

**BEFORE THE ILLINOIS STATE LABOR RELATIONS BOARD,
IN THE MATTER OF INTEREST ARBITRATION BETWEEN:**

CITY OF DANVILLE,)	
)	
Employer)	Pre-Trial Date: September 3, 2010
)	Hearing Date: September 29, 2010
and)	
)	ILRB Case No. S-MA-09-238
)	
)	
POLICEMEN'S BENEVOLENT)	
AND PROTECTIVE ASSOCIATION,)	Marvin Hill, Jr.
UNIT #11,)	Arbitrator
)	
Union)	
)	
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Appearances:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The City of Danville, IL (hereinafter "City," "Administration," or "Management") is located approximately 150 miles south of Chicago, near the eastern boundary of the State of

Illinois. Effectively, Danville is a “stand-alone” municipality, entirely surrounded by rural areas. The nearest Illinois municipal center of any significant size is Champaign-Urbana, the twin-city home of the University of Illinois, which lies over thirty miles to Danville’s west along Interstate 74.

As pointed out by the Administration, Danville’s recent economic existence has been, to say the least, a struggle. The City’s recent unemployment rate (as stated by the Union), 11.9%, has more than doubled since May, 2006 (the execution date of the parties’ incumbent Agreement), when it stood at 5.7%, underscores the City’s continuing struggling fiscal condition (EX 11 at 3; UX 38; R. 105). In addition to high local unemployment levels, the City has requested that the Arbitrator take judicial-type notice of the nation-wide recession that has caused decreases in the City’s main revenue sources such as sales taxes, income taxes and corporate replacement taxes, circumstances which the Administration says have only exacerbated the City’s revenue woes (*Brief for the Employer* at 2; R 26-27). The Administration has also pointed out the condition of downtown Danville, with significant vacancies and business closings (*Brief* at 1).

During the pendency of the proceedings dealing with the Command Officers before Chicago Arbitrator George Larney, the Patrol Officers also commenced bargaining for a new Agreement and, while awaiting Arbitrator Larney’s Award, had filed for interest arbitration before Arbitrator Peter Feuille (“Feuille”). In the wake of the issuance of Arbitrator Larney’s Award, the Patrol Officers agreed to a stipulated award by Arbitrator Feuille which included, *inter alia*, a one year wage freeze for the contract year commencing May 1, 2006. *City of Danville and PBPA Unit #11.*, ILRB Case No. S-MA-06-233 (Feuille, 2007)(“*City of Danville II*” or “Feuille Award”) (EX 3 at 3; UX 14; R. 6).

As is the case for most municipalities, the City's primary (if not sole) source of funding for discretionary spending (including the salaries and benefits of the Patrol Officers) has been, and continues to be, the General Fund. There is no dispute that none of the City's other "dedicated" funds are available for police department employee salaries and benefits. Since the fiscal year ending April 30, 2006 (the fiscal year in which the Larney Award was issued), through the fiscal year ending April 30, 2009, the General Fund revenues remained remarkably constant, *i.e.*, approximately \$22 to \$23 million (EX 10). In 2010, however, the General Fund revenues decreased by nearly \$2.5 million from the previous year's revenues to end at a six-year low of approximately \$18.9 millions (JX 8 at 6; EX 9 at 6). The General Fund expenditures for fiscal years ending in 2005 through 2010 have similarly averaged about \$22 to \$23 million over the same time frame (EX 10). However, expenditures have exceeded revenues in four out of the City's six most recent fiscal years, with the largest deficit occurring in the last of those six years, *i.e.*, the fiscal year ending 4/30/10 (EX 10).

Danville Mayor Scott Eisenhauer, who took office of May of 2003, acknowledged that the City has taken a different approach in devising its economic strategies during bargaining for the fiscal years after 2007. Specifically, as part of those strategies, the City has avoided wage freezes for various represented employee groups, but instead has favored (a) "across-the-board" increases that reflected "cost-of-living" or "CPI" data at the time of settlement, coupled with (b) modifications of the various contracts and departmental operations to obtain efficiencies which would generate savings that would, in turn, help subsidize the "across-the-board" increases (*Brief for the Employer* at 4-5). Based on the City's budget for the fiscal year closing April 30, 2010, the General Fund was targeted to close with a positive balance of a mere \$1,765.00, if everything went according to the budgetary plan; however, as of June 11, 2009 (the date of the final

revisions to the 2010 CFR), the City had ended up the 2009-2010 fiscal year about \$263,000.00 behind that objective (EX 7; R. 38). Because there are no realistic avenues for increasing revenues at this time, Management asserts the City's administration will have to continue to explore ways to reduce either the costs for providing the current level of services, or the public services themselves, which are subsidized by the General Fund (R. 44-45)(*Brief for the Employer* at 5).

The Parties' Bargaining Relationship. The parties' bargaining relationship spans several years and multiple contract terms, culminating in their recently-expired Agreement effective May 1, 2006 through April 30, 2009, which, as described above, was the product of Arbitrator Feuille's stipulated Award (JX 1; EX 3). The parties commenced negotiations for a successor collective bargaining agreement on or about August 11, 2009, and met only three more times through June 24, 2010. By June 24, 2010, the parties had not reached an accord on a labor agreement. At or following that June 24, 2010, meeting, the Union declared impasse and demanded interest arbitration of the unresolved issues, pursuant to Section 14 of the *Act*. On or about July 21, 2010, the parties selected the undersigned Arbitrator as the neutral in the case from a panel supplied by the Illinois Labor Relations Board (ILRB).

On August 3, 2010, the parties and Arbitrator Hill set September 29, 2010 as the date for hearing. At that time, Arbitrator Hill suggested that the parties meet at a pre-hearing conference in hopes of agreeing on comps and issues, which the parties did on September 3, 2010 in Bloomington, Illinois. During that pre-hearing conference, the parties stipulated to the comparable communities which had been established in Arbitrator George Larney's Award (EX 1 at 7) and had again been used in the recent interest arbitration involving the City's Command Officers before Arbitrator Peter R. Meyers in *City of Danville and Danville Command Officer*

Association, ILRB Case No. S-MA-07-220 (Meyers, 2010)(“*City of Danville III*” or “Meyers Award”)(EX 13.C at 7; UX 2). Also at that pre-hearing conference, the parties orally advised Arbitrator Hill of their open issues and their positions thereon. Before the close of the pre-hearing conference, Arbitrator Hill ordered the parties to submit their final offers on open issues to him, *via* fax or e-mail, on or by September 22nd, so he could simultaneously exchange them. The parties did as directed by Arbitrator Hill (R. 4).

The Arbitration Hearing. The hearing opened and was concluded before the undersigned on September 29, 2010. Late during that hearing, Union counsel Shane Voyles (“Voyles”) informed Tim Guare, *for the first time*, that he had filed an Unfair Labor Practice (“ULP”) Charge just the day before, claiming that the City’s insurance benefits proposal was a “permissive” topic of bargaining (UX 25; R. 166). At the close of the September 29, 2010, hearing, Arbitrator Hill ordered the filing of post-hearing briefs in this matter in duplicate and addressed to the Arbitrator, bearing a postmark not later than November 23, 2010 (R.182).

Subsequent Tentative Agreement Reached on Selected Issues. On October 19, 2010, and subsequent to the hearing, the parties reached and executed a tentative agreement on several open issues: Grievance Procedure, Military Leave and Plain-Clothes Allowance. Accordingly, those items are no longer in dispute or before the Arbitrator for resolution. Another issue, termination pay (sick-leave buy back), was apparently withdrawn (the issue was not discussed at the hearing nor briefed by the parties). On November 15, 2010, Mr. Guare asked for, and received, the Arbitrator’s approval of a two-week extension for the filing of briefs, *i.e.*, to December 7, 2010. Briefs were accordingly filed and exchanged electronically through the offices of the undersigned Arbitrator. The record was accordingly closed on December 7, 2010.

II. IMPASSE PROPOSALS: ISSUES FOR RESOLUTION

As required by Section 14(g) the *Act*, both parties have submitted final offers for consideration. Their proposals are as follows:

A. THE CITY’S FINAL OFFER (EX 12.A)

I. **Article IV re: Management Rights**

Status Quo

II. **Article VII, Section 7.4 re: Layoffs and Recalls.**

Status Quo

III. **Article XI, Section 11.1 and Appendix B, re: Base Salaries.**

5/1/09 - 1.0% Increase
5/1/10 - 3.0% Increase
5/1/11 - 3.0% Increase

IV. **Article XI, Section 11.4(a) re: Group Insurance (Employee Contributions).**

Amend current Section 11.4(a) to provide for monthly premium co-payments as follows (one dep./two+ deps.):

<u>5/1/09</u>	<u>5/1/10</u>	<u>5/1/11</u>
100/110	115/125	130/140

V. **Article Section 11.4(b) re: Group Insurance (Terms of Coverage)**

Amend current Section 11.4(b) to adopt similar language and coverages agreed to by the City’s other non-police bargaining units as follows:

The insurance benefits provided for herein shall be provided under a group insurance policy or policies, or thorough a self-insured or managed-care plan selected by the City, ~~with no reduction in current coverage~~ and, effective on the date of Arbitrator Hill’s Award in ILRB Case No. S-MA-09-238, as provided to the City’s full-time employees other than members of the bargaining units represented by the Union (“City-wide plan”). Except as otherwise provided herein, the City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar to the coverage and benefits that are in effect under the City-wide plan as of

January 1, 2011.¹

VI. Article XIII, Section 13.11 re: Residency Requirement

Status Quo

B. THE UNION'S FINAL OFFER (EX 12.B)

I. Article IV re: Management Rights

Amend current Article IV by deleting the following language:

(xv) to layoff of relieve employees due to lack of work or funds or for other legitimate reasons;

II. Article VII, Section 7.4 re: Layoffs and Recalls.

Amend current Section 7.4 as follows:

All layoffs and recalls of officers shall be in accordance with the provisions of Section 10.2.1-18 of Division 2.1 Article 10 of the Illinois Municipal Code (65 ILCS 5/10-2.1-18). The Union does not waive any of its rights under 5 ILCS 315/7, 10 or 14 to (1) negotiate over any proposed layoff as well as the impact of any proposed layoffs and (2) submit any unresolved issues to interest arbitration pursuant to and in accordance with the requirements of the IPLRA.

III. Article XI, Section 11.1 and Appendix B, re: Base Salaries.

5/1/09 - 3.0% Increase
5/1/10 - 3.0% Increase
5/1/11 - 3.0% Increase

IV. Article XI, Section 11.4(a) re: Group Insurance (Employee Contributions).

Amend current Section 11.4(a) to provide for monthly premium co-payments as follows (one dep./two+ deps.):

<u>5/1/09</u>	<u>5/1/10</u>
95/105	95/105
	(per Command)

¹ The City was granted leave to submit a modified proposal on this issue after the hearing, to clarify the commencement date of the City's proposed changes (R. 121). The proposal set forth herein was submitted to the Arbitrator and Mr. Voyles *via* email on 10/15/10.

Additionally, amend the final paragraph of current Section 11.4(a) as follows:

In the event that the City negotiates a different ~~lesser~~ contribution rate with the Command Officers effective May 1, ~~2004~~ 2011 or thereafter, such ~~lesser~~ rate shall be applicable to employees covered by this Agreement upon its implementation for Command Officers.

V. Article Section 11.4(b) re: Group Insurance (Terms of Coverage)

The Union has not presented any proposal on this issue as part of its final offers. Rather, the Union filed a ULP alleging that the City's proposal was a permissive topic of bargaining.

VI. Article XIII, Section 13.11 re: Residency Requirement

Amend current Section 13.11 to extend the residency requirement from within 5 miles of City's boundaries to as follows:

~~"In the event that the City elects to change the residency requirements which are currently applicable to all persons employed by the City, or in the event that any such change is mandated by law by the Illinois General Assembly, any such shall likewise be applicable to all officers covered by the Agreement; provided, however, that no such change shall be more restrictive than the requirements of the City which are in effect as of the date of this Agreement.~~

Effective upon the execution date of this Agreement officers shall be required to establish their priciple [sic] place of domicile within the State of Illinois and within a thirty (30) mile radius of the Danville Police Department. Such principle place of domicile must be established no later than one hundred-eighty (180) days after the completion of an officer's probationary period. Such principle place of domicile must be established and maintained as a condition of continued employment.

III. STIPULATIONS OF THE PARTIES

On the record, the parties stipulated, *inter alia*, to the following:

- A) They would waive the "tripartite panel" mode of interest arbitration, and that the Arbitrator would be the sole arbitrator in this case (Jt.Ex.2, ¶1);
- B) The issues before the arbitrator for resolution are:
 - (1) Wages;
 - (2) Insurance Benefits;
 - (3) Insurance Premium Contributions;

- (4) *Termination Pay (Sick Leave Buy-back);*
- (5) *Clothing Allowance;*
- (6) *Military Leave;*
- (7) *Residency;*
- (8) *Layoff/Recall (and Management Rights); and*
- (9) *Grievance Procedure.*

(Jt.Ex.2, ¶5); and

C) The eight comparable communities shall be as determined by Arbitrator George Larney’s Award to include the following:

Alton	Normal
Belleville	Pekin
East Moline	Quincy
Kankakee	Urbana

(JX 2, ¶7).

IV. STATUTORY CRITERIA

As in all interest arbitration cases involving protective service bargaining units in Illinois, the Arbitrator’s findings and decisions must be based upon the requirements set forth in Section 14 of the *Act*, as applicable. *See, Town of Cicero v. Illinois Association of Firefighters Local 717*, 338 Ill. App. 3d 364; 788 N.E.2d 286; 272 Ill. Dec. 982 (1st Dist., 2003) (“*Town of Cicero II*”). The following provisions of Section 14 of the *Act*, 5 ILCS 315/14(g) & (h), are relevant to these proceedings:

- (g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall . . . direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.
- (h) Where there is no agreement between the parties, . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
 - (1) The lawful authority of the employer;
 - (2) Stipulations of the parties;
 - (3) The interests and welfare of the public and the financial ability of the unit

of government to meet those costs;

- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as 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.

5 ILCS 315/14(h)

In addition, as asserted by the City, it is well settled that, where one or the other of the parties seeks to obtain a substantial departure from the parties' *status quo*, an "extra burden" must be met *before* the Arbitrator resorts to the criteria enumerated in Section 14(h). It is the City's position that the Union's demands for (a) relaxation of the City's residency requirement and (b) elimination of the City's management right to determine the size and composition of its police force are "breakthrough" bargaining demands which require the Union to meet such an "extra burden." (See, *Brief for the Employer* at 12). To this same end, the Union has taken the position that the City's offer regarding Health Insurance and Health Insurance Contributions require a break-through analysis.

The oft-cited standards regarding this “extra burden” has been articulated numerous arbitrators including Chicago Arbitrator Harvey Nathan. In *Sheriff of Will County and AFSCME Council 31, Local 2961*, Arbitrator Nathan declared:

[I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties’ contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties’ particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.” *Will County Board and Sheriff of Will County* (Nathan, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change....In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to or
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine); See, also, *Sheriff of Cook County II*, at 17 n.16, and at 19.

Management makes the case that the Union’s proposals regarding Management Rights/ Layoffs and Residency are significant attempts to alter the parties’ negotiated *status quo*. Accordingly, argues the City, the foregoing standards will have to be met by the Union, as the

party seeking the change, in order to persuade the Arbitrator that there is a need for the Union's proposal which transcends the inherent need to protect the bargaining process. Moreover, these standards must be met before the Arbitrator is required to assess the Union's residency proposal in light of the Section 14(h) statutory criteria (see, *Brief for the Employer* at 12-14). The Association argues that breakthrough analysis be applied with respect to the City's proposal on insurance benefits.

V. DISCUSSION AND ANALYSIS

ISSUE #1: WAGES/EMPLOYER'S POSITION

A. CONSIDERATION OF SECTION 14(H)'S CRITERIA REQUIRES THE ADOPTION OF THE CITY'S PROPOSED ACROSS-THE-BOARD WAGE INCREASES

1. Changes in Circumstances During the Proceedings – [Section 14(h)(7)]

On or about June 24, 2010 (about 14 months after the agreement expired), and after only limited, brief "negotiation sessions," the Union demanded interest arbitration. At that time, the City's General Fund revenues had decreased by nearly \$2.5 million from the previous year's revenues to end at a six-year low of approximately \$18.9 million. As a result, despite the fact that General Fund expenditures had decreased by almost \$300,000.00 from 2009 to 2010, the City still suffered its greatest level of deficit spending in the past six years, going from expending approximately \$1.9 million more than its revenue in fiscal year 2009 to expending over \$4 million more in fiscal year 2010 (*Brief* at 15-16; EX 10).

Management submits the main reason for the rapid decrease in revenues from 2009 to 2010 is the State of Illinois' failure to pay its bills on time. The amount of the deficit in the General Fund for the fiscal year ending April 30, 2010, is roughly equivalent to the amount owed to the City by other governmental entities, with the largest amount owed by the State of Illinois.

The amount of the State's arrearage of revenues owed to the City has significantly grown since the date that the previous Agreement expired and, as a result, should be considered as a factor in favor of the City's three-year wage proposal.

Rather than recite the same litany of "bad news," the City refers the Arbitrator to Arbitrator Benn's comprehensive and cogent narrative of other downturns in relevant economic trends such as unemployment, the stagnant economy, the threat of deflation and the dire prospect that "the current economic crisis will not soon be over." Arbitrator Benn's observations on the state of the economy in *City of Chicago, supra*, are particularly apropos in this case because the *City of Chicago Award* was issued in April of 2010 (just five months prior to this hearing), and is based on time frames which are similar to the one at issue here. As Arbitrator Benn has succinctly stated in *State of Illinois, Dept of Central Management Services and IBT, Local 726* ("ISP"), since the Patrol Officers' last wage increase on May 1, 2008, "the economy simply tanked." *ISP, supra*, at 13. See also, *Sheriff of Cook County and AFSCME Council 31*, ILRB Case No. L-MA-098-003 (Benn, 2010), ("*Sheriff of Cook County III*")("As of this writing, the economic outlook and the chances for recovery in the short-term are simply not good.").

In the Employer's view, Arbitrator Benn's view of the present state of the economy is shared by numerous other arbitrators. (*Brief* at 16-17). Accordingly, the City states that this criterion supports adoption of the City's proposal and rejection of the Union's wage proposal.

2. The Interests and Welfare of the Public and the Financial Ability of the City to Meet Those Costs – [Section 14(h)(3)]

Management submits that the City's financial stresses are among the most significant influences driving the City's position, and last offer, on wages. To this end the City states that more-current "ability to pay" analysis has declined to adopt the "litmus test" approach that the Union is expected to advocate, and that proper application of this criterion favors the City's

proposals here (*Brief* at 18).

While the City is not unable to pay *any* wage increases, in the strict sense that it cannot pay its bills, the City's financial stresses require it to make adjustments in its operational costs in order to be able to pay wage increases which meet or exceed "cost-of-living" (CPI) rates. Accordingly, as Arbitrator Elliott Goldstein stated in the *City of Galesburg*, when the Arbitrator reviews the City's economic stresses in this case, the criteria of paragraph 14(h)(3) should ". . . not only be considered, but also given substantial, and perhaps even determinative weight." *Id.* at 45-46. As such, it is critical that the analysis of this case under this factor be correctly applied in a principled fashion as articulated by Mr. Goldstein.

Management points out that for the fiscal year ending April 30, 2010, the General Fund ending cash balance was just barely over \$311,000.00 (EX 7; R. 26). This setback during the 2009-2010 fiscal year was due to multiple factors, the most notable being the City's decreased revenue stream and the State of Illinois' arrearage of revenues owed to the City (EX 10; R. 26-28).

The City contends that this type of fiscal "Hobson's choice" (*i.e.*, having to cut personnel costs by reducing services or benefits in order to be able to pay wage increases) has been the subject of recent arbitration cases, all favorable to management's position. See, e.g., *County of Woodford (Sheriff) and FOP*, ILRB Case No. S-MA-09-057 (Feuille, 2009)(*"County of Woodford"*)(where Arbitrator Feuille adopted the reasoning used in *City of Granite City and IAFF, Local 253*, ILRB Case No. S-MA-93-186 (Edelman, 1994), that "ability to pay" analysis requires an employer to show ". . . that the Union's offer would place such a heavy burden on the employer's finances that funds would have to be shifted from other employer services to pay the Union's offer, resulting—and this is the important part—in the elimination or harmful

diminution of essential employer services or extensive layoffs or both.” (*Brief* at 19); *County of Woodford, supra*, at 35; *City of Rockford and PBLC, Unit No. 6*, ILRB Case No. S-MA-09-125 (Yaffe, 2010)(where the arbitrator adopted the city’s wage proposal, notwithstanding that it would likely result in a downward shift in the city’s ranking among their external comparables. The arbitrator noted that, even though the city technically has the “ability” to pay the union’s wage demands, in reality adoption of the union’s wage demands would result in harmful consequences including additional reductions in staff and reductions in services).

The City respectfully requests this Arbitrator to decline the Union’s invitation to view Section 14(h)(3) as an “inability to pay” type of “litmus test” which must be proven by an employer to avoid imposition of the union’s wage proposal. The City submits that the Arbitrator apply the 14(h)(3) criterion in the same manner and at the same time as the other criteria, and as the “interests of the public/ability to pay” has been assessed in *City of Galesburg, supra*, and *County of Woodford, supra, i.e.*, rather than requiring the City to affirmatively meet any absolute and/or arbitrary “inability to pay” standard which has no basis in the language of the statute.

In sum, the City submits that the record unequivocally shows that the “ability to pay” criterion strongly favors the adoption of its proposed wage increases rather than the Union’s, and that proper analysis of the City’s “ability to pay” wage increases overwhelmingly supports the City’s proposals which reflect current CPI realities. However, and as Arbitrator Goldstein stated in *City of Galesburg, supra*, the criteria of Subsection 14(h)(3) requires a two-pronged analysis of: (1) the City’s ability to pay, and (2) the interests of the public. The City maintains the “public’s interests” are best served by adoption of its wage proposals for the following reasons.

In this case, the City says, there is ample evidence that its service levels in 2009-10 were maintained, in large part, because of the number of employee groups who agreed to various

efficiencies and changes in their operations which reduced the City's base wage costs by approximately \$875,000.00, thereby helping to make their "cost of living" wage adjustments affordable; and that, without the City's ability to obtain those changes and new efficiencies in 2009, the City would have had to make further cuts in staff and public services (R. 27-34; *Brief* at 22). From an economic standpoint, there cannot be any serious dispute as to whether the public gained substantial benefit from, and was best served by, the City's cost-saving strategies of coupling new efficiencies with "cost-of-living" wage increases commensurate with CPI-U data at the time of their implementation. In this case, the Union provided no evidence that it agreed to, or was even willing to consider, "cost cutting" measures which would reduce personnel costs, thereby making increases that exceed CPI-U more affordable. Simply because the current number of unit positions (51) is less than the City's outside authorization of officers (56) does not imply that the Union was unable to make any cuts (*Brief* at 22 n.8).

A common inquiry under the "interests of the public" criterion is what, if any, adverse impacts on staffing does either of the proposals have on the provision of public services? Management asserts the City's Patrol Officers' present wages create no detriment to the public services provided by them and, therefore, the public interest is best served by the adoption of the City's proposed wage increases, rather than the Union's proposal.

3. Average Consumer Prices/Cost of Living – [Section 14(h)(5)]

The City argues that examination of CPI-U for U.S. DOL's Midwest Region ("MURA") supports its proposal as the more reasonable and proportionate of the two (*Brief* at 24).

(a) *The City's Proposal Re: Years 1 and 2.*

Arbitrator Elliott Goldstein's analytical approach (i.e., the retrospective approach, based on objective data, not projections of future increases) is particularly appropriate for assessing the parties' wage increase proposals for 2009 and 2010, because so much time has passed since the

employees' last negotiated increases, the City asserts. Again, applying Arbitrator Goldstein's analysis in *City of Burbank, supra*, to this case, the last negotiated wage increase for the officers was implemented on 5/1/08, *i.e.*, on the heels of the CPI-U reporting year ending 4/30/10. Thus, with respect to the first two years of the Agreement, the appropriate measures of CPI-U for the MURA, since the last negotiated increase for these employees, are:

<u>Year</u> <u>Ending</u>	<u>CPI-U</u> <u>Index</u>	<u>Annual %</u> <u>Inc./Dec.</u>
4/30/08	205.393	
4/30/09	202.327	-1.5%
4/30/10	207.777	2.7%

(EX 20.C at 2)(*Brief* at 25).

The City submits that the Arbitrator should assess the parties' last wage offers for the first two years of the Agreement against the two-year period of CPI-U data concluding 4/30/10. Assuming the Arbitrator concurs, the parties' proposals, when measured against the CPI-I Midwest for the appropriate 2-year "relevant period," compare as follows:

<u>Increase</u> <u>Date</u>	<u>Annual</u> <u>CPI-U %</u>	<u>City's</u> <u>Proposal</u>	<u>Union's</u> <u>Proposal</u>
5/1/09	-1.5%	1.0%	3.0%
5/1/10	2.7%	3.0%	3.0%
<i>Totals:</i>	1.2%	4.0%	6.0%

The City's wage proposals for 2009 and 2010 both exceed CPI-U; thus, the City's proposal more than fully insulates the Patrol Officers from any "loss of buying power" attributable to inflation. Moreover, the City's proposed increases are far more commensurate with the applicable CPI-U data, while the Union's proposed increases exceed inflation for the two-year period by approximately 400%.

(b) *The City's Proposal Re: Year 3.*

With respect to the third year of the Agreement (for which only partial-year CPI-U data is

available at this time), the City and the Union have each proposed a 3% increase in wages. As of the date of the hearing, the annual increase in the CPI-U for the MURA through August 31, 2010 was 1.5% (CX 20.A. at 2).

Based on the foregoing the City states that its wage proposal is overwhelmingly supported by the statutory “cost-of-living” criterion (*Brief* at 28).

4. Other Factors Traditionally Considered – [Section 14(h)(8)]

(a) *Internal Comparability*

In the Employer’s view, the bulk of the internal comparability evidence adduced on the record favors the City’s wage proposal.

First, the Patrol Officers are among the highest paid employees in the city, other than Police Command and Fire Command, and will remain so even if the City’s wage proposal is adopted. Further, the record overwhelmingly shows that the City has consistently endeavored to treat similarly-situated employees in like fashion. To this end, since Mayor Eisenhower took office in May, 2003, all of the City’s unions have taken a one-year wage freeze, whether by negotiated agreement or (as in the case of the Command Officers) by interest arbitration. The City’s non-union employees took two wage freezes. All those prior union contracts have now expired and all of the City’s other bargaining units have new agreements in place with the City that, with the exception of the police unions, have a striking similarity; in every case, the salient features of all these settlements were restructuring/elimination of costs that subsidize a significant portion of whatever wage increase was granted. Specifically:

The Transit Workers -- gave up “daily (over 8-hour) overtime calculation” in favor of “weekly (over 40-hour) calculation.” For this concession, they received wage increases of 4% per year for 3 years, at a time when the CPI-U rate was 3.7%, *i.e.*, they received just .3% over inflation at time of settlement (11/20/07).

The Public Works Workers -- gave up morning and afternoon break times and merged them with their lunch time; this reduced travel times to and from break sites and increased actual productive work time. For this concession, they received wage increases of 3% per year for three years, at a time when the CPI-U rate was 3.3%, *i.e.*, they received .3% less than inflation at time of settlement (12/8/08).

Firefighters – agreed to reduce the size of the Department from 58 to 51 positions (5 immediately, 2 more through attrition in the following year), and to reduce their minimum shift manning guarantee from 13 to 11 per shift, yielding first-year Division-wide savings of \$405,000 in base wages (not including overtime, insurance coverage, employment taxes and other “roll-up” costs). In exchange for these significant savings, they received wage increases of 3.5% per year for two years.

The Fire Command Officers -- reached a similar tentative agreement with the City, *i.e.*, in consideration of the \$405,000 in personnel cost cuts (Division-wide), the Fire Command Officers would also receive a 3.5% wage increase in each of the years starting 5/1/09 and 5/1/10. However, the City Council rejected this tentative agreement, and the matter was resolved in interest arbitration. In *City of Danville and IAFF Local 429*, ILRB Case No. S-MA-10-300 (Reynolds, 2010) (“*City of Danville IV*”), the arbitrator noted the substantial Department-wide cuts that had been agreed to by both Fire Department units, and awarded the parties’ tentative agreement (3.5% wage increase in each of the two years starting 5/1/09) that had been tentatively agreed to, but rejected by the Council. *City of Danville IV, supra*, at pp. 5-7 (Note: at the time Arbitrator Reynolds issued his award, the MURA CPI-U increase for the year ending 4/30/10 was 2.7%.).

The Clerical Unit -- employees are the lowest paid of the City’s unionized groups. These negotiations focused on the City’s desire to revise language regarding layoff procedures and to remove the City’s payroll administrator from the bargaining unit, both of which were accomplished. As a result, the 2-year contract yielded 2% and 3% wage increases.

The Police Command Officers -- contract was also resolved by interest arbitration which resulted in Arbitrator Meyers awarding the City’s final wage offer of a 4-year contract starting 5/1/08 and yielding 3%, 3%, 1% and 3% wage increases (*City of Danville III, supra*). **The wage increases for the final two years of the Police Command contract overlap with the first two years of the three-year term of the Agreement at issue here and, include the exact same two-year pattern of wage increases sought here (1% and 3%).** It should be noted that neither the Police Command Officers nor any other employee group has received any commitment from the City regarding wage increase effective 5/1/11 (the 3rd year of the Agreement in this case)(*Brief* at 29-31).

While the Union may wish to reap some of the wage gains that have been made by the Transit Workers, Public Works employees, Firefighters, Fire Command Officers and Clerical Workers, they should be permitted to do so only if they can show that they are truly “similarly-

situated.” In the City’s view, unlike the unions cited above, this unit has neither agreed to, nor offered, any “concessions” to help offset the cost of wage increases (Brief at 31).

According to the Administration, when all is said and done, there is only one internal comparable that is of any use when assessing wages – the Police Command Unit. This makes eminent sense considering that neither police bargaining unit made any meaningful concessions during the most recent round of bargaining; nor were they affected greatly by any of the City’s reorganization/cost cutting measures through May 1, 2010. It should also be noted that the City’s wage proposals for Police Command went “hand in hand” with the City’s proposed changes to align their insurance coverage with the rest of the City’s employees, which proposals were ultimately not allowed to be presented to Arbitrator Meyers for consideration and decision.

Based on all the foregoing, the City respectfully submits that all factors concerning internal comparability favor acceptance of City’s wage proposal here, and rejection of the Union’s.

(b) *Other Awards*

Under the “catch-all” criterion of Section 14(h)(8), the City requests this Arbitrator to pay particular attention to the wage awards in six recent interest arbitration decisions, which speak to both the extraordinarily difficult economic times which exist for all public employers (including the City here) as well as the reasonableness of the City’s wage proposals in this case. See, *City of Chicago* (where Arbitrator Benn awarded a 5-year contract term, and annual wage increases that totaled 10% (non-compounded) for 5 years. Thus, the average annual increase under the award was 2%); *City of Rockford* (where Arbitrator Yaffe awarded the city’s proposed increases of 0% for 1-1/2 years, 2% for 1-1/4 years, and 2% for 1/4 year (3 months)); *City of Rockford* (increasing wage rates by 4% (non-compounded) over three years, or an average of

1.33% per year); *Village of Romeoville* (Arbitrator Fletcher awarded the employer's proposed 2% wage increase in each of three contract years starting 5/1/09); *Village of City of Belleville, supra* (Arbitrator Goldstein awarded across the board increases of 3.25%, 0% and 2.5% for the three contract years commencing 5/1/08. Thus, the aggregate "across the board" increases were 5.75% over 3 years, or an average of 1.92% per year); *City of Evanston, supra*, Arbitrator Goldberg awarded increases of 2.5%, 0%, and 2% (and an additional 1% in the last 6 months) for the 3 years commencing 3/1/09, or an average of 1.83% per year); and *Village of South Elgin, supra* (where Arbitrator McAlpin adopted the employer's 1.75% - 1.75% proposal, and rejected the Union's 2.25% - 2.75% demand)(*Brief* at 33-35).

5. Comparisons with Employees in Comparable Communities – [Section 14(h)(4)]

While the parties have stipulated as to which communities are "comparable," the City takes a different view as to how, if at all, instructive the collective bargaining agreements of the stipulated "comparables" are in these proceedings. Citing numerous arbitrators, the City asserts that it does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other public entities at a time when the economy was in much better condition than it is now (*Brief* at 35-36). Although external comparability has been a factor given great weight by interest arbitrators, including this arbitrator, in these uncertain and volatile times – at least for now in these transition cases where the economy crashed during the proceedings – cost-of-living considerations and changes that have occurred are more "applicable" and must be given greater weight than comparability. Based on the similarity of the circumstances present in this case, and for all the reasons articulated by Arbitrator Benn in *ISP, supra*, *Boone County Sheriff, supra* and *North Maine FPD, supra*, the City respectfully submits that the Arbitrator here should similarly

find that the external comparability factor in Section 14(h)(4) of the *Act* must yield to the cost-of-living and changes factors specified in Sections 14(h)(5) and –(7).

B. CONCLUSION RE: ACROSS-THE-BOARD WAGE INCREASES

The City maintains the dire economic climate which exists during these negotiations has shaped its fiscal strategy to create new efficiencies and cost-savings measures in all Departments which make wage increases that either meet or exceed “cost-of-living” affordable. Accordingly, there can be no serious argument but that the public’s interests are best served by maintaining public service levels while getting the most “bang for the buck.” As such, criteria (3) (“interests of the public/ability to pay”), (5) (“cost of living/consumer prices”), (7) (“changes during the proceedings”) and (8) (“internal comparability”) all strongly favor the City’s wage increase proposal. Finally, to the extent it is at all relevant, criterion (4) (“external comparability”) also favors the City’s proposal, which would substantially preserve the employees’ competitive wage ranking with the stipulated comparables. Accordingly, based on all the foregoing, the City states that proper application of the Section 14(h) criteria require the Arbitrator’s selection of the City’s proposed 1%, 3% & 3% wage increase for the 3-year term of the parties’ successor Labor Agreement (*Brief* at 42-43).

ISSUE #1: WAGES/UNION’S POSITION

A. **The Recession has not changed §14(h) of the Act nor the Rules of Interest Arbitration**

The Association acknowledges that under the Illinois Public Labor Relations Act, interest arbitration is “clearly intended to supplement the bargaining process, not supercede it.” City of DeKalb & DeKalb Professional Firefighters Assoc., Local #1236, IAFF, S-MA-87-76 (Goldstein, Chair) (at 7). In fulfilling this task, however, the arbitrator should consider whether “each negotiating team . . . advance[d] proposals that are both reasonable and representative of

their bargaining position,” and should focus on reasonableness with the overarching goal of maintaining the status quo. City of DeKalb & DeKalb Professional Firefighters Assoc., Local #1236, IAFF, S-MA-87-76 (Goldstein at 8-9). These principals were recently underscored by Arbitrator Goldstein as follows:

Interest arbitrators are essentially obligated to attempt to replicate the results of arm’s length bargaining between the parties and to do no more.” Tough economic times may provide a relevant context, but “all statutory factors set out in Section 14(h) [do not] go by the wayside, because these are bad times.” In short, “[t]he rules of the game and the frame of analysis have not changed.” In this case, the ‘tough economic times’ context bears little fruit for either party, because the bulk of the internal and external comparable data was produced during those tough times.

While the City claimed that there was a marked contrast between pre-recession and post-recession wage increases among the comparables, the facts are otherwise.

B. The Union’s Wage and Insurance Contribution proposals should be adopted, because they are favored by the §14(h) factors

The Union’s proposal on wages is more reasonable than the employer’s final offer, because it is supported by the statutory criteria and it most closely resembles the agreement the parties should have reached at the bargaining table. It is beyond dispute that this police union seeks a higher general wage increase for year 2009 than was recently awarded by Arbitrator Meyers for the only other internal police union. Unlike Arbitrator Larney’s award in 2006, Arbitrator Meyers did not find that 1% was a reasonable wage proposal for year 2009.

He was very careful to describe his award of 1% for the command officers for 2009 as a “negative” which “does not argue in favor of its adoption.” He adopted the employer’s proposal, because he believed it to be slightly less negative than the Union’s failure to effectively counter the employer’s duration/contract term offer. Therefore, the 1% “negative” imposed by Arbitrator Meyers does not reflect the agreement the parties should have reached at the bargaining table.

Instead, Arbitrator Meyers awarded that negative because of how last, best offer interest arbitration works.

1. Wages: Application of the §14(h) factors to the facts demonstrates that the Union's Wage proposal should be adopted

While worth noting, the first two §14(h) factors, the employer's lawful authority and the parties' stipulations, do not strike at the heart of this issue and are not probative. The same can be said of "the interests and welfare of the public," which is the first part of the third statutory factor. Both parties can make compelling arguments that their position is in the public interest. Practically, however, there is always a balancing act any unit of government must perform when deciding how to get "the most 'bang' for its 'taxpayer buck'" when spending to protect the public and enforce the law. Irrespective of whether the City is millions of dollars in the black, or thousands of dollars in the red, the City of Danville has the financial wherewithal to pay either parties' final offers. Because it cannot be said that the public's interest in economic frugality trumps the public's interest in a professional, well-paid police force, none of the first three §14(h) factors decisively favors either party's financial proposals.

a. The City has the ability to meet its costs and to pay a reasonable general wage increase

The City asserted it was experiencing difficult financial times. In addition to being not unique, this circumstance is statutorily irrelevant. The plain language of §14(h) indicates that the City's "financial ability" must be considered. The City presented no evidence of inability to pay a general wage increase, instead arguing that a wage freeze would make its General Fund Reserve healthier. Because the employer presented no evidence of inability to meet its costs, but instead explained it, like anyone, has to make choices on how to best raise and spend revenue, this statutory factor favors the Union's proposal.

Like any reasonable and prudent party, the City of Danville is concerned about its balance sheet. However, there is no requirement that a home rule municipality operate with a balanced budget. Even during difficult financial times an employer must find a way to accommodate a deserved wage increase. Hard times, in and of themselves, are therefore not grounds for a government otherwise able to meet its costs to achieve a wage freeze or a “negative” 1% general wage increase. This is especially so where the government seeks to impose that negative for one group of public safety employees, while negotiating a 3.5% general wage increase for another *during the recession*.

b. Internal Comparability favors the Union’s wage proposal

In spite of the Meyers Award, the manifest weight of the internal comparability evidence supports the Union’s proposal. For this factor to weigh in favor of the City’s 1% “negative” wage offer, the Arbitrator must ignore all internal comparables and focus exclusively on the police command unit. If that was the only interest arbitration award which had occurred in recent memory in Danville, and if Arbitrator Meyers had not taken the effort to explain how that 1% was a “negative,” that approach might be warranted. But those circumstances do not exist. Instead, irrespective of which union the City is dealing with, it has demonstrated a preference for arbitrating contracts instead of negotiating them, which has an obvious financial impact upon any cost savings the City achieves via that route.

Arbitrator Meyers’ Award is not the only recent public safety interest arbitration award relevant to this proceeding. In 2010, before any “bounce back” from the recession, the City arbitrated the fire command officers’ wages and insurance contributions. (UX 1). The City sought a wage freeze for year 2009. (UX 1 at 3). Arbitrator Reynolds instead awarded 3.5% for

that year. (UX 1 at 6). Therefore, even if only the Reynolds and Meyers awards are averaged, the 2.25% result is closer to the Union's proposal for year 2009 than it is to the City's.

But §14(h) does not limit “[c]omparison of the wages . . . of the employees involved in the arbitration proceeding with the wages . . . of other employees performing similar services” to only those wages determined by interest arbitration. So, the rank and file firefighters’ 2009 general wage increase of 3.5%, negotiated during the recession, should also be considered. Doing so reveals an average 2.66% general wage increase during year 2009 for all internal public safety employees.

Since it offered 2% for year 2009 during negotiations but cut that figure in half for purposes of arbitration, the City tendered a regressive wage proposal as its final offer. The City justified this by explaining how it bargained a reduction in force with the fire department unions. But there is zero evidence that either fire union agreed to go from 58 firefighters one day to 51 the next. Just as it did with the Police Department, the City unilaterally cut the Fire Department staffing levels. However the City allegedly bought the IAFF's subsequent consent. One has very little to do with the other, as those negotiations took place after the City had already eliminated those positions by attrition. Even if this *quid pro quo* were real and not illusory, there is no evidence that the City was willing to offer any *quid pro quo* to this unit, relying instead upon a not-so-veiled threat of more layoffs.

Just as it did with the rank and file firefighters, the City reduced the rank and file police officers from 56 officers down to 49. The City could not really buy a ‘no layoffs’ deal from the police union, because it used a strings-attached federal grant to hire three new officers. Under this grant, the City was prohibited from laying off these new officers, who happen to be the least senior. This created another issue for the City, because the City was obligated to lay off the least

senior officers first. If the City wished to negotiate, and gain a quid pro quo from this union, it should have sought concession on this aspect of the agreement (which incorporates state law) in exchange for 3% or more in year 2009. Unwilling to offer any quid pro quo to the police officers for this reduction in force through attrition, the City again resorted to interest arbitration. Because it proved no such attempt to offer any quid pro quo to this unit, any illusory quid pro quo offered the fire unions does not undo the Union's 2009 general wage proposal being more closely aligned with the internal comparables than the City's offer.

Consideration of the non-public safety internal comparables underscores that this factor weights in favor of the Union's wage proposal. Excluding the lone 4%, but not excluding the command officers' 1%, reveals an overall internal comparable average of 2.6%. That average was produced by agreements negotiated or arbitrated during the recession. The bulk of the internal comparables evidence in this case simply does not support the City's 1% general wage increase offer, but instead supports granting the Union's proposal.

c. External Comparability favors the Union's wage proposal

No evidence exists that the City of Danville has ever negotiated a 1% general wage increase with any bargaining unit. Not only is there zero evidence that Danville has bargained such a minimal wage increase with any of its bargaining units, there is zero evidence that any comparable community has achieved a 1% general wage increase for any police officer bargaining unit for year 2009. In fact, no comparable police bargaining unit will see a general wage increase of less than 2% during year 2009 (double the City's offer), and the "going rate" for that year, roughly 3.4%, is in excess of the Union's offer in this case.

d. While the City's wage proposal more closely resembles the 2009 cost of living data, it is not *also* a quid pro quo for increased health insurance contributions

If any §14(h) factor favors the City's wage proposal, it is cost of living data. Nevertheless, the City's 1% wage offer tacitly admits that there is no symbiotic relationship between the cost of living and annual general wage increases for this bargaining unit. The statutory "cost of living" generally does not remain static, or frozen, but instead rises a few percentage points each year. For example, from May of 2006 to May of 2007, the cost of living rose 4.2%. That year, this bargaining unit's wages did not increase in tandem with CPI data but were instead frozen. Year 2009 was exceptional, because the cost of living reportedly dropped that year. If there were any interdependence between general wage increases and CPI data, the City would be offering a negative number for year 2009.

There is zero evidence in this case of any direct correlation between general wage increases and CPI data. In 2005 and 2007, the general wage increase was slightly higher than CPI data. In 2006, there was no relationship. In 2008, the general wage increase was slightly lower than CPI data. If the City's offer for 2009 is adopted, there is little correlation between the figures. The same would be true for 2010, since both parties' 3.0% offer is at least a full percentage point above CPI projections. At best, wage increases for this bargaining unit track the cost of living numbers in the same way that the cost of a haircut approximates the cost of a meal away from home.

Instead of relying solely on the Meyers Award as its justification for the 1% wage offer for year 2009, the City is instead hoping to sell that 1% as being so generous an offer, in comparison to the one time drop in the cost of living, as to be a quid pro quo for its proposed increased employee health insurance contributions. Or, it is assuming 1% or 2% is a standard general wage increase, and therefore its 3% offers in years 2010 and 2011 reflect an extra 1% quid pro quo. One wonders why it would assume 1% or 2% is standard, when none of the

comparables average that figure and when Arbitrator Meyers just described 1% as “harsh” and “negative.” By making this argument, however, the City concedes the requirement of offering a quid pro quo to increase employee health insurance costs. Ultimately, its disingenuous (if not perjured) marketing technique fails because the evidence fails to support any verifiable relationship between CPI data and annual general wage increases for this bargaining unit.

e. The remaining statutory factors, if present, reveal little

The remaining §14(h) factors, sub-paragraphs 6 through 8, were given little attention at hearing. The parties spent no time during the hearing delving into the overall benefits package, identified at §14(h)(6), presumably because it is unremarkable in comparison to the other Danville bargaining units as well as those in the comparable communities. Whatever similarities exist between this bargaining unit’s overall compensation package and every other bargaining unit’s overall compensation are not probative of which parties’ wage offer should be selected.

With regard to the §14(h)(7) factor, changes during arbitration, there is again little evidence in the record. Thus, there is no occasion to find for one party or the other with respect to either of these §14(h) factors. However, the statute at §14(h)(8) explains that other factors “normally or traditionally taken into consideration” shall also be considered.

WAGES: DISCUSSION AND AWARD

A. The City’s wage offer is more reasonable relative to the Union’s offer when CPI date is considered

Management correctly points out that as of the date of the filing of its post-hearing *Brief*, the annual increase in the CPI-U for the MURA through 10/31/10 was the same 1.5%. Even if the CPI-U for the fiscal year ending 4/30/11 reaches approximately 211.8 (1.9% increase from 2010), the parties’ proposals, when measured against the CPI-I Midwest for the appropriate 3-year period compare as follows:

<u>Increase Date</u>	<u>Annual CPI-U %</u>	<u>City's Proposal</u>	<u>Union's Proposal</u>
5/1/09	-1.5%	1.0%	3.0%
5/1/10	2.7%	3.0%	3.0%
5/1/11	1.9%	3.0%	3.0% (City projection)
Totals:	3.1%	7.0%	9.0%

The City stresses that its 3rd year 3% wage increase proposal is intended to exceed the CPI-U data for 4/30/11, and is specifically intended to help abate the employees' increased costs associated with the City's health insurance proposal (discussed *infra*).

Relative to the CPI criterion, I find the City's proposal to be more reasonable relative to the Association's final offer, a position not contested by the Union.

B. Relevant Internal comparables, on balance, favors the Administration's position

In addition to the internal settlements that were restructured to eliminate costs (*supra* at 20-21), for the years 5/1/09 through 4/30/11, the Police Command Officers' percentage wage increases are 1% and 3% , i.e., identical to those included in the City's final offer to the Patrol Officers in this matter for the same contract years. The data for Danville's units indicate the following:

	<u>2009</u>	<u>2010</u>	<u>2011</u>
PBPA (Police Command)	1%	3%	
Laborers (Public Works)	3%	3%	
IAFF (Fire Command)	3.5%	3.5%	
Laborers (Mass Transit)	4.0%		
Laborers (Clerical Unit)	2%	3.0%	

Excluding the 4% of the Mass Transit Employees, the average internal general wage increases are: 2.6% 3.2%
(*Brief for the Union* at 10-11)

Given this evidence record, I agree with the City's position. When measured against the

Police Command Officers’ agreement or any of the City’s other union agreements, the City’s wage proposal for the Patrol Officers is more appropriate and equitable than the Union’s offer, given that other units made serious concessions for wage increases.

C. External criteria, on balance, favors the Association’s final offer

A review of the increases accorded in the relevant bench-mark jurisdictions indicates the following distribution for the three-year period:

	<u>2009</u>	<u>2010</u>	<u>2011</u>
Alton:	3.5%*	3%	
Belleville:	3.25%	0%	
East Moline:	4%		
Kankakee:	2%	3%	4%
Normal:	2 + 2%	2 + 2%	3.5%
Pekin:	3.5%		
Quincy:	3.5%		
Urbana:	3.5%		
Bold number averages:	3.06%	2%	4%
<u>Total averages:</u>	3.40%	2.5%	3.75%

*The City represented that this agreement was negotiated pre-recession, but it was signed in June of 2008 (CX 28 at 35; *Brief for the Association* at 11).

(See, UX 17; CX 28-35, bold numbers indicating figures produced between December 2007 and June 2009).

Even accounting for contracts arbitrated or negotiated during the recession, that “going rate” is 3.06% , which is in excess of the Union’s offer, and is a full two percentage points in excess of the City’s offer. As such, the manifest weight of the external comparable

data, even accounting for the recession, weighs in favor of the Union's wage offer.

Favoring the Employer's offer is this: The proposed annual wage increases of 1%, 3% and 3% will increase wages by 7% (non-compounded) over 3 years, yielding an average of 2.33% per year, an outcome more favorable to the Patrol Officers than under all of the City of Chicago, *supra*, City of Rockford, *supra*, the Village of Romeoville, *supra*, City of Belleville, *supra*, City of Evanston, *supra*, and Village of South Elgin, discussed *supra* at 21-22, awards, which decisions all rejected the unions' higher wage demands. (see, *Brief for the Employer* at 35). Accordingly, current arbitral trends support the adoption of the City's proposal, and rejection of the Union's wage demands, especially when the parties' positions are considered with respect to insurance benefits (discussed *infra* 33-38).

I also find that the City's Patrol Officers' present wages create no detriment to the public services provided by them and, therefore, the public interest is best served by the adoption of the City's proposed wage increases, rather than the Union's proposal.

Given my decision with respect to the Association's position on insurance coverage (*status quo*), I hold that the City advances the better case regarding wages. Cost of living (CIP-U), internal (police command), and economic parameters trump external criteria under this specific evidence record. The City's three-year wage offer of seven percent is not so out of line

with the externals that would otherwise cause ignoring Danville's precarious financial position,² one of a declining general fund and deficit spending (due in major part to the State's non payment of funds to cities in Illinois). Unlike the federal government, the City of Danville cannot print money. As such, I cannot ignore the City's deficit spending by awarding nine percent over three years, clearly out of line with cost-of-living data and other considerations noted in this opinion. As noted by counsel for the City (*Brief* at 41), the Employer's wage offer will not significantly change external rankings, and I so hold. Seven percent over three years, commencing May 1, 2009, under the dismal economic conditions facing governments in Illinois, is hardly a wage freeze.

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

ISSUE #2: TERMS OF INSURANCE COVERAGE/EMPLOYER

A. THE UNION'S CLAIM THAT THE CITY'S INSURANCE PROPOSAL IS "PERMISSIVE" IS OF NO CONSEQUENCE IN THESE PROCEEDINGS

The Administration concedes there is no dispute but that, in the interest arbitration before Arbitrator Meyers involving the Police Command Officers, the City had proposed re-aligning the Command Officers' insurance coverage (which, like here, was 90/10) with that of the rest of the City's non-police employees (which was 80/20) (R. 49). There is similarly no dispute but that

² Significantly, as of April 30, 2010, the City's General Fund ending cash balance was around \$311,000 (EX 7; R. 26). Moreover, the record indicates that expenditures by the City have exceeded revenues in four out of the City's six most recent fiscal years, with the largest deficit occurring in the last of those six years, the fiscal year ending 4/30/10 (EX 10). I agree with the City's position that traditional "inability-to-pay" analysis, mandated by the statute, must take into account declining General Fund balances and deficit spending by government entities. To hold otherwise would abdicate a neutral's mandate under the statute to consider the government employer's (1) ability to pay and (2) the interests of the public. Simply because the government can fund a wage increase does not imply that the statutory inquiry is at an end. Anyone who has served as an arbitrator or advocate in the public sector knows that government expenditures are a matter of priorities, not just balance sheets. I decline to read "ability to pay" as simply an inquiry whether a city can "meet its costs to pay a wage increase." Deficit spending and a declining General Fund balance are not statutorily irrelevant criteria, as argued by the Union, and I so hold.

the Union took issue with the City's "scope of insurance" proposal, claiming it was "permissive" in nature, and filed both a Petition for a Declaratory Ruling to that effect (in which the City joined), as well as their redundant ULP Charge (claiming that the City had insisted upon a permissive topic of bargaining to impasse). As recited by Arbitrator Meyers, the ILRB ruled that the City's "scope of insurance" proposal was "permissive" and so, by stipulation of the City, that issue was not before Arbitrator Meyers for resolution (EX 13.C at 6; UX 2 at 6). The Union eventually withdrew their redundant ULP Charge as "moot." (*Brief* at 43-44).

Despite the substantive differences between the two proposals, the Union filed a ULP the day before the hearing, claiming that the City had insisted upon presenting to impasse a proposal which "repeats the impermissible flaw" found to be problematic by the Board General Counsel, Jerald Post (UX 25 at 2; hereinafter "Post"). The Union's claim that the Arbitrator may not lawfully consider or award the City's "scope of insurance" proposals is without merit, and must be disregarded here in this case:

1. The Union's Use of ULP Procedures Is Not Appropriate For Barring the Arbitrator's Consideration of the City's Proposal
2. The Union's Allegations Contained in Its ULP Are Without Merit And Should Be Disregarded Here

The City's proposal is intended to: (a) place the Patrol Officers on the same 80/20 plan, with the same deductibles, co-pays, etc. as are applicable to all of the City's non-police employees, on the date of the Award; and (b) allow the City to make changes to the Patrol Officers' coverage, so long as the benefits remain "substantially similar" to those that are in effect for the Patrol Officers on January 1, 2011 (EX 12.A., as amended by e-mail of 10/15/10; R. 64). As the City understands the Union's argument, it is that the City's proposal is "unlawful" because it is substantively the same proposal that was found to be "permissive" by

Mr. Post in the Declaratory Ruling. In other words, Mr. Voyles is claiming that Post's prior Declaratory Ruling has a "preclusive" effect on the City's current proposal.

There is simply no rational basis for any conclusion that the "scope of insurance" proposal here presents the same problem identified, and thus raises the same issue decided, by Post. Accordingly, the City respectfully submits that the allegations contained in the Union's ULP are without support in fact or in law, and should be disregarded entirely by the Arbitrator here (*Brief* at 49).

3. Arbitrators Are Appropriately Averse to Deciding Matters Which Should Be Decided By The ILRB

It must be emphasized that the Association is not asking the Arbitrator to honor an ILRB determination based on the City's insurance proposal *in this case*; rather, the Union is attempting to have the Arbitrator base his decision regarding the City's new proposal on Post's *prior* Declaratory Ruling (involving a substantively different proposal). By dangling the specter of "illegality" (based on his groundless claim that the City's "scope of insurance" proposal here is the same as the one Post found defective previously), the Union seeks to convince the Arbitrator to make the same judgment that he is presently asking of the ILRB. Arbitrators are rightfully reluctant to acting as the ILRB. *See, e.g., City of Decatur and IAFF Local 505*, ILRB Case No. S-MA-06-204 (Hill, 2008) ("*City of Decatur*") at 32; *City of South Beloit and FOP*, ILRB Case No. S-MA-06-106 (Perkovich, 2009).

B. THE CHANGES SOUGHT BY THE CITY DO NOT WARRANT "BREAKTHROUGH" ANALYSIS

1. The Union's Attempts to Cling to The Status Quo Are Not supported by Arbitral Precedent

The Union has been advised of the key changes that would result from the Arbitrator's adoption of the City's proposals, and initial placement of the Patrol Officers on the City's health insurance plan applicable to all non-police employees:

- (a) Claims for benefits under the City-wide benefit structure will be processed on a "80/20" basis (the incumbent Police arrangement is "90/10");
- (b) Pharmacy co-pays for PPO participants' claims will be processed the same as for HMO participants, *i.e.*, they will no longer be credited toward "deductible/out-of-pocket" maxima; and
- (c) Effective January 1, 2011, the "out-of-pocket" maxima for all City employees (not just Police) shall be increased to \$2,000/yr. per beneficiary (at a maximum, x3 for family)(*Brief* at 52).

In the City's opinion, most arbitrators would find that these adjustments to current insurance arrangements do not create "an entirely new" benefit structure which warrants "breakthrough" analysis. Further, the deference afforded an insurance "*status quo*" is especially minimized where the *status quo* runs counter to internal comparability factors. Also, at least one arbitrator has been reluctant to treat changes in insurance plans as a "breakthrough" where the changes do not make the employee group "pioneers," but simply align a bargaining unit with the other employees of the employer. *See, City of Peoria and IAFF Local 544*, ILRB Case No. S-MA-92-067 (Feuille, 1992) ("*City of Peoria*") at 30 (*Brief* at 53-54).

2. "*Quid Pro Quo*" Analysis Does Not Favor the Union's Proposed Clinging to the *Status Quo*

In management's view, interest arbitrators are disinclined to treat insurance adjustments designed to bring uniformity to employee groups as a "breakthrough." (*Brief* at 54). Moreover, unions' demands for a "*quid pro quo*" in such cases are frequently unsuccessful.

Unlike the situation in *City of Decatur* (Hill)(wherein the City was seeking changes that would result in a "totally new program"), there has been absolutely no showing either that: (a)

the City is proposing a “totally new Plan” for the Patrol Officers; (b) the Patrol Officers in Danville have “given up” anything that was specifically intended to pay for retaining their 90/10 Plan while avoiding receiving the same insurance plan benefits that are available to all other City employees (other than Command Officers); or (c) the other employee groups received anything of value for their acceptance of the change from the 90/10 configuration of the Plan to the 80/20 configuration (and other changes over time). Moreover, the Union in this case has presented no evidence (nor can it) that it has made any proposal that would even begin to *address* the well-recognized “skyrocketing costs” of insurance on a year-to-year basis (*Brief* at 55).

Any record evidence involving *quid pro quo* in this case pertained to the City’s augmentation of its wage increase proposal for 2011 (the year in which the changes would affect the Officers). The City’s approach to wage increases for all employee groups in recent years has been to: (a) meet anticipated cost-of-living rates, and (b) pay additional wage increases based upon changes in the employees’ terms of employment which result in savings to the City. As of the time of the hearing the annual rate of CPI-U increase was 1.5%, while the City’s wage proposal for 2011 is 3%. The intent of the City’s wage proposal was to (a) meet cost of living, which was expected to be less than 2% on 5/1/11, and (b) pay an additional 1+% to help defray the additional costs to the Officers resulting from the realignment of their insurance with other City employees. The City has estimated that, in a “worst case scenario” whereby every beneficiary in the Patrol Officers’ group Union reaches their maximum “deductible/out-of-pocket” amounts after 1/1/11, the total impact on the unit is approximately \$92,000, which represents about 3% of wages bargaining unit-wide.

Even if the insurance changes could fairly be characterized as a “breakthrough,” the City states that its offered wage increase constitutes a substantive “*quid pro quo*” which supports the adoption of the City’s proposal (*Brief* at 56).

Moreover, if the Union argues that the City needed to pay an additional 3% as a suitable “*quid pro quo*” in its *Brief*, the Arbitrator should find such an argument ludicrous, inasmuch as that would mean that the City would reap no savings whatsoever from realigning the Officers with the rest of the City employees (*Brief* at 57).

Based on all the above, the City submits that, if the Arbitrator determines that “breakthrough” analysis is appropriate here, any consideration of *quid pro quo* favors the City’s position, and supports rejection of the Union’s unprincipled attempt to cling to the *status quo*.

C. APPLICATION OF THE RELEVANT STATUTORY CRITERIA REQUIRES THE ARBITRATOR’S ADOPTION OF THE CITY’S FINAL OFFER ON THE SCOPE OF INSURANCE

Stating that “not all of the criteria under Section 14(h) will be particularly useful in examining the parties’ competing “scope of insurance” proposals,” the City maintains that because insurance is an economic issue, other Section 14(h) criteria which have been discussed at length, the City simply adopts those same observations regarding the state of the economy.

Still, argues the City, there are particular Section 14(h) criteria which require specific attention and application here: Internal Comparability (Section 14(h)(8)); External Comparability/Overall Compensation (Sections 14(h)(4)(A) and -(6)); and Interests of the Public (Section 14(h)(3)). It is the City’s position that the relevant statutory factors fully support the City’s position on insurance in this case, and require rejection of the Union’s proposal.

1. Internal Comparability

Apart from the equity aspect of uniform insurance, the efficiencies that result from a unified approach to employee health care benefits also underscore the paramount role that

internal comparability plays in the resolution of insurance disputes. In the instant case, there is no record evidence of any variations whatsoever in the insurance benefits afforded to any of the City’s non-Police employee groups. It is clear that the Police unions are the only employee groups in the City who are not covered by the 80/20 plan configuration. It is fully appropriate to align the Patrol Officers’ benefits with the City’s non-police employees under a unified, homogeneous insurance benefit plan (*Brief* at 62).

2. External Comparability/Overall Compensation

The Village submits external comparability is not nearly as important in deciding this issue as it might be in cases involving wage disputes. Moreover, numerous arbitrators have acknowledged that it is a daunting task to try to make comparability assessments among different plans with widely varying deductibles, co-pays, etc. Neither of the parties has introduced evidence of the details of the insurance plans for the comparable communities. However, the record does contain some evidence of the comparative ranking of the Officers’ wages and the impacts that the City’s proposed insurance changes may have on those rankings.

The City calculated the “career earnings of officers” in 2010 by aggregating each year of service’s salary within 2010, under both the City’s and the Union’s wage proposals (EX 37.C). That exercise resulted in a showing that Danville Officers’ career earnings would be 3rd among the 9 comparables if the City’s wage proposal was adopted:

	<u>Total</u>	<u>Rank</u>	<u>% of Mean</u>
City	1,556,984	3 of 9	102%

Assuming (a) the average “worst case scenario” economic impact on Officers’ wages resulting from the change in insurance is, on average, 3%, and (b) no other comparable has any “out of pocket” offset against wages, those numbers become:

	<u>Total</u>	<u>Rank</u>	<u>% of Mean</u>
City	1,510,274	4 of 9	100%

Admittedly, this methodology is somewhat artificial and is based upon certain assumptions which may or may not become realities. However, the “faults” inherent in the exercise all argue toward an outcome even more favorable to employees, to wit:

1. The 3% deduction is the “worst case scenario” average impact, which, as noted above, may not ever happen.
2. It is unrealistic to think that *none* of the Police Officers in any of the other comparable communities has any “out of pocket” obligations that would similarly be offset from their wages as well.
3. The wages used were the 2010 wages (because too many comparables’ 2011 wages are unknown at this time). If 2011 wages were used, the wage calculations would obviously have been higher (*Brief* at 63).

Even with all the “warts” of this “guess-timation” exercise, it appears fairly clear that adoption of the City’s insurance and wage proposals will not result in any worse outcome than: (a) the Patrol Officers will rank 4th of 9 in career earnings and (b) their “career wages” will remain at or about 100% of the mean total for 2010. The Union has certainly not provided any data or evidence that these projections are substantially wrong. Accordingly, there is no basis in the record for any finding that the alignment of the Officer’s insurance benefits with those of the other City employees will result in dilution of the Officers’ overall compensation to non-competitive levels (*Brief* at 62-64).

3. Interests of the Public

The City asserts it is difficult, if not impossible, to imagine how the public would be better served by allowing the Union to hold the litigation/arbitration “knife” to the City’s “throat.” The City seeks only to be allowed to make changes which would leave the Plan

“substantially similar” to the benefits in effect for Patrol Officers on January 1, 2011. This is a common staple of bargaining in Illinois. The Union’s position (*i.e.*, that allowing the City such minimal flexibility) has never been sanctioned by the ILRB and should not be awarded by the Arbitrator.

D. CONCLUSION RE: TERMS OF INSURANCE COVERAGE

The City’s proposed “scope of insurance” language addresses and eliminates the “external indicia” concern found to be problematic by ILRB General Counsel Post in the Command Officers’ negotiations. As such, the Union’s argument about it being “permissive” in nature should be ignored. The changes sought by the City are adjustments to existing benefits, intended to align the Officers’ benefits with those of the City’s non-police employees, and are not a “whole new Plan.” Thus, “breakthrough” analysis is not warranted here. However, even if the changes could fairly be described as a “breakthrough,” the City’s proposed changes are justified and supported by wide-spread arbitral precedent, as well as the relevant statutory 14(h) criteria, most especially “internal comparability.” Accordingly, and based on all the foregoing, the City respectfully states that its “scope of insurance” proposal to unify should be adopted, and the Union’s unprincipled attempt to “cling to the *status quo*” should be rejected, in this case.

ISSUE #2: INSURANCE BENEFITS/UNION

A. Health Insurance Benefits -- The City failed to prove the need for its “breakthrough” health insurance benefits proposal, but that proposal should not even be considered because it is still a permissive subject of bargaining

Addressing Health Insurance Benefits, the Union seeks to maintain the status quo and the City seeks to change it. At hearing, the Union emphasized its legal argument that the City’s proposal could not even be considered. In the Association’s view, the City failed to articulate any recognized basis or justification for achieving a “breakthrough” at interest arbitration.

1. The City's three articulated justifications do not support the award of a breakthrough at interest arbitration

The Association maintains that Mayor Eisenhower explained the City wished to move the Association to its “city-wide plan” for two reasons: equity and economy. The City offered one extra reason: to skirt the “handcuffs” of bargaining. None of these three reasons, individually or collectively, meets the recognized standard for achieving a breakthrough at interest arbitration, the Association argues.

Breakthrough issues, traditionally, are changes to structure, design or nature of a program or provision in a collective bargaining agreement. A “break through” item is one which changes the status quo and should have been negotiated at the table, rather than being sand-bagged or lain behind the log in anticipation of interest arbitration. City of DeKalb & DeKalb Professional Firefighters Assoc., Local #1236, IAFF, S-MA-87-76 (Goldstein, Chair) (p. 8). The party wishing to change the status quo, by means of interest arbitration instead of by voluntary negotiations, bears the burden of proving that the “negotiators should, as reasonable [persons], have voluntarily agreed to it.” Twin City Rapid Transit Co., LA 845 (McCoy, chair, 1947). To depart from the status quo on this issue, the City was required to show, “1) there is a proven need for the change; 2) the proposal (to depart from *status quo*) meets the identified need without imposing an undue hardship on the other party; and 3) there has been a *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision.” (CX 29B at 49). The City’s case for changing the health insurance benefits provision fell far short of this standard.

First, neither its first nor last reasons, “equity” and being handcuffed by the law, constitute any legitimate need and therefore the City cannot meet part one of the three-part test for either reason. Even assuming the condition of the economy is a legitimate need for changing

the *status quo* with respect to health insurance benefits, the City proved no *quid pro quo* that the Union should have snatched up during negotiations.

2. The City failed to prove that its proposal on health insurance was not permissive

a. The City repeated its permissive offer to the Union

Taking things in their proper order, and staying true to the Act, it must first be established that the City's health insurance benefits proposal was one which the arbitrator could award. The relevant context or background from which to judge the legality of the City's proposal is the Illinois Labor Relations Board General Counsel's ruling in S-DR-10-004. (UX 26). Absent evidence of substantial changes to the content of the proposal at issue in S-DR-10-004, that language remains permissive and therefore outside of the boundaries of what the arbitrator can lawfully award in this case.

Instead of abandoning its permissive proposal and starting from scratch, the City opted to tinker with it. Because it chose this course of action, it should bear the burden of proving that its changes in fact altered the substance of its proposal. That cannot be proved because the City repeated most (if not all) of the content from the permissive proposal in S-DR-10-004. The new proposal reads:

The insurance benefits provided for herein shall be provided under a group insurance policy or policies, or thorough [sic] a self-insured or managed care plan selected by the City, with no reduction in current coverage and, effective on the date of Arbitrator Hill's [sic] Award in ILRB Case No. S-MA-09-238, as provided to the City's full time employees other than members of the bargaining units represented by the Union ("City-wide plan"). Except as otherwise provided herein, the City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar to the coverage and benefits that are in effect under the City-wide plan as of January 1, 2011. (City Ex. 12A, as amended post-hearing).

Changing word order, but not content, the City's "new" proposal can be stated as follows:

The insurance benefits provided for herein shall be provided under a group insurance policy or policies, or thorough [sic] a self-insured or managed care plan selected by the City. Except as otherwise provided herein, the City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar to the coverage and benefits that are in effect as of January 1, 2011 under the "City-wide plan" (as provided to the City's full time employees other than members of the bargaining units represented by the Union) and, effective on the date of Arbitrator Hill's [sic] Award in ILRB Case No. S-MA-09-238.

That proposal is substantially the same as its permissive proposal, which stated:

The insurance benefits provided for herein shall be provided under a group policy or policies or thorough [sic] a self-inured [sic] plan selected by the City. The City shall notify and consult with the Union before changing insurance carriers, self-insuring or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar to the coverage and benefits that are provided to the City's other full-time employees (who are not members of the bargaining units represented by the Union) as of the effective date of Arbitrator Meyers' award in ILRB Case No. S-MA-07-220, provided:

- a. The City will notify the Union at least 60 days in advance of the effective date of any imposed changes in coverage (and prior to signing agreements with insurers implementing those changes) of the precise nature of the changes in coverage contemplated by the City and, if requested by the Union, the City will meet with the Union for the purposes of obtaining the Union's input and suggestions concerning the proposed changes, further noting that the obligation imposed to notify and meet does not amount to a bargaining obligation or a right to impasse resolution; and
- b. The Union shall have the right to grieve any changes in coverage under a *de novo* standard and the City will have the burden to demonstrate that the changes are justified. (Un.Ex. 26, Dec. Ruling, p.3).

Although he discussed sub-paragraphs one and two of this proposal in passing, the General Counsel did not recite those sub-paragraphs when deciding:

Contrary to the Employer's assertion, I find that the proposal grants the Employer an extremely broad range of flexibility to make midterm changes to the bargaining unit's health insurance benefits" and "This use of external indicia to determine the health insurance benefits of bargaining unit employees amounts to a waiver of a statutory right, and therefore is a permissive, not mandatory, subject of bargaining." (UX 26, Dec. Ruling at 7).

Because of the language appearing in the introductory paragraph of its proposal, but not its sub-parts, the General Counsel observed:

The Union does not know and cannot know what changes could occur to its bargaining unit employees' health insurance benefits during the term of the contract. No sooner than the contract is signed, the Employer could drastically increase deductibles for its non-union employees (or, as the Union suggested, bargain with another unit for higher wages and commensurably higher deductibles) and apply those changes to the bargaining unit employees. *This broad authority granted to the Employer under the proposal results in the Union's abdication of its right to bargain over a mandatory subject.*" (UX 26 at 7).

No matter which party bears the burden of proving that the City's proposal is lawful, no objective observer can compare the City's "new" proposal to its non-mandatory one, and conclude the "new" proposal differs from its permissive proposal so much as to cure all defects identified by the General Counsel. (UX 26). That language therefore remains a permissive subject of bargaining, outside of the arbitrator's lawful authority to award in this matter.

b. In practice, the City has proved the General Counsel's point

The City proved how its language would work. Recall that the General Counsel found the health insurance proposal language to be too broad an "abdication" of unilateral authority to the City because it would allow "the Employer [to] drastically increase deductibles." (UX 26 at 7). Assuming a 66-100% increase is "drastic," the City did just that. (CX 25 at 2, second-to-last para.).

Free from the "handcuffs" of bargaining "any change of any dollar amount," the city merely notifies its non-police bargaining units about "drastic" unilateral changes to the health insurance plan. Because it does not have to bargain increasing employee out-of-pocket increases,

the City merely informs the other bargaining units that “there will be an increase of the yearly deductible and out of pocket amounts.” That notice does not invite bargaining, and no such bargaining occurred. That means, the City does not have to offer any quid pro quo to make such changes. Therefore, its proposal in this case is of tremendous benefit to the City, which underscores how its 1% “harsh” or “negative” wage offer fails to represent any valid quid pro quo.

c. The City has not done its homework about how the federal government will view its “city-wide plan”

This “drastic” increase also defeats the plan’s “grandfather status.” As explained in City Exhibit 25B, at page 34560:

“(g) *Maintenance of grandfather status*

c. *Changes causing cessation of grandfather status.*

(ii) *Increase in percentage cost-sharing requirement.*

Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement (such as an individual’s coinsurance requirement) causes a group health plan or health insurance coverage to cease to be a grandfathered health plan.”

Kathy Courson’s letter explains that the yearly deductible increased 66% and the out of pocket maximum increased 100%. The maximum percentage increase allowed under the federal regulations is 40.27% or less. Therefore, the City’s scheduled changes, if they take effect, will “cause[] a group health plan or health insurance coverage to cease to be a grandfathered health plan.”

In the Association’s view, if the City really wants its plan to be grandfathered, it therefore must do something different than what it has planned for January 1, 2011. And, by the City’s own admission, “quite frankly we can’t begin to cost out” what a loss of grandfathering status will mean. Consequently, no matter what happens on January 1, 2011, the City will see additional unknown costs in its “City-wide plan” which it will very likely meet by passing the

buck(s) down to the employees in the form of “drastically increase[d] deductibles.” If its offer is awarded, it will pass along those costs without being handcuffed by having to offer a quid pro quo to the Union. In short, the City’s proposal does nothing to end litigation over health insurance benefits and the adoption of “[s]uch a scenario hardly would be conducive to the strengthening of a stable and cooperative relationship between the parties.” For all of these reasons, the City’s proposal to change the health insurance plan should be rejected in favor of maintaining the status quo.

INSURANCE BENEFITS: DISCUSSION AND AWARD

In the instant case the City has proposed re-aligning the Patrol Officers’ insurance benefits with those of their non-police counterparts in the City, a reasonable but nevertheless a significant change in the *status quo*. According to the Administration, however, its current proposal has been modified from the proposal found problematic by ILRB General Counsel Jerald S. Post (“Post”) in the Declaratory Ruling, in order to address the specific “flaw” that rendered the City’s proposal to the Command Officers “permissive.”

Generally, and invoking black-letter law in this area, there is validity to the notion of internal consistency with respect to insurance coverage. As stated by Wisconsin Arbitrator Edward Krinsky in *City of Elgin & Local 439, IAFF* (2005):

Given that the City’s offer achieves internal consistency to a much greater degree than the Union’s offer, and that both offers result in employees paying significantly smaller premiums than employees in comparable jurisdictions, the arbitrator favors the City’s offer with respect to Health Insurance Premiums (Krinsky at 9-10).

Arbitrator Krinsky accepted the City’s offer even though the Firefighters would be making larger contributions in 2006 than any of the other units. *Id.* at 8. Also, the bargaining unit would be making contributions some three months before the police and other bargaining units. *Id.* at 9. Finally, in Elgin, the employer’s insurance costs were significantly lower (second lowest)

relative to the bench-mark jurisdictions. While neither offer provided internal uniformity of benefits, Arbitrator Krinsky awarded the City's final offer since that offer achieved internal consistency "to a much greater degree than the Association's offer." *Id.*

Similarly, in *Village of Schaumburg & Metropolitan Alliance of Police Chapter 195* (2007), Arbitrator Tom Yeager found compelling notions of internal consistency with respect to insurance benefits. On this subject the Arbitrator had this to say:

The Village argues that the Arbitrator should select its final offer to maintain the Village-wide uniformity with respect to its generous flexible benefit plan since the Association has not met its burden of demonstrating a compelling reason to create unique terms applicable only to this bargaining unit. It contends that Illinois arbitrators with amazing uniformity recognized the strong interest of employers in maintaining uniformity with respect to health insurance and cited the arbitrator to several of those decisions.

* * *

As I discussed earlier, unless there is some compelling reason why this bargaining unit should not be treated like the other bargaining units, the Village's ability to negotiate the same provision with its other represented bargaining units should receive significant if not controlling weight in this interest arbitration. Again, as was the case with the Union's wage proposal there is no record evidence that persuades me this principle should not be controlling in this instance. There is no evidence relevant to this issue that distinguishes this unit from the others (*Id.* at 25-27, emphasis mine).

Chicago Arbitrator Elliott Goidstein, in *Elk Grove Village & Metropolitan Alliance of Police* (1996), agreed with the position articulated by the above arbitrators. His reasoning regarding uniformity of insurance benefits is noteworthy:

However, I believe that the factor of internal comparability alone requires selection of the Village's Insurance Proposal, as the Village believes. Prior to 1994, I note, the Village had always provided insurance benefits to all Village employees on an equal basis. All of the Village's various insurance options were made equally available to union and non-union employees alike, and on the same terms and conditions, including the same dollar amount of employee contributions.

* * *

Arbitrators have uniformly recognized the need for uniformity in the administrations of health insurance benefits. Arbitrator Fleischli, in *Village of Schaumburg and FOP* (September 15, 1994), perhaps stated it best when he explained:

In the case of benefits like health insurance, internal comparisons can be particularly important because of the practical need to establish uniformity in the largest pool for reasons of fairness and to hold down overall costs.

Id. at 36 (emphasis mine).

Arbitrator Feuilee's analysis in *City of Peoria and IAFF* (September 11, 1002), is also illustrative. In that dispute, the City was "moving in the direction of bringing all of its employees under the new health insurance plan," while the fire union wanted a separate plan and program for its employees. Covering the weight to be given the factor of internal comparability, Arbitrator Feuille was of the view that:

[T]he health insurance issue in dispute here in a city-wide issue, in that the City is trying to continue to maintain City-wide uniformity in its health insurance plan whereby all employees will receive the same medical and dental benefits and also make contributions according to the same contribution formula. In other words, health insurance is not an issue that is somehow unique to this City bargaining unit. Instead, it is most usefully addressed from a city-wide perspective.

Accordingly, the Panel believes that the internal comparability evidence deserves considerable weight. Unlike some other labor-management issues, this health insurance issue is the type of issue where comparisons with other City-employees are imminently appropriate and useful. In this instance, other city employees constitute healthy appropriate comparison groups within the meaning of Section 13(h) of the Act. The internal evidence provides much stronger support for the City's offer than for the Association's offer.

Goldstein at 96-97, quoting Arbitrator Feuille at 31-32.

Just as the Union requests to change the *status quo* with respect to management rights/layoffs (*infra*) and residency (*infra*), the Association points out that in this case it is the City that is seeking to change the *status quo* with respect to insurance benefits. While the Union asserts that so-called "breakthrough" analysis is required to move the unit to the City-wide insurance plan, regardless of what test is applied by the thinnest of margins the Association makes the better case for maintaining the *status quo*.

To this end, I credit the Union's arguments regarding the absence of an adequate *quid pro quo* for moving to the Employer's city-wide plan. Aside from the Association's argument that the City's proposal is "permissive," I do not see any kind of *quid pro quo* offered by the City (even three percent in year three of its wage proposal) that would otherwise justify the Association adopting the City's offer. Indeed, as noted by the Association, the City's only evidence of any *quid pro quo* was "coincidence" -- the 2009 dip in CPI data. The City never offered this Union the 3.5% general wage increases it offered its other bargaining units who agreed to move to the "city-wide plan." Absent proof of any bona fide *quid pro quo*, which the Union should have agreed to, the City failed to make a case meeting all elements of the three-part test for changing the *status quo*.

Supporting such a view is the decision of Arbitrator Ray McAlpin in *FOP & Sheriff of Cook County*, ILRB Case L-MA-96-009 (1998). Similar to Arbitrator Nathan's analysis in *Sheriff of Will County*, *supra*, Arbitrator McAlpin had this to say regarding a *quid pro quo* requirement when one party is proposing a significant change to an existing benefit package:

[W]hen one side or another propose[s] significant changes to the *status quo*, there is a special burden placed on that party. When one side or another wishes to deviate from that *status quo* of the collective bargaining agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This panel recognizes that this extra burden of proof is placed on those who wish to significantly change that collective bargaining relationship. The party desiring the change must show that:

- (1) There is a proven need for the change.
- (2) The proposal meets the identified need without imposing an undue hardship on the other party; and
- (3) There has been a *quid pro quo* offered to the other party of sufficient value to buy out the change or that other groups were able to achieve this provision.

Sheriff of Cook County, *supra*, at 20 n. 19; see also *Brief for the Employer* at 13-14 (quoting McAlpin).

I also credit the Association's argument regarding its concern of allowing the City to increase deductibles unilaterally.³ This is not to assert the Union's view is correct. I only recognize the difficulty of being on the legal side of the envelope regarding granting one side the authority to "reposition" insurance benefits. Asserting that its insurance proposal is "whatever it is on January 1, 2011" (R. 51; 65) is not reassuring for the Union where the City presented no hard evidence of what that plan will be.

For the record: By the thinnest of margins I am awarding the Union's *status quo* position on health insurance benefits but with this declaration: The Union's continued insistence on being separate from the rest of the bargaining units at Danville is problematic, at best, for the near future. Gone are the days when employees can isolate themselves from the realities of the economy – an economy that has really tanked, quoting Arbitrator Benn – by insisting on retaining Cadillac-type insurance benefits negotiated in an entirely different economic environment from the present. Skyrocketing health-care costs will eventually mandate moving everyone from 90-10 to 80-20 co-payments. This phenomenon has forced many cities in Illinois to get out of the business of providing health insurance to retirees. There will be a point in time that economic necessity *will* mandate a change from the *status quo*. Danville will not be exempt. My guess: The next round of arbitration will again be the forum for another contest between the parties regarding a plea for uniformity. Given the evidence record before me, however, coupled with my awarding the City's final offer on wages for three years (1%, 3%, and 3%), I hold only

³ In the Association's words: "The Union does not know and cannot know what changes could occur to its bargaining unit employees' health insurance benefits during the term of the contract. No sooner than the contract is signed, the Employer could drastically increase deductibles for its non-union employees (or, as the Association suggested, bargain with another unit for higher and commensurably higher deductibles) and apply those changes to the bargaining unit employees. *This broad authority granted to the Employer under the proposal results in the Association's abdication of its right to bargain over a mandatory subject.*" (UX 26 at 7 (emphasis added); *Brief* at 14-15).

that management has not shown an appropriate justification and *quid pro quo* to move the bargaining unit to a city-wide program *at this time*.

For the above reasons, the Association's final offer on insurance benefits is awarded.

ISSUE# 3: INSURANCE PREMIUM CO-PAYMENTS/EMPLOYER

A. THE CRITERIA OF SECTION 14(H) REQUIRE ADOPTION OF THE CITY'S INSURANCE CONTRIBUTION PROPOSALS

The City's employee health insurance plans are self-funded and administered by a third-party administrator. Accordingly, the City funds the plan with actuarially-determined "escrow" rates, which are the equivalent of "premiums" in traditional plans. The Patrol Officers make no contribution to the premium/escrow amount for single coverage. As of 5/1/08, the Patrol Officers' level of contribution towards the dependent health insurance cost was \$85 per month for one dependent and \$95 per month for coverage of two or more dependents.

The parties have both proposed increases in the level of employee contributions for dependent health-insurance coverage. However, their proposals differ in all three (3) years of the Agreement. The Union's final offer is to implement a one time \$10.00 increase to the employees' monthly contribution effective 5/1/09. The City's final offer is to continue the status quo of increasing the employees' contribution by \$15.00/month for each year of the Agreement.

1. Other Factors - Internal Comparability – [Section 14(h)(3)]

It is beyond any serious argument that, when it comes to insurance benefits, internal comparability is often the most important statutory criterion, and may even serve as the only relevant criterion. The facts in the instant case compel a finding that internal comparability favors, and requires adoption of, the City's proposal.

It is undisputed that every employee of the City is eligible for coverage under either a PPO or HMO program under the City's health insurance benefit Plan (*although Police Department members presently receive 90/10 benefit levels, while the remainder of the City's employees receive benefits on a less-generous 80/20 basis*). It is also undisputed that, from 5/1/06 through 4/30/09 (the 3-year term of the previous agreement) the Patrol Officers' contribution rates were equal to, or lower than, those of any other City employee group with the exception of the Clerical Union employees who, as mentioned, are the lowest paid employees in the City.

As of the date of the hearing, the monthly contribution rates for all but one of the other unionized groups in the City had been established for what will be the first two years of the Patrol Officers' 2009-12 Agreement. There are no internal comparables for the final year of the Agreement. However, the evidence record clearly demonstrates that the Union's proposal abandons any notion of internal comparability.

In summary, in the first two years of the Agreement, the City's proposal will maintain the historical "parity" relationships for insurance contributions that have been in place since at least the 2007-2008 fiscal year, while the Union's proposal will substantially alter those relationships. Such a proposal is patently offensive, especially in light of the fact that the Patrol Officers have continued to enjoy their "90/10" plan benefits, while every City employee (other than Police officers) received "80/20" coverage, through (at least) the first 20 months of this Agreement term. Accordingly, this factor alone counsels strongly for adoption of the City insurance premium co-payment proposal. The City respectfully submits that, based on the record before the Arbitrator, and for all the reasons articulated in the relevant precedent cited above, the statutory criterion of internal comparability strongly favors the Arbitrator's adoption of the

City's proposal on health insurance premium contributions (*Brief* at 71).

2. Changes in the Statutory Factors During the Proceedings – [Sec. 14(h)(7)]

The City submits that its arguments regarding the “crashing” of the economy, and the impacts that has had on the City and its finances during these negotiations, are similarly applicable to the issue of insurance premium contributions.

3. Overall Compensation of the Employees – [Section 14(h)(6)].

The City argues that it is appropriate for the Arbitrator, in assessing the reasonableness of the parties' respective health insurance proposals, to review the City's costs for the bargaining unit members' wages and health insurance benefits (the two most significant components of the employees' overall compensation), in the aggregate.

Given that the CPI-U Midwest rose only 1.2% during the 2-year period from 5/1/08 (the date of the Patrol Officers' last raise) to 4/30/10, the City's proposed aggregate 2-year increases in the City's subsidy of employees' insurance escrow rates along with wages (4.7%) clearly exceed current economic realities. Accordingly, the City's proposed adjustments to the employees' wages and insurance premium contributions are strongly supported by the statutory criterion of Section 14(h)(6).

The City points out that the Union's proposed two-year increases to the City's expenditures for the same “overall compensation” items (6.4%) is more than five times the CPI-U rate of inflation for the relevant two-year period (1.2%) (discussed, *infra*). The City respectfully submits that its insurance contribution proposal, when coupled with salaries as part of “overall compensation,” meets any measure of “reasonableness” in the current economic climate. Moreover, when you combine the above data for the first two years with the fact that the City has offered a 3% wage increase for the 3rd year of the Agreement with a projected CPI-

U increase of 1.5% to 1.9% for that same year, the City's proposals certainly provides the Patrol Officers with a more than reasonable overall compensation package even with the City's insurance contribution proposal for 2011-12. Accordingly, statutory factor 14(h)(6), "Overall Compensation" strongly supports this Arbitrator's adoption of the City's proposed adjustments to the bargaining unit members' rates of contribution to their health insurance premiums, and rejection of the Union's proposal (*Brief* at 73-74).

4. Average Consumer Prices/Cost of Living ("CPI") – [Section 14(h)(5)]

Management points out that for many years health insurance costs have continued to rise at a much more rapid rate than the CPI-U and, with the enactment of the new Federal Healthcare Reform legislation, this trend will undoubtedly continue for, at least, the term of this Agreement. However, because the criterion of Average Consumer Prices/Cost of Living is so unpredictable as it relates to assessing health insurance issues in today's economy, it favors neither the City's nor the Union's proposal.

5. The Interests and Welfare of the Public and the Financial Ability of The City to Meet Those Costs – [Section 14(h)(3)]

The City submits its proposed increases to the employees' contributions toward health insurance premiums are just such a "reasonable cost sharing scheme" intended to "mitigate the spiraling increases in insurance costs" which serve the public interests. As noted above, the parties' three-year proposals cover two contract years that have almost already elapsed; accordingly, there is no need to prognosticate regarding what insurance rates are likely to do during those two years. As such, adoption of the Union's proposal would generate the following contribution rates:

	<u>5/1/09</u>	<u>5/1/10</u>
Dep. Premium	\$1,011	\$1,041
Union's proposed Contributions	95/105	95/105
% Equivalent	9.4/10.3	9.1/10.1

(EX 21).

The City's proposals are not "worlds apart" from the Union's proposals for year 1:

	<u>5/1/09</u>	<u>5/1/10</u>
Dep. Premium	\$1011	\$1041
City's proposed Contributions	100/110	115/125
% Equivalent	9.9/10.9	11/12

(EX 21).

In short, the City's proposal is only \$5 per month more in year one. As for years two and three, the Union's proposal completely ignores the economic realities regarding the continuously rising costs of health insurance faced by employers and employees in the both the public and private sector, and would actually *decrease* the percentage of premium contributions by Union members. Also, it must again be noted that the City has offered a 3% wage increase in years two and three of this Agreement, despite the fact that the increase in CPI-U was only 2.7% in 2010-11 and is projected to increase somewhere between 1.5% and 1.9% for 2011-12.

For all the foregoing reasons, the City states that this statutory factor favors the City's proposal on health insurance contributions (*Brief* at 75-77).

6. Comparisons to Employees in Comparable Communities – [Section 14(h)(4)]

For all the reasons discussed above, the City submits that external comparability is not nearly as important in deciding this issue as it might be in cases involving wage disputes. That

being said, the City submits that its proposal is supported by the statutory criterion of external comparability as well.

Most of the City's comparable communities' collective bargaining agreements describe the employees' co-payment obligations as a percentage of the premium, rather than a fixed amount (EX 39 A-H.). However, the comparables' contracts fail to provide much, if any, information about what those premiums are, thereby posing the risk of making the comparison an exercise not so much of “. . . apples and oranges, but dump trucks and plant life.” *City of Loves Park, supra*, at 32. Accordingly, in order to have some rational basis for comparison, the City superimposed the comparables' published percentage rates on the City's known premium amount for 2008, 2009 and 2010 (EX 40; R. 79). Based on that exercise (which admittedly has its perils), and as the City's Exhibit 40 shows, the averages for the external comparables in terms of employee contributions for dependent health insurance are \$204 per month for 2008, \$222 for 2009, and \$226 for 2010 (EX 40; R. 150). Given this variable information, it appears that the City's proposed employee contribution for the first two years of the Agreement is less than half of the mean for all of the comparables. In fact, the City's proposed premium contributions are lower than every comparable community except for Pekin (which requires its employees to contribute towards single coverage, which the City does not)(EX 40).

Accordingly, the City's proposed contribution rates for 2009-10 and 2010-11 remain very low on the list of comparable communities. Admittedly, there is necessarily some speculation involved in the City's estimations; nevertheless, it is clear that there is no external comparability pressure to reject the City's insurance contribution proposals for all 3 years of the Agreement and this statutory criterion does not weigh against the City's proposal (*Brief* at 77-78).

B. CONCLUSION RE: INSURANCE CONTRIBUTIONS

Criterion (#8) (“internal comparability”) is the primary (and often the sole determinant of the insurance contribution issue, and this criterion overwhelmingly favors the City’s proposal. This is especially true since the Union has already enjoyed its higher-level 90/10 benefit coverage, rather than the 80/20 City-wide insurance benefit program, through the first 20 months of the term of the new Agreement. As in the discussion of wages, in these economic times, it should be self-evident that the public’s interests are best served by governmental entities’ development of economic policies that are intended to get the most “bang for the buck,” and that criterion (3) (“interests of the public/ability to pay”) similarly supports the City’s position. Moreover, the bargaining unit entered this process with far less burden to make premium contributions than their external comparables, and the City’s proposal does nothing to diminish or otherwise change the Union’s enviable competitive position on this economic item, and thus criterion (4) (“external comparability”) also favors the City’s proposal. Finally, and as the City’s exhibits and calculations show, the modest increases sought by the City will not cause any “hardship” by disproportionately “diluting” the Command Officers’ wage increases, and criteria (6) (“overall compensation”) and (5) (“cost of living/consumer prices”) either support the City’s proposal, or neither proposal in this case.

Accordingly, based on all the foregoing, the City states that proper application of the Section 14(h) criteria require the Arbitrator’s selection of the City’s proposed insurance premium contributions for the 3-year term of the parties’ new Agreement (*Brief* at 78-79).

ISSUE #3: INSURANCE CONTRIBUTION/UNION

A. **The Union’s Insurance Contribution Proposal Should be Adopted**

As with their respective wage offers for years 2010 and 2011, the parties' offers for health insurance contributions are but \$5.00 apart for year 2009. However, the City has again proposed an increase of "fifteen dollars each year, rather than the ten-dollar annual increase that was adopted and implemented in accordance with Arbitrator George Larney's decision." Although the City has proposed to hike the gradual annual increase these employees will contribute to their health insurance premiums, it has not proposed to abandon a fixed dollar amount in favor of a percentage. Nor has it proposed to double the contribution amounts, like it unilaterally doubled potential out of pocket expenses under its tentative "City-wide plan." Its proposal therefore "does not constitute the type of comprehensive, game-changing alteration on this issue."

In contrast, the Union's offer, during the first year of the agreement, "would [mirror] the established *status quo* of ten-dollar increases in the police command officers' monthly contributions." The Union's health insurance contribution offer is not expressly conditional upon its wage offer. Nevertheless, it was drafted in response to the employer's notorious position with wages. The Union offered to freeze the gradual health insurance premium contribution increases during the second and third years of the agreement.

Repeating a full discussion of the §14(h) factors would be unrevealing as the public welfare, the financial ability of the City of Danville, the consumer price index data and the §14(h)(6-8) factors are no different for this issue than for the wage issue. Ironically, however, the same data that supported the City's wage offer now supports the Union's insurance contribution offer.

While not contingent upon either party's wage offer, the Union's health insurance contribution offer is relative to resolution of the wage issue. Obviously, if the City's wage

proposal is adopted, “the extremely low one percent wage increase that these employees will receive for 2009 strongly argues in favor of holding the line as much as possible with regard to their out-of-pocket expenses for insurance coverage.” Conversely, if the Union’s wage proposal is adopted, the employees should be able to absorb the \$15 increases proposed by the City. While the statutory factors are important, and establish the proper framework within which to compare last, best final offers, the penultimate consideration is the offers themselves. A review of those offers, and the bargaining (or better arbitrating) history between the parties, indicates that the Union’s insurance contribution proposal resembles “the results of arm’s length bargaining between the parties” and therefore should be adopted.

INSURANCE CONTRIBUTION: DISCUSSION AND AWARD

The City’s employee health insurance plans are self funded and administrated by a third-party administrator. As such, the City funds the plans with actuarially-determined “escrow” rates, which are the equivalent of “premiums” in traditional plans. Remarkably, the Patrol Officers make no contribution in the premium/escrow amount for single coverage, and neither party has proposed to impose such a requirement. The employees in this bargaining unit contribute towards their health insurance premiums as follows under the most recent labor agreement (the numbers before the slash are the dollar amounts employees with only one dependant must pay, while the numbers following the slash indicate the amounts paid by employees with more than one dependant insured through the city:

5/1/06:	55/65
5/1/07:	70/80
5/1/08:	85/95

The parties’ final offers are as follows:

	<u>Union</u>	<u>City</u>
5/1/09:	95/105	100/110
5/1/10:	95/105	115/125
5/1/11:	95/105 or less	130/140

Although both parties' final offers propose an *increase* in the employees' contribution, the City's proposal maintains the parties' *status quo* of \$15.00/month *annual* increases which has occurred with respect to the Patrol Officers for every year since 2007. The Union's proposal, by contrast, would dramatically change the *status quo* pattern of annual increases. Therefore, if the special burden for breakthrough proposals is to be applied at all, it should be applied to the Union's proposal, at least if the Association's criterion for change is applied to this impasse item.

Significantly, the City's 2009 proposal will maintain the Patrol Officers' historical parity with the Firefighters, Fire Command, Public Works and Mass Transit employees. Specifically, since 2007-08, the employee contribution level for the Patrol Officers has been \$5.00 per month less than the contributions made by the Firefighters, Fire Command and Public Works employees. In addition, since 2005-06, the Patrol Officers and the Mass Transit employees have contributed the same monthly amount for dependent health insurance. The City's 2009 proposal maintains the parity relationship between all of these groups. The Union's proposal, however, alters this "parity relationship" by providing the Patrol Officers with a 2009 contribution rate that is \$10 per month less than the rates for Firefighters, Fire Command and Public Works employees. Moreover, the Union's proposal results in the Mass Transit employees paying more than the Patrol Officers, which has not previously been the case.

By contrast, the City's 2010 proposal will continue to maintain the historical parity relationships between the Patrol Officers, Firefighters, Fire Patrol and Public Work employees

while the Union's proposal will cause the difference in the contribution levels between the Patrol Officers and these groups to expand to a \$25.00 per month difference in 2010.

I credit the City's numbers regarding the cost component. As such, if the City's wage increases and insurance contribution proposal are awarded, the estimated cost increases for those two compensation components for the first two years of the Agreement would look like the following:

CITY COSTS (CITY PROPOSAL):

	5/1/08	5/1/09	5/1/10
City's Proposed Starting Annual Wages (EX 36)	43,070	43,501	44,806
<u>Monthly Wages</u>	<u>3,589</u>	<u>3,625</u>	<u>3,734</u>
Monthly Escrow (EX 21)	1048	1111	1156
City's proposed Contributions (JX 4 at 2)	85	100	115
<u>+ Diff. (City pays)</u>	<u>963</u>	<u>1011</u>	<u>1041</u>
<u>Monthly Net</u>	<u>4,552</u>	<u>4,636</u>	<u>4775</u>
<i>% Combined Increase</i>		<i>1.8%</i>	<i>2.9% = 4.7%</i>
<i>5/1 CPI-U Midwest (EX 19.A)</i>		<i>-1.5%</i>	<i>2.7% = 1.2%</i>

In contrast, the same sort of analysis of the Union's wage and insurance proposals yields a different conclusion:

CITY COSTS (UNION PROPOSAL):

	5/1/08	5/1/09	5/1/10
Union's Proposed Starting Annual Wages (EX21)	43,070	44,362	45,693

<u>Monthly Wages</u>	<u>3,589</u>	<u>3,697</u>	<u>3,808</u>
Monthly Escrow (EX16)	1048	1106	1136
Union's proposed Contributions (JX 4 at 3)	85	95	95
<u>+ Diff. (City pays)</u>	<u>963</u>	<u>1011</u>	<u>1041</u>
<u>Monthly Net</u>	<u>4,552</u>	<u>4,708</u>	<u>4,849</u>
 <i>% Combined Increase</i>		3.4%	3.0% = 6.4%
<i>5/1 CPI-U Midwest (EX 19.A)</i>		-1.5%	2.7% = 1.2%

As pointed out by the City, the Association's proposed two-year increase to the City's expenditures for the same overall compensation items (6.4%) is more than five times the CPI-U rate of inflation (1.2%) for the two-year period.

I also credit the City's numbers regarding costs. The City's proposal is only \$5 per month more in year one. For years two and three, the Association's proposal ignores the economic realities regarding the rising costs of providing health coverage to employees.

Clearly, on all counts the City advances the better case and, accordingly, its proposal is awarded.

ISSUE #4: MANAGEMENT RIGHTS/LAYOFFS/EMPLOYER

A. THE UNION'S PROPOSED ELIMINATION OF THE CITY'S CONTRACTUAL MANAGEMENT RIGHT TO DETERMINE WHETHER LAYOFFS ARE NECESSARY IS AN UNWARRANTED ATTEMPT TO SUBSTANTIALLY ALTER THE PARTIES' NEGOTIATED STATUS QUO

The City first asserts that like the overwhelming majority (if not all) of the public sector labor agreements in Illinois, Article IV, "Management Rights" of the parties' current Agreement provides for the City's retention of the "sole right and authority" over various matters pertaining to the operation and direction of the Police Department, including:

“(xv) to layoff or relieve employees due to lack of work or funds or other legitimate reason.”

(JX 1 at 6). Article VII, Section 7.4, provides the parties’ agreed-upon mechanism for the implementation of such layoffs:

All layoffs and recalls of officers shall be in accordance with the provisions of Section 10.2.1-18 of Division 2.1, Article 10 of the Illinois Municipal Code (65 ILCS 5/10-2.1-18). (JX 1 at 12).

Despite an unchanged history going back to 2002 (EX 3), the Union attempts to strip the City of that right, and to force the City to bargain over layoff decisions, including compulsory interest arbitration over the layoff decision itself (EX 12.B at 5). The City rejects the Association’s attempt. In support the City advances the following arguments:

1. The Union Has Not Shown That the Current Administration of Layoffs Has “Broken Down” Since Arbitrator Feuille’s Award Was Issued in 2007

For purposes of determining whether the Union’s “breakthrough” demand should be granted, the first relevant inquiry is: “What has changed since 2007 to make the City’s current right to determine the size of its police department dysfunctional at present?” According to the City, the Union adduced absolutely no evidence that Mayor Eisenhauer exhibited any change whatsoever in the operation of the parties’ existing “layoff” provisions; that the system has not functioned as it was intended; or that it has “broken down” in any way, especially not since 2007 and Arbitrator Feuille’s Award (EX 3; UX 14).

2. The Union Has Not Shown That the Current Layoff Provision Has Created a “Compelling Need” or Any Other New Problems for the Union Since Arbitrator Feuille’s Award Was Issued in 2007

In management’s eyes, the Association made no showing that any officer has even been laid off since 2007, much less that any other “compelling need” has arisen since Arbitrator Feuille’s Award which makes it imperative that the Arbitrator here must grant the Union’s

“breakthrough” demand to force the City to abdicate its authority to determine the size and scope of the police services it provides.

3. The Union Has Not Shown That, Since Arbitrator Feuille’s Award Was Issued in 2007, the City Has Either (i) Refused A Sufficiently Valuable *Quid Pro Quo*, or (ii) Abdicated its Management Rights to Other Similarly Situated Employee Groups Without a *Quid Pro Quo*

The Union’s demand here is nothing short of the collective bargaining equivalent to a “smash and grab”, *i.e.*, a clear attempt to unilaterally strip the City of its management right to determine the size of its police force without offering any justification or substantial and meaningful *quid pro quo*. To this end the Union has not introduced any testimonial or other record evidence that the Union ever offered, or even considered, any proposed exchange of value for the elimination of the City’s *management* right to determine the size of its police force, without interference from the Union. Finally, the Union adduced no evidence whatsoever that the City has ever agreed to make layoff decisions a “joint” or “bargained” process with any other similarly-situated employee group, with or without a *quid pro quo*.

Based on all the foregoing, the City respectfully states that the Union here cannot meet its “extra burden” necessary to enable the Arbitrator to consider its proposed alteration of the parties’ *status quo* regarding management rights/layoffs. Accordingly, the City submits that the Arbitrator should award the City’s position, *i.e.*, that Article IV, Section (xv) and Article VII, Section 7.4 of Agreement should remain the parties’ *status quo* going into the new Agreement (*Brief* at 81-83).

- B. The Union’s Claim that The City Has No Right to Insist Upon the Parties’ Status Quo Is Unfounded In Law or In Fact

The Union made no attempt on the record to justify its assault on the parties’ negotiated *status quo* under accepted arbitral standards. Instead, it claims that the City’s insistence on the

status quo language is the equivalent of the City's demand that the Union waive its statutory right to bargain, which in turn is a permissive topic of bargaining which cannot be asserted to impasse. The Association's pronouncements on this issue are, again, the legal analysis equivalent of adding "2 plus 2" and getting "8." For the following reasons, the City states that the Association's claims in this regard are supported neither by law nor by the facts of this case.

First, the cases supplied by Mr. Voyles simply do not arrive at the legal conclusion he will undoubtedly ask the Arbitrator to reach (UX 14). For example, *Chicago Park District v ILRB, Local Panel*, 354 Ill. App. 3d 595 (App. 1 Dist., 2004) and *Forest Preserve District of Cook County v. ILRB, Local Panel*, 369 Ill. App. 3d 733 (App. 1 Dist., 2006) stand for the inarguable truism that reductions of hours or layoffs are mandatory topics of bargaining (a proposition with which the City has no quarrel). The Association's other proffered case, *AFSCME v. ISLRB*, 274 Ill. App. 3d 327 (App. 1 Dist., 1995), states that a party may waive their right to bargain over layoffs through clear and unequivocal contract language (similar to the parties' current language) (again, a principle with which the City does not argue). However, not one of these cases states that the parties' negotiations of management rights provisions, which reserve exclusive authority to the City, is a "permissive" topic of bargaining.

Second, none of the cases proffered by Voyles involve police officers. As such, none of those cases take into consideration the provisions of Section 14(i) of the *Act* which states, *inter alia* "In cases of peace officers, the arbitration decision shall. . . not include. . . (iii) manning; (iv) the total number of employees employed by the department. . . ." (*Brief* at 84). These provisions have been the basis for the ILRB General Counsel's Declaratory Rulings that "manning" issues are "permissive" topics of bargaining. *See, e.g., City of Highland Park*, 12 PERI ¶2020 (ISLRB GC, 1996); *City of Mattoon*, 13 PERI ¶2004 (ISLRB GC, 1997). It is unfathomable that the

ILRB will not permit the Union to force “manning” and “department size” proposals to impasse, yet Mr. Voyles claims that the Union has a right to “end-run” such prohibitions by forcing “layoff” proposals to impasse.

Third, in order to get to the conclusion that Mr. Voyles urges the Arbitrator here to adopt, Voyles is expected to (again) hold out his over-reaching “spin” on the ruling in *Village of Wheeling*, *supra* (*i.e.*, that insistence to impasse on a “non-mandatory” topic of bargaining is a ULP). However, the Union’s anticipated arguments in this regard have the same fatal flaws as discussed above. As has been held by the ILRB in *City of Ottawa*, *supra*, the IELRB in *Mt. Vernon Educ. Ass’n*, *supra* and the 4th Appellate District in the *Mt. Vernon* appeal, only “broad” waivers of bargaining (*i.e.*, over matters that are unforeseen) are “permissive” in nature, while “narrow” waivers (over known or foreseeable issues) are “mandatory.” Indeed, Gen. Counsel Post re-affirmed this very principle in his Declaratory Ruling (EX 13.B at 6; UX 26). Obviously, the potential for layoffs is apparent to all parties in public sector bargaining during these troubled economic times. *See, City of Sycamore*, *supra*, p.9, wherein this Arbitrator observed: “No...police officer...holds any kind of tenure with the City. A severe downturn can presumptively be remedied with appropriate manpower or other cuts.”

Because layoffs in the current economic climate cannot seriously be viewed as “unforeseen,” there is nothing “permissive” about the Agreement’s current reservation of Management Rights to decide upon layoffs.

Finally, for all of his pronouncements of the “impermissibility” of the City’s insistence on the Management Rights *status quo*, there has been no effort by Mr. Voyles to obtain any determination by the ILRB that he is correct. As discussed, Voyles is well-acquainted with the ILRB’s procedures for Declaratory Rulings, which is the best method for obtaining the ILRB’s

guidance as to whether a proposal is truly “permissive” or “mandatory” and thus subject to the Arbitrator’s jurisdiction. He has chosen neither to pursue that course, nor even to file a ULP; rather, he has attempted to “dump” the task (of ruling on whether the current Management Rights language is an impermissible “waiver”) in the lap of the Arbitrator. As noted previously, arbitrators have previously observed that a union’s “last minute” claim that a proposal is “permissive,” especially where the union has taken no steps to obtain the determination of the ILRB on the issue, have no meaningful impact on arbitration proceedings. *See, e.g., City of Decatur, supra*, at 32.

Based on all the foregoing, the City states that the Association’s claim (*i.e.*, that the Arbitrator has no authority to award the City’s proposed maintenance of the Agreement’s *status quo* language governing layoffs) is unfounded and should be rejected, and the City’s proposal on layoffs should be granted.

C. APPLICATION OF THE APPLICABLE STATUTORY CRITERIA REQUIRES THE ARBITRATOR’S ADOPTION OF THE CITY’S FINAL OFFER

Even if the Union could meet the “special burdens” applicable to “breakthroughs” on the issue of layoffs, the Association made absolutely no showing on the record that any application of relevant Section 14(h) criteria favors its proposed elimination of the City’s Management Right to decide upon layoffs.

1. Section 14(h)(4): Comparisons With Other Employees

(a) *External Comparability*

A review of the “Management Rights” provisions of the agreements of the stipulated comparables reveals a striking level of consistency in the comparables’ treatment of the issue. Like Danville, five (5) of the comparables (Alton, Belleville, Kankakee, Pekin and Quincy) expressly reserve the right to “relieve employees from lack of work or funds or other proper

reasons (the language found to be express authority to layoff employees by the Appellate Court in *AFSCME, supra.*);” two (2) others (Normal and Urbana) reserve the right to “determine the means...and numbers of personnel by which the operations are to be conducted,” an arguably broader right, as adjustments to numbers of personnel need not depend upon a “lack of work or funds” (EX 43: *Brief* at 86-87).

Similarly, the “Layoff” language of the comparable contracts are quite uniform in their treatment of the layoff procedure issue. Like Danville, Normal expressly incorporates Section 10-2.1-18 of the *Municipal Code*, which statutorily provides for layoffs in reverse order of seniority in the rank affected. Five (5) others (East Moline, Kankakee, Pekin, Quincy and Urbana) all provide for layoffs in order of least seniority first” (Er.Ex.44). The remaining two (Alton and Belleville) do not have specific “layoff” procedure provisions, so they remain subject to the *Municipal Code’s* (65 ILCS 5/10-2.1-18’s) requirements.

(b) *Internal Comparability*

Even a cursory review of the City’s contracts with other bargaining groups supports the City’s retention of the *status quo* (*Brief* at 87-88).

2. Section 14(h)(3): Interests and Welfare of the Public.

The City submits it is difficult, if not impossible, to imagine how the public would be better served by allowing the Union yet another opportunity to interject itself in the City’s mid-term management of its operations and to threaten costly litigation/arbitration if the City dares to disagree with it.

D. CONCLUSION RE: MANAGEMENT RIGHTS/LAYOFFS

The Union has not shown any substantial reason for disrupting the parties’ *status quo* regarding the City’s right to determine the necessity of layoffs as a management right. It has not

met the “special burdens” applicable to “breakthroughs” in interest arbitration, and its desperate plea to have this Arbitrator serve in the stead of the ILRB and determine the “mandatory” or “permissive” nature of the parties’ *status quo* is inappropriate and unwarranted. Finally, even if the Management Rights/Layoff was properly cognizable under the Section 14(h) criteria, the only applicable statutory criteria (external and internal comparability, interests of the public) weigh heavily in favor of the City’s position. Accordingly, and based on all the foregoing, the City respectfully submits that the parties’ *status quo* provisions on layoffs should be awarded, and the Union’s proposals rejected.

ISSUE #4: MANAGEMENT RIGHTS/LAYOFF/UNION

A. The current “lay off” language appearing in the agreement is a permissive waiver which the arbitrator cannot continue

The Union objects to the continuation of the status quo lay off language because it is a permissive, or non-mandatory waiver of the Union’s statutory right to bargain. At present the agreement grants management the right to layoff “because of lack of work or other legitimate reasons.” As observed by the General Counsel, “[t]he waiver of a statutory right is a permissive subject of bargaining.”

The usual procedure for determining whether proposed contractual language is mandatory or non-mandatory (permissive) is to “request[] a determination” under “Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board.” (UX 26 at 1). The end result of that process is a “Declaratory Ruling.” Choosing not to “reinvent the cheeseburger” the Union herein relies upon a higher authority than the General Counsel.

The Appellate Court has previously found the language in the parties’ agreement to have “contractually waived [the] statutory right to bargain over . . . layoffs.” (UX 27 at 9 and 10 of 11). Because the language in the parties’ agreement mirrors that ruled upon by the Appellate

Court, it is a “waiver of a statutory right [which] is a permissive subject of bargaining.” (UX 26 at 5).

The Appellate Court observed the following in the AFSCME case:

- d. A public employer’s “decision to lay off employees was a mandatory subject of bargaining;” and
- e. “[A] party to a collective bargaining agreement *may* waive its rights to bargain under the Illinois Public Labor Relations Act where the contractual language evinces an unequivocal intent to relinquish such rights.”

Next, the Court construed the following passage appearing in the AFSCME contract:

“[T]he Employer retains the exclusive right to manage its operations, determine its policies, budget and operations, the manner of exercise of its statutory functions and the direction of its working forces, including, but not limited to: The right to hire, promote, demote, transfer, evaluate, allocate and assign employees; * * * *to relieve employees from duty because of lack of work or other legitimate reasons*; [and] to determine the size and composition of the work force * * *.” AFSCME v. State Labor Relations Board, 274 Ill.App.3d 327, 334-35, 653 N.E.2d 1357, 1363 (1st Dist. 1995)(emphases added).

The *status quo* text of the parties’ management rights clause likewise states:

“[T]he City has and shall continue to retain the sole right and authority to operate and direct the affairs of the City and Police Department in all its various aspects, including, but not limited to, all rights and authority exercised by the City prior to the execution of this Agreement. Among the rights retained by the City are . . . (xv) *to layoff or relieve employees due to lack of work or funds or for other legitimate reasons* [and] (iii) to determine the . . . number of personnel need to carry out [its] mission.” (JX 1, at 6)(emphasis added).

Obviously, the status quo language “expressly refer[s] to layoffs.” (UX 27). But even if it did not, as occurred in AFSCME, “there is no other way to read this language but as a clear and unequivocal intent by the parties to grant [the employer] the sole authority to determine whether a layoff of bargaining unit personnel is necessary due to economic necessity.” (UX 27 at 9 of 11, last para.). Therefore, this language “reflects the requisite intent on the part of [the Union] to *waive its right to collective bargaining over the issue at hand.*”

That the language is codified, so to speak, in the parties' agreement is of no consequence. Under the Act, the parties are free to include a permissive subject of bargaining in their agreement. However, where both parties do not jointly elect to continue it, the language cannot be imposed by an arbitrator. The employer's status quo proposal is therefore an insistence upon the continuation of a waiver of a statutory right "with no possibility of resolving the impasse before an arbitrator as required by the Act." The employer has no lawful authority to insist on this proposal, which is relevant under §14(h)(1) of the Act. Because the Union does not agree to continue the waiver, and because the arbitrator cannot impose it (even by merely continuing it), this language must fall from the agreement.

MANAGEMENT RIGHTS/LAYOFFS: DISCUSSION AND AWARD

The Union has not shown the emergence of any new "compelling need" or "special hardship" or other problems that have been created by the layoff provision since 2007 and Arbitrator Peter Feuille's 2007 Award. Rather, the Association's entire focus is "legal," that what management is proposing violates the Act.

- A. The Association's argument that the current language is permissive is rejected as having been asserted in the wrong forum; The Employer's insistence on the *status quo* language is not the equivalent of the City's demand that the Association waive its statutory right to bargain

This negotiated contract term has appeared unchanged in the parties' Agreement going back to at least 2002 (EX 3). The Association developed no record evidence that would otherwise indicate that this provision is not an established part of the parties' negotiated *status quo*. More importantly, if in fact the Union believes the provision at issue *involving police officers* is permissive, the appropriate forum to resolve this is before the Board. While I agree with the Association that the waiver of a statutory right is a permissive subject of bargaining, the usual procedure for determining whether proposed contractual language is mandatory or non-

mandatory (i.e., “permissive”) is before the Illinois Labor Relations Board. As correctly pointed out by the Association, the end result of that process is a “Declaratory Ruling” (DR). The Association’s failure to secure a ruling from the Board is, in effect, dispositive of its *legal* argument before me. ⁴ Until the ILRB decides, and gives effect to, the “permissive” argument advanced by the Association, I agree with the City that it would seem highly inappropriate for an interest arbitrator to make such a determination regarding the operation of provisions of the *Act*.

B. Internal and External criteria favor the City’s proposal

Similar to the residency provision (discussed *infra*), both internal and external data support awarding the City’s status quo offer on management rights/layoff. An examination of internal criteria is telling:

Police Command – City reserves the right to lay off employees, pursuant to 65 ILCS 5/10-1-38.1 (the Civil Service Code equivalent to 65 ILCS 10-2.1-18) (EX 13(a) at 2.6).

LIUNA (Clericals) – City reserves the right to layoff employees due to lack of work or funds or reorganization or for other legitimate reasons, in reverse order of seniority (EX 14 at 4,8).

Firefighters - City reserves the right to layoff employees due to lack of work or funds or other legitimate reasons, pursuant to 65 ILCS 5/10-2.1-18 (EX 15 at 5,37)

LIUNA (Transit) - City reserves the right determine the number of employees it will employ or retain, and the size and composition of the work force, pursuant to inverse seniority in the classification affected, with “bumping” rights (EX 16(b), at12,14).

⁴ I note that Section 14(d) of the Act and Section 1230.90(j) of the Board’s Rules both provide:

“Arbitration proceedings shall not be interrupted or terminated by reason of any unfair labor practice charge involving either party.”

80 Ill.Adm.Code 1230.90(j).

As such, if the Union believed management was asserting a permissive-type item to impasse, this position should be asserted before the Illinois Labor Relations Board (ILRB) for a Declaratory Ruling (DR) on the matter, which can impact arbitration proceedings, as it did in the hearing before Arbitrator Meyers. By statute and rule, an unfair labor practice charge is not permitted to have any impact on interest arbitration proceedings.

Fire Command - City reserves the right to layoff employees due to lack of work or funds or other legitimate reasons, pursuant to 65 ILCS 5/10-2.1-18 (EX 17 at 3,7)

LIUNA (Public Works) - City reserves the right to layoff employees due to lack of work or funds or other legitimate reasons, pursuant to reverse bargaining unit seniority (EX 18 at 3, 6)

As pointed out by the Administration, clearly there is no internal comparability pressure to award the Union's demand for a new right to bargain over layoff decisions (*Brief* at 63-64).

Similarly, an examination of external bench-mark jurisdictions favors the City's position. Significantly, like Danville, five jurisdictions (Alton, Belleville, Kankakee, Pekin and Quincy) expressly reserve the right to relieve employees from lack of work or funds or other proper reasons. Two jurisdictions (Normal & Urbana) reserve the right to "determine the means . . . and numbers of personnel by which the operations are to be conducted." (EX 43; *Brief for the Employer* at 86-87).

For the above reasons the Employer's position on management rights/layoffs is awarded.

ISSUE #5: RESIDENCY/EMPLOYER

A. HISTORY OF THE CITY'S RESIDENCY REQUIREMENT

The City has required that its police officers reside within five (5) miles of the City limits since the mid-1970's. The same requirement has been made applicable to all other City employees *via* City Ordinance and Section 39.04 of the City's Personnel Policies, going back to at least 1995 (UX 29). In 1999, Policy Section 39.04 was amended to provide that mayoral appointees would be required to reside within the City's limits, but all other employees (including Patrol Officers) would continue to be permitted to reside within five miles of the City limits (EX 46). The City's residency requirements were incorporated into the parties' contract by Section 13.11 of the parties' prior (*i.e.*, 2002-2006) Agreement, which provided:

In the event that the City elects to change the residency requirements which are currently applicable to all persons employed by the City, or in the event that such change is mandated by law by the Illinois General Assembly, any such change shall likewise be applicable to all officers covered by this Agreement; provided, however, that no such change shall be more restrictive than the requirements of the City which are in effect as of the date of this Agreement.

(EX 2 at 4). These residency requirements remained unchanged and were in effect in 2006, at the time the parties began their negotiations for their now-expired Agreement.

In 2006, during the last round of negotiations between the parties, the Union proposed to eliminate Section 13.11 and/or any residency requirement for Patrol Officers (EX 2 at 4; R. 6). Ultimately, the prior negotiations were submitted to Interest Arbitrator Peter Feuille for resolution. By agreement of the parties, on February 15, 2007, Arbitrator Feuille entered a “Stipulated Award” (EX 3; UX 14; R. 6, 156). That Stipulated Award made no changes to the incumbent Section 13.11 of the Agreement. Thus, Section 13.11 and the residency requirements that were (and remain) in effect on “the date of the (2006) Agreement” are the parties’ negotiated *status quo* regarding Patrol Officers’ residency requirements (R. 6).

In February, 2008, the City Council amended City Policy Section 39.04 to restrict residency for new employees (hired on or after January 1, 2008) to “within the corporate limits of the City” and enacted Ordinance 8570 to that effect (EX 47 at 4; UX 30 at 1). Paragraph (A)(4) of Section 39.04 was amended to expressly state that the new “in-City” residency requirements did not apply to employees hired before January 1, 2008. However, for reasons that are neither explained nor apparent on the face of the Ordinance, the “5-mile limit” for employees hired prior to January 1, 2008 was omitted (EX 47 at 4). **The City maintains that the omission of any reference to the “5-mile” limit for pre-2008 hires in Section 39.04 was an error in drafting, and did not manifest any intent of the City Council to affirmatively eliminate the 5-mile residency requirement applicable to pre-2008 hires (*Brief at 90*).**

In 2009, the Union again came to the negotiations table with a demand to abolish residency requirements for Patrol Officers, as it had in 2006. The residency issue was unresolved when this case was assigned to the Arbitrator here for resolution. Management points out that at the pre-hearing conference held in Bloomington, IL on September 3, 2010, Mr. Voyles identified residency as one of the Union's open issues and, upon the Arbitrator's direct question, responded that the Union would be seeking a residency limit of "20 miles" in this case.

Notwithstanding his earlier representation to the Arbitrator and counsel for the City to the contrary, on September 22, 2010, Voyles submitted the Union's written "final offers" which included a demand to allow Patrol Officers to reside within a "30-mile radius of the Danville Police Department" (EX 12(b) at 7). A week later, at the September 29th hearing, Voyles announced, *for the first time ever*, that he interpreted Policy Section 39.04, as amended by Ordinance No. 8570, as affirmatively establishing a new *status quo* that "set free" all Patrol Officers hired before January 1, 2008, to live wherever they wished, and that the Union's "30-mile radius" proposal was intended to be more restrictive than the parties' *status quo* (R. 137, 181).

In the wake of the September 29, 2010 hearing, the City reviewed the history of Ordinance No. 8570 and verified that the omission of any reference to employees hired before January 1, 2008 was inadvertent and attributable to "scrivener's error." On October 19, 2010, (the first possible City Council meeting following the hearing), the Council enacted Ordinance No. 8711, which recited the Council's prior intent to retain the "5-mile radius" requirement for employees hired before January 1, 2008, and amended paragraph (A)(4) of Section 39.04 as follows:

Any employee of the City who was employed on or before January 1, 2008 shall be exempt from the provisions of division (1) above, but rather shall continue to be required

to reside within 5 miles of the corporate limits of the City, unless otherwise directed for an employee covered by a Collective bargaining Agreement.

- B. THE UNION SEEKS A “BREAKTHROUGH BENEFIT” AND THE ABOLITION OF A PRODUCT OF THE PARTIES’ PAST NEGOTIATIONS, AND THEREFORE BEARS AN “EXTRA BURDEN” OF PROOF WHICH HAS NOT BEEN MET IN THIS CASE.

It is well settled that the Union, as the party seeking to obtain a “breakthrough” change in the *status quo*, is required to meet an “extra burden” of proof before there is any assessment of the proposals against the criteria of Section 14(h). The same standards applicable to “breakthroughs” generally are no less applicable to residency disputes in interest arbitration (*Brief* at 92). If the Union should attempt to argue that that the usual “extra burdens” that apply to “breakthrough” issues in interest arbitration do not apply in residency cases, the Arbitrator should summarily reject such a claim.

In an obvious attempt to dodge these “extra burdens,” the Association “ambushed” the City with his last-second claim that the City has “set free” all employees hired prior to January 1, 2008 to live wherever they wish (R. 137, 181). Any attempt by the Union to argue that the “5-mile radius” requirement applicable to all City employees hired before January 1, 2008 is not a “*status quo*” which would impose this “extra burden” should be rejected as supported by neither fact nor law (*Brief* at 93).

There can be no doubt that the current residency requirement, while embodied in the City’s ordinances, is nevertheless the “product of prior negotiations” and incorporated into Section 13.11 of the parties’ Agreement. The Union’s own prior attempts to eliminate Section 13.11 in the previous negotiations verify that this is so (EX 2; R. 6). Moreover, if the Union should advance a claim that a new *status quo* was established by the Council in 2008, such a claim is simply wrong and must fail (*Brief* at 93).

Management submits that under Illinois law, the primary rule in construing a statute (or ordinance) is to ascertain and give effect to the legislative body's intent. *People v. O'Donnell*, 227 Ill.2d 31, 36, 316 Ill.Dec. 248, 879 N.E.2d 315 (2007). While that examination starts with the plain language of the law in question, in choosing between two possible constructions of a statute or ordinance, courts will act to avoid a construction producing absurd results. *Rode v. Village of Northbrook*, 123 Ill.App.3d 436, 441, 462 N.E.2d 843, 78 Ill.Dec. 724 (App. 1 Dist., 1984), quoting *Illinois Nat'l. Bank v. Chegin*, 35 Ill.2d 375, 220 N.E.2d 226 (1966). Where a plain or literal reading of the statute (or ordinance) produces absurd results, the literal reading should yield. *People v. Hanna*, 207 Ill.2d 486, 800 N.E.2d 1201 (2003). Reviewing courts have measured the "absurdity" of the result by the discernible intentions of the lawmaker. *See, e.g., Vincent v. Dept. of Human Services*, 392 Ill.App.3d 88, 98, 910 N.E.2d 723, 331 Ill.Dec. 314 (App. 3 Dist., 2009) (McDade, concurring).

In this case, the Association asks the Arbitrator to decide what is the meaning of the temporary "silence" of Section 39.04 (under Ordinance No. 8570) regarding residency requirements for pre-2008 hires: does the omission evidence the Council's deliberate intent to abolish the residency requirement for pre-2008 hires (Voyles' position)? Or were the incumbent residency requirements simply and inadvertently omitted by mistake (the City's position)? The City submits that adoption of Mr. Voyles' interpretation (*i.e.*, that all pre-2008 hires were intentionally "set free" by the Council) is an absurd result that should be avoided (*Brief* at 94). Given that the construction of an ordinance should avoid absurdities and should reflect the intent of its drafters, the Arbitrator cannot reasonably interpret Ordinance No. 8570's silence regarding the 5-mile radius rule as the manifestation of the Council's legislative intent to affirmatively abolish the requirement, the City argues.

Even assuming *arguendo* (but not conceding) that the Arbitrator or a court could conceivably find that the Association’s interpretation of Ordinance No. 8570 (*i.e.*, that the Council intentionally abolished the 5-mile radius requirement, however briefly) was correct, the City has “restored” the 5-mile radius requirement by enacting Ordinance No. 8711 (City Brf.Ex.A). Mr. Voyles’ “gotcha” claim (*i.e.*, that the City is contractually barred from making such a change (R. 181)) is simply wrong. The parties’ *status quo* is defined by the clear language of Section 13.11, which does not identify any specific residency requirement; rather Section 13.11 expressly requires that any changes to the Patrol Officers’ residency requirements must (a) be applicable to the City’s employees generally, and (b) not be any more restrictive than the residency requirements in effect as of the date of entry into the 2006 Agreement. Ordinance No. 8711 fits the requirements of the parties’ *status quo* and the language of Section 13.11 perfectly; in fact, it “restores” the exact same requirements that were in effect in 2006 (if, for the sake of argument, they could be deemed to have ever gone away), and which the parties have lived with up until the day before the hearing. Voyles’ claim (*i.e.*, that the City is “stuck” with the “least restrictive” residency requirement that may have ever been implemented after 2006, but before a new Agreement goes into effect (R. 181)), finds absolutely no basis whatsoever in the language of Section 13.11.

1. The Union Has Not Shown That the Current Residency Requirement Has “Broken Down” Since Arbitrator Feuille’s Award Was Issued in 2007

Management contends for purposes of determining whether or not the Union’s “breakthrough” residency demand should be granted, the relevant inquiry is: “What has changed since 2007 to make the City’s current residency requirement dysfunctional at present?” Again, the simple answer is “nothing.”

2. The Union Has Not Shown That the Current Residency Requirement Has Created a “Compelling Need” or Any Other New Problems for the Union Since Arbitrator Feuille’s Award Was Issued in 2007.

The Administration contends that the Association has not shown any hardship or compelling need (since 2007) by the operation of the City’s current residency requirement. The record contains no evidence of any new “hardship” that has befallen its members, or any “compelling” need that has arisen since Arbitrator Feuille’s Award. Absent any showing of a worsening of Patrol Officers’ conditions, housing and schooling options, or of any other “compelling need” which has arisen since Arbitrator Feuille’s Award, the Arbitrator here must grant the Union’s “breakthrough” demand to eliminate the current residency requirement (*Brief* at 99-100).

3. The Union Has Not Shown That, Since Arbitrator Feuille’s Award Was Issued in 2007, the City Has Either (i) Refused A Sufficiently Valuable *Quid Pro Quo*, (ii) Unreasonably Resisted The Union’s Repeated Attempts at the Bargaining Table to Relax the Residency Requirement, or (iii) Granted Relaxed Residency to Other Similarly Situated Employee Groups Without a *Quid Pro Quo*

Similar to its demand to strip the City of its management right to determine the size of its police force, the Union’s residency demand here is another collective bargaining “smash and grab”, *i.e.*, a clear attempt to unilaterally take an unwarranted “breakthrough” expansion of the City’s residency requirement without offering any justification or substantial and meaningful *quid pro quo*. The Union never introduced any testimonial or other record evidence that the Union ever offered or even considered, for example, a wage freeze, acceptance of the City’s insurance proposals regarding parity with the other City employees, or any other proposed exchange of value for the relaxation of residency (R. 237). Moreover, and as noted above, at the pre-hearing conference on September 3rd, the Union would be seeking a “20-mile” residency requirement. Yet, when the Union’s actual final offers were tendered, the demand was for “30-

miles” (EX 12(b)). As stated by Arbitrator James Cox in *Village of Broadview and FOP*, ILRB Case No. S-MA-06-145 (Cox, 2007)(“*Village of Broadview*”), arbitrators have held that:

In addition to compelling need and evidence of a *quid pro quo*, the moving party must offer evidence of repeated good faith attempts at the bargaining table to secure agreement from the other side. *‘The party seeking the change has the burden of showing not only a clear justification for the proposal but also that it was unable, despite repeated attempts, to obtain relief at the bargaining table.’ Village of Elk Grove, at pp. 67-68.* If the collective bargaining process is to be protected, evidence of the parties’ negotiations must be examined. Without such evidence, there is danger to the bargaining process if a change to the *status quo* were granted. . . *A change to the status quo should not be granted when the moving party conveys a proposal late in the bargaining process...Only after the moving party is able to carry the burden of compelling need, quid pro quo, and exhaustive, good faith collective bargaining, should external and internal comparability and other Section 14 factors be examined by an arbitrator.”*

Village of Broadview, supra, pp.3-4 (*emphasis supplied*)(*Brief* at 101). In this case, it is clear that the Union has not made any (much less repeated) good-faith efforts to negotiate a mutually-agreeable relaxation of residency. Finally, the record contains no evidence whatsoever that the City has ever granted a more-“relaxed” residency requirement to any similarly-situated employee group, with or without a *quid pro quo* (*Brief* at 101).

C. APPLICATION OF THE STATUTORY CRITERIA REQUIRES THE ARBITRATOR’S ADOPTION OF THE CITY’S FINAL OFFER

It is the City’s position that the relevant statutory factors fully support the City’s position here and require rejection of the Union’s proposal (*Brief* at 102). The focus here should be on Section 14(h) factors: - (3) the interests and welfare of the public; - (4) comparability (internal and external); and - (8) other factors normally or traditionally taken into consideration. *See, City of Macomb and FOP*, ILRB Case No. S-MA-01-161 (Malin, 2002), pp.10-11 (*Brief* at 101-102).

1. Section 14(h)(3): Interests and Welfare of the Public

It is the City’s position that the public’s interests and its welfare are best served by having the City’s Patrol Officers reside within five miles of the City limits. Most interest arbitration awards dealing with residency questions and this Section 14 criterion have focused on a specific

issue, *i.e.*, whether the public's interest in having a stable police force has been hampered by the residency requirement. While unions often claim that residency requirements deter qualified applicants from seeking employment with the City, and/or drive out qualified and valuable workers, in this case the record clearly shows that the current residency requirement has had no adverse impact on the quality or longevity of the Patrol Officers' services (*Brief* at 103-104). The stability and efficiency of the Police Department have not in any way been adversely impacted by the residency requirement (*Brief* at 106-107)

2. Section 14(h)(4): Comparison to Other Employees

(a) *Internal Comparability*

Internal comparability is an important, even paramount, criterion for determining a contract term involving residency requirements in interest arbitration. This is especially true in the instant case, wherein *all* internal comparability factors favor the City's position, in the City's view (*Brief* at 107-108). No other City employees who are similarly-situated to the Patrol Officers (*i.e.*, full-time employees represented by unions) are permitted to live outside the 5-mile radius applicable to the Patrol Officers here.

Clearly, this is not a case like the Arbitrator's Awards in *City of Markham II, supra*, and *City of Blue Island and IAFF Local 3547*, ILRB Case No. S-MA-01-190 (Hill, 2002). In both of those cases, this Arbitrator awarded a relaxation of residency *precisely because* other employee groups had relaxed residency requirements, and the award was necessary to achieve the same sort of internal parity discussed in *Village of South Holland, supra*. Indeed, the Arbitrator alluded to this very point on the record (R. 183). Moreover, in *City of Markham II, supra*, this Arbitrator found that the employer had been shown to have been lax in enforcing the existing requirement, a factor that favored the union's position to relax it. *City of Markham II, supra*,

p.16. In this case, the Union presented absolutely no evidence that the City has “turned a blind eye to,” or otherwise failed to enforce, its residency requirements.

The same concerns that drove the *Village of South Holland* decision are present here, and compel the same result, *i.e.*, rejection of the Union’s proposal. Because there has been no suggestion on the record that the City’s enforcement of its residency requirements has been anything but uniform and fair in its application and enforcement, it is the City’s position that and all factors concerning internal comparability favor acceptance of City’s proposal and rejection of the Union’s position (*Brief* at 108-109).

(b) *External Comparability*

None of the eight stipulated comparables have any contractual residency requirement that reaches as far as the Union’s “30-mile” demand here, a factor which completely belies the propriety of any award of the Union’s proposal here (EX 42)(*Brief* at 109). Further, it must be remembered that Danville’s residency requirement is the one that has existed between the parties during, and as a result of, their collective bargaining history. Even if the “comparables” conflicted with the “*status quo*” (they do not), they should not be given the same weight. In the City’s opinion, the Union must show that there is a much more compelling need to eliminate the City’s “5-mile radius” residency requirements than simply because there might be a few other municipalities elsewhere in Illinois, that take a slightly more relaxed approach. Based upon all the foregoing, the City respectfully states that the residency requirements of the parties’ stipulated comparable communities favor the City’s proposal in this matter (*Brief* at 109-110).

3. Section 14(h)(8): Other Factors

(a). *Issues Unique to Police Employees*

At the hearing in this case, the Union never made any showing that the police officers have the type of concerns regarding fear of retaliation against them or their families in

connection with the performance of their duties as Patrol Officers, and/or that Patrol Officers' disenchantment with the residency requirement was adversely affecting the stability and efficiency of the Department's workforce.

(b). *"Quality of Life" Issues*

The Union here introduced no evidence that there is insufficient affordable and attractive housing stock available and which meets the City's residency requirement (*Brief* at 111-112).

(c). *"Liberty Interests"*

Addressing an anticipated liberty-interest argument by the Association, the City cites Arbitrator Goldstein's analysis in *Village of Matteson and IAFF* (2008), which it says should be operative in the instant case. In Arbitrator Goldstein's words:

The majority of interest arbitrators have rejected this [liberty interest] line of argument in favor of applying the *Will County status quo* rule or the specific factors set forth in the Act for use by an interest arbitrator in deciding between union and management proposals, whether economic or non-economic...A general claim that liberty interests in the abstract actually control a proper resolution of the current residency rule issue cannot trump the *Will County status quo* rule, I find . . . the *Will County status quo* rule demands much more specific proof that unanticipated inequities existed other than a claim of liberty by the bargaining unit employee to have freedom to choose where they live to make the residency rule improper. Moreover, there is not a scintilla of evidence that the residency requirement has not been consistently applied by the Village to its employees covered by [the relevant ordinance]. It is also clear that the bargaining employees took up their employment with the Village knowing full well of the then-applicable residency rules in place.

(*Brief* at 114, quoting Goldstein at 66-67).

D. CONCLUSION (EMPLOYER) RE: RESIDENCY

The summary of the analysis of Arbitrator Benn in *Village of Lansing supra*, is dead-on to the record developed here, and the City adopts it (with appropriate change of nouns) as its own summary of the City's position on the residency issue in this case:

"First, from an internal comparability standpoint, all City employees are required to [comply with the same residency requirement].

Second, the City's residency requirement is made well-known to candidates seeking to become Patrol Officers and ultimately members of the bargaining unit. Aside from the published ordinance requiring residency [within 5 miles of] the City, candidates are informed of the residency requirements in advertisements for positions (including the City's website); when they receive their applications; during orientation; at the oral interview; and during the background interview. In short, with respect to residency, employees come into their employment relationship with the City with eyes wide open and in full voluntary acceptance that they have to comply with the residency requirement as a condition of employment.

Third, a demonstration that the current residency system is working with its geographic limits comes from the City's presentation concerning recruitment and retention of bargaining unit personnel. There is no real showing that substantial numbers of Patrol Officers have left their positions because of the residency requirement. Patrol Officers have resigned, but there has been a steady and increased pick up of applications by prospective candidates. The information offered by the City also shows that in the recent past, attendance at orientation has increased. Further, as shown by the City, the number of individuals taking the test has not shown a downward trend. The residency requirement does not appear to be a hindrance to the City's ability to retain existing Patrol Officers or to attract prospective Patrol Officers. Thus the residency requirement does not need fixing to the extent sought by the Union.

Fourth, there is no evidence that the requirement that Patrol Officers live [within 5 miles of] the City...has placed Patrol Officers or their families in physical jeopardy as a result of the residency requirement. It is certainly possible that a trip to the grocery store, to a local event or attendance at school, places of worship, etc. could bring Patrol Officers or their families into contact with individuals the Firefighters have encountered in their role as Patrol Officers. But there is no real evidence that such has occurred with adverse consequences that would cause an objective observer to conclude that a change is needed to allow Patrol Officers to live elsewhere to the extent sought by the Union.

Fifth, the Union's argument that Patrol Officers are "severely limited in their ability to make choices in the education of their children" is not persuasive or demonstrated. Granted, by expanding the residency boundaries there will be more options for educational opportunities for the Patrol Officers children. But there is nothing to show that the City's schools are inadequate...the most important consideration with respect to schools is that there is no evidence that Patrol Officers are leaving employment with the City in any significant numbers because of perceived inadequate educational opportunities for their children sufficient for a conclusion to be drawn that the residency requirement is broken and in need of repair.

Sixth, the Union argues that expanded residency boundaries will permit more opportunities to live in communities with growing real estate markets...a wide choice of affordable housing is available in [and within 5 miles of] Danville. But again, as with the discussion concerning schools in the City, there is no evidence that Patrol Officers are

leaving employment with the City in any significant numbers because of perceived inadequate housing availability sufficient for a conclusion to be drawn that the residency requirement is broken and in need of repair.

Seventh, given the above, the Union's arguments concerning external comparability are insufficient to change the results....the Union's burden to show that the existing residency requirement is broken, insufficient or in need of repair has not been carried. Indeed, under the facts in this case, the Union could not carry its burden. The City's proposal on residency is therefore adopted." *Village of Lansing* at pp.12-16.

For all the foregoing reasons, the City respectfully states that the Union has demanded the abolition of a negotiated residency requirement that is part of the parties' *status quo*. The Union has not shown any compelling need that has arisen since 2006, when the residency *status quo* was most recently negotiated, and has offered no substantive *quid pro quo* in exchange for its demand. Further, the record shows that all applicable statutory criteria, including comparability (internal and external) considerations, favor retention of the current residency requirement.

The City acknowledges that residency is a non-economic issue and, thus, the Arbitrator is not strictly bound by Section 14(g)'s requirements that one of the parties' last best offers must be adopted (as in economic issues). However, as stated by Arbitrator Benn:

Although residency is a non-economic item, which allows for formulation of a term different from either parties' proposal, there is no demonstrated reason why some boundary on residency other than the parties' proposals should be considered.

Village of Lansing, supra, at 16 n. 41 (*Brief* at 114-116).

Accordingly, the City's proposed residency requirement should be adopted as the Award in this case.

ISSUE #5: RESIDENCY/UNION

- A. Residency -- The traditional 'breakthrough' analysis does not apply to the residency issue because the *status quo* is in a state of flux

The Union's proposal for this non-economic issue was to "expand" the residency requirement to a 30-mile radius originating from the Public Safety Building, as limited by the borders of the State of Illinois. Because this is a non-economic issue, the arbitrator is not hamstrung by the parties' offers. It is the Union's position that its proposal is actually more restrictive, for most officers, than what existed on the day of hearing. The parties are not in agreement as to which potential 'status quo' is the correct one, and there are potentially three different residency policies applicable to employees from this bargaining unit from which to choose (*Brief* at 44).

1. **The de facto status quo**

There is no legitimate dispute as to what the status quo contractual language states. That provision, however, defers to the City Code and does not specify any residency requirement:

In the event that the City elects to change the residency requirements which are currently applicable to *all persons employed by the City* . . . any such change shall likewise be applicable to all officers covered by this Agreement; provided, however, that no such change shall be *more restrictive* than the requirements of the City which are in effect as of the date of this Agreement." (JX 1 at 33, §13.11)(emphases added).

That collective bargaining agreement was executed on March 26, 2007. (JX 1 at 36).

During bargaining, and continuing until the Union obtained the most recent pre-hearing copy of §39.04 of the City Code of Ordinances, both parties believed that police officers were required to live within five miles of city limits. Even though no ordinance or personnel manual specified a 5 mile rule on the hearing date, Director Thomason testified that 5 miles was the rule. This 'rule' therefore is at most the de facto, or "illegal or illegitimate," status quo. BLACK'S LAW DICTIONARY 287 (6th ed. 1991)(*Brief* at 44-45).

2. The *de jure* status quo

On February 5, 2008, the City passed Amended Ordinance 8570. (UX 30, §39.04(A)(1); CX 47). By passing that ordinance, the City of Danville changed whatever §39.04 previously stated by “deleting it in its entirety and replacing it with the attached new Personnel Policies.” (CX 47). The 2008 amendments, which expressly wiped away (or broke through) whatever existed prior to, exempted all city employees hired before January 1, 2008 from any residency requirement: “Any employee of the City who was employed on or before January 1, 2008, shall be exempt from the provisions of division (1) above.” (UX 30). Furthermore, the 2008 version of §39.04(A) “Residency” contained only five sub-parts, none of which established: (1) any residency policy for any city employee hired prior to January 1, 2008; nor (2) any police officer specific policy. (UX 30)(Brief at 45-46).

Not only did that ordinance expressly break through whatever status quo existed prior to it, the ordinance also established a two-tier residency policy based upon hire date. (CX 47). In early 2008, the City created a new residency policy of treating all employees hired before January 1, 2008 differently than employees hired after that date. Therefore, under the version of §39.04 codified on the hearing date, there were two different residency requirements: any employee hired prior to January 1, 2008 was exempt; and any employee hired after that date was required to reside within corporate limits. Specifically, the law as established by the City of Danville, exempted Officers Stark through Long from any residency requirement and required Officers Edington through Snyder to reside “within the corporate limits of the City, unless otherwise dictated for an employee covered by a Collective Bargaining agreement.”

3. Door number 3

Because the City Code deferred to the collective bargaining agreement, which in turn deferred to the City Code, it is debatable whether Officers Edington through Snyder were governed by the de facto five-mile limit, or were instead governed by the de jure limits set forth at §39.04. The ‘most-favored nations’ clause at Article XIII of the agreement further clouds this issue. But the correct interpretation is not of primary importance here. Instead, it is sufficient to note that the “status quo” was two or three different residency requirements applicable to the members of this bargaining unit: (1) the de facto five-mile limit; (2) the *de jure* exemption; and (3) strict residency potentially applicable to employees hired after January 1, 2008. Because the status quo was so uncertain, and was literally wiped away by Ordinance 8570, what the Union proposes here cannot accurately be described as a breakthrough.

4. **The traditional break-through analysis assume a stable, long-standing *status quo*, not present in this case**

The three-part analysis identified by the Association as applicable in cases like this assumes the status quo is stable, rather than uncertain. It assumes the status quo was hammered out over the years through arms length bargaining. No such status quo exists here because the City unilaterally broke through or abolished it in favor of an entirely new, two-tiered scheme (Brief at 46).

5. **The relevant *status quo* is what exists when interest arbitration is initiated**

There can be no dispute as to the language of §14 of the Act, which states:

During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the *initiation of arbitration procedures* under this Act.” (emphasis added).

Because the statute from which the arbitrator's authority derives forbids changes in the status quo once "arbitration procedures" have initiated, the status quo at the beginning of the hearing is relevant while any changes to the status quo after the hearing has begun are unlawful. 5 ILCS 315/14. To be more blunt, the City committed an unfair labor practice under §14(l) by changing the residency requirement just after hearing. Consequently, the status quo as it existed on September 29, 2010, is relevant while the employer's subsequent unlawful unilateral changes to mandatory subjects of bargaining, like residency, must not be considered (*Brief* at 47).

6. Internal Comparability supports expanded residency

The only evidence on this issue derives from the text of the internal comparables' collective bargaining agreements and the text of §39.04, as certified on the day of hearing. It was unlawful for the employer to alter the residency requirement for this bargaining unit once arbitration proceedings had begun. 5 ILCS 315/14(l). The same would not necessarily be true for the City's post-hearing alteration of the residency requirements for other unionized city employees. Therefore, again, there are at least two sets of internal comparables data: (1) the residency policies in place on the hearing date; and (2) the City's subsequent alteration of those. The City's efforts to again change those requirements underscores why a traditional break through analysis sets too high a bar for the Union's position.

On September 29, 2010, with the exception of the Laborers' Transit employees, the de jure status quo as reflected at §39.04 was also the prevailing internally comparable residency requirement. Granted, the City had recently embarked on establishing a two-tiered residency requirement as early as 2005. By late 2005, it opted to establish strict residency (within city limits) for its new hires. Assuming that most current City employees were hired before Halloween 2005, the prevailing residency requirement for all Danville City employees, whether

represented or not, was no residency requirement. Overwhelmingly, therefore, internal comparability supports the Union's expanded residency offer, even if that offer is more restrictive than the status quo.

7. External comparability supports expanded residency

The external comparability data also supports the Union's proposal for 'expanded' residency. Six of the eight comparable departments allow their officers to live at least 15 miles from city hall or the police department. Only one externally comparable department, Kankakee, boasts a residency requirement similar to the de facto requirement, or the new hire de jure residency policy. Likewise, only one other comparable department, Belleville, has a two-tiered residency requirement like the employer installed by Ordinance 8570. (City Ex. 47). Absent these two exceptions, the overwhelming weight of the external comparables data supports the Union's proposal for "expanded" residency (*Brief* at 48).

8. The Union's residency proposal represents an identifiable boundary, and should eliminate any confusion as to what policy exists for this bargaining unit

Although it does not neatly fit into any of the §14(h) factors, the City has previously argued, and Arbitrator Meyers agreed, that labor stability is a relevant concern to be weighed when considering which offer is most reasonable. Presently, there are at least two and possibly three different residency policies (depending on who is enforcing the policy) in place at the Danville Police Department. The Union proposes a definite 30 mile radius, applicable to all officers covered under this agreement. Such a definite and specific requirement, set forth in the collective bargaining agreement, which cannot be changed by whim of the City Council, will promote stability and consistency for this issue. That stability and consistency would not be well served by deference to the inconclusive "*status quo*," as proposed by the City. For this reason,

and because expanded residency is supported by the internal and external comparables, the Union's proposal should be awarded (Brief at 49).

RESIDENCY: DISCUSSION AND AWARD

- A. The Association's argument that there are at least two sets of internal comparables data: (1) the residency policies in place on the hearing date; and (2) the City's subsequent alteration of those, is rejected

Addressing the Union's assertion that there are at least three possibilities regarding residency requirements applicable to the bargaining unit, I hold that the City's deletion of the incumbent "five-mile radius" requirement, in the same provision of Ordinance No. 8750 that specifies that the new "in-City" requirement is inapplicable to pre-2008 hires, does not manifest an intent to deliberately abolish the incumbent "five-mile radius" requirement. By all accounts the omission was "inadvertent." As maintained by the Employer, the most that can be said with any certainty is that the City's passage of Ordinance No. 8750, whether purposefully or erroneously, created silence on the issue of what, if any, residency requirement applied to pre-2008 hires. The question thus becomes "What does that silence mean?"

To this end I agree with the City's position, specifically that any question about the Employer's intent was answered when it enacted Ordinance No. 8711, which not only restored the five-mile radius requirement for pre-2008 hires (to the extent it was ever eliminated), but memorialized, in its recitals, that the Council had never intended to eliminate the status quo requirement.

- B. There is no evidence that the current five-mile residency requirement is non-functional, or has otherwise caused any hardship to the bargaining unit

There is more: The Union adduced no evidence whatsoever that the residency system has not functioned as it was intended, or that it has "broken down" in any way, especially not since 2007 and Arbitrator Peter Feuille's Award (EX 3; UX 14)(*Brief for the Employer* at 99). Nor has

the Association shown that the parties' current residency requirement has created a compelling need or caused any other problems for the Association and the bargaining unit.

C. **Internal and even External considerations favor the City's five-mile, status quo proposal**

What really compels a decision for the City on residency, more than any other factor submitted, is an analysis of internal criteria. The correct focus has been outlined by Arbitrator Elliott Goldstein in *Village of South Holland & FOP*, ISLRB Case No. S-MA-98-120 (1999): Addressing the issue of residency and internal criteria Arbitrator Goldstein found that:

There is a legitimate and logical concern on the part of the management of the Village that a residency rule should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment for this bargaining unit has been proved, I find . . . that the Union's attempt to establish such a compelling need for the liberalization of the Village's residency rules because of the unique nature of the terms of work for police officers does not convince him in this case to disregard the internal comparable, which undisputedly shows all of the Village employees worked under the same rules for residency as does this bargaining unit.

Village of South Holland, supra, at 52-53 (emphasis mine). See also, *City of Markham and IBT Local 726*, ILRB Case No. S-MA-07-1100 (Hill, 2007)(stating "I agree with those arbitrators who, with rare exceptions, find internal comparability equally or more compelling than external data. To this end, and consistent with my decisions in *City of Markham, supra*, and *City of Blue Island & IAFF Local 3547*, ILRB Case No. S-MA-01-190 (2002)(awarding a relaxation of residency because other employees had relaxed residency requirements), I find merit in the City's position that internal comparisons favor a uniform residency policy in the protective services.").

Arbitrator Neil Gunderman, in *Village of Skokie & IAFF Local 3033* (1993), discussed the importance of the internal criterion and had this to say on the subject:

Arbitrators in interest disputes frequently consider not only external comparables, which the Illinois Public Labor Act mandates be [sic] considered, but internal comparables as well. Internal comparables are considered for at least two purposes:

first, to determine if there is a pattern of settlements between the employer and its bargaining units which may be applicable to the dispute before the arbitrator; and second, to determine if there has been an historical pattern of settlements involving bargaining units.

Generally, where internal comparables are considered for the purpose of determining if there is a pattern of settlements it involves a situation where agreements have been reached between the employer and a number of bargaining units and either the union or the employer is attempting to break the settlement pattern. *Id.* at 30 (emphasis mine).

I find especially significant that no other full-time City employee represented by a union is permitted to live outside the five-mile radius applicable to the bargaining unit. While the Association can point to some other external bench-mark jurisdictions that have better residency requirements than Danville, none of the comparables have residency requirements that reach as far as the Association's 30-mile proposal. Consistent with the better weight of arbitral authority, Danville's "internals" trumps the situation in the external bench-mark jurisdictions.

For the above reasons, the Employer's final offer on residency is awarded.

VII. AWARD

WAGES: EMPLOYER'S FINAL OFFER AWARDED

INSURANCE BENEFITS: UNION'S FINAL OFFER AWARDED

INSURANCE CONTRIBUTION: EMPLOYER'S FINAL OFFER AWARDED

MANAGEMENT RIGHTS: EMPLOYER'S FINAL OFFER AWARDED

RESIDENCY: EMPLOYER'S FINAL OFFER AWARDED

Dated this 13th day of December, 2010,
At DeKalb, IL 60115

Marvin Hill, Jr.
Arbitrator