

INTEREST ARBITRATION
RICHARD M. STANTON ARBITRATOR

City of Danville,)	
)	
)	EMPLOYER
)	
and)	CASE NO.
)	S-MA-11-336
Danville Police Command)	
Officers Association)	
)	UNION

OPINION AND AWARD

APPEARANCES:

For the City: Timothy E. Guare

For the Union: Shane Voyles

Date of the Award: October 15, 2013

BACKGROUND

The Danville Police Command Officers' Association, "Union", which represents a unit of command officers and the City of Danville, "City", have a relationship that has extended over many years. With the exception of the last two labor agreements, the parties have negotiated successor agreements without resorting to statutory impasse procedures. With respect to the instant matter, the parties were unable to reach agreement and the Union invoked the interest arbitration procedures of the Illinois Labor Relations Act ("Act"), Section 14.

The parties subsequently agreed, pursuant to Section 14(p) of the Act, to waive a tripartite arbitration panel and appointed the undersigned as sole arbitrator. On May 16, 2011, an interest arbitration hearing was held, during the course of which both parties presented evidence. The Union and the City submitted post-hearing briefs.

STATUTORY FRAMEWORK

This interest arbitration award is rendered pursuant to Section 14(g) of Act, which provides, *inter alia*, that as to each economic issue the arbitrator shall adopt the last offer of settlement which in the opinion of the arbitrator more nearly complies with the following eight (8) factors prescribed in subsection (h) Act:

- (1) The lawful authority of the employer.
- (2) Stipulation of the parties
- (3) The interest and welfare of the public and financial ability of the unit of government to meet those costs.
- (4) Comparison of 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 generally:
 - a. In public employment in comparable communities.
 - b. In the 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 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 or traditionally taken into consideration in the determining of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in public service or in private employment.

The Arbitrator's decision was based on all of the eight (8) factors set-forth in the Act in arriving at his decision. The Act does not give any more weight to one factor over another but leaves it up to the discretion of the arbitrator to determine the weight to be given to any particular factor.

ISSUES

The parties agreed that the following issues were properly before the Arbitrator:¹

ECONOMIC

1. Wages
2. Health Insurance Premium Co-payments
3. Terms of Health Insurance Coverage

NON ECONOMIC

Residency

¹ Tr. 3

FINAL OFFERS

A. WAGES

Union Proposal:

Annual General Wage Increases of:

5/1/11: 2.0%
5/1/12: 2.0%
5/1/13: 2.0%

Employer Proposal:

Annual General Wage Increases of:

5/1/11: 2.0%
5/1/12: 2.0%
5/1/13: 2.5%

B. INSURANCE

1. Health Insurance Premium Co-payments²

Union Proposal

Increase the employees' annual dependent premium contributions to:

5/1/11: 105/115
5/1/12: 115/125
5/1/13: 125/135

City Proposal

Increase the employees' annual dependent premium contributions to:

5/1/11: 110/120
5/1/12: 125/135

Upon and after the Award date, employees covered by this Agreement shall be required to contribute, by payroll deduction, 11% of the monthly premium cost of their coverage elections under City-provided health insurance plans, for employee and dependent coverage.

² The numbers before the slash are the dollar amounts employees with only one dependent pay and the numbers following the slash is the amount employees pay for more than one dependent.

2. Terms of Health Insurance Coverage:

Union Proposal: Status quo.

City Proposal: Strike paragraphs (a) through (e) of Section 22.1 and all of Section 22.3, and change Section 22.2 as follows:

Section 22.2. Right to Select Carriers

“The insurance benefits provided for herein shall be provided under a group insurance policy or policies, or thorough [sic] a self-insured or managed care plan selected by the City. Effective January 1, 2013, or as of the date of issuance of Interest Arbitrator Richard Stanton’s Award in ILRB Case No. S-MA-11-336 (whichever is later), the City shall provide employees with the option to elect health care coverage for themselves and their dependents in either a: City-provided Preferred Provider Organization (PPO) Plan; Health Maintenance Organization (“HMO”) Plan; or Point of Service (“POS”) Plan. The Summary Plan Descriptions for the PPO, HMO, and POS Plan options are attached to this Agreement as “Exhibits D.1 thru D.3 respectively. The City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar.”

C. RESIDENCY

Existing terms:

Section 32.8. In the event that the City elects to change the residency requirements which are currently applicable to all persons employed by the City, or in the event that any such change is mandated by law by the Illinois General Assembly, any such change shall likewise be applicable to all officers covered by this Agreement; provided, however, that no such change shall be more restrictive than the requirements of the City which are in effect as of the date of this Agreement.

Note: as a result of action by the Danville City Council in drafting the 2008 personnel policy amendments the existing “5-mile limit” for employees hired prior to January 1, 2008 was

inadvertently omitted. Subsequently, it was held that all patrol officers hired before January 1, 2008, were free to live wherever they wished. *City of Danville and PBPA Unit #II*, S-MA-09-238 (Hill, 2010) ("Hill Award")

City Proposal: Delete existing terms and replace with the following language:

Section 32.8. All bargaining unit members who were initially hired as Danville Police Officers prior to January 1, 2008 shall establish and maintain their principal place of residence within 5 miles of the corporate limits of the City of Danville. Each bargaining unit member who is initially hired as a Danville Police Officer on or after January 1, 2008, shall be required to comply with the residency requirement applicable to Patrol Officers on the date of such Command Officer's original hire as a Patrol Officer.

STIPULATED COMPARABLE COMMUNITIES³

Alton	Belleville
East Moline	Kankakee
Normal	Pekin
Quincy	Urbana

DISCUSSION

INTRODUCTION

Breakthrough vs. Modification of the Status Quo

Many arbitrators hold that the party proposing a breakthrough "must meet a more stringent standard than is applied to a proposal to change to existing contractual language." *County of Tazewell and Tazewell County Sheriff and Illinois FOP Council*, S-MA-09-054 (Meyers, 2009), at 29. As a result, much ink is devoted to determining if a proposal is breakthrough or merely a modification of the status quo. This search for the "breakthrough" holy grail is further complicated by the fact that while all "breakthroughs" are a change to the parties' status quo, not all changes to the status quo are "breakthroughs".

³ Tr. 4-5

The “breakthrough” versus “modification of the status quo” analysis is unnecessarily complicated. I prefer that when attempting to determine if a particular offer requires a higher level of scrutiny one should first determine where to place the offer on a continuum that goes from a very slight modification of the status quo to one that constitutes a very significant change.

At one end of the continuum are offers that create very significant new rights or obligations. An example of such an offer is the City’s final offer to have Command Officers contribute toward single insurance coverage when they had not done so in the past. On the extreme other end of the continuum are offers that modify existing rights or obligations without significantly changing them. An example of such an offer is the Union’s final offer to increase wages by 2% in each of the three years of the agreement. In a nutshell, the more significant the change, the more stringent the standard that should be applied.

Arbitrator’s Role

The approach I would take where one party is proposing a significant change in the labor agreement is the approach taken by Arbitrator Stephen Goldberg in *City of Bloomington and IAFF Local 49*, S-MA-08-242 (Goldberg, 2011) ("*City of Bloomington*"), where at page 17, Arbitrator Goldberg stated that:

The key question then, as the Union asserts, is whether the parties, as reasonable negotiators, should have agreed to those changes. In resolving that question, I accept, at least *arguendo*, that the criteria cited by the Union are relevant, and that all those criteria must be satisfied to justify the changes proposed by the City. I do so, however, with one reservation. While the Union, relying on previous arbitrators' decisions, asserts that the City must show a proven "need" for the change it here seeks, I find the term "need" too strong, suggesting an absolute necessity. Instead, I prefer to ask whether (1) the City has shown a legitimate interest in the change it seeks; (2) the proposed change meets the City's legitimate interest without imposing undue hardship on the Union, and (3) the City has proposed an adequate quid pro quo for the proposed change. (Citation omitted)

However, I would add the caveat that in applying the reasonable negotiator standard, the decision must still be based on the requirements set-forth in Section 14(h) of the Act, and I have done so in this decision.⁴

Wage Determination

For the first two years of the agreement, the parties’ proposal are identical, 2% in each year. In the third year the parties’ proposals differ in that the City offers 2.5% but the Union is only seeking 2%. As the City acknowledges, the .5% should be considered as a part of the quid pro quo for the modifications it is seeking to health insurance.

The City has made a very convincing argument in support of its wage proposal. With respect to the cost of living factor the City’s evidence established that:

Assuming that the	CPI	City's Proposal	Diff.	Union's Proposal	
2011	2.3%	2.0%	-.30%	2.0%	-.30%
2012	1.2%	2.0%	+.80%	2.0%	+.80%
2013	1.67%	2.5%	+.83%	2.0%	+.33%
Totals	5.17%	6.5%	+1.33%	6.0%	+.83%

Clearly, while both parties' 3-year proposals exceed the actual and/or anticipated growth in CPI- U during the contract's term, the City’s wage proposals do more to ensure that the Command Officers' wages do not lose ground to inflation than do the Union's and, if adoption of either of parties’ wage proposals are deemed to be supported by the "cost of living" statutory criterion, it is the City's wage proposals.

****Under either party's proposal, the City's Sergeants will maintain their comparable

⁴ The “reasonable negotiator” standard I have adopted here has a long history in interest arbitration. As far back as 1947 an arbitration panel stated that: “We take it that the fundamental inquiry, as to each issue is: what should the parties as reasonable men, have voluntarily agreed to?” *Twin City Rapid Transit Co*, 7 LA 845 848 (McCoy, Freeman & Gold, 1947)

⁵ *The Livingston Survey*, Philadelphia Federal Reserve, June 7, 2012"

rankings at their minimum and maximum rates of pay. However, under the Union's proposal, the Sergeants will lose more ground to the averages of the comparables' minimum/maximum rates than they would under the City proposal (Er.Ex.46).
[City brief, pp. 28-29]

The Union conceded that the City's wage offer was more reasonable.

I find that when considering all of the factors set-forth in Section 14(h) of the Act the City's wage offer is more reasonable. However, the City's wage offers was more generous because the City considered it the *quid pro quo* for the acceptance of the City's health insurance premium and coverage offers.⁶ Accordingly, if neither of its health insurance proposals are adopted, I would consider the City's final wage offer to be in effect withdrawn.

HEALTH INSURANCE ISSUES

1. Premiums

In its final offer regarding health insurance premiums, the City seeks to increase the employees' annual dependent premium contributions as follows:

5/1/11: 110/120,

5/1/12: 125/135, and

Upon and after the [instant] Award date, require all bargaining unit employees to pay 11% of the monthly premium cost of their coverage elections under City-provided health insurance plans, for employee and dependent coverage.

In summary, in the first two years of the agreement the City and Union offers are close. However, effective with the date of the instant award the City is proposing very significant changes: for the first time all employees, including those selecting only individual coverage would have to pay 11% of the monthly premium cost of their health premium. In the past employees with only single coverage did not pay anything and employees with dependent

⁶ "In a nutshell, the City has moved substantially from its initial offer of the first-year wage freeze as a *quid pro quo* for proposed changes to health insurance. (City brief pg. 18)

coverage paid a flat negotiated amount

2. Coverage.

Adoption of the City's health insurance coverage proposals would, according to the City, result in:

- (a) Claims for benefits under the City-wide benefit structure being processed on a "80/20" basis (the incumbent Police arrangement is "90/10");
- (b) Pharmacy co-pays for PPO participants' claims being processed the same as for HMO participants, *i.e.*, they will no longer be credited toward "deductible/out-of-pocket" maxima; and
- (c) Effective on the date of this Award *** the "out-of-pocket" maxima for unit employees being increased from \$800 to 2,000/yr. per beneficiary (at a maximum, x2 for family).
(City brief pg. 31).

The City's health insurance coverage final offer, if adopted, would bring the command officer bargaining unit coverage in line with the health insurance coverage of all other non-police bargaining units.

DISCUSSION OF THE TWO HEALTH CARE ISSUES- PREMIUMS AND COVERAGE

The City's two health insurance offers are not significant for the first two years of the three year agreement. However, as detailed above, the City's offer for the third year are clearly very significant modifications of the labor agreement. Accordingly, for the two health insurance issues I would apply the three step analysis used by Arbitrator Goldberg in *City of Bloomington, supra.*, namely:

- (1) Has the City has shown a legitimate interest in the changes in plan coverage and premiums it seeks?

The City asserts that its two health care proposals are an attempt to ameliorate the escalating cost of providing health insurance to its employees. For example, the City introduced evidence that:

Specifically, monthly premiums for full family dependent coverage (*i.e.*, for the employee and dependents combined) under the Command Officers' 90/10 PPO option (the most costly) in 2011 through 2013 (the years of this contract) are:

	<u>2011</u>	<u>2012</u>	<u>2013</u>
	\$1,631	\$1,876	\$2,157
yielding cost increases of:		15%	15.0%

(Er.Ex.17.4).

Controlling the cost of providing health insurance is without a doubt a legitimate interest.

The City also has a legitimate interest in aligning Command Officers unit health care coverage with the health care with coverage provided to non-police units. As stated at page 48 in Hill Award, *supra*, page 48:

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

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

The City also raises the specter of the so-called Obamacare "Cadillac Tax":

Of particular note, the Obamacare "Cadillac Tax" goes into effect in 2018, and will require employers to pay an additional 40% tax on

insurance premiums whose costs exceed \$27,500 annually (*i.e.*, \$2,292/mo.). If the Command Officers are permitted to keep their 90/10 plan, their current family premium (\$2,157) will be only 6% away from the "Cadillac Tax" threshold, with 4 years left to go. (City brief pg. 35)

While the potential impact of the "Cadillac Tax" is of some relevance, I have given it light weight because the labor agreement under consideration expires in 2014 and "Cadillac Tax" does not go into effect until 2018, if at all.

- (2) Have the proposed changes met the City's legitimate interest without imposing undue hardship on the Union?

Terms of Health Insurance Coverage Issue

The City acknowledges that moving the bargaining unit to the City-wide benefit structure will have the following negative effects:

- (a) Moving to a "80/20" basis co-pay (the incumbent Police arrangement is "90/10");
- (b) Pharmacy co-pays for PPO participants' claims will be processed the same as for HMO participants, *i.e.*, they will no longer be credited toward "deductible/out-of-pocket" maxima; and
- (c) Effective on the date of this Award *** the "out-of-pocket" maxima for unit employees would be increased from \$800 to 2,000/yr. per beneficiary (at a maximum, x2 for family).
(City brief pg. 31)

It is difficult to quantify the potential negative effects on the bargaining unit of these proposed changes in plan benefits because it depends on the plan usage. To state the obvious, if, for example, an employee does not use the pharmacy benefits; the change in the pharmacy benefit has no effect. However, it is safe to say that many employees and their dependents would use at least some of the health insurance benefits during the year. In addition, the potential negative economic impact when using the City's proposed benefits plans might possibly deter an employee or dependent from seeking necessary

medical care, thereby exacerbating a medical problem.

The Union also fears that it would be waiving its right to bargain any changes to the health insurance pursuant to Section 7 of the Illinois Public Labor Relations Act and would have to utilize what it considers to be inferior rights pursuant to the Agreement's grievance procedure if the following language contained in the City's health care coverage offer is adopted:

The City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein shall remain substantially ~~the same~~ similar.

Whether enforcement rights pursuant to the grievance procedure are inferior to rights under the Act can be debated but it is clear that the proposed language may limit the Union to the grievance procedure if it seeks to challenge changes in health insurance coverage that the City claims are substantially similar.

Health Insurance Premium Issue

Adopting the City's final offer that all bargaining unit members pay 11% of the health insurance premium will have varying negative effects depending on the plan that is chosen. For example, if the family Health Alliance PPO plan is chosen the monthly negative impact is \$102:⁷

2013 family Health Alliance PPO monthly premium	\$2,157	
City's final offer (11% of \$2,157)		\$ 237
Union's final offer		<u>135</u>
Additional monthly cost to employee		\$ 102
Additional yearly cost to employee (12 x 102)		\$1,224

⁷ The labor agreement will expire on April 30, 2014, but monthly health insurance premiums are not expected to decrease after that date. Accordingly, in computing the yearly negative impact the assumption is a monthly premium of at least \$2,157. (City brief pg. 34).

For the single coverage the impact is:

2013 single Health Alliance PPO - monthly premium \$675	
City's final offer (11% Of \$675)	\$ 74
Union's final offer	0
Additional monthly cost for employee	\$ 74
Additional yearly cost for employees (74 x 12)	\$888

One must also recognize that if the upward trend in insurance premiums continues, the impact on the employees could be even greater in the future.

In summary, the City's two health care proposals affect the bargaining unit adversely and are, thus a burden. The question is: do they constitute an undue burden? The answer to that question depends on what is being offered in exchange for accepting the changes proposed in the two health insurance offers.

(3) Has the City proposed an adequate quid pro quo for the proposed changes?

Arbitrators have applied various analytical methods when attempting to determine the value of an employer's offer, i.e. the "quid". Arbitrator Marvin Hill in *City of Decatur & IAFF Local 505*, FMCS Case No. 07-0302-02060-A, at pg. 24, finding that the City did not offer an adequate quid pro quo, opined that:

The aggregate increase over the four-year term offered by the Administration is 16.5%. The Union's final offer for the relevant time period is 14.8%, making the City's offer a mere 1.7% over four years.

Adopting Arbitrator Hill's methodology in *City of Decatur*, the Union in the present case argued that the City's final offer was only .5% more than the Union's final offer or \$30 per month. (Union brief pg. 23). While what the Union states is correct, it ignores, as shown below, the effect that the City's frontloading of some of wage

increases has on overall compensation.⁸

The following chart shows the effect adopting the City's final wage offer would have on the lowest paid members of the bargaining unit, starting sergeants:

CITY'S INITIAL OFFER

BASE	% INCREASE		YEILD	NEW BASE	MONTHLY
69,633	0%	=	0	69,633	5,803
69,633	2%	=	1,393	71,026	5,919
71,026	3%	=	2,131	<u>73,157</u>	6,096
				\$213,816	

CITY'S FINAL OFFER

BASE	% INCREASE		YEILD	NEW BASE	MONTHLY
69,633	2%	=	1,393	71,026	5,918
71,026	2%	=	1,421	72,447	6,037
72,447	2.5%	=	1,812	<u>74,259</u>	6,188
				\$217,732	

Adoption of the City's final wage offer would result in a gain of \$3,916 over the course of the agreement's three year term (\$217,732 – \$213,816 = \$3,916). In addition, adoption the City's final offer would result in the Command Officer's unit starting negotiations for a successor agreement with a yearly base wage rate that is \$1102 higher than it would have been with the City's initial offer. (\$74,259 – \$73,157 = \$1,102).

The question is, would these positive aspects of the City's wage offer be enough to overcome the reluctance of a reasonable union negotiator to accept any, or all, of what he/she considered the negative aspects of the City's two health care offers, namely:

⁸ All wage calculations are based on the wages of starting sergeants.

Health Care Premiums

1. An immediate increase in employees' health care premium of between \$74 to \$102 monthly, \$148 to \$204 for the remaining two months of agreement if the changes would go into effect on November 1, 2013 and \$888 to \$1,224 annually thereafter.
2. The probability that the employees' share of the health care premium contribution would increase in the future as the premium increases.

Health Care Coverage

1. Accepting health care plans that the Union considers inferior to the existing plan, because, *inter alia*, it would cost an employee more when utilizing health plan benefits.
2. The Union's perception that it would be waiving its right to bargain any changes to the health insurance plan pursuant to Section 7 of the Illinois Public Labor Relations Act and would have to utilize what it considers to be inferior rights pursuant to the agreements grievance procedure.

EFFECT OF FIRE DEPARTMENT 2013 TENTATIVE AGREEMENT

The City filed a supplement to its post-hearing brief and exhibits in which set-forth the terms of a Settlement Agreement between the City and its two Fire Department bargaining units, Firefighters and the Fire Command Officers ("Settlement Agreement") that had been reached after the hearing in this matter closed but before I issued my decision.⁹ Section 14(h)(7) of the Act provides that arbitrators must consider changes in the statutory criteria which occur during the pendency of the interest arbitration proceedings. Furthermore, Section 14(h)(8) of the Act requires that if applicable, internal comparability shall be taken into consideration in the determination of wages, hours and conditions of employment. Accordingly, as set-forth below, I have considered the Settlement

⁹ The settlement was approved by the City Council but it is pending a ratification vote by the membership of the Union's two bargaining units..

Agreement, exhibits and the arguments advanced in the City's Supplemental Brief and the Union's response.

Among the terms in the Settlement Agreement that I have considered and believe are most relevant in the present case are the following:

(1) Insurance Premium Contributions

Increase 4/30/11 monthly contribution rates as follows:

Effective May 1, 2011:	Individual	\$35
	1 spouse or children	\$135
	Full family	\$150

Effective May 1, 2012;	Individual	\$50
	1 spouse or children	\$150
	Full family	\$165

Effective May 1, 2013: 11% of coverage selected

(if the City elects a 4th year option)

Effective May 1, 2014: 11% of coverage selected

(2) Wages (Across-the-board increases)

Effective May 1, 2011: 2%

Effective May 1, 2012: 2%

Effective May 1, 2013: 2.5%

(if the City elects a 4th year option) Effective May 1, 2014 2.5%

Regarding the insurance coverage issue, there were no changes in the Settlement Agreement that are relevant to these proceedings. However, the City in its Brief stated that:

First, and as noted in the City's Post-Hearing Brief, the Fire Union employees are already on the City's "80/20" PPO Plan, and they, like all other non-police City employees, have never received any identifiable *quid pro quo* for making the change from the old "90/10" PPO Plan (As argued more fully in the City's Post-Hearing Brief, the Police Command Officers thus should not be entitled to any such *quid pro quo* now.). The Settlement Agreement makes no change to the Fire Union's 80/20 insurance

coverage; however, it does require the attachment of a "summary of benefits," which is substantively the same requirement imposed by the City's proposed changes to Section 22.2 of the Command Officers' contract here (Er.Ex.7.B, p.1). (Emphasis supplied). (City's Suppl. Brief pg. 4).

In summary, if the membership ratifies the Settlement Agreement, the Firefighter bargaining units will have the same health insurance benefit and premium terms as the City seeks for the Police Command unit. However, the changes in Firefighters' health insurance premium contribution and coverage came to pass in two stages. In a prior labor agreement, the Firefighters moved to the City's 80/20 PPO plan.¹⁰ In the second stage, as provided for in the new Settlement Agreement, the Firefighters will be moving from a negotiated flat rate contribution similar to that which is provided for the current Police Command Officers agreement, to the 11% premium contribution. This is the same as what the City seeks in these proceedings for the Police Command unit.

Unlike the situation with the Fire Department units, the City here is seeking to changes both premium contributions and plan benefits in one step. A two stage movement regarding health insurance benefit and premium terms is what a reasonable negotiator would consider if confronted with two very significant changes in health insurance terms. This would be particularly true when the City has not proposed an adequate quid pro quo for both of the proposed changes but one that is adequate quid quo pro for one of the changes.

Furthermore, whether or not the membership ratifies the Tentative Settlement Agreement, the fact that the Union's negotiators signed off on the agreement is evidence of what reasonable union negotiators would consider as acceptable.

¹⁰ The City asserts the Firefighters never received any identifiable quid pro quo for making the change from the old "90110" PPO Plan. (City Br. pg 4). While this statement may well be accurate, this assertion leaves open the possibility that the Union received an unidentified quid pro quo.

ECONOMIC ISSUES AWARD

In arriving at my award concerning the health care premium issues, I was mindful of Arbitrator's statement in Hill Award, *supra*, at page 52, that:

The Union's continued insistence on being separate from the rest of the bargaining units at Danville is problematic, at best, for the near future. Gone are the days when employees can isolate themselves from the realities of the economy – an economy that has really tanked, quoting Arbitrator Benn – by insisting on retaining Cadillac-type insurance benefits negotiated in an entirely different economic environment from the present. Skyrocketing health-care costs will eventually mandate moving everyone from 90-10 to 80-20 co-payments. This phenomenon has forced many cities in Illinois to get out of the business of providing health insurance to retirees. There will be a point in time that economic necessity *will* mandate a change from the *status quo*. Danville will not be exempt.

Furthermore, while I relied upon all of the eight (8) factors set-forth in Section 14(h) of the Act; in line with the thinking of many other arbitrators, when considering health care insurance coverage I gave particular consideration to internal consistency and aligned the command officer's health insurance benefit with that provided to all other non-police units. *See, e.g. Krinsky in City of Elgin & Local 439, IAFF, S-MA-04-112 (2005) and Winnebago County Sheriff and FOP, ILRB Case No. S-MA-00-285 (Benn, 2002).*

I believe that the City's wage offer would not convince a reasonable union negotiator to accept the heavy burden imposed on bargaining unit by agreeing to the combined cost of both the premium and the coverage offers. However, the wage offer is sufficient to justify the acceptance of one of the health insurance offers. The question is which one? Applying the reasonable negotiator test, for the reasons stated above, including the desirability of aligning employee health plan coverage, I award the City's wage and health insurance coverage offers and Union's status quo health insurance premium offer.

RESIDENCY

As stated above, the Danville City Council in drafting the 2008 personnel policy amendments inadvertently omitted the "5-mile limit" for employees hired prior to January 1, 2008. The Union took the position that the City Council action resulted in both the Command Officers' and Patrol Officers' bargaining units not being subject to any residency requirement and were free to live wherever they chose. When the City disagreed with the Union's position, the Union filed grievances on behalf of both bargaining units. The parties agreed to consolidate the grievances for hearing before Arbitrator James Cox. In *City of Danville and Policemen's Benevolent and Protective Association, Unit 11*, FMCS1107-12-56808-A (2012) Arbitrator Cox ruled that:

*** (a) the City's 2008 Ordinance "deleted" the prior [Residency] Policy "in its entirety;" (b) after February 5, 2008, there was no residency requirement in effect for post-2008 hires were exempt from the new Policy; and (c) the 2008 Ordinance imposed "in-City" residency on the Officers, was void as violative of Section 32.8 which was more restrictive than the incumbent 5-mile requirement ***. Thus, on March 25, 2012, Arbitrator Cox ruled that there is no residency requirement in effect for police officers hired after January 1, 2008. (City brief pg. 84)

While the City does not wish to re-litigate the case that was presented to Arbitrator Cox, in the instant case the City seeks an award providing that:

All bargaining unit members who were initially hired as Danville Police Officers prior to January 1, 2008 shall establish and maintain their principal place of residence within 5 miles of the corporate limits of the City of Danville. Each bargaining unit member who is initially hired as a Danville Police Officer on or after January 1, 2008, shall be required to the comply with the residency requirement applicable to Patrol Officers on the date of such Command Officer's original hire as a Patrol Officer."

In contrast to the City's position, the Union is seeking status quo, thus preserving Arbitrator Cox' findings in *City of Danville and Policemen's Benevolent and Protective Association, Unit 11*, FMCS1107-12-56808-A (2012).

In support of its position the City contends that the:

***The mid-term erasure of any post-2008 residency requirement for police officers posed significant problems for the City. No City employees (other than police) have voiced any illusion that they are not subject to the City's Ordinances which provide that they must comply with either the historical 5-mile residency requirement (depending

on the date of their hire and/or the contents of their union contract) or the post-1/1/2008 "in-City" requirement. By contrast, the Command Officers appear to be claiming that they are entitled to the benefits of "silence" or "no rules" regarding the residency of Command Officers who are originally hired on or after January 1, 2008. This creation of a "2- tiered" structure by inadvertence cannot be viewed as a tolerable circumstance, and the City should be allowed to attempt to cure the problem without delay.

To be clear, because of the *Municipal Code's* requirement (*i.e.*, that residency requirements cannot be made more restrictive for police officers after they have been hired), the City cannot remedy this problem until it first restores the 5-mile requirement for the Patrol Officers, which cannot be accomplished here (The Patrol Officers' contract expired on April 30, 2012, and is in negotiations currently – Er.Ex.13, p.34). However, what the City can do at this time is to ensure the historical alignment between the Command Officers and the Patrol Officers as soon as possible. As long as the Union is permitted to hang onto "silence" on the issue for each of the two police units it represents, there can be no such alignment. Put another way, Union's proposal here seeks to preserve the possibility that Command Officers will have "no residency" even if future negotiations (and/or interest arbitrations) restores a residency requirement for Patrol Officers (the unit which produces all future Command Officers). Requiring the City to wait another contract term to obtain contractual alignment between the two police officer units would be unreasonable and compound the current problems due to the inadvertent regulatory vacuum resulting from the 2008 Ordinance and Arbitrator Cox's Award. (City brief pp. 86-87).

The City has an interest in addressing and remedying the anomaly of police units not having a residency requirement when all other City employees, except mayoral appointees, are subject to a residency requirement when that anomaly came about due to an inadvertent error in drafting amendments to the City's personnel code. The City also has a legitimate concern that if residency is not addressed in these proceeding Command Officers will still have not have a residency requirement even if future negotiations and/or interest arbitrations restores a residency requirement for Patrol Officers.

The two police units are currently aligned, neither have a residency requirement. I am mindful of the City's concerns about having to wait another contract term to align the residency requirement for Command Officers and Patrol Officers if the Patrol Officers' Unit is once again subject to a residency requirement. However, I do not believe that the smallest of the two units, the Command Officers unit, the proverbial tail, should wag the dog, the Patrol Officer unit. The City's concerns regarding residency can best addressed by aligning the units when, and if,

they become unaligned because future negotiations and/or interest arbitrations restores a residency requirement for Patrol Officers.

My award regarding the residency issue is that:

The status quo shall remain in effect.

However, if in future negotiations and/or interest arbitrations the residency requirement for the Patrol Officer unit is restored, the Command Officers unit's residency requirements shall be modified so that residency requirements in both bargaining units are aligned.

AWARD

WAGES	CITY FINAL OFFER
HEALTH INSURANCE COVERAGE	CITY FINAL OFFER
HEALTH INSURANCE PREMIUM	UNION FINAL OFFER

RESIDENCY

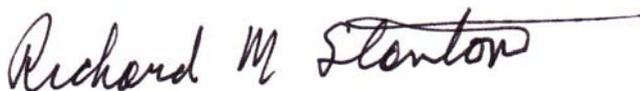
THE STATUS QUO SHALL REMAIN IN EFFECT.

HOWEVER, IF IN FUTURE NEGOTIATIONS AND/OR INTEREST ARBITRATIONS THE RESIDENCY REQUIREMENT FOR THE PATROL OFFICER UNIT IS RESTORED, THE COMMAND OFFICER UNIT'S RESIDENCY REQUIREMENTS SHALL BE MODIFIED SO THAT RESIDENCY REQUIREMENTS IN BOTH BARGAINING UNITS ARE ALIGNED.

The substance of the above decisions shall be incorporated into the parties' May 1, 2007 – April 30, 2011 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

The Arbitrator will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 15th day of October, 2013



Richard M. Stanton