which is the same as the City's 2008-09 fiscal year). Second, as noted above, during the parties' negotiations prior to December 3, 2008, on December 3, 2008, and during the period after the Council's partial rejection of the Award and prior to the June 17, 2009 supplemental hearing, the parties' representatives agreed on the resolution of all issues except for the training incentive matter. As a result, all of the terms of the parties' 2008-09 CBA have been resolved except for the training incentive issue.

Before we can address the merits of the training incentive issue, there are two threshold issues vigorously contested by the parties we must address - the burden of proof, and retroactivity.

Burden of Proof

Union's Position. As a result of the City Council's rejection of the training incentive issue in the parties' December 3, 2008 agreement, which agreement was codified in the February 18, 2009 Award, the Union argues that the City carries an especially heavy burden of proving why the Union's final offer should not be selected. The Union agrees that, normally, a party seeking a change in the *status quo* has the burden of proving the need for such change. However, in the instant matter the City agreed with the Union's training incentive proposal during the bargaining process, which process included both sides making concessions on a variety of issues. In other words, the City agreed in negotiations with the Union to alter the training incentive *status quo* and adopt a modified training incentive pay ladder. However, after the City agreed to do this during bargaining and agreed to codify this agreement via the February 18, 2009 Award, the City Council repudiated the agreement reached by the City's representative. Accordingly, the Union insists it is the City's burden to prove why the City's agreement with the Union on the training incentive issue should not be adopted.

The Union points to considerable arbitral authority in support of this argument. Since interest arbitration became effective in 1986, many Illinois interest arbitrators have

required public employers who have rejected arbitration awards to prove why the rejected awards should be upheld in the subsequent supplemental awards (Union Brief, pages 18-19 ("Un.Br. 18-19")). These reasons include requiring the employer to show that the rejected provisions were the product of manifest error, compliance with the rejected provisions would result in extraordinary hardship, there must be a clear showing of error or hardship, or that the rejected provision was arbitrary or capricious or without authority, or that there is a demonstration of significant hardship (Un.Br. 18-19). The Union argues that the City has not met any such burden in this case.

The Union notes that the original Award in this matter went through multiple drafts vetted by both the City and Union representatives before the Award was finally issued on February 18, 2009. The City has offered no evidence that this Award was the product of manifest error, will result in significant hardship, or was issued in an arbitrary or capricious manner. The Union argues that there has not been a single interest arbitration award in Illinois that was overturned in a supplemental interest arbitration proceeding (Un.Br. 20), and the City has not even come close to meeting its burden of showing why the City Council's rejection of the instant Award should be upheld.

City's Position. Addressing the Union's argument that the City bears the burden of proving why the Council's rejection of the training incentive issue in the Award should be upheld, the City says there is no support for this assertion either in the Act or in the Board Rules. Sections 14(n) and (o) of the Act provide

that upon rejection of an arbitration award "the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision . . ." Section 1230.100(e) of the Board's Rules provide that such supplemental hearing shall be conducted in accordance with Section 1230.90 of the Board's Rules, which are the rules that govern the conduct of initial interest arbitration proceedings. As a result of this statutory and regulatory language, the City insists that there is "absolutely nothing in the Act or the Board's Rules to suggest that the City has any different burden in a supplemental proceeding that in an original interest arbitration proceeding. This should be particularly true where the factors enumerated in Section 14(h) of the Act were not considered in the original proceeding by the arbitrator" (City Brief, page 22 ("C.Br. 22")).

In contrast to the Union's argument, the City emphasizes that the Union is the party proposing a change in an employment term, in that its final offer seeks a significant increase in training incentive pay. The City emphasizes that it is well settled among Illinois interest arbitrators that the party proposing a change bears the burden of persuasion (C.Br. 22-23). In the instant matter, the Union is not only proposing a change in the status quo, it is proposing a compensation increase of such magnitude that the Union's proposal clearly seeks a "breakthrough" on the training incentive issue. As numerous Illinois interest arbitrators have stated, such breakthroughs should be negotiated at the bargaining table and should not be imposed by arbitrators over the objections of one party. The City concludes by noting

that the "Union has not satisfied its burden of persuasion in light of the relevant statutory criteria, and the status quo should be maintained" (C.Br. 23).

Analysis. There is considerable merit in both parties' arguments on the burden of proof, or the burden of persuasion.

Looking first at the Union's argument regarding arbitral precedent regarding the burden of proof in supplemental arbitration proceedings, the Union submitted five supplemental awards as attachments to its post-hearing brief to illustrate how five Illinois interest arbitrators dealt with initial awards that were either partially or fully rejected by employer governing bodies. The five supplemental awards and the arbitrator's rulings (I do not differentiate between neutral arbitrators serving as chairs of tripartite panels and serving as individual arbitrators) submitted by the Union include the following (what follows are my summaries of these awards):

- *County of Peoria and American Federation of State, County and Municipal Employees*, ILRB No. S-MA-86-10, award issued on February 11, 1986 by Arbitrator Anthony Sinicropi. Eight issues were arbitrated, and the arbitrator selected the employer's offer on five issues and the union's offer on three issues. On the portion of ILRB's website that contains posted entries summarizing each award received by the Board, the Board's posted entry for this case states "Supplemental hearing was held after the Employer rejected three issues in the award. Supplemental Award issued February 11, 1986, and rulings on all issues stayed the same as original award."³

3. The Sinicropi Award in the *Peoria County* case attached to the Union's post-hearing brief appears to contain only Arbitrator Sinicropi's original award without the inclusion of his supplemental award. Accordingly, I needed to verify that Sinicropi issued a supplemental award as contended. I take arbitral notice that the ILRB maintains a website, a portion of that website contains posted summaries of each Section 14 award the Board has received, and the posted entry for this *Peoria*

- *International Brotherhood of Teamsters, Local Union No. 714 and County of Cook and Sheriff of Cook County*, ILRB No. L-MA-01-001, Arbitrator Peter R. Meyers. In this case, Meyers' original decision was issued in November 2001 and addressed five issues, including wages. The Board of Commissioners of Cook County subsequently rejected the initial award on wages, so a supplemental arbitration proceeding was held to address the wage issue. In his supplemental award issued in April 2002, Arbitrator Meyers reaffirmed the initial award on wages. In his supplemental award, Meyers concluded that the public employer did not demonstrate that the initial award "contains one or more substantial errors, or would cause significant hardship to the citizens of the County, so as to justify any revision or modification" of the original award (Meyers Supplemental Award, p. 29).
- *Illinois Fraternal Order of Police Labor Council and County of Cook/Sheriff of Cook County*, ILRB No. L-MA-01-002, Arbitrator John C. Fletcher. In this case, Fletcher's initial award, issued in January 2002, addressed two issues, including wages. The Board of Commissioners of Cook County subsequently rejected the initial award on wages, so a supplemental arbitration proceeding was held to address the wage issue. In his July 2002 supplemental award, Arbitrator Fletcher was not persuaded by the employer's rejection reasons and therefore concluded that the employer failed to demonstrate that the original award was the result of error or that the implementation of the original award would result in hardship to the employer, and the original award was affirmed (Fletcher Supplemental Award, p. 51).
- *Greater Peoria Airport Authority and Illinois Fraternal Order of Police, Lodge No. 247 Unit-A*, ILRB No. S-MA-00-109. Arbitrator Michael H. LeRoy. In this case, LeRoy's original award, issued in December 2001, addressed the sole issue of physical fitness testing. The public employer subsequently rejected parts of the initial award, so a supplemental arbitration proceeding was held to address the fitness testing issue. In his April 2002 supplemental award, Arbitrator LeRoy was not persuaded by the employer's reasons for its rejection, including finding that there was no showing the original award was not based on the "manifest

County case confirmed that Sinicropi issued a supplemental award in which he affirmed his original rulings on the three issues the employer had rejected. In addition, I note that Arbitrator Meyers, in his supplemental award issued in *Teamsters Local 714* case discussed in the text, discussed Sinicropi's supplemental award (Meyers Supplemental Award, p. 10). Similarly, Arbitrator Traynor, in his supplemental award in the *County of St. Clair* case discussed in the text, discussed Sinicropi's supplemental award at great length (Traynor Supplemental Award, pp. 5-7).

weight of the evidence," no showing the original award was "arbitrary or capricious," and finding that the original award did "not impair the lawful authority" of the employer. LeRoy reaffirmed his original award (LeRoy Supplemental Award, pp. 26-41).

- *County of St. Clair/Sheriff of St. Clair County and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-91-047, Arbitrator Duane Traynor. In this case, Traynor's initial award, issued in May 1992, addressed three issues, including wages and longevity pay. The St. Clair County Board subsequently rejected his rulings on wages and longevity pay, so a supplemental arbitration proceeding was held to address those two issues. In his September 1992 supplemental award, Arbitrator Traynor concluded that "the Employer has not demonstrated that the Award causes a significant hardship on the County, or contains manifest errors sufficient to cause the Panel to change or modify the Award" and therefore affirmed the original rulings (Traynor Supplemental Award, p. 29).

However, this was not the end of the matter. In October 1992 the St. Clair County Board "unanimously rejected the entire Supplemental Award" (Traynor Second Supplemental Award, p. 1) and so advised Traynor. Traynor determined that this second rejection by the County Board was a "Motion to Reopen the Arbitration Panel Proceedings for the Purpose of An Additional Hearing based upon the provisions of Section 14" of the Act (*id.*). In his Second Supplemental Award, Traynor denied the employer's motion to reopen the hearing for multiple reasons, including "it is the Arbitration Panel's belief and holding that a Motion for the Reopening and holding of another hearing was not within the intent of the statute and the Arbitration Panel has no authority to hold another hearing" (Traynor Second Supplemental Award, p. 6).

The theme that emerges from these cited supplemental awards is that Illinois interest arbitrators require in their supplemental proceedings that the public employers carry the burden of persuading the arbitrator to reverse his/her original decision(s) on the rejected issue(s). I believe Arbitrator Meyers captures this arbitral reasoning particularly well. In his Supplemental Award issued in the *Teamsters and Cook County* case (ILRB No. L-MA-01-001) summarized above, he looked to the

reasoning expressed by Arbitrator Sinicropi in his *Peoria County and AFSCME* Supplemental Award (ILRB No. S-MA-86-10), and to the reasoning expressed by Arbitrator Goldstein in his *Teamsters Local No. 714 and Cook County* Supplemental Award, issued in June 1996, and stated the following:

"A cohesive understanding of Section 14 of the Act suggests that its general provisions governing interest awards must be construed to offer recourse to employers, via a supplementary hearing, where necessary to protect them from arbitral excess or error. Section 14(n) therefore must be understood as a means of addressing 'substantial error' by arbitrators or awards that might cause extreme hardship for the public. As Arbitrator Goldstein put it, Section 14(n) is not intended to provide employers with the ability to reject awards 'simply to seek a better deal in a new hearing' . . ." (Meyers Supplemental Award, p. 11).

I strongly agree with Arbitrator Meyers that Section 14(n) needs to be available as a means of addressing "substantial error" by arbitrators, and I emphatically agree with Arbitrator Goldstein, as cited by Arbitrator Meyers, that Section 14(n) does not exist to enable public employers "to simply seek a better deal in a new hearing."

Arbitrator Traynor expressed a similar view. In his Supplemental Award in the *County of St. Clair* case discussed above, Traynor quoted Arbitrator Sinicropi in the latter's supplemental proceeding in the *Peoria County* case as follows:

"'While there is no legal or arbitral precedent and little relevant material in the legislative history which provides guidance on the nature of a 'supplemental proceeding' under the statute, this much is clear: the initial award must be entitled to 'great weight' and should not be changed in a second proceeding absent 'extraordinary hardship' or evidence that a significant error was made by the Arbitrator in his first award" (Traynor Supplemental Award, p. 6, quoting Sinicropi Supplemental Award).

Arbitrator Fletcher, in his Supplemental Award in the *Illinois Fraternal Order of Police Labor Council* case summarized above, discussed at some length the competing standards of review offered by the employer and the union in that supplemental proceeding. After this review, Fletcher concluded "that in order for the award in this matter to be set aside, there must be clear showing of error or hardship" (Fletcher Supplemental Award, p. 23).

It can be argued, however, that there is a significant difference between the five supplemental awards summarized above, and the instant supplemental proceeding. In the above five cases, there was an original award issued after a full-fledged evidentiary hearing on the merits, and in these five cases the parties had opportunity to submit evidence that addressed the Section 14(h) decision factors arbitrators must use when making their selection decisions.

In contrast, in the instant proceeding the original arbitration hearing on December 3, 2008 was an arbitration horse of a very different color. That December 3 hearing was held for the purpose of confirming for the record (a) that the parties had reached agreement on the remaining issues and (b) establishing a verbatim record I could use for the issuance of the agreed Award in February 2009. As this indicates, the instant supplemental hearing is the parties' first opportunity to present evidence and supporting arguments regarding how the Section 14(h) decision factors should be applied to the training incentive final offers. Does this difference require us to set aside the arbitral

precedent discussed above and upon which the Union has relied heavily in its burden of proof argument?

I find that it does not. The record is clear that on December 3, 2008 the City entered into a tentative agreement with the Union on the training incentive issue (and on other issues, since resolved; UXs 1, 25). Additionally, the City and the Union agreed that their negotiated agreement would be codified and issued via the original Award in this matter (UXs 25, 26). By entering into this negotiated agreement that was codified and issued as the Award, the City elected not to reject the Union's proposal on the training incentive issue. In turn, the City elected to not take this issue to a full-fledged evidentiary original interest arbitration hearing and apply the Section 14(h) factors to the merits of the parties' offers on the training incentive issue.

Subsequently, the City Council rejected the City's tentative agreement on the training incentive issue and offered reasons for its rejection (UXs 27, 28; these reasons will be examined below). As a result, in the instant proceeding the City bears the burden of demonstrating why the City Council's rejection of the City's agreement on the training incentive issue deserves to be upheld instead of the parties' original agreement on this issue being upheld. As part of this burden, I find the initial Award is entitled to "great weight," for this Award expresses the parties' tentative agreement on this issue.

Moving on, we consider the City's argument that the Union is the party proposing a change on the training incentive issue, that

its proposed change is of such magnitude that it constitutes a "breakthrough," and therefore the Union has the burden of persuasion. I do not agree that the change proposed by the Union constitutes a "breakthrough" proposal. The training incentive pay schedule existed in the expired CBA, and the Union's proposal does not seek to incorporate a new issue into the CBA, but instead seeks higher pay rates for reaching various training levels. In that regard, the Union's proposal is very similar to a wage proposal seeking a higher wage rate in each contract year, and I have never heard of such a wage proposal having the "breakthrough" label hung on it. The same conclusion applies to the City's breakthrough argument here.

I agree with the City that the Union is the moving party seeking to change the status quo on the training incentive issue. I agree that, normally, the party proposing a departure from the status quo bears the burden of persuasion on why its proposal should be adopted. However, on December 3, 2008 City representatives agreed with the Union's proposal on this issue. Having agreed to change the status quo on the training incentive issue, the City is now in position where it cannot credibly claim it is solely the Union's burden, as the change-proposing party, to prove that this change should be adopted. Because the City earlier agreed with the Union's proposed changes to the training incentive pay ladder, the City implicates itself when it advances this argument. As a result, the Union's burden of showing why this training incentive pay should be adopted is exceeded by the

City's burden of showing why its earlier agreement with the Union on this issue should no longer be upheld.

Finding. Based on the above analysis, I find (1) that each party bears a burden of persuasion in this proceeding, and (2) that the City bears the significant burden of demonstrating why the parties' agreement on the training incentive agreement expressed in the initial Award should be set aside.

Retroactivity

City's Position. The City argues that no award can be retroactive to any date earlier than May 1, 2009, that the Union's final offer calls for its training incentive offer to be implemented retroactive to January 1, 2009, and therefore the Union's final offer is contrary to the Act and its selection would be illegal.

The Act explicitly addresses retroactivity as follows in Section 14(j):

"(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary,

notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration."

In addition, Section 1230.100(e) of the Rules and Regulations of the Illinois Labor Relations Board ("Board Rules") also address retroactivity as follows:

"The commencement of a new municipal fiscal year after the initiation of arbitration procedures (Section 14(j) of the Act) shall not render the proceeding moot. Awards of wage increases may be effective only at the start of the fiscal year beginning after the date of the award; however, if a new fiscal year began after the initiation of arbitration proceedings, an award of wage increases may be retroactive to the beginning of that fiscal year (emphasis in original).

The City says that the Union's final offer on the training incentive issue is invalid on its face because it violates the express retroactivity language of the Act and the express retroactivity language of the Board Rules. The City points to Section 14(j) of the Act and to Section 1230.100(e) of the Board Rules and says that "both require an award of wages to apply either prospectively to the commencement of the fiscal year following the date of the award or if retroactivity is permitted, to the commencement of the fiscal year that changed after the commencement of arbitration" (C.Br. 7). The City agrees that the Union requested mediation prior to the start of the May 1, 2008 beginning of the City's 2009 fiscal year (Tr. 15). However, a second fiscal year of the City began on May 1, 2009 during the pendency of this arbitration process. Additionally, the Union's final offer calls for an implementation date of January 1, 2009, which date is not the commencement date of any fiscal year of the City.

The City argues that the pertinent language in the Act generally calls for wage awards to take effect at the start of the fiscal year following the award. However, the exception to this general rule is that if the municipality's fiscal year changed during the pendency of the arbitration process, the award "may" be retroactive to the commencement of "that" fiscal year. The City's current fiscal year began on May 1, 2009, but the Union's final offer does not call for its proposed training incentive increases to take effect on that date but instead on January 1, 2009 - a date during a fiscal year which has ended. As a result, the Union's final offer violates Section 14(j) of the Act and Section 1230.100(e) of the Board Rules, and as such an award of the Union's offer would be illegal. In turn, the City's final offer must be selected.

Union's Position. The Union says that it protected the Arbitrator's authority to award retroactivity on this issue by initiating arbitration proceedings prior to May 1, 2008 via the Union's filing for mediation prior to that date (Tr. 18). The Union notes that the first sentence in Section 14(j) says "Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section." Additionally, the Union says that its timely filing of its mediation request meets the requirement in Section 1230.100(e) of the Board Rules which states "if a new fiscal year began after the initiation of arbitration proceedings, an award of wage increases may be retroactive to the beginning of that fiscal year." In other words, the Union argues

that its pre-May 1, 2008 filing of a mediation request protected the Arbitrator's authority to award wage increases back to May 1, 2008.

Moreover, the Union says that many interest arbitrators in Illinois have addressed retroactivity, and all of them known to the Union have favored it ("the Union is aware of no case in the history of interest arbitration in Illinois where an arbitrator did not award retroactive compensatory benefits" (Un.Br. 10). In its post-hearing brief, the Union quotes six interest arbitrators who have awarded fully retroactive wage increases and issued comments favoring retroactivity (Un.Br. 10-12). The Union concludes that, contrary to the City's assertion, I have the lawful authority to award the Union's proposal retroactively to May 1, 2008 or to a date that provides for less than full retroactivity. The Union also concludes that, based on the weight of existing arbitral authority, I should select the Union's offer.

Analysis. The parties agree that the Union filed a request for mediation with the Board prior to May 1, 2008 (Tr. 15, 18). The opening sentence of Section 14(j) of the Act specifies that "Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section." In other words, the parties agree the original arbitration procedure which culminated in (a) the issuance of the February 18, 2009 Award and (b) the City Council's March 10, 2009 partial rejection of that Award was deemed to be initiated prior to May 1, 2008 within the meaning of Section 14(j) of the Act.

I emphasize that the instant supplemental proceeding is a continuation of that original arbitration proceeding. The City and Union are not currently engaged in some sort of new arbitration process. Rather, Section 14(o) of the Act clearly specifies that, when a public employer's legislative body rejects an interest arbitration award, a supplemental arbitration proceeding shall follow: "If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel . . . for further proceedings and issuance of a supplemental decision (emphasis added)." In other words, this supplemental proceeding continues the arbitration process that was deemed initiated prior to May 1, 2008 by Section 14(j) of the Act via the Union's filing of a mediation request. The fact that the parties and the Arbitrator needed until November 2009 to complete this supplemental arbitration proceeding does not alter this fact.

Section 14(j) provides that "If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act . . . , the foregoing limitations [on retroactivity] shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, . . ." The City is correct that a new fiscal year commenced on May 1, 2008 after the initiation of arbitration procedures. It is also true that a second new fiscal year commenced on May 1, 2009 after the initiation of arbitration procedures. However, in light of the Union's filing of its pre-May 1, 2008 request for mediation, the commencement of this second fiscal year does not prevent an award of wages from being fully retroactive to May 1, 2008. I

note that there is nothing in Section 14(j) that says, in the language allowing retroactivity, that such retroactivity is limited to a single fiscal year.

Accordingly, the fact that a second City fiscal year commenced on May 1, 2009 while this supplemental arbitration was pending does not mean that retroactivity is prohibited from extending back further than May 1, 2009. On the contrary, an award rendered during this supplemental arbitration proceeding may be fully retroactive to May 1, 2008.

At the conclusion of the June 17, 2009 supplemental hearing, I invited the parties to address the retroactivity issue in their post-hearing briefs (Tr. 147-148). I note that the City stated it could cite no legal authority in support of its restricted retroactivity position: "The City has been unable to locate any published Illinois judicial decision dealing with this issue and has been advised by the General Counsel of the Illinois Labor Relations Board (the "Board") that the issue has not been addressed by the Board" (C.Br. 6). I also note that the Union did not cite any legal authority in support of its full retroactivity position. However, the Union supplied significant arbitral authority via several Section 14 interest arbitration awards, attached to its post-hearing brief, that directly addresses the retroactivity dimension presented by the City, as will be seen in the following paragraphs.

First, I note that in *Village of Loves Park and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-04-175, Arbitrator Barry Simon was faced with an impasse over wages and

health insurance. The prior CBA had expired on April 30, 1994. He issued his award on June 29, 1996. In its final offer on wages, the Union sought wage increases retroactive to May 1, 1994, while the City's final offer on wages provided for no retroactive payments. Arbitrator Simon selected the Union's wage offer, and his decision was based in part on his support of retroactivity, stating that "Without retroactivity, the longer it takes to reach closure, the more the governmental unit saves in wages. This is contrary to the public's interest in swift resolution of labor disputes" (Simon Award, p. 29).

I call the parties' special attention to the fact that two new fiscal years commenced after the initiation of arbitration but before the award was issued in the *Loves Park* case. The first fiscal year began on May 1, 1994 and the second on May 1, 1995. According to the City of Ottawa's reasoning, Arbitrator Simon's June 1996 award of wages retroactive more than two years back to May 1, 1994 was "illegal." Yet the City of Loves Park, which was represented by legal counsel (Simon Award, p. 1), advanced no claim that the union's offer was improper under the Act and that an award which selected that union's wage offer would be "illegal," at least no such claim that was reported by Arbitrator Simon in his Award.

Second, I note that in *Village of Elk Grove Village and Village of Elk Grove Village FireFighters Association, Local 23398 of the IAFF*, ILRB No. S-MA-96-86, Arbitrator Lisa Salkovitz Kohn was faced with an impasse over a multitude of issues, including wages. The parties' prior CBA had expired on April 30, 1996. She

issued her award on September 12, 1997. In its final offer on the separate issue of retroactivity, the Union sought full retroactivity for wage increases back to May 1, 1996 (retroactivity for regular and all other hours, including overtime hours), while the City's final offer on wages provided for limited retroactivity for wage increases back to May 1, 1996 (retroactivity for all regular hours but not for overtime hours). Arbitrator Kohn selected the Union's full retroactivity offer rather than the City's limited retroactivity offer, stating that "a restriction on retroactivity would punish the bargaining unit members for both parties' failure to avoid impasse" (Kohn Award, p. 27).

I call the parties special attention to the fact that two new fiscal years commenced after the initiation of arbitration but before the award was issued in the *Elk Grove Village* case, the first on May 1, 1996 and the second on May 1, 1997. According to the City of Ottawa's reasoning, Arbitrator Kohn's September 1997 award of retroactivity 1.4 years back to May 1, 1996 was "illegal." Yet Elk Grove Village, which was represented by legal counsel (Kohn Award, p. 1), advanced no such "illegal" argument in that proceeding, at least none reported by Arbitrator Kohn in her Award. In fact, according to the City of Ottawa's reasoning, the Village's own final offer on retroactivity was improper, for the Village's final offer called for limited retroactivity back to May 1, 1996 even though two new fiscal years had commenced by the time Arbitrator Kohn issued her award.

Third, I note that in *City of Elmhurst and Illinois Fraternal Order of Police Labor Council, Lodge No. 81*, this Arbitrator was faced with several issues including wages. The parties' prior CBA had expired on April 30, 1992. I issued my award in that case on July 2, 1993. As will be discussed in more detail below, the parties agreed that wage increases for the 1992-93 year would take effect on November 1, 1992, and would not be fully retroactive back to May 1, 1992. The Union's wage offer was selected, and it took effect on November 1, 1992.

I call the parties special attention to the fact that two new fiscal years commenced after the initiation of arbitration but before the award was issued in the *City of Elmhurst* case. The first fiscal year began on May 1, 1992, and the second commenced on May 1, 1993. According to the City of Ottawa's reasoning, this Arbitrator's award of retroactive wage increases back to November 1, 1992 was "illegal." Yet the City of Elmhurst, which was represented by legal counsel (Feuille Award, p. 1), advanced no such argument in that proceeding. In fact, according to the City of Ottawa's reasoning, the City of Elmhurst's own final offer on retroactivity was improper, for the City of Elmhurst's final offer also called for retroactivity back to November 1, 1992 even though two new fiscal years had commenced by the time I issued my award in that case.

It stretches credulity miles beyond the breaking point to conclude that these three municipal employers, who were well represented by legal counsel, would be so ignorant of their rights under Section 14(j) that they would tolerate interest arbitration

awards that required them to pay significant retroactive monetary payments covering more than one fiscal year if they had no legal obligation to do so under Section 14(j) of the Act. Yet that is what Arbitrator Simon in the *Loves Park* case, Arbitrator Kohn in the *Elk Grove Village* case, and this Arbitrator in the *City of Elmhurst* case awarded, and in none of these awards is there any mention or even the slightest hint that any municipal employer advanced the "illegal" retroactivity argument that has been advanced by the City of Ottawa in the instant matter.

In short, there is no persuasive evidence in the record to support the City's "illegal" retroactivity position and argument. In contrast, there is significant evidence in the record to support a conclusion that there is nothing illegal or otherwise impermissible under Section 14(j) of the Act for an arbitration award to provide for wage increases that extend back into a prior fiscal year even though more than one fiscal year has commenced since the initiation of the arbitration proceeding.

There is a second element to the City's "illegal" argument, and that is the Union's proposed retroactivity date of January 1, 2009 in its training incentive offer. Citing the pertinent language from the Act and from Board Rules, the City argues that wage awards must take effect on the commencement date of a fiscal year:

"Fifth, Section 14(j) of the Act and Board Rule 1230.100(e) are consistent and both require an award of wages to apply either prospectively to the commencement of the fiscal year following the date of the award or if retroactivity is permitted, to the commencement of the fiscal year that changed after the commencement of arbitration. In any event, the Union's last offer of settlement includes an

effective date of January 1, 2009. That date is not the commencement of any fiscal year of the City" (C.Br. 7).

I do not believe that anything in Section 14(j) of the Act or in Board Rule 1230.100(e) imposes such an all-or-nothing requirement regarding when wage increases must take effect. I note, for instance, in the *City of Elmhurst* case discussed above, the prior CBA expired on April 30, 1992. In their wage offers, both parties agreed and proposed that the first-year wage increases (for the 1992-93 year) of their multiple-year wage final offers would take effect on November 1, 1992. That date was not the start date of any fiscal year in the City of Elmhurst, yet that is what both parties proposed, and this Arbitrator's selection of the Union's wage offer resulted in a wage increase retroactive to November 1, 1992. According to the City of Ottawa's reasoning, however, both Elmhurst parties' first-year wage offers were inappropriate under Section 14(j) of the Act and Board Rule 1230.100(e) because they did not take effect on the start date of a fiscal year.

Moving on, in its post-hearing brief the City favorably cites an award by Arbitrator Matthew Finkin in *City of Venice and International Union of Operating Engineers, Local 148*, ILRB S-CA-07-108 (C.Br. 8). The City notes that Arbitrator Finkin could have selected the Union's wage offer, which called for retroactivity back to the May 1, 2007 start date of the City of Venice's fiscal year. Instead, however, Finkin selected the City's wage offer, which contained an effective date of January 1, 2008. That date of January 1, 2008 was not the start date of any fiscal year in the City of Venice.

Section 14(j) provides that the Act's retroactivity limitation shall be inapplicable if a new fiscal year has commenced since the initiation of arbitration procedures. The pertinent language in this section goes on to say "and such awarded increases may be retroactive to the commencement of the fiscal year . . ." (emphasis added). This statutory language is permissive, and it certainly does not mandate that retroactive "increases in rates of compensation" must be retroactive only to the commencement date of the fiscal year. As a result, if a party proposes that a pay increase be retroactive to a date after a fiscal year has begun, such as January 1, there is nothing in this statutory language or the Board's rules that would prevent such a mid-year implementation date.

In short, I can find no evidence to support the City's contention that increases in wages or monetary benefits must take effect only on fiscal year commencement dates.

Finding. For the reasons expressed above, I find that the evidence does not indicate that the effective date of January 1, 2009 in the Union's training incentive final offer is impermissible or otherwise inappropriate, and I find that an award of the Union's final offer would not be illegal. Accordingly, there is no basis for a conclusion that the Union's inclusion of the January 1, 2009 effective date in its training incentive offer mandates the selection of the City's final offer on the training incentive issue.

The parties will note that this finding addresses only the retroactivity arguments advanced by the City. We now proceed to

examine the training incentive issue and the parties' final offers on their merits.

In-Service Training Incentive (Section 20.2)

Section 20.2 consists of five paragraphs of varying lengths (UX 37). Paragraphs four and five specify the percentage (of base wages) pay rates that will be paid to unit members for achieving various levels of in-service training, paraphrased as follows:

| | |
|-----------------------|---------------------------|
| 600 hours of training | 2.0 percent of base wages |
| 900 hours | 1.5 percent |
| 1,200 hours | 1.0 percent |

These pay amounts are cumulative, in that an officer who accumulates 1,200 hours of in-service training will be paid an in-service training incentive of 2.0 percent plus 1.5 percent plus 1.0 percent for a total of 4.5 percent.

The focus in the parties' December 2008 tentative agreement, the February 2009 Award, and in this supplemental arbitration is on the percentage pay rates attached to various amounts of training.

Position of the Union. The Union's final offer on this issue is the same as was included in the Award dated February 18, 2009, namely, (1) to continue unchanged the first three paragraphs of Section 20.2 and (2) to modify paragraphs four and five of this section to read as follows:

"Effective January 1, 2009, all employees who attain or have attained 600 hours of in-service [training] shall receive a pay incentive of 2% of his base wage. All employees who attain or have attained 900 hours of in-service training shall receive an additional pay incentive of 2% of his base wage. All employees who attain or have attained 1200 hours of in-service training shall receive an additional pay incentive of 2% of his base wage. All employees who attain or have attained 1500 hours of in-service training shall receive an additional pay incentive of 2% of his base wage.

All of the above in-service training pay incentives shall be cumulative, making a total possible in-service training pay incentive of 8% of base wage. The number of in-service training hours shall be cumulative from an employee's first date of service. Said pay incentive shall be included in an employee's hourly rate. " (UX 26).

In short, the Union's final offer calls for (1) the addition of a new level of 1,500 training hours, and (2) the training incentive percentage amounts to be increased at each level above 600 hours such that a unit member who has achieved 1,500 hours or more of training shall receive cumulative training incentive pay of 8.0 percent, up from the current 4.5 percent maximum that is reached at 1,200 hours.

The Union supports its final offer with a variety of evidence and arguments. The Union emphasizes that its final offer is identical to the parties' agreement on the training incentive issue reached during the December 3, 2008 negotiations, which agreement was read into the record by the Arbitrator on December 3 (UX 25), and issued in the February 18, 2009 Award (UX 26). The Union notes that the parties agreed that their December 3, 2008 agreement on the six remaining unresolved issues would be issued via the agreed Award issued in this matter (UX 25, p. 4). The Union points out that the City was represented during these negotiations by its officially designated labor representative, and there was no apparent restriction on the authority of the City's representative to enter into the agreements reached on December 3, 2008.

Moving on, the Union argues that the data in various City exhibits do not show that the City's offer should be selected. The Union is particularly critical of the City's exhibits

containing economic data designed to show that the Union's offer is not warranted. The Union emphasizes that in the City's "Reasons for Partial Rejection of Award" issued on March 25, 2009, the City did not present any sort of claim of an economic inability to afford the training incentive increase contained in the Award (UX 28). As a result, the Union argues that the City's belated attempt to use an economic argument, particularly comparisons of pay and benefits with police officers employed in other jurisdictions, to justify the selection of the City's offer is not the least bit persuasive.

Instead, the Union argues that the internal comparables are far more relevant to this proceeding. The Union negotiates with three bargaining units: police, fire, and an AFSCME unit that includes employees from multiple City departments. The Union emphasizes that the CBAs in all three City bargaining units provide for training incentive pay. The Union says that the AFSCME CBA currently provides for a maximum training incentive pay of 8.1 percent of base pay to employees in the Water Department and the WasteWater Department (UX 38). The Union says that the fire CBA currently provides for a maximum training incentive pay of 9.5 percent of base pay to fire service employees (UX 38). However, the police CBA currently provides a maximum training incentive pay of 4.5 percent of base pay to police (UX 38). The Union's proposal would provide for a maximum training incentive pay of 8.0 percent of police base pay, which proposal would do nothing more than allow the members of the police bargaining unit

to catch up to their fellow City employees in the other two bargaining units on the training incentive pay dimension.

Additionally, the Union is highly critical of the City's use of police pension costs, particularly the police pension "spike" in an officer's last year of employment, and police retiree health insurance costs as justification for why the Union's offer should not be selected. The Union notes that in CXs 32 and 34 the City presents these costs as part of the total compensation package received by unit members, with these exhibits designed to show additional cost burdens borne by the City for each unit member. The Union emphasizes that the pension spike and retiree health insurance are benefits granted to other City employees (Tr. 127-128), so there is absolutely no justification for a conclusion that members of the police unit are receiving some special benefits not received by other City employees.

The Union also argues, as discussed more fully in the "burden of proof" section above, that the City bears a heavy burden of proving why the Union's final offer should not be selected. The Union further notes that the considerable weight of arbitral authority in Section 14 supplemental arbitrations supports this contention. The Union reiterates that the City has not come close to satisfying this burden.

For all of these reasons, the Union argues that its final offer on the training incentive issue is the most reasonable within the meaning of Section 14(h), and therefore its offer should be selected.

Position of the City. The City's final offer on this issue is the continuation status quo, namely, that all of the training incentive language in Section 20.2 be continued unchanged into the 2008-09 CBA from the prior CBA (UX 37).

The City points out that Section 14(g) of the Act directs the Arbitrator to select the last offer of settlement on an economic issue which "more nearly complies with the applicable factors" enumerated in Section 14(h) of the Act. As noted above, Section 14(h) specifies a list of decision criteria, but as the City notes nothing in Section 14(h) attaches weights to these criteria.

The City says that the Section 14(h) criteria most relevant to the resolution of this dispute are numbers (3), (4), (5), (6), and (7). Section 14(h)(3) provides for consideration of "interests and welfare of the public and the financial ability of the unit of government to meet those costs." The City notes that in LaSalle County it has one of the highest overall tax rates and taxes at the legal maximum for its general corporate fund (CXs 1, 3). The City notes that it has budgeted a nine percent decrease in sales tax revenue for the current 2009-10 fiscal year, and in the first six months of this current fiscal year actual sales tax receipts have declined more than four percent compared to a year earlier (Tr. 144). The City expects that its tax levies for police and fire pensions will need to be increased due to the poor performance of those pension funds in the current economic downturn. The City also anticipates a decline in real estate tax revenues based on falling housing values. The City calculates that the annual cost of the Union's offer is \$30,320 (Tr. 107).

This financial information clearly favors the selection of the City's offer.

Section 14(h)(4) provides for comparisons among the Ottawa police officers with other employees performing similar services in comparable communities. The external comparables used by the City are the cities of LaSalle, Mendota, Morris, Peru, Streator, and Yorkville (CXs 9-21). The Union used as its external comparables Dixon, East Moline, East Peoria, LaSalle, Morris, Morton, Peru, Streator, Sycamore, and Yorkville. After noting that both parties included the same five comparable cities (LaSalle, Morris, Peru, Streator, Yorkville), the City argues that its external comparables are more appropriate than the Union's comparables, for all of the City's comparables are within close enough geographic proximity to Ottawa to be considered within the same labor market as Ottawa. The same clearly cannot be said for the more distant cities as Dixon, East Moline, East Peoria, Morton, and Sycamore used by the Union.

When examining the City's external comparables, the City emphasizes (1) that the four percent base wage increase received by this unit on May 1, 2008 was exceeded only by Yorkville's 4.5 percent increase on that date; (2) none of the City's comparables pay their police officers a training stipend; (3) when comparing base wages, longevity pay, and other stipends over a 20-year period only Yorkville and Morris have paid their officers more than Ottawa; and (4) Ottawa ranks third overall during this 20-year period in police compensation (CX 23).

The City says that, based on the actual training hours possessed by unit members at the time of the June 17, 2009 hearing, the Union's training incentive would cost the City an additional 2.6 percent, with the amounts for individual officers varying depending on their accumulated training hours (Tr. 111). More specifically, 16 of the 33 officers in the Department already have 1,500 or more training hours, so they will receive the equivalent of an immediate 3.5 percent wage increase on top of the four percent general increase they already received, for a total increase of 7.5 percent effective January 1, 2009 (Tr. 112). The City says that raises of this magnitude are unheard of in today's dismal economic climate.

Further, the City's data show that for the 2008-09 year City police officers already received an average 5.5 increase in total compensation (CX 27), when pension costs are included this figure increases to 6.9 percent (CX 27), and there is absolutely no justification for the additional substantial expense contained in the Union's training incentive offer. If the Union's offer is adopted, the overall increase in police compensation during 2008-09 would be 7.4 percent, and when pension costs are added in the total increased cost to the City would be 9.2 percent (CX 28). The City insists that raises of this magnitude are totally unwarranted in today's economy.

Turning to internal comparability, both parties devoted significant energy to comparing police with firefighters. The City says that firefighters do not perform similar services to police officers, so firefighters are not comparable employees. In

any case, the comparisons with the City's firefighters do not justify the selection of the Union's officer. The City agrees that the total cumulative percentage of training stipends available to the City's firefighters are larger than those available to the City's police officers, but the City emphasizes that the resulting average annual difference in career earnings between these two groups favors firefighters by only a small amount - \$649 per year, or \$12.48 per week (CX 27A). When promotions are added into the calculation, the difference favoring firefighters shrinks to a very modest \$111 per year (CX 28A). Neither of these figures justifies the selection of the Union's offer.

CX 29A shows that if the Union's proposal is adopted, the current modest earnings differential between firefighters and police would be reversed and the police would receive a significantly larger compensation package. This result is not justified by any evidence in the record. In short, both the external comparability and the internal comparability evidence do not support the selection of the Union's offer.

Section 14(h)(5) refers to the "average prices for goods and services, commonly known as the cost of living." The City notes that the data in CX 35 show that the percentage change in the Consumer Price Index (CPI) between April 2008 and April 2009 was a 1.5 percentage point decline for all Midwest urban consumers. This statutory decision factor strongly supports the City's offer, particularly in light of the four percent base wage increase unit members received on May 1, 2008.

Section 14(h)(6) refers to the overall compensation of employees, include direct wage compensation, paid time off, insurance, pensions, and so forth. Under this factor the City points to the pension spike currently received by police officers in Section 22.4.B of the CBA, which provides for a 20 percent bump in police officer pay for one pay period for members who have attained at least 20 years of service and are at least 50 years old (UX 37). The financial impact of this pension spike is to significantly increase the lifetime value of the officer's pension benefit, at a significant cost to the City (CX 32). This is a significant financial benefit that is part of the overall compensation package and should not be ignored, especially in light of the fact that none of the City's external comparables provide such a benefit.

In addition, the City provides very generous post-retirement health insurance coverage to police and other City employees, with the retiree paying only 25 percent of the cost (UX 37, Section 23.1). All of the City's external comparables require the retired employee to pay 100 percent of their health insurance cost (CX 33).

These are two significant benefits to City police officers, and they generate significant annual costs to the City. As a result, this statutory decision factor weighs strongly in the City's favor.

The City also argues, as discussed more fully in the "burden of proof" section above, that the City bears no different burden of persuasion in this supplemental proceeding than it would in an

original arbitration proceeding. The City reiterates that the Union is the party proposing a change in the training incentive issue, so the Union bears the burden of demonstrating why this change is warranted. The City argues that the Union has not met this burden.

In short, the City says that the application of the statutory decision factors in Section 14(h) require the selection of its final offer on the training incentive issue.

Analysis. Section 14(g) of the Act requires that I adopt the last offer of settlement which, in my opinion, "more nearly complies with the applicable factors prescribed in" Section 14(h). There are many decision factors in Section 14(h), and we turn to their application to the two final offers in the record. We do this because this is the first time the parties have presented evidence on the training incentive issue and sought to have that evidence analyzed pursuant to the Section 14(h) decision factors.

At the same time, I found above in the burden of proof section that the City bears the burden of showing why its earlier agreement with the Union's proposal on the training incentive issue, which agreement was expressed in the Award, should be reversed. That burden also will be applied in the analysis that follows.

Section 14(h)(1) refers to the "*lawful authority of the employer.*" There is no doubt that the City has the lawful authority to pay the current training incentive stipend proposed by the City or the increased training incentive stipend proposed by the Union. Indeed, neither party has raised any sort of

"lawful authority" claim in this proceeding. In short, this decision factor does nothing to help us select one of these final offers, so it will not be considered further.

Section 14(h)(2) refers to "*stipulations of the parties.*" This is a very important factor in light of the fact that the parties agreed to include the Union's proposed training incentive into their tentative agreement during their negotiations on December 3, 2008 and then also agreed to include this increased training incentive in the agreed Award issued on February 18, 2009 (UXs 25, 26). The City Council's subsequent rejection of this training incentive issue does not change the fact that on December 3, 2008 the parties' designated representatives stipulated to the resolution of the training incentive issue in the manner contained in the Union's final offer presented in this proceeding.

Further, the City Council, in its "Reasons for Partial Rejection of Award" dated March 25, 2009, tried to put as much distance as it could between the City and the original Award. For instance, the Council stated that "The Award was based upon a purported agreement between the parties . . ." (UX 28, p. 1), and the Council also stated that "Any alleged agreement with regard to an economic issue . . ." (UX 28, p. 2). I emphatically note that there was nothing the least bit "purported" or "alleged" about the parties' December 3, 2008 agreement. The parties allowed me to be present during the negotiations that produced this agreement, and what emerged was a good-faith agreement in the fullest sense of that term which resulted from arms-length negotiations that involved very considerable discussion between the parties'

representatives. The parties' agreement was then read into the verbatim record produced for the initial Award (UXs 25, 26).

I will discuss the nature of this agreement in more detail below under Section 14(h)(8). For now, I note that the evidence under Section 14(h)(2) strongly supports the Union's offer, for the Union's offer is identical to the parties' stipulation on this training incentive issue reached on December 3, 2008 (UX 25) and codified in the Award (UX 26).

Section 14(h)(3) refers to the "*interests and welfare of the public and the financial ability of the unit of government to meet those costs.*" The public has a two-fold interest. One is that the City employ highly qualified police officers, which in turn requires that these officers be fairly compensated. The other is that the City operates on sound financial footing with tax rates that are not unusually burdensome when compared with tax rates in comparable communities. The evidence in the record regarding the City's economic condition through FY2008 shows that the City employs well-compensated police officers (more on this below), and that the City's financial condition is strong (UXs 35, 36).

More specifically, the evidence shows that the City was in very sound financial condition at the start of the 2009 fiscal year involved in this proceeding. I note that UX 36 is the City's audited annual financial report for FY2008, and that this document is the most recent official City financial document in the record. In this report we see that the general fund is the source for money to operate the City's departments, including the police department. On page 24 of UX 36 the auditor reported a fiscal

year beginning fund balance for the general fund of \$4,963,526, and an ending fund balance on April 30, 2008 of \$6,383,337 (UX 36, p. 24). We also see that the City's total general fund expenditures in that year were \$11,390,306 (UX 36, p. 23). In other words, the City's ending fund balance in the general fund (1) increased substantially from April 30, 2007 to April 30, 2008, and (2) on that date amounted to more than fifty percent of the City's total general fund expenditures in that year. As a result, the official financial information in the record shows that the City is clearly able to pay the estimated \$30,320 annual cost of the Union's offer (Tr. 107). Additionally, if the Union's offer is selected, the FY2009 cost to the City of the Union's offer will be less than \$15,000 due to the January 1, 2009 effective date contained in the Union's offer.

But the City argues we are long past FY2008, and I agree. Moving forward to the current fiscal year (FY2010), the City says that its sales tax revenues declined by at least four percent during the first six months of the current fiscal year compared to the same period a year earlier (C.Br. 12), the City expects that its tax levies for police and fire pension funds will increase due to the poor investment performance of those funds during the current economic downturn, and the City anticipates declining real estate tax revenues due to declining housing values (CX 13).

I share the City's belief that the City is becoming more financially stressed due to current declines in tax revenues resulting from the economic downturn, and that its financial condition almost certainly will be less favorable on April 30,

2010 than it was on April 30, 2008 (UX 36) or on April 30, 2007 (CX 8, UX 35). However, it is not possible to accurately know the state of the City's current financial condition given the outdated financial information in the record and the fact that there appears to be considerable lag time involved in obtaining more current information.⁴

Pulling the financial information together, it provides more support for the City's offer than for the Union's offer. At the same time, I find this financial information does not take us very far in determining the appropriate outcome of this dispute.

Section 14(h)(4) is a lengthy decision factor that is usually referred to by the shorthand term "*comparability*." This factor calls for comparisons of the wages, hours, and conditions of employment of unit members with these same terms of other employees performing similar services and with other employees generally in "public employment in comparable communities" and in "private employment in comparable communities." Because neither party presented any comparisons with employees in the private sector, that final element of this decision factor need not be considered further.

On the *external comparability* dimension, I find that there is no persuasive reason to reject either party's comparability group. I believe the two most important comparability selection criteria

4. I note that the City's FY2007 audited financial report was issued on January 11, 2008, seven months after the end of the 2007 fiscal year (UX 35, p. 2). The City's FY2008 audited financial report was issued on April 23, 2009, one year after the end of the 2008 fiscal year (UX 36, p. 4).

are population and proximity. I note that the City's estimated 2007 population is 19,142, and that all of the parties' comparables fall within a population range of 9,532 (LaSalle) to 22,701 (East Peoria; UX 2). In other words, all of the comparison cities used by both parties are sufficiently comparable in population to Ottawa that they can be used here. Regarding proximity, I agree with the City that some of the Union's comparison cities, such as Morton, East Peoria, and East Moline, are so far from Ottawa that they are not in the same local labor market area with Ottawa. However, all of the comparison cities used by both parties are within 100 miles of Ottawa (UX 7). As a result, all of the comparison cities can be used in the external comparability analyses that follow. Having noted that, I also agree with the City that its comparables are significantly closer to Ottawa than many of the Union's comparables, and that any contradictions in the external comparison data will be resolved in the City's favor.

I note the parties submitted three kinds of external comparability evidence. The first is the existence of training incentive pay in comparable communities. The City says that none of the comparison communities provide a training incentive stipend to their police officers (Tr. 89-91), and there is not a single exhibit in the record that documents a training incentive pay system in any comparison city. This means that this is an unusual benefit, at least among comparable communities in this part of Illinois. This evidence strongly favors the City's offer.

The second kind of external comparability evidence is annual compensation for police officers. In UX 30, the Union's data show how Ottawa officers' pay at the time of hire and then at yearly or almost-yearly intervals up to 26 years of service compared with comparison cities during the 2008 year. This exhibit also shows Ottawa police officer 2008 pay levels if the City's offer is selected and if the Union's offer is selected. This exhibit, which includes base pay and longevity pay for those cities that provide it, shows that Ottawa officers during their careers generally rank in the bottom third of the Union's comparison group if the City's offer is selected (i.e., no change in training incentive pay), and rank nearer the middle of this comparison group if the Union's offer is selected (i.e., a significant increase in training incentive pay). This analysis also shows that the adoption of the Union's offer moves Ottawa officers up an average of about three places in the Union's compensation rankings during most of the experience years shown in this exhibit (within a range of moving up two to five places in particular years; UX 30).

CX 23 shows how Ottawa police officer compensation (base wage plus an average of 10 percent more to reflect all the pay stipends Ottawa officers receive, Tr. 89-90) at various experience levels in 2008 compares with base pay and longevity pay in LaSalle, Mendota, Morris, Peru, and Yorkville. In this group of six cities, CX 23 shows that Ottawa police pay places unit members in third place in the City's external comparison group. I find that CX 23 and UX 30 present similar findings - that Ottawa police

officers are neither police pay leaders nor pay laggards among their comparable communities in both parties' comparison groups. I also find that this conclusion will not change regardless of which final offer is selected (CX 23, UX 30).

The third type of external comparability evidence is percentage pay increases. The Union did not submit any such percentage increase data. CX 23 shows percentage pay increases effective May 1, 2008 for Ottawa and its five comparison cities ranged from 4.5 percent in Yorkville to 3.0 percent in LaSalle. I calculate that the average wage increase in these six cities for that year was 3.67 percent, which indicates that the 4.0 percent increase awarded to Ottawa officers on May 1, 2008 is moderately above average.

If the Union's offer is adopted, the City's evidence shows that Ottawa officers will receive the equivalent of an additional 2.6 percent increase averaged across the entire bargaining unit, with about half the unit receiving the equivalent of a 3.5 percent increase (Tr. 111-112). I find that this external comparability evidence provides no support for an additional percentage pay increase of this magnitude.

In sum, I find that the overall external pay comparison evidence provides considerably more support for the City's offer than for the Union's offer.

On the *internal comparability* dimension ("comparison . . . of the employees involved in the arbitration proceeding . . . with other employees generally"), I note that both parties have made internal comparisons to other City employees. These internal

comparisons show the following. First, the members of the fire bargaining unit and the AFSCME-represented bargaining unit also are eligible for and are paid training incentive stipends. Second, the training stipends are larger, when measured as a percentage of base pay, in both of the City's other bargaining units than they are in the police unit. According to UXs 32 and 38, firefighters are eligible to earn up to 9.5 percent of their base wage via additional stipends when they successfully complete training to perform various duties (to be precise, firefighters hired prior to May 1, 2006 are eligible for up to 9.5 percent incentive pay, while firefighters hired after May 1, 2006 are eligible to earn up to 8.5 percent incentive pay (Tr. 56)), and the data in UX 32 show that most firefighters are paid toward the high end of this incentive stipend range.

Similarly, the Union calculates that AFSCME-represented employees in the Water Department and the WasteWater Department can earn up to 8.1 percent of their base pay by becoming trained to perform additional duties (UX 38).

These internal comparisons provide strong support for the Union's offer. Ottawa police officers currently can undertake additional training and earn up to a maximum training incentive stipend of 4.5 percent, and the City's offer proposes to maintain this status quo. The Union's offer would provide police officers with the opportunity to earn up to an additional 3.5 percent training incentive pay, or a maximum of 8.0 percent. The selection of the Union's offer would bring City police officers up

to the training incentive stipend percentage maxima that already exist in the City's other two units.

Taken together, the comparability evidence presents a mixed picture. Most of the external comparability evidence provides strong support for the City's offer, particularly the fact that none of the comparison cities provide training incentive pay to their police officers. Some of the external comparability evidence shows that Ottawa police pay currently ranks in the middle of the external comparison pack, and will continue to do so regardless of whose offer is selected (CX 23, UX 30). In contrast, the internal comparability evidence strongly supports the Union's offer (UXs 32, 38). In its totality, then, the comparability evidence provides moderate support for the City's offer.

Turning to *Section 14(h)(5)*, this is the *cost of living* or inflation factor. There is no question that the evidence about recent changes in the cost of living - showing that the cost of living actually declined during the April 2008-April 2009 period (CX 35) - when combined with the four percent wage increase received by unit members effective May 1, 2008, provides strong support for the City's offer.

Turning to *Section 14(h)(6)*, this is the "*overall compensation*" factor that provides for consideration of all the compensation and benefits provided to the employees. The City argues that the City's police officers receive a superior overall compensation package. The City calls particular attention to the "pension spike," which feature provides for a significantly

enhanced pension (CX 32). The City emphasizes that none of its external comparables provide a similar benefit. Additionally, the City notes that it provides much better retiree health insurance to retired unit members than do all of the City's comparable communities. All of the City's comparables require their retirees to pay 100 percent of the cost of retiree health coverage, but the City requires that retired police officers and other City employees pay only 25 percent (CX 33).

When we consider the City's overall compensation package provided to its police unit members in comparison with the City's external comparables, these overall compensation data provide strong support for the City's offer. This conclusion is moderated only slightly when we examine the City's overall compensation package in light of the overall compensation packages it provides to other City employees. On this internal comparability dimension, the evidence shows that the City provides the pension spike to other City employees and it provides other City employees with the same low-cost retiree health insurance coverage received by members of the police bargaining unit. There is no question that Ottawa police officers enjoy an excellent overall compensation package, as do other City employees. As a result, the evidence under the Section 14(h)(6) factor provides considerable support to the City's offer.

Section 14(h)(7) refers to "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." We discussed above, under Section 14(h)(3), the overall negative economic climate, and the apparent negative changes in the City's

financial condition resulting from the economic downturn, that emerged during the pendency of this proceeding. As a result, there is no need to repeat that information here.

Section 14(h)(8) refers to "such other factors, not confined to the foregoing [the factors enumerated in (1) through (7)], 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." There is one other factor that needs careful scrutiny under this dimension. It is how Section 14 interest arbitration awards which are issued and then subsequently rejected (in whole or in part) by the governing body of the public employer under Section 14(n) have been handled in the supplemental arbitration proceedings mandated in Section 14(o). That is the dimension that lies at the core of this supplemental arbitration proceeding. Under Section 14(h)(8), we would be remiss if we did not take this body of supplemental arbitration experience into account. In fact, I expressly suggested to the parties at the conclusion of the June 17, 2009 hearing that they might want to address the "prior experience with supplemental proceedings under the act" in their post-hearing briefs (Tr. 148).

The City elected to not address this supplemental proceeding experience in its post-hearing brief. In contrast, the Union addressed this issue, including submitting five supplemental awards as attachments to its post-hearing brief to illustrate how five Illinois interest arbitrators dealt with initial awards that

were either partially or fully rejected by the governing bodies of the employers in those cases. We examined those awards in the "burden of proof" section above, we saw that the arbitrators in those five cases reaffirmed their initial rulings in the supplemental proceedings, and we do not need to re-examine those five awards here.

However, we need to be sure that the five awards submitted by the Union that address this supplemental decision dimension accurately reflect how Section 14 arbitrators generally have ruled in supplemental proceedings. I have taken arbitral notice for many years that a portion of the Board's website is devoted to "interest arbitration." In particular, I have taken further notice that on this portion of its website the Board posts summaries of the interest awards the Board receives (<http://www.state.il.us/ilrb/subsections/pdfs/IntArbAwardSummary.PDF>).

As I reviewed this part of the Board's website to determine the supplemental award status of the Sinicropi Award in the 1986 *Peoria County* case discussed above, I discovered other Section 14 arbitration cases in which supplemental awards were issued. Accordingly, I reviewed this part of the Board's website to determine (a) how many Section 14 arbitrations the Board specified as involving a supplemental proceeding and (b) how the Board specified that arbitrators ruled in these supplemental proceedings.

In addition to the five supplemental awards the Union submitted with its post-hearing brief that were discussed above, I

found six additional cases posted in summary form on the Board website in which the Board listed that a "supplementary award" or a "supplemental award" was issued in a Section 14 case. These six cases, listed in chronological order, are:

- ❖ *County of Alexander/Sheriff and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-92-91, award issued on September 27, 1993 by Arbitrator Cox. Economic issues included wages, duration, insurance premiums, and third year language. Non-economic issues included layoff language. A "supplementary" award was issued on December 13, 1993 that addressed all five of these issues. Four of them stated "(no change from original award)," while the third year language issue stated "(Union's offer)" in place of "(Arbitrator's decision)" in the original award.
- ❖ *Village of Fox Lake and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-98-122, award issued on April 28, 1999 by Arbitrator Malin. The three issues were wages, maintenance of economic benefits, and entire agreement. Malin selected the union's offer on wages and the employer's offers on the other two issues. A "supplemental award" was issued on October 18, 1999 which noted the "Original Award reaffirmed."
- ❖ *Town of Cicero and International Association of Fire Fighters, Local 717*, ILRB No. S-MA-98-230, award issued on November 26, 1999 by Arbitrator Berman. The sole issue was residency, and the arbitrator selected the union's offer. A "supplemental award" was issued on September 21, 2000 which noted the "Employer's motion for reconsideration denied. Original award reaffirmed." In addition, on December 12, 2000 the arbitrator issued a "Denial of Employer's Motion for Further Proceedings" in which it was again noted "Original Award reaffirmed."
- ❖ *Village of Cahokia and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-00-215, award issued on January 20, 2003 by Arbitrator Perkovich. The sole issue was residency, and the arbitrator selected the union's offer. A "supplementary award" was issued on July 2, 2004 which noted the "Original award confirmed."
- ❖ *City of Springfield and International Association of Fire Fighters, Local 37*, ILRB No. S-MA-01-209, award issued on April 1, 2003 by Arbitrator Benn. The sole issue was health insurance, and the arbitrator selected the employer's offer. A "supplemental award" was issued on April 28, 2003 which noted the "Union's request denied." The Board's posted entry

does not explain why or how the Union submitted a request that resulted in a supplemental award.

- ❖ *City of County Club Hills and International Brotherhood of Teamsters, Local 726*, ILRB No. S-MA-02-245, award issued on April 28, 2003 by Arbitrator Wolff. The two issues were wages and sick leave buy back. A "supplementary award" on wages was issued on November 21, 2003 which noted that "Wages (reaffirmed in toto)" (emphasis in original).

The *City of Springfield* case in 2003 involving Arbitrator Benn does not fall within the scope of the review that is pertinent here. As noted above, we are addressing supplemental awards issued by arbitrators in the wake of employer rejections of one or more issues in original awards. The Board's posted entry for the *City of Springfield* case involves an original award in which Arbitrator Benn selected the employer's offer on the sole arbitrated issue, and then the arbitrator issued a supplemental award denying some sort of union request. That kind of supplemental proceeding is sufficiently far afield from the matter at hand that the *City of Springfield* case will not be considered further.

I noted above in the burden of proof section, after examining the five supplemental awards submitted by the Union, that the five arbitrators in those supplemental cases had rejected the employers' arguments and in all five cases and had reaffirmed their original decisions. The posted entries immediately above from the Board's website specifying the existence and outcomes of five additional supplemental awards show the same thing - all the arbitrators in these additional cases affirmed their original rulings (except for one issue addressed by Arbitrator Cox in the *County of Alexander* case).

These 10 supplemental proceeding cases constitute a factor which is "normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment" by Section 14 arbitrators when employers have rejected part of all of original awards. Taken together, these 10 supplemental proceeding cases, and the arbitrator rulings in them, provide very strong support for affirming the training incentive ruling in the parties' February 2009 Award.

Moreover, I find that the City has not demonstrated that I made any "substantial [or any other kind of] error," made an "arbitrary" or "capricious" decision, or issued a ruling that will cause "significant [or any other kind of] hardship" for the City when I ruled for the Union on the training incentive issue in the February 2009 Award. This assessment is based on the City's list of reasons for rejection of the Award. In their entirety, the City's list of reasons are:

- a. "Counsel for the City did not have the authority from a majority of the City Council to agree to said provisions.
- b. The provisions for In-Service Training Incentive is not reasonable and does not meet or satisfy the relevant factors in Section 14(h) of the Act.
- c. [This reason refers only to selected non-economic issues and is now moot.]
- d. The Award refers to unspecified tentative agreements which were not authorized and/or approved by the City Council or where not tentatively agreed upon during negotiations. Any alleged tentative agreement with regard to an economic issue is not reasonable and does not meet or satisfy the relevant favors in Section 14(h) of the Act." (UX 28).

Regarding reason "a", I have no knowledge of the exact parameters of the relationship between the City Council and City counsel - Mr. Leigh - representing the City in negotiations. I

know from direct observation that Mr. Leigh consulted frequently with the Mayor and other City officials during the December 3, 2008 negotiations. I know from direct observation that he was very careful about the agreements he made with the Union during those negotiations. For the City Council to subsequently disavow Mr. Leigh's diligent and vigorous efforts in protecting the City's interests during these negotiations does not constitute evidence of any error, failure, hardship, or other shortcoming contained in the original Award.

The City Council, in reasons "b" and "d", characterizes the content of the training incentive as "not reasonable" without even making an effort to demonstrate why the provisions of this issue are "not reasonable." Similarly, the Council's assertion in reasons "b" and "d" that the training incentive provisions do not meet or satisfy the relevant factors in Section 14(h) does not constitute proof of any error, failure, hardship, or other shortcoming in the initial Award. Although the City Council is correct that the Award did not address these factors, the Council's Section 14(h) assertion completely ignores the fact that the February 2009 Award was an agreed award that eliminated the need for either party to apply the factors in Section 14(h) to the training incentive issue or to any other issue in the Award. As a result, it is not the least bit surprising that the transcript of the December 3, 2008 arbitration hearing contains no references to evidence being submitted that addressed the Section 14(h) factors. Accordingly, in light of the fact that the Award was an agreed Award, the absence of an examination of the Section 14(h) factors

in that Award does not constitute evidence of any sort of error, failure, hardship, or other shortcoming in that arbitration proceeding or in that Award.

Further, the fact that the parties' representatives mutually agreed to revise the training incentive section of the CBA in the manner proposed by the Union's final offer places an even higher burden on the City Council to prove why the parties' negotiated agreement, and its incorporation into the February 2009 Award, should be reversed. As noted above, the Council's list of reasons does not come remotely close to meeting this burden.

When we pull together all of these evidentiary conclusions under Section 14(h)(8), they provide far more support for the selection of the Union's final offer than for the selection of the City's final offer.

As noted in the analysis above, the evidence on some of the Section 14(h) factors supports the selection of the City's offer, and the evidence on some of these factors support the selection of the Union's offer. More specifically, I find that the two factors that are most "applicable" and deserve the most weight in this supplemental proceeding are Section 14(h)(2) - the stipulations of the parties - and Section 14(h)(8) - the accumulated body of rulings among Section 14 arbitrators in supplemental arbitration proceedings. The evidence on both of those dimensions provides sufficiently strong support for the Union's offer that this evidence outweighs the evidence on the other Section 14(h) factors that supports the City's offer.

Finding. For all of the reasons expressed above, I find that the evidence provides significantly more support for the selection of the Union's final offer on the training incentive issue than for the selection of the City's final offer.

The Parties' Agreement on Outstanding Non-economic Issues

As noted above, in March 2009 the City Council rejected a total of six issues, three of which were contained in the February 18, 2009 Award: training incentive (Section 20.2), discipline (Article 8), and Fire and Police Commission (Article 21). Additionally, the Council rejected the parties' tentative agreement on three issues reached prior to December 3, 2008: funeral leave (Section 12.2), limited duty (Section 12.5), and promotions (Article 28) (UXs 27, 28). All of these issues except for the training incentive issue are non-economic.

Also as noted above, after this rejection and prior to the June 17, 2009 supplemental hearing, the parties' representatives reached agreement on the five non-economic issues specified in the preceding paragraph. The parties submitted their agreement on these five issues into the record as UX 1, and asked that it be incorporated into this Supplemental Award by reference (Tr. 8-10). I am pleased to grant their request, and it is so ordered.

Additionally, I note for the record that all other tentative agreements reached by the parties and not rejected by the City Council remain incorporated by reference in the February 18, 2009 Award (UX 26).

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the Union's last offer of settlement on the training incentive pay issue more nearly complies with the applicable factors prescribed in Section 14(h) of the Act. As a result, I select the Union's final offer on the training incentive pay issue.

As noted above, the parties' agreements on five non-economic issues contained in UX 1 are incorporated into this Supplemental Award by reference.

It is so ordered.

Respectfully submitted,

Champaign, Illinois
November 20, 2009

Peter Feuille
Arbitrator