ILLINOIS STATE LABOR RELATIONS BOARD

BEFORE

ARBITRATOR BARRY E. SIMON

In the Matter of the Interest Arbitration Between	)	
	)	
CITY OF ROCK FALLS, ILLINOIS,	)	
	)	
Employer,	)	
	)	
and	)	Case No. S-MA-10-238
	)	
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL,	)	
	)	
Union.	)	

OPINION AND AWARD

The above identified matter was heard before the undersigned Arbitrator on March 21, 2012, at the Rock Falls City Hall, Rock Falls, Illinois. Representing the City of Rock Falls, hereinafter referred to as "the Employer," or "the City." was:

James L. Reese, Esq.
Ward, Murray, Pace & Johnson, P.C.

Also appearing on behalf of the City were:

Robbin Blackert, City Administrator
David Blanton, Mayor
William Wescott, City Clerk

Representing the Illinois Fraternal Order of Police Labor Council, hereinafter referred to as "the Union," was:

Gary L. Bailey, Esq.
Illinois Fraternal Order of Police Labor Council

Also appearing on behalf of the Union were:

Becky Dragoo, FOP Field Supervisor
Michael Sheley, FOP Field Representative

Sworn testimony was given before the Arbitrator, and recorded and transcribed by a Certified Shorthand Reporter. In lieu of closing arguments, the parties filed post-hearing briefs that were received by the Arbitrator on May 18, 2012, at which time the record was closed.

Background: Rock Falls is a city of 9,266, according to the 2010 Census, and is located in Whiteside County in northwest Illinois. It is not a home rule municipality. The Union is the certified bargaining agent for Police Officers and Police Sergeants employed by the City, having first been certified by the Illinois Labor Relations Board on November 20, 1989. In all prior contract negotiations, the parties have been able to achieve collective bargaining agreements without the need to resort to interest arbitration. This speaks well of the cooperative relationship between the City and Union, but also points out the seriousness of the positions taken by the parties with respect to the issue in dispute herein.

The bargaining unit consists of ten (10) Police Officers and five (5) Police Sergeants. The parties' most recent collective bargaining agreement was for May 1, 2007 through April 30, 2010. The agreement continues to remain in effect by virtue of an "evergreen" provision. On January 4,

2010, the Union filed a demand to bargain a successor contract. The parties commenced bargaining and reached tentative agreement on a number of issues,[1] but were at an impasse on the issue of wage increases.

On January 31, 2011, the Union filed a demand for interest arbitration. By letter dated December 29, 2011, the Illinois Labor Relations Board notified the undersigned that he had been selected to serve as the neutral Arbitrator in this matter pursuant to the Illinois Public Relations Act, 5 ILCS 315/1, *et seq.* ("the Act"). The parties agreed to waive the Section 14(d) fifteen day time limit for commencing the hearing. The also agreed that the Arbitrator would serve as the sole member of the arbitration panel, waiving the Section 14(b) requirement for a three member arbitration panel. They additionally agreed that the Arbitrator would have sixty (60) days after the submission of post-hearing briefs to issue his Award.

The Issue and Final Offers: At the hearing, the parties confirmed they were at impasse on one economic issue, namely wages. They have agreed, though, that whichever offer is selected by the Arbitrator, the wage increases shall be retroactive. On the issue of wages, the Union's final offer is:

Effective May 1, 2010, 2.75% increase on all existing pay steps

Effective May 1, 2011, 3.00% increase on all existing pay steps

Effective May 1, 2012, 3.00% increase on all existing pay steps

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[1]The parties have agreed that the Arbitrator shall incorporate into the collective bargaining agreement any tentative agreements reached during negotiations between the parties. All other provisions of the current collective bargaining agreement, except those altered by tentative agreements and those at issue herein, shall remain unchanged in the successor agreement, which shall expire on April 30, 2013.

Retroactive on all hours paid.

The City's final offer is:

> The Base Wage rate in each grade shall be increased by two per cent (2%) over the amount of base wage shown in the column labeled "5/1/09 - 4/30/10" on APPENDIX A of the 2007 CBA for each grade therein, effective May 1, 2010 through April 30, 2011; the Base Wage rate in each grade shall then be increased by two per cent (2%) over the amount in effect through the entire wage scale effective May 1, 2011; and Base Wages shall be likewise increased by two per cent (2%) through the entire wage scale effective May 1, 2012, all in accordance with Appendix A attached hereto. The contract shall expire on April 30, 2013.

The Standards: The Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, sets forth the factors to be considered by the Arbitrator with respect to each economic issue in dispute.

These factors are:

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 these costs.

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

   A) In public employment in comparable communities;

   B) In private employment in comparable communities.

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

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

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

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

The Comparables: The Union suggests the following communities as being comparable to the City of Rock Falls: Geneseo, Mendota, Princeton, Rochelle, LaSalle and Peru. The City has not proposed an alternate list of comparable communities, nor has it argued that any of the communities identified by the Union is inappropriate.

Wages: As noted above, for contract years beginning on May 1 in 2010, 2011 and 2012, the Union has asked for wage increases of 2.75%, 3.00% and 3.00%, respectively, while the City has offered increases of 2.00% each year. It is the Arbitrator's role to determine, based upon the statutory factors, which of these offers is more appropriate.

Position of the Union: The Union submits that the lack of any evidence from the City rejecting the comparability of any of the communities on its list of comparables establishes that they offer a reliable and balanced basis for comparability comparisons as required by the Act. The Union presents the following comparison of patrol officer salaries as of May 1, 2010:

Jurisdiction	Start	1 Year	5 Years	10 Years	15 Years	20 Years
Geneseo	$39,312	$41,163	$45,344	$47,570	$48,734	$49,858
Mendota	$42,458	$44,021	$47,867	$51,493	$51,743	$52,493
Princeton	$42,848	$44,845	$51,911	$52,425	$52,939	$53,453
Rochelle	$40,893	$47,050	$51,875	$57,138	$63,107	$63,107
LaSalle	$43,599	$44,035	$45,779	$48,395	$50,575	$52,319
Peru	$46,022	$46,483	$49,824	$53,624	$57,426	$61,227
Average 5/1/10	$45,522	$44,600	$48,767	$51,774	$54,087	$55,410
Rock Falls 2009	$34,779	$36,183	$42,817	$43,392	$44,846	$47,116
City Offer 5/1/10 *below average*	$35,475 *-16.57%*	$36,907 *-17.25%*	$43,673 *-10.44%*	$44,260 *-14.51%*	$45,743 *-15.43%*	$48,058 *-13.27%*
Union Offer 5/1/10 *below average*	$35,735 *-15.96%*	$37,178 *-16.64%*	$43,994 *-9.97%*	$44,585 *-13.89%*	$46,079 *-14.81%*	$48,412 *-12.63%*
difference	$ 260	$ 271	$ 321	$ 325	$ 336	$ 354

The Union notes that applying the increase that it proposes would still leave the Rock Falls patrol officers below all of the comparable communities at each step of the pay scale. It says its offer reduces the disparity that exists, but still leaves a large chasm between the Rock Falls officers' salaries and the average salaries in those communities. The Union explains that it is not seeking a windfall so that the officers might catch up to their counterparts, but rather is looking to establish a modest foothold to begin to erode the disparity.

The Union also offers the following comparison between the offers and the scheduled wage increases in the comparable communities:

Jurisdictions	2010	2011	2012	Total
Geneseo	0.0%	2.0%	3.0%	5.0%
Mendota	2.5%	2.5%	3.0%	8.0%
Princeton	3.5%	2.5%	2.5%	8.5%
Rochelle	3.0%	2.25%	2.75%	8.0%
LaSalle	3.0%	3.0%		
Peru	0.0%	2.0%		
City Offer	2.0%	2.0%	2.0%	6.0%
Union Offer	2.75%	3.0%	3.0%	8.75%

The Union notes that the City's wage offer for 2012 is lower than the comparable communities, and explains that its offer, which it says is modestly larger than those among the external comparables, is intended to ease the disparity that currently exists. It points out, though, that its proposal does not exceed the highest increases in those communities. The Union argues that its final offer is not disproportionate when compared to the wage increases among the external comparables. It concludes, therefore, that its offer is more reasonable.

The Union next compares its final offer to the increase in the cost of living. It presents the following consumer price index (CPI) figures from the Bureau of Labor Statistics:

	5/1/2009 - 4/30/2010	5/1/2010 -4/30/2011
CPI-U (Midwest Urban)	2.25%	3.15%
CPI-U (US City Avg.)	1.94%	3.08%
CPI-W (Midwest Urban)	2.48%	3.56%
CPI-W (US City Avg.)	2.76%	3.59%
Average of All Four	2.36%	3.35%

According to the Union, its proposal for the first two years is nearly identical to the increase in the cost of living for the same period. If the Arbitrator awards the Union's final offer, it says the bargaining unit employees will receive a salary increase nearly the same as the rate of inflation, while the City's offer of a wage increase would be lost to inflation. The Union avers that arbitrators generally reject wage offers that are less than the cost of living because they would effectively cause the employees to suffer an unfair and unwarranted salary decrease. Because its offer is much closer to the cost of living, the Union avers it is more reasonable than the City's.

The Union states the City has not proven that it is financially unable to pay the wage increase it has proposed. It says the City has offered testimony only about the impact the economy has had upon its finances, but has not produced any data to support a defense of "inability to pay." While it expects the City to take care in the expenditure of taxpayer money, the Union submits that fiscal prudence is not a statutory factor to be considered by an interest arbitrator.

The Union contends the Act requires a balancing of the employer's ability to pay with the interests and welfare of the public. In this regard, the Union submits that the ability to hire and retain quality emergency service employees is essential to the interest and welfare of the public. Competitive compensation, says the Union, reduces employee turnover and the costs associated with training new employees.

Speaking to the City's finances, the Union observes that its managers have carefully not overtaxed its citizens, but have collected sufficient revenue to maintain reserve funds. It notes that both the Unreserved Fund Balance and the General Fund Balance grew from 2003 to 2008. Although these balances declined in 2009 and 2010, the Union says they remained far above the

2005 levels and have now increased to a level above 2006. The Union characterizes the City's finances as healthy.

The Union notes the City has computed the difference between the two wage offers to be approximately $25,000 over the life of the contract, or just over $8,300 each year. With an Unreserved Fund Balance of $1,478,467 at the end of the 2011 fiscal year, the Union says this difference amounts to 0.56% of the unrestricted monies during the first year of the contract. According to the Union, the City should be able to afford its final offer without having to tap into the reserves created by the enterprise funds. The Union concludes, therefore, that the interests and welfare of the public, as well as the City's ability to pay, favor the Union's wage offer as being more reasonable.

While the Act provides for internal comparability as a factor for the Arbitrator to consider, the Union submits that there is no evidence of a history between the parties of using internal comparisons in their eight prior labor agreements. It notes that other interest arbitrators have found internal comparability to be only a limited factor in police officer cases. The Union also points out that the police and firefighter contracts differ in that the latter has a provision for longevity pay, which the police contract does not. It asserts other labor agreements with the City have different employee benefits which make it difficult to compare with the police contract. It concludes, therefore, that internal comparability should not have an impact on the resolution of this dispute.

The Union argues its wage proposal is neither excessive nor innovative. It says it is merely seeking a moderate pay increase. It asks, therefore, that the Arbitrator adopt its final offer.

Position of the Employer: The City first argues that the rate of increase provided by its wage offer over the life of the contract is closer to the average increase of the six communities identified by the Union as being comparable. According to the City, that average increase is 7.19%. It says the differential for the Union's proposal (8.75%) is 1.56%, while its proposal (6.00%) is 1.19% different than the average.

The City asks the Arbitrator to compare Rock Falls with the Union's comparables by looking at the equalized assessed valuation of property (EAV) within the communities. It submits the following data:

City	EAV	General Fund Revenue	Population	EAV per person	Revenue per person
Princeton	$142,166,533	$5,922,455	7,660	$18,559.60	$773.17
Mendota	$ 77,097,557	$4,536,597	7,372	$10,452.16	$615.38
Geneseo	$128,322,848	$2,763,167	6,586	$19,484.19	$419.55
Peru	$228,218,580	$9,425,930	10,295	$22,167.90	$915.58
LaSalle	$135,755,616	$5,391,367	9,609	$14,127.97	$561.07
Rochelle	$201,886,652	$5,840,375	9,574	$21,086.97	$610.02
Rock Falls	$ 75,944,740	$4,706,005	9,266	$ 8,196.07	$507.88

From this table, the Employer notes that Rock Falls, while having a population that places it in the middle of the Union's comparable communities, has the lowest EAV of all the cities, as well as the lowest EAV per resident. The Rock Falls EAV, says the Employer, is less than half of the average of the six comparable communities. It says these data show that the City has a far less ability to make payments from the wealth of its citizens than do the other communities, and that

general fund expenses extract a greater portion of the wealth of Rock Falls citizens than do the general fund expenditures of the other six cities.

While it acknowledges that the wage scale is lower than the police departments in the other communities, the Employer says this is justified, based upon the ability of the City and its residents to support basic police functions. The Employer explains that Rock Falls has less general fund revenue than all of the cities except for Geneseo and Mendota (which both have substantially fewer inhabitants). It notes that the general fund revenue for fiscal year 2010 includes $372,343 of non-home rule sales tax, $143,435 of hotel-motel tax, and grant funds of $202,570. According to the City, these amounts, although included in general fund revenue, cannot be utilized for the defrayal of typical municipal services, including police services. Thus, says the Employer, general fund revenues available for such services were slightly less than $4 million for that fiscal year.

The Employer denies the utilities departments (electric, water and sewer) have reserves of cash that could be used to offset a shortfall in the general fund. As a non-home rule unit of government, the Employer says it has no authority to use revenue beyond that granted by the Illinois Constitution or by statute. It says the City has no power to use utilities revenues except as provided in the applicable enabling legislation, which does not include supporting general municipal functions. Thus, it says the City's ability to make wage increases is limited to the funds received within the general revenue fund.

The Employer explains that there are four other collective bargaining units, namely the Fire Department personnel represented by the IAFF, Telecommunicators represented by the Illinois FOP Labor Council, and Utilities and Clerical workers each represented by separate units of the IBEW.

All these units, says the Employer, agreed to accept a 2% wage increase for each of the three years of their contracts, covering essentially the same time period as the contract involved in this dispute. It says there is no justification for a larger increase for this bargaining unit.

The Employer disputes the Union's suggestion that employees have resigned the department for greener pastures. It notes that only one officer has left the department within the past five years, while the department has hired six other new officers who have remained on the force. The Employer concludes that its wage scale is evidently competitive within the market area and that wages are not the cause of departures.

With respect to the Union's data on the consumer price index, the Employer notes the CPI had declined from 2008 through 2009, but increased thereafter. From May 2008 through February 2012, says the Employer, the CPI has increased slightly more than 5%. It says the City's proposal of 6% during that time period would be greater than the CPI. It presents the following comparison:

Wages - Midwest Urban

May 2008-2009	-4.941 =	-2.43%
May 2009-2010	5.703 =	2.88%
May 2010-2011	8.898 =	4.37%
May 2011-February 2012	0.676 =	0.31%
		5.13÷3 = 1.71%

Wages - All cities

May 2008-2009	-4.014 =	-1.92%
May 2009-2010	5.35 =	2.56%
May 2010-2011	8.83 =	4.12%
May 2011-February 2012	1.363 =	0.61%
		5.37÷ 3 = 1.79%

The Employer notes that the Rock Falls police contract has a feature that is unique from those of the Union's comparable communities, except for Princeton. In this contract, says the Employer, the concept of "paid holidays" does not exist. Instead, it explains, department employees are compensated an amount equal to 6% of the base salary for the possibility that the employee will be required to work on a normally recognized holiday. In Geneseo, Mendota, LaSalle and Peru, according to the Employer, employees are paid for eight hours for each recognized holiday, whether the employee works or not. In Rochelle, it notes that employees are paid based upon the number of hours the officer is assigned on the shift during which the holiday falls, which can be eight, ten or twelve hours. The Employer additionally submits the following data:

City	Recognized Holidays	Work Hours/Year
Geneseo	10	2,184
Mendota	10	2,080
LaSalle	11	2,184
Peru	11	2,080
Rochelle	12	2,085

From these data, the Employer computes that the contracts in effect in Geneseo, Mendota, LaSalle and Peru result in the employees receiving between 3.66% and 4.3% of base salary as holiday pay.[2] It concludes, therefore, that the City compensates its officers for holidays at a higher percentage of base wage than do the other cities. This compensation, argues the Employer, must be a factor in determining which of the final offers will put the officers in a position that best meets the requirements of the Act.

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[2]Without knowing the length of the employees' shifts, the City says it is difficult to determine the applicable percentage for Rochelle.

For the reasons stated above, the City argues it has proposed a reasonable wage increase, and one that has already been accepted by all of the other bargaining units for the period of time in question. It submits that the Union's final offer would put the police officers at an advantage over other City employees, and would encourage and foster discord among them. It asks, therefore, that the Arbitrator adopt the City's final offer.

Discussion: The Act requires the Arbitrator to give consideration to the factors set forth in Section 14(h), as applicable. In the instant case, the parties have addressed, and Arbitrator finds it appropriate to give consideration to four of these factors, namely:

* * *

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

(4) Comparisons 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.

* * *

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

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

* * *

One of the chief concerns of the public is the stability of the police force, *i.e.*, its ability to hire and retain competent employees. During the term of the previous collective bargaining agreement (May 1, 2007 through April 30, 2010), information provided by the Union shows that the department hired four police officers and there were no employees who resigned to work for another police force. Since the expiration of that contract, the department hired three more officers and one officer, who was hired in September 2007, resigned in March 2010 to work for the Sheriff's office. Since 1998, according to the Union's data, six officers have resigned to work for other police departments. The tenure of these officers has ranged from less than four months to six years eight months. Among the patrol officers still employed, the most senior has been on the force for almost 14 years. The longest tenured sergeant has been on the force for nearly 21 years.

These data indicate a relatively stable workforce with no more than normal attrition. Based upon this information, the Arbitrator is unable to conclude that wages have been a factor in the decision by any of the officers to seek employment elsewhere. Any number of variables might affect an employee's decision to change jobs. For instance, another police force might offer greater promotional opportunities or be closer to the employee's residence.

A second area of concern for the citizens of Rock Falls is the cost of the parties' proposals. According to City Administrator Robbin Blackert, the Union's final offer will cost the City approximately $25,000 more than the City's final offer over the three-year life of the contract.[3] She gave no indication that the City did not have the financial resources to pay the wage increases that would be required by the Union's final offer without having to enhance its revenues. When asked by the

[3]According to Blackert, this figure includes the 6% holiday pay allowance and historical overtime, but does not include the difference in pension payments.

Union's counsel if the City had the ability to pay the additional $25,000, Mayor David Blanton evaded directly answering the question. His final response was, "I guess my answer to that question is if I have $25,000 and I take every bit of that $25,000 and spend it and I have some other emergency that comes up that's unknown, I don't have any money to pay that." The Arbitrator does not take his response as an assertion that the City does not have the ability to pay the additional $25,000 over the term of the contract.

While the evidence shows that the City's General Fund balance in the past nine years has been as high as $2,485,106 in FY2008, it has also been as low as $14,239 in FY2003. In FY2011, the ending fund balance was $1,611,670, of which $1,478,467, or 91.74%, was unreserved. This compares to an ending fund balance of $1,390,195 in FY2010, of which $975,178 (70.15%) was unreserved. Despite the current state of the economy, these figures suggest the City has had the benefit of prudent financial management. While it is understandable that the City would rather avoid the additional $25,000 cost, interest arbitrators have regularly held that fiscal prudence is not the same as the inability to pay. In *County of Tazewell and Tazewell County Sheriff and Illinois FOP Labor Council*, S-MA-09-054 (2009), Arbitrator Peter R. Meyers held:

> Important as the desire to be prudent in handling finances may be, moreover, this is not one of the factors expressly listed in Section 14(h) of the Act. The Employer's arguments in favor of continued prudence simply do not, and cannot, carry the same weight as arguments derived from the factors expressly set forth in Section 14(h). A need for prudence is not the same as a claimed inability to pay, and the Employer's arguments in favor of continued prudence cannot be accepted as tipping the scales in favor of its proposals on this issue or the rest of the issues addressed in this proceeding, although the need for continued prudence nevertheless may be considered as part of the Employer's larger arguments in favor of its proposals here.

The Arbitrator concludes, based upon the record before him, that the City has not asserted, and cannot assert, that it is unable to pay the wage increase sought in the Union's final offer. It must

be understood, however, that the fact that the City has the ability to pay the increase does not dictate that it must.

The Act directs interest arbitrators to give consideration to changes in the cost of living. It was once commonplace in collective bargaining that parties would negotiate cost of living adjustment (COLA) clauses as a means for automatically adjusting wage rates for inflation during the life of the contract. Using a COLA clause, wages would be adjusted, typically annually, based upon the change in the consumer price index over the prior year. COLA increases generally augmented general wage increases to ensure that such increases were real increases to wages and not affected by the cost of living. The obvious downside to COLA clauses is the uncertainty it causes in evaluating the costs of a collective bargaining agreement. Relying solely upon negotiated general wage increases, the parties create a greater level of certainty as to the costs, but must engage in crystal ball gazing to determine if those wage increases will be real increases to spendable income for the employees.

If there are any advantages to interest arbitration, one is that the longer the process takes, the less crystal ball gazing we must do. The Union has provided CPI data covering the year prior to the new contract[4] and the first year of the contract. Averaging the four measures,[5] the Union avers the cost of living rose 2.36% from May 1, 2009 through April 30, 2010, and 3.35% from May 1, 2010 through April 30, 2011. The data also show CPI-W (US City Average) seasonally adjusted annual-

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[4]The Arbitrator concurs with the Union's rationale for using the data from the year prior to the contract. This approach is consistent with the method used for computing cost of living adjustments under a COLA clause.

[5]CPI-U (Midwest Urban), CPI-U (US City Average), CPI-W (Midwest Urban) and CPI-W (US City Average.

ized increase of 2.0% for the six months ending February 29, 2012. Data provided by the Employer includes the CPI figures for May 1, 2008 through April 30, 2009. There is no explanation for the inclusion of this twelve-month period, except for the fact that the CPI declined. The Arbitrator believes the data are skewed by the inclusion of that year.

An analysis of the cost of living data shows that the Employer's final offer does not exceed the rate of inflation. Thus, its offer would not result in a rise of real income to the employees, whereas the Union's would. However, it appears that the Union's proposal would significantly exceed the cost of living in the first and third years of the contract. In *Village of Rock Falls and Rock Falls Fire Fighters Association, IAFF*, S-MA-94-163 (1995), Arbitrator Harvey Nathan noted that "most economists look at productivity to justify increases above the inflation rate." The Union has presented no evidence of any increase in productivity that would justify the increase it seeks.

The Union bases its case chiefly upon the external comparables. Inasmuch as the Employer has neither proffered a list of communities it deems to be comparable, nor taken exception to any of the communities on the Union's list, the Arbitrator is compelled to accept the six communities identified by the Union as being the external comparables. The Arbitrator's own review of the characteristics of those communities does not reveal any basis for excluding any one of them.[6]

The Arbitrator, nevertheless, must examine the external comparables with a skeptical eye. It is more typical in interest arbitration that there is interplay between the union and the employer

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[6]One might ask why Sterling, located across the river from Rock Falls, was not included on the Union's list of external comparables. Undoubtedly, it draws its employees from the same labor market. The Arbitrator believes the Union has adequately explained its exclusion, noting primarily that Sterling has a considerably larger population than Rock Falls. With a 2010 population of 15,370, Sterling is approximately 50% larger than Peru, the largest community on the Union's list. In any case, the Arbitrator does not consider it appropriate to augment the list with communities that have not been proposed by either party.

in developing the list of comparable communities. They may both come to the table with their individual lists of communities and reach agreement as to comparability, at least upon some of the communities. If they cannot, it is the role of the interest arbitrator to assess the parties' recommendations and develop a list of communities that are sufficiently similar to the community involved in the arbitration and to each other. There is an understandable tendency for unions to proffer a list of communities with higher wage rates, as the Union did in this case, and for employers to do the opposite. Because of the importance of comparables in interest arbitration, it must be expected that each party would present data that favor its own position. The arbitrator's list is not developed with the objective of striking a balance between the two, but that is often the outcome.

In *City of Loves Park and Illinois FOP Labor Council*, S-MA-04-175 (2006), this Arbitrator noted:

> The purpose of using comparable communities is to look at wages, hours and conditions of employment in communities somewhat similar to the community that is the subject of the arbitration. If arbitrators were to consider only communities that had comparable wages, hours and conditions of employment, there would be no point in making such an analysis.

In rejecting the employer's proposal to include "Sterling as a comparable in order to temper the impact of Woodstock's incongruously high wage table . . . [as] an appropriate way of trying to 'level the playing field' . . . " the Arbitrator reiterated, "Again, the Arbitrator should not consider wage rates among the factors in determining comparability. That would result in tautological reasoning."

It is clear that the Union's list of external comparables favors its final offer. Applying the Union's first year increase of 2.75%, the May 1, 2010 Rock Falls salaries would still be considerably less than Geneseo, which has the lowest salaries of any of the comparables. Applying the two

subsequent 3% increases, the May 1, 2012 starting salary in Rock Falls ($37,911) would still be less than the 2010 starting salary in Geneseo ($39,312).

The Employer has cited the fact that the Rock Falls agreement calls for a holiday pay allowance of 6% of the previous fiscal year's salary base in lieu of payment for working on holidays. Princeton similarly pays a holiday allowance, but at the rate of 6.5%. The other communities grant holiday pay for each of the scheduled holidays, but additionally pay their police officers a premium of 1.5 times their regular pay for hours worked on holidays. Peru and LaSalle also compensate their officers at the rate of twice their regular pay if they are not regularly scheduled to work on the holiday, or if they work beyond their regularly scheduled hours. In light of the variance in the amount of the payments, it is not possible, based upon the information presented to the Arbitrator, to quantify the value of holiday pay and premiums in the other communities. The data presented by the City reflect the value of the holiday pay in the various communities, but do not take into consideration the additional premiums paid to employees when they work on the holiday. The Arbitrator believes, though, that it is likely that the actual differences between those communities and Rock Falls are negligible for the purposes of this analysis.

The City's primary focus, on the other hand, is on the internal comparables. It has negotiated collective bargaining agreements with four different bargaining units, including the Telecommunicators represented by the Illinois FOP Labor Council, that all provide for the same wage increases the City proposes for this unit. The Arbitrator can appreciate the Employer's desire to have parity among all of its organized employees. There is no evidence that any of the other units has a "me-too" agreement. Consequently, it is not unreasonable for the Employer to anticipate hard feelings

among employees who settled for less if the Union's final offer were to be accepted by the Arbitrator. This factor, then, clearly favors the Employer.

The Union challenges the use of internal comparables on the basis that the contracts are different and provide different benefits to the employees they cover. For instance, the Union cites the fact that the firefighter contract provides for longevity pay, which the police contract does not have. The Arbitrator does not find the Union's argument to be sufficiently persuasive so as to reject the concept of internal comparability. It is certainly likely that the police contracts the Union cites as external comparables also provide benefits that are different than those in the Rock Falls contract, such as the number of holidays, vacation and sick leave allowances or uniform allowances. With respect to the longevity pay in the Rock Falls - IAFF contract, the Arbitrator notes that the Fire Department has a somewhat different compensation structure. Firefighters advance in grade by attaining higher levels of certification, as well as achieving time in grade. Once a firefighter has reached the highest level of certification, longevity pay kicks in. The pay schedule has seven pay grades for firefighters and one salary level for captains. In the Police Department, officers progress through the grades based upon time in grade plus the completion of training courses. Although the training courses must be certified, the officer is not required to obtain a certification to progress to the next pay level. Progression to pay grades 7 through 13, however, are based solely upon time in grade. Inasmuch as a firefighter might achieve the highest pay grade within six years of completing a probationary period, while a police officer might be only halfway through the pay scale after seven years of service, the Arbitrator does not see a significant difference between the longevity pay for firefighters and the progression to higher pay grades for police officers.

The major conflict presented to the Arbitrator is whether internal or external comparables should carry more weight. As noted, the former clearly favors the Employer, while the latter favors the Union. The Act gives the Arbitrator no guidance on this question.

Arbitrator Harvey A. Nathan addressed this issue with this Employer in *Village of Rock Falls and Rock Falls Fire Fighters Association, IAFF*, S-MA-94-163 (1995), writing as follows:

> Internal comparability is the measurement of the terms and conditions of employment of one bargaining unit with others of the same employer. It is significant because of the inherent similarities when the employer is the same. The important question of whether the municipality has a community of interests with the comparison employer is obviated. Moreover, ability to pay and other economic considerations, as well as local community features and practices are self-evident or have been resolved. However, internal comparability can be a two-edged sword. On the one hand the employer seeks uniformity among its different bargaining units. It does not want one unit to play off of another. The employer wants uniformity among its employee groups, not competition for a costlier contract. It rightfully wants some structure in its wage and benefit plan for its employees as a whole, and not have pay packages running every which way without regard to skills or level of importance within the overall community. Additionally, the employer may lose credibility if it bargains a contract for wages and benefits at one level only to agree to a more costly package with another group.
>
> Unions, on the other hand, do not want to be bound by the agreements negotiated by other labor organizations representing other types of employees. The unions argue that there can be no good faith negotiations when the employer presents a package justified mostly on the basis of its acceptance by other employee groups. In some cases the employer's so-called "pattern" is self-serving. It settles with its weakest bargaining units first and then argues that the other units must accept the "pattern" it has established. Moreover, there may have been special needs and considerations which led one unit to settle for certain terms which are not as applicable to the unit in question. Internal comparability should not be used as a straightjacket which inhibits the consideration of the separate needs of particular units.
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> * * *
>
> The evidence is reasonably clear that the City has attempted to maintain some semblance of stability among its three bargaining units. While it has not insisted on a lockstep comparison of wages and benefits, terms and conditions among the three units have a lot in common. As noted above, the six step salary schedule in the Fire Fighters' contract was initiated by the City as a system similar to what was in place with the Police. The language of the insurance provisions is the same as exists in the FOP and IBEW agreements. The vacation and holiday provisions are also the same.

> Because of the chronological order of bargaining, it appears that at times the parties played catch-up with each other. Sometimes the FOP got increases which were then matched with the Fire Fighters. At other times, the Fire contract had slightly more generous provisions, such as with caps for medical insurance contributions. However, there does appear to be a pattern emerging where the Fire Fighters are slowing [*sic*] closing the gap in salaries with the Police unit. Thus, as a result of the May, 1993 reopener the Fire Fighters narrowed the salary gap to $650. . . .

Arbitrator Nathan awarded the salary increase contained in the Union's final offer, noting that "the Fire Fighters have been closing the gap with Police over the last few contracts." Parity between the two departments was obviously on Arbitrator Nathan's mind. That gap has not yet been closed. Examining entry level salaries in the two departments, it is evident that an entry level firefighter was paid the same rate in contract year 2011-2012 that an entry level patrol officer would have received the prior year under the City's wage proposal ($35,474.91).[7] The Union's proposal would further widen the gap between the two units.

While interest arbitrators generally give greater weight to external rather than internal comparables, we also tend to single out the protective service employee units to assess internal comparability and give less weight to other bargaining units. In *Village of Elk Grove and Metropolitan Alliance of Police No. 141* S-MA-95-11 (1996), Arbitrator Elliott Goldstein stated there is "an essential balance between police and fire salaries, and that the non-bargaining unit employees are really not a factor in the equation." Similarly, Arbitrator Steven Briggs, in *Village of Arlington Heights and Arlington Heights Fire Fighters Association Local 3105 IAFF*, S-MA-88-89 (1991) wrote, "In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a

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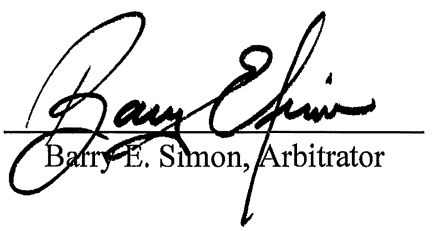
[7]There is actually a one penny difference.

particular public sector jurisdiction. This is especially true regarding firefighters and police units which notoriously attempt to attain parity with each other."

While the Arbitrator agrees with the Union that there has not been a history of pattern bargaining among the City's bargaining units, there does appear to be some history of a relationship between salaries in the Police and Fire Departments. In the Arbitrator's opinion, the factors in favor of the City's final offer, particularly the interest in maintaining some degree of comparability with the firefighters, outweigh those in favor of the Union's final offer. In the final analysis, applying the statutory factors, the Arbitrator finds the City's final offer to be more appropriate.

Award: The Arbitrator adopts the City's final offer with respect to wages for Police Officers and Police Sergeants. The wage schedule is attached hereto as Appendix A, and shall be retroactive to May 1, 2010. All contract terms tentatively agreed to by the parties as contained in Appendix B attached hereto are made a part of this Award by reference.



Barry E. Simon, Arbitrator

Dated: May 31, 2012
Arlington Heights, Illinois

APPENDIX A - 2010-13

GRADE	5/1/09 - 4/30/10	5/1/10 - 4/30/11	5/1/11 - 4/30/12	5/1/12 - 4/30/13
1	$34,779.32	$35,474.91	$36,184.40	$36,908.09
2	$36,182.74	$36,906.39	$37,644.52	$38,397.41
3	$37,585.15	$38,336.85	$39,103.59	$39,885.66
4	$38,987.61	$39,767.36	$40,562.71	$41,373.96
5	$40,390.03	$41,197.83	$42,021.79	$42,862.22
6	$42,816.78	$43,673.12	$44,546.58	$45,437.51
7	$43,104.14	$43,966.22	$44,845.55	$45,742.46
8	$43,391.51	$44,259.34	$45,144.53	$46,047.42
9	$43,678.87	$44,552.45	$45,443.50	$46,352.37
10	$43,966.24	$44,845.56	$45,742.48	$46,657.33
11	$44,845.56	$45,742.47	$46,657.32	$47,590.47
12	$45,966.69	$46,886.02	$47,823.74	$48,780.22
13	$47,115.87	$48,058.19	$49,019.35	$49,999.74

APPENDIX A

Tentative Agreements

Section 14.05 No employee shall be entitled to accumulate or accrue any vacation time or vacation pay from year to year, or to take vacation pay and work in lieu of vacation time. Employees terminating, resigning their employment in good standing upon two (2) weeks advance notice, or who elect to retire, shall receive any unused vacation time with vacation pay in their final paycheck. For each completed month of service during the fiscal year in which an employee terminates, the employee shall receive one-twelfth (1/12 or 0.083) percent of his or her annual vacation pay. However, the provisions of Section 28.01 shall control the payments under this Section.

Section 14.06 If an employee is denied the right to take vacation which was previously scheduled because of operational requirements of the department, then that employee may carry over the denied vacation to the next fiscal year, to be taken within thirty (30) days of the beginning of such next fiscal year, but provided that if the employee is denied the vacation within such additional thirty (30) day period due to operational needs of the department, the employee shall be granted another thirty (30) days within which to schedule and take the vacation.

Section 18.03 **Military Leave**. Any regular employee who leaves active employment for the purposes of being inducted, entering, determining physical fitness to enter, or performing training duty in the armed forces or Coast Guard, either by enlistment, draft or recall will be granted a leave of absence.

Upon the expiration of such leave of absence, each employee will be restored to his/her former job classification or to a position of like seniority, status and pay, unless circumstances of the City have so changed as to make it impossible or unreasonable to do so, provided:

(a) application for re-employment is made within ninety (90) days after discharge from active service or hospitalization continuing after discharge for a period of not more than one (1) year;

(b) the employee presents a certificate showing satisfactory completion of service;

(c) the employee's voluntary period of enlistment or recall to active duty does not exceed four (4) years, plus one (1) year additional voluntary extension of active duty if the extension is at the request and for the convenience of the government.

If an employee is a member of a military reserve unit of the United States or State of Illinois, and is required to and attends an annual or other leave or training leave in that

military unit or is called to active duty, then the provisions of any federal or state law governing such military service, leave or duty shall be followed by the City. Any such military leave shall in no way affect vacation, sick leave, or other emergency leave benefits of the employee's job status, unless the applicable federal or state law does not require that vacation or sick leave continue to accrue during such leave or duty. The employee will receive full pay during the absence which shall be computed at the amount equal to 100% of base pay less any taxable wages paid by the military unit of the United States or State of Illinois.

Section 18.05 Personal Leave. Each employee shall be allowed two (2) personal leave days off to be taken during the fiscal year subject to the approval of the Chief of Police or his designee which shall not be unreasonably denied. However, an employee shall not be paid for any personal leave day taken within the first year of employment until completion of one full year of employment.

Any unused personal day may not be carried over into the next fiscal year unless the day has been requested off and denied for operational purposes without scheduling availability within the fiscal year.

Section 24.05 Clothing Allowance. The Employer shall provide each employee with an initial issue of required uniforms and equipment. Any cost that results in changes initiated by the employer with respect to changes or additions of required standard uniforms and equipment shall be born by the Employer, unless requested by the F.O.P.

Uniformed officers shall be granted an allowance of four hundred twenty-five dollars ($425.00) a year per officer for the replacement of uniforms due to normal wear and tear. Officers assigned to work in assignments that require the regular wearing of plain clothes shall be granted an allowance of four hundred twenty-five dollars ($425.00) a year per officer for the purchase of said clothing items to be handled in quartermaster fashion.

The Employer agrees to defray the reasonable and functional replacement or repair of an officer's personal effects which are necessary or appropriate for performance of that officer's duty. Such repair or replacement shall be functional, and any costs beyond that attributable to the duty related damage shall be the responsibility of the officer.

In addition to the clothing allowance hereinabove, the City agrees to replace protective vest at a 25% and 75% cost sharing when they wear out or the life expectancy expires, 25% from clothing allowance of the officer and 75% from Police Department line item budget and an officer who has not expended all of the uniform allowance stated

in this section may carry over the unused portion to be applied to the officer's 25% portion of the protective vest cost in a later year..

ARTICLE 28. Voluntary Separation from Service.

Section 28.01. An employee with less than eight (8) years service in the police department desiring to voluntarily resign or leave service as an employee shall provide to the employer written notice of such intent to resign at least fourteen (14) days in advance of the effective date of the resignation. An employee who fails to provide such notice shall forfeit the right to be paid for any accrued but unused vacation time and for unused sick leave under Section 15.04. Voluntary resignation shall not include an employee whose employment is to be terminated due to illness or injury. For these purposes, an employee shall not be considered as "resigning in good standing" if any discipline proceeding directed toward the employee is pending which was commenced at the time of or prior to the giving of notice of that employee's election to resign.