

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

City of Galena, IL,
The Employer

And

Illinois Fraternal Order of Police Labor
Council (FOP),
The Union

Illinois Labor Relations Board Case No.
S-MA-09-164

APPEARANCES

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PREFATORY STATEMENT

Before us is a deadlock over several specified issues for represented employees (7) in a 13-person municipal police unit. The unit was originally certified on March 1, 1995, and the latest labor contract expired on May 1, 2009.¹

Negotiations included a June, 2009 unsuccessful attempt at mediation. The parties' last joint bargaining session occurred on February 1, 2010. Having invoked interest arbitration on August 5, 2009 under the Illinois Public Labor Relations Act (the Illinois Statute), a transcribed hearing with the undersigned took place on March 5, 2010 at City Hall in Galena, Illinois. The parties waived using a tripartite panel and elected to make their positions and arguments, with exhibits, through summary presentations, supplemented by post-hearing briefs. Since written rebuttals were not to occur, this case was closed of record upon receipt of both briefs, June 12, 2010.

FINDINGS

1. The City of Galena, incorporated in 1826, is unique and rich in American history (noteworthy with its cadre of Civil War generals); also its architecture with some 85% of its structures appearing in the National Registry of Historical Places. Since the 1960's commercial tourism has become an increasingly stable source of income in the community, heaviest from July through October.

This is a small community, having but 3,460 residents, located in the uppermost corner of Northwest Illinois. Exceeded in visitorship only by Chicago and Springfield in the State, it caters to well over one million visitors each year with its historical sites, convention facilities, recreational events and activities, and its Main Street assembly of shops, galleries, emporiums and

¹ Reference Agreement between the City of Galena and the Illinois FOP Labor Council on behalf of the Galena Police Unit, May 1, 2005 through April 30, 2009 (Jt. Ex. 1), the third renewal agreement between the parties.

cafe's. The predominant source of revenue to the City's General Fund is visitor taxes. Close to 70% of its employment costs are covered from its General Fund, and in the eight (8) months ending 12/31/09, these visitor taxes made up 75% of its revenue. For a balanced budget for 2010-2011, the Employer is forecasting 4.8% less revenue, and consequently the need to cut expenses by 8% or an amount that exceeds \$700,000 on a total of \$8.9 million, 2.2% less in its General Fund.

The contracting parties have each endeavored to make community comparisons, but are unable to mutually agree upon a set of comparables owing to the City's uniqueness. This is their first joint experience with interest arbitration. The only element of compatibility in their views on comparability is that smaller size of resident population is one appropriate distinguishing feature. Omitted in their submissions, however, is data from the contiguous areas of Southwest Wisconsin or Eastern Iowa, both of which are visitor and labor market sources, and where both states have more than twenty (20) years more experience with labor arbitration for police personnel than the State of Illinois.²

2. In the order of appearance in the contract instrument, the parties have described the components of their bargaining impasse thusly: grievance handling process, call back pay,

² Galena's relatively remote location, still immediately surrounded by rugged ruralism, renders the exclusion of three-quarters of the circumferential area arbitrary and impractical, irrespective of the Union's cited casework involved with East St. Louis and East Moline. The process of interest arbitration is legislative, not judicial, and the "precedent" of awards written fifteen (15) years ago, while material, are less controlling than the "situation and terrain" with which confronted, to borrow from the undersigned's own long ago military service. Each of the cited cases, S-MA-95-13 and S-MA-93-114, included an abundance of credible comparisons using Illinois cities, even where the employer in the former case unsuccessfully argued its stand alone official "distressed" status.

Twenty-first century Galena is no longer a stage coach rest stop traveling to the lead mines or Dubuque from Chicago, and there is nothing in the meaning of the wording of the Illinois Statute that compels cloistered intellect, that the parties confine their scope of analysis to but one-quarter of the City's circumferential pie. Moreover, granted that speculation is the death knell for an arbitrator in writing his or her award, there would have been justified inquiry to include the terms and conditions of employment for law enforcement in Dubuque. Though not quite double the size of Freeport to the East, and formerly a factory town, it now offers similar tourism features catering to visitors, with its history, riverfront restoration, museums, tours, shops, boutiques, eateries, and a gambling casino.

personal days/leave, retention limit on discipline in personnel records, wages/duration, and employee health insurance contributions.

3. The Union represents some 450 law enforcement units in the State of Illinois, and the essence of its approach is in what it refers to as necessary catch-up improvements for this police unit it has represented for fifteen (15) years. It avers that its proposals should be viewed in the context of labor contracts it has now negotiated in the smaller Illinois communities of Geneseo, 14 full time sworn officers; Milan, 14 officers; Roscoe, 13 officers; and South Beloit, 16 officers – populations 6480, 5348, 8780 and 7602 respectively. It argues that such factors as fiscal budget, household income, and home values also make these communities demographically comparable with Galena, and submits data in support of this contention.

4. The Employer, in essence, counters that these proposed comparables exist within the competitive orbit of the populated concentrations of the Quad Cities and Rockford/Beloit. Instead, it offers more generalized data, admittedly limited but geographically closer, but even more paraxial. It refers to East Dubuque, population 1,995 (14 miles), with 7 sworn officers; Jo Davies County Sheriff's Department (headquartered in Galena), servicing a county of 12,395 residents with 20 officers; Savanna, 3,542 (30 miles), with 7 officers; Freeport, 26,443 (45 miles), with 55 officers; and Fulton, 3,881 (49 miles), with 8 officers.³

Two (2) of these law enforcement jurisdictions (County Sheriff and Freeport) have labor contracts best described as unresolved at the time of the hearing, with wage freezes at issue according to the information submitted. The Employer's documentation is sparse on terms and conditions of employment in all external jurisdictions it cites. It chiefly relies on an internal

³ Populations and distances are chiefly from the Illinois Official Highway Map, 2009-2010, published by the Illinois Department of Transportation, coupled with Section V, Law Enforcement Information published by the Illinois State Police, 2008, that includes populations and number of full time sworn officers in these jurisdictions (Ref. Un. Ex. Tab 30).

comparison: its seven (7) person Public Works Streets Department Unit represented by Local Union 722, IBT, and that four (4) year contract instrument is submitted in total.

It further contends its non-represented employees must be factored into any judgment on fairness in the treatment of employees on the property. The Employer also avers that the terms and conditions of employment in its Police Unit are the result of carefully constructed bargains, with trade-offs, in a succession of contracts, taking into account all employees working for the City; it infers it would be irresponsible to nullify what has been agreed upon in the past based upon invalid comparisons advanced by the Union.

The Employer represents it is economically constrained due to the current downturn in the local economy --- it originally proposed a wage freeze to both of its bargaining units --- yet it believes it is compelled to now make an economic proposal that is "generally consistent" with what was ultimately settled upon with its Public Works Unit in April/May, 2009.

5. Section 14(g) of the Illinois Statute instructs that "... the (arbitrator) shall identify the economic issues in dispute, ... (and) adopt the last offer of settlement which, in the opinion of the (arbitrator), more nearly complies with the applicable factors prescribed in subsection (h)."

These factors are enumerated thusly:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and 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 ... with the wages, hours and conditions of employment of the 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.

6. At contract expiration, May 1, 2009, the average length of service in the Galena Police Bargaining Unit below the rank of Sergeant was essentially a clustered 5 1/3 years, with an average rate of \$18.65 per hour. As imperfect as the comparability process is, and because of the discord over where and how the parties made their choices, all localities submitted shall be reviewable in that there are at least some elements of validity in both presentations. Where determinable, a wage or step rate that correlates with five (5) years service becomes a logically coherent basis of analysis in responding to this data aggregation.

7. Finally, by stipulation, the award incorporates all newly revised Articles, Sections and Subsections that have been agreed upon. But in that the parties used no system of joint sign off on "tentative agreements," the provisions of the previous contract instrument shall remain applicable to the extent not modified by the arbitrator on declared open issues, or to the extent modified by the parties themselves as unmistakably demonstrated in their presentations.

ISSUES TO BE RESOLVED

1. **Grievance Process Steps/Participation/Coin-Toss-Protocol (Article VII, Sections 2 & 3)**

Union Proposal

It believes the expanse of time from written grievance filing to the right to invoke arbitration is excessive and should be shortened. This should be accomplished by eliminating both Steps 4 and 5 – referred to as a Mayoral Committee and then the full City Council, with successive voting on the matter at issue. The current process consumes 101 working days, maximum, or

approximately four (4) months before arbitration can be invoked. With the Steps' elimination, the City Administrator would become the final voluntary settlement stage (Step 3), thereby shortening the process by approximately one-half. It also proposes that the oral presentation of a grievance be optional because it involves the immediate supervisor, who is Step 1.

The Union avers that under the present structure the prospect for a subsequent change in management grievance response is remote, and produces nothing more than time delay rumination; that there has been no instance in the parties' bargaining relationship where the City Council (Step 5) has done anything but reinforce the management response. Furthermore, the involvement of the full City Council, which again includes the Mayor, brings into play the provisions of the Illinois Open Meetings Act, and unfairly and unnecessarily subjects a grievant to the discretion of the City Council relative to confidentiality on a personal matter being grieved. This does nothing more than "politicize" the grievance process, subjecting what should be a genuine effort at voluntary settlement to "local city politics," which has no place in the process.

Finally, the Union proposes that arbitrator selection (Section 3) be accomplished through each party alternatively striking but one name from the submitted arbitration panel rather than two. The order of striking would continue to be determined by a coin flip.⁴

Employer Position

It is amenable to a shortened time frame, but rejects eliminating Mayoral or City Council participation in that they constitute "the representative body of the City of Galena." It would agree

⁴ The grievance process at issue calls for a written filing to the Lieutenant in charge (Step 1), after an oral attempt at resolution. This would be followed by an appeal to the Police Chief (Step 2), followed by an appeal to the City Administrator (Step 3). Failing settlement, appeal is to be made to a management committee (Step 4) composed of the Administrator, Chief and Mayor, each exercising one vote on the matter at issue. From there the issue is to be appealed to the full City Council (six (6) aldermanic persons) and Mayor (Step 5) each also exercising one vote. Only thereafter, failing settlement, can arbitration be invoked (Step 6).

that the first step include the grievant's supervisor and Police Chief. Step 2 would include both the City Administrator and Mayor, and the City Council would constitute the third Step prior to the right to invoke arbitration. It would be agreeable to allowing a grievant to waive oral presentment.

However, it offers no response to a modified coin-toss-protocol, which renders its position as no change.

The Employee adds that it "... is open to an agreement that discussions and exchanges which occur in executive session between the City Council and the grieving officer may never be released to the public as they most certainly are personnel matters. However, to remove the representative body ... is not acceptable and would create problems with other union employees of the City ...". It is "suggested that it is not in the interest of the employees to exclude the elected City Council from the process." The Employer represents being open to the construction of a procedure that would ease the Union's stated concerns but retains the involvement of the City Council.

(Although the Employer's response is in the main discernable, no specifics as to a time frame for appeal are attached to the process it is now willing to accept. Nor does it offer a write-up of language to memorialize and incorporate this response in the instrument.)

2. **Call Back Pay Guarantee (Article X, Section 7)**

Union Proposal

Minimum of 2 hours at time and one half.

Employer Position

Minimum of 2 hours at straight time (no change from current contract).

3. **Personal Days/Leave (Article XII, Section 6)**

Union Proposal

Twenty four (24) hours of personal leave to be granted annually without restriction, effective 1/1/10. Strike the requirement that the employee must sacrifice sick leave to earn personal time off.

Employer Position

Conditional conversion of twenty four (24) hours of sick leave to personal leave each contract year, dependent upon non-use of sick leave in the previous contract year (no change from current contract).

4. **Retention of Disciplinary Records (Article XIII, Section 2)**

Union Proposal

Written warning: Two (2) year removal.

Suspension: Five (5) year removal provided there is no "substantially similar misconduct."

Employer Position

Three (3) years (no change from current contract).

Permanent retention (no change from current contract).

5. **Wage Rate Increase/Contract Duration**

	<u>Union Proposal</u>	<u>Employer Proposal</u>
Retroactive to 5/1/09	3%	\$.40 per hour general increase
Effective 5/1/10	3.25%	\$.55 per hour general increase
Effective 5/1/11	3.5%	\$.65 per hour general increase
Effective 5/1/12	Expiration	\$.75 per hour general increase
Effective 5/1/13		Expiration

Whereas the parties' instrument contains no classification wage schedule as such, a separate seniority list identifies one Sergeant, one Detective/Investigator, and five (5) Patrol Officers. Each of these employees and their individual compensation appears in the instrument's appendix. Only Savanna similarly exhibits its employees among the police comparables; all others present a wage schedule or matrix. But no separate job title of Detective/Investigator appears in any of the comparable evidence submitted.

The Galena instrument does contain a separate provision for a 1% longevity increase upon completion of 5, 10, 15, 20, 25 and 30 years of service. (Ref. Longevity Pay Scale) Consequently, one officer would be eligible for this 1% bump under the Union's 3-year program, with a second officer likewise eligible at the end of the fourth year under the Employer's proposal. This is in contrast with Public Works where all but one employee will be eligible to receive such an increase in addition to their general increases over the four (4) years of \$.40, .50, .60 and .70 respectively.

The Employer, in effect, offers 5 cents more per hour in each of the last three (3) years of its Police proposal.⁵

The Union's percentage increases result in different hourly increase amounts even with the main officer force materially at an hourly average of \$18.37. The Detective/Investigator, however, currently is paid 9% above this average, whereas, the Sergeant is paid 19% more. (The current rate and differential paid the Sergeant is not necessarily attributed to union bargaining since the position and incumbent were an accretion to the bargaining unit just prior to this most recently expired contract.)

The Employer expresses the City Council's concern over the compounding effect of a percentage increase, although both the Sergeant and Detective/Investigator are significantly senior in service with 20 and 10 years respectively; also their job descriptions portray broader responsibilities than Patrolpersons.

The Employer's flat cents per hour proposal would compress the differentials in the hierarchy of jobs. The only Sergeant rate/differential shown in the City's submitted materials is from the City of Fulton: "\$3,000 annually, . . . incorporated into and made part of the employee's base wages"; except its relationship to a Patrol average cannot be determined. Effective 5/1/09, however, the stipend amounted to 7.77% over a five (5) year Step Rate of \$38,813 or \$18.66 per hour, which had advanced by 3.5% over the previous year, with another 3.5% scheduled to have taken place on 5/1/10.

Relative to the Union submitted comparables, the Geneseo contract is shown to have a 10% differential for Sergeant throughout the Step Schedule (matrix) over and above the Patrol Rates

⁵ The Public Works increases are percentaged at 2.31%, 2009; 2.82%, 2010; 3.29%, 2011; and 3.72%, 2012. The average hourly rate at the time of its contract settlement appears to have been \$17.43; the percentages annualize at 3.04%. The Employer also seeks to persuade using the increases granted non-represented employees for 2009 and 2010, 2.3% and 2.82% respectively.

shown. Although the labor contract expired on June 30, 2010, wages for a 5-year Patrolperson advanced by 3.5% on 7/1/09 to \$21.80 per hour. A maximum rated Sergeant in Geneseo, 18 years, was being paid 16 ½% more than the Galena Sergeant at the time of the Galena expiration.

The Village of Milan's contract was concluded in August, 2007 for the period 7/1/06 to 6/30/10. A Sergeant is paid an additional \$1.35 per hour over the Patrolperson rate, which amounts to a 5.6% differential, with a 5-year Patrolperson shown at \$24.08 per hour on 7/1/09, having advanced by 4%. No step improvement occurs until 6 years, at which time a 2.7% increase takes place (\$.66/hour).

There is no Sergeant Rate in the Village of Roscoe but a separate Corporal Rate, which is a stipend of \$1,500 added to the incumbent's annual salary. This equates to a differential of 2.8% over the 5-year officer rate of \$54,494.90 or \$24.95 per hour based upon 2184 hours per year. This had advanced by 3.75% in 2009 along with separate step movement of 2%. The contract expired 12/31/09, and no further information is provided.

Finally, in the Union's South Beloit contract the rank of Sergeant is excluded from the bargaining unit. A five-year police officer was making \$48,500 or \$22.21 per hour at the time of the Galena expiration. The combination general/step improvement is 9.3% in 2009/2010, with a general increase of 5% in 2010/2011, making a rate of \$55,606 or \$25.46 per hour at contract expiration, June 30, 2011, for an officer then having seven (7) years of service.

The City of Savanna, among Employer comparables, reveals a previous average Police Department rate of \$17.59 per hour for seven (7) employees, but no 5-year rate as such, having granted a 3% rate increase for 2009/2010. The average length of service was 12 years, but union representation is undeterminable. East Dubuque appears to pay all City employees from the same schedule, having granted increases of 3% effective May 1, 2009 and 3.5% on May 1, 2010. A five

(5) year employee currently makes \$16.72 per hour, but the City also appears to pay the full cost of health insurance. That worth, in hourly cents per hour, is undeterminable from the evidence submitted, but would amount to \$.72 or \$.59 per hour for the employee contribution to family coverage plans in Galena, working a 2242 straight time hourly year.

The rate situation for the Sheriff's Department in Jo Davies County and for Freeport also remains unclear from the limited information the Employer has provided. There was apparently a wage increase prescribed by contract in Freeport of 3.34% for police personnel, which employees refused to forego and a reduction in force of four (4) sworn officers has resulted.

There is a wage freeze in the Jo Davies Sheriff's Department currently in effect. The Road Deputies' hourly Step Structure, as of November 30, 2009, provides a 5-year Deputy with a rate of \$17.89 per hour. The Sergeants --- no data submitted --- reportedly are represented by the FOP Labor Council, and are pending arbitration.

As best as can be determined from this diverse data, at the time of the contract expiration, a 5-year officer among all comparables, but using the Savanna average, was being paid an unweighted hourly rate of \$20.22 per hour compared with Galena at \$18.65. Excluded is Freeport where no wage rates were entered into evidence. In view of the acclaimed touristy associated with Galena, to which it actively aspires, there is an admitted quandary over the inclusion of an even smaller, non-touristic East Dubuque, and a non-municipal Sheriff's Department in this potpourri of submissions. The Union accurately points out that cities and counties are apples and oranges; all jurisdictions are reluctantly being evaluated here strictly to equally accommodate both of the contracting parties. Even so, an 8% gap for the Galena officers is revealed from these combined submissions.

Finally, the Employer represents its Police Unit's proposed wage program is percentaged at 2.10% the first year, 2.83% the second, 3.26% the third, and 3.64%, the fourth, which it equates as a tad under 3% annually (2.96%). (Ref. Em. Ex. G3)

6. **Employee Percentage Health Insurance Premium Contribution**

	<u>Union Proposal</u>	<u>Employer Proposal</u>
2009-2010	9% max., retroactive to 5/1/09	Single coverage, 5% (was zero) + spouse, 12% (was 12%) + children, 12% (was 12%) Family, 12% (was 8%)
2010-2011	10% max.	Single, 10% + spouse, 15% + children, 15% Family, 15%
2011-2012	11% max.	Single, 15% + spouse, 18% + children, 18% Family, 18%
2012-2013	---	All coverages, 20%

Including all employees, the Employer currently employs some thirty one (31) full-time hourly/salaried persons, which constitutes the City's insurance risk group. Its proposed new contribution rate structure for 2009-2010 was implemented on January 1, 2010 under the continuing contractual arrangement in the Public Works Unit and Police Unit to provide "such benefits . . . under the same terms and conditions and in the same amounts as applicable to the non-represented City employees." Its stated intention, as evidenced in the Public Works contract, is to limit any future increases in employee contribution costs to no more than 3.5% annually.

The Employer argues that the Union has unfairly discounted its concerted effort over the past twelve (12) months to engage all employees, union and non-represented, in finding a new health benefit structure that helps minimize the cost impact to employees in maintaining

worthwhile benefits. The benefit structure the employee committee agreed upon, even with "huge increases in cost to the City . . . (at) a time of declining revenues" has been egregiously ignored by the Union in its presentment.

Moreover, the Employer explains that while it has ". . . required . . . employees to pay a greater share of the insurance premiums, at the request of the employees the City made available an insurance option that would reduce the actual premiums paid by employees. At the same time, employees accepting participation in the new insurance plan (will) have deposited by the City in their personal insurance bank accounts an average of almost \$11,000 over the four year contract period. For the union to focus only on the issue of the employee paying a greater percentage of their insurance premium ignores the tangible improvements made to the . . . insurance system. Eight-five percent (85%) of the . . . insured employees, including most of the police union employees, voluntarily switched to the new insurance option and are receiving the benefits of the change."

In what can be learned from the comparables submitted, Milan and East Dubuque continue to provide health coverage without employee premium contribution; others prescribe either a flat amount of contribution or varying percentages. In Jo Daviess County, for example, employees were contributing 35% of the family coverage premium at the time of the Galena expiration; the County paying 100% of the coverage for the employee.

OPINION

Any model or conceptual approach in arbitral decision making is dependent upon the evidence submitted; data that reveals what is happening in a span of time. Once thusly armed, the obligation of an interest arbitrator is to react with equanimity, and endeavor to display the seemingly duller virtues in these modern times of prudence, balance and common sense. It was

noted at the outset that several of the issues being argued transcend what has been happening on Main Street in our economy; their measure being in the arguably more discretionary standards as well as corrosive comparisons under arbitration law.

Many years ago, Alabama law professor-arbitrator Whitley P. McCoy, who thereafter served as the first director of the Federal Mediation Service, wrote the following in an interest arbitration award:

“Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations – they have left it to (the arbitrator) to determine what they should, by negotiation, have agreed upon. . . . (T)he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to? . . . (The) endeavor (is) to decide the issues as, upon the evidence, we think reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.”⁶

With this in mind, those issues having a direct relationship to Employer finances shall be taken up first in order of their impact on functional costs. Grievance processing and discipline expungement shall be ruled upon lastly.

Wages/Duration

The data submitted demonstrates the comparative wage diminution effect of a non-annualized step progression, as in Galena, when applied to a relatively younger main officer force in point of service. The Sergeant and Detective/Investigator incumbents are currently being paid differentials significantly higher than, or nonexistent, in the comparables. This no doubt is influenced by the lengths of their service, the Sergeant’s extended period of employment with the City outside the bargaining unit, and, judging by the position descriptions, their supervisory and

⁶ Twin City Rapid Transit Company, 7 LA 845 at 848 (1947). (This is an often quoted view of the process among serious students of arbitration law.)

special independent responsibilities in overseeing law enforcement in the steady influx of out-of-towners, which is clearly an environment separate and distinct from any of the communities submitted into evidence.

The Employer's original bargaining proposal for a one-year hiatus based upon declining revenues to its General Fund is not at issue in these proceedings. A bargaining postponement, not necessarily a freeze, was arguable due to economic conditions in this jurisdiction. Instead, by design, the Employer proposes flat increases over four (4) years in order to negate compounding, but also in keeping with what was agreed upon with its Streets Unit. (The Teamsters reportedly also sought wage compression.) Except its main police officer force is essentially clustered, and a non-percentage increase is clearly at variance with police jurisdictions submitted into evidence where increases occurred. An internal Streets Department Unit also constitutes dissimilar work under the Illinois Statute, and is the only reviewable non-police data submitted. Non-represented wage rate increases also are not "normally or traditionally" probative under arbitration law relative to union bargaining. (Ref. Section 14(h)(8))

Under the conditions of the present economy, irrespective of beginning, isolated and tentative signs of recovery, the undersigned is reluctant to countenance a long term program when the predominant pattern throughout public service is shorter term. The nature of the parties' final proposals inextricably link wages and duration, and each arguably would have been viable had the wage content of their first or even second year been the sole difference.

A commitment to long term in the present economy is atypical, and too much a crapshoot because of the projected certainty in the combinational rise in the costs of debt, energy, health care, and taxes, and with a now more fluctuant CPI, up close to 2.5% over the last year as of March, 2010. The Union's shorter length is least objectionable of the choices.

Police and fire personnel have been given a special status in state jurisdictions that endorse collective bargaining. Wage and contract duration patterns for non-public safety employees have but a secondary influence where clear patterns exist in the public safety arena, especially where disparity is revealed. The main Galena officer force is being paid in the neighborhood of at least \$1.50 per hour less than all these police comparables combined, based upon an average five (5) year length of service.

The Union's proposal is adopted. Its content is viewed as compatible and in harmony with the prescribed percentage increases in the Union's comparables, and in the Employer's closer cited communities of Fulton, Savanna and even East Dubuque, as against the Employer's lesser offering when converted to a percentage amount. Furthermore, absent evidence to the contrary, it is reasonable to presume that the Quad Cities and Rockford/Beloit should have no more effect on Union comparables than should similarly distanced Dubuque on this Employer.⁷

Employee Health Insurance Premium Contribution

Unless it is evident there are exceptional patterns or unusual conditions, it is generally accepted under arbitration law that internal comparables carry substantial weight on this issue. Insurance cost/benefit issues normally move beyond a separate bargaining unit where that unit is an integration in the economics of a larger risk pool for cost/benefit purposes. There is evidence the Employer has attempted to engage all of its employees in the choices under its health benefit program.

There is now heatedly argued uncertainty --- even among reasoning, nonvitriolic commentators --- over the effect federally enacted health insurance governance will have on future health rates where no specific cost control measures were legislated. The Employer has factored in

⁷ After reviewing the Union's commonly utilized supporting data in proposing its comparables, the Employer's sole argument for their disqualification remains their proximity to these population centers, but without de facto data to support its contention.

a 3.5% annual maximum accretion, whereas predictions are upwards of 9%. To the extent its proposal mirrors what has been established for its Public Works Unit and among its non-represented employees, the undersigned finds there to be no fair basis in fact or circumstance to alter or disrupt the current health program arrangement on this property. The Employer's position is adopted.

Call Back Guarantee

The contract prescribes a twelve (12) consecutive hour shift as normal in a fourteen (14) day cycle, overtime beyond 86 hours, with the Employer having the right, with notice, to institute eight (8) or ten (10) hour shifts; call back at straight time unless beyond 86 hours.

Except for Geneseo, which runs 12 and 10-hour shifts concurrently and pays overtime after 84 hours in a 14-day cycle, Union comparables have a provision for a two (2) hour call back guarantee at time and one half. Normal shifts in Milan, Roscoe and South Beloit are also 12-hours, with this overtime call back guarantee. Such matters are not addressed in the materials furnished covering Employer comparables, except its Public Works contract provides the two (2) hour overtime guarantee after its normal eight (8) hour shift.

The Union's proposal is persuasive, and a call back guarantee of time and one half shall be applied unless the officer involved is working a less than twelve (12) consecutive hour shift, in which case the two (2) hours guarantee shall remain at straight time.

Personal Days/Leave

The contract provisions currently in effect provide for a conditional conversion of sick leave to personal leave (24 hours) provided no sick leave has been taken in the previous contract year. This arrangement has existed since the inception of the bargaining relationship when sixteen (16) hours was first agreed upon as the amount of sick leave that could be converted. No such

approach can be found in the police jurisdictions submitted --- the Teamsters' Streets Unit also provides for such conversion --- but no discernible pattern predominates in granting personal leave or amount. Absent the submission of an analysis of usage problems in adding unqualified personal days, the undersigned is reluctant to grant an unadjoined arrangement that would add direct scheduling complications to so small a work force. Scheduling arrangements and like-contingencies more appropriately make this a matter to be taken up and resolved jointly by the contracting parties. Absent a resolution, future negotiations require the submission of evidence or arguments relating to costs, notification, scheduling, and like-problems. The Employer's position is adopted.

Grievance Process Steps/Participation/Coin-Toss Protocol

One aspect of these proposed changes is indeed irregular in an ad hoc arbitration form. This would involve the assignment or denial of contractual administrative authority in a management hierarchy.

Inherent sensitivities render this better suited to mediation techniques, which the parties elected not to pursue prior to the hearing's commencement. But under the obligation of a compelled response in settlement of all issues raised, it is appropriate to remind that the statutory instruction is for a grievance process that is "expeditious, equitable and effective." (Ref. Section 2. Policy Statement of the Illinois Statute.)

Among practitioners of contract law, the "practical" interpretation and construction of a contract instrument is most beneficial in choosing the meaning of legal effect. Judicial notice is taken that the right to grieve under this instrument is restricted solely to its application, meaning or interpretation. Effectively removed from challenge are extensively written management

prerogatives. (Article VI, Management Rights) These provisions also have a bearing on the legal effect of the participation issue.

Included in these prerogatives are provisions that contractually proscribe against actions that would “. . . affect the internal central authority of the City of Galena Police Department, or its Mayor and City Council.” Both the Mayor and City Council accordingly are accorded the right to handle the processing of an employee grievance. Their undenied participation also is consistent with the exercise of Employer rights under Section 10(b)(2) of the Illinois Statute.

The practical problem is in how this participation operates in accomplishing what is called for in the Statute. In light of the decidedly restrictive legal effect over what is grievable in this instrument, seven (7) deliberative stages, including an initial oral presentment, is viewed as unreasonably formalistic and unduly prolonged for such a small bargaining unit, and unrepresentative of prevailing practices in both the public and private sectors where, at most, three (3) but no more than four (4) process steps normally precede the right to invoke arbitration. Exceptions can occur in large multi-location employers and employer associations in the private sector.⁸

⁸ For an authoritative discussion, also see the overview “Steps in a Grievance Procedure” in the universally used treatise by Elkouri & Elkouri, How Arbitration Works, (BNA: Washington D.C.), Sixth Edition (2003), pp. 213-215. Also see the research by Arbitrator H. Graham, assisted by H. Heshizer, Low-Level Settlement of Grievances, Labor Law Journal, July, 1979, pp. 427-432. In their extensive interviewing of professionals in the labor-management field, the involvement of a political body is in fact to be “discouraged.” Moreover, in the comparables submitted there is no voting regimen contractually prescribed in the management decision making relative to grievance response. There are one, two (2) and three (3) steps at most, and only one instance where there is provision for select Aldermanic or Council participation (Geneseo).

Most importantly, an aggrieved employee's required submission to a succession of higher management voting regimens can be perfunctory, even intimidating and perfidious when the same managers are voting on an issue they have already heard and decided upon.⁹

The Union's initiative and the Employer's response are adopted relative to the truncation of the grievance process at three (3) steps prior to the right to invoke arbitration. The grievant shall also be given the option of oral presentment or immediate written submission at Step 1, as proposed and in accordance with the Employer's willingness to accept.

Who the Employer appoints as its grievance representatives and the manner of their private deliberation are matters for the Employer exclusively to decide upon. Under its proposal, its Step 1 representatives are adopted as the immediate supervisor and Police Chief. Step 2 is adopted as the City Administrator and Mayor. But Step 3 shall be contractually referred to as a Management Committee composed of selected members of the City Council.

The undersigned is unwilling to subscribe to a management voting regimen prescribed by contract on a matter of interpretation and application of the instrument. Such a feature is an exercise in self-contradiction. Irrespective of this being the public sector, there is an unprofessional, unsavory awkwardness to vote first on acceptance of the terms and conditions of the instrument, and then subsequently vote again over what was meant where an issue is raised in an employee/union grievance. Under contract law the parties are bound by what was agreed upon, and unless there is a joint accord to consider modifying what was agreed upon, any further voting process is excessive. One conceivable matter for possible resolution through voting concerns

⁹ It is also normally recommended, where possible, that each party, at each succeeding step, include a different person with higher ranking authority. See 37 LA 475 at 480 (Stutz, 1961). Such thinking is still considered relevant as a worthwhile practice in attempting to reach voluntary agreement. Having the same managers repeatedly voting on the issue also amounts to a perspicuous stretch in the meaning of the word "equitable" used in the Illinois Statute.

whether to expend organizational resources in having a dispute decided in arbitration, but such decision making more suitably belongs in the private deliberations of each of the parties.

The response process to a union's contractual grievance normally or traditionally is not likened to the civic handling of a petition from the citizenry over an issue of property assessment. Prior to the Employer rendering its Step 3 answer, the City Council is at liberty to convene its executive session without grievant or union participation. Its deliberation would be based upon what transpired in the Step 3 discussion that included its selected members. The chief object of the three (3) Steps is understanding and reaching settlement, not the performance of a Tribunal inquiry.

On the matter of coin-toss-protocol, the Union's proposal is adopted wherein each party shall strike but one arbitrator candidate at a time; this being a more common practice in the field; e.g., none of the comparables strike more than one nominee at a time.

Accordingly, the language of the contract instrument pertaining to the grievance process shall be worded thusly to the extent modified from its current provisions:

ARTICLE VII
Grievance Procedure

... Section 2. Procedure

The parties acknowledge that, whenever possible, it is most beneficial to the bargaining relationship that an employee(s), with direct supervision or the Police Chief, seek to resolve problems bearing on the labor contract through free, open and informal exchange. Failing resolution, or should an employee(s) not believe his or her problem can be so administered, a written presentment shall be processed in the following manner exclusively. To the extent possible, there shall be an equal number of attendees from each party at each of the following steps, unless mutually agreed otherwise.

Procedural Steps

STEP 1: Any employee who has a grievance shall submit the grievance in writing on a grievance form, a copy of which appears as Appendix B, to a management committee composed of the employee's immediate supervisor and Police Chief. The grievance form write-up shall inform with a complete statement of the facts, the provision(s) of the Agreement which is alleged to have been violated, and the relief requested. All grievances must be presented no later than five (5) business days from the time the grievant becomes aware of or had an opportunity to be aware of the alleged violation through the use of reasonable diligence. Management shall render a written response within five (5) business days after the grievance has been received, and which shall include at least one meeting between the parties if none has previously taken place.

STEP 2: If the grievance is not settled at Step 1, and the grievant wishes to appeal to Step 2, the grievance shall then be submitted to a management committee composed of the Mayor and City Administrator within five (5) business days after receipt of the City's answer at Step 1. Management shall thereafter provide a written answer within five (5) business days after this appeal has been received.

STEP 3: If the matter remains unsettled as a result of deliberations and answer at Step 2, the grievant shall have the right to appeal through the Mayor's office to a management committee composed of members of the City Council. This appeal is to be made within five (5) business days upon receipt of the City's answer at Step 2 .

In the deliberation on the matter at issue, the parties shall meet within five (5) business days of the receipt of the appeal and endeavor to reach a voluntary settlement. Failing this, the City shall provide its written response to the grievant and Union within ten (10) business days following the conclusion of such meeting.

STEP 4: If the dispute remains unresolved despite efforts at Step 3, the matter may be submitted to arbitration. Such a request for arbitration shall be made within ten (10) business days after receipt of the City's final response as a result of Step 3, or absent such response, within ten (10) business days after the final response should have otherwise been made.

Section 3. Arbitration

In invoking arbitration, the sequence of the procedure is prescribed as follows:

- (a) . . . A "flip of the coin" shall take place, with the winner of the toss deciding who will strike the first name. The parties will then alternate striking one name until only one remains. The person remaining shall be the arbitrator. . . .

Retention/Expungement of Disciplinary Records

Of the issues in dispute, this is the most vexing but also the least openly discussed at hearing. The select group of comparables offer little or no insight into substantiation for the modification the Union seeks, and where it bears a burden of persuasion. Only the Village of Roscoe has a specific provision for removal.

The most sensitive aspect of permanency of suspension record is the fact that the issue involves person(s) currently employed in this bargaining unit. The Union exhibits a reluctance to make individual cases a matter of public record in this form.

The Employer counters that a suspension's permanency "doesn't mean that the employee is to be punished . . . in perpetuity, but to remove it takes away part of the history of that employee's service to the City"; that new managers would "have a mental history of what has gone on and for someone to be suspended is a major issue and ought to be there." Except, on inspection, the Employer misstates, at hearing, that the same policy is in effect in its Public Works Unit since a written warning there can be removed after one year, and suspension removal occurs two (2) years after such discipline has been imposed.

Without suggesting a retrial of relevant case work, a more insightful response would include some knowledge of the nature of the misconduct that would be removed under the Union's proposal. Non-retrial is understandable, but this is irrespective of the fact that even discipline removal does not ensure against past discipline, no matter how stale, having adverse effect in judging testimony in a future discipline hearing. Whether or not a matter is technically removed, it would be the imprimatur of an arbitrator to judge a charge of repeated or similar misconduct under the just cause standard.

The main thrust of the Union's argument is a recent Illinois Appellate Court decision which upheld the right of public disclosure of adverse actions in a personnel file under the Freedom of Information Act. A requested disclosure was filed by an irate motorist and appealed by both the motorist and the Sheriff of Sagamon County following alleged egregious mistreatment of the motorist by a Sheriff's Deputy in a traffic episode. In essence, the Appellate Court ruled that such disclosure of all misconduct in a personnel file that bears on the deputy's performance of duties as a public servant does not constitute an invasion of privacy.¹⁰

Most telling in Gekas v. Williamson is its demonstration and reinforcement of the need for the exercise of judicious performance of law enforcement duties when dealing with the constant influx of out-of-towners or strangers in the Galena community. The case is material in understanding job demands. It does not persuade for an acceptance of the Union's removal proposal as does the disparity with which the Employer applies its retention policy on the property. In the absence of a broader universe of comparables, but to correct this inequity, the Union's proposal is adopted provided there is no substantially similar misconduct during the interim periods for either type of discipline, written warning or suspension.

MATTERS REPORTEDLY MUTUALLY AGREED UPON BY THE PARTIES

In addition to the foregoing opinion and rulings on outstanding issues presented, the following modifications to the contract are reportedly agreed upon by the contracting parties. Their agreed upon revised language is to appear thusly:

Article XII, Leaves of Absence, Section 2. Maternity Leave (c):

In any case, if an employee has not returned to work within six (6) months after delivery, she shall provide a doctor's statement substantiating her continued disability and expected date of recovery. (Previous follow on last sentence is deleted.)

¹⁰ Gekas v. Williamson, 393 Ill. App. 3d 573, 912 N.E. 2d 347, 332 Ill. Dec. 161 (4th Dist. 2009).

Article XII, Leaves of Absence, Section 2. Maternity Leave (e):

employees shall be allowed to use sick leave or personal days for the spouse's delivery or the adoption of their child (5 days providing there are no complications).

Article XII, Leaves of Absence, Section 3. Funeral Leave:

. . . ; immediate family shall mean the employee's spouse, children, step-children, parents, siblings, grandparents, grandchildren, in-laws, and legal guardian.

Article XVI, Salaries – And Other Compensation, Section 4. Lateral Entry:

<u>Years of Experience</u>	<u>Salary Level</u>
0 – 2 years	start pay, \$16.76 per hour
2 – 4 years	6-month step, \$17.08
4 – 6 years	1 year step, \$17.43
6+ years	2 year step, \$17.72

Article XIX, General Provisions, Section 7. Clothing, Cleaning and Equipment Allowance:

The amount which each employee is allotted under the City's said allowance shall be \$600 per year, prorated if employed less than a year. The Detective/Investigator allowance shall be \$750 per year. . . .

Article XX, Drug & Alcohol Testing, Section 4. Test to be Conducted:

. . . If it is determined that there was an alcohol concentration of .00, it shall be presumed that the person has not consumed alcohol in violation of this section.

If there was at the time of the test an alcohol concentration in excess of .00, such facts shall give rise to a rebuttable presumption that the person was in violation of this section. . . .

Finally, the documents that constitute the updated and mutually agreed upon dues deduction and grievance forms are attached as an Appendix to this Award as "A" and "B" respectively.

AWARD

Recap on Resolution of Impasse Issues as Presented and in the Order of Appearance in the

Instrument:

1. Grievance Handling – Mutual agreement on number of steps and optional oral presentment prior to filing; arbitrator modified time frame. Employer proposal on its representatives, except Step 3 is identified as a designated management committee composed of members of the City Council under conditions explained. Union proposal on coin-toss-protocol.

2. Call Back Pay – Union proposal but applied exclusively to 12-hour shifts.
3. Sick Leave/Requested Unrestricted Personal Days – Employer proposal.
4. Retention/Expungement of Discipline – Union proposal, as modified.
5. Wages/Duration – Union proposal.
6. Employee Health Insurance Contributions – Employer proposal.

Dated this 12th day of July, 2010 at Rockford, IL


Robert J. Callaway, Arbitrator

Dues Authorization Form
ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL
974 CLOCKTOWER DRIVE
SPRINGFIELD, ILLINOIS 62704

I, _____, hereby authorize my employer, _____, to deduct from my wages the uniform amount of monthly dues set by the Illinois Fraternal Order of Police Labor Council, for expenses connected with the cost of negotiating and maintaining the collective bargaining agreement between the parties and to remit such dues to the Illinois Fraternal Order of Police Labor Council as it may from time to time direct. (In addition, I authorize my Employer to deduct from wages any back dues owed to the Illinois Fraternal Order of Police Labor Council from the date of its certification as exclusive bargaining representative to the date this dues deduction is implemented, in such manner as it so directs.)

Date: _____ Signed: _____
Address: _____
City: _____
State: _____ Zip: _____
Telephone: _____

Employment Start Date: _____

Title: _____

Employer, please remit all dues deductions to:

Illinois Fraternal Order of Police Labor Council
Attn: Accounting
974 Clock Tower Drive
Springfield, Illinois 62704

(217) 698-9433

Dues remitted to the Illinois Fraternal Order of Police Labor Council are not tax deductible as charitable contributions for federal income tax purposes; however, they may be deductible on Schedule A of Form 1040 as a miscellaneous deduction.



GRIEVANCE

(use additional sheets where necessary)

Lodge No. / Year / Grievance No.

Date Filed: _____
Department: _____

Grievant's Name: _____
Last First M.I.

STEP ONE

Date of Incident or Date Knew of Facts Giving Rise to Grievance: _____
Article(s) and Sections(s) of Contract violated: _____
Briefly state the facts: _____

Remedy Sought: _____

Given To: _____ Date/Time: _____

Grievant's Signature

FOP Representative Signature

EMPLOYER'S STEP ONE RESPONSE

Employer Representative Signature

Position

Person to Whom Response Given

Date

STEP TWO

Reasons for Advancing Grievance: _____

Given To: _____ Date/Time: _____

Grievant's Signature

FOP Representative Signature

EMPLOYER'S STEP TWO RESPONSE

Employer Representative Signature

Position

Person to Whom Response Given

Date

STEP THREE

Reasons for Advancing Grievance: _____

Given To: _____

Date/Time: _____

Grievant's Signature

FOP Representative Signature

EMPLOYER'S STEP THREE RESPONSE

Employer Representative Signature

Position

Person to Whom Response Given

Date

REFERRAL TO ARBITRATION by Illinois FOP Labor Council

Person to Whom Referral Given

Date

FOP Labor Council Representative

