

INTEREST ARBITRATION

OPINION AND AWARD

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IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**METROPOLITAN ALLIANCE OF POLICE, CHAPTER 471**  
("Union", "MAP" or "Bargaining Representative")

AND

**FOREST PRESERVE DISTRICT OF DUPAGE COUNTY**  
("Employer", "District", or "Management")

FMCS Case No. 091103-0042-A  
Arbitrator's Case No. 08/078

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

**Appearances:**

**On Behalf of the Union:**

Richard J. Reimer, Esq., Richard J. Reimer & Associates, LLC.  
Jeffrey A. Goodloe, Esq., Richard J. Reimer & Associates, LLC.

**On Behalf of the Employer:**

R. Theodore Clark, Jr., Esq., Seyfarth & Shaw, LLP.

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the Forest Preserve District of DuPage County ("the District" or "the Employer") and the Metropolitan Alliance of Police, Chapter 471 ("the Union" or "MAP") pursuant to Section 14(p) of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit represented by the Union in this case, when fully staffed, consists of approximately eighteen Ranger Police Officers (hereinafter "officers") employed by the Forest Preserve District of DuPage County. (Tr. 76). This dispute arises from the parties' impasse in negotiations for their first Collective Bargaining Agreement subsequent to final certification of the Union as the exclusive bargaining representative of Ranger Patrol Officers employed, which occurred on April 14, 2008. (U. Ex. 18).

The record establishes that this Union was first certified to represent Ranger Police Officers employed by the District on July 14, 2006. The parties accordingly opened negotiations on January 11, 2007, and thereafter, met for purposes of bargaining on March 2, 2007, April 9, 2007, June 21, 2007, August 6, 2007, and August 24, 2007. (Id.). On August 27, 2007, the Union's certification was vacated by the Second District Appellate Court, whereupon the Union filed a new representation petition with the Illinois Labor Relations Board on October 30, 2007. (U. Ex. 8). On April 14, 2008, the Union's certification of representation was re-established, and the parties thereafter met for purposes of further bargaining on June 25, 2008, July 23, 2008, August 1, 2008, and August 15, 2008. (U. Ex. 18).

Still unable to resolve all outstanding issues, the parties sought and subsequently participated in mediation on October 10, 2008 and November 21, 2008. (Id.).

The mediation process proved unsuccessful in securing a full contract for this bargaining unit, according to the parties, and thus, on November 3, 2008, they jointly submitted nine outstanding issues to interest arbitration under the Act. The parties' attendant stipulations are set forth in Section III of this Award.

A hearing before the undersigned Arbitrator was held on May 7, 2009 at the headquarters of the Forest Preserve District of DuPage County, 3S580 Naperville Road, Wheaton, Illinois, commencing at 10:30 a.m.<sup>1</sup> The parties were afforded full opportunity to present their cases as to the impasse issues set out herein below, which included written and oral evidence in the narrative. The District and the Union also presented one witness each, both of whom their respective counsels were permitted to cross-examine. A 215-page stenographic transcript of the hearing was made, and thereafter the parties were invited to offer such arguments as were deemed pertinent to their respective positions. Pursuant to Section 14(h)(7) of the Illinois Public Labor Relations Act of IPLRA or "Act"), the Employer submitted the then most recent CPI report as Employer Exhibit 14 on July 23, 2009, so as to supplement the record.

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<sup>1</sup> The Exhibits introduced at the May 7, 2009 hearing will be cited in the following manner: Joint Exhibits as "Jt. Ex. \_\_\_", Union Exhibits as "U. Ex. \_\_\_", and District [Employer] Exhibits as "Er. Ex. \_\_\_", respectively.

At the hearing, the following individuals were present:

For the District:

R. Theodore Clark, Jr., Attorney  
Laura Capizzano, Director of Human Resources  
Thomas Wakolbinger, Office of Law Enforcement

For the Union:

Richard Reimer, Attorney  
Diana Kopf, Ranger Police Officer  
David Pederson, Ranger Police Officer  
John Dennis, Ranger Police Officer  
Scott Caswick, Ranger Police Officer

Post-hearing briefs were exchanged on August 4, 2009, at which time the record was declared closed.

## II. **FACTUAL BACKGROUND**

### A. **The Parties**

Metropolitan Alliance of Police, Chapter 471, "the Union" in this matter, is a labor organization within the meaning of Section 3(i) of the Act, and is the exclusive bargaining representative, within the meaning of Section 3(f) of the Act, for all Ranger Police Officers employed by the District. The District owns and has fiscal jurisdiction over approximately 25,000 acres of land divided into seventy forest preserves in DuPage County, and is an "Employer" within the meaning of Section 3(o) of the Act.

#### 1. **The Forest Preserve District of DuPage County**

The mission of the Forest Preserve District of DuPage County as stated on its internet webpage is, "... To acquire and hold lands containing forests, prairies, wetlands, and associated plant communities or lands capable of being restored to such natural conditions for the purpose of protecting and preserving the flora,

fauna, and scenic beauty for the education, pleasure and recreation of its citizens." (U. Ex. 21). The District's Office of Law Enforcement Department, which embraces the bargaining unit in this case, "is responsible for protecting the natural resources and physical properties contained within over 25,000 acres owned and operated by the Forest Preserve District of DuPage County. The office is also charged with providing a safe environment for the visitors who use the preserves by reducing the possibility of injury and crime." (Id., U. Ex. 30). Funding for District operations comes primarily through local real estate taxes. Other significant funding sources include the sale of bonds, investment earnings, and user fees. (Id.).<sup>2</sup> The District also presently enjoys a AAA bond rating, which according to Standard & Poor's is indicative of "practices that are strong, well embedded, and likely sustainable." (Id.).

## **2. The Forest Preserve District of DuPage County Law Enforcement Department**

The District normally budgets for a regular complement of eighteen full-time Officers, two full-time Sergeants, three full-time Lieutenants, one Deputy Chief, and one Chief of Police. (U. Ex. 30). Bargaining unit officers on day shift work from 7:00 a.m. to 3:00 p.m., while those assigned to afternoon shift work from 2:00 p.m. to

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<sup>2</sup> On May 3, 2009, the District's webpage stated, "As of the 2007 tax levy, the District has lowered its tax-levy rate 12 of the past 14 years, even as conservation, education, and recreation-related efforts at the District have expanded. Less than 3 cents of every dollar spent of county property taxes supports the Forest Preserve District. The District is subject to the tax cap, which limits property tax growth to the lesser of the Consumer Price Index or 5 percent." (U. Ex. 21).

midnight. At full strength, day shifts operate with eight officers, and afternoon shifts operate with ten officers. There is no midnight shift at the present time, and thus, after-hours police calls on District premises are usually handled by the DuPage County Sheriff's police. (Tr. 78).

Officers in the bargaining unit operate District-owned marked squad cars, and carry firearms while on duty. Officers also patrol District preserves on foot and horseback, and by bicycle, boat, snowmobile, ATV and skies. They are trained as first-responders in life-threatening emergencies and are authorized, among other things, to issue traffic citations and make arrests. They are periodically required to appear in criminal and traffic court, and also to assist outside police agencies on an as-needed basis. (Tr. 80-81).

Both the District and the Union are particularly proud of the fact that bargaining unit officers represent the first park or forest preserve law enforcement group in Illinois to meet standards for the Commission on Accreditation for Law Enforcement Agencies, Inc. ("CALEA") award. (U. Ex. 21). The record establishes that since 1979, only 507 out of 17,000 similar law enforcement agencies nation-wide have satisfied requirements to receive this award.<sup>3</sup>

**B. The Parties' Collective Bargaining History**

As previously noted, the Illinois State Labor Relations Board ("the Board") initially certified the Union as the exclusive

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<sup>3</sup> CALEA accreditation takes about three years to achieve, during which every police officer in the Department is required to meet more than 300 established standards. (U. Ex. 21).

bargaining representative of the District's full-time Police Officers in July, 2006. Negotiations for the initial Collective Bargaining Agreement commenced on January 11, 2007, and continued until the Union's certification was vacated by the Second District Appellate Court on August 27, 2007. Thereafter, the Union reapplied for certification, which was finally granted by the Board on April 14, 2008. Negotiations thus recommenced, and bargaining sessions were subsequently held on June 25, 2008, July 23, 2008, August 1, 2008, and August 15, 2008. On October 10, 2008 and November 21, 2008, the parties participated in mediation for purposes of resolving outstanding issues, and when that process proved unsuccessful overall, impasse resolution procedures set forth in the Illinois Public Labor Relations Act, 5, ILCS 315/1 et. seq. were invoked. The Arbitrator is now called upon to hear evidence and publish findings as to seven outstanding economic issues and two outstanding non-economic issues.

### **III. STIPULATIONS OF THE PARTIES**

The Forest Preserve District of DuPage County ("Employer") and the Metropolitan Alliance of Police, Chapter #471 ("Union") hereby stipulate that the following are the economic and non-economic issues in dispute:

#### Economic Issues:

1. Term of Agreement
2. Wages
3. Officer-In-Charge Pay
4. Court Standby Pay
5. Sick Leave

6. Departmental Meetings/Training
7. On/Off Duty Designation<sup>4</sup>

Non-Economic Issues:

1. Fair Share
2. No Solicitation

In addition to the foregoing, the parties are in disagreement as to whether two further matters, "patrol officer vehicles" and "residency," can be submitted to interest arbitration at this time, given the status of the parties' bargaining history concerning these two issues. To resolve this disagreement, the parties agreed that the Arbitrator would have the authority to determine whether or not these two issues would be advanced to interest arbitration at the outset of the hearing, after both parties had had an opportunity to argue their respective positions to the Arbitrator.<sup>5</sup>

#### **IV. THE PARTIES' FINAL PROPOSALS**

##### **A. The Union's Final Proposals**

###### Economic Issue # 1 - Term of Agreement

The Union proposes a three year agreement, with retroactive wage increases and benefits commencing effective January 1, 2009, and terminating on December 31, 2011.

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<sup>4</sup> The parties also stipulated to the additional economic issue of an "Employee Retention Incentive Program", which the Arbitrator excluded from these proceedings in accordance with Negotiating Ground Rule No. 6 pertaining to the timeliness of "Submission of Proposals." (Jt. Ex. 5, Er. Ex. 19., Tr. 14).

<sup>5</sup> The two additional issues in dispute were ultimately excluded from these proceedings by the Arbitrator and are thus not included in the Award which follows. (Tr. 12). Joint Stipulations are Jt. Ex. 1.

Economic Issue # 2 - Salaries

The Union proposes the following step system, effective retroactive to January 1, 2009.

<u>EEF</u>	<u>STEP 1</u>	<u>STEP 2</u>	<u>STEP 3</u>	<u>STEP 4</u>	<u>STEP 5</u>	<u>STEP 6</u>	<u>STEP 7</u>	<u>STEP 8</u>	<u>STEP 9</u>	<u>STEP 10</u>
1/1/09	\$53,753	\$55,903	\$58,139	\$60,465	\$62,884	\$65,399	\$68,015	\$70,736	\$73,565	\$76,508
1/1/10	\$55,366	\$57,580	\$59,884	\$62,279	\$64,770	\$67,361	\$70,055	\$72,858	\$75,772	\$78,803
1/1/11	\$57,027	\$59,307	\$61,681	\$64,147	\$66,713	\$69,382	\$72,157	\$75,044	\$78,045	\$81,167

Employees will receive their Across-the-Board increase on January 1st of each year. Employees will receive their step increase on their anniversary date.

Upon implementation of this Agreement, employees' salaries shall be adjusted to reflect the wage step for the employees' current years of service as set forth in Appendix A of this Agreement.

Economic Issue # 3 - Officer-In-Charge Pay

The Department may designate a Patrol Officer as an Officer in Charge to replace a Command Officer who is absent from a shift for a period of two (2) hours or more. The Patrol Officer shall receive as compensation one (1) hour of pay at his/her applicable overtime rate for each instance when he/she is designated Officer in Charge.

Economic Issue # 4 - Court Stand-By Pay

An officer who is required to be on stand by for court shall be compensated for a minimum of two (2) hours compensation at the applicable overtime rate of pay. Court stand-by is defined as a period of time when an officer is placed on stand-by status due to a trial or court hearing in progress or anticipated to begin which requires the officer's presence. During stand-by status, the officer shall leave a telephone number with dispatch or the States' Attorney's Office where he can be reached immediately.

Economic Issue # 5 - Sick Leave Accrual

Police Officers will accrue sick pay at a rate of five (5) hours per bi-weekly pay period, provided that a Police Officer shall not be permitted to accrue any sick pay beyond the total maximum accrual of 2,000 hours.

Monetary Compensation Upon Termination - A Police Officer who leaves the employment of the District in good standing will be eligible for monetary compensation for accumulated sick leave, based on the following schedule of continuous service:

5-7 years	25%
8-10 years	33½%
11-15 years	37½%
16+ years	50%

Unused sick days may be paid out up to a maximum of 2000 hours.

Economic Issue # 6 - Departmental Meetings/Training

A Police Officer shall receive pay at his/her applicable overtime rate of pay for all time spent in Departmental Meetings, Firearms Training, and General Training. The Patrol Officer shall be paid for the actual time spent at the meeting, practice or program, or for two (2) hours, whichever is greater, at the applicable overtime rate of pay. Officers shall be compensated for travel time to and from said training.

Economic Issue #7 - On/Off Duty Designation

At the beginning of each shift, each Police Officer shall be considered "on-duty" when, upon entering their assigned Patrol vehicle, they notify the dispatch center via radio of their duty commencement. Officers shall be accordingly compensated as such. At the end of a shift, officers will likewise notify the department dispatch center and shall then be considered "off-duty".

Non-Economic Issue # 1 - Fair Share

During the term of this Agreement, Police Officers who are not members of Metropolitan Alliance of Police shall, commencing thirty (30) days after the effective date of this Agreement, pay a fair share fee to Metropolitan Alliance of Police for collective bargaining and contract administration services tendered by MAP as the exclusive representative of the Officers covered by this Agreement. Such fair share fee shall be deducted by the District from the earnings of non-members and remitted to Metropolitan Alliance of Police each month. Metropolitan Alliance of Police shall annually submit to the District, a list of the Officers covered by this Agreement who are not covered by Metropolitan Alliance of Police and an affidavit, which specifies the amount of the fair share fee, which shall be determined in accordance with the applicable law.

Non-Economic Issue # 2 - No Solicitation

While the District acknowledges that bargaining unit employees may conduct solicitation of merchants, residents or citizens of DuPage County, the Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions on behalf of the DuPage Forest Preserve Police or the Forest Preserve District of DuPage. Bargaining unit members agree that the District name, insignia, communication systems, supplies and materials will not be used for

solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit employees may not be done on work time in a work uniform. The bargaining unit employees agree that they will not use the words "DuPage Forest Preserve Police" in their name or describe themselves as the "Forest Preserve District of DuPage." Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol, and sergeant-rank police officers employed by the District.<sup>6</sup>

**B. The District's Final Proposals**

Economic Issue # 1 - Term of Agreement

Termination in 2010 - Unless otherwise specifically provided herein, this Agreement shall be effective as of the day after it is executed by both parties and shall remain in force and effect until December 31, 2010. This Agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the anniversary date.

Reopener - Negotiations limited to the percentage adjustment, if any, to the salary schedule set forth in Section 14.1 that will be effective during calendar year 2010 shall commence on a mutually agreeable date on or after November 1, 2009. Any such reopener negotiations shall be subject to the provisions of Section 17.10 (Resolution of Impasses) in the event the parties are at impasse.

Economic Issue # 2 - Salaries

Effective January 1, 2009, and retroactive to that date, employees on the active payroll as of the first payroll period following ratification of the collective bargaining agreement by both parties shall be paid on the basis of their place on the following salary schedule:

Start	1 <sup>st</sup> slot	2 <sup>nd</sup> slot	3 <sup>rd</sup> slot	4 <sup>th</sup> slot	5 <sup>th</sup> slot	6 <sup>th</sup> slot	7 <sup>th</sup> slot	8 <sup>th</sup> slot	9 <sup>th</sup> slot	Merit
46,000	48,000	50,000	52,000	54,000	56,000	58,000	61,000	64,000	67,500	72,500

Each employee's placement on the salary schedule as of January 1, 2009 shall be in accordance with Appendix A, provided, however, any employee who is in the 9th slot or lower and whose salary increase effective January 1, 2009, is less than four percent (4%) shall have his/her salary increased to reflect a four percent (4%) salary increase for the 2009 calendar year.

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<sup>6</sup>The Union's final proposals are set forth in Joint Exhibit 2.

After completion of the employee's probationary period, an employee will be moved to the 1st slot. Employees shall be eligible to move beyond the 1st slot and up to and including the 9th slot on an annual basis (i.e. on January 1 of the following year), but such movement shall be based on a determination that the employee is meeting departmental standards based on an evaluation of the employee's performance during the preceding year. If an employee alleges that he has been unreasonably denied a slot increase, the employee may file a grievance in accordance with the grievance and arbitration procedure set forth in this contract.

After being in the 9th slot for at least one year, employees will be eligible for a merit increase based on sustained performance of up to four percent (4%) based on an evaluation of the employee's performance during the preceding year that demonstrates that the employee is consistently performing above expectation, provided that no employee shall be paid an annual salary that exceeds the salary schedule maximum. Receipt of a merit increase for a given year does not guarantee that the employee will receive a merit increase in the following year. If an employee alleges that he has been arbitrarily denied a merit increase based on sustained performance, the employee may file a grievance in accordance with the grievance and arbitration procedure set forth in this contract.

#### Economic Issue # 3 - Officer-In-Charge Pay

Effective January 1, 2009, if a bargaining unit employee is assigned as the Officer-In-Charge for a full shift, such employee shall be paid five percent (5%) above the employee's straight time hourly rate of pay for the shift in question.

#### Economic Issue # 4 - Court Standby Pay

The District's final offer on this issue is that there is insufficient justification to provide court standby pay and therefore the parties' first collective bargaining agreement should not have any provision providing for court standby pay.<sup>7</sup>

#### Economic Issue # 5 - Sick Leave Accrual

##### Section 10.2 - Sick Leave Accrual

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<sup>7</sup> It is noted for the record that the District proposes to adopt Tentative Agreement language set forth in Section 9.7 of Joint Exhibit 4 as it applies to "Court Time."

After the completion of the first calendar month, full time Officers who are in pay status for at least 120 hours for the month in question will accrue sick leave based on the following schedule:

<u>Years of Completed Continuous Service</u>	<u>Hours Accrued per Month</u>	<u>Sick Days Accrued/Yr</u>
0 through 5 years	4.00 hours	6 days
6 through 10 years	4.75 hours	7 days
11 through 15 years	5.50 hours	8 days
16 through 20 years	6.00 hours	9 days
21 years or greater	6.75 hours	10 days

#### Section 10.4 Monetary Compensation Upon Termination

Upon voluntary termination or layoff of employment, the employee will receive monetary compensation for accumulated sick leave, based on the following schedule of continuous service (compensation will be at the employee's present salary rate):

<u>Years of Completed Continuous Service</u>	<u>Monetary Compensation Percentage Rate</u>
5 through 7 years	50%
8 through 10 years	67%
11 through 15 years	75%
16 years or greater	100%

Upon dismissal from employment for cause, sick leave credits will be forfeited.

#### Economic Issue # 6 - Departmental Meetings/Training

A Patrol Officer shall be paid at his/her applicable hourly rate of pay for actual time spent in Departmental meetings and District assigned training. If a Patrol Officer is required to attend a Departmental meeting or District-assigned training that is scheduled to begin more than one-half (1/2) hour after the ending time of his/her scheduled shift on the day in question or more than one-half (1/2) hour prior to the beginning time of his/her scheduled shift on the day in question, the Patrol Officer shall be paid for the actual time spent at such meeting or training, or for two (2) hours, whichever is greater, at the applicable hourly rate of pay. Notwithstanding any other provisions in this Agreement, officers shall not be compensated for travel time to and from such meetings or training that falls outside of their scheduled hours of work for the day in question.

#### Economic Issue # 7 - On/Off Designation

At the beginning of each shift, Officers who are assigned take home patrol vehicles shall be considered "on-duty" when they sign on to the CAD system and notify the dispatch center via radio of their duty commencement, provided that they must be in DuPage County at such time. At the end of their shift, officers will likewise sign off on the CAD system and notify the department dispatch center and shall

then be considered "off-duty," provided that they must be in DuPage County at such time. Officers shall be accordingly compensated as such.

#### Non-Economic Issue # 1 - Fair Share

During the term of this Agreement, employees who do not choose to become dues paying members of the Union shall, commencing sixty (60) days after their employment or sixty days after the date of this Agreement is executed, whichever is later, pay a fair share fee to the Union for collective bargaining and contract administration services rendered by the Union as the exclusive representative of the employees covered by said Agreement, provided fair share fee shall not exceed the dues attributable to being a member of the Union. Such fair share fees shall be deducted by the District from the earnings of non-members and remitted to the Union. The Union shall periodically submit to the District a list of the members covered by this Agreement who are not members of the Union and an affidavit which specifies the amount of the fair share fee. The amount of the fair share fee shall not include any contributions related to the election or support of any candidate for political office or for any member-only benefit.

The Union agrees to assume full responsibility to insure full compliance with the requirements in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), with respect to the constitutional rights of fair share fee payers. Accordingly, the Union agrees to do the following:

- Give timely notice to fair share fee payers of the amount of the fee and an explanation of the basis for the fee.
- Advise fair share fee payers of an expeditious and impartial decision-making process whereby fair share fee payers can object to the amount of the fair share fee.
- Place the amount reasonably in dispute into an escrow account pending resolution of any objections raised by fair share fee payers to the amount of the fair share fee.

It is specifically agreed that any dispute concerning the amount of the fair share fee and/or the responsibilities of the Union with respect to fair share fee payers as set forth above shall not be subject to the grievance and arbitration procedure set forth in this Agreement.

Non-members who object to this fair share fee based upon bona fide religious tenets or teachings shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed upon by the employee and the Union. If the affected non-member and the Union are unable to reach agreement on the organization, the organization shall be selected by the affected non-member from an approved list of charitable organizations established by the Illinois

State Labor Relations Board and the payment shall be made to said organization.

Non-Economic Issue # 2 - No Solicitation

While the District acknowledges that the Union may be conducting solicitation of DuPage County merchants, residents or citizens, the Metropolitan Alliance of Police and the Chapter agree that none of its officers, agents, solicitors, or members will solicit any person or entity for contributions on behalf of the Forest Preserve District of DuPage County and/or its Police Department and that no member of the bargaining unit will solicit any DuPage County merchants, residents or citizens on behalf of the Metropolitan Alliance of Police, the Forest Preserve District of DuPage County and/or its Police Department.

The Metropolitan Alliance of Police and the Chapter agrees that the name, shield or insignia, communications systems, supplies and materials of the Forest Preserve District of DuPage County and/or its Police Department will not be used for solicitation purposes. Neither the Chapter nor the Metropolitan Alliance of Police, including their retained solicitors, may use the words "DuPage County Forest Preserve District Police Chapter 471," impersonate a DuPage County Forest Preserve Police Officer in making solicitations, or create the impression that solicitations are being sought on behalf of the DuPage County Forest Preserve District, the DuPage County Forest Preserve Police Department or on behalf of DuPage County Forest Preserve Police Officers. If the District establishes that the Metropolitan Alliance of Police has violated any of the provisions of this Section, the Metropolitan Alliance of Police shall pay the District liquidated damages in the amount of \$100 for each violation.

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by the Chapter or the Metropolitan Alliance of Police directed to the general public, nor shall it limit the District's right to make public comments concerning solicitation.<sup>8</sup>

**V. RELEVANT STATUTORY LANGUAGE**

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

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<sup>8</sup>The District's final proposals are set forth in Joint Exhibit 3.

5 ILCS 315/14(g)

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

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

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

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

#### **VI. EXTERNAL COMPARABLES**

The parties are not in agreement as to external comparables. The District has proposed comparison of pending economic issues in this record, and salaries in particular, with two other Chicago-area forest preserve districts; Kane County Forest Preserve District and Will County Forest Preserve District. The District also proposes external comparison with McHenry County Conservation District, and "secondary" comparison with College of DuPage, which has a law enforcement bargaining unit and is, like the District, located in DuPage County. The Union, on the other hand, proposes external comparison with only one similar Illinois jurisdiction, and that is the Lake County Forest Preserve District.

Because this is the first contract between these parties, and because the issues of the Labor Agreement duration or term and the wage and salary structure are front and center in this interest arbitration, the statutory criterion of external comparability is quite significant, as I see it. Importantly, however, this case presents a unique twist on the usual police department interest arbitration, in that this particular bargaining unit's function is, while similar in some ways, distinctly different in others to those of

traditionally-addressed municipal and county police departments, I would suggest.

In this case, I make no comment as to the relative qualifications and training of personnel in either setting. Indeed, this record absolutely establishes that the Ranger Police Officers employed by the Forest Preserve District of DuPage County are eminently qualified in all areas of law enforcement, and perform, when called upon to do so, duties substantively similar in nature to those of other municipal agencies. However, as to the specific matter of external comparability, both the Union and the District expressly acknowledge the uniqueness of discrete forest preserve police jurisdictions, in that both "lists" of proposed external comparables (promulgated for purposes of analyzing salaries and other outstanding economic issues) are comprised exclusively of county "forest preserve" or "conservation" districts. (Compare my discussion of the alleged uniqueness of firefighter external comparables in college towns in City of DeKalb and DeKalb Professional Firefighters Association, Local No. 1236, I.A.F.F., ISLRB No. S-MA-87-26, Arb. No. 87/1277) (decided June 1, 1988) at pp. 21-24. (To limit the universe of comparability solely to college towns disregards the "natural labor market" aspects of external comparability).

The Arbitrator is in essential agreement with the parties that viable "candidates" for external comparability in the Chicago area are few, in the instant case, it is to be noted. Certainly, there are only perhaps four or five functionally similar jurisdictions, though it appears that the parties were unable to agree on a common list of

those, even though there are so few to choose from. Careful examination of this record reveals why this came to be so: there is significant disparity between the proposed external comparables on both sides as to the critical issue of officer salaries, I note. Because wages is the real focus of the parties' use of external comparables, in many respects, consistent reliance on external comparability on the part of both the Union and the District diminished noticeably as each succeeding issue was argued, I specifically stress. Yet these observation should not be deemed to downgrade the importance of external comparability with regard to the reasonable resolution of economic issues in the arena of interest arbitration. As I noted early on, "comparability [with respect to economic issues] plays a special role. In fact, many commentators have indicated that comparability is indeed the most important factor in the usual interest arbitration case. Accurate comparabilities are the traditional yardstick for looking at what others are getting and that in turn is of crucial significance in determining the reasonableness of each party's respective final offer." City of DeKalb, supra, at p. 15.

Turning to the specific proposed comparables, the first of the District's proposed external comparables is McHenry County Conservation District ("MCCD" or "McHenry County"), which operates with a complement of ten full-time patrol officers, two sergeants, and a Chief. Like the District in this case, MCCD also operates on a

two-shift schedule.<sup>9</sup> MCCD officers are represented by the Illinois Fraternal Order of Police Labor Council, and have an existing current Collective Bargaining Agreement with their Employer which is in effect from April 1, 2007 through March 31, 2010. (Er. Ex. 3). MCCD officers are accordingly subject to scheduled wages/salaries, and have also bargained concerning sick leave accrual, fair share, and court time provisions.

The District's second proposed external comparable is Kane County Forest Preserve ("KCFP"), which operates with a complement of six full-time officers, eighteen part-time officers, one sergeant and a Chief. (Er. Ex. 2). KCFP also operates on a two-shift schedule, and officers are not represented by a union for purposes of collective bargaining.

The District's third proposed external comparable is Will County Forest Preserve ("WCFP"), which operates with a complement of seven full-time officers, eighteen part-time officers, three sergeants, a Deputy Chief, and a Chief. WCFP also operates on a two-shift schedule, and officers are not represented by a union for purposes of collective bargaining. (Er. Ex. 2).

Finally, the District proposes "secondary" external comparability with the College of DuPage ("COD") law enforcement group. Here, the District acknowledges significant differences between the Union in this case and COD law enforcement personnel.

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<sup>9</sup> Day shift is 7:00 a.m. to 3:30 p.m., and afternoon shift officers work from 3:30 p.m. to midnight. (Er. Ex. 2).

However, the District notes that COD officers are represented for purposes of collective bargaining, and have specific jurisdiction in DuPage County.

The Union proposes only one external comparable; Lake County Forest Preserve District ("LCFPD", or "Lake County"), which operates with a complement of ten full-time patrol officers, and twenty-five part-time officers. Like the District in this case, LCFPD also operates on a two-shift schedule.<sup>10</sup> LCFPD officers are represented by the Illinois Fraternal Order of Police Labor Council, and have an incumbent Collective Bargaining Agreement, their first with their Employer, in effect from January 1, 2007 through December 31, 2010. (Er. Ex. 3). LCFPD officers are accordingly subject to scheduled wages/salaries, and have also bargained concerning sick leave accrual, fair share, court time, and other "specialty pay" provisions. (U. Ex. 34).

Having examined the record thus far with particular respect to the statutory criterion of external comparability, the Arbitrator is persuaded that both McHenry County and Lake County serve as appropriate choices on the majority of fronts. On this, the Arbitrator is guided by Arbitrator Edwin Benn, who published certain useful guidelines in A Practical Approach to Selecting Comparable Communities in Interest Arbitrations Under the Illinois Public Labor Relations Act, Edwin Benn (1998), Chicago Kent College of Law

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<sup>10</sup> Day shift is 5:30 a.m. to 2:00 p.m., and afternoon shift officers work from 1:30 p.m. to 10:00 p.m. (Tr. 127).

Institute for Law and the Workplace, Vol. 15 Lead Articles, Issue 4.

Of course, I have already noted that in this particular case we are not dealing with "communities" or "municipalities" per se. However, the matter of external comparability must nevertheless be resolved, since the parties are not in agreement and I have a statutory obligation under this Act to duly consider the important criterion of outside comparability in resolving the outstanding issues in this, the "flagship" contract between these two parties, I rule. Once again, though, how to construct the universe of external comparability has now been considered numerous times by the arbitrators working as interest arbitrators under the Act. While there are permissible variations, the ground rules are recognized and ascertainable, I stress.

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

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

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

respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities."

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

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

Obviously, the question here is, "How is Arbitrator Benn's cogent instruction useful when the parties have proposed no common comparables?" In this case, the solution is a relatively simple one, given the unique nature of these parties' bargaining relationship and the discrete function of local forest preserve law enforcement groups. Once again, I note that accurate comparables are "the traditional yardstick for looking at what others [in the relevant marketplace] are getting and that in turn is of crucial significance in determining each parties' respective final offers. . ." However, "[t]he particular facts must always be reviewed, in the appropriate context." Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35. That is the critical point -- context is everything, in my opinion.

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

When all is said and done, there are two proposed comparables, one from each list, which I deem clearly appropriate for purposes of my consideration of the open contractual issues in this record. They are McHenry County from the District's list, and Lake County from the Union's. McHenry County Conservation District (MCCD) functions in a manner "not unlike a forest preserve district," the District claims, without direct contradiction, I note. (Tr. 178). It is unionized and has an existing Labor Contract. It has ten bargaining unit officers, so while smaller in number of personnel, it still is within a reasonable relationship in size of the bargaining unit, especially when the number of full-time officers working in the Lake County Forest Preserve is considered, I find.

Similarly, Lake County Forest Preserve is unionized and is covered by a first-time Labor Contract at present. The size of its

bargaining unit is smaller than the DuPage County Forest Preserve when full-timers are compared, but similar to McHenry. Other common characteristics are function and geographic area, and these are all common points of comparability among Lake, McHenry and this District, I hold.

At first blush, however, I would normally reject the District's proposal that Kane County and Will County Forest Preserve Districts should be used for comparative purposes in this case for one fundamental reason: officer employees in those two jurisdictions are not represented by a union for purposes of collective bargaining. This is significant, because the conditions under which those officers work were not bargained for, as MAP has stressed. These conditions were simply imposed as terms of employment at hiring. Consequently, the specific conditions under which the similar employee groups in Kane and Will Counties work are in point of fact not indicative of any "negotiated norm" which might be subject to comparative interpretation under the Act, I recognize.

However, and this is a major "however," the Kane and Will County Forest Preserve jurisdictions are useful for at least one purpose of statutory evaluation, namely, these political instrumentalities, even though not organized, suggest what the "general labor market in the area presently supports," I find. Thus, these two Forest Preserve districts which are geographically contiguous to DuPage County, plus McHenry and Lake, constitute this District's natural labor market, I am persuaded. To that extent, then, these two Districts are deemed by me to be "secondary external

comparables" because at least as regards pay rates, Kane and Will County Forest Preserve District have a potential to directly impact the "labor market" for the Forest Preserve District of DuPage County, I rule. In view of these facts, I accept the Employer's contention of comparability which stems from the statutory factors, and especially Section 14(h)(4) of the Act, quoted above.

I reject however this District's proposed "secondary" comparable of the College of DuPage (COD) law enforcement group. True, this particular group, unlike those of Will and Kane Counties, is represented by a union for purposes of collective bargaining, and is also located in DuPage County. However, this record adequately establishes that those two similarities represent the sum total of any resemblance between the COD bargaining unit and the Employer and Union in this case. The actual functions of the two groups of employees are entirely different; indeed, COD officers do not even carry firearms, and are certainly not required to patrol thousands of acres of forest preserve for purposes of protecting the general population of DuPage County, I stress. In other words, there is simply not a sufficient number of "contacts" between the two bargaining units to make them statutorily comparable under the Act, I find.

Finally, the Arbitrator rejects the District's proposal that, should Lake County be accepted as a comparable, then so also should Cook County, because "one has to drive through Cook County to get to Lake County from DuPage County." Cook County is simply not a viable comparable in this case, I am therefore convinced, if only because of

the difference in the number of employees working for its forest preserve and the geographic area encompassed in its borders.

Thus, for purposes of analyzing the parties' respective arguments which follow, the Arbitrator will consider Lake County Forest Preserve District and McHenry County Conservation District as the primary external comparables, and Kane and Will as "secondaries," on terms and conditions of employment, but not on overall wage structure. On that critical point for comparison, as can be observed, Section 14(h)(4) expressly permits comparisons to "comparable communities," not comparable unionized communities, I rule.

In sum, as Arbitrator Benn noted in Streamwood, supra, "It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities [in this case forest preserve and/or conservation districts) supportive of their respective positions." Certainly, that appears to be the case in the case now before me, with specific respect to the major economic issue of officer salaries, where McHenry and Lake seem to form "outliers" in the universe of wage rates and structure, I also note.

In essence, the broader universe of four other comparables, rather than just the Lake County Forest Preserve District, contradicts the Union's core claim that "catch-up" with Lake County must be the governing consideration in this case, as will be developed in detail below. Based on the specific rubric of Section 14(h)(4), precisely the current "catch-up" argument of this Union, a repeated theme in its brief, must be looked at through the mandated statutory standards, not the artificial "universe of two," I rule.

Additionally, Arbitrator Benn also instructed there are a host of other "contacts" between comparable groups, such as geography, nature of work performed, department size, and future financial well-being, which make employee groups similar enough (or dissimilar enough) to be chosen or rejected as comparables in the interest arbitration setting. Both Lake County Forest Preserve District and McHenry County Conservation District, in my opinion, are, at the very least, the most satisfactory of all the proposed comparables in this case. The other secondary grouping of Kane and Will are posts delineating the labor market, but do not control issues beyond basic wage rate comparisons, in my view, I again conclude.

Perhaps, based upon the Union's evidence relative to county population, EAV, and the geographic scope of the Lake County Forest Preserve District, Lake County may be slightly "more comparable" in the traditional sense than McHenry County is, I recognize. In point of fact, this District offered no similar demographic support to that presented by MAP for Lake County in terms of data in this record when proposing its four comparables. However, there are reasons for counting MCCD, Kane and Will County Preserves as comparables. One is my reluctance to accept a universe of external comparables of two political jurisdictions. The Act calls for more points of comparison, based on the articulated standards, I hold.

Indeed, as I stated in City of DeKalb and Local No. 1236, I.A.F.F., supra, at p. 22:

Geographic proximity and the idea of the job market as important in setting the price of labor run directly counter to its [the Union's] claim. . .

[t]he Union's claim of so narrow and precise a universe as being the only proper source of comparison or comparability seems quite far-fetched as the only possible basis for comparison. Very frankly, the Arbitrator believes that some municipalities in DuPage or Kane County would be more comparable to DeKalb than the cities of East Peoria, East Moline or Alton, but Chicago or the North Shore are equally inappropriate if these are the only comparables to be used. Therefore, both lists of comparable communities leave something to be desired, to say the least.

Simply put, a universe of two for use as a definitive point of comparison completely puts aside the core idea of the natural labor market as an important component of external comparability under Section 14(h) of the Act, I again stress. See Laner and Manning, "Interest Arbitration: A New Terminal Impasses Resolution Procedure for Illinois Public Sector Employees," Chicago Kent L. Rev. 839, 842-43 (1984). The evidence establishes that four comparables, two organized and two not organized, are the relevant points of comparison, I rule.

#### **VII. INTERNAL COMPARABLES**

In this particular instance, the criterion of internal comparability does not have the value it might otherwise have if this proceeding was an interest arbitration concerning a municipal law enforcement group. Collective Bargaining Agreements involving police and firefighter bargaining units traditionally serve to support one another on issues of wages, benefits and other relevant common working conditions. Here, however, other District employees are not represented by a union for purposes of collective bargaining, and, at least as far as this record demonstrates, DuPage County Forest Preserve District does not have its own fire protection group. In

this, both the District and the Union are in agreement that there are no truly comparable groups for purposes of internal comparison. The Arbitrator is aware, and will address the matter in detail below, that the District proposes on at least one outstanding issue (Sick Leave Accrual) to maintain "status quo" with other non-represented employee groups in the employ of the Forest Preserve District of DuPage County. However, the District's proposals aimed at maintaining alignment with existing Management policies and practices are not recognized in this particular context as controlling as the status quo, I conclude, within the intent and meaning of criteria of Section 14(h) of the Act and subsequent interpretive arbitral guidance. The factor of internal comparability is not critical in this particular context, I therefore hold.

#### VIII. DISCUSSION AND FINDINGS

##### A. Economic Issue No. 1 - Term of Agreement

In support of its final proposal for a three-year contract term, the Union argues that, "All of the comparable jurisdictions proposed by either the Union or the District have terms of duration greater than the one year proposed by the District." In particular, the Union notes that both Lake County and McHenry County districts have union contracts for law enforcement officers with three year terms running from 2007 to 2010.<sup>11</sup> The Union also argues that at least

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<sup>11</sup> The Union also cites other proposed external comparables, such as the rejected comparable of COD law enforcement personnel, who have a five-year contract with the FOP. (Er. Ex. 3). For purposes of this analysis, the Arbitrator will confine his analysis to the two selected primary external comparables which have existing Collective Bargaining Agreements.

one arbitrator (Benn; County of Boone and Illinois FOP Labor Council, Case No. S-MA-08-025, 2009) tied contract term to duration of bargaining. Specifically, the Union points out, Arbitrator Benn noted that bargaining in the case before him had taken some time, and a short-term contract would have resulted in an immediate return to the bargaining table before the parties had even had a chance to live with what they agreed to.

In the instant case, the Union submits, this point of an immediate return to the bargaining table being mandated by me is particularly significant. This is clearly a detriment to MAP, given that this is the first unionized arrangement between the District and its law enforcement police officers and the fact that the Union's certification woes prior to 2008 prolonged bargaining for an unusually long time. If the District's proposal is adopted, the Union argues accordingly, "The parties will be in a position that they will possibly be back at the bargaining table in as little as three months to negotiate a wage reopener."<sup>12</sup> This is completely unacceptable, the Union argues.

The District, on the other hand, argues that, "Given the tremendous economic uncertainties, the Arbitrator should award the District's Final Offer for a two year Agreement with a wage reopener for the second year."<sup>13</sup> Clearly, the District submits, this approach is more reasonable than the Union's, as even interest arbitrators

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<sup>12</sup> Union brief at p. 43. In point of fact, the Union and Employer would be back immediately, it is to be noted.

<sup>13</sup> District brief at p. 7.

have, in recent months, manifestly recognized the volatile nature of the present economic landscape and its impact on the tenor of collective bargaining.

Specifically, the District cites Boone County (March 23, 2009), supra, wherein Arbitrator Benn commented in relevant part as follows:

... The problems employers, unions and employees (and interest arbitrators) faced in recent years concerning health insurance now pale in comparison to the daunting task of how to set the terms of collective bargaining agreements in the face of the current economic crisis.

... These are, unfortunately, very volatile and unpredictable times - a conclusion that is consistent with the general state of the declined economy at this moment.

Perhaps a cautious and practical way to approach negotiations and interest arbitrations in these uncertain and changing times is for parties to negotiate reopeners on economic items... With negotiated reopeners, the parties can then assess the situation as the economy changes rather than project years out into the future with fixed obligations having no idea what the economic conditions will be. For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers. Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14(g)...<sup>14</sup>

Since, the District argues, only its final offer realistically deals with these challenging times in the very manner suggested by

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<sup>14</sup> Arbitrator Benn quotes from his earlier decision in State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-262, January 27, 2009. (Er. Ex. 23).

Arbitrator Benn, the Arbitrator should award a two-year term with a wage reopener for the second year.<sup>15</sup>

Frankly, the lack of congruence between the parties' final offers in the duration of the contract at issue puts this interest arbitrator in a genuine quandary. An integral part of this process is to compare apples to apples, these parties certainly know. And, when assessing economic proposals that are inherently so divergent because the Union presents a three-year package and the District, a two-year proposal -- with the second year continuing a wage reopener -- the ability to accurately assess the best and final offers is significantly compromised. This has caused not a few interest arbitrators to conclude that the party proposing the shorter term must be found to effectively be presented "zero or nothing" for the third year. That conclusion creates an extremely steep hill for the party presenting the two-year proposal to persuade a neutral its package is the more reasonable on wages, or on any other economic terms, I recognize.

As the District has argued, however, and no one can reasonably deny, these are indeed trying and uncertain economic times, I also stress. The entire setting of bargaining, and by extension interest arbitration, will thus, if it has not already, change because of it, it is to be noted. Hopefully, these changes, if they are perceived to be unfavorable to unionized employee groups in general, will prove temporary, and I believe that this is exactly what Arbitrator Benn

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<sup>15</sup> District brief at p. 8.

recognized when he suggested shorter term obligations with reopeners on economic issues, or in the alternative, authorizing interest arbitrators to impose reopeners or modify final offers. The times in which these proposals are made make what I would have formerly considered a negative "no-brainer" -- unreasonableness of Management's two-year offer for the duration of an initial contract for these parties, with a wage reopener in the second year -- not inherently unfair. My reasons follow.

It is interesting that the Union apparently urges a three-year contract term in this case and in these times for fear that a short-term contract will simply make more work (more negotiating) with no consequent benefit to the bargaining unit. This is not necessarily the case, as the pendulum indeed swings two ways and negotiators and interest arbitrators do, as they should, pay a great deal of attention to the potential for economic change, I note. Moreover, the Union also attempts to lock the District into an attendant three-year wage proposal that, in the very first year, manifestly ignores the realities spoken of by Arbitrator Benn on more than one recent occasion. Simply put, the Union want a catch-up of over 25% in the first year. If an arbitrator is handcuffed to "last best offers" on economic issues, then such last best offers must necessarily be rooted in reality, I reason.

It is true that both of the selected unionized externally comparable bargaining units I have determined are relevant, have three-year long contracts, I realize. However, it is also important to note that one contract (Lake County) took effect January 1, 2007

and the other (McHenry County) took effect on April 1, 2007. As the parties in this case have both expressly noted, negotiations for the instant contract were long and arduous affairs, dating back to 2006, it is also to be noted. I recognize that the term of negotiations was uniquely extended in this particular case by the Second District's action to vacate initial certification of this Union, but still, the process was lengthy and involved. The Arbitrator assumes, without so finding as a matter of fact, that some negotiations (absent certification delays) was likely still true in McHenry and Lake Counties as well. In other words, those two contracts were, most probably, substantively negotiated in 2006, and times were significantly different then, I emphasize.

Thus, to award a three-year contract in the instant case on the sole basis of external comparability with Lake and McHenry Counties would effectively ignore a reality that is ever-present in the current economic environment; in the private sector, businesses are closing, downsizing, outsourcing, and reducing benefit levels just to stay alive, and there is just no getting around that fact. In the public sector, budgets are knocked out of kilter and tax collections have been impeded. Even the Union at least indirectly recognizes these facts in noting that one single Department vacancy prompted no fewer than 99 applications from candidates all over northern and central Illinois. (Er. Ex. 11, Tr. 182).

Equally important to a proper resolution of this case, though, is that the Union has emphasized there is no inability to pay increases involved in this case, as will be developed below. The

Union goes on to properly point out in no uncertain terms that if the contract term is only two years, with a wage reopener, the parties will be back at the table virtually upon the deliver of this Opinion and Award. These are strong arguments in favor of a longer term contract, I recognize. When coupled with the years involved for the parties to reach their first contract, I cannot just automatically say "that was then; this is now," I recognize. These issues are not easy to resolve, as the parties well know. The strong presumption in normal times, I reiterate, is that the lack of congruence in the duration of the contract means a "zero" offer for the third year. See my decision in County of Cook and Cook County Sheriff's Department (Joint Employers) and IBT 714, L-MA-95-001 (Goldstein, 1995). Even if that is assumed to be true, the context and circumstances demand further scrutiny of what is reasonable here, I hold.

Again, the hope that present hard times are temporary is what drove Arbitrator Benn to comment on the advantages of shorter-term contractual obligations on issues having economic impact on both unions and Employers alike. As he specifically noted, with negotiated (or imposed) reopeners, parties are able to assess on a more current basis every situation as the economy changes, and adjust accordingly. Furthermore, and this should in some sense reassure the Union, economic change for the better is both demonstrable and measurable. Thus, if and when things improve down the road, and of course this is the hope, a good case can again be made for historical long-term contracts which establish sustainable economic obligations on the part of Employers. In the meantime, I am convinced that, as was Arbitrator

Benn, more frequent bargaining opportunities in current circumstances are not inherently unreasonable and can serve the interests of both parties.

Given all present arguments and the evidence in this record, then, I find that the District's proposal as to contract term is the more reasonable of the two final offers before me. Therefore, for all the aforementioned reasons, I resolve Economic Issue No. 1 in the District's favor as more appropriate and consistent with the standards set forth in Section 14(h) of the Act, and I adopt it on that basis.

**B. Economic Issue No. 2 - Salaries**

The second of the economic issues in this interest arbitration is necessarily linked to the parties' proposals in Issue No. 1 concerning contract term. In a nutshell, the District (in concert with its two-year term offer) proposes a new wage schedule which includes across-the-board salary increases retroactive to January 1, 2009 and a reopener for 2010 wages. In contrast, the Union presents a three-year wage schedule, also retroactive to January 1, 2009, which consists of a restructuring of present salaries, and subsequent across-the-board increases in each succeeding year of the proposed three-year contract.

To better understand the present pay structure, the parties explained that on January 1, 2006, the District implemented a "Broadbanding Compensation Project" which it explained to employees, including those of this bargaining unit, as follows:

Employees in the same job often possess different skills and qualifications. One of the objectives of the District is to give managers more discretion to reward employees based on individual contribution. Broadbanding is a pay-

for-performance management system that provides a wider spread of pay opportunity in which to recognize and reward individual performance. Broader pay bands provide greater flexibility to managers to base pay decisions on the person performing the job. In addition, by eliminating narrow pay ranges, managers can now provide base salary merit increases to employees who were previously at the top of their pay range.

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The new pay structure consists of 3 parts:

- 6 pay bands (B1-B5) for staff exempt/non-exempt positions
- 2 pay bands (DB1, DB2) for Director-level positions
- 5 pay bands (B1PT-B5PT) for part-time and hourly positions

For staff level positions, 45 pay ranges under the old structure have been collapsed down to six bands. Broader pay ranges provide greater opportunity for pay increases based on good performance and increasing skills and responsibilities. And with fewer bands, promotions to a higher pay band will be more meaningful as they represent the assumption of significantly greater job responsibilities.

Ranger Police Officers, who, of course, were not represented for purposes of collective bargaining at the time, were placed in pay band "B4A", with a minimum salary of \$41,429 per year, a mid salary of \$58,572, and a top salary of \$75,710. (U. Ex. 27). The record further establishes that for fiscal year 2005-2006, merit/bonus funding in the amount of 4% of the District's current (at that time) salaries for budgeted positions was set aside as a "pool" for merit increases in that fiscal year. (Er. Ex. 28). A similar "pool" of 4% was set aside for fiscal years 2006-2007 and 2007-2008, with the proviso that, "No employee will move beyond the pay band maximum for their classification." (Id.). A 3% pool was reserved for fiscal year 2008-2009 merit increases in the District. (Id.).

The last merit increases awarded among District Police Officers who were then unrepresented but now are represented by MAP, were issued in the 2007-2008 fiscal year. (Tr. 149). No increases were awarded in 2009, the District explains, "because of the differences between the parties and how they were approaching salary adjustments" during bargaining for this contract. (Id.). Thus, the District's proposed salary increases in Economic Issue No. 2 herein before the Arbitrator, are based upon present (2008) wages. (Id.).

As to the specific proposals, then, the Union first offers a base-pay step structure, to which it proposes assigning bargaining unit members in accordance with seniority. The Union's proposed step structure also incorporates what it terms "catch-up" wage increases which would closely align this unit with its favored external comparable of Lake County. According to evidence presented by both the Union and the District, the Union's proposal would result in average salary increases for the bargaining unit of 25.18% in the first contract year, retroactive to January 1, 2009. (Union Brief at p. 45, Er. Ex. 26).<sup>16</sup>

Thereafter, in accordance with the new step structure thus established, the two subsequent years of the Union's proposed salary schedule would bring average bargaining unit salary increases of 5.77% in 2010 and 5.55% in 2011. (Id.). The Union urges that this is reasonable, based on the statutory criteria to be discussed below.

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<sup>16</sup> That fact is absolutely critical to my assessment of the merits of this case, I specifically observe.

I emphasize that once again the underlying basis for the Union's proposal in these percentage increases is external comparability and appropriate fairness, as well as the fact that the Employer has made only a proposal for its year two of the contract of a "reopener" in wages. Year three is of course not part of the District's offer, because of the two-year limit in Management's offer in the duration of this contract, these "offers" by the District must be considered to be "zero" offers in economic value. Consequently, the relative reasonableness of the offers dictates my acceptance of the Union's final wage proposal, it urges.

The Union's proposal also differs significantly from the District's, in that it contains no merit component, I emphasize. Increases proposed by the Union are scheduled step increases, and are awarded on the exclusive basis of seniority, this record makes absolutely clear. That is an absolutely critical difference in the "last best" offers of the Union and District, the Union stresses again and again. Management may invoke the straw-man of "times are tough," says the Union, but that argument certainly has no relevance to the Employer's maintaining the "merit component" in its one-year pay proposal, I am told. Economic circumstances may be difficult for some political jurisdictions, it recognizes. But this District may not rely on such a generality to make reasonable a pay offer that incorporates "merit" factors which could circumvent rangers from receiving any pay increase at all, the Union claims.

The Union defends its current wage proposal on the nearly sole basis of external comparability. "Adopting the Union's final wage

proposal creates wage parity with the only other appropriate external comparable."<sup>17</sup> This is not unreasonable, the Union argues, in light of prior interest arbitrations which have yielded significant parity increases on the basis of the statutory criterion of external comparability. Indeed, the Union argues, it is striking that it will require an average 25.18% salary increase "to simply create wage parity with the bargaining unit's only comparable community, the LCFPD." Certainly, the Union acknowledges that the proposed transition from a broadband merit pay system to a step system involves significant cost to this District. However, the Union stresses, the bargaining unit sought representation expressly because the District has "consistently failed to address" issues of officer pay. Its pay structure has been out of line for years, insists the Union.

The Union thus specifically rejects the District's wage proposal because, first, the proposed "slot" system presents an initial salary structure significantly below that of the externally comparable jurisdiction of Lake County. Second, the Union argues, the District's proposal promotes the "same flawed merit type system previously in place." Again, this is of crucial significance to a fair and proper resolution of this case because the District's proposal gives it unchecked power to determine the "merit of an individual ranger bargaining unit employee. Under the District's merit-based proposal, I am reminded, it would be possible for Management to force an officer to remain in his initial "pay slot"

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<sup>17</sup>Union brief at p. 47.

indefinitely. This, the Union stresses, is completely unacceptable, since in the administration of the so-called merit component as to wages in its "final best offer," the Employer has retained absolute control without even a pretense of standards limiting discretion, MAP insists.

The Arbitrator should also reject any reliance by the District on current CPI-U data, the Union argues. The District has admitted, the Union notes, that it makes no specific "inability to pay" argument when it comes to the issue of salary increases. Thus, the Union reasons, the Arbitrator is free to focus only on "viable comparison data," i.e., the difference between pay rates of Lake County Forest Preserve's pay structure and this District, and the need for a catch-up award of parity wage increases. Even in this economy, the Union stresses, the Arbitrator should refrain, as cautioned by Arbitrator Benn in Boone County, supra, from simply dispensing with traditional comparability considerations. The Union thus maintains that I must not lose sight of the great disparity between the two "real comparables" in this case. MAP's final wage proposal should thus be adopted as the more reasonable final offer, the Union submits.

The District argues that the Arbitrator should accept its final salary offer for a number of compelling reasons. First, the District argues, its final offer provides for a minimum salary increase of 4% and an average salary increase of 4.51% for calendar year 2009. Unquestionably, the District argues, on the sole basis of cost, this is more reasonable than the Union's final proposal of average salary increases of 25.18%.

Second, the District argues, external comparability data supports acceptance of its final wage proposal. In support, the District notes that similarly situated McHenry County Conservation District law enforcement officers have a current minimum salary of \$40,144 per year, and a maximum salary of \$60,216 per year. At pp. 15 and 17 of its brief, the District also cites salary data for Will and Kane Counties, indicating minimum salaries of \$40,757 and \$41,207 respectively and maximum salaries of \$57,453 and \$60,216 respectively. Therefore, local labor market trends and the parameters of pay rates in this market (if not for several of the other economic issues involved in this case, where bargained terms are the required points of comparison) show comparability. It is to be remembered that this District's starting salary under the terms of the District's final wage proposal is \$46,000 and the ninth slot pay rate is at \$67,500. The District's pay rates are absolutely in the comparability universe, says this Employer.

Looking at all proposed jurisdictions, "even including Cook County," the District maintains, it is clear that Lake County is an "outlier" in terms of salaries. Thus, the District urges, whether or not the Arbitrator accepts its list of comparables, it is still obvious that the Union's sole reliance on Lake County for purposes of supporting its salary proposal is clearly misplaced and the District's final wage proposal is more than reasonable.

Third, the District claims, recent CPI-U data favors a more conservative approach to wage increases. Nationally, the District

avers, a pattern of decline is evident, and still, the Employer's proposal substantially exceeds reported changes in the cost of living.

Fourth, the District notes, the Employer has had no difficulty attracting qualified applicants for vacancies in this employee group. Significantly, the Employer points out, this record indicates that a single Officer vacancy in the District prompted no fewer than 99 applications from all around the greater Chicago area. Moreover, the District asserts, voluntary turnover among Ranger Officers is remarkably low, averaging less than one per year over the last five years. (Er. Ex. 9).

Finally, the District argues, the interests and welfare of the public strongly support acceptance of the District's final offer. More specifically, the District rejects the Union's reliance on the fact that the District does not assert a pure inability to pay argument in this case. In support, the District cites Arbitrator Edward Clark in City of Gresham and IAFF Local 1062, 1984, wherein he concluded in relevant part as follows:

Having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure. The City exists for the service and benefit of its residents not for the benefit of its employees. The careful management which characterizes the City of Gresham in matters such as this is confirmed by the high bond rating from Moody's, the widely respected financial rating service. Residents need many services such as police, parks, street repairs, court, in addition to fire services. In our system, the elected representatives of the people of Gresham make policy decisions on the apportionment of funds among a variety of public services based upon recommendations of its professional staff. The City must also consider the salary expectation of other employees besides firefighters and the reciprocal impacts from decisions relating to one classification of employee compared to another.

Arbitrator Clark's reasoning applies here also, the District argues. Moreover, the District submits, since the Employer is clearly not making an inability to pay argument, the District's financial statements, made part of this substantial record by the Union, are simply not relevant to this "last-best offer" wage proposal.

For reasons which follow, I am persuaded by the District that the Union's final salary proposal is not, overall, reasonable. Clearly, the Union relies primarily on wages paid to similarly situated (and unionized) law enforcement personnel employed by its single comparable, the Lake County Forest Preserve District. There are a number of reasons, most of which have been argued by the District here and already set out above, that sound logic simply militates against accepting the Union's final offer as it is before me. This is a "last best offer issue," with no discretion on my part to reshape the parties' respective offers, I must specifically point out. My role is to analyze the reasonableness of the final offers in light of the mandated statutory criteria and not to compromise, when all is said and done. That is the nub of the case, I hold.

At the outset, the Union proposes to "catch up" with Lake County in the first year of this contract (retroactive to January 1, 2009) by contractually imposing average across-the-board salary increases of 25.18%. Obviously, I note, because this is an "average", some District Officers would, under the Union's proposal, receive an even greater percentage increase than that (while some would receive less, I recognize). In point of fact, if I accept MAP's wage offer, no fewer than six of the present seventeen members of this

unit would receive increases of over 30% in the very first year of this initial contract, the record demonstrates. That is an extremely material fact, to me; accordingly, this front-end loaded offer might raise a red flag even in normal economic circumstances, in my view.

In this current economic climate, there is simply no reasonable foundation for awarding such a massive increase, unless the need to "catch-up" is proven by very strong evidence that all other employees in numerous comparable bargaining units are being paid substantially more, such as is the case with the officers of the Lake County Forest Preserve, which I determine, once again, is not the case. The Union has offered no proof of any such jump based on cost-of-living considerations. CPI data in this record indicate a general decline in the cost of living, and downturns in the housing market (which in turn dictate property taxes representing the primary source of the District's revenues [U. Ex. 30]) have been demonstrated to exist at present.

But yet there is no evidence this Employer has had any difficulty recruiting and retaining competent employees. Indeed, the proofs of record are precisely to the opposite. There is virtually no employee turnover and 99 applicants came forward from all over Chicagoland for one open slot in the unit, the evidence shows. The ability to increase taxes is also tied to the CPI, which is currently flat or negative, I again emphasize. The "cost factors" driving this sort of pay raise are seemingly non-existent, then, I hold. Compare, Cook County Sheriff and County of Cook and IBT 714, L-MA-95-001 (Goldstein, 1995) and Supplemental Proceeding to that case, at

pp. 3-4, where I found that a cost-of-living date and strong proof of a proven need for "catch-up" based on external comparables, plus the joint Employers in that case having offered a three-year contract with two wage reopeners justified adoption of that Union's final wage offer of 4.5%, 8% and 8% over three years.

Again, in this case, the catch-up contention manifestly is based on one comparable, but lacks support from other statutory criteria, as just set out. Moreover, it must be noted that the Lake County wage provisions pursued by the Union in this case were negotiated in a very different economic climate from the one in which we are all forced to operate now, I reiterate. In fact, the Lake County/FOP contract was signed on January 19, 2007, almost three years ago, and, in my view, it stands to reason that the wage structure negotiated then predated that.

The record also establishes that even the District's current wage structure, which is not even as favorable as the one it proposes for this contract, has not discouraged qualified applicants from pursuing employment with the District, I stress. 99 applicants for one open position is proof of that. Moreover, this record establishes that the District experiences very little turnover, and while this, in and of itself, is not the most superior of factors in terms of statutory support, the end result is nevertheless significant: the District's present salary practices are not, even according to applicants in the current labor market, a deterrent to employment.

However, as there never has been a pure "inability to pay" argument advanced by the District, I find much of the discussion by

the Employer of the reasoning of Arbitrator Clark, in Gresham to have less weight than in other cases I have encountered. Certainly, as Arbitrator Clark observed on the record before him, the District in this case clearly exists for the benefit of the citizens of DuPage County and those elected officials of this body are permitted to make choices on how to allocate resources as a fundamental part of their jobs. Arbitrators do not willy-nilly override those choices "for fun," as many critics of the process would have it. The core idea of the Act is that if probative evidence exists in the framework of the Section 14(h) criteria that require choices that differ from Management's, our role is to accept that evidence and choose the Union's final wage offer, no more, no less.

Interest arbitrators are essentially obligated to attempt to replicate the results of arm's-length bargaining between the parties, and to do no more, I also stress, though. See Arbitrator Nathan's discussion of the nature of the interest arbitration process in Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, pp. 51-52 (1988). I have routinely accepted those principles over the years. See my decisions in City of Burbank and Ill Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Ass'n Unit 54 and City of Elgin, ISLRB Case No. 8-MA-00-102 (2002) at pp. 95-97.

This neutral finds that much of the District's and its reliance on Gresham is in fact irrelevant to the resolution of the dispute. As noted above, this Arbitrator is not authorized to interject itself into what is the political question of overall allocation of

resources. I cannot order the District to raise taxes, either by concluding that the property tax "has room" to be increased or by indicating that other funding sources are available and might be utilized. That is simply not the function of an interest arbitration panel, as I understand it. Instead, economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer.

The neutral also agrees with the statement of Arbitrator George Roumel, citing Arbitrator Charles Killingsworth, in City of Southfield, 78 LA 153, 155 (1982), that "the employer's ability to pay may probably be taken into consideration only within the limits of 'zone of reasonableness'. This zone is determined by examining wage rates in other cities for similarly situated employees." In sum, the Employer's admitted ability to pay the wage increase proposal by the Union is considered only in terms of a "zone of reasonableness" established through a review of salary data in the comparable political jurisdictions. The whole question of "ability to pay," as desirability to expend funds in a certain manner, rather than the more usual issue of inability to meet financial demands, is thus not really before me, as I understand interest arbitration principles and the meaning of the Illinois statute, I hold.

Putting aside the difference in the duration of the contract evidenced by the respective proposals presented in the dispute at bar, by far the most difficult issue in this case is that the Employer's wage proposal still incorporates the "merit component" that was part of the broadband wage structure unilaterally implemented by Management

in 2007, I understand. Clearly, the Union desires to eliminate this "merit" pay factor in the overall compensation structure and frankly declares the particular merit system unreasonable on its face, I note. Its existence may have been part of the bargaining unit's motivation to choose MAP in the first instance, it suggests. More important to MAP, the merit component's existence now arguably becomes part of the "status quo" for these parties. That is the teaching of Will County, supra, at p. 52.

My response is two-fold. First, it is a fact that many arbitrators distinguish between a "status quo" negotiated by the parties in an initial contract and one imposed by an interest arbitrator. Second, I am left by the parties to assess overall reasonableness and cannot cherry-pick the final offers now on the table, I again stress.

The second aspect of my analysis is to look at what the Employer is actually proposing with respect to its merit component in the wage proposal. Is it truly a system without standards or guidelines, as MAP says? Is it a device to give Management the ability to freeze employees with no pay raise? The Employer strongly suggests to the contrary, of course. In its brief, at p. 9, the District presents the actual wording of its wage offer, as follows:

Economic Issue # 2 - Salaries

Effective January 1, 2009, and retroactive to that date, employees on the active payroll as of the first payroll period following ratification of the collective bargaining agreement by both parties shall be paid on the basis of their place on the following salary schedule:

Start 1<sup>st</sup> slot 2<sup>nd</sup> slot 3<sup>rd</sup> slot 4<sup>th</sup> slot 5<sup>th</sup> slot 6<sup>th</sup> slot 7<sup>th</sup> slot 8<sup>th</sup> slot 9<sup>th</sup> slot Merit

46,000 48,000 50,000 52,000 54,000 56,000 58,000 61,000 64,000 67,500 72,500

Each employee's placement on the salary schedule as of January 1, 2009 shall be in accordance with Appendix A, provided, however, any employee who is in the 9th slot or lower and whose salary increase effective January 1, 2009, is less than four percent (4%) shall have his/her salary increased to reflect a four percent (4%) salary increase for the 2009 calendar year.

After completion of the employee's probationary period, an employee will be moved to the 1st slot. Employees shall be eligible to move beyond the 1st slot and up to and including the 9th slot on an annual basis (i.e. on January 1 of the following year), but such movement shall be based on a determination that the employee is meeting departmental standards based on an evaluation of the employee's performance during the preceding year. If an employee alleges that he has been unreasonably denied a slot increase, the employee may file a grievance in accordance with the grievance and arbitration procedure set forth in this contract.

After being in the 9th slot for at least one year, employees will be eligible for a merit increase based on sustained performance of up to four percent (4%) based on an evaluation of the employee's performance during the preceding year that demonstrates that the employee is consistently performing above expectation, provided that no employee shall be paid an annual salary that exceeds the salary schedule maximum. Receipt of a merit increase for a given year does not guarantee that the employee will receive a merit increase in the following year. If an employee alleges that he has been arbitrarily denied a merit increase based on sustained performance, the employee may file a grievance in accordance with the grievance and arbitration procedure set forth in this contract.

(See, also, the District's final offers, Issue 2, above).

From my review of this wage offer, what jumps out is the Union's point concerning the lack of any definition for what is entailed in the "determination [by Management] that the employee is meeting departmental standards" beyond the amorphous "based on an evaluation of the employee's performance during the preceding year." This is not a comprehensive system that identifies some basic performance norms, such as attendance, initiative, avoidance of discipline, or the like. Perhaps what is contemplated are "definitive performance standards" already in existence and for which the bargaining unit employees have

notice. Perhaps not. See Enterprise Wire Co., 46 LA 359, 362-365 (Daugherty, 1966) for a discussion of the process in discipline cases where just cause is the issue and particularly Test 1 of the "Seven Tests."

Yet what is true is that there is a permissible variation in the range of available methods of compensation and the structuring of pay plans. And, importantly, there is in this Management proposal the specific provision for a right of an affected employee to grieve a Management decision to block slot movement based on substandard performance, albeit on an abuse of discretion basis. That structure means Management's unbridled discretion is not inherent in pay progression, I hold, despite the Union's strong arguments otherwise.

It is also significant, by the same token, however, to remember that the interest arbitrator must not routinely accept any party's proposal that would, in fact, be a deal-breaker at the negotiating table. Management's proposal for the sort of merit compensation call that might block slot movement takes on a different cast under that circumstance, I note. This fact, plus the difference in duration of the contract between the parties' offers, is what makes this case so difficult, in my judgment. The parties have truly put me to the test to justify a choice between the kind of merit system proposal on wages coming from Management and the front-loaded 25% wage demand in the first year of an initial contract that this Union has presented.

My response to these proposals depends in large part upon the provision of this Employer wage proposal for grievance and arbitration for slot movement denials for an employee in the District's wage

proposal. I know the Union believes this is absolutely unacceptable and would not negotiate such a deal. Still, this provision has included in it a test for reasonableness and abuse of discretion, I hold.

In my view, then, the District has proposed a reasonable "slot" structure, but just barely. On the other hand, its wage proposal, at the very outset of this initial contract for the parties, establishes upwards of a 4% wage increase across the board. The merit component cannot in my view, per se, make the overall offer "comparatively unreasonable." Again, it is my job to choose on a comparative basis, and in accordance with the mandated statutory criteria. I find the merit component not to be unreasonable under these facts, even though it might be under most circumstances unacceptable at the bargaining table.

What happens after this interest arbitration decision on wages is, obviously, what the reopener will be all about, I further stress. According to nationwide wage trends and economic climate, I do not find the District's proposal in terms of percentage of increase to be out of balance, however, I find. Nor do I find the "broadband" wage schedule in its percentage increases and the range of wages upon which it was based, to be so deficient from an area labor market standpoint that it demands the enormous parity increases promulgated by the Union. That is the true core of this case, I rule.

Again, the matter of the merit component in the District's proposal, which, in my view, constitutes the Union's most compelling argument against its acceptance, obviously bothers me, I specifically

note. Unfortunately, according to my statutory restrictions under the Act when finding on matters of an economic nature, I am (absent express authority from the parties to do otherwise) barred from modifying the District's additional restriction on wage increases to the extent that they are controlled by employee performance. I cannot modify the offers to make either the Union or Employer's offers "make better sense," as the parties know.

To sum up, had the Union's proposal been even somewhat in the ballpark in terms of numbers, I might have been inclined to adopt the Union's wage offer based on the presence of the District's merit language alone. Indeed, the Union presents an interesting supposition that an officer under this Agreement might be barred from all scheduled wage increases for an extended period of time because of some finding that his or her performance did not "meet expectations". The facts make this plain. The grievance process can cure that potential abuse. It cannot cure 25% to 30% wage increases when the universe of comparables does not convincingly demand such a "catch-up," I hold.

In conclusion, I simply cannot find for the Union on the issue of salaries as these final proposals have been presented to me. The parties rolled the dice in a real sense in this case. The "catch-up" increases pressed by the Union on the sole basis of external comparability (and on a single comparable in the area of salaries at that) are just too great to overcome. My statutory duty under the Act restricts me from modifying either proposal due to the economic nature of this issue, and thus the District's final offer will be adopted

because, on the whole, it is the more reasonable of the two offers. I rule.

For all the foregoing reasons, then, I have no choice but to find the District's wage proposal superior to that of the Union in terms of overall reasonableness. It is thus adopted that basis, I hold.

**C. Economic Issue No. 3 - Officer-In-Charge Pay**

The Union proposes that the District may designate a Patrol Officer as an "Officer-In-Charge" to replace a Command Officer who is absent from a shift for a period of two hours or more. For that privilege, the Union proposes that such "officers in charge" be paid one hour of overtime for each instance he or she has been so designated.

The Union argues that, at present, the District pays no premium for the privilege of designating an officer-in-charge in the absence of a command officer, even though, according to testimony adduced at arbitration, this occurs two or three times every month. (Tr. 89). The Union relies primarily on internal comparison between regular officer pay and that of Sergeants and Lieutenants, arguing the obvious: more responsibility brings (or should bring) more compensation. The Union also relies on a precedent interest arbitration by Arbitrator Sinclair Kossoff which expressly recognized that the Employer's proffered 5% shift premium for designated officers-in-charge is significantly lower than premiums granted to other public safety employees who are assigned added

responsibilities.<sup>18</sup> The Union accordingly urges the Arbitrator to adopt its "Officer-in-Charge" proposal.

The District's final offer provides for a full shift premium of 5% at the straight time rate for officers who are designated "Officer-in-Charge". The District points out that no premium is currently allowed, and thus, its offer of a 5% enhancement constitutes a "breakthrough" for the Union and its proposal should be recognized as such, the District contends. Moreover, the District argues, the Union's final offer would provide for an average 18.75% increase in pay for being assigned Officer-in-Charge for as few as two hours of extra work. There is no support among the external comparables for such a substantive premium, the District concludes.

As for Lake County, the District notes, an officer in that jurisdiction is paid "an additional ten percent (10%) of his rate of pay for each hour worked as Officer-in-Charge." (U. Ex. 34). Still, the District maintains that that premium is substantially less than what the Union proposes here. For all the foregoing reasons, then, the District urges the Arbitrator to adopt its proposal as the more reasonable of the two final offers on this issue.

Overall, I agree with the District that its proposal of a 5% per shift premium at the straight time rate is reasonable. Presently, the record establishes, Ranger Officers designated as Officers-in-Charge are paid no premium at all, and thus, I find, the District's final offer of 5% demonstrates recognition on the part of

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<sup>18</sup> City of Rock Island and IAFF, Local 26, S-MA-06-142 (Kossoff, 2007).

Management that employees so assigned bear more responsibility, and likely have more tasks to perform than they would otherwise.

Whether 5% is actually a more reasonable offer in terms of its scope is another matter, and external comparability is particularly useful on this question. As the District notes, Lake County Forest Preserve District officers receive a 10% premium for every hour they perform service as Officer-in-Charge. Interestingly, the situation in Lake County is not so clearly favorable as a comparable on this issue, because a sample calculation reveals that Lake County's premium is substantially lower than what the Union has proposed on this issue, I find. First, the Union relies on an interest arbitration involving a municipal firefighter union in support of its assertion that the District's proffered 5% is "below that received by other public safety employees for officer in charge pay." But there are differences in work schedule, benefits, and other terms and conditions of employment that make this assertion questionable, I hold. For example, the District in its brief presented the following scenario for the benefit of the Arbitrator: "Assume, for example, that an officer works three hours as an officer-in-charge and that such officer's straight-time hourly rate of pay is \$30.00 per hour. Whereas the officer would be paid \$45.00 [in premiums] based on the Union's final offer (i.e., one hour of pay at the overtime rate), under the Lake County FPD contract the officer would be paid only \$9.00 [in premiums]. (i.e., 10% of \$30.00 = \$3.00 x 3 = \$9.00).

Consequently, even if an officer in this District were to work a full 8 hours as officer-in-charge, based on the Union's final offer,

that officer would be paid \$45.00 [in premiums]. Under the Lake County FPD contract the officer would be paid only \$24.00 in premiums, I note.

In the above comparison, I recognize, in terms of actual dollars, Lake County FPD officers are presently making more than District officers. Thus, their 10% premium for "Officer-in-Charge" pay naturally might yield more in terms of actual income for a specific officer in both groups than the scenario offered by the District. In other words, the illustration as it is presented is based upon percentages alone, and in order to compare "apples to apples", an assumption had to be made that base pay between the two groups was identical.

The Union did not offer any evidence, in this case, in terms of actual dollars, that the Rock Island firefighters would be similarly impacted, i.e. how its proposal of two hours at the overtime rate would have played out for those firefighters "acting in charge" in Rock Island, would have stood up to their comparables, I note.

Also important is the fact that members of the other accepted externally comparable unionized group, officers employed by the McHenry County Conservation District, do not presently receive a negotiated Officer-In-Charge premium at all. I have not used the Will and Kane County Forest Preserve Districts in direct comparison here, but they do not have officer-in-charge premiums, I note in passing.

For all the foregoing reasons, I find the District's final proposal on the economic issue of Officer-In-Charge pay to be more

appropriate and consistent with the standards of Section 14(h). It is adopted on that basis.

**D. Economic Issue # 4 - Court Standby Pay**

As to the issue of "Court Standby Pay", the Union proposes that "an officer who is required to be on stand-by for court shall be compensated for a minimum of two hours at the applicable overtime rate of pay. Court stand-by is defined as a period of time when an officer is placed on stand-by status due to a trial or court hearing in progress or anticipated to begin which requires the officer's presence..." This premium, the Union argues, should be paid whether or not the officer is ever actually called to court.

A careful reading of the above language indicates no stated distinction between duty and off-duty status for this premium. Certainly, at face value, this is problematic, as an officer on duty cannot, in the traditional sense, also be on standby. In other words, the District would certainly be entitled under Tentative Agreement Article III (Management Rights) language to "assign.... direct and supervise Police Officers" while they are on duty. Nevertheless, the Union's language distinctly differs from the already tentatively agreed language of Section 9.7 (Court Time), which states:

Employees who are required to make court appearances on behalf of the District during times that they are not scheduled to work will receive pay for all hours worked at the rate of one and one-half (1½) times their regular hourly rate, with a minimum guarantee of two (2) hours. The minimum guarantee shall not apply if court time continuously precedes or follows an employee's working hours (either regularly scheduled or overtime), in which case the employee will be paid only for actual hours worked. (Emphasis added) (Joint Ex. 4).

Thus, the Union's language could be construed to mean that an Officer might be "on standby" or considered in "standby status" if he or she has been notified that a court appearance is pending, regardless of his or her duty status. If Court Standby is considered by the parties to be a "premium", then TA'd Section 9.10 prohibiting pyramiding does not apply. However, if it is "pay" in the true sense, which the Arbitrator is convinced that it is, then an Officer's off-duty status is implied in the language of both proposals (even though it is only expressly stated in the District's), as pyramiding would occur if the officer received two extra hours of overtime while already on duty and under pay.

As to the District's actual proposal on Economic Issue No. 4, it is stated that, "The District's final offer on this issue is that there is insufficient justification to provide court standby pay and that therefore the parties' first collective bargaining agreement should not have any provision for court standby pay."

This argument is somewhat confusing, given the fact that the parties' Tentative Agreement (Joint Exhibit 4) already contains the "Court Time" language set forth hereinabove. However, the matter was clarified at the interest arbitration hearing in this matter, when District counsel stated that the District merely memorialized in cited Section 9.7 what the practice regarding court appearances presently is." (Tr. 203). In other words, the District acknowledged in Section 9.7 of the Tentative Agreement that "court time" will be paid as actual time worked at the overtime rate of pay with a two-hour minimum, on any day an officer who is not scheduled to work is

nevertheless required to appear on behalf of the District in court. This then, I hold, is not the "stand-by" pay proposed by the Union.

Thus, in this proposal, the District seeks to maintain the negotiated (TA'd) status quo which officers in the bargaining unit are presently receiving outside the confines of this new Agreement, it is to be noted.

On the other hand, the Union argues that there is inconvenience to officers required to be available for court (presumably while off duty). That indisputable fact merits compensation, whether or not they are actually called to appear, says MAP. The District, as previously noted, seeks to keep things the way they are; that is, actual pay at the overtime rate if called while off duty, with a two-hour minimum, I understand.

To determine which of the two proposals is more reasonable, external comparability again proves useful, I find.

Relevant Section 9.7 of the incumbent Lake County Forest Preserve District contract with FOP states:

Court Time - Employees required to attend Court as a result of their employment with the District during their off-duty hours which do not immediately precede or follow an employee's regularly scheduled working hours shall be compensated at the overtime rate for a minimum of two (2) hours at the appropriate overtime rate or be compensated for the actual time worked, whichever is greater, at the overtime rate.<sup>19</sup>

Applicable Section 18.2 of the incumbent McHenry County Conservation District contract, also with FOP, states:

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<sup>19</sup>U. Ex. 34 at p. 9.

Employees covered by this Agreement who are required to attend court or inquests outside their regularly scheduled work hours shall be compensated at their appropriate rate of pay with a guaranteed minimum of two (2) hours or time served, whichever is greater.<sup>20</sup>

As one can readily observe, both externally comparable collective bargaining agreements, for all intents and purposes, mirror the tentatively agreed-upon language in Section 9.7 of this new contract. Moreover, that language comports with the practices already in place at the District.

Apparently, then, the Union has withdrawn its support for Section 9.7 and now seeks a new, and heretofore enhancement in "court-related" compensation. The Union desires to re-name Section 9.7 from "Court Time" to "Court Standby," as I read the evidence. Upon the whole of this record, and in light of the fact that there is no external backing for this demanded enhancement, I am convinced that no change should be made to language the parties have already tentatively agreed to relative to pay for attending court, and I so rule.

I recognize, for the Union's benefit, that I have no statutory obligation to automatically adopt tentative agreement language on the sole basis that at some point in time during negotiations it was considered acceptable on both sides of the table. Certainly, negotiations are fluid, and as they progress and "quid pro quo" comes into play, circumstances could change such that certain tentatively agreed language no longer makes the sense it once did (hence the word

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<sup>20</sup>Er. Ex. 3 at p. 21.

"tentative"). However, such is not the case here. In my view, the Union has failed to establish, as it necessarily must have done, why court time provisions agreed to at the table are now unacceptable, and further the Union has failed to offer some demonstrable quid pro quo for the enhancement it currently proposes at arbitration.

For all the foregoing reasons, I find the District's proposal that tentatively agreed Section 9.7 language should remain intact with no change. I thus resolve Economic Issue No. 4 in the District's favor as more appropriate and consistent with the standards of Section 14(h). It is so adopted.

**E. Economic Issue No. 5 - Sick Leave Accrual**

The parties' respective sick leave accrual proposals are set forth in detail in Section IV above. In relevant part, the Union argues that the Arbitrator should adopt its final offer because it more nearly comports with statutory factors as set forth in Section 14(h) of the Act. The Union further argues that its proposal is substantively more similar to the norm among other represented public safety groups than is the District's. In point of fact, the Union argues, even the District concedes that the standard sick leave accrual rate for municipal law enforcement officers is one day (8 hours) per month. (Tr. 191).

The Union also rejects the District's proposal because it merely restates the non-negotiated status quo which exists District-wide and represents roughly half of what other public safety bargaining units are awarded for this benefit.

The District, on the other hand, urges the Arbitrator to adopt its final proposal "since it will maintain District-wide uniformity on this generous fringe benefit."<sup>21</sup> The District argues that the premise of uniformity of benefits among Employer groups has been repeatedly supported in interest arbitrations, and should be given controlling weight here. In support, the District cites City of Elgin and IAFF Local 439, (Krinsky, 2005), wherein the arbitrator ruled that, "...an item such as the administration of sick leave benefits should be uniform within a municipality wherever possible, in order to avoid confusion and unfairness." Likewise, the District argues, Arbitrator Thomas Yaeger ruled in favor of the Employer in Village of Schaumburg and MAP, (2007) on the basis that deviation from uniform policy is a "type of change best achieved through mutual agreement rather than imposition by a third party."

Though the Union's attempt to contend that the Employer's sick leave accrual rate is low, the District submits, there is no evidence that this accrual, as a benefit, is "inadequate to serve [its] intended purpose or that [it has] worked a hardship on bargaining unit employees."<sup>22</sup> In any event, the District states, even if the sick leave accrual rates proposed by the Employer "may be somewhat less than some other public Employers provide, the very generous provisions

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<sup>21</sup>District brief at p. 31.

<sup>22</sup>District brief at p. 32.

governing the payout of unused sick leave at termination more than make up for any perceived concern over the accrual rate..."<sup>23</sup>

After reviewing the record, particularly the evidence relative to the two primary externally comparable bargaining units, I am convinced that, at least as far as accrual rates are concerned, the Union's final offer is more reasonable and in ordinary circumstances should be accepted. I say should be, because the record establishes that the District's present policies with specific respect to the accrual of sick leave, are roughly half the norm for public safety bargaining units in general. More to the point, the District's present policy with specific respect to the accrual of sick leave is also roughly half that of the two externally comparable jurisdictions of Lake County Forest Preserve District and McHenry County Conservation District, I stress.

Section 14.2 of the current McHenry County/FOP Collective Bargaining Agreement states:

All full-time employees shall be entitled to sick leave without loss of pay, earned at a rate of one (1) eight (8) hour day for every full month of active duty..."<sup>24</sup>

Similarly, Section 12.1 of the incumbent Lake County/FOP Collective Bargaining Agreement provides in relevant part that:

Employees shall accumulate paid sick leave at the rate of one (1) day for each month's service..."<sup>25</sup>

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<sup>23</sup> District brief at p. 33.

<sup>24</sup> Er. Ex. 3 at p. 16.

<sup>25</sup> U. Ex. 34 at p. 12.

Thus, without even looking at payout rates at this juncture, one can easily see that the Union's proposed accrual rate of "five (5) hours per bi-weekly pay period," while slightly higher than both comparables cited above, is closer to the norm than the accrual rate proposed by the District.

I also find the District's "uniformity" argument not persuasive in this particular case for a number of reasons. First, this record indicates that all but the District's Ranger Police Officers are not represented by a union for purposes of collective bargaining. Thus, sick leave accrual policies are in place pursuant to a unilateral Management mandate, and do not represent a negotiated status quo with other internally comparable bargaining units. True, the District does cite two other DuPage County bargaining units having sick leave accrual provisions consistent with existing District policy. However, these bargaining units are not within the District, and thus are not available for comparison with this particular Employer as to collectively bargained sick leave provisions. Thus, the District's selective reliance on those alleged "internal comparables" is misplaced, I hold.

Moreover, in my opinion, while accrual of sick leave is indeed a "benefit" of employment, it is distinguishable from health and welfare benefits where the County of DuPage might purchase a plan for everyone in order to keep costs to both Employer and employee affordable. It is in that particular arena of health benefits costs that interest arbitrators have often ruled that consistency is necessary to maintain continuity of benefits across bargaining unit

lines for large groups of employees while at the same time keeping overall costs to the Employer in check, I stress.

I duly note the District's reliance on Village of Schaumburg; supra, wherein Arbitrator Yaeger apparently ruled in favor of consistency across bargaining unit lines on the issue of sick leave buyback. However, I cannot similarly rely on it without knowing why he decided the way he did. Certainly, what is readily discernable from the District's citation is that Arbitrator Yaeger was dealing with a municipal police department, and that is clearly not the case here. Moreover, there is no indication in this record that Arbitrator Yaeger was working with an initial contract where the parties had no prior negotiated status quo or, in the alternative, a history of following similarly situated public service bargaining units in order to gain a viable and timely contract.

For all intents and purposes on this issue, the District essentially urges the Arbitrator to negate the bargaining process in favor of adopting a unilateral policy promulgated by Management, simply to keep everyone "on the same page" in terms of accruing (and also paying out) sick leave benefits. Adopting this logic, in my view, would be tantamount to abandoning my duty under the Act to select one of two "last best offers" which more closely complies with established statutory criteria. On the face of things, in terms of accrual rate alone, the Union's proposal should win the day. However, for one very important omission, it cannot.

For ease of reference, I will cite the Union's exact proposal, because the manner in which it is framed has ultimately proven fatal to the cause. In relevant part, it states:

Sick Leave Accrual. Police Officers will accrue sick pay at a rate of five (5) hours per bi-weekly pay period, provided that a Police Officer shall not be permitted to accrue any sick pay beyond the total maximum accrual of 2,000 hours.

Thus, according to this language, there are only two contractual conditions upon which the accrual of sick leave is based: the employee accruing sick leave must be a "Police Officer" within the intent and meaning of the Agreement, and that "Police Officer" may not accrue sick pay beyond a total maximum of 2,000 hours. But absent from the Union's proposed language is any requirement that the "Police Officer" also perform some amount of qualifying service. In other words, any "Police Officer" being carried on the payroll, whether active or not, would continue to accrue sick leave with every passing "bi-weekly pay period" according this language.

Article X of the parties' tentative agreement contains all other sick leave provisions as follows:

Section 10.1 - Purpose and Use

The purpose of sick leave is to provide an employee with protection against loss of income due to the Officer's personal sickness or injury that prevents the Officer from performing his/her normal job duties. Sick leave may not be used for an illness or injury incurred as a result of secondary employment. All secondary employment that is inconsistent with the purpose of the sick leave must be discontinued while on approved sick leave.

If an Officer is unable to work due to illness, the Officer must inform his/her supervisor if at all possible at least one hour prior to the start of the scheduled work day. An employee's failure to inform his/her supervisor each day of absence, or at agreed intervals in the case of an extended

illness, will result in a loss of that day's pay. Officers will comply with reasonable reporting rules as may be established by the L.E. Director.

In order to receive pay for a sick leave day that occurs immediately before or immediately after any other regularly scheduled paid day off the Officer must establish proof of sickness to the reasonable satisfaction of the L.E. Director or his designee.

Section 10.2 - Sick Leave Accrual

THIS SECTION, ALONG WITH SECTION 10.4 IS ONE OF THE UNRESOLVED ECONOMIC ISSUES

Section 10.3 - Miscellaneous

It is specifically agreed that the District retains the right to audit, monitor, and/or investigate sick leave usage and, if an employee is suspected of abuse or if the employee has prolonged and/or frequent absences, to take corrective action, including such actions as discussing the matter with the employee, requiring that documentation be provided to substantiate the use of sick leave for the purpose set forth in Section 10.1 above, the requiring that the employee seek medical consultation, institution sick leave verification calls (for employees suspected of abuse, including employees who are frequently absent), and/or where appropriate, taking disciplinary action, including dismissal, subject to the contractual grievance and arbitration procedure.

Section 10.4 - Monetary Compensation Upon Termination

THIS SECTION, ALONG WITH SECTION 10.2, IS ONE OF THE UNRESOLVED ECONOMIC ISSUES<sup>26</sup>

I have cited the sum total of Tentative Agreement language as it pertains to sick leave for one important purpose, that is, to demonstrate that nowhere else in Article X have the parties stipulated as to how sick leave may be accrued. Thus, their respective final offers before me represent complete proposals as to sick leave accrual.

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<sup>26</sup> Joint Exhibit 4 at p. 16.

It is obvious, from reading the above, that the Union's language as it stands, does not require that any service be rendered by an officer covered by this Agreement in order to accrue sick leave. In contrast, the District's proposal states in relevant part that:

After completion of the first calendar month, full-time officers who are in pay status for at least 120 hours for the month in question will accrue sick leave based on the following schedule... (Emphasis added).

Thus, while the District's proposed accrual schedule is approximately half that of the Union's, and well below that of accepted external comparables, there is a requirement that officers be in "pay status" for a minimum of 120 hours in the month for which sick leave benefits are accrued. This is distinctly different from the Union's silence on the matter of qualifying service or duty status during a month or "bi-monthly pay period" in which sick leave benefits may be accrued, I hold.

As previously cited language demonstrates, both accepted externally comparable Collective Bargaining Agreements also stipulate service requirements for the accrual of sick leave benefits. Lake County Forest Preserve District officers accrue sick leave at a rate of one day for each month's service. (U. Ex. 34 at p. 12). Similarly, McHenry County Conservation District's full-time officers earn sick leave at a rate of one eight-hour day for every full month of active duty. Additionally, the McHenry County contract as a comparable in this matter is even more restrictive than that of Lake County, in that it requires officers eligible for sick leave benefits to be "full-time" and "on active duty."

I am not saying for purposes of this Award that I find McHenry County provisions to be more reasonable than those of Lake County in terms of comparability to either of the two proposals before me (though it more closely aligns with what the District has proposed in terms of qualifying requirements). Instead, the point here is that the Union's current proposal in the instant case contains no qualifying criteria at all, and clearly this approach is a major departure from the norm. I cannot reform the proposal since it is an economic one, I also rule.

Because I will award the District's proposal on that basis exclusively, I will not comment here on the further matter of pay-out schedules, since I am not privileged under the statute to "cherry-pick" from either proposal, I again note. The District's pay-out schedule must automatically be adopted along with the rest of Article X proposed language, since both sections 10.2 and 10.4 have been presented to me as a single economic issue.

As to the Union's objection to the District's condition on sick leave pay-out concerning dismissed employees, I do not find that it supersedes my concern for the "lack of service" requirements in the Union's accrual proposal. Moreover, even the Union's proposal on the issue states that pay-out will be made to officers "who leave the employment of the District in good standing." I submit that one reasonable reading of this section is that dismissed officers are not, in fact, "in good standing" at the time they leave the employment of the District. Either both the District and the Union are essentially

saying the same thing on this point, or they are buying a grievance arbitration if the Union's proposal were to be adopted, I hold.

For all the foregoing reasons, then, I will adopt the District's proposal with the following express caution. The District cannot view my decision in this matter as approval of the arguments it has promulgated in support of a sub-standard accrual schedule. Internal consistency with non-represented employees of the District is not a viable argument, in my view, because the benefit of sick leave is distinctly different from health and welfare benefits such as insurance, which arbitrators have endeavored to keep consistent for other important reasons.

I resolve Economic Issue No. 5 in the District's favor as more appropriate and consistent with the standards of Section 14(h), and I adopt the District's proposal on that basis.

**F. Economic Issue No. 6 - Departmental Meetings/Training**

The Union's final offer on the outstanding issue of pay for departmental meetings and training proposes that officers be paid "at the applicable overtime rate of pay for all time spent in Departmental Meetings, Firearms Training, and General Training... The Patrol Officer shall be paid for the actual time spent at the meeting, practice or program, or for two hours, whichever is greater at the applicable overtime rate... Officers shall be compensated for travel time to and from said training."

In defense of its proposal, the Union argues that the purpose of its proposal "was to compensate bargaining unit members at their applicable overtime rate for all time spent in mandatory training

outside the employee's regular shift." (Emphasis original, U. Brief at p. 71). The Union also states that internal administrative inconsistencies with respect to allowance of travel time for purposes of attending training prompted its universal proposal with respect to travel time. (Tr. 99). The two hour minimum comports with external comparable data, the Union argues further, and thus, the Arbitrator should adopt its proposal on this economic issue.

The District stresses two major differences in the two proposals concerning training and attendance at mandatory departmental meetings. First, the District argues, the Union's proposal demands travel time "to and from said training." The District's offer, on the other hand, states just the opposite; "Officers shall not be compensated for travel time to and from such meetings or training that fall outside of their scheduled hours of work for the day in question."

Second, the District contends that their final offer of pay at the appropriate rate for actual time spent attending departmental meetings and training with a two-hour minimum is reasonable. It means, the District points out, that under proposed language, an officer who attends training and/or meetings during regular duty hours continues to earn actual time at the straight time rate. This, the District argues, stands in sharp contrast to the Union's proposal that the same time be paid at the premium overtime rate.

District officers are also provided with patrol vehicles, the Employer goes on to assert. It is therefore a "generous benefit," the District submits, since officers travel to and from work at no

personal cost. That fact alone, the District argues, more than offsets any time spent traveling outside regular duty hours. The District further stresses that officers required to attend training or departmental meetings outside normal working hours under its present proposal will be compensated for actual time worked (with a two-hour minimum) at the applicable overtime rate. This proposal is reasonable and thus should be adopted, the District argues.

On this issue, I find that the District's proposal is the more reasonable one. First, while the Union submits in its post-hearing brief that the purpose of the language was to provide for overtime outside duty hours, this is not what its final proposal says. In point of fact, the Union proposes that overtime shall be paid for all time spent in departmental meetings, firearms training and general training. Second, in my opinion, there is no distinction between on-the-clock and off-duty mandatory training in the Union's offer here, in light of the word "all", between duty and off-duty time.

In sum, I do not find it sensible that any officer should be paid for training and departmental meetings at the overtime rate of pay if he or she is already on duty. Moreover, the District has agreed to pay actual time worked on off-days at the overtime rate, with a two hour minimum.

Furthermore, examination of these proposals in the context of external comparability reveals that the District's offer is comparatively reasonable. Specifically, Section 10.8 of the incumbent Lake County contract with the FOP provides that:

Employees attending authorized mandatory training outside of the regular shift approved by the Employer shall be paid

time and one-half their regular hourly rate of pay for all time spent outside of the regular shift attending mandatory training with a two-hour minimum. (Emphasis added). (U. Ex. 34 at p. 11).

No travel time is awarded in this FOP/Lake County contract. Thus, for purposes of comparison, the Union's favored comparable nearly mirrors what the District has proposed here, I specifically note.

As to McHenry County Conservation District provisions concerning mandatory training, Section 18.5 (Training Travel Time) of the incumbent contract states that:

Officers are not compensated for travel time in compliance with the Fair Labor Standards Act. A day of training is considered a regular shift per the schedule. Officers have the option of using a District vehicle if one is available... Officers whose assigned training day is four (4) hours or less will be obligated to report back for duty to complete the remaining hours of their shift or the option to request benefit time. Any training class over four (4) hours will be considered a regular shift and the Officer will be compensated appropriately. Officers who on training days have to be switched; i.e., to address multiple day training classes will be given time off prior to or after the training. Officers who are attending a five (5) day class on a three (3) day off week will have the (3rd) day off, be bumped forward or backwards depending on the pay period. (Er. Ex. 3 at p. 21).

In this provision of the MCCD contract then, it is apparent that those officers in McHenry County are not normally required to attend training on their days off. When they are required because of class duration, they are given alternate rest days instead of premium pay. The fact that travel time is excluded from this rule is also expressly stated, I note.

Thus, I find, the District's proposal closely resembles applicable language in both the primary externally comparable

Collective Bargaining Agreements, and is also more reasonable in its scope than what the Union has proposed, in my opinion.

Therefore, for these reasons, I resolve Economic Issue No. 6 in the District's favor as more appropriate and consistent with the standards of Section 14(h), and I adopt the District's proposal on that basis.

**G. Economic Issue No. 7 - On-Off Designation**

The Union's last best offer on this final outstanding economic issue states that, "At the beginning of each shift, Officers who are assigned take home patrol vehicles shall be considered 'on-duty' when, upon entering their assigned patrol vehicle, they notify the dispatch center via radio of their duty commencement. Officers shall be accordingly compensated as such. At the end of a shift, officers will likewise notify the department dispatch center and shall when be considered 'off-duty.'"

The District's proposal, which is substantively similar, states: "At the beginning of each shift, Officers who are assigned take home patrol vehicles shall be considered 'on-duty' when they sign on to the CAD system and notify the dispatch center via radio of their duty commencement, provided that they must be in DuPage County at such time. At the end of their shift, officers will likewise sign off on the CAD system and notify the department dispatch center and shall then be considered 'off duty,' provided that they must be in DuPage County at such time. Officers shall be accordingly compensated as such."

Careful reading of both proposals reveals three differences which are really relevant to this bargaining unit alone. In other words, assessment of proposed language in terms of external comparability in this particular case is not particularly helpful. The first variance between the two offers presented to me has to do with the actual wording concerning patrol vehicles. The Union says that an officer shall be considered on duty upon entering his/her assigned patrol vehicle. The District puts a slightly different spin on the same idea in stating that an officer "who is assigned a take home patrol vehicle" shall be considered on duty when he or she enters the vehicle and is signed into the CAD system."

The District argues that the Union's language could be construed down the road to require that every officer be assigned a take-home patrol vehicle. Whether or not this is actually true; in other words, whether or not a grievance arbitrator might in the future interpret the language to imply such a requirement, is pure speculation at this point.

However, I view the distance between the parties on this point to be so slight that leaning in the Union's favor would not be unreasonable. I do not construe any particular "patrol car" requirement in the Union's language. There is no disputing the fact that at present (even under the parties' tentative agreement) there is no requirement that the District assign each and every officer a take-home vehicle. Thus, to say "who is assigned a vehicle" does not open the issue to the expansion the Employer argues, in my view.

Second, the District and the Union differ in the requirement that an officer must be "signed on to the CAD system" before he or she is considered on duty. The District's proposed language requires this, while the Union's does not. Again, I find that the two proposals do not differ materially in any important respect. Additionally, the evidence indicates that signing on to CAD is already the practice and reality dictates that an officer is not fully capable of responding to a call until all systems are "go."

Finally, there is the more problematic matter of the District's requirement that officers be within the confines of DuPage County before they are considered on duty, and sign off duty before they depart DuPage County at the end of the day. This is a requirement in the District's proposal which is absent in the Union's. Indeed, it is the thorniest of the three relatively minor differences in proposed On-Off Duty language. Interestingly, the District neither addresses nor defends this difference in post-hearing argument. Nor, for that matter is the requirement restated in the District's summary of this issue in the "Argument" section of the brief. Whether the omission was intentional or not, because it is included in the District's final proposal, it must be dealt with in a meaningful way.

The Union's primary argument here is that the District does not presently have a residency requirement, and thus any condition of employment even touching upon the residency issue is off limits to me. I would indeed agree, if the disputed language before me contained some restriction as to where District officers may or may not live. However, that is absolutely not the case here.

In point of fact, a District officer is not legally authorized to exercise his or her duties in an official capacity until the confines of DuPage County have been entered. However, I find it reasonable that an officer may be considered on duty at such time as he or she has signed on even if he or she is physically within the limits of DuPage County. The officer may be called upon to respond at that point to duties within the County, I hold. Similarly, at the end of the day, when he or she has departed DuPage County, they may be called upon to return and are authorized to perform in a professional capacity on behalf of the District or DuPage County.<sup>27</sup> Therefore, I find, on balance, that the Union's proposal is more reasonable.

For this and all the foregoing reasons, I resolve Economic Issue No. 7 in the Union's favor as more appropriate and consistent with the standards of Section 14(h), and I adopt the Union's proposal on that basis.

#### **H. Non-Economic Issue No. 1 - Fair Share**

While there was extensive discussion in the record on the issue of fair share, the governing principles of fair share contributions have already been established by the United States Supreme Court. As the parties well know, in Aboud v. Detroit Board of Education, 431 U.S. 209 (1977), the Court rejected a claim that it was unconstitutional for a public Employer to designate a union as the exclusive collective-bargaining agent of its employees, and to require

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<sup>27</sup> I do not view this discussion to apply to any duty assignment issued by the Employer after "sign-in" which requires bargaining unit officers to traverse county lines during the course of business.

nonunion employees, as a condition of employment, to pay a fair share of the Union's cost of negotiating and administering a collective bargaining agreement.

In subsequent Chicago Teachers Union v. Hudson, 475 U.S. 292 (1981), where I was the original hearing officer, the Court went on to address the process by which fair share contributions may be collected in accordance with Abood, supra, and further how a nonunion employee may bar the Union from spending fair share contributions in ways which violate their constitutional rights.

Neither of these parties endeavors to depart from either Abood or Hudson. There is though some dispute as to exactly how the two decisions should be held in a manner consistent with one another and memorialized in this first contract. The Union proposes relatively generic, and what it argues is "standard", fair share language calling for contributions of non-union members to commence "thirty days after the effective date of this Agreement," and continue for purposes of "collective bargaining and contract administration services tendered by MAP as the exclusive bargaining representative of the Officers covered by this Agreement," I note. The Union further directs that the District shall make such deductions and pay them to MAP monthly, and in turn provide the District with a list and affidavit concerning the names of non-union members for purposes of fair share deductions.

The District's proposal, on the other hand, provides for deduction to begin "sixty days after employment or sixty days after the date this Agreement is executed." The District's proposal also contains standard deduction language, but further establishes a

contractual requirement that the Union comply with Hudson by agreeing to:

- Give timely notice to fair share payers of the amount of the fee and an explanation of the basis for the fee
- Advise fair share fee payers of an expeditions and impartial decision-making process whereby fair share fee payers can object to the amount of fair share fee
- Place the amount reasonably in dispute into an escrow account pending resolution of any objections raised by fair share fee payers to the amount of the fair share fee.

Hudson, the Union acknowledges, requires three things: (1) an adequate explanation of the basis for the fee, (2) a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, and (3) an escrow for the amounts reasonably in dispute while such challenges are pending.<sup>28</sup> However, the Union argues, the District's proposal goes beyond Hudson in several significant ways.

First, the Union argues, Hudson says nothing about requiring the Union to give "timely notice", but rather only mandates an "adequate explanation of the basis for the fee." Second, the Union claims, the District's proposal requires that the Union "advise fair share payers of an expeditions and impartial decision-making process" for purposes of objecting to the amount of the fee. Again, the Union notes, Hudson requires nothing of the kind. Instead, says the Union, Hudson holds that non-union employees have the burden of objecting to

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<sup>28</sup> 475 U.S. at 310.

fees.<sup>29</sup> Third, the Union argues, there is no need to "regurgitate" Hudson requirements as to establishing escrow accounts for disputed contributions pending resolution, as MAP recognizes and complies with Hudson in every other Fair Share bargaining unit. In other words, the Union argues, its obligation to comply with Hudson is absolutely understood in its proposal.

Finally, the Union disputes the District's concern that it will be the subject of litigation as a "state" action deducting fair share contributions from non-union employees. First, the Union argues, the District has presented no evidence that MAP's practices have ever been challenged as improper or illegal. Furthermore, the Union argues, Article II indemnity language already covers any potential for District exposure on this issue.

It is true, the District acknowledges, that it has concern for the ultimate use of fair share deductions on the part of this Employer. "It cannot be emphasized too much that it will be the District's action in mandatorily deducting from non-union members the fair share fee and remitting to the Union that constitutes the 'state action' that is the legal predicate for the numerous lawsuits that are filed each year challenging the constitutionality of fair share clauses. As a result, the District very much believes that if it is willing to agree to a fair share clause, as it is in this case, then the fair share clause should set forth the specific constitutional

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<sup>29</sup> 475 U.S. at 307.

obligations of this Union to fair share fee payers." (Er. Brief at p. 41).

There, then, lies the heart of this matter. The District wishes to have language expressly memorializing constitutional obligations pursuant to Hudson and also indemnifying it from action in the event a fair share payer initiates legal challenge as to the Union's use of fair share contributions. The Union, on the other hand, is not willing to negotiate language which adds to its constitutional obligations under Hudson. I see both points, and fortunately, since this is a non-economic issue, I have some latitude in crafting language which would address both valid concerns and still stay within my statutory (and in this case constitutional) boundaries.

As the Union argues and both parties acknowledge, fair share language is routinely incorporated into modern Collective Bargaining Agreements in accordance with the United States Supreme Court's ruling in Abood. Fortunately, it varies slightly from contract to contract, so there is room to craft provisions on this particular occasion which adequately address the parties' expressed concerns, and in particular the District's desire to "contractualize the Union's Hudson obligations to fair share fee payers" (Er. Brief at p. 40), without, as the Union argues, adding to them.

Therefore, I submit the following Section 2.3 language in lieu of the proposals proffered by both parties:

**Section 3.2 - Fair Share**

During the term of the Agreement, Police Officers who are not members of Metropolitan Alliance of Police (hereinafter "the Union") shall, commencing thirty (30) days after the effective date of this Agreement, pay a fair share fee to

the Union for collective bargaining and contract administration services rendered by the Union as the exclusive representative of the employees covered by said Agreement, provided the fair share fee shall not exceed the dues attributable to being a member of the Union. Such fair share fees shall be deducted by the District from the earnings of non-members and remitted to the Union on a monthly basis. The Union shall periodically submit to the District a list of the members covered by this Agreement who are not members of the Union and an affidavit which specifies the amount of the fair share fee. The amount of the fair share fee shall not include any contributions related to the election or support of any candidate for political office or for any member-only benefit.

The Union agrees to assume full responsibility for insuring complete compliance with the requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson, 106 U.S. 1066 (1986), with respect to the constitutional rights of fair share payers. Non-members who object to this fair share fee based upon *bona fide* religious tenets or teachings shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed upon by the employee and the Union. If the affected non-member and the Union are unable to reach agreement on the organization, the organization shall be selected by the affected non-member from an approved list of charitable organizations established by the Illinois State Labor Relations Board and the payment shall be made to said organization.

The above language, which I find appropriate and consistent with the standards of Section 14(h) and also my statutory authority under the Act, shall be adopted into this Agreement in lieu of all proposed Section 2.3 language submitted to me by the parties.

**I. Non-Economic Issue No. 2 - No Solicitation**

As to the final outstanding issue of "No Solicitation" language, the Union argues that what is proposed here has been ratified by many other bargaining units, as MAP, not unlike many other organizations, "has and will continue to utilize fund raising in order to defray the costs and expenses of managing a labor Union." In support, the Union cites no fewer than 17 Illinois Collective

Bargaining Agreements which contain language substantively similar to that which it has proposed here.<sup>30</sup> Essentially, the Union states, the no solicitation provisions proposed by MAP in this case are substantively identical to the no solicitation language adopted by this Arbitrator in Western Springs and MAP, Chapter 360, March, 2007.<sup>31</sup> That language, the Union argues was derived from Village of Bensenville and Metropolitan Alliance of Police, 14 PERI 2042 (ILRB, 1998), which has served well in Illinois as a historical template for solicitation/no solicitation provisions since 1998. Thus, the Union argues, what is proposed here closely resembles the norm, and should be adopted.

The Union also argues that the District's language should be rejected on the basis that it proposes "liquidated damages" for violations of no solicitation language. Not a single contract among its other bargaining units, the Union argues, contains such a clause. Clearly, the Union notes, the District is evidently concerned about solicitation, but has not offered any compelling justification for the fresh restrictions it proposes.

At arbitration, the Union acknowledges, the District expressed its belief that, first, there exists a perception among members of the public that they will be treated differently (more favorably) by Ranger Police and other law enforcement personnel if they contribute

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<sup>30</sup> U. Ex. 41.

<sup>31</sup> U. Ex. 38. See also; Village of Willowbrook and MAP, Chapter 231, (Briggs, 1999, and Village of Elk Grove Village and MAP, Chapter 141, S-MA-95-11 (Goldstein, 1995)).

to the Metropolitan Alliance of Police through legal solicitation of contributions. Second, the Union notes, the District expressed concern over solicitation methods and how funds will actually be used. However, the Union argues, the District also acknowledged that its concerns regarding the Union's use of solicited funds are "editorial," and that it truly does not question the Union's charitable purposes.

To allay the District's worries, the Union points out that MAP is required to make appropriate filings with the Illinois Secretary of State's Office, and it has consistently done so. Moreover, the Union argues, citizens are free to lodge complaints with the charitable trust division of the Illinois attorney general's office. Thus, the Union submits, MAP has endeavored to negotiate language into this contract which both satisfies its fund-raising priorities and adequately addresses the District's apprehensions concerning actual solicitation practices engaged in by bargaining unit members, use of the District's name and insignia for purposes of soliciting funds for MAP, and use of District communication systems and supplies for purposes of soliciting funds for MAP. All are prohibited in standard MAP no solicitation language, and have also been prohibited in this final proposal, the Union argues.

The District, on the other hand, argues for more restrictive language based on "valid public policy considerations."<sup>32</sup> First, the District expresses concern for potential misunderstanding among DuPage County citizens concerning the actual function of MAP solicitors under

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<sup>32</sup>Er. Brief at p. 43.

its legal protection as a charitable organization. While MAP may be legally classified as a "charity" for purposes of solicitation under Illinois law and considered an exempt organization under Federal tax law, it is definitely not a charity in the ordinary sense of the word, the District argues.

Furthermore, the District objects to a frequently-held perception on the part of the public that making donations to an organization like MAP provides them with some degree of "protection" against citation or prosecution. (Tr. 163-64). Even if this perception is not accurate, the District argues, the Employer "very much believes the integrity and impartiality of its ranger police officers would be unduly compromised if they were directly involved in any solicitations on behalf of MAP."

After carefully examining both proposals, I am convinced that the only real difference between the two is the fact that the District's offer of Section 17.4 language bars members of this bargaining unit from all solicitation activities, that is, bargaining unit members may not solicit for either MAP or the District. The Union's proposal, on the other hand, expressly provides that, "Solicitation for the benefit of the collective bargaining representative [MAP] by bargaining unit employees may not be done on work time in a work uniform..." Thus, while the Union agrees that "no bargaining unit employee will solicit any person or entity for contributions on behalf of the DuPage Forest Preserve Police or the Forest Preserve District of DuPage," it is clear that the Union intends to retain the privilege of using bargaining unit members to

conduct off-duty soliciting on behalf of MAP (and not on behalf of the District) so long as they do not use the "District name, insignia, communication systems, and supplies and materials" in doing so.

When all is said and done, I do not find a substantive conflict of interest in allowing bargaining unit members to solicit on behalf of MAP, as long as they are not "connected with the District" in the minds of the individuals from whom contributions are being sought. Here, the Union specifically proposes that:

While the District acknowledges that bargaining unit employees may conduct solicitation of merchants, residents or citizens of DuPage County, the Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions on behalf of the DuPage Forest Preserve Police or the Forest Preserve District of DuPage. Bargaining Union members agree that the District name, insignia, communication systems, supplies and materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit employees may not be done on work time in a work uniform. The bargaining unit employees agree that they will not use the words "DuPage Forest Preserve Police" in their name or describe themselves as the "Forest Preserve District of DuPage. Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol, and sergeant-rank police officers employed by the District. (Emphasis added).

I further agree with the Union with respect to the District's proposal in favor of "liquidated damages" for violations of these provisions. On this point, the District has failed to demonstrate any statutory basis for departing in this particular way from what is, in a basic sense, widely accepted no solicitation language.

Accordingly, and for all the foregoing reasons, Section 17.4 of the Agreement will now read as the Union has:

While the District acknowledges that bargaining unit employees may conduct solicitation of merchants, residents or citizens of DuPage County solely on behalf of the Metropolitan Alliance of Police as its own entity, the Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions specifically on behalf of the DuPage Forest Preserve Police or the Forest Preserve District of DuPage County.

Bargaining Unit members agree that the District name, insignia, communication systems, supplies and materials will not be used for any solicitation purposes. Solicitation for the sole benefit of the Metropolitan Alliance of Police by bargaining unit employees may not be done on work time in a work uniform. Bargaining unit employees soliciting on behalf of the Metropolitan Alliance of Police agree that they will not use the words "DuPage County Forest Preserve Police" in their communications, or otherwise identify themselves with the Forest Preserve District of DuPage County. Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol, and sergeant-rank police officers employed by the District.

The above language shall be adopted into this Agreement as Section 17.4. For the foregoing reasons, I find the Union's proposal appropriate and consistent with the standards of Section 14(h) and also my statutory authority under the Act.

**IX. AWARD**

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

(1) I select the District's last offer on Economic Issue No. 1 with respect to Term of Agreement as being, on balance, supported by convincing reasons and also as more fully complying with all the applicable Section 14 decisional factors. It is so ordered.

(2) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the District's final offer on Economic Issue No. 2 with respect to Salaries because it is more reasonable and more closely complies with

the criteria of Section 14(h) of the Act than the Union's. It is so ordered.

(3) As per the discussion in the Opinion above and incorporated herein as if fully rewritten, I award the District's final offer on Economic Issue No. 3 with respect to Officer-In-Charge pay on the basis that it more closely complies with the criteria of Section 14(h) of the Act than the Union's. It is so ordered.

(4) Pursuant to the above findings and incorporated herein as if fully rewritten, I award the District's final offer with respect to Court Standby Pay on the basis that it more closely complies with the criteria set forth in Section 14(h) of the Act than the Union's. It is so ordered.

(5) As per the discussion in the Opinion above and incorporated herein as if fully rewritten, I select the District's final offer with respect to Sick Leave on the basis that, while the Union's proposal more closely complies with accrual schedules of the accepted external comparables, it contains no provision that service be performed as a condition of benefit accrual. The District's final offer is not accepted on the claimed basis of internal comparability, but is awarded on the basis that, on balance, it is more reasonable than the Union's because of its requirement that full-time officers be "in pay status for at least 120 hours for the month in question" before sick leave benefits may be accrued. The District's final offer is thus selected. It is so ordered.

(6) Pursuant to the above findings and incorporated herein as if fully rewritten, I award the District's final offer with respect to

the economic issue of pay for attending Departmental Meetings and Training on the basis that it more closely complies with the criteria set forth in Section 14(h) of the Act than the Union's. It is so ordered.

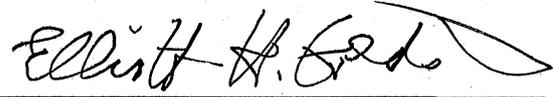
(7) For reasons set forth above and incorporated herein as if fully rewritten, I select the Union's final proposal with respect to the final economic issue of On/Off Designation on the basis that it is reasonable and more closely complies with criteria set forth in Section 14(h) of the Act than the District's. It is so ordered.

(8) In accordance with my statutory authority under the Act with specific respect to modifying proposed language concerning non-economic issues, I hereby adopt revised language as it is set forth hereinabove concerning the issue of Fair Share contributions. For reasons set forth above and incorporated herein as if fully rewritten, the revised provisions shall be substituted for the parties' proposed Section 2.3 language as they, in my view, comply with criteria set forth in Section 14(h) of the Act and also represent a recognizable and workable compromise between the two proposals which will enhance rather than usurp future bargaining on this issue. It is so ordered.

(9) In accordance with my statutory authority under the Act with specific respect to modifying proposed language concerning non-economic issues, I hereby adopt the Union's revised language as it is set forth hereinabove concerning the issue of No Solicitation. For reasons set forth above and incorporated herein as if fully rewritten, the revised language shall be included in the parties' Labor Contract

as Section 17.4 as it, in my view, complies with criteria set forth in Section 14(h) of the Act.

Date: December 10, 2009

A handwritten signature in black ink, reading "Elliott H. Goldstein". The signature is written in a cursive style with a long, sweeping flourish at the end.

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Elliott H. Goldstein  
Arbitrator