IN THE MATTER OF ARBITRATION	)	
	)	
BETWEEN	)	Marvin Hill
	)	Arbitrator
BYRON FIRE PROTECTION DISTRICT,	)	
EMPLOYER	)	
	)	Case S-MA-12-005
-- and --	)	
	)	
BYRON PROFESSIONAL FIREFIGHTERS,	)	Successor collective bargaining
IAFF LOCAL NO. 4755, UNION.	)	agreement
	)	
	)	

Appearances

For the Employer: Karl Ottosen, Esq.
Ottosen Britz Cooper Cilbert & DiNolfo, LTD.
1804 North Naper Blvd, Ste 350
Naperville, IL 60563
kottosen@ottosenbritz.com

For the Union: Joel A. D'Alba, Esq.
Asher Gittler & D'Alba, Ltd.
200 W. Jackson Blvd
Ste 1900
Chicago, Illinois 60606
jad@ulaw.com

I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The Byron Fire Protection District (hereinafter the "District," "Employer," or "Administration") is located in Ogle County, Illinois, just south of Rockford, Illinois. The District is governed by a five member elected Board of Trustees and employs 12 full-time sworn members: Nine in the bargaining unit, and 40 part-time firefighters. It provides fire protection emergency services to about 54 square miles of territory with a current equalized assessed valuation (EAV) as approximately $642,000,000 of property. The record indicates that 480 million or 80% of the District's EAV comes from one property, the Byron Nuclear Power Plant (R. 40). The District employed its first full-time firefighters when the power plant was built. Most of the original employees have reached retirement age and the District has started to see turnover in its full-time members in the past several years. The members have received

consistent pay raises and make good money for the comparative cost of living in Byron, at least in the eyes of management.

Five of the nine unit employees are "off-scale" with individual base pay rates. Two firefighters in 2009 were at $62,184 and $65,333 and three lieutenants ranged from $66,000 to $74,000. (R. 82; ER 14 and 16). About five to six years ago the Board of Trustees reviewed the pay and benefits of its long-term employees and determined that they were not representative of the community. Accordingly, the Board reduced the annual pay increases. The employees formed an association and a first collective bargaining agreement was reached. (R. 89-90, UX 1, EX 10). This collective bargaining agreement provided for a two-tier pay plan. New employees were to be placed on an eight-year step plan with 2.5% steps and existing employees received different "steps" and annual increases (EX 10).

As discussed, *infra*, the Board seeks to provide modest pay raises, while capping exposure to retiree health insurance, and having the employees make contributions to their health insurance. To this end the Administration submits that all unionized public employees of employers receiving property taxes from the Byron nuclear power plant except the firefighters make contributions to their health insurance. All comparable fire district employees contribute toward their health insurance. In addition, the District seeks to change insurance plans to a high deductible health plan with a Health Savings Account (HSA) by which the Employer's costs will be reduced significantly even with the district making major funding contributions into each employer's HSA to cover the deductibles. While the District acknowledged it has the money to pay the Union's proposed wages and benefits, it submits that this is merely the beginning of the discussion. The real question is whether the community in general and the comparable districts' total compensation packages warrant the payment of the Union's proposed pay and benefits.

The current contract expired effective October 31, 2009. Both parties are in agreement regarding the termination of the successor agreement, the second contract between these parties, as October 31, 2013. [1] Significantly, they are not in agreement on the comparable bench-mark jurisdictions (R. 11). As noted, *infra*, the Firefighters assert the towns of Dixon, the fire protection districts of North Aurora and Pleasantview, and the cities of Rockford and Sycamore (R. 14). The District compares itself primarily to the fire protection districts of Channahon, Cherry Valley, Minooka, North Aurora, Rutland-Dundee, Sugar Grove and one non-fire-protection-district, the City of Clinton which has a nuclear power plant and small fire department (R. 43). The Administration takes exception to any claim by the Firefighters regarding the comps cited by the Union. [2]

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[1] Mr. D"Alba: "And the parties have no disagreement as to the duration. The contract would begin on a retroactive basis to 2009 and extend to 2013." (R. 6).

[2] Mr. Ottosen: "We do have objections as to the use of these comps [the comps proposed by the Union], or the representation that they were actually the comps used from 2006." (R. 15).

II. ISSUES FOR RESOLUTION

Four *economic* issues remain unresolved: holidays, health insurance, retiree health insurance, and wages. In addition, the parties are at impasse regarding bench-mark comparables.

III. POSITION OF THE EMPLOYER

The position of the Administration, as outlined in its post-hearing *Brief*, is summarized as follows:

A. The Administration's Comparables Should be Adopted by the Neutral

While the Union asserts the District is to be compared to the Cities of Rockford, Dixon, Sycamore and fire protection districts of North Aurora and Pleasantview, the District compares itself to fire protection districts of Cherry Valley, Minooka, North Aurora, Rutland-Dundee, Sugar Grove and the City of Clinton with a nuclear power plant and small fire department. Management asserts there is no rational basis for the Union's proposed comparables other than a claim that they were among the departments the parties examined in 2006. However, the parties during the last negotiations and the current negotiations never agreed to any set of comparable departments for impasse resolution purposes, the Employer maintains (R. 106-107).

In the Employer's view, fire protections districts should be compared to other districts and not municipal departments because of their significant differences in funding. Even though ability to pay is not an issue in this proceeding, the appropriate arbitration practices should be applied. Unlike cities, Fire Protection Districts are 90% reliant on property taxes for fuinding. They receive no state sales, income, motor fuel or other distributive revenue based on population. Besides property taxes, fire districts receive user fees and minimal other income sources such as grants or personal property replacement taxes.

The District's proposed comparables are all rural and outside of Cook, Lake, and DuPage Counties, management asserts. All are districts except Clinton, which admittedly is not comparable other than it has a nuclear power plant to support its department and is the only one in the state with a unionized work force. All are districts with recently formed IAFF Locals in first formal contracts. The most comparable is neighboring Cherry Valley which is between Byron and Rockford yet the Union completely ignored it. Strangely, the one non-union district is in both party's lists and it is the least comparable of the districts in the Employer's list with 24 full-time firefighters, and significantly greater EAV than any of the other districts.

Based on geographic location, department size, budget and long history of negotiation, Pleasantview Fire Protection District of Cook and DuPage Counties is not a comparable to Byron. Because of its small work force and its high EAV, the District could be favorably compared to any fire district in the State and the Union could argue it should receive pay equal to the largest fire departments because the District has the money to do so.

At the hearing, the Union's attorney asserted there was a "total disconnect" between the cash on hand and the amount the District is willing to pay to employees "to commit to fair wages for this bargaining unit." (R. 34-35). This is inappropriate within the statutory framework. It may have been the mindset of past District administrations but it is not reflective of today's Board of Trustees' determination to be representatives of the community it serves. The Board firmly supports continuing to provide excellent service with well paid and protected employers, but it requests the Arbitrator to consider the District's proposals in light of the current economic conditions of the community when comparing the District's pay and benefits with total compensation packages of similar fire protection districts. It is not merely a question of paying because one Employer has the money to do so thanks to a nuclear power plant located in a rural community. The fact is half of the bargaining unit made over $90,000 the past two years and that is committing fair wages to the unit, the Employer argues.

B. <u>HOLIDAYS</u> (Section 5.3)

The District's final offer is as follows:

Section 5.3 – Holidays

The following holidays shall be recognized and observed as holidays for the purpose of this Section:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Good Friday	Christmas Eve
Independence Day	Christmas Day
New Year's Eve	

Platoon employees who work as regularly scheduled or on an overtime assignment on a 24 hour shift which begins on any of the above recognized holidays will be paid at double time (24 hours regular pay plus 24 hours holiday pay).

* * * *

The District proposes to maintain the current nine (9) holidays which have been in place since at least 1999 (UX 15). The Union is seeking ten (10) holidays.

While holidays and holiday pay is the part of firefighters' total compensation with the most disparity, management asserts that keeping the number at nine (9) makes the most sense with three shifts although there is no guarantee they will be evenly spread across three shifts (Brief at 6). The District argues there is no way ten holidays are fairly spread over three shifts annually. The District's total compensation package with nine holidays, even with eliminating Clinton which lowered the average, keeps it well above the average of the District's comparables. (EX 13, sheet 3) This is true without taking into consideration the five of nine unit employees paid above top scale. Only North Aurora, a Kane County department with a

much larger work force and EAV, compares to the District's five off scale employees (*Brief* at 6).

Admittedly this is not a major dollar item. However, based on the above, there is no reason to award an additional holiday, the Employer argues.

Further, the language as proposed by the Employer should be the contract language on this issue regardless of whether the Arbitrator awards Presidents Day as an additional holiday.

The Employer's language more clearly defines the holiday, who is eligible to receive holiday pay, and the amount of the holiday pay (*Brief* at 7). The Union's language under its chart of days is ambiguous and should not be adopted. The District's practice is to pay holiday pay to those employees who work on a 24-hour shift which starts on the recognized holiday rather than starting the pay at midnight.

Hence, for the above reasons it is submitted the Arbitrator should adopt the Employer's language even if he awards the Union the additional holiday.

C. HEALTH INSURANCE (Section 12.1)

The District's final offer with respect to health insurance is as follows:

Section 12.1 Heath Insurance

The District agrees to provide hospitalization and medical coverage for the employees and their dependents. An outline of the benefits and coverage per plan shall be available to each member. If multiple plans (e.g. HMO and PPO options) are available, members may change plans once a year. Members wishing to change plans must submit in writing his/her desire to change plans prior to any established deadline. The District will not be held responsible for changes made to the policy by the insurance company.

Through December 31, 2011, the District will pay 100% of the premium amounts set forth in accordance with the provider contract coverage for employees and for covered dependents under a plan or plans selected by the District. Effective January 1, 2012, all employees will make contributions toward their health insurance premiums of 10% of the cost of their coverage. An optional dental plan may be selected at the District's expense.

As soon as practical following execution of this Agreement, but no later than January 1, 2013, the District will change to a Health Savings Account Plan (HSA) with a $2500 deductible for single coverage and an additional $2,500 for a total of a $5000 deductible for dependent coverage. For the first year of the HSA plan the District will pay 100% of the deductible expense, regardless of coverage elected by the employee, with the deductible contribution ($2500 for single and an additional $2500 for dependent coverage) to be paid into each employee's HSA at the beginning of the calendar year. After the first year of the HSA plan the District will pay 80% of the deductible expense,

regardless of coverage elected by the employee, with the deductible contribution ($2000 for single and an additional $2000 for dependent coverage) to be paid into each employee's HSA at the beginning of each calendar year.

The District reserves the right to institute cost containment measures relative to insurance coverage. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions, except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.

The extent of coverage under the insurance policies (including HMO plans) referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies or plans or benefits shall be resolved in accordance with the terms and conditions set forth in said policies or plans and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the District, nor shall such failure be considered a breach by the District of any obligation undertaken under this Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it may have to the District, any employee or beneficiary of any employee.

* * * *

Management points out that it is the issue of health insurance that actually brought the parties to arbitration (*Brief* at 8).

As noted, the District proposes to continue to pay 100% of the premiums for all coverages through December 31, 2011. Only after a signing bonus of $500 and two across-the-board fully retroactive pay increases of 2.0% each (11-1-2010 and 11-1-2011) have been implemented (along with up to two step increases of 2.5% each) does the District seek to apply any premium contribution. Had the Union accepted the District's offer in April or June, 2011, the HSA plan could have been implemented saving the District $8,000 per month in premium costs. The savings was to be shared by up to $5,000 per employee contribution into HSAs but that savings is not possible for another 12 months. It is estimated that effective January 1, 2013, the employee annual cost for family coverage will be less than an estimated $1,375 with the implementation of an HSA plan. This is very close to the District's final offer at mediation of $100 per month for dependent coverage.

The Union's final offer on this issue appears to be contingent upon the acceptance of its wage proposal. The Employer argues it is unclear when the Union proposes to begin employee contributions of $25 and $50 monthly. It must be assumed as of the effective date of the contract, 11-1-2009, because no other date is specified. In addition, the Union's final offer completely binds the District to the current plan's coverages. It eliminates any ability to address cost containment measures and fails to address the issues of coverage and claims disputes

contained in the last two paragraphs of the District's final offer. While it is similar to the *status quo* language of the informal agreement, the Union's final offer's minimalist approach to contract language on such an important contract provision as health insurance must fail when looking at any set of comparables (*Brief* at 7).

Addressing the comparables with respect to health insurance, the District generated the following data which, if credited, supports its final offer:

Health Insurance Comparison Employer Comparables

Department	Clause Type	Employee Contributions
Channahon	Broad	20% all coverages
Cherry Valley	Broad*	15% all coverages
Clinton	Minimal	15% S 22.5 – 27.5 % dep
Minooka	Broad*	10% all coverages
N. Aurora	Broad	0 HMO/if take PPO pay difference in costs
Rutland-Dundee	N/A	No ins. $6000 reimbursement allowance to Employees
Sugar Grove	Minimal	'09-10 = 15% '11 = 18% all coverages

(EX 5A-G; EX 12 at 4-11; *Brief* at 8).
*almost identical to Employer's final offer

Overlapping Taxing Bodies

Employer/Unit	EE Contribution
Byron CUSD – ESP	S-13% Dep 33%
Byron Library District	S-10% Dep 100%
Byron CUSD – Teachers	S-10% Dep. 30%
Cir. Clerk – Clerical	same as other Cty EEs
Ogle Cty Sheriffs – Patrol	25% all coverages
Ogle Cty Sheriffs – Admin	25% all coverages
Ogle Cty Health Dept.	20% all coverages
Ogle Cty Probation Dept.	same as sheriff's plan
Ogle Cty Sheriff's – Sgts	25% all coverages
Oregon Park District	15% all coverages

(EX 1A-1K)

Union's Comparables

Department	Clause Type	EE Contributions
Pleasantview	Broad	15% dep only

Rockford	Broad	PPO S-390/yr; Fam-1170 HSA no prem but: Ded 750 of 1500 S; 1500 of 3000 fam
Sycamore	Minimal	15% '09-10; 5-1-10 = 16% all coverages
Dixon	Unknown (pgs missing)	45% Dep 3267/yr HSA plan w/City contribution to HSA of 2155 for family cov. 45% or 3358/yr PPO plan

(UX 24-27; Brief at 8).

The District submits that more of the parties' proposed comparable employers' contracts contain broad form health insurance clauses. All of them contain employee contributions significantly above the meager $600 per year for family coverage offered by the Union (*Brief* at 8).

The advantages of an HSA plan include the HSA funds being owned by the employee and contributions whether employer or employee up to an IRS determined annual maximum (currently $3,100 single/$6250 family) are tax free. When the employee leaves employment of the Employer, the HSA goes with the employee and when funds are withdrawn at retirement and used for medical expenses they are still not considered income for federal income tax purposes. Employees are more likely to be better consumers with respect to medical expenses when using HSA plans. In order to assist in the transition, the District is willing to fully fund in January, 2013 the deductibles of all employees. Thereafter, it proposes an 80% funding level in January each year. In practical effect, the employee will have a $500 deductible if electing single coverage, but will not be subject to the deductible until having spent $4,500 in medical expenses the first two years of the plan. For those electing dependent coverage, they will have a $1,000 deductible, but will not be subject to it until after having incurred $9,000 in medical expenses in the first two years of the plan.

The District's final offer is less costly to the employees for the first two years and thereafter offers a better health insurance option in the form of an HSA plan with minimal costs to the employees in comparison to comparable districts. Few have as low a 10% contribution of under $1400 per year for family coverage. Even the Union's comparables support at least a 10% premium contribution as proposed by the District. Two of the four bench mark jurisdictions have HSA plans. While Rockford and Dixon are large enough to offer multiple plans, the District with so few employees simply does not have that option at this time. In addition, when compared to the public employees in the area who also benefit from the EAV of the nuclear power plant, a 10% employee contribution for all coverages as proposed by the District is the lowest of the overlapping employers.

It should be noted that the District's starting pay of $42,300 for a new hire is above the Byron CUSD's starting pay for a new teacher this year with a MS + 16 or an 8th year teacher with a BS degree. (EX 1C, App. A) The top paid firefighter at $50,281 on the Employer's final offer is just below an 8th year teacher with a MS + 24. At the same time, the teachers pay 10% of their single coverage and 30% of the premiums for dependent health insurance. The off scale firefighters at $63,427 and $66,640 compare to the teachers very well as might be expected given

how the starting pay did. Each off scale firefighter's base pay exceeds all BS + 24 steps with less than 20 years of service. The District's three Lieutenants at the current rate pursuant to the Employer's final offer range from $69,425 to $77,283. A last step MS teacher in the 23rd year or more of service is paid $69,992 and the highest possible teacher's salary at MS + 32 with 30 years is $84,560 (EX 1C, App. A). Again, the District only seeks a 10% contribution toward the selected health coverage (*Brief* at 10-11).

Addressing costs, management submits that from 2006-2011, the annual premium for family health insurance increased over 62% and by almost $8,100 (EX 7C; *Brief* at 11). In addition to the $21,328 for health insurance, the District pays $1,325 for dental insurance for the employees. It is past time for the employees to contribute toward their health insurance and to do so in a meaningful way. $600 per year equals a 2.6% contribution and is out of line with either set of comparables (*Brief* at 11).

Based on the District's comparables, the overlapping taxing bodies and the Union's comparables, the District's Health Insurance Language – Section 12.1 – should be adopted for this primary issue of the Employer. It more fully and appropriately addresses the issues connected with the very important topic of health insurance and contains a 10% contribution level which by today's standard is considered a minimal amount. Most of the public employers reviewed have collective bargaining agreements requiring considerably greater employee contributions. In addition, the Employer's proposal moves the parties in the right direction by implementing an HSA plan in 2013 yet contains a minimal deductible for the employees due to the Employer front loading the HSA each year (*Brief* at 11).

D. RETIREE HEALTH INSURANCE COVERAGE (Section 12.2)

The Employer's final offer on retiree health insurance coverage is as follows:

Section 12.2 – Retiree Health Insurance Coverage

All full-time sworn or civilian employees hired on or before November 1, 2006, and who retire on or before October 31, 2012 with a combined total of age plus length of full-time service with the District equaling a minimum of 80 will be eligible to receive a District contribution toward their monthly health insurance premium of 50% of the current single premium rate effect or $350.00, whichever is less, until reaching the age of 65. Sworn employees must be at least age 50 at retirement and civilian employees must be at least age 55 at retirement to be eligible. Retired employees electing continued coverage in the District's health insurance plan, must pay their share of the premiums to the District by the 1st of the month. Retirees electing to continue coverage for dependents must pay the entire cost for the coverage to the District by the 1st of each month. Failure to timely remit payment will cause the insurance to cease and it will not be able to be reinstated, except for any grace period as may be mandated by law.

Section 12.3 – Short Term Disability Policy Supplement

> The District will maintain a short term disability policy which will pay 60% of the individual's normal salary starting with the 15th calendar day of an off duty sickness or injury which keeps the employee from working, and paying this benefit for as long as the employee cannot work through 351 days. With current IRS rules the District will report the premium as ordinary income to each employee and taxes will be accrued on that premium. To the extent permitted by the terms of the insurance policy, the employee may use accrued vacation leave and the District will pay the employee the difference between his normal salary and the short term disability amount paid so that the employee receives his normal salary. The employee may use his accrued sick hours to bridge the first 14 calendar days of missing work due to an illness or injury to maintain income. If the employee has exhausted all of his sick days, he may use any vacation days he has been given at the beginning of the anniversary year, or that he has accrued during the course of the current anniversary year to bridge the first 14 days off work before the Short term Disability insurance starts.

* * * *

Management points out that the District and Union have nearly identical proposals on this topic (including the same omission of the word "in" between "rate" and "effect" in the first sentence which the Arbitrator is respectfully requested to remedy in his award). The only difference is the date by which employees must retire to be eligible for the benefit. The current agreement had the date of October 31, 2009; the District proposes October 31, 2012; and the Union October 31, 2014. The District asserts that it could have taken the position that the clause expired on October 31, 2009 and not offered to extend it at all. Few public employers are maintaining retiree health insurance benefits and the District sought to end its program with the first contract. The District was not initially interested in any extension of this benefit, but has offered to extend it for three years. The Union seeks another two years with the specific intent to have it be considered an open item for a future contract's impasse resolution proceeding. (R. 95-98; *Brief* at 12).

The Administration submits that of the District's bench-mark comparables only Clinton has retiree health insurance benefits of any kind. At the same time, no current employee of that department is eligible to receive any employer-paid retiree insurance. Thus, the District's proposal is the most generous of the comparable departments. It is fair to extend the benefit from 2009 to 2012, but there needs to be a definite end date made clear to the employees. The District has no intention of continuing this benefit further and desires to be more in line with its comparable districts (*Brief* at 12).

E. <u>WAGES</u> (Appendix A)

The Employer's wage proposal is as follows:

SALARY SCHEDULE

Firefighter II PM

	Step	11/1/2009	11/1/2010	11/1/2011	11/1/2012	11/1/2013
	Start	$ 40,657.50	$ 41,470.65	$ 42,300.06	$ 43,146.06	$ 44,008.99
	2nd year	$ 41,673.94	$ 42,507.42	$ 43,357.57	$ 44,224.72	$ 45,109.21
	3rd year	$ 42,715.79	$ 43,570.11	$ 44,441.51	$ 45,330.34	$ 46,236.94
	4th year	$ 43,783.68	$ 44,659.35	$ 45,552.54	$ 46,463.59	$ 47,392.86
	5th year	$ 44,878.27	$ 45,775.84	$ 46,691.35	$ 47,625.18	$ 48,577.68
	6th year	$ 46,000.23	$ 46,920.23	$ 47,858.64	$ 48,815.81	$ 49,792.13
	7th year	$ 47,150.24	$ 48,093.24	$ 49,055.11	$ 50,036.21	$ 51,036.94
	8th year	$ 48,328.99	$ 49,295.57	$ 50,281.48	$ 51,287.11	$ 52,312.85
Over scale FF	Dinges	$ 60,964.74	$ 62,184.03	$ 63,427.72	$ 64,696.27	$ 65,990.20
	Fortune	$ 64,052.90	$ 65,333.96	$ 66,640.64	$ 67,973.45	$ 69,332.92

Lieutenant FFII/PM

	Step	11/1/2009	11/1/2010	11/1/2011	11/1/2012	11/1/2013
	Start	$ 44,723.25	$ 45,617.72	$ 46,530.07	$ 47,460.67	$ 48,409.88
	2nd year	$ 45,841.33	$ 46,758.16	$ 47,693.32	$ 48,647.19	$ 49,620.13
	3rd year	$ 46,987.36	$ 47,927.11	$ 48,885.65	$ 49,863.36	$ 50,860.63
	4th year	$ 48,162.05	$ 49,125.29	$ 50,107.80	$ 51,109.95	$ 52,132.15
	5th year	$ 49,366.10	$ 50,353.42	$ 51,360.49	$ 52,387.70	$ 53,435.45
	6th year	$ 50,600.25	$ 51,612.26	$ 52,644.50	$ 53,697.39	$ 54,771.34
	7th year	$ 51,865.26	$ 52,902.57	$ 53,960.62	$ 55,039.83	$ 56,140.63
	8th year	$ 53,161.89	$ 54,225.13	$ 55,309.63	$ 56,415.82	$ 57,544.14
Over scale LT						
	Salo	$ 66,729.48	$ 68,064.07	$ 69,425.35	$ 70,813.86	$ 72,230.14
	Logston	$ 72,373.13	$ 73,820.59	$ 75,297.00	$ 76,802.94	$ 78,339.00
	Hogan	$ 74,282.08	$ 75,767.72	$ 77,283.08	$ 78,828.74	$ 80,405.31

In lieu of any 2009 increase, all employees shall receive a $500.00 signing bonus.

Any employee without FFII certification shall have $500.00 deducted from the above salary schedule.

Any employee without PM certification shall have $2000.00 deducted from the above salary schedule.

* * * *

The District first points out that the Union failed to file a request for mediation in advance of the District's fiscal year commencing 9-1-09 in order to grant authority to award retroactive pay increases to November 1, 2009 (*Brief* at 12). Thus, both parties propose fully retroactive pay back to November 1, 2010.

Management submits that its final offer includes an additional $500.00 signing bonus for 2009, while the Union adds $725 to the salary schedule's steps and then adds a 2% across-the-board increase for 2010 and 2011 (*Brief* at 12-13).

Management computes that $725 amounts to 1% - 1.8% increases to the unit employees, making the Union's first year proposal 3% - 3.8%; its second year increase 4.5% - 5.3%; followed by 3% and 3%, for a total increase over the life of the contract of 13.5% - 15.1% *plus any step increases due the employees.* The Administration's proposal equals 2.68% - 3.32%; 2.0%; 2.0%; and, 2.0%, and totals 8.68% - 9.23% over the life of the parties' agreement. This wage increase was acceptable to the Union's negotiating team on April 19, 2011 if they did not have to contribute $600 - $1,200 per year for health insurance (EX 2A, at 2). To now seek 6% - 7.5% higher wages through interest arbitration is contrary to the principles of the process, management argues (*Brief* at 13).

The Employer maintains there should not be major windfalls nor losses derived because of interest arbitration. To this end in April 2011, the Union proposed no premium contributions in exchange for pay raises equal to about 9.0% - 9.8% over the life of the agreement. Now for the equivalent of $300 - $600 (.74% - 1.48% of starting firefighter to .4% - .8% top Lieutenant's pay) in premium contributions the Union demands an additional 6% - 7.5% of salary. Also, on November 17, 2010, the Union was willing to pay 10% of the dependent health insurance costs effective 11-1-10 and 20% on 11-1-11 in exchange for a total increase of 14.75% over the contract's term (EX 2C). The Employer's final offer asks for less in premium contributions over the life of the Agreement due to a later start date and the change to the HSA with premium costs of under 65% of the PPO plan. And the minimal net deductibles of $500 single and $1,000 family in the <u>last</u> year of the contract is not a significant change when all co-pays for doctor visits and prescription drugs are charged to the deductable rather than employee out-of-pocket expenses (*Brief* at 13).

While it is to be expected that the Union's interest arbitration proposal exceeds its settlement position, this is too great of a disparity, the Employer asserts. The Employer also altered its position for arbitration on wages and insurance as it advised the Union it would if it had to incur the expense of interest arbitration. However, it is submitted that not only has the Employer's final offer stayed closer to the settlement range of the parties at mediation, but it also is very well supported by the comparables. The employer's final offer on wages dropped a mere $250 from the signing bonus for 2009. Although the health insurance section is the most important issue in dispute to the District, these two issues should not be viewed as trade off items. The District believes the total compensation packages of comparable districts as well as independently reviewing each issue demonstrates that the Employer's proposed wages and insurance sections are the most appropriate of the final offers on each item (*Brief* at 13-14).

In the District's view the Union misrepresents the District's compensation as far behind allegedly comparable departments. Further, the Union's comparison of firefighter top pay and lieutenant top pay completely ignores the off-scale firefighters who are paid $12,000 - $14,000 more than the Union reflects as top pay (*Brief* at 14).

According to the Employer, the new salary schedule is three years old and only four employees are on it. As the years go by, the top pay will increase. None of the employees will be at the top step by the end of this Agreement's term. Once that occurs, it is likely there will be turnover in officer ranks in the next few years granting opportunities for advancement onto the lieutenant pay scale. Because of the rapid turnover of the department, it is expected newer lieutenants may be promoted before reaching their fourth step. Therefore, the Employer's lieutenant's wage scale is 10% above each step of the firefighters with the firefighter to move into the appropriate step based upon overall seniority with the District at promotion. Should a firefighter be at top step or off-scale he receives a 10% increase upon promotion (*Brief* at 14-15).

Management also submits that the most compelling argument in favor of the Employer's wages offer is the total compensation package comparison of the comparable districts. Only North Aurora exceeds the Byron firefighters in pay and benefits (EX 13, sheets 2 and 3; *Brief* at 15).

The District's comparison depicts *total* compensation received by firefighters and lieutenants in comparable districts. The comparison is done without including 55% of the bargaining unit which is off-scale. In wages alone this would add $12,000 - $14,000 for two firefighters and $13,000 - $21,000 for the three lieutenants. If these off-scale members were added into the formula, the District's numbers would greatly exceed the average, but that is not necessary to prove the District's offer is fair and appropriate in this economy especially for this community with 12% unemployment.

Another factor to consider, the District asserts, is the Consumer Price Index (CPI)(*Brief* at 15). From 2006 to 2010, the annual percentage increases in the CPI-U compared to Union contract increase were:

Year	CPI-U	Contract	
2006-7	4.1%	3.75%	
2007-8	.1%	4.0%	
2008-9	2.7%	4.25%	
2009-10	1.5%	0.0%	($500 = .67 - 1.2%)
	8.4%	12.0%	
Average	2.1%	3.0%	

Thus, the past four years' wage increases have exceeded the CPI-U even without an increase in 2009-10. The District's signing bonus plus 2.0% for 2010-11 matches the 3.0% CPI-U for last year. As no premium contributions are sought until 2012, there are no grounds for a requested increase of the magnitude sought by the Union as an offset for the insurance costs.

Further, after one year of a 10% contribution, the Employer proposes to provide $5000 to each employee's HSA in January 2013 which more than off-sets the Employee's reasonable contribution to their insurance costs (*Brief* at 16).

Wages and insurance should be viewed together, management argues. Employees have never contributed to the costs of their health insurance even though their wages and benefits are well above the average of their comparable departments. The Employer's wage proposal most closely follows where the parties were in their negotiations and maintains the employees in their ranking among their comparables. The Union's final wage proposal is substantially above its bargaining position during mediation with lower insurance contributions than it was offering for lower wage increases. The Union's proposal at arbitration is not a reasonable extension of the collective bargaining process and should not be awarded, in management's eyes (*Brief* at 16).

F. CONCLUSION

In summary, management argues that wages and insurance go hand in hand in most negotiations. The Employer's final offers of these two issues are well thought out to keep the employees with excellent insurance and minimal exposure for deductible and premium contributions while maintaining their overall excellent total compensation package ranking among comparable districts. It is respectfully submitted that the Employer's final offers on all four open issues should be granted for the reasons stated above (*Brief* at 16-17).

III. POSITION OF THE UNION

The position of the Union, as outlined in its post-hearing *Brief*, is summarized as follows:

A. The Parties' Historical Comparables Should be Adopted in this Proceeding

The Union first asserts that arbitrators have recognized the importance of the parties' agreed-upon inter-city pay and benefit benchmarks. To this end, in discussions between the fire chief and representatives of the Union, there was an agreement to use five fire departments as comparables: Dixon, North Aurora, Pleasentview, Rockford and Sycamore (UX 34 & 35). Two of these departments are fire protection districts and thus have the same financial structure of the district here, except for the large amount of property tax revenue received in the Byron Fire Protection District. Three of the departments, Dixon, Rockford and Sycamore, are cities or towns, which might not have been selected by an arbitrator in our initial case selection of comparable cities due to the differences in revenue, collection, structure and rights to collect revenue between municipal departments and districts. However, the parties through their ongoing discussions agreed upon these cities to be used, including Rockford a geographically close city but much larger in size, department staffing, budget and EAV. They agreed to an eight -year step plan and worked with a series of charts (UX 34), in selecting base pay and percentage increases to determine wages for 2006, 2007 and 2008 (R. 102-103). The use of these departments created expectations that fair and equitable pay increases would be based on using them. The employer's position is that there was no stipulation to bind the district in any future

negotiations. The parties are looking for a fair group of benchmarks and they agreed upon these comparables. There is no sound reason not to use these benchmark departments in the current collective bargaining negotiations, even though they are different in size of department and revenues and expenses. They are all clustered in northern Illinois and are part of a geographic area in which is reasonable to expect that prospective firefighters would live in a labor market that included these towns, and that is one reason why the union relied upon these comparables.

The employer's list of comparables is based upon fire protection districts and one city, Clinton. The union asserts that Clinton should be excluded because as a municipality its revenue structure is totally different and more diverse than that of a fire protection district. Arbitrators have generally excluded such a mixture, unless of course it was agreed upon, as it was. It is for this reason, that the union has removed in its analysis the City of Clinton from the employers' list of comparables which consists of fire protection districts with the exception of the City of Clinton.

Tables 3 and 4 show the results of an analysis of top base pay with the combined comparables, excluding the City of Clinton. For purposes of comparison, the Union analysis under either group of comparables is that under Byron firefighters under the employer's offer would remain below average, and its relative rank would be at or near the bottom of the consolidated group. In 2010 Byron would rank last under both offers, and in 2011 it would rank last under the District's offer and second to last under the Union's offer.

B. Holidays – Section 5.3

The Union's final offer proposal for holidays is as follows:

The following holidays shall be recognized and observed as holidays for the purpose of this Section:

New years Eve	President's Day
New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Good Friday	Christmas Eve
Independence Day	Christmas Day

An employee who works a holiday as described in the policy manual will be paid hour-for-hour worked in addition to his or her regular pay for working that day.

* * * *

The Union's claim for an extra holiday is based on the employer's regressive bargaining tactic and an analysis of the employer's own comparables. The Employer's Exhibit 2(f), the June 15, 2011, final offer, contained a proposal for Section 5.3, p. 9 to add Presidents' Day to the list of holidays recognized and observed by the employer. The *status quo* for recognition of holidays is reflected in the Employer's current final offer, nine (9) days, excluding Presidents' Day. The Union points out that the Employer changed its offer of ten holidays and reduced it back to the *status quo* (*Brief* at 26). The backtracking bargaining tactic with respect to this issue is of the same dimension as the one involving wages.

According to the Union, the monetary value of holidays for the Byron Firefighters is $1,215, which is $200 less than the average and median. Byron ranks six out of eight in the list of comparables when it is included in the list of comparables. Adding an additional holiday, at a value of $135, will increase the dollar value of holidays at Byron to $1,350, which would still be below the average and the median.

For the foregoing reasons, the Union's proposal on holidays is more reasonable than that submitted by the employer.

C. Health Insurance – Section 12.1

The Union's proposal on health insurance is as follows:

> With the above wage increases, this district will maintain the current level of coverage and continue to pay the premium of the cost of group health insurance premiums for employees and their covered dependents, except that the employees will pay $25.00 per month for single coverage and $50.00 per month for family coverage. This includes dental coverage and a $25,000 life insurance benefit for the employee.

(*Brief* at 27).

* * * *

The Union maintains there are several reasons why the employer's healthcare proposal is unreasonable and warrants rejection. These reasons include regressive bargaining, substantial breakthrough from the *status quo*, the absence of a *quid-pro-quo*, the failure to exercise good, prudent government and fiduciary responsibilities in obtaining competitive bidding, the reservation of rights to implement cost containment measures without collective bargaining and impasse resolution, and the removal of an issue from the grievance procedure, which is a non-mandatory subject of bargaining. In essence, an employer may not use the arbitration process to obtain a waiver of a statutory right, the Union asserts (*Brief* at 28-29).

Like the wages and holidays issues, the healthcare final offer constitutes regressive bargaining in two major respects. The employer's June 15, 2011, final offer provides for the employer payment of 100 percent of the deductible expense incurred by an employee regardless of the coverage elected by the employee. That language appears in the second paragraph of Section 12.1 of the June 15, 2011, District final offer (EX 2(F)). The final offer language removes the obligation to pay 100 percent of the deductible expense after the first year of the health plan, at which point the employer's payment obligations is cut to 80 percent. The second change that affects employees are the employee-paid premium amounts designed to take effect in January 1, 2012. The June 15, 2011, final offer of the District proposed that employees make contributions to health insurance of $50 per month for single coverage and an additional $50 per month for dependent coverage coupled with increases in premium between seven percent and eighteen percent to be split in half between the District and the employee. The Administration's final offer would require employees to pay increased premium contributions of 10 percent of the cost of coverage, which is obviously a major change in the amount employees would be required to pay (*Brief* at 29).

The changes made by the Administration are illustrated as follows:

TABLE 6 – INSURANCE CHANGES

June 15, 2011 District's Final Offer	District's Final Offer To Arbitrator
Through December 31, 2011, the District will pay 100% of the premium amounts set forth in accordance with the provider contract coverage for employees and for covered dependents under a plan or plans selected by the District. As soon as practical following execution of this Agreement, but no later than January 1, 2012, the District will change to a Health Savings Account Plan (HSA) with a $2,500 deductible for single coverage and an additional $2,500 for a total of a $5000 deductible for dependent coverage. For the term of this Agreement the District will pay 100% of the deductible expense, regardless of coverage elected by the employee, with the deductible amount ($2500) for single and an additional $2500 for dependent coverage) to be paid into each employee's HSA at the beginning of each calendar year.	Through December 31, 2011, the District will pay 100% of the premium amounts set forth in accordance with the provider contract coverage for employees and for covered dependents under a plan or plans selected by the District. Effective January 1, 2012, all employees will make contributions toward their health insurance premiums of 10% of the cost of their coverage. An optional dental plan may be selected at the District's expense.

June 15, 2011 District's Final Offer	District's Final Offer To Arbitrator
Effective January 1, 2012, all employees will make contributions toward their health insurance premiums of $50.00 per month for single coverage and an additional $50.00 per month for any dependent coverage. Any increases in premium above 7% and below 18% will be split 50-50 between the employees and the District, with the District assuming the first 7% of any annual premium increase and any increase above 18%.	As soon as practical following execution of this Agreement, but no later than January 1, 2013, the District will change to a Health Savings Account Plan (HSA) with a $2,500 deductible for single coverage and an additional $2,500 for a total of a $5,000 deductible for dependent coverage. For the first year of the HSA plan the District will pay 100% of the deductible expense, regardless of coverage elected by the employee, with the deductible contribution ($2500 for single and an additional $2500 for dependent coverage) to be paid into each employee's HSA at the beginning of the calendar year. After the first year of the HSA plan the District will pay 80% of the deductible expense, regardless of coverage elected by the employee, with the deductible contribution ($2000 for single and an additional $2000 for dependent coverage) to be paid into each employee's HSA at the beginning of each calendar year.

These changes constitute regressive bargaining in that employees would have higher expenses to incur with respect to healthcare and are a significant breakthrough from the long term *status quo* in which employees did not pay healthcare contributions. The employer has argued that comparables form the basis for this proposal, but in terms of healthcare the most significant comparable relied upon by the arbitrators is the internal comparable. It is clear from the testimony and presentation in this case that the employer, even with its unilateral decision making authority, did not require its own employees to undertake the healthcare expense that is similar to the one that would be incurred if the arbitrator grants the employer's proposal.

Not only has the Employer not exercised its inherit managerial right to require the non-represented employees to pay for health insurance it has not offered a *quid-pro-quo* to obtain this very important benefit. In the face of below average wage increases, the employer's proposal to obtain substantial employee payments is simply unreasonable (*Brief* at 32).

While the union has argued that the employee payments will be substantial, at the moment there is no precise knowledge as to what the employee payments will be. The employer has admitted that it does not have a chart to indicate what employee payments will be paid under the its proposed healthcare plan.

As this arbitrator has noted in the Village of Niles, Case No. S-MA-02-257 and S-MA-01-228 (Arb. Hill) (2003) good, prudent government practice would required obtaining a competitive bid and having clear information as to what the employees would be required to pay for health insurance. In this case, the employer has admitted there was neither competitive bidding nor that a request for a proposal from other insurance companies was issued. No records for competitive bidding were available, and there were no records of any other insurance company submitting information as to what the charges would be for 2012. Tr. pp. 47-48. The only alternative plans that were presented were plans or insurance services from one company–Blue Cross–Blue Shield. Id. The arbitrator held in Village of Niles:

> The Bargaining–Unit members are being asked to be partners in payment for a plan negotiated by the Employer which cannot be clearly and adequately explained to the employees as to the calculation of the amount they would be required to pay. No prudent partner shall enter into an agreement with another partner where the costs are indeterminate and without a proper explanation of the financial arrangements. The Employer's proposal is simply inadequate as to its financial information and for this additional reason should be rejected. No safeguards are built into the Employer's proposal to cap or eliminate the contributions of employees. This is also part of a good business practice that has not been included in the Employer's proposal. Village of Niles, p. 49.

(*Brief* at 32-33).

There is no indication that the employer made any serious effort to determine if competitive bidding with insurance companies other than Blue Cross participating with insurance premium costs would have been reduced. In fact, counsel for the employer admitted

there had been no competitive bidding and request for proposals from other insurance companies had not been solicited. In the absence of having of a specific clear and competitively obtained number, the employer's proposal should be rejected.

Byron pays a high premium for the health insurance it provides, $22,404, for participation in the PPO program. A review of the data provided by the employer demonstrates that North Aurora pays $20,000, and Cherry Valley pays $16,541. All the rest pay less than $13,000. It is quite conceivable that the absence of competitive bidding and very careful and prudent buying has placed Byron at the top rank in the payment of health insurance premiums. But this is no reason to saddle employees with a very sizeable increase, the first of its kind, and require them to pay health insurance payments in the year when the percentage increase for Byron was less than it had been in prior years. In the absence of any quid pro quo, this unwarranted breakthrough should be rejected.

In this case, the employer has a health insurance fund of 4.5 million dollars as of 2011. The employer's proposal to charge employees for health insurance benefits comes in the year when the employer's healthcare cost dropped 4.2 percent for family premiums (*Brief* at 34).

The employer's proposal for healthcare does not contain a clear and precise final offer that is appropriate for purposes of interest arbitration. The third sentence of the first paragraph contains a contingent offer: "If multiple plans (e.g. HMO and PPO options) are available, members may change plans once a year." There is no indication that there will be multiple plans. This is an open ended offer that not only precludes the union from engaging in negotiations but also is not a clearly determined offer. Arbitrator Berman noted in the City of Rockford decision, ISLRB Case No. S-MA-06-103, pp.51-2 (Berman, Arb.) (2008), that the employer's proposal consisted of contingent offers at which the employer stated, "the City may offer an HMO,". . .the City may select a fully funded option. . ., the City "may implement a specialty pharmacy program," and the City "may offer employees access to an array of voluntary benefits." The arbitrator rejected this offer as being open ended, and it would allow the employer to offer employees a wide variety of healthcare options at an unspecified cost to them, make changes in coverage and benefit levels or employee contributions. The arbitrator held, "Unsuccessful negotiations resulting in impasse would not be subject to interest arbitration presumably leaving the City free to unilaterally implement any change it proposed. In short, the city would relieve itself from either the burden of bargaining either to agreement or to impasse culminating in arbitration.

In this case, the employer is asking for an extraordinary breakthrough without demonstrating the heavy burden of proving that the system is now not working, that it has offered a buyout of *quid pro quo* or that there is a compelling need to start charging employees health insurance benefits. There is a long history of the employer paying for health insurance without employee contributions to the premium cost, and the employer has a $4 million insurance fund. Under these circumstances and the below average wage increases being offered by the employer, there is simply no reason why this extraordinary change should be granted. In this matter, the Union has recognized that it should pay for something concerning health care, and so it proposed first time payments for single and family coverage. The proposal is to pay for

single coverage is quite significant because none of these comparables are proposed by the Union have employees paying for family coverage (*Brief* at 35).

In this case, the employer simply has not met the burden of demonstrating not only why health insurance increases should be paid for the first time by employees but has not indicated what the employees would have to pay. This is a very significant weakness in the employer's claim for employee payments. It is difficult to evaluate what the employees would be paying in context of the small wage increases that are being offered by the employer. This is an additional reason to reject the employer's proposal.

The language of the healthcare final offer in the fourth paragraph reserves the right to institute cost containment measures relative to insurance coverage and gives examples of what kinds of measures might be implemented. However, glaringly missing from this proposal is the right to engage in collective bargaining negotiations over such changes. In City of Rockford, ISLRB Case No. S-MA-06-103 (Berman, Arb.) (2008), the arbitrator held that a similar proposal should be rejected because healthcare is a mandatory subject of bargaining. He noted that the City of Rockford's proposal would permit the city to offer employees a wide variety of health insurance options at an unspecified cost, make changes in coverage and benefit levels or employee contributions and that the union could neither prevent nor modify the changes the employer might wish to implement. He further noted that unsuccessful negotiations resulting in impasse would not be subject to interest arbitration, and that the City was attempting to "relieve itself of the burden of bargaining either to agreement or to impasse culminating in arbitration." Id. at p. 53. Arbitrator Berman noted the increased cost in healthcare supported the kinds of changes the employer sought, but that kind of unfettered discretion, according to Arbitrator Berman, was unacceptable and warranted rejection of the employer's healthcare final offer.

This language proposed by the employer in the words of the Illinois Labor Relations Board "clearly and explicitly gives the city the right to unilateral implement the policy at issues." Policemen's Benevolent Protection Association of Illinois, Unit 156-Sergeants, 19 PERI ¶69 (local panel) (2003)("Board determined the union had waived the right to bargain over a suspicious package handling policy with language allowing the employer to assign sergeants, add methods of operation, determine methods by which operations are to be conducted and to alter policies and procedures.") The proposal here is not a mandatory subject of bargain. Mt. Vernon Education Association, IEA-NEA, 11 PERI ¶1013, IELRB (1995). The compelled waiver of a statutory right is a permissive subject of bargaining. University of Illinois (Chicago), 8 PERI ¶1014 (1991), aff'd 244 Ill. App. 3d 945, 612 N.E.2d 1365 (4th Dist. 1993). Because the IPLRA requires mid-term bargaining over mandatory subject of bargaining, and the District's proposal does not provide for the union to have a right to bargain mid-term over such subjects, the proposal should be rejected. Illinois Department of Central Management Services, Department of Corrections), the Illinois Labor Relations Board, State Panel, 373 Ill. 3d 242 869 N.E.2d 274 (4th Dist. 2007), petition for leave to appeal denied, (9/26/07).

The last paragraph of the employer's proposal is a clear violation of Section 8 of the Illinois Public Labor Relations Act. That section provides:

> the collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration in disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Illinois Public Labor Relations Act, 5 ILCS 315-8, emphasis added.

The employer may not use this arbitration procedure as a way to force agreement excluding something from the grievance procedure. In Wheeling Firefighters Association, 17 PERI ¶2018 (2001), the Board held that an employer violated the Act by insisting to impasse upon the inclusion of proposals that required the continued resolution of disciplinary action against employees to be heard by the employer's Board of Fire and Police Commissioners and requiring exclusion of such disputes from the arbitration step for the parties' grievance procedure. It was this insistence to impasse upon the permissive subject of bargaining that was held to constitute a breach of the employer' duty to bargain in good faith, and that is exactly what the employer is doing in this matter.

In this situation, the employer is seeking to exclude certain disputes from the arbitration procedure set forth in this agreement. Illinois case law prevents such an action, and it is an unfair labor practice for the employer to insist to the point of impasse on such a provision. While the employer may obtain such a provision by negotiations, it may not compel a union to agree to it. Because the employer does not have lawful authority to compel such a provision to arbitration, its proposal should be rejected pursuant to Section 14(h)(1) – the lawful authority of the employer (*Brief* at 38).

D. Retiree Health Insurance – Section 12.2

The Union's proposal on retiree health insurance is as follows:

> All full-time sworn or civilian employees hired on or before November 1, 2006, and who retire on or before October 31, 2014 with a combined total of age plus length of full-time service with the District equaling a minimum of 80 will be eligible to receive a District contribution toward their monthly health insurance premium of 50% of the current single premium rate effect or $350.00, whichever is less, until reaching the age of 65. Sworn employees must be at least age 50 at retirement and civilian employees must be at least age 55 at retirement to be eligible. Retired employees electing continued coverage in the District's health insurance plan, must pay their share of the premiums to the District by the 1st of the month. Retirees electing to continue coverage for dependents must pay the entire cost for the coverage to the District by the 1st of each month. Failure to timely remit payment will cause the insurance to cease and it will not be able to be reinstated, except for any grace period as may be mandated by law.

To be consistent with the current agreement between the parties, the union has proposed the retiree health insurance provision have a cutoff date that is coincidental with the expiration of the agreement. The current contract expired effective October 31, 2009, and the provision on retiree health insurance provides for firefighters and lieutenants who retiree on or before that same date and who are otherwise eligible to receive the retiree health insurance benefit. This

benefit consists of a District contribution of 50 percent of the current single premium rate in effect or $350.00 which ever is less that is to be paid until the firefighter reaches the age of 65. The purpose of this provision is to grant retired firefighters an important benefit, however the employer's proposal would cutoff that benefit for employees who retiree after October 31, 2012, while the collective bargaining agreement was still in effect.

Both parties agree that the termination of the collection bargaining agreement should be October 31, 2014, each of the parties' wage proposals provide for wage increases on November 1, 2013, which means that the collective bargaining agreement would terminate on October 31, 2014. The employer proposes that employees who retire after October 31, 2013, and before October 31, 2014, would not be eligible for this benefit. This is inherently unfair because the parties in the last collective bargaining agreement provided for granting this benefit to an employee who retired at any point during the term of the collective bargaining agreement.

The Union believes there is no sound reason why this benefit should not be extended to all current firefighters who might retiree in that one year period. In this situation, the employer strips protection for those firefighters who might reach the mandatory age of retirement within that one year period, November 1, 2013 through October 31, 2014.

Union president Logston testified that the thinking of the Union on this proposal was that the sunset provision for this benefit would coincide with the termination of the collective bargaining contract. The concern was that a sunset during the term of the collective bargaining agreement would give the employer the ability to argue during the next contract negotiations that the *status quo* was no such benefit existed for employees who retired. The employer is attempting to use this arbitration to create a different *status quo* that would otherwise be the case at the time of the contract expiration. It is quite likely that reasonable parties in negotiations would have agreed to such a clause that would not have hampered the union's ability to argue and then take continuation of this retiree health provision to arbitration on a provision that had been placed in sunset status prior to the termination of the collective bargaining agreement (*Brief* at 40).

E. <u>Wages</u>

A. The Union's proposal for wages is as follows:

> The salaries for all full time Shift Lieutenants and Firefighters will be as follows:
>
> This wage scale (Schedule A attached) assumes the employee is a paramedic and a Firefighter II. If they are not, deduct the following amounts for each certification the employee does not have.
>
> a. FF II – Deduct $500.00

(i) To be considered for FF II pay increase, employee must present a Firefighter II Certificate as issued by the Office of the Illinois State Fire Marshal's Office.

b. EMT-P – Deduct $2,000.00

(i) To be considered for paramedic pay, the employee must present a current paramedic license as issued by the Illinois Department of Public Health, and be certified through the District's resource hospital with a letter of such certification being presented from the resource hospital.

c. There shall be no retroactive pay increase for 2009.

d. Effective November 1, 2010, the salary schedule for all positions shall be increased by $725 and the resulting salary numbers shall be increased by 2 percent.

e. Effective November 1, 2011, the salary schedule for all positions shall be increased by $725 and the resulting salary numbers shall be increased by 3.5 percent.

f. Effective November 1, 2012, the salary schedule for all positions shall be increased by 3 percent.

g. Effective November 1, 2013, the salary schedule for all positions shall be increased by 3 percent.

(*Brief for the Union* at 8-9).

1. Average Consumer Prices for Goods and Services Commonly Known as the Cost of Living Supports the Union's Wage Proposal

The Union submits that the Employer's proposal for wage increases for the first three wage increments of the collective bargaining contract, November 1, 2009 through November 1, 2013, is short of the amount of wage increases needed to keep pace with inflation through November 1, 2011 (*Brief* at 5).

The November 1, 2011, CPI index number is 6.49 percent above the November 1, 2008, CPI-U index number. The last wage increase for bargaining unit members was in November 2008 when the top base pay level was increased by 4.25 percent to $48,328.99. To keep pace with inflation for the pertinent time period, the wage increase, the November 1, 2011, base salary should be $51,476. The Employer's proposal for November 1, 2011, is $50,281.48, which is $1,189.71 below the top base pay needed to keep pace with inflation. The Employer offer with top base pay for November 1, 2012, $51,287.11 is $188.89 below the November 1, 2011, CPI benchmark number. Thus, the employer's offer for the first three years of the contract does not

even meet the inflation adjustment needed for the first two years of the contract, 2009 – 2010 (*Brief* at 5).

The Employer's proposal for wage increases in 2010 and 2011 is two percent for each of the two years, and the offer for the wage adjustment in 2009 is zero. These proposed wage increases are clearly inadequate to deal with the cost of living increases not only for the period of 2009 to 2010 and 2010 to 2011 but also for the four-year period between 2008 and 2012. The all items increase in the CPI-U survey between November 2010 and November 2011 was 3.4 percent. The one-year increase proposed by the Employer for the November 2010 and November 2011 period is clearly inadequate, as are the overall proposal of wage increases of zero in 2009 and 2 percent annual increases through 2013 (*Brief* at 5-6).

For these reasons, the employer proposal does not meet the arbitration statutory standard for the average consumer prices for goods and services, commonly known as the cost of living as stated in Section 14(h)(5) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h)(5). The union offer for November 1, 2011, for top base pay is $52,535 and this is $1,059 above the CPI bench mark number, but is closer to that number than the one offered by the Employer. The Union's final offer should be awarded because it is more reasonable in the context of the other factors for the arbitrator to consider, including the need to catch up with wage increases that have been granted in the comparables since 2008.

2. <u>The Ability to Pay Criterion Supports the Union's Final Offer</u>

The Union points out that for an exceptionally good reason, the Employer does not assert any inability to pay in this interest arbitration (*Brief* at 6). The employer has the good fortune of a very large, if not excessively large series of reserve funds in the form of an ambulance fund, a capital projects fund, a general fund and an insurance fund. Thus, in 2011, the capital projects fund had an estimated cash on hand of $7,815,000. The ambulance fund had estimated cash on hand of $540,782, almost twice what it hand on hand in 2009. The insurance fund had estimated cash on hand of $4,587,000 (UX 31). The annual budget for the corporate fund for 2011 indicated beginning cash on hand of $730,000 and estimated receipts $2,554,487 and estimated expenditures of $2,018,282, which means that the amount of money coming in exceeded the amount of money going out by over a half million dollars. The August 31, 2010, annual financial report shows that the total government fund balance for the District increased by $356,971 (UX 30 at 12). With an annual budget surplus of $462,935 in August 2010 and a total fund balance of $9,350,755, it should be abundantly clear that the employer has more than sufficient funds to pay for the increases sought by a union in this case, and it so admitted at the hearing (*Brief* at 7).

Also, the Union points out that the Districts' general fund has transferred money to the District's reserve for the future capital expenditures fund. In 2010, $450,000 from the general fund and $350,000 from the ambulance fund was transferred into the reserve capital expenditures fund. In 2009, $650,000 from the general fund and $350,000 from the ambulance fund were transferred in to the reserve for future capital expenditures. In 2008, $1,238,698 were transferred from the general fund. In the context of municipal finance, these funds are incredibly

rich. The reserve and the capital expenditure funds of $8,806,831 is more than seven times the amount spent by the general fund for the same year (*Brief* at 7).

Yet, with all this incredible wealth, the employer takes the position that the wages in this District should be paid at the bottom or near bottom of the comparables. There is no excuse for not granting the union's modest proposals that will not advance the relative rank of the top base pay salaries by more than one rank. The employer's counsel has stated, "We know we've got a lot of money in the bank. But just because there's a lot of money in the bank doesn't mean this has to be going over into an employee-requested wage scale." (R. 91). Counsel also acknowledged that the District, "Certainly can afford what's being requested." (R. 89). The apparent concern of granting wage increases, that are actually less than those granted to the comparables, was based upon the need to be more reflective of the community. However, top base pay under the union's proposal is $52,535 for November 1, 2011, which is $18,358 below family income reported for Byron in 2009 and is $4,391 below household income for the same period. Given the employer's ability to pay and its unwillingness to even be reasonable in wage increases, the union's proposal should be granted.

3. The employer's offer is the product of regressive bargaining and does not <u>match the comparables</u>

A key to rejecting the employer's final offer on wages is the regressive nature of the Employer's proposal to accommodate the 2009 wage increment. In the instant case, the Union's April 14, 2010, request for mediation signed by both the union president and the fire chief was received by the Federal Mediation and Conciliation Service on August 9, 2010. While this mediation request can be construed under Section 14(j) to initiate the process for arbitration, its timing limits the arbitrator's ability to award a wage increase retroactive to November 1, 2009, but does not limit the arbitrator to award a retroactive wage increase to November 1, 2010, or to award salary adjustments in 2010 or later years to rebuild the base pay or catch-up with the base pay of the comparable employers. Both parties recognize this limitation as it applies to 2009 but have proposed wage increases that will be retroactive to November 1, 2010. In the absence of a stipulation between the parties to authorize the arbitrator to grant a retroactive wage increase effective November 1, 2009, wage increases to compensate for the November 1, 2009, to November 1, 2012 pay gap may be awarded in subsequent years (*Brief* at 10-11).

To mitigate the loss of retroactive wage increases for 2009 and the drop in relative base pay status, the parties have proposed two very different solutions, but the employer's solution is rooted in regressive bargaining (*Brief* at 11). The District's final offer submitted in June 2011, EX 2(F), provided for a $750 signing bonus, "[i]n lieu of any 2009 increase. . . ." EX 2(F) at 31; R. 108. The Employer's final offer to resolve the issue of wages reduces the final offer signing bonus for 2009 from $750 to $500. This kind of regressive bargaining discredits the employer's entire wage proposal and is indicative of bad faith bargaining. This arbitrator and others have recognized the primary function of an interest arbitrator is to approximate what the parties would have agreed to had they been able to settle the issue themselves. <u>City of Alton and IAFF, Local 1255</u>, ILRB Case No. S-MA-06-006 (Fletcher, Arb.) (2007); <u>Village of Arlington Heights and IAFF</u>, ISLRB Case No. No. S-MA-88-89 (Briggs, Arb.) (1999); <u>Village of Skokie and Skokie Firefighters IAFF Local 3033</u>, ISRB Case No. S-MA-07-007 (Hill, Arb.) (2008)(*Brief* at 11).

In this case, the employer's $750 signing bonus is an indication of what might have happened, but the employer's apparent disappointment in being involved in this proceeding has led to a lower proposal for the signing bonus. That action is bad faith and impairs the bargaining process. Accordingly, this component of the employer's proposal is sufficient reason, as noted by Arbitrator Hill, in Village of Elmwood Park, ILRB Case No. S-MA-10-192 (Hill, Arb.)(2010), to reject the employer's wage proposal. County of Cook and Cook County Sheriff, Case No. L-MA-99-102 at 27 (Arb. Berman)(2011)(arbitrator rejects union's wage package which had been modified in the final offer and was argued by the employer an example of regressive bargaining). The employer's claim that the expense of an arbitration proceeding necessitated the reduction of the signing bonus is not especially credible given the large mass of available funds in its reserve accounts. This is not an adequate basis on which to move backward rather than forward in bargaining and is in essence an improper Employer's tax or penalty for having exercised a statutory right to proceed to interest arbitration (*Brief* at 11-12).

The other major reason for denying the employer's wage proposal is also related to the 2009 gap created by the untimely mediation letter, which in turn leads to no wage increase for that year. While other departments' wage levels increased in 2009, the Byron wages were not, and the employer's proposal does little to protect the wage status previously established in the 2006 to 2008 collective bargaining agreement. In the 2006-2008 contract negotiations, the parties agreed to use five benchmark cities and one fire protection district as wage comparables. This was the parties' first collective bargaining agreement and covered the period 2006 to 2008. The intent of the parties was to create a fair way of dealing with wage increases, so the wage scale listed in Union Exhibit 1 was agreed upon. The parties agreed to an eight-year step plan and worked with a series of charts that were maintained in the files of the fire department and offered into evidence as Union Exhibit 34. The purpose of these charts is to show the comparables relied upon by the parties during those negotiations, and they do show that a particular wage increase was agreed upon for future negotiations. The significance of these comparable cities is that the chief and the trustees believed in 2006 that the mix of three cities and two districts, Dixon, North Aurora Fire Protection District, Pleasant View Fire Protection District, Rockford and Sycamore, constituted a fair basis on which the contract negotiations were to be based (*Brief* at 12-13).

Table 1 demonstrates that for the years 2006 to 2008, the Byron firefighter–paramedic salary levels were approximately 82 to 83 percent of the average and approximately 73 to 76 percent of the median. Byron's top base pay in this group ranked five out of six for 2006, 2007 and 2008. That stable relationship in relative base pay compared to the comparable employers' salary levels would drop precipitously to 69 percent of average and 69 percent of median in 2011 if the employer's offer is awarded.

4. The Union Proposes to Rebuild the Base Pay

This major difference is due to the employer's refusal to place additional dollars into the base pay structure for 2010 to accommodate the gap resulting from the untimely mediation notice. By not having a wage base increased for 2009, the employees loose relative wage status, which the employer does not attempt to rebuild. The union's proposal is based on the absence of a stipulation for retroactive wage increases for 2009 and adjusts the 2010 and 2011 salary structure by absolute dollars to rebuild the base. First, this is accomplished by adding $725 to the November 2010 base pay and multiplying that number by 2 percent. Effective November 1, 2011, the salary schedule would be enhanced by $725 and then multiplied by 3.5 percent. The Union's proposal adds $1,450 to base pay to rebuild what was lost for 2009. This adjustment awards no retroactive wage increase to the November 1, 2009, base pay wage schedule or other elements of the salary structure and does not give the firefighters cash payments in the amount of the increase that they might have had if the arbitrator could have awarded a retroactive wage increase. The additional dollars represent approximately the value of a three percent wage increase that was lost in 2009 and is to be added to the base pay in the years 2010 and 2011. This is a relatively modest form of catch-up that has necessitated not by the parties agreeing to create a lower wage structure with a wage deficiency but by the unfortunate untimely mediation notice and the statutory limit on the authority of an arbitrator to grant a retroactive wage increase to November 1, 2009.

The adverse harm from the employer's 2009 wage proposal of zero is that future pension payments would be based upon a salary that would have been reduced by an unfortunate administrative error. This is not a case where the parties purposefully negotiated lower wage increases, and one of them is seeking to reestablish a former relationship. In this situation, a catch-up is warranted, and the employer's too modest and regressive $500 signing bonus does not provide for future needs in terms of pension calculations (*Brief* at 18).

5. Pension pickup does not change the relative rank for the firefighters' base pay

The employer claims that pension pickup payment for each employee is worth 9.455 percent in additional income. Commencing in October 1987, the District's trustees enacted a resolution, Resolution 87-1, providing that employee contributions to the Byron Firemen's Pension Fund shall be paid by the Byron Fire Protection District on behalf of all employees enrolled in the fund (UX 33). That practice of paying the employee contributions continues to the present. The purpose of this resolution was to add to the cost of living increase in lieu of the merit raise for 1987. The employees were not satisfied with the raises that were being granted at that time, so they approached the chief and suggested the pension pickup as a resolution to this question. While the employee does not have a 9.455 percent salary deduction from pay, the actual pension pickup is not used in calculating the salary at the end of the firefighter's career for purposes of determining the actual pension annuity. Thus, the pension pickup is not part of what is known as pensionable compensation. However, it does give the employee in Byron additional disposable income.

Figuring in the pension pickup for top base salary does not significantly alter the low rank of Byron's top step base pay among its own comparables. For 2011, the base pay with the pension pickup added would be $55,027, which is more than $12,000 below the average and more than $5,000 below the median. The relative rank in 2011 would change from seven of seven to six of seven (*Brief* at 19).

6. The Employer's total compensation calculations are skewed

Addressing Employer Exhibit 12, the Union maintains the wage charts on Employer Exhibit 13 include more than wages and consider the employer's costs, rather than direct compensation to the employees. In the Union's view, the exhibit reflects total cost to the employer for doing business with respect to firefighters' salaries and supplements, rather than an indication of what the employee actually receives in pay. It is not a demonstration of the W-2 statements the employees receive each year to show their taxable compensation. For these reasons, Employer Exhibit 13 should not be regarded by the arbitrator (*Brief* at 19-21).

An analysis of the employer's chart showing hours worked indicates that the medium numbers of hours worked is 2,656 per year and 50.46 per week and the mean or average is 26.58 per year and 51.11 per week (EX 13). The Byron hours per week are 51.53 and 2,680 per year, which is the third highest in the group. The chart below indicates these differences.

TABLE – Annual Hours/Hours Per Week—Employer's Comparables

	Annual Hours	Hours Per week
Channahon	2,728	52.46
Cherry Valley	2,608	50.15
Clinton	2,536	48.76
Minooka	2,728	52.46
North Aurora	2,624	50.46
Rutland Dundee	2,632	50.61
Sugar Grove	2,752	52.96

In effect, the employer's proposal for compensation is below average for employees who work at the third highest level of hours among the comparables that it proposes (*Brief* at 22). For these reasons, its wage offer should be rejected. The firefighters' higher efforts here are a reason to award the Union's proposal.

IV. DISCUSSION

A. Statutory Criteria

The statutory provisions, in pertinent part, governing the issues in this case are found in Section 14 of the IPLRA:

> (g) 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). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
>
> (h) Where there is no agreement between the parties,…the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
> (A) In public employment in comparable communities.
> (B) In private employment in comparable communities.
> (5) The average consumer prices for goods and services, commonly known as 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.

Furthermore, "It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party's *status quo*, an "extra burden" must be met before the arbitrator resorts to the criteria enumerated in Section 14(h)." Additionally, where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, the onus is on the party seeking the change." *Village of Maryville and Illinois Fraternal Order of Police,* S-MA-10-228 (Hill, 2011).

Arguably, there are no significant "breakthrough" items in this case, although the Employer's offer on the insurance issue, where the City desires to establish employee contribution rates, comes close as a significant breakthrough.

B. Focus of an Arbitrator in a Interest Dispute

At this stage of interest arbitration in the State of Illinois there can be no serious dispute that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator reflected the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated:

> Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . [T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntary agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.

See, *City of Galena, IL*, S-MA-09-164 (Callaway, 2010).

Similarly, Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, S-MA-88-9 (1988), Arbitrator Nathan declared that the award must be a natural extension where the parties were at impasse:

> [I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining." *Will County Board and Sheriff of Will County* (Nathan, 1988), quoting *Arizona Public*

Service, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

> . . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change….In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:
>
> (1) that the old system or procedure has not worked as anticipated when originally agreed to or
>
> (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
>
> (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.
>
> Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); *See* also, *Sheriff of Cook County II*, at 17 n.16, and at 19.

Arbitrator Elliott Goldstein said it best: "Interest arbitrators are essentially obligated to replicate the results of arm's-length bargaining between the parties, and to do no more." *Metropolitan Alliance of Police, Chapter 471*, FMCS 091103-0042-A (2009). [3]

C. The Employer's Comparables are More Relevant than the Union's Bench-mark Jurisdictions

In *Macon County Board and AFSCME, Council 31 and Local 612*, S-MA-94-70, Arbitrator Peter Feuille stressed geography and size in selecting comparables. His reasoning is instructive in this case:

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[3] See also, *City of East St. Louis & East St. Louis Firefighters Local No. 23*, S-MA-87-25 (Traynor, 1987), where the Arbitrator, back in 1987, recognized the teak of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor's words:

> Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

Id. at 11.

> I selected 12 comparison counties from the Union's comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St, Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). **It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions.** Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. *Feuille* at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995), likewise found <u>geographic proximity</u> and <u>local labor markets</u> as primary considerations in selecting comparables:

> The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.
>
> **It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists.** That principle has been upheld again and again by interest arbitrators and there is no need to discuss it al length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defines that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as "just too far away to be meaningful for comparison purposes." Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, "as being outside of the

local labor market in which Mt. Vernon competes for police officers." *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

> **Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor.** An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in City of Springfield & IAFF, Local 37, S-MA-18 (Berman, 1987), at 26, "[d]etermining comparability is not an exact science." Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:
>
>> The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.
>
> **In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes.** *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

> **Thus, in selecting a comparability group, the arbitration panel should look to "those features which form a** <u>financial</u> **and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace." The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources.** *Kohn* at 7 (emphasis mine).

* * *

As I held in *Town of Normal & IAFF 2442* (2007), applying the above principles, and conceding that this analysis is anything but an exact science, I find the Administration's analysis more on point than the Union's assertions. There is no rational basis to include Rockford, with a reported population of 153,000, and compare it to a Fire Protection District like Byron. [4] Clearly, the Employer's bench-mark jurisdictions, based on fire protection districts and one city, Clinton, is more in line with the intent of the statute and arbitral precedent than the Union's comparables.

Arbitrator Charles Fischbach, in *City of Du Quoin & IL FOP* (2008), S-MA-04-075, observed that "external comparability is a crucial factor in interest arbitration because it often receives the most attention from the parties." *Fischbach* at 23. I submit that the attention is often disproportional to its importance in selecting final offers. Clearly, with the exception of Rockford and maybe Sycamore (who really desires to be St. Charles and, in fact, likes to compare itself to that city, puzzling, I believe), there is some basis in fact for including all the comparables submitted by both parties. To this end, consistent with many of the Union's exhibits (combining comparables), I have made extensive reference to both parties' comparables in generating this opinion and award.

D. Holidays

Using the Employer's numbers, the number of recognized holidays (the *status quo* is nine; the Union proposes ten) and the value of the holiday benefits vary greatly between the comparable districts, noted as follows:

District	No. Recognized Holidays	11/1/10 Value of 11th Year
Byron	9 (2x if work)	$1,215.52
Channahon	0 (3 days pay)	$1,498.92
Cherry Valley	9 (120 hrs pay)	$2,497.42
Clinton	10 (2x if work)	$1,315.80
Minooka	8 (11/2 if work)	$561.53
N. Aurora	11 (2x if work)	$2,262.58
Rutland-Dundee	6 (1½ if work)	$433.27
Sugar Grove	7 (1½ if work)	$1,244.84

(EX 12, at 1-3 and EX 13, sheet 2; *Brief* at 6)

Noteworthy, the only comparable city with ten holidays is Clinton, a city the Union desires to exclude from the analysis. The comparables favors the District's final offer of nine holidays.

[4] Arguably the Union recognizes the inappropriateness of including Rockford as many of the tables it generated in its post-hearing *Brief* relied on the District's comparables (see Table 2 for example, *Brief* at 16) rather than on its own bench mark jurisdictions.

What of the Union's argument that its claim for an extra holiday is based on the Employer's regressive bargaining tactic (*Brief* at 26)? The fact that the City at one time offered ten holidays is not dispositive of an award. There is no requirement under the statute that a party, having made an offer on an impasse item, cannot revise and even retract it if compelled to go to arbitration. Indeed, one benefit of final offer arbitration is that the parties will be more likely to reach an accord on issues because neutrals cannot "split the baby" in an award. [5] The fact that a party is not bound to a position once made in bargaining is good reason to proffer it in bargaining. A rule that ties a party to an offer made would cause a party to think twice before making it in bargaining.

Moreover, apparently the parties understood that offers on items could be changed if they ended up in interest arbitration. [6] Also, as noted by counsel for the Administration, "I don't believe either party is stuck by any proposal that might have been offered previously to today on the open items because we've agreed for the final offers for the Arbitrator's consideration to be presented within five business days after this hearing." (R. 43).

For the above reasons, the Employer's position on holidays is awarded.

E. <u>Health Insurance</u>

Currently employees do not pay for health insurance. The District's final offer on insurance is, by all accounts, a Draconian [7] measure for the bargaining unit and especially the undersigned Arbitrator. Its proposed allocation of employee-paid costs of premiums at a mere ten percent is more than reasonable, especially in these economic times. Beginning January 1, 2013, the HAS plan and corresponding deductibles is a rational response to increasing health insurance costs, which the District estimates at a 61% increase for the last five years. This is also reasonable.

As explained by counsel for the Administration:

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[5] As the parties know, the Act significantly restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. Unfortunate (or not), there is no Solomon-like "splitting of the child" under the statute. Cf. 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

[6] Mr. Ottosen [discussing the District's former offer on holidays]: "The Union rejected it. And it was understood and in writing stating that we were free to modify the open items if we went to interest arbitration and, in fact, would do so." (R. 26).

[7] Latin. Adjective. From the Athenian law giver Draco. 1. of, pertaining to, or characteristic of Draco or his code of laws. 2. (often lowercase) rigorous; unusually severe or cruel: Draconian forms of punishment. See, en.wikipedia.org/wiki/Draco_(lawgiver). *Not to be confused with* Draco *Lucius Malfoy (b. 5 June, 1980)* a pure-blood wizard and the only son of Lucius and Narcis referenced in the Harry Potter novels.

So we're proposing the current plan through January 1, 2013, and at that time switching over to an HSA.

But we are proposing that for the first time for the year 2012 employees will pay a contribution to their health insurance equal to 10 percent of the premium cost.

The Arbitrator: 90/10?

Mr. Ottosen: Yes.

The Arbitrator: So the HAS is really off the table for my purpose?

Mr. Ottosen: Well, no, because our next paragraph says we want you to incorporate this language, that no later than January 1, 2013, we'll convert to the HAS plan with a 2,500 single coverage deductible and 5,000 total deductible for dependent coverage, district to pay 100 percent of the deductible expense the first year regardless of coverage selected by the employee and that's to be paid at the beginning of the calendar year.

So in January of 2013 the district would fund those with single coverage into their savings account $2,500 and into those with the dependent coverage $5,000.

That money is the employee's. It's not the district's. If they don't use it, it accumulates. When they leave, it's there for retirement purpose. The money goes in tax free. And as long as you take it out and use it for healthcare expenses under the IRM regulations currently, it is still nontaxable income. Any earnings in that savings account are also tax-free earnings.

We're saying than after the first year, so in January we would contribute 2,000 for single, an additional 2,000, for a total of $4,000 for those with dependent coverage. (R. 57-58).

The problem for the Administration is in the details regarding the last two paragraphs of its proposal, specifically the following:

> The District reserves the right to institute cost containment measures relative to insurance coverage. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions, except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.
>
> The extent of coverage under the insurance policies (including HMO plans) referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies or plans or benefits shall be resolved in accordance with the terms and conditions set forth in said policies or plans and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the District, nor shall such failure be considered a breach by the District of any obligation undertaken under this Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s)

from any liability it may have to the District, any employee or beneficiary of any employee.

As correctly pointed out by the Union, management is seeking to exclude certain disputes from the arbitration process set forth in the parties' collective bargaining agreement (see, *Brief for the Union* at 38). One can readily hypothesize cost containment measures that affect an employee's benefits under the insurance policy. Awarding the Administration's final offer would eliminate the grievance procedure as an effective method of dispute resolution. I credit the Union's arguments that such a provision is arguably illegal under Illinois law where the employer insists to impasse, as it has done in this case, on such an exclusionary provision.

Clearly, the Administration would acquire maximum discretion regarding insurance while at the same time isolating itself from negotiations and the grievance procedure. [8] I am confident that awarding the Administration's proposal would result in a prolonged court battle between the parties regarding the permissive nature of the District's language.

Then there is this aspect of the evidence record that favors the Union. Amazingly, the employer has not "set the table" for purpose of establishing a first-time premium-sharing breakthrough for the union employees. An exchange with counsel makes the point:

> Mr. D"Alba: I'm asking if the employees have been informed that as of this date, that on January 1 of 2012 they will be expected to pay a 10 percent increase – 10 percent of the premiums incurred by the employer. That has not taken place, is that correct?
>
> Mr. Ottosen: That has not been finally implemented by the Board, no. (R. 61-62).

In Village of Niles, Case No. S-MA-02-257 (Hill, 2003), I rejected such a breakthrough [9] without the non-represented village employers having been required to pay health insurance. Thus, in 2003 I rejected the employer's attempt to impose a 10 percent contribution payment for a firefighter. I understand the strategy, especially when competing unions are scrambling for a fair piece of the pie (which is not the case in a fire protection district). It is quite another thing

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[8] I have no problem with the Administration attempting to limit an employee's attempt to litigate through the grievance procedure whether a claim is cognizable under the parties' insurance policy. The problem with the language proposed by the District is that it goes further than merely limiting access to the grievance procedure for coverage disputes. Suppose, for example, an employer elects to self insure without informing the union that it has taken this path to cost containment (I actually arbitrated such a case). Is a grievance non-arbitrable under the Employer's language? Or suppose an employee is reinstated with full make-whole relief, including costs incurred for medical bills that would have been covered had the employee not been unjustly dismissed. An argument can be made that his claim for medical expenses precluded by the Employer's language, although I do not believe this was the District's intent. My belief is that awarding the District's language would result in litigation and I'm unwilling to award such a provision in an interest arbitration.

[9] In 2003, a first-time premium could legitimately be considered a "breakthrough," as arbitrators used that term at that particular time in bargaining. Given the comparables available in 2012, I am not holding that the same analysis would apply in 2012 in these same economic times where many units are moving to 15 and 20 percent contribution rates. Again, my problem in Byron is not with the Administration's numbers, but with everything else argued by the Union.

when one union is asked to set the table while management awaits the outcome to consider whether it will join up by accepting an adverse benefit package. Again, the Union advances the better case, not on the numbers but on the language issues.

I also find it noteworthy (and puzzling) why there is no competitive bidding for insurance, a situation rarely seen in interest arbitration disputes with insurance as an issue. [10] Merely relying on a broker (my experience) is problematical, at best.

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

F. Retiree Health Insurance

The record indicates that the current collective bargaining agreement expired effective October 31, 2009, and the provision for firefighters and lieutenants who retire on or before that same date, and who are otherwise eligible to receive the retiree health insurance benefit will receive retiree health insurance benefits of 50% of the current single premium rate in effect or $350, whichever is less, that is to be paid until the firefighter reaches the age of 65.

Both parties are in agreement regarding the termination of the successor collective bargaining agreement as October 31, 2014. The Employer proposes that employees who retire after October 31, 2013, but before October 31, 2014, would not be eligible for this benefit. In contrast, the Union's position is the benefit should be extended to all current firefighters who might retire in that one-year period. As pointed out by the Union, "the Employer strips protection for those firefighters who might reach the mandatory age of retirement within that one-year period." (*Brief* at 40). The Union also notes its concern regarding a "sunset provision" during the term of the parties' collective bargaining agreement, as opposed to the end of the labor agreement. *Id*. According to the Union: "The Employer is attempting to use this arbitration to create a different status quo that would otherwise be the case at the time of the contract expiration." *Id*.

This much is clear: Few public employers in the State of Illinois are maintaining retiree health insurance benefits and, indeed, the Administration apparently attempted to end it with the first collective bargaining agreement (*Brief for the District* at 12). The Administration asserts that it was not initially interested in any extension of this benefit, but had offered to extend it for three years, or until October 31, 2013. *Id*. Desiring to be more in line with the bench-mark jurisdictions (only Clinton has retiree health insurance), the Administration seeks a date certain to end the benefit. *Id*. It acknowledged the Union's desire to have it considered an open item for a future contract's impasse resolution proceeding (R. 95-98).

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[10] Mr. D'Alba: Is there any competitive bidding in 2006 through 2011?

Mr. Ottosen: Competitive bidding, no. But the broker does seek other quotes from other carriers or provides alternative options to the districts to consider.

But the District has maintained the BlueCross BlueShield plan since 2006. I think it's the same plan each year, with no deductibles in network for single or family with very little out-of-pocket costs.

Mr. D'Alba: Did the District ever send out a request for proposal for other insurance companies to bid?

Mr. Ottosen: No. The broker would solicit other companies' proposals. And the District has looked at alternatives, including the State of Illinois; local government plan. (R. 47).

The Union has not identified any firefighter intending to retire during the one-year window acknowledged by both parties (October 31, 2013, but before October 31, 2014). Absent any comparability with the bench mark jurisdictions (Clinton excepted), and recognizing that the Administration could well have taken the position that the clause effectively expired on October 31, 2009, the District's position is awarded.

For the above reasons, the District's final offer is awarded.

G. Wages

1. The Parties' Wage Offers

District	Firefighters
2.68-3.32; 2.0%; 2.0%; 2.0%, totaling 8.68-9.23% over the life of the agreement	There shall be no retroactive pay increase for 2009. Effective November 1, 2010, the salary schedule for all positions shall be increased by $725 and the resulting salary numbers shall be increased by 2.0% Effective November 1, 2011, the salary schedule for all positions shall be increased by $725 and the resulting salary numbers shall be increased by 3.5% Effective November 1, 2012, the salary schedule for all positions shall be increased by 3.0% Effective November 1, 2013, the salary schedule for all positions shall be increased by 3.0% Wage increases total 13.5% to 15.1% over the term of the collective bargaining agreement

* * * *

Both parties propose fully retroactive pay back to November 1, 2010. The District's final offer includes an additional $500 signing bonus for 2009, [11] while the Union adds $725 to the salary schedule's steps and then adds 2.0% across the board increases for 2010 and 2011. The Union's proposal adds $1,450 to the base to rebuild what was lost for 2009 (which the Union estimates was approximately 3.0%).

[11] The District's final offer submitted in June 2011 (EX 2(F)) provided for a $750 signing bonus "in lieu of any 2009 increase." (R. 108). The District's final offer to resolve the issue of wages reduced the so-called "final offer" to from $750 to $500. The Union characterized this as a backward movement in bargaining which "undercuts any reasonable attempt to reach an agreement." (*Brief* at 11). The Employer's response that both parties deviated from its medication position is well taken. (See, *Brief for the District* at 13-14).

2. Ability to Pay Considerations

The fact that the City did not enter an inability-to-pay argument (indeed, it concedes it has the resources to pay the Union's demand) is not dispositive of anything. As correctly outlined by Arbitrator Edward Clark in *City of Gresham & IAFF 1062* (1984), the fact that public management is able to pay a specific wage proposal is not grounds for awarding it. In the Arbitrator's words:

> Having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure. The City exists for the service and benefit its residents not for the benefit of its employees. The careful management which characterizes the City of Gresham in matters such as this is confirmed by the high bond rating from Moody's, the widely respected financial rating service. Residents need many services such as police, parks, street repairs, court, in addition to fire services. In our system, the elected representatives of the people of Gresham make policy decisions on the apportionment of funds among a variety of public services based upon recommendations of its professional staff. The City must also consider the salary expectation of other employees besides firefighters and the reciprocal impacts from decisions relating to one classification of employee compared to another.

Arbitrator Clark's reasoning applies here also. Accord: *City of Southfield*, 78 LA (BNA) 153, 155 (Killingsworth, 1982)(holding that the employer's ability to pay may probably be taken into consideration only within the limits of a "zone of reasonableness" which "is determined by examining wage rates in other cities for similarly situated employees.").

3. Comparative Issues and Problems in Evaluating the Parties' Salary Data

A number of issues complicate an easy evaluation of the parties' relative salary data.

First, the salary schedule is only three years' old and only four employees are on it. None of the employees will be on the top step by the end of the collective bargaining agreement's term. As argued by the Employer, because of the rapid turnover of the Department, it is expected newer lieutenants may be promoted before reaching their fourth step. (*Brief* at 14-15). Therefore, the lieutenants' wage scale is 10% above each step of the firefighters' with the firefighter to move into the appropriate step based on overall seniority with the District at promotion. *Id*.

Second, when total compensation is considered, management submits that only North Aurora exceeds the Byron unit in pay and benefits (EX 13, sheets 2 & 3). Noteworthy is this: the comparison is done without including 55% of the bargaining unit which is "off-scale." Again as pointed out by the Administration, "if these off-scale members were added into the formula, the District's numbers would greatly exceed the average, but that is not necessary to prove the

District's offer is fair and appropriate in this economy especially for this community with 12% unemployment." [12] (*Brief* at 15).

Third, at the same time, I credit the Administration's argument that the Union's exhibits ignore the fact that 9.455% of salary in each of the Union's and Employer's comparables is deducted from the employees' paychecks and paid to their pension funds. The District's employees receive the full amount of the salary schedule, plus the District pays an additional 9.455% of the salary amount to the Byron Firefighters' Pension fund. This is an 18.91% swing in compensation value which must be taken into consideration to obtain a handle on total compensation numbers.

4. The Effect of the Administrative Error on a Wage Award

The statute authorizes an arbitrator to grant retroactive wage increases when a party requests mediation pursuant to Section 14(j) of the Illinois Public Labor Relations Act. Under this section, arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation, and the commencement of a new municipal fiscal year after the initiation of an arbitration procedure, i.e., the mediation letter, will not impair the jurisdiction or authority of the arbitration panel but will limit the ability of the arbitration panel to award a wage increase that would be retroactive to the start of the fiscal year. "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." However, this limitation will not apply, "if a new fiscal year has commenced . . . since the initiation of the arbitration procedures under this Act . . . and such awarded increases may be retroactive to the commencement of the fiscal year . . . ." Section 14(j).

In the instant case, the Union's April 14, 2010, request for mediation signed by both the union president and the fire chief was received by the Federal Mediation and Conciliation Service on August 9, 2010. While this mediation request can be construed under Section 14(j) to initiate the process for arbitration, its timing limits an arbitrator's ability to award a wage increase retroactive to November 1, 2009, but does not limit the arbitrator to award a retroactive wage increase to November 1, 2010, or to award salary adjustments in 2010 or later years to rebuild the base pay or catch-up with the base pay of the comparable employers. Both parties recognize this limitation as it applies to 2009 but have proposed wage increases that will be retroactive to November 1, 2010. In the absence of a stipulation between the parties to authorize the undersigned arbitrator to grant a retroactive wage increase effective November 1,

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[12] Management further asserts:

> Further, in 2010, without a 2% increase included, the three lieutenants made $99,140, $102,010, and $104,797 and firefighters made between $60,350 and $85,757. As such, management argues it is difficult for the Union to claim with a straight face its members are underpaid; it is impossible to justify the requested wage increases based on the record evidence.

(*Brief for the District* at 15).

2009, wage increases to compensate for the November 1, 2009, to November 1, 2012 pay gap may be awarded in subsequent years (*Brief* at 10-11).

* * * *

I understand that this is not a case where the parties purposefully negotiated lower wage increases, and one of them is now seeking to reestablish a former relationship. What took place in 2010 (missing a deadline) [13] was the result of an administrative error, and I have no problem with the Union asking to make up for the resulting loss by building up the base.

At the same time, wage proposals are not considered in a vacuum. In an attempt to craft an award that reflects what the parties would have concluded had they been left to their own devices, my award of the Union's insurance proposal (which would not have been awarded but for the serious language issues regarding waivers of mandatory items) really tips the balance in the Administration's favor regarding wages, and I so hold.

V. AWARD

For the reasons outlined above, the following is awarded:

A. Holidays: District's Final Offer

B. Insurance: Union's Final Offer

C. Retiree Health Insurance: District's Final Offer

D. Wages: District's Final Offer

Dated this 6th day of February, 2012
At DeKalb, Illinois, 60115

_____
Marvin Hill
Arbitrator

[13] For whatever it is worth, Byron is not alone. I served as interest arbitrator in Schaumburg Fire Command where the Schaumburg Firefighters unit took a zero in wages as a result of missing a deadline. In a city where parity was dispositive over the years, the zero did not help the fire command's cause.