

ILLINOIS LABOR RELATIONS BOARD
PETER R. MEYERS, Arbitrator

In the Matter of the Interest
Arbitration between:

**DOLTON PROFESSIONAL
FIREFIGHTERS
ASSOCIATION, LOCAL
3766, IAFF,**

Union,
And

VILLAGE OF DOLTON,

Employer.

ILRB Case No. **S-MA-11-154**

DECISION AND AWARD

Appearances on behalf of the Union

Lisa B. Moss—Attorney
Dave DuVall—President
Ray III—Vice President
Terry Hughes—Neg.
David Alvarado—Secretary
Jermel Brim—Board Member

Appearances on behalf of the Employer

Michael J. Kralovec—Attorney
Evangeline Levison—Village Attorney
Bert Herzog—Acting Village Administrator

This matter came to be heard before Arbitrator Peter R. Meyers on the 9th day of November 2011 at the Dorchester, 1515 East 154th Street, Red Room, Dolton, Illinois. Ms. Lisa B. Moss presented on behalf of the Union, and Mr. Michael J. Kralovec and Ms. Evangeline Levison presented on behalf of the Employer.

Introduction

The parties in this matter are the Village of Dolton, Illinois (hereinafter "the Employer"), and the Dolton Professional Firefighters Association, Local 3766, IAFF (hereinafter "the Union"). The parties' most recent collective bargaining agreement has an effective term of from May 1, 2008, through April 30, 2011. Pursuant to Articles X, XVII, and XX of that Agreement, which provide for re-openers in connection with certain specified issues, the parties entered into collective bargaining negotiations over two of the specified issues, wage increases and minimum staffing. The parties entered into negotiations over these issues, but they reached an impasse. The Union thereafter requested that the Illinois Labor Relations Board submit a panel of mediators, and the parties selected a mediator to assist them in resolving these two issues. On April 12, 2011, the parties participated in mediation, but they were unable to reach any successful resolution. The Union thereafter filed a Demand for Compulsory Interest Arbitration with the Illinois Labor Relations Board.

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter was scheduled to be heard by Neutral Arbitrator Peter R. Meyers on November 9, 2011, in Dolton, Illinois. The parties submitted post-hearing briefs, with the Union's brief being received on January 12, 2012, and the Village's brief on February 2, 2012.

Relevant Statutory Provisions

ILLINOIS PUBLIC LABOR RELATIONS ACT 5 ILCS 315/1 *et seq.*

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new

agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) 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.
 - (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.

Issues Submitted for Arbitration

The following issues were included in the Union's Demand for Compulsory Interest Arbitration:

1. Article X, Section 10.1 – Wage Increases; and
2. Article XVII, Section 17.3 – Staffing.

Discussion and Decision

The Village of Dolton, Illinois, is located in southern Cook County. The Village's Fire Department (hereinafter "the Department") serves the Village's population of nearly 25,000 citizens from two fire stations that house a total of two engines, one truck, and one squad. The Union has represented a bargaining unit of Department employees since 1992. In that time, the Union and the Village have been parties to collective bargaining agreements effective for the periods 1992-1997, 1997-2001, 2001-2005, 2005-2008, and the current agreement covering 2008-2011. The current agreement was implemented after the parties engaged in an interest arbitration proceeding before Arbitrator Edwin Benn. Arbitrator Benn's May 28, 2009, Decision and Award provided for the incorporation of certain provisions into this Agreement, including re-openers on specific issues.

The bargaining unit represented by the Union consists of two shift lieutenants, eight engineers and ten firefighters. The Department's Chief is not a member of the bargaining unit. Each member of the bargaining unit is required to be a certified emergency medical technician, although paramedic services in the Village are provided by contract paramedics through an outside, third-party contractor.

The Department operates three shifts that each extend for twenty-four hours. Employees work twenty-four hours on duty, and they then are off duty for forty-eight hours. Historically, each shift has been led by a shift commander holding the rank of

lieutenant, with an acting lieutenant assigned to command a shift if no lieutenant is on duty.

In accordance with the contract re-opener provisions, the Union submitted its proposal for modifications in the matters of wages and staffing pursuant to the contractual reopener provisions. The parties engaged in negotiations for one session to the point of impasse, and they subsequently engaged in an unsuccessful attempt to settle these two issues through mediation. The issues of wages and staffing now are presented here for binding interest arbitration.

The analysis and resolution of these issues is governed by the factors set forth in Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h) (hereinafter "the Act"). Not all of the listed statutory factors, however, will apply to this matter with the same weight and relevance. As is true in most interest arbitration proceedings, the identification of appropriate external comparable communities is quite important. In this particular case, the parties have the advantage of being in agreement as to external comparables. The parties have stipulated that Blue Island, Country Club Hills, Hazel Crest, Homewood, Markham, Midlothian, Park Forest, and South Holland, all located within the State of Illinois, are appropriate external comparables. This Arbitrator has reviewed the proposed external comparables and finds that they are, indeed, appropriate. The parties' list of proposed external comparable communities is hereby adopted for purposes of this interest arbitration proceeding, and this list shall be applied to the analysis of the outstanding issues in accordance with Section 14(h)(4)(A) of the Act.

Consideration also must be given to the internal comparables here, which involves

a review of relevant provisions governing other employee groups working for the Village. In addition, the parties have stipulated that despite the prevailing economic circumstances facing the Village, the Village is not claiming that it is unable to pay the Union's wage proposal pursuant to Section 14(h)(3) of the Act. There is no dispute in this matter regarding the lawful authority of the Village, nor has there been any argument that there have been changes in circumstances during the pendency of this proceeding that will affect the outcome. As for the remaining statutory factors, the interests and welfare of the public always must be considered, while consumer prices and overall compensation also are important considerations in this matter. Accordingly, all of these relevant statutory factors shall guide this Arbitrator's analysis of the two issues in dispute between the parties.

Decision

1. Article X, Section 10.1 – Wage Increases

On the impasse issue of wage increases, the Union's final proposal is as follows:

Article X, Section 10.1 Wage Increases

The current members of the bargaining unit shall receive wage increases which shall be computed upon the current base salary as follows:

Effective May 1, 2008 – 4%

Effective May 2, 2009 – 4%

Effective May 1, 2010 – 2%

Base Salary	May 1, 2008	May 1, 2009	May 1, 2010
Firefighter	\$56,775.61	\$59,046.63	\$60,227.56

Engineer	\$62,132.18	\$64,617.47	\$65,909.82
Lieutenant	\$67,488.36	\$70,187.89	\$71,591.65

Firefighters hired before May 1, 2006 shall receive a raise one time each year on May 1 as set forth above.

Firefighter (hired after 5/1/2008)	May 1, 2008	May 1, 2009	May 1, 2010
Step 1	\$48,880.00	\$38,880.00	\$39,657.60
Step 2	\$44,845.20	\$45,602.21	\$46,514.25
Step 3	\$50,810.40	\$52,324.42	\$53,370.91
Step 4	\$56,775.61	\$59,046.63	\$60,227.56

The pay to be set forth above is to be read across on May 1 each year and down on the employee's anniversary date.

Wage increases shall be implemented no later than the first full payroll period after the issuance of this Order.

The Village's final proposal on the impasse issue of wage increases is as follows:

The Village proposes a zero percent wage increase for the year May 1, 2010 through April 30, 2011.

On this economic issue, the Arbitrator may resolve the parties' dispute only by choosing one or the other of the parties' final proposals. This choice must be guided, as noted, by the relevant statutory factors listed in Section 14(h) of the Act. The wage issue here involves one calendar of the current Agreement's three-year terms. In the first two years of the parties' current Agreement, covered employees received four percent annual wage increases. There was no wage increase figure incorporated into the Agreement for the third and final year of the contract, hence the raising of this wage increase issue via the contractual re-opener.

In proposing a two percent increase for the final year of the contract, which began on May 1, 2010, the Union emphasizes the comparison with the external comparables.

The record suggests that going into the final calendar year of the contract, the Department's employees ranked sixth among the nine comparable communities with regard to average wage. The Union acknowledges that both parties' proposals would result in the employees' average wage maintaining that sixth place positioning, although both proposals would result in the bargaining unit's average wage falling further behind the average wage established across the external comparables. The Union points out that the Village's proposal would result in a significant increase in the negative variance between the bargaining unit's average wage and the external comparables' overall average wage, while the Union's own proposal would result in a much smaller increase in that negative variance. The data also show that in six of the eight external comparables, fire department employees received wage increases in 2010 ranging from just below two percent to four percent.

It also is necessary to compare the overall compensation available to the Village's firefighters with what is available to their colleagues in the external comparable communities. Overall compensation includes such items as vacation time, holiday pay, and any premium pay. While the Village's firefighters do receive generous vacation, sick time, and other benefits, the evidence in the record about these other items of compensation confirm that these additional elements of compensation are within the ranges established for these items in the external comparable communities. Longevity pay is another element of the firefighters' overall compensation. The evidence in the record showing the impact of longevity pay on overall compensation demonstrates that under both the Union's and the Village's proposals, the Village's firefighters will earn

wages that are below the average wages among the external comparables until they reach about twenty years of service. As longevity increases, the average wage figures for the Department's employees appear to rise above the average external wage figures under both parties' wage proposals, although these wages will stay well within the overall wage range no matter which party's proposal is adopted.

This evidence relating to these other elements of the firefighters' overall compensation shows that the total compensation to be paid to the Village's firefighters under either of the parties' wage proposals will place them near the middle of the range of total compensation established among the external comparables. The Union's proposed two percent wage increase keeps the firefighters very close to the average, while the Village's proposed wage freeze would move its firefighters further below that average.

This comprehensive comparison of the parties' wage proposals with the data from the external comparables demonstrates that the Union's proposed two percent wage increase is more appropriate than the Village's proposed wage freeze for 2010. I find that the Union's proposal keeps the Department's wages more in line with the average wage rates across the external comparables. This particular statutory factor therefore supports the Union's proposal as more appropriate and reasonable than the Village's proposal of a wage freeze for 2010.

With regard to internal comparisons, the Village asserted that it recently completed negotiations on a new contract with its public works employees that provides for a two-year wage freeze. The competent, credible evidence in the record, however,

does not conclusively document that such an agreement has been reached and ratified. As of the close of the hearing, the Village has submitted a Village Council resolution authorizing the ratification of an Agreement with AFSCME, the union representing the employees in the Public Works Department, along with certain tentative agreements, but the Village has not offered the new AFSCME contract. Under these circumstances, it cannot be determined what, if anything, the Village offered to its Public Works' employees as a *quid pro quo* for any wage freeze.

The Village also has asserted that it currently is in negotiations over a contract for its Police records clerks unit, but there is no evidence of any agreement between those two parties as to wages. The Village recently has laid off employees, eliminated certain positions, and left other positions unfilled as it has responded to the current wide-ranging economic downturn, but, as previously mentioned, there is no evidence that adoption of the Union's wage proposal would result in further layoffs, reductions in essential services, or other cost-cutting measures. The evidentiary record on internal comparables therefore does not particularly favor either party's proposal. It is necessary to note, however, that the two percent increase proposed by the Union is quite modest, and it would result in a relatively minor increase in the overall wages that the Village pays to its firefighters. I find that the internal comparison does not suggest that the Union's proposal is unreasonable or inappropriate.

As for the statutory factor focusing on an employer's financial ability to handle the costs of different economic proposals, such as the competing wage proposals at issue here, the parties stipulated during the hearing that the Village is not claiming that it is

financially unable, pursuant to Section 14(h)(3) of the Act, to pay the wage increase sought by the Union. This is important because, in its post-hearing brief, the Village did argue that it does not have the ability to pay the wages that the Union is seeking. A review of the record shows that the Village has not presented the type of detailed and extensive financial information necessary to meet its burden of proving a financial inability to pay. The Union entered an annual Treasurer's Report into the record that provides basic information about Village revenue and expenditures for the fiscal year ending on April 30, 2011, but this report does not provide any information about such things as Village general and/or operating funds, it has not been audited, and there is no documentation or analysis that would support the information set forth in that report. The Village also has not shown that these numbers are completely accurate. This Arbitrator would note, for example, that the Report indicates that the Village paid more than \$9 billion in total compensation to the listed employees, but this obviously is an error, probably typographical.

There also is no evidence in the record that the Village would be forced to reduce its essential services or implement extensive layoffs if the Union wage proposal were to be adopted. Moreover, the Village has acknowledged that it has not kept pace with the collection of water and trash collection fees, and that it may unnecessarily be paying fees to its trash collection vendor to pick up garbage at vacant houses that do not actually require garbage collection.

Based on the fact that the Village did not present sufficient evidence to meet its burden of proving that it is financially unable to pay the costs associated with the Union's

wage proposal, as well as the stipulation reached during the hearing, this Arbitrator finds that there has not been, and cannot be, a Section 14(h)(3) showing by the Village in this proceeding that it is unable to pay the costs associated with the Union's wage proposal.

Evidence of the Village's financial condition nevertheless does have an impact on this analysis, in the context of the interest and welfare of the general public. The record in this matter demonstrates that the Village is facing financial difficulties, as is true of most government entities in these challenging economic times. Any increase in the Village's personnel costs ultimately will be shouldered by taxpayers, and the record suggests that many of the Village's citizens are experiencing significant financial pressures. The Village has referenced recent data that indicate, for example, that the unemployment rate within the Village is more than fifteen percent. About 2,000 foreclosure actions were filed on properties located within the Village between 2009 and 2011, and more than 1,400 Village residents filed for personal bankruptcy during that same period. These figures, of course, suggest that the Village does not have much room to increase its property tax revenues, either by raising tax rates or by increasing the rate of collection. In light of the data confirming the breadth and depth of the financial challenges facing the Village and its citizens, increased personnel costs must be a concern. As noted, however, the Union's modest proposal of a two percent wage increase for 2010 would involve only a relatively small increase in wages.

Wage increases obviously do contribute to increased personnel costs, but many other factors also play a real part in this. Among these other factors are the costs associated with attracting, screening, hiring, and training new personnel. These types of

personnel costs can quickly mount if employee attrition rates are high because, among other reasons, an employer is not offering competitive compensation packages. It certainly is in the interest of the general public and the Village itself, that the Village retain its valuable, experienced, and highly skilled employees. This is particularly true of its Department employees, who are extensively trained first-responders charged with critical public-safety responsibilities. All of these considerations together demonstrate that the interests and welfare of the general public favor the Union's proposal of a two percent wage increase for the final year of the parties' contract.

Consumer price data, another of the statutory factors that is quite relevant to the economic issue of wages, show that consumer prices rose in both 2009 and 2010. The Union's proposed two percent wage increase falls in line with the consumer price data in the record; it is lower than the inflation rate for 2010, but a bit higher than the inflation rate for 2009. The Village's proposed wage freeze for 2010 would mean that the Department's firefighters would lose buying power. This factor therefore supports the Union's proposal on wages as being more appropriate and reasonable.

The remaining statutory factors have little, if any, relevance to the parties' competing wage proposals. The proper resolution of this dispute over wages for 2010 therefore must be resolved based on the relevant factors already discussed. This analysis of the relevant statutory factors demonstrates that the Union's proposal on wages for 2010 is more appropriate and reasonable than in the Village's proposal. Compared to the Village's proposed wage freeze, the modest two percent increase that the Union has proposed would better maintain the Village's wage rates when compared to the external

comparables, would make it more likely that the Village would be able to retain these valuable employees, and would better enable the bargaining unit's members to maintain their purchasing power.

In accordance with the evidence in the record and the relevant statutory factors, and in light of all the considerations discussed above, this Arbitrator finds that the Union's proposal on the impasse issue of wage increases is more appropriate and shall be adopted. The Union's proposal on this issue therefore shall be incorporated into the parties' collective bargaining agreement, and it is set forth in the Appendix hereto.

2. Article XVII, Section 17.3 – Staffing

On the impasse issue of staffing, the Union's final proposal is as follows:

Article XVII, Section 17.3 Staffing

- A. The Employer shall staff all shifts with a minimum of ~~four (4)~~ five (5) full time paid personnel with EMT certification for the safety of the citizens and firefighters of the Village of Dolton, one of whom shall be a Lieutenant or Acting Lieutenant and two (2) of whom shall have the rank of Engineer.
- B. When a full-time position becomes vacant, a full-time paid employee shall fill the vacancy from the overtime roster.
- ~~C. Section 17.3 shall be subject to a re-opener effective May 1, 2010.~~

The Village's final proposal on the impasse issue of staffing is as follows:

The Village proposes maintaining the status quo on minimum staffing.

The staffing levels during the history of the parties' collective bargaining show that the parties have mutually agreed to adjustments here. During the effective terms of the parties' first two collective bargaining agreements, the minimum staffing level was established at three full-time paid personnel with EMT certification, with two having to

hold the rank of engineer. In their 2001-2005 Agreement, the parties agreed to increase minimum staffing to four full-time paid personnel with EMT certification, again with two having to hold the rank of engineer. Under the parties' current Agreement, this minimum staffing level has been maintained.

The Union has suggested that its proposal on this issue is a "housekeeping" proposal that simply reflects the reality of the Department's current staffing practices. The Union asserts that beginning under the parties' 2001-2005 Agreement, the Department's then Chief increased the minimum number of personnel on each shift from four to five, and the Village requires that a lieutenant or an acting lieutenant be on duty during each shift. This argument, however, is undercut by the fact that the parties did not change the minimum staffing level to reflect this supposed staffing practice either in the 2001-2005 Agreement or in the two subsequent Agreements.

The fact that it is not uncommon, as the Village conceded at hearing, for there to be more than four persons working a Department shift is not enough to show that the Union's proposal on minimum staffing is merely a "housekeeping" matter. The contractual minimum staffing levels certainly would allow the Department to exceed those minimums as needed, but the Department is not contractually authorized to drop below the minimum staffing level. Just because the Department may occasionally, or even frequently, exceed the contractual minimum staffing level, this does not mean that the contract must be modified so as to increase the contractual minimum.

In seeking an increase of minimum staffing to five full-time paid personnel holding EMT certification, with one holding the rank of lieutenant or acting lieutenant

and two holding the rank of engineer, the Union is, in fact, proposing a breakthrough on this issue. The Union is seeking a significant change in a provision that has not been altered during several rounds of negotiations. Because the Union has advanced a breakthrough proposal on the issue of minimum staffing, the Union must meet a heightened standard of proof, pursuant to which the Union must demonstrate a substantial and compelling argument to justify its proposal. Although a higher staffing level may be needed or justified on some occasions, there would have to be a showing that, for example, the current minimum level is inadequate to safely serve the public and maintain Department operations for the Union to be successful in seeking an increase in that minimum through interest arbitration.

The Union has made several arguments based upon the Village's application for an receipt of a SAFER grant. This grant from the Department of Homeland Security provides a five-year commitment to increased cost sharing that would assist the Village to hire nine additional full-time firefighters. The evidentiary record documents that as of September 8, 2009, the Department had, in fact, hired nine additional full-time employees. The Union has pointed to the Village's assertions, in its grant application, that hiring additional firefighters was necessary to reduce the risk of harm to the public and to the Department's members caused by inadequate staffing.

The Union's arguments based on the SAFER grant, however, simply do not support its proposal for an increase to the contractual minimum staffing levels. The fact is that the Village properly used the funding obtained through the grant to hire nine additional firefighters, and the Department utilizes these new hires as it staffs each shift

with at least four, although sometimes more, employees, while reducing reliance on overtime. Moreover, there has been no showing that the current minimum staffing levels are inadequate or carry any undue risk of harm. Again, just because the Department sometimes does staff shifts with five employees does not mean that this should be adopted as a minimum requirement. Moreover, there is no logic to the Union's argument that the Safer grant somehow obligates the Village to staff each shift with a minimum of five employees. The Safer grant has no relation to or impact on the contractual minimum staffing requirement, and it cannot reasonably be used to justify the imposition of an increase, through interest arbitration, in the minimum staffing level.

The fact is that the contractual minimum staffing level is something that should be established through collective bargaining negotiations and mutual agreement. This is a requirement that should not be imposed from the outside through interest arbitration or other means. I find that if the Union is to achieve an increase in the contractual minimum staffing requirement, it must do so through collective bargaining where the parties can negotiate the relevant issues involved, such as safety, manpower shortages, costs, etc.

The Union has failed to provide evidence of any health or safety issue directly related to the current minimum staffing level that would justify the imposition of an increase in that level. In fact, the Union has failed to provide sufficient competent and credible evidence that would justify adoption of its breakthrough proposal. In addition, the only statutory factor that has any bearing on this issue, a comparison of the Department's minimum staffing levels with the minimum staffing levels in the external comparables, supports the Village's proposal that the *status quo* should be maintained.

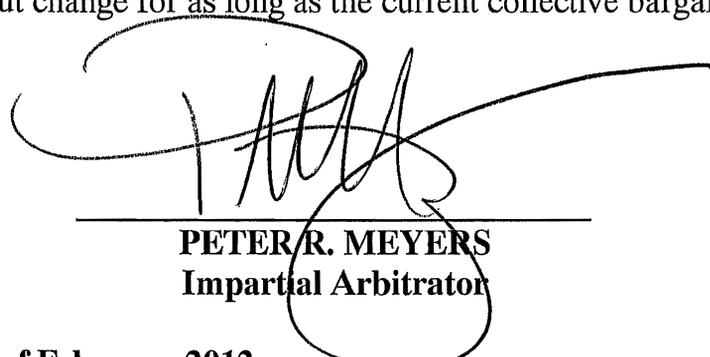
The record shows that among the external comparables, only two of the eight comparables have a minimum staffing level greater than four.

In accordance with the evidence in the record and the relevant statutory factors, and in light of all the considerations discussed above, this Arbitrator finds that the Village's proposal on the impasse issue of minimum staffing levels is more appropriate and shall be adopted. Accordingly, Article XVII, Section 17.3, of the parties' current collective bargaining agreement shall be maintained without change for as long as the current collective bargaining agreement remains in effect.

Award

On the issue of wages, this Arbitrator finds for the Union. This Arbitrator finds that the language set forth in the attached Appendix in regards to Article X, Section 10.1, Wage Increases, shall be adopted and incorporated into the parties' new collective bargaining agreement.

On the issue of staffing, this Arbitrator finds for the Village. Accordingly, Article XVII, Section 17.3, Staffing, of the parties' current collective bargaining agreement shall be maintained without change for as long as the current collective bargaining agreement remains in effect.



A large, stylized handwritten signature in black ink, appearing to read 'P. Meyers', is written over a horizontal line. The signature is highly cursive and loops around the line.

PETER R. MEYERS
Impartial Arbitrator

**Dated this 28th day of February 2012
at Chicago, Illinois.**

APPENDIX

Article X, Section 10.1 Wage Increases

The current members of the bargaining unit shall receive wage increases which shall be computed upon the current base salary as follows:

Effective May 1, 2008 – 4%

Effective May 2, 2009 – 4%

Effective May 1, 2010 – 2%

Base Salary	May 1, 2008	May 1, 2009	May 1, 2010
Firefighter	\$56,775.61	\$59,046.63	\$60,227.56
Engineer	\$62,132.18	\$64,617.47	\$65,909.82
Lieutenant	\$67,488.36	\$70,187.89	\$71,591.65

Firefighters hired before May 1, 2006 shall receive a raise one time each year on May 1 as set forth above.

Firefighter (hired after 5/1/2008)	May 1, 2008	May 1, 2009	May 1, 2010
Step 1	\$48,880.00	\$38,880.00	\$39,657.60
Step 2	\$44,845.20	\$45,602.21	\$46,514.25
Step 3	\$50,810.40	\$52,324.42	\$53,370.91
Step 4	\$56,775.61	\$59,046.63	\$60,227.56

The pay to be set forth above is to be read across on May 1 each year and down on the employee's anniversary date.

Wage increases shall be implemented no later than the first full payroll period after the issuance of this Order.