

INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

POLICEMEN'S BENEVOLENT LABOR COMMITTEE
("Union" or "Bargaining Representative")

AND

CITY OF CARLINVILLE
("City" or "Employer")

ILRB Case No. S-MA-11-308 and No. S-MA-11-307
Arbitrator's Case No. 11/021

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

Appearances:

On Behalf of the Union:

Shane M. Voyles, PBLC Staff Attorney
Daniel Dykstra, PBLC Staff Attorney
Eric Poertner, PBLC Chief Labor Representative
Kasey Groenwold, PBLC Labor Representative
Brian Lawton, Union President
Pat Wills, Union Vice-President

On Behalf of the Employer:

Patrick Murphey, Miller, Hall & Triggs, LLC
Claudia Leonatti, Budget Director
Dave Steiner, Alderman and Finance Committee Chair
Tim Coomrod,

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the City and the Union pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (the "Act"). The Parties are at an impasse in their negotiations for a successor to two Collective Bargaining Agreements between the City and the Union's predecessor, the Illinois Fraternal Order of Police Labor Council (the "FOP"), both of which were in effect from May 1, 2007 through April 30, 2010. The Parties each waived the tripartite arbitration panel and so I am appointed as the sole Arbitrator to decide this matter.

The hearing before the undersigned Arbitrator was held on March 26, 2012, at the City Hall, located at 550 N. Broad St., Carlinville, Illinois, commencing at 10:00 a.m. The Parties were afforded full opportunity to present their cases as to the impasse issues set out herein, which included both testimony and narrative presentation of exhibits. A 139-page stenographic transcript of the hearing was made, and thereafter the Parties were invited to file written briefs that they deemed pertinent to their respective positions. Post-hearing briefs were exchanged on or about May 24, 2012, and the record was thereafter declared closed.

II. FACTUAL BACKGROUND

The City is an Employer within the meaning of Section 3(o) of the Act. The Union is a labor organization within the meaning of Section 3(i) of the Act. The Union is the exclusive bargaining representative, within the meaning of Section 3(f) of the Act, for all sworn police officers in the ranks of Lieutenant and below, as certified by the Illinois Labor Relations Board ("Board") on May 13, 2010, in Case No. S-RC-10-180 ("Police Unit"). The same day, the Board also certified the Union as the exclusive representative for a civilian unit of the City's dispatchers and clericals assigned to the Carlinville Police Department, in Case No. S-RC-10-182 ("Civilian Unit"). The Union replaced the FOP as the representative for both units. The Police Unit currently consists of 11 officers; there are currently four dispatchers and one secretary in the Civilian Unit. The units are covered under separate contracts, but it appears that the parties have historically consolidated negotiations over their terms, I note.

The City, population of 5,685, is the County Seat of Macoupin County. In addition to the two bargaining units at issue here, City employees in the departments of Street, Water and Sewer, Animal Control and the City Clerk's Office are organized into a single bargaining unit represented by Teamsters Local Union No. 525 ("Public Works Unit").

The record further reveals that the FOP demanded bargaining for both represented units on January 4, 2010. It is not entirely clear from the record whether the FOP and the City actually began negotiations prior to the FOP's being decertified. This apparently was true, since the record contains an indication that two FOP requests for mediation, one for each of the Police and Civilian Units, were filed by the FOP with the Board on March 31, 2010. The City's attorney stated on the record at the instant interest arbitration hearing that City agents were not able to find copies within City files of either of the requests for mediation. It is common, I note, that requests for mediation occur after at least some initial bargaining between Parties.

At any rate, as mentioned above, the FOP was decertified in both these units on May 13, 2010. Bargaining between the Union and the City began following this Union's demand to bargain made on May 14, 2010. Negotiations for both bargaining units were again consolidated. The negotiations, which included two mediation sessions with mediators from FMCS, failed to produce agreements on all outstanding issues and so compulsory interest arbitration was invoked. A hearing date in this matter was then scheduled for August 25, 2011. That hearing was cancelled and the parties used the time for further mediation, with me serving as the mediator, I note.

The facts of record disclose that a tentative settlement between the Parties on the outstanding issues for both the police and civilian units was then reached during the mediation session on August 25th, or so the parties thought. However, the City' governing body, the City Council, rejected the tentative agreement, the evidence establishes. On October 18, 2011, the City's attorney wrote advising me of the rejection and requesting that the hearing now be rescheduled. The attorney referenced the Board case numbers for both bargaining units in his letter, the facts also disclose.

III. SCOPE OF THE PROCEEDINGS

The Parties disagree at the outset as to the scope of this interest arbitration. The Union contends that the Civilian Unit should be included in my award.¹ The Union points out that the expired labor agreement between the City and FOP covering the civilians expressly set out in Article VI that, "The resolution of any bargaining impasse shall be in accordance with the Illinois Public Labor Relations Act, 5 ILCS 315/14." This provision survived both the expiration of the agreement and the change in bargaining representative, the Union submits. The Union, as the successor to the FOP, is now entitled to enforce the Parties' agreement to use interest arbitration in accordance

¹ The demand for interest arbitration for the Civilian Unit is covered under a separate Case No. S-MA-11-307.

with the provisions of Section 14 of the act, the Union firmly believes.

The Union further points out that the City's conduct during negotiations, that is the engaging in consolidated negotiations for the police and civilians, including mediation concerning both units before me, evidenced the City's intent to agree to a consolidated interest arbitration under Section 14 of the Act. Here, says the Union, unrefuted testimony further establishes that Management actually signed off on tentative agreements covering both the sworn officer and civilian bargaining units on August 25, 2011. These facts should estop the Employer from refusing to continue this process of combining negotiation to the interest arbitration part of the statutory bargaining procedures, the Union maintains.

The City strongly objects to the inclusion of the civilian bargaining unit in this interest arbitration, I note. The Employer instead insists that the submission agreement, set forth in the stipulated Ground Rules, Joint Exhibit 3, includes only the Police Unit.² The City also points out that these proceedings are convened under Section 14 of the Act, which provides for compulsory interest arbitration only for protective service employees. This claim by the Employer is no longer completely true, since there has been an amendment to the Act

² Case No. S-MA-11-308.

which provides for mandatory interest arbitration for all first contracts for civilian units like the instant civilian unit. However, the application of this amendment to the Act is not proper, on grounds that the record demonstrates this is not the first contract for this civilian unit, I find.

Article VI of the predecessor FOP agreement covering the civilians became "null and void," along with all the other terms of that prior labor agreement, upon the Union's certification as the new exclusive bargaining agent, the City further contends. The City has given the Union fair warning throughout the bargaining process that it was reserving its right to object to the inclusion of civilians should the Parties move the matter to interest arbitration, it adds. And, of critical significance, says the Employer, it is basic to the arbitration process that an agreement to arbitrate must be mutual to be enforceable. See Litton Financial Printing Division, A Division of Litton Business Systems, Inc. v. NLRB, 501 U.S. 190, 118 Ct. 2215 (1991).

The matter of whether the civilian unit seeking interest arbitration in ILRB Case No. S-MA-11-307 under the rubric of Section 14(h) of the Act is, in fact, properly arbitrable in the present proceeding, must be resolved prior to turning to the two substantive issues currently in dispute in Case No. S-MA-11-308 pertaining to the police unit. According to the Union, the

basis for my jurisdiction for the civilian unit is Article VI of the predecessor civilian agreement between the Employer and the FOP, I understand. The Union insists Article VI is enforceable by virtue of a line of private sector case law dealing with successorship issues, plus technical provisions of the Act permitting my ruling on the scope of my authority under the Act. The basic issue is whether Article VI represents a mandatory subject of bargaining or whether civilian unit interest arbitration proceedings under the Act are merely permissive, so that the lack of a joint submission agreement to arbitrate in Joint Exhibit 3 would oust me from jurisdiction to hear Case No. S-MA-11-307.

According to the Employer, Article VI, as well as the remainder of the FOP predecessor agreement for the civilian unit with this Employer, is totally void by operation of the decertification and change in bargaining unit representatives as of May 13, 2010. Moreover, the Board's Rules, including Section 1230.170, make clear that an interest arbitrator's powers, in situations where interest arbitration is "permissive and voluntary" and not compulsory as is the case with the protective services, are derived entirely from the parties' mutual submission agreement. In the instant case, the Employer contends, the submission agreement does not represent a consent on the part of this Employer to permit interest arbitration for

the civilian unit. Finally, says the Employer, since the question of my authority to force an interest arbitration in this civilian unit and not the police unit is substantive, it may be raised at any time and cannot be waived by the conduct of this City before the start of this interest arbitration hearing.

In approaching this issue, I start with the observation, also made by other arbitrators, that the Act provides little or no guidance in determining my jurisdiction to hear interest arbitrations other than in protective service units where these proceedings are clearly compulsory in nature.

It must be understood that the current dispute involves more than the submission agreement of these parties, I find. As to the status and enforceability in the instant arbitration of Section VI of the FOP/City Labor Contract, the prior contract with a now "repudiated Union," the issue is whether this specific term has ceased to exist.

The analysis is not easy. First, I have held in similar circumstances that, for purposes of bargaining history and breakthroughs in negotiation, prior contracts are not deemed to be a total nullity. Precedents pertaining to successorship do apply. See Village of Elk Grove Village and Metropolitan Alliance of Police (MAP) P. 41, ISLRB No. S-MA-95-11 (Goldstein, 1996). (FOP and Village had three predecessor contracts before MAP certified as new bargaining representative. Negotiations

for contract between MAP and Village should be considered not an initial labor contract but a successor agreement for many of Section 14(h)'s terms), i.e., bargaining history and what is the status quo for the then-current negotiations).

Second, the United States Supreme Court has found in similar fashion that an expired prior labor contract may sometimes continue to contain enforceable terms that may be arbitrated. The Court held:

"And of course, if a collective-bargaining agreement provides in explicit terms that certain benefits continue after the agreement's expiration, disputes as to such continuing benefits may be found to arise under the agreement, and so become subject to the contract's arbitration provisions." Litton Financial Printing Division, A Division of Litton Business Systems, Inc. v. National Labor Relations Board, 501 U.S. 190, 207-08, 111 S.Ct. 2215, 2226 (1991).

The Court reiterated that "structural provisions relating to remedies and dispute resolution--for example, an arbitration provision--may in some cases survive in order to enforce duties arising under the contract." Id. The Court further stated, "[w]e presume as a matter of contract interpretation that the parties did not intend a pivotal dispute resolution provision to

terminate for all purposes upon the expiration of the agreement." Id.

Another important means of determining my jurisdiction is the fact that the City just prior to the opening of the instant interest arbitration submitted a final offer in which it objected to arbitration for the civilian unit. However, in addition to this final offer, the City objected to the continued inclusion of Article VI in the civilian agreement, I stress. In other words, the City never treated the prior contract with the FOP as a nullity in bargaining, or even as to its final offers. Specifically, the City demanded in negotiations that Article VI, with its terms that would of necessity apply only after the expiration of the predecessor FOP contract, should be deemed ineffective because the Parties were to negotiate to eliminate that clause or obtain the deletion through this interest arbitration. For purposes of bargaining between this Union and the City, even though the prior contract had expired and the Employees' Collective Bargaining Agent had changed to the PBLC, I stress, the Employer's conduct has been consistent with its recognition that Article VI carried over unless eliminated through mutual agreement, precisely as the PBLC has argued.

Faced with these facts, I have examined the City's primary contention that Article VI is a "permissive-non-mandatory" term or subject of bargaining to which the Parties "may, but may not

be, compelled to agree." While I accept the differentiation between the civilian unit and protective services police unit as regards compulsory interest arbitration process, I am opposed to an approach that identifies permissive and mandatory topics with the automatic result of making voidable a bargained provision of a labor contract. I emphasize that the actual focus of the mandatory and non-mandatory subject of bargaining rule under the Act is that a provision waiving a statutory right belonging to the employees is a permissive subject of bargaining, but that, once agreed to, such provisions are enforceable and not void, like any other negotiated contract clause between the parties, I stress.

The Union also has emphasized that the City had an option to raise its objections to interest arbitration for the civilian unit in a court of law under the Illinois Uniform Arbitration Act or to seek a Declaratory Ruling before the Board.³ I agree. Instead, the City in this case chose to raise its jurisdictional objections before me on the day of hearing, although it had preserved the objection one year earlier, I also acknowledge.

However, and this is a major however, while there have been cases arising under the Act dealing with the issue of status of negotiating history and prior contractual agreements between an

³ See County of Macoupin and Sheriff of Macoupin County and Policemen's Benevolent Labor Committee, S-MA-09-065 and 066 (Goldstein, 2012) pp. 1-2.

Employer and a predecessor Union, none of these cases called for the enforcement of an agreement to go to interest arbitration for a civilian unit not covered by the compulsory arbitration terms of IPLRA, I find. Unlike City of Elgin and MAP Unit 54 (Steven Briggs, Arb., issued June 20, 1995), for example, a case where MAP, through the election route succeeded the FOP as the prior incumbent Union, the Parties themselves agreed in City of Elgin upon wage retroactivity, and proceeded on the basis that MAP was negotiating a "successor" contract. What was at issue was not enforcement of a promise to go to interest arbitration, I emphasize.

I also understand that, as Arbitrator Nathan explained in Will County Board and Sheriff of Will County (August 17, 1988):

If the [arbitration] process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining." Accordingly, interest 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 the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme that 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 for the peculiar circumstances these particular parties have developed for themselves. To do anything less would be to inhibit collective bargaining.

(See pp. 49-50 of the Will County Board 1988 case by Arbitrator Nathan citing Arb. H. Platt, Arizona Public Service Co., 63 LA 1189, 1196 (1974). See also Arbitrator Nathan's discussion in

Village of Elk Grove Village and IAFF, Local 3398, ISLRB No. S-MA-93-231 (October 1, 1994), at pp. 67-68.

The Parties therefore present me with this novel question: can the Parties be forced to arbitrate under the Act over a unit that is not a protective services grouping? Unfortunately, I find that it is not within my jurisdiction to decide it. The City correctly points out that Section 14 of the Act, which is the first source of my jurisdiction, makes interest arbitration compulsory only with respect to protective services bargaining units. Where the Parties voluntarily submit matters that involve civilian units. Section 1230.170 of the Board's Rules makes clear that the arbitrator's powers are derived entirely from the Parties' submission agreement. Moreover, even if Article VI is still in effect, I do not believe the Act gives this Arbitrator any authority to compel a party to participate in the actual interest arbitration. I cannot issue an injunction or alternatively force a submission agreement by an ex parte award. My role as Interest Arbitrator, where Section 14 does not command compulsory interest arbitration, is limited to conducting the hearing and deciding the issues that are mutually placed before me.

The City may ultimately be bound by the terms of Article VI to submit the Parties' impasse over the civilians to interest arbitration under Section 14 of the Act, as Article VI of the

expired City-FOP predecessor contract provides. I do not sit in these proceedings as a rights arbitrator, though. My job is to determine some of the terms for the Parties' next agreement, not to enforce terms contained in their old agreement. As to existing agreements of the Parties, my jurisdiction is limited to the Parties' submission, which here is contained in the Ground Rules submitted at the start of the hearing. By virtue of paragraph one of Joint Exhibit 3, the Ground Rules and Pre-Hearing Stipulations of the Parties, I have authority "to rule upon these mandatory subjects of bargaining submitted to it as authorized by the Illinois Public Labor Relations Act, Section 14 for the Unit certified in S-RC-10-180 of Police Officers."

This is not a situation where successorship is claimed to rebut claims that the status quo must be as if a first contract is being negotiated. For purposes of negotiating history, prior contractual agreements between the FOP and the City are clearly relevant as evidence, as is also the case in a status quo or breakthrough analysis. Interest arbitrators are careful to look at bargaining history and prior agreements to ascertain what is and is not a potential breakthrough. See Village of Elk Grove Village and Metropolitan Alliance of Police, Case No. S-MA-95-11 (Goldstein, 1996) at pp. 21-24. See also Village of Lisle, 2003 ILRB Lexis 77 (ILRB SP 2003). The submission agreement grants

me primary jurisdiction, however, I rule, because that is what Board Rule Section 1230.170 expressly states.

Accordingly, only Case No. S-MA-11-308 will be considered and not Case No. S-MA-11-307, despite the Union's significant arguments to the contrary, I rule.

IV. STIPULATIONS OF THE PARTIES

The Parties agreed that the Labor Contract for the Police Unit should have a three-year term, beginning May 1, 2010, and that the following are the economic and non-economic issues in dispute:

Economic Issues:

1. Wages
2. Retroactivity
3. Health Insurance

Non-Economic Issues:

None

In addition to the foregoing, the Parties entered into the following pre-hearing stipulations:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The Parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Joint Employers and Union.

2. The Parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The Parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be secured for the duration of the hearing by agreement of the Parties. Additionally, the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the Parties.

4. The Parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Act.

5. The Parties further stipulated that all tentative agreements reached during negotiations, except those entered into in mediation, are submitted as Joint Exhibit 4 and shall be incorporated by reference into this Award.

6. The Parties agreed to the following 9 Illinois municipalities for purposes of external comparability under

applicable statutory criteria: Beardstown, Carlyle, Greenville, Hillsboro, Mascoutah, Pana, Pittsfield, Shelbyville and Stauton.

V. THE PARTIES' FINAL PROPOSALS

A. The Union's Final Proposals

Economic Issue #1 - Wages

The Union proposes the following wage increases:

Effective April 30, 2011:

- \$.50 per hour for all employees.

Effective May 1, 2011:

- \$.50 per hour for all employees.

Effective May 1, 2012:

- \$.50 per hour for all employees.

All current employees and two retirees (Foster and Reiher) shall receive a flat payment of \$1,040.00 as compensation in lieu of retroactive pay for fiscal year 10-11.

Economic Issue #2 - Retroactivity

All wage increases shall be retroactive to April 30, 2011.

Economic Issue #3 - Health Insurance

The Union proposes to add the following language to the existing Hospitalization language:

Effective September 1, 2011, employees shall be responsible for paying \$500 plus 20 percent of the individual deductible, or \$700, which shall represent a maximum out of pocket expense to the employee for individual coverage. Other out of pocket expenses, such as co-pays, but excluding health insurance premium contributions, shall apply to this out of pocket maximum. If the premiums for individual coverage increase more

than 10 percent in any renewal year, the City may change the deductible to reduce premiums provided employees shall not be obligated to pay more than \$900 for maximum out of pocket expense.

B. The City's Final Proposals

Economic Issue #1 - Wages and Retroactivity

Effective May 1, 2011:

- \$1.00 per hour for all employees.

Effective May 1, 2012:

- \$.50 per hour for all employees.

Economic Issue #2 - Retroactivity

All wage increases shall be retroactive to May 1, 2011.

Economic Issue #3 - Health Insurance

The City proposes to maintain the status quo as to existing practice and the language of Article XXVI - Insurance Sections 1 through 3. Accordingly, employees will continue for the term of the Agreement to contribute the first \$375 in deductible and 20% of the remaining \$1,125. In addition, the City proposes to add the following new Section 4:

"The Employer will make available to bargaining unit employees a flexible benefits / Section 125 Plan to all bargaining unit employees administered through the insurance provider, provided it may lawfully do so and will not require the City to assume more than minimal costs to administer."

VI. RELEVANT STATUTORY LANGUAGE

Section 14 of the Act provides in relevant part:

5 ILCS 315/14(g)

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

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

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

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

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

5 ILCS 315/14(j) - [Limits on the arbitrators authority to issue retroactive wages.]

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

VII. EXTERNAL COMPARABLES

The external comparables listed above are stipulated. The data shows that as of fiscal year 2009, Carlinville's patrol officer wages ranked below average among the comparables at all points along the spectrum, from start to 24 years of service. Due to wage freezes at the points of hire and one year of service agreed to in the FOP Agreement for each of fiscal years 2007 through 2009, the dollar gap is now greatest at the start of employment, nearly \$7,000 annually, and closes to just over \$300 per year at 24 years of service. In fiscal year 2010, the average hourly increase received among the external comparables was \$.47, including wage freezes for officers in Beardstown and Hillsboro. In fiscal year 2011, the average hourly increase among the comparables was \$.49, including wage freezes in Hillsboro and Shelbyville. Wage increases in fiscal year 2012 were provided only for Beardstown, Greenville, Shelbyville and Staunton. The average increase among these municipalities was \$.36, including a wage freeze in Shelbyville.

VIII. INTERNAL COMPARABLES

Employees in the Public Works Unit received hourly increases of \$.50 in fiscal year 2010 and \$.55 in fiscal year 2011. No wage data was available for fiscal year 2012. The City asserts that the Agreement covering the Public Works Unit was

"negotiated in 2009, before the 'Great Recession'". (Employer Brief, p. 23).⁴ The record reveals the their current contract was ratified by the City in May, 2009.

On the issue of health insurance, the record reveals that the City pays the full premium for employee coverage and employees are responsible for the full premium cost for coverage of dependents and other family members. The current language of Article XXVIII, Section 1, Hospitalization is, in pertinent part, as follows:

The Employer shall provide hospitalization insurance to its employees who are members of the bargaining unit for the same costs as the coverage provided to the other City employees outside the bargaining unit. In the event the Employer deems it necessary to alter the insurance coverages and/or any other aspects of said insurance, the Employer shall so notify the Lodge, which shall have the right to send a representative to discuss the proposed changes on coverages or other proposed changes in the medical insurance with the Police Committee, the Mayor, and/or whatever other committee may be in charge of health insurance, provided that in no event shall the costs to the employees of said insurance coverage be increased in the pending fiscal year. However, the said costs of the insurance coverages to the employees shall be automatically reviewable and open for negotiation for the following fiscal year.

The contract language contained in the Public Works Unit labor agreement is similar to that contained in the Police Unit, but does not specifically provided that insurance will be

⁴ The Great Recession began in the fall of 2008, before the Presidential election that year, the Arbitrator believes.

offered on the same terms as it is offered to non-unit employees. Nevertheless, the City offered without challenge that all of its employees have historically enjoyed the same health insurance benefits at the same cost to the employee.

In September 2007, the City unilaterally changed carriers in response to proposed increases in the renewal premiums being offered by its former carrier. The new coverage included, among other things, an increase in the employees' annual deductible and co-pays. The City picked up part of the cost of the increased deductible, but the employees' deductible for employee coverage nevertheless increased from \$250 annually to \$700, with the employee being responsible for the first \$500 and 20% of the remaining \$1,000. The FOP filed a grievance challenging the City's change in benefits and costs.

The above-described matter was ultimately heard before Arbitrator Peter Meyers, who ruled in favor of the Union and ordered the City to reimburse unit employees for any deductibles they incurred in fiscal year 2007 beyond \$250. Arrangement was then made for reimbursement of employees in the Police and Civilian Units only in accordance with Meyer's award. In November 2009, the FOP and City agreed to increase the employees' annual deductible obligation to \$375 plus 20% of the remaining \$1,125, where it remains.

IX. OTHER FINANCIAL CONSIDERATIONS

The City has not raised any claim that it is unable to bear the cost of the Union's proposals. The City experienced a deficit in its general fund in 2009. Its fund balances have since recovered to pre-2009 levels. The City submits, however, that to maintain a viable general fund in the face of declining revenues it has been forced to annually move more than \$200,000 from the City's water funds to meet Streets Department operating expenses. This has allowed the City to continue maintaining a relatively large police staff, in comparison to the other municipalities in the area, and fund police operations, the City submits. Those operations currently consume around sixty percent of the City's general revenues, adds the City. The City's budget director did not say in her testimony how long into the future the City could continue to so borrow from its water funds and avoid having to further deplete general revenues.

Moreover, because the City has a population above 5,000, its officers are covered by the Police Pension Fund. The benefits under the Police Pension Fund represent a much more generous plan than do those of the IMRF, which applies to communities with populations below 5,000. Accordingly, contribution requirements are higher for the City than they are for these smaller communities. The City offers a comparison of its overall 2010 pension contribution to IMRF for its 70 or so

civilian employees. That amount was \$132,815, while for the same year the City contributed \$142,542 for its 12 sworn police officers. Thus, there is a factual basis for the City's contention that the police officer pension costs are higher than are those of the remaining City employees.

X. THE AUGUST 25, 2011 TENTATIVE SETTLEMENT

The Parties first participated in mediation before me on August 25, 2011, the day originally scheduled for hearing in this matter.⁵ During the mediation session with me, the Union and City bargaining teams reached tentative settlement on the issues submitted herein, namely wages/retroactivity and health insurance. The terms of settlement were reduced to writing that day and initialed by the Parties' representatives. They were ultimately rejected by the City Council, reportedly on recommendation of the City Attorney. The terms of the settlement now make up the Union's final offer, except that the Union's proposal omits a provision for the establishment of a Section 125 Plan for purposes of paying out-of-pocket medical expenses that was included in the tentative settlement, and which is now included in the City's final offer.

The terms of the tentative agreements should be given "significant, if not controlling, weight in this proceeding,"

⁵ They had previously had two unsuccessful mediation sessions with a federal mediator.

the Union suggests. (Union Brief, p. 26). My discussion in County of Ogle and Ogle County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-03-051 (Goldstein, 2005) supports this approach, I am told by the Union. There, the Union submits, I indicated that the weight to be given to rejected tentative agreements varies from case to case based on the reasons shown for the rejection. The record in this instant case contains no evidence to suggest that the City had a legitimate basis for rejection, the Union argues. The City's bargaining representatives clearly sought to change the terms of the deal prior to the City council ratification vote, but they never explained what was wrong with the terms as agreed. The objective evidence suggests that the City simply hopes for a better deal, the Union therefore suggests.

The City responds that there was never a meeting of the minds. In fact, one of the City's attorneys wrote to the Union's chief spokesperson, in an email on September 13, 2011, asking for clarification of the language of the tentative agreement, specifically on the issue of health insurance. She explained in her message that that parties agreement had been to limit the employees' cost for deductible to the first \$500 and twenty percent of the next \$1,000, for a total of \$700, which could increase in future years, if rates increased sufficiently to allow the City to change coverage, to a maximum of \$900. The

City, she wrote, had not agreed to reimburse employees for other out-of-pocket expenses, such as co-pays, but had instead agreed merely to credit employees for co-pays for purposes of meeting the annual deductible. The Union's spokesperson responded in an email on September 23, 2011, standing by the Union's interpretation of the Parties' tentative agreement, by which the \$700 deductible chargeable to employees would be an out-of-pocket maximum and that all other expenses under the plan, such as co-pays, would either be credited against that cost or reimbursed by the City.

The City argues that I cannot enforce the tentative agreement against the City as if it were a binding agreement. The Union suggestion to the contrary simply fails to consider the role that ratification plays in the bargaining process it insists. The City informs me that my award in County of Ogle, supra, predated the Board's ruling in Harvey Park District, 23 PERI 132 (ILRB SP 2007), aff'd 386 Ill.App.3d 773 (2008), wherein the Board reaffirmed the rule that ratification by an employer's governing body is a necessary condition for the formation of a binding labor agreement. The City Council's rejection in this case was due to the obvious misunderstanding between the parties as evidenced by the exchange between their spokespersons.

XI. DISCUSSION AND FINDINGS

A. Economic Issues #1 and #2 - Wages and Retroactivity

The City challenges my authority to award any wage increases effective at any time before May 1, 2011, the start of the City's 2011 fiscal year. The challenge is based on Section 14(j) of the Act. Specifically, that section limits the arbitrator's authority by stating that any increases by the interest arbitrator in compensation contained in the award can take effect at the earliest upon the start of the Employer's next fiscal year following the date of issuance of the award, provided that limitation does not apply where the Union has timely initiated the arbitration process by filing a request for mediation with the Labor Board. Here, the City points to the fact that the Union was not certified until May 13, 2010, after the start of the 2010 fiscal year, and did not file for mediation until November 4, 2010, which means that its request for mediation kicked in the arbitration proceedings for the beginning of the 2011 fiscal year. Again, Section 14 (J) under these facts, prevents me from granting any retroactivity for Fiscal Year 2010.

The Union responds that it is entitled to rely on the request for mediation filed by the FOP on March 31, 2010, because the PBLC stands in the shoes of the FOP, its predecessor. As the successor to the FOP, the Union succeeded to

all of the contractual and statutory benefits that the FOP properly preserved before the change of representatives took place, it claims.

The City's reply is twofold. First, the City contends that the FOP's filing was not effective because the City was not served with the request for mediation at the time, as required by the Act. Therefore, the FOP did not effectively preserve the issue of wages for fiscal year 2010.

The City's second contention is essentially that the FOP is not a party here. The Union cannot "piggyback" onto the FOP's request for mediation and thereby avoid the limiting effect of Section 14(j). Whatever filings the FOP made with regard to this bargaining unit were effectively nullified by and upon its decertification as the employees' representative, the City adds. Bargaining between the real parties in interest here did not begin until after this now incumbent Union was certified, the City strongly maintains.

I do find that my authority to decide this issue is clearly evident in the Act itself, I note. The questions here involve jurisdiction, statutory construction and public policy. I cannot consider the economic issue of retroactivity without addressing the statutory issue raised by the City. My jurisdiction over the issue is therefore established, I find.

The terms of Section 14(j) of the act are not really in dispute. That Section clearly provides a basic rule that "Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award." This limitation does not apply where the arbitration procedures are initiated in advance of the disputed fiscal year, in this case fiscal year 2010, which began on May 1, 2010. Arbitration procedures are deemed in Section 14(j) to be "initiated" by the filing of a request for mediation. The exception does not save the Union's proposal here unless the Union is entitled to the benefit of the FOP's early filing, which the City disputes. This is the issue that I must decide.

I note that the record contains no evidence as to the service of the FOP's request for mediation other than counsel's representation that copies of it were not found in the City's files. While I certainly credit counsel's testimony as such, I do not find it probative on the issue of whether the City was in fact served.⁶ The only material fact before me on this issue is a copy of the form itself, allegedly filed, which bears the Board's dated receiving stamp on its face. I will accept it as effective for whatever purpose it may be used.

⁶ I also find nothing in the record that tells me that a request for mediation must be served in accordance with the Act or the Board's procedures in order for it to effectively initiate the arbitration proceedings under Section 14.

As to this second issue, I view my role here as trying to anticipate how those bodies, i.e. the Board and the courts, with clearer jurisdiction over this issue, might ultimately rule. As I suggested above, this appears to be a matter of first impression. I have found no cases on point, in my research. However, I find fairly analogous a Board decision holding that an employer is under a continuing obligation to arbitrate with a successor union grievances that were pending at the point that the employees changed representatives. Village of Lisle, 2003 ILRB LEXIS 77 (ILRB SP 2003). The Board noted in its opinion that the NLRB has taken a somewhat different approach to the issue, whereby the Employer is deemed to be obligated to bargain with the successor union over those grievances that were pending under the expired contract with the predecessor, but is not obligated to arbitrate in the absence of a contract. See Arizona Portland Cement Co., 302 NLRB 36 (1991).

It has long been my understanding that when a successor union steps into the shoes of its predecessor, at least as a matter of typical practice, it generally picks up where the predecessor left off, processing lingering grievances, for example. Indeed, some years back, I again note, I rejected an argument made in the settling of interest arbitration that the election of a new union somehow cleared the slate of bargaining

history. See Village of Elk Grove Village and Metropolitan Alliance of Police, supra S-MA-95-11 (Goldstein, 1996).

However, I find the differences to be considerable between successorship and filing a request for a mediator by a Union that is then replaced through a Board Election. The fact that certain rights to enforce contractual terms and benefits may belong to a successor Union benefits the affected employees. Thus, for example, the First District adopted the standard that a successor Union may enforce containing contractual benefits in a case arising three years after a collective bargaining agreement "Expired" Consolidated Broadcasting Corporation v. American Arbitration Association, 115 Ill. App. 3d 577, 450 N.E. 2d 1252 (1st Dist., 1983).

That the Parties intended to honor a replaced Union's actions by seeking to negotiate and then filing for mediation is completely unconvincing, I find, and the Act does not command that result, I again stress. Indeed, the replacement process for the FOP, and the certification of this Union, makes it evident that the FOP's representational actions, although perhaps not its contract enforcement functions, indeed became void on May 13, 2010, I hold. Obviously, then, the decision of the Employees in the police and civilian units to hire a new bargaining representative stopped the FOP's bargaining rights, including potential mediation. The negotiations with the FOP

were over; its filing for mediation with the Board in March, 2010 was voided by its decertification, I specifically hold.

The retroactivity at issue here amounts to \$.50 per hour for all hours worked by each officer who worked on April 30, 2011, I realize. In truth, the Parties' respective proposals with respect to wage increases, including retroactivity, are effectively the same. The real issue is the Union's additional proposal for a \$1,040 stipend to be paid to each unit employee, and to two named retirees who apparently worked in 2010, which is proposed in lieu of retroactivity for 2010. It is included with the Union's wage proposal and is not severable from it, I find. For these reasons, I find little useful purpose in separating the issues of wages and retroactivity for this discussion and my award.

The stipend, and indeed the Union's full wage proposal, embodies the terms of the parties' tentative agreement on wages reached at the August 25, 2011 mediation before me. The City's reasons for rejecting the tentative agreement in toto, as I wrote above, centered on the issue of health insurance. However, the City's legal counsel suggested during this hearing that after the City Council rejected the tentative August 25 settlement package, it decided to propose maintaining the status quo in health insurance, meaning that the City would incur additional costs, in the form of annual deductible, over the

cost it anticipated from the tentative settlement. Having determined to take on the additional costs in insurance, the City Council also decided that retroactive pay would be "off the table for 2010." (Tr. 117).

In its Brief, the City points out that the Parties' respective offers as to the wage increases are "essentially the same," each being fairly in line with the external comparables. (Employer Brief, p. 23). The City also points out that in labor agreements negotiated after 2009, some of the external groups have agreed to some wage freezes. The wage increases given to employees in the Public Works Unit for 2010 and 2011 seem to favor the Union's proposal, the City concedes. I must also consider that the Public Works Employees have been paying much more for insurance in recent years than have the officers at issue here. The City's proposal is in any event "above the documented cost of living . . . and cannot arguably diminish employee wages," the City adds (Id). The City also suggests that its proposal will allow it to operate without reduction in police services, insisting that the interests and welfare of the public favor the City's offer.

The Union submits that only one of the external comparable units suffered a wage freeze in 2010. The rest, the Union suggests, received wage increases that were effective from the start of the 2010 fiscal year for their respective communities.

Similarly, the Public Works Unit employees received an increase of \$.50 per hour, effective May 1, 2010, which was followed by an increase of \$.55 per hour on May 1, 2011. The Union reminds me that the stipend is intended to replace retroactive pay that the officers would otherwise receive for 2010. The City is already saving money under the Union's proposal, as the officers are not receiving additional pay for any hours beyond the officers, straight-time 2080 hours annually. CPI rose 1.6% in 2010 and another 3.2% in 2011, the Union adds. The record does not support a wage freeze.

The main point for the Union is that its proposal is the same as what the parties tentatively agreed to in August 2011. The Union submits that it is an axiom of arbitrators that a party should not be allowed to gain through arbitration what it could not get through bargaining. The City merely hopes to do better here, avers the Union, than it did in negotiations by "skating on its promise to pay the \$1,040 in lieu of retroactivity." (Union Brief, p. 29).

I previously discussed at length the effect of rejected tentative agreements on my analysis of competing proposals in County of Ogle, supra, both parties noted. I will not survey that discussion at length here. The Union is correct that I generally consider rejected agreements in my analysis and afford them some weight, as seems to be the consensus among

arbitrators. The amount of weight I give them is always dependent on the reasons shown for rejection. The City's admonition is that I must respect the ratification process. I have never suggested that a rejected tentative agreement is per se binding on the Parties or that its terms ought to be awarded without regard to the other statutory factors. I instead recognize that the goal of interest arbitration is to reach a result that most nearly resembles what the Parties would have reached in strike-driven bargaining. County of Ogle, supra, at p. 59. Each side in bargaining is obligated to send duly authorized bargaining agents to the bargaining table. I must presume that the Agents designated by the Parties are knowledgeable of the needs of their principals and aware of the import of any agreements they reach. Thus, while I recognize each party's right to ratification, I cannot buy into the notion that a failure of a party to ratify what their negotiators have agreed to simply wipes the slate clean.

Addressing the nub of this case, though, I agree with the City's argument that there is no real issue about retroactivity in the instant case. Because of the clear terms of Section 14(j), I cannot grant retroactivity for fiscal year 2010, I hold.

In so holding, I stress that the PBLC was not certified by the ILRB until May 13, 2010, (City Ex. D), and it did not

initiate a request for mediation until November 4, 2010 (City Ex. F). As stipulated, the City of Carlinville's fiscal year is May 1 to April 30, and under Section 14(j), the Arbitrator has authority to award increases in rates of compensation only on and after May 1, 2011, "the start of the fiscal year next commencing after the date of the arbitration award." Section 14(j) does not limit what PBLC and the City may agree to do, just as Section 14(i) does not bar the parties from agreeing to a "minimum manning" provision, and Section 7 expressly provides "the parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement." See City of Elgin and MAP Unit 54 (Steven Briggs, Arb., issued 27, 1995) supra. Section 14 does not authorize an arbitrator to impose such terms absent mutual agreement. Here, the Union's final offer includes a wage increase of 50 cents effective April 30, 2011, and a lump sum "in lieu of retroactivity for the 2010-2011 fiscal year." While permissible, if the Employer agrees, this is not a mandatory term the Union can impose unilaterally, directly or through Section 14 proceedings, I hold.

The Union's apparent effort to piggyback on a form allegedly filed with the ILRB Board by the FOP prior to its May

13, 2010 decertification (Un. Ex. 18) is unconvincing, I also hold. First, evidence is lacking that the FOP ever submitted a copy to the City of Carlinville, nor is the document signed by anyone representing the City, despite this document's assertion it was a "joint request". More important, assuming arguendo, the document is what it purports to be, the FOP is not a party to these negotiations, and the document was not actually intended to initiate mediation for the PBLC, obviously. The FOP was decertified May 13, 2011 (City Ex. D) in ILRB Case No. S-RC-10-180, when PBLC became the certified exclusive representative. Sections 7 and 14 of the IPLRA identify the "parties" to interest arbitration as the Employer and the present certified exclusive representative. PBLC could not demand mediation prior to the May 1, 2010 start of the 2010-2011 fiscal year, since it had no authority to bargain with the City. Moreover, the IPLRA and the governing rules require the request for mediation be served upon the other party to the negotiations, as PBLC did in November, 2011. Plainly, the Union's final offer, seeking increases in compensation prior to May 1, 2011, is an offer this Arbitrator is expressly denied authority to impose under Section 14 of the Act, and I so hold. Nothing can change that controlling fact, I rule.

Based on all these considerations, I hold that the Employer's wages and retroactivity offers are most reasonable in light of the statutory criteria, and I so award.

B. Economic Issue #3 - Health Insurance

As I explained above, the Union's Health insurance proposal here embodies the terms of the August 25, 2011 tentative agreement, except that it does not include a provision calling for the establishment of a Section 125 Plan. The health insurance plan contains an annual deductible of \$1,500. The Union's proposal calls for employees to contribute the first \$500 of that deductible and 20% of the remaining \$1,000, for a current total of \$700. That amount is established as an annual out-of-pocket maximum. "All other expenses, such as co-pays," are either credited toward the employee's contribution to deductible or reimbursed by the City. These terms are reflected in new language to be added to the existing language of the contract.

The City's proposal maintains the status quo as to both the language and current contribution levels. Employees' contribution to deductible is capped at \$375 plus 20% of the remaining \$1,125, annually. There is no provision for crediting co-pays against the deductible or for reimbursement of same by the City.

Both proposals leave the current premium structure intact. The City pays premiums in full for employee coverage and employees are responsible for any additional premiums to cover their dependents and other family members.⁷

As I stated previously herein, I believe that the City's negotiator made a mistake in signing off to the tentative agreement on health insurance as drafted. To be sure, the mistake was unilateral. However, the draft language appears to embody a latent ambiguity, which is found within the phrase "[a]ll other expenses, such as co-pays." What defines the universe of "all other expenses?" If that universe includes what Arbitrator Meyers referred to in his award as all medical costs not covered by insurance, which I understand to be the Union's view of it, the size of the universe could be staggering. The risk taken on by the City, to cover costs beyond policy limits, is sobering. I am convinced that the City's negotiators did not appreciate the import of the provision establishing the employees' contribution to deductible as an out-of-pocket maximum. It is a change in benefits, rather than cost, and one that is actuarially significant, I suggest. The fact that the

⁷ Family deductible is apparently set at \$4,500 annually. The City does not contribute to family deductible beyond the \$800 it contributes on behalf of the employee. There is only one unit employee who is currently enrolled in family coverage. The parties' dispute here centered entirely on employee coverage.

City's negotiators agreed to the language is still significant, I also suggest. But it is not a dispositive consideration.

Both parties seem to concede that external comparability data available on this record are not helpful to my analysis, and I agree. I am not an actuary and I have no access to the City's claims experience, and so I will not guess which proposal will be most beneficial to the employees or costly to the City. However, it is clear that whichever proposal I select these employees will fare significantly better than their fellow City employees.

I have considered the City's evidence as to its current financial condition, which although less than desirable nevertheless does not suggest an inability to pay or that the health benefits plan of the Union is so rich as to be beyond what these parties would have negotiated through arms-length bargaining. I do not find that external comparables or the CPI somehow trumps the internal comparability data, I finally conclude. I have decided a number of cases since the onset of the Great Recession. In each case, I have expressed my opinion that external comparability remains the principle factor in most cases, but I stressed that it must be "accurate comparability," and that "context is everything." City of Belleville and Illinois FOP Labor Council, S-MA-08-157 (8/26/2010). I also drew a distinction between the external comparables settled

before and after the 2009 sharp economic downturn, discounting the former and assigning greater weight to the latter. I wrote:

This neutral accordingly finds that much of the Union's reliance on the City's alleged fiscal liquidity is factually irrelevant to the resolution of this dispute. The issue is not a straight inability to pay contention by the City; it is much more, I realize. See the cited awards by Arbitrator Benn relied on by the City so strongly in this case. Despite these citations, I am unwilling to accept the premise that all statutory factors set out in Section 14(h) go by the wayside, because these are bad times. All factors must still be considered, because that is my job, I point out. The context of the discussion may have changed because times are hard. 3% to 4% increases each year are no longer common, as I understand it from my review of the published police and fire wage increase data. The rules of the game and the frame of analysis have not changed, in my view, and that makes the parties' posture in this case difficult, I frankly state. id.

I again note that *accurate* comparability is indeed the "traditional yardstick" used in measuring the viability of last best offers, in that the relevant marketplace is closely examined for purposes of comparing what other similarly situated employee groups are receiving from their respective (and ostensibly analogous) Employers. However, the particular facts must always be reviewed in their appropriate context. (Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35). That is the critical point here--context is everything, in my opinion.

The City characterizes the Union's proposal as a breakthrough, I further understand. Its concern is that without a requirement that employees share in the costs of coverage,

costs to the City will soar, at a most inopportune time. I cannot estimate what additional costs would befall the City under the Union's proposal. It takes little imagination, in any event, to see that the proposal is truly a breakthrough. As I said earlier, the Union's proposal does not simply redistribute the costs of insurance between employer and employee. It rewrites the policy itself, but only for these employees. The Union's proposal moves these bargaining unit employees further from the written language of the contract than they currently stand.

In matters of health insurance, arbitrators have long recognized the importance of internal comparability. On this point, uniformity of benefits is substantially more important to the employer than is uniformity in employee contribution. In fact, that has been the model followed by the City. The employees have all shared the same benefits and, until recently, bore the same costs. Eliminating the parity in benefits will make it more difficult for the City to negotiate with carriers to hold down costs. Indeed, depending on what is included in the term "[a]ll other expenses, such as co-pays," an issue that might ultimately be decided by a labor arbitrator, the City might be put in the position of a co-insurer of these employees, with significant exposure to risk. The City's rationale for opposing further separation of these employees from their fellow

City employees is quite clear. They seek to save the taxpayers money, a consideration that I believe is legitimate, especially in today's economic climate.

I appreciate that the City approached the tentative agreement as a package proposal. However, the Parties proposals in this interest arbitration are not submitted in that same posture. As I noted in Ogle County, supra, at p. 61, I am in perhaps the worst position to weigh the overall value of competing packages or "engage in guesswork as to the value of [any] quid pro quo." In fact it appears to me that the cost to the employees in the City's final wage proposal, \$1,040 each, far outweighs the additional cost to the City in staying with current employee contributions to deductibles as opposed to what the City seemingly thought it was getting in the tentative agreement.

The City's negotiators may have made a mistake in agreeing to the terms of the tentative agreement, but there is no evidence in the record that suggests to me that it was in any way caused by the Union. It would not well serve the interest arbitration process and the parties' bargaining relationship for me to simply disregard the tentative agreement in toto and allow the City to repackage its terms in order to get a better deal. The tentative agreement provides strong support for the Union's overall wage proposal but the IPLRA forbids it, I find.

Applying the statutory factors to health care, I find the Employer's offer more reasonable under the applicable factors and I shall thus Award the Employer's proposal.

XII. AWARD

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

(1) I select the City's last offer on Economic Issue No. 1 with respect to Wages as being, on balance, supported by convincing reasons and also as more fully complying with all the applicable Section 14 decisional factors.

(2) I select the City's last offer on Economic Issue No. 2 with respect to Retroactivity as being, on balance, more fully complying with all the applicable Section 14 decisional factors and Section 14 (j).

(3) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 3 with respect to Health Insurance because it is most reasonable under the statutory criteria.

IT IS SO ORDERED.

Date: November 19, 2012

Elliott H. Goldstein
Arbitrator