

In the Matter of the Arbitration) ILRB Case No. S-MA-12-130
)
 Between)
) Interest Arbitration
 CITY OF GALESBURG)
)
)
 and)
)
 PUBLIC SAFETY EMPLOYEES)
 ORGANIZATION)
)

APPEARANCES

For the Union

Mr. Shane M. Voyles, Senior Staff Attorney
 Mr. Eric Poertner, Chief Labor Representative

For the Employer

Mr. Donald W. Anderson of Ancel, Glink, Diamond, Bush,
 DiCianni & Krafthefer, P.C., Attorney
 Mr. David W. Jones, City of Galesburg HR & Risk Manager

O P I N I O N A N D A W A R D

Introduction

Galesburg is a city in west-central Illinois with a population, according to the 2010 census, of 32,195. It employs 237 persons, of which 165 belong to one of three unions: AFSCME Local 1173, representing various employees in clerical and public works classifications; Public Safety Employees Organization ("PSEO" or "the Union"), representing police officers; and International Association of Firefighters (IAFF) Local 555, representing firefighters and fire captains. The AFSCME unit contains 86 bargaining unit positions; the PSEO, 38 police officers; and the IAFF local, 41 employees.

PSEO and City of Galesburg ("the City" or "the Employer") are parties to a collective bargaining agreement for the term January 1, 2009, through December 31, 2011, for a unit of all "non-exempt full-time permanent employees in the classification of Police Officer, but excluding supervisory, confidential, probationary and exempt employees and all elected officials or officers of the City." They were unable to agree on all of the terms of a successor agreement and entered into

impasse resolution proceedings under Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq. ("IPLRA").

The parties selected the undersigned impartial arbitrator, Sinclair Kossoff, to serve as sole arbitrator in their dispute and waived a tripartite panel. By letter dated June 8, 2012, the Illinois Labor Relations Board notified the undersigned arbitrator of his appointment as interest arbitrator in this case. Hearing was held in Galesburg, Illinois, on August 28, 2012. In negotiations prior to the hearing the parties reached tentative agreement on a number of contract terms. On August 21, 2012, they exchanged final offers on five outstanding issues. Their final offers were the same for one of the issues, leaving four items still in dispute: Wages, Educational Incentive Pay, Health Insurance, and Personal Days. The parties stipulated in writing "that all open issues are economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act."

Statutory Criteria

Section 14(h) of the IPLRA provides that ". . . 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.

Comparable Communities

The parties are in agreement that the following ten Illinois cities are comparable municipalities for purposes of this proceeding: Alton, Danville, DeKalb, Granite City, Kankakee, Normal, Pekin, Quincy, Urbana, and Rock Island.

WAGES¹

Union Final Offer

The Union's final offer provides for the following increases in the salary schedule for the bargaining unit:

Effective January 1, 2012: 2.5%
Effective January 1, 2013: 2.5%
Effective January 1, 2014: 2.5%

City Final Offer

The City's final offer provides for the following increases in the salary schedule:

Effective January 1, 2012: 2.00%
Effective January 1, 2013: 2.00%
Effective January 1, 2014: 2.00%

¹The parties have used the terms "wages" and "salary" interchangeably in this proceeding, and the arbitrator will do so likewise in this opinion.

Union Position on Wages

The Union notes that in two prior interest arbitrations involving the police unit "internal comparability was given great, if not controlling weight by the arbitrators." Faithfulness to the Illinois Public Labor Relations Act, however, the Union argues, requires that the arbitrator choose between final economic offers on the basis of eight factors, and not just one.

The Union acknowledges that in 1997 Arbitrator Malin found that external comparability and the CPI favored the Union's wage offer, but nevertheless selected the City's final offer because "of the strong evidence of pattern bargaining." Thereafter, in 2006, the Union recognizes, "Arbitrator Goldstein elaborated upon the arbitral precedent on the issue, and placed the burden on the Union to disturb lockstep parity." The Union argues that the present case "demonstrates, however, that lockstep parity is as destructive to 'natural' collective bargaining as it is helpful."

This is so, the Union contends, because, instead of approaching its bargaining with the Union in an effort to reach voluntary agreement, the City seeks to impose another union's agreement on the bargaining unit. Such an approach, the Union argues, is inconsistent with the provision in the Act which states that "A bargaining unit determined by the Board to contain peace officers shall contain no employees other than peace officers unless otherwise agreed to." 5 ILCS 315/3(s)(1). In addition, the Union contends, abdication of one unit's bargaining rights to another is a permissive subject of bargaining, and under §14 of the Act, an arbitrator has authority only over mandatory subjects of bargaining.

Its final offer, the Union asserts, is a reasonable, middling offer that does not seek to make up decades of lost ground, but is an attempt merely to keep pace. The City's offer, according to the Union, is historically low and will result in the employees falling even further behind. Its final wage offer is better supported than the City's by the Section 14(h) factors, the Union contends, and should be adopted.

The lawful authority of the employer and the stipulations of the parties, the Union asserts, "are not probative" regarding the wage increase issue. The interests and welfare of the public factor is likewise not decisive, the Union reasons, because both parties can make arguments that their position is in the public interest. With regard to the financial ability of the City to meet the costs of the Union's wage offer, the Union asserts that Galesburg's finances are healthy and stable. It notes that revenues exceeded expenditures in all

years from 2006 through 2011 and that the City's General Fund has a balance equal to 16 weeks of expenditures, the amount that its financial officer testified it should have as a "rule of thumb." The size of the City's population has remained stable, the Union notes, and, therefore, the Union asserts, so long as residents' wages increase, so too will the City's tax base. Also indicative of the financial health of the City, the Union argues, is the fact that at the end of 2011 it had \$40,000,000 in unreserved fund balances.

With respect to internal comparability, the Union noted in its brief that the City reached agreement with the firefighters for the years 2012-2014, but not with its AFSCME unit. To that extent, the Union observed, this case is different than the two prior interest arbitrations between the parties. After the briefs were filed, however, the City reached agreement with the AFSCME unit for a 2% general wage increase for each year of a three-year contract, 2012-2014.

The Union observes that the evidence of external comparability is incomplete in that only three of the ten comparable communities had contracts for years 2012, 2013, and 2014. The evidence that does exist, the Union asserts, "decisively favors the Union's 2.5% proposal." For example, the Union asserts, the lowest external wage increase among the comparable communities was 2.5%, and the average increase, 2.67%, for 2012. This is made worse, the Union asserts, by the fact that Galesburg already ranks last among the comparable municipalities with respect to starting pay and pay over the course of a career. Choosing the City's final offer, the Union declares, would cause Galesburg officers to fall further behind. The Union finds this difficult to accept "considering that Galesburg experiences a higher crime rate than five of the ten comparable communities."

On cost-of-living, the Union asserts that the cost-of-living data are incomplete for the first year of the Agreement and that there are no data for the second and third years. From 2007-2011, according to the Union's exhibit, the cost of living increased an average of 2.226%, including 2009, when the movement of the CPI was negative. Excluding 2009, the Union asserts, the average increase for these years was 2.87%. "If past experience is an indication of future events," the Union remarks, "the cost of living will rise by an amount nearer to 2.5% per each year of the Agreement than the 2.0% offered by the Employer."

The overall compensation package favors adoption of its proposal, the Union argues, because of the combination of poor health insurance coverage and low wages. The City's officers, the Union asserts, have "the second highest potential out-of-pocket liability among all of the external comparable group" and

rank last with respect to wages among all of the comparable municipalities.

In conclusion the Union contends that none of the first three factors compellingly favors each party; that the comparability standards are a wash in that internal comparability favors the City's proposal, but external comparability the Union's; the cost-of-living data are not conclusive; "but historical data better supports adoption of the Union's proposal." The Union argues that "the overall compensation of the Galesburg officers is paltry in comparison to other similarly situated employees, and the Galesburg officers do not deserve to fall even further behind." The City's finances do not compel such a result, the Union contends; its 2.5% wage proposal is reasonable, better supported by the applicable Section 14(h) factors, and should be adopted.

Employer Position on Wages

The City takes the position that its wage offer is strongly supported by internal comparability evidence. There is a pattern of settlements, the City asserts, between the City of Galesburg and its bargaining units, and this has been the case historically. The Union, according to the City, is attempting to break the pattern. Wage settlements for all union groups have been identical or virtually identical, the City notes, every year since 1985, the year before the IPLRA was extended to police and firefighters. Further, the City stresses, "this uniformity has been established by free collective bargaining in every year except those years for which Arbitrator Malin and Arbitrator Goldstein determined the amount of the pay increase for police officers by awarding, in each case, the City's offer." The City points out that the Malin award covered a one-year period and the Goldstein award, a two-year period.

The City cites interest arbitration authority giving controlling weight to an existing pattern of parity between wage increases for firefighters and police officers, including a case where Arbitrator Fleischli selected the Village's offer on internal comparability grounds although both external comparability and cost-of-living considerations favored the Union proposal. *Village of LaGrange and Local 1382, AFSCME* (1987). Another case cited is *City of Granite City and Granite City Firefighters Association* (1994), where, according to the City, "identical increases for police and firefighters every year from 1985 through 1992-93 evidenced 'clear pattern bargaining.'"

The City argues that internal comparability is particularly important when police and firefighter units are the subject of comparison. If the PSEO's wage offer were to be awarded here despite the long history of parity, the City

contends, it is predictable that in the next round of bargaining the IAFF unit would demand 1.5 percent in "catch-up" money before even talking about new money increases. The result, the City asserts, would be a lack of stability in the bargaining process at a time when stability is important because of the uncertain economic environment.

The City objects to the Union's characterization of the pattern bargaining in Galesburg as "lock-step parity," an expression which the City views as pejorative. The City points to an earlier award by Arbitrator Barbara Doering between the City and its firefighters union that, according to the City, showed that "the historical uniformity of percentage wage increases had not precluded the City and its unions from engaging in *quid pro quo* negotiations on wages, wage structures, and health insurance contributions." The historical pattern of comparability among the three bargaining units, the City contends, "has a salutary effect on negotiations, in that it invites each of the units to bargain in good faith to conclude an agreement with the City without fear that it will be penalized, at least in terms of percentage wage increases, by having been the first to agree."

The City asserts that while the firefighters have been the lead group in recent negotiations, each of the three units is invited to take the lead, and nothing in the process requires the firefighters to take the lead. The process enhances good faith negotiations, the City argues, by discouraging unions from hanging back in negotiations to wait and see what the others got, then trying to top them. It encourages stability, the City declares, and discourages whipsaw bargaining. "Yet," the City asserts, "it does not preclude unions from offering and accepting economic tradeoffs within the overall package of wages and benefits provided to their members by the City."

The City argues that the fact the six-step firefighters wage structure results in a higher salary for firefighters beginning with the third year of the progression than the nine-step police unit wage schedule is not a basis for departing from pattern bargaining. The City does not deny the accuracy of the Union's claim but asserts that "the alleged disparity is a function of free collective bargaining." The City quotes from the Barbara Doering arbitration award of December 6, 1994, who explained that in the 1991 negotiations the firefighters negotiated an upward movement of their wage structure from range 18 to range 19, the range at which the police salary schedule was positioned. This, Arbitrator Doering noted, increased the salary at each step of the schedule - A through F - by five percent. In exchange for this improvement, Arbitrator Doering stated, the firefighters agreed to move the first of their two 5% educational incentives into the base salary at step F. In other words, Arbitrator Doering explained, in order to be placed in step F a

firefighter needed both five years of service and completion of one year of college courses. The firefighters, as the Doering award relates, refused to accept a City proposal to increase their pay schedule from six to nine steps, i.e. to add steps G, H, and I after step F to their wage progression.

The Doering award reported the bargaining history for the police unit in 1992. The police, in their 1992 negotiations, accepted the City proposal to increase the number of steps in their wage progression for new hires to nine, A through I, at range 19 of the salary schedule. Under the new schedule, the 5% educational incentive was rolled into the base salary at step A. The salary at step A on the nine-step schedule was therefore 5% higher than at step A on the six-step schedule applicable to firefighters. However, thereafter, the increments at steps B through I were 2.5% rather than 5% as previously. It also took 8 years rather than 5 years to reach the top salary. Under the previous contract (and under the firefighters contract negotiated in 1991), the yearly salary increments in moving from steps A through F were 5% per year. In order to get the PSEO to agree to the new schedule for new hires a one-time \$550 bonus was given upon implementation of the new three-year contract.

Union Exhibits 14, 15, and 21 show that the A-F firefighter wage progression with 5% increments between steps results in a higher salary the third year (step D) of the schedule compared with the A-I police officer wage progression with 2½% increments between steps. This is true even though the salary at step A of the police officer schedule is 5% higher than step A of the firefighters schedule. The police officer continues to earn less than the firefighter until the police officer reaches step I. City Exhibit 7 shows that at step I of the police salary schedule the police officer earns 6 cents per hour more than the firefighter who is at step F of the firefighter salary schedule (for police officers and firefighters who work the same number of hours per pay period).

The City argues that disparity in schedules is the result of free collective bargaining and that the Union, admittedly, has made no effort to negotiate a different schedule since 1992. "[Y]ou can't complain about something that you bargained for and then made no attempt to change in subsequent negotiations," the City contends.

External comparability, the City argues, does not favor the Union's offer. Noting that the list of comparable communities was first agreed to by the parties in the 1994 Doering arbitration, the City asserts that some communities are more comparable than others. On a geographic basis it asserts that only Quincy and Galesburg and perhaps Danville, which is part of a small MSA (metropolitan statistical area), are stand-alone communities. It differentiates the other cities in the

group as follows: DeKalb and Kankakee are part of the Chicago MSA or CSA (combined statistical area); Alton and Granite City are part of the St. Louis MSA; and Rock Island is part of the Quad Cities MSA.

Based on economic data the City contends that some of the other comparable communities are better able to pay the costs of government for the following reasons: The revenue available to Normal in its general fund is more than twice the general fund revenue available to Galesburg. The equalized assessed valuation (EAV) for property in Normal is two-and-one-half times the EAV available to Galesburg, and both Urbana and DeKalb show EAV numbers nearly twice the amount available to Galesburg. The median value of a home in DeKalb and Normal is more than twice that of Galesburg, and median home value in Urbana, almost twice as great as in Galesburg. In addition, the City asserts, the crime rates in Danville, Alton, Kankakee, and Rock Island are significantly higher than in Galesburg, indicating that greater productivity is required in those communities than in Galesburg. The sum of the economic and demographic data it has presented, the City contends, leads to the conclusion that one would expect police compensation to be higher in many of the comparable communities than in Galesburg, which, the City asserts, is the fact.

The City asserts that the wage rates paid to police officers in Galesburg historically have been low in relation to the comparable jurisdictions. The City calls the arbitrator's attention to Arbitrator Goldstein's 2005 award which noted that going back to the 1995-96 collective bargaining agreement Galesburg has ranked in the lower half of the wage rankings for the agreed comparable cities. The City quotes a statement by Arbitrator Goldstein in a 1988 case (S-MA-87-26) that "[i]t is not the responsibility of the arbitration panel to correct previously negotiated wage inequities, if any." It also cites the remark by Arbitrator Robert Perkovich in *City of North Chicago and Illinois FOP Labor Council*, Case No. S-MA-96-62 (1997), at p. 11: "I believe that because the role of the interest arbitrator is to replicate the agreement the parties would have agreed to had they not utilized arbitration, any continuing march toward equality or comparability should be undertaken through bilateral negotiations." The same principles apply here, the City asserts.

Despite its historical low position, the City contends, the facts show relative improvement in Galesburg salaries from 2009 through 2012. During the last three-year contract term (2009-2011), the City asserts, wages for police officers increased by 10.25% (including the .5% training stipend that was rolled into the base salary). Of the seven comparable communities with increases for all three years, according to the City, the largest increase among them was Normal, with a 9.5%

increase over three years. The average increase for the seven municipalities, the City asserts, was 7.6%. The City calculates that the Union therefore gained an average of 2.65% over three years during the 2009-2011 period as a result of its efforts at the bargaining table.

The City argues that it makes no difference whether its or the Union's offer is accepted since under either proposal the relative position of Galesburg among the comparable communities will remain the same. The only exception, according to the City, would be at the entry level salary where under the Union's offer, Galesburg would move ahead of Quincy by \$47. With respect to maximum compensation and median service salary (eight years), Galesburg, according to the City, would remain last under either the City's or the Union's final offer. Only if the Union's educational incentive proposal of an additional 5% were accepted, the City asserts, would Galesburg move up in the rankings in terms of maximum compensation for a police officer or at median service salary where it would climb respectively to 8th place and 6th place.

With regard to wage settlements among the comparable communities for 2012 through 2014, the City argues that there is not enough information to make comparisons. The information that is available shows that for 2012, the municipalities of DeKalb, Granite City, and Quincy increased police officers' wages by 2.5%, and Urbana, by 3.0%. The only wage information in the record for 2013, is that Quincy's collective bargaining agreement provides for a 3.0% increase for that year. Regarding Quincy's increase of 5.5% for 2012 and 2013, the City remarks that it "comes on the heels of a 5.5% increase for 2009 through 2011 that compares with the 10.25% increase enjoyed by Galesburg police officers." As for DeKalb and Urbana, the City distinguishes them from Galesburg on the basis "of their locations and significantly greater economic resources."

The City argues that the cost-of-living factor favors its final offer on the basis that the CPI "increased at a rate of about 1.5% per year for the period . . . of the last collective bargaining agreement" as contrasted with increases averaging about 3.4% under the Agreement. Regarding the period of the new Agreement, the best data available, the City asserts, "suggest that 2% raises over three years should more than cover increases in the consumer price index over that period. . . ." The interests and welfare of the public factor, the City contends, supports the City's offer. The lingering effects of the Maytag plant closing and a projected \$2M shortfall in revenue for the General Fund in 2013, the City argues, dictate caution and prudence on the City's part with regard to wages and benefits for employees. There is no evidence, the City asserts, that it has not been able to attract and retain capable police officers with the wages and benefits it pays now.

Arbitrator's Findings and Conclusions on Wages

The first of the eight statutory criteria, the lawful authority of the employer, does not favor either proposal over the other. The City has the authority to adopt either final offer. Nor is the second factor, stipulations of the parties, a consideration that weighs for one party more than the other.

"The interests and welfare of the public and the financial ability of the unit of government to meet those costs" is the third factor listed in the statute. It is generally in the interests of the public to keep taxes within reasonable limits, and employee wages will affect the tax burden on the public. Public interests and welfare are also served by a well-trained efficient police force. The morale of the force can have a significant effect on the dedication with which it performs its duties. It goes without saying that a fair wage is an important element in achieving good morale among one's workforce.

The foregoing being said, the arbitrator does not believe that acceptance of the Union's offer over the City's offer would create an unreasonable tax burden on the public. Nor, in the arbitrator's estimation, would it be reasonable to expect that setting the police officers' wage increase at the same percentage as the other two bargaining units in the City, one of which was a unit of firefighters, which increase was freely negotiated by the other unions in collective bargaining, would deflate morale.

With regard to hiring police officers, the City presented evidence showing that there are many more well-qualified applicants for the few openings that arise annually than the number of available positions. So far as retention of officers once hired, the Union made no effort to show that the wages or working conditions are causing officers to seek better positions elsewhere.

There is no claim here of inability to pay, but, on the other hand, the City's chief financial officer testified that the City has not yet come back from the effects of the closing of the Maytag plant and that she is seeking to find ways to cover a two million dollar shortfall in the 2013 General Fund budget. In 2010, to maintain the financial integrity of the City, it was necessary to schedule five furlough days for management and AFSCME employees. The financial officer testified that revenues are increasing but not to the same extent as expenditures. She attributed the City's ability to maintain a relatively consistent General Fund balance over the years, including difficult economic times, to a "strict" city council, which, she testified, "really want to make sure that we don't overspend."

None of the foregoing statutory factors are determinative of the selection between the Union's and the City's final offers. Either party's final offer on wages would be compatible with the preceding factors. What will be determinative of the outcome on wages will be considerations of internal comparability, external comparability, and cost-of-living.

In an interest arbitration award dated March 18, 1997, Arbitrator Martin H. Malin adopted the City's final offer on wages based on considerations of internal comparability. In his award he specifically found that external comparability favored the Union's offer of a 3.25% general wage increase, but he adopted the City's offer of a 2.85% increase on the basis that "the evidence of internal comparability with respect to wages [is] quite compelling" and "strongly favors the City's offer in the instant case." Malin Award, pages 8 and 9.

Arbitrator Malin stated that the weight to be given to internal settlements in an interest arbitration "must be decided on a case-by-base basis, considering all of the evidence, with the primary focus being how helpful the data is to the arbitrator's educated guess as to what the parties would have agreed to had their negotiations not broken down." Arbitrator Malin thus espoused the view of many arbitrators that their function in an interest arbitration is to determine what the parties themselves, as reasonable persons, should have, or would have, agreed upon in voluntary negotiations.

The internal comparability that Arbitrator Malin found "quite compelling" was that "[i]n every year since 1985, except for 1996, all three bargaining units received the identical percentage increase in base pay. In 1996 the AFSCME and IAFF increases differed by 0.1 percent." Arbitrator Malin noted that when the AFSCME contract settled for a slightly higher percentage increase than the IAFF contract, the City offered the difference to IAFF, but IAFF rejected the offer.

Arbitrator Malin also took the interests of the public and the cost of living into account. He did not accept the Union's argument that because the City conceded that it had the ability to pay either party's offer, the public interest in attracting and retaining highly qualified officers supported the Union's offer. He noted that the evidence before him did not show that the City was having salary-related difficulties in attracting or retaining officers. Regarding cost of living, Arbitrator Malin asserted that "the most that can be said is that the City's offer is, at worst, very slightly below the increase in the cost of living while the Union's offer is, at most, slightly above the increase in the cost of living." Arbitrator Malin concluded, "This factor does not tip the scales appreciably in either direction."

In resolving whether to give greater weight to internal or external comparability, Arbitrator Malin resorted to the touchstone of the settlement that the parties would have reached had their negotiations not broken down. He stated:

Thus, resolution of the wage increase issue turns on balancing internal versus external comparability. Generally, interest arbitrators look at external comparables because the settlements reached in comparable municipalities are a good indication of the settlement that the parties would have reached had their negotiations proved fruitful. However, in the instant case, this must be balanced against an over ten year history of pattern bargaining. This pattern has been by design. Mr. Barber testified that the City strives to reach the same settlement with each exclusive representative and that, to ensure such an outcome, management representatives from all three departments sit on each negotiating team (Tr. 81). On balance, based on the record developed in this case, I find that internal comparability outweighs external comparability. I will award the City's offer.

In 2004 the parties were again in interest arbitration for the police officers unit, this time before Arbitrator Elliott H. Goldstein. By then, what had been a 10-year history of parity among the three City bargaining units in the percentage amount of the annual wage increase had grown to 18 years. Arbitrator Goldstein award, p. 48. Arbitrator Goldstein stated that "arbitrators are extraordinarily reluctant to disturb such a pattern where it is found to exist." Id. In support of his assertion Arbitrator Goldstein quoted from the decision of Arbitrator Briggs in Village of Arlington Heights and Arlington Heights Firefighters Association, Case No. S-MA-88-89 (1991):

The arbitrator is convinced from the record that the Village's salary offer is the more appropriate, for several reasons. First, the salary increases negotiated by the parties themselves for 1988-89 and 1989-90 were arrived at through free collective bargaining. Obviously, then, they reflect increases that both parties deemed appropriate. Those increases are exactly the same as the ones negotiated between the Village and the FOP for Arlington Heights Police Officers, suggesting that the Union in this case felt comfortable with the wage levels of firefighters vis-a-vis those of police officers. Nothing in the record has convinced me of the need to alter that longstanding salary relationship. Indeed, granting the firefighters percentage increases higher than those negotiated by the FOP would quite likely instill in the latter the motivation to redress the balance during future

negotiations. This produces a whipsaw effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability of the bargaining process.

Arbitrator Goldstein also cited decisions by Arbitrators Fleischli and Edelman that gave determinative weight to historical internal parity. He echoed Arbitrator Briggs's fear that granting the PSEO's offer would result in "catch-up" demands by the other unions in the next round of bargaining before even talking about new money increases. Any new money granted, Arbitrator Goldstein observed, would then produce a "catch-up" demand on the part of the PSEO when its contract expired. The result would be instability in the relationship, Arbitrator Goldstein predicted.

Arbitrator Goldstein decided the wage issue primarily on the basis of the 18-year history of parity between the police unit and the other two bargaining units in Galesburg. He considered external comparability to the extent that he found that under either the Union's or the City's offer Galesburg would remain last in wages among the comparable municipalities. Thus Arbitrator Goldstein declared, "Since the same will be true [i.e., "the Union neither gained nor lost any ground with respect to the comparables"] regardless of which offer is selected in this proceeding, it cannot be said with confidence that external comparability favors either offer."

Arbitrator Goldstein also discussed the cost-of-living factor and concluded that it "does not favor either party." Goldstein Award, p. 59. As noted, the determinative consideration for him was historical wage increase parity among the three City bargaining units. It is now more than seven years since Arbitrator Goldstein issued his award. The wage parity noted by Arbitrators Malin and Goldstein among the City's bargaining units has now endured for a quarter of a century. Historical wage parity was the principal basis for adoption of the City's final offers in interest arbitration cases involving these same parties before Arbitrators Malin and Goldstein. It has also been the deciding factor in other interest arbitration decisions involving Illinois public employers, as cited in the Goldstein award. Based on the prior interest arbitration precedents involving these same parties for the same bargaining unit, and the long history of pattern bargaining for the City of Galesburg, this arbitrator would be very reluctant not to give determinative weight to internal comparability in this case. This is especially so where the precedent for these parties is consistent with the approach of other prominent Illinois arbitrators in similar factual contexts.

There is an important caveat, however, which this arbitrator believes should be applied when there is a conflict between external comparability and internal comparability. That caveat is referenced in the section called Standards Applicable in Both Private-Sector and Public-Sector Interest Arbitration in Elkouri and Elkouri, How Arbitration Works (Sixth Edition, 2003) at pp. 1407, 1413:

Similarly, in *City of West Bend*¹⁸³ the matter of comparables, both internal and external, were considered, with the union arguing that the wage increase was necessary "in order to catch up to the external comparables," and the city "argu[ing] for adherence to the internal pattern of a pair of 4% increases." In holding that the city's proposal was the more reasonable, the arbitrator explained: "[W]here there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables."¹⁸⁴ (emphasis added)

¹⁸³100 LA 1118, 1121 (Vernon, 1993).

¹⁸⁴*Id.* at 1121. See also *Monroe County, Wis.*, 113 LA 933 (Dichter, 1999).

In the present case, wage increases for 2012 have been determined for four of the ten comparable communities: DeKalb, Granite City, Quincy, and Urbana. For the first three communities the increase was 2.5%, and for Urbana, 3.0%. All of the increases are more consistent with the Union's offer of 2.5% for 2012 than the City's offer of 2.0%. Although four out of ten comparables is less than half the number, nevertheless there does appear to be a trend for 2012 favoring the Union's offer among the comparable communities. It would therefore be important to determine whether the trend shows unacceptable wage level relationships between Galesburg and the comparables.

The arbitrator does not believe that the evidence establishes unacceptable wage level relationships between Galesburg and the four municipalities in question for 2012. Galesburg ranked behind all four municipalities under the expired 2009-2011 contract, and it will continue to do so under the new contract. Significantly, moreover, if one compares the dollar amount of a police officer's salary in Galesburg with a police officer's salary in each of the other four cities at entry level, maximum total compensation, and at median level (eight years' service) in 2009 (the first year of the expired Galesburg contract) with 2012 (the first year of the new Galesburg contract), one would find that in most cases the Galesburg officer was earning a higher percentage of his counterpart's

salary for each jurisdiction in 2012 than in 2009. (Sources, City Exhibits 30R, 31R, 32R, 33R, 34R, and 35R).

The arbitrator has also compared the dollar amount of a police officer's salary in Galesburg with eight years' service to the officer's counterpart in DeKalb, Quincy, and Urbana for the years 2011 and 2012. Rounding to two digits, in 2011 the Galesburg police officer's salary was 74% of the DeKalb officer's, 94% of the Quincy officer's, and 92% of the Urbana officer's salary. In 2012, the percentage amount, rounded to two figures, was the same for DeKalb and Urbana, and was reduced from 94% to 93% for Quincy. The arbitrator's calculations do show some salary deterioration from 2011 to 2012 in Galesburg's police salaries vis-a-vis the external comparables that have finalized wages for 2012, but they do not indicate that adoption of the internal pattern will result in unacceptable wage level relationships between Galesburg police officers and those other communities. The relationships in terms of rankings and percentage spread will be similar to what they were in both 2009 and 2011.

The arbitrator has also taken into account the cost-of-living factor. The collective bargaining agreement in dispute here is for the period January 1, 2012, through December 31, 2014. If interest arbitration is supposed to replicate collective bargaining, the greatest weight should be given to the changes in the prior contract period since, in the normal course of collective bargaining, the parties would have taken that into account in formulating their bargaining proposals for the new contract. The CPI for All Urban Consumers, 1982-84 = 100, increased by 6.53% during the term of the 2009-2011 contract, which averages to 2.19% per year. That amount is slightly closer to the City's offer than the Union's.

The statute also requires the arbitrator to consider changes in any factors during the course of the arbitration proceedings. The Bureau of Labor Statistics News Release dated November 15, 2012, stated that the CPI increased 0.1 percent in October on a seasonally adjusted basis and by 2.2 percent over the last 12 months before seasonal adjustment. The most recent CPI data therefore also slightly favor the City's final offer on wages over the Union's. However, the BLS News Release also stated that the 2.2 percent change in October was an increase from the September figure of 2.0 percent. This could portend higher cost-of-living increases for the future. The arbitrator finds that the cost-of-living factor as a whole probably does not favor either party's case more than the other's.

For the reasons stated in the foregoing discussion and based on a consideration of all of the factors listed in Section 14(h) of the IPLRA to the extent applicable, the arbitrator finds that the City's final offer on wages is the more reasonable

choice in that the internal comparability criterion tips the balance in favor of the City's final offer.

HEALTH INSURANCE

Union Final Offer

The Union proposes to maintain the status quo on the health insurance premium.

Employer Final Offer

The City proposes, effective January 1, 2013, to increase employee monthly contributions for insurance coverage as follows: for single coverage from \$40 to \$45; for employee plus one coverage from \$140 to \$145; and for family coverage from \$285 to \$315. No change in contributions is proposed for the first year of the contract effective January 1, 2012. In addition the City proposes certain language changes in the health insurance provision.

Union Position on Health Insurance

It is the position of the Union that the City has not offered a quid pro quo for the changes it seeks in the health insurance provision. Nor, the Union argues, has it shown a need for the change. In addition to the lack of a quid pro quo or a need, the Union urges, the City's low wage proposal is sufficient reason to reject its proposal. It cites Arbitrator Meyers's decision in PBLC and City of Danville, S-MA-07-220 (2010), where he stated that "the extremely low one percent wage increase that these employees will receive for 2009 strongly argues in favor of holding the line as much as possible with regard to their out-of-pocket expenses for insurance coverage." The Union asserts that the 1% wage increase identified by Arbitrator Meyers was part of a four-year wage package averaging 2.5% per year and that here the City is offering even less.

Employer Position on Health Insurance

The City lays great emphasis on internal comparability in arguing that its offer on the medical plan must be adopted. It asserts that even arbitrators known to favor external comparability analyses tend to stress the primacy of internal comparability when it comes to benefit issues like health insurance. It quotes from decisions by Arbitrators Fleischli, Feuille, and Yaeger supporting the position that important and even controlling weight should be given to internal comparisons on the issue of health insurance.

The City notes in its brief that its offer on health insurance was negotiated between the City and the IAFF. After the City's brief was filed, the City negotiated the same health insurance terms to increase the employee share of the premium payment for 2013 and 2014 and to update and correct certain language with the AFSCME bargaining unit.

"Given the fact that employee premium contributions have been the same for all bargaining units at least since 2000," the City argues, "there is strong, if not conclusive, presumption that the contribution levels contained in the new IAFF agreement should be extended to the PSEO agreement as well. Indeed," the City continues, "the weight given to internal comparability by arbitrators generally is even greater with respect to insurance issues than it is in regard to wage issues." Internal comparability, the City contends, strongly favors its final offer.

With regard to external comparability, the City asserts that the Union does not dispute, but concedes, the fact that Galesburg police officers contribute less on average to the cost of health coverage than their counterparts in comparable communities. Its Exhibit 47R, the City states, shows that the dollar or percentage contribution levels in some comparable communities is quite high. The City does not contest the information in Union Exhibits 30 and 31 that show that Galesburg's police officers incur higher coinsurance, deductible, and out-of-pocket costs than the comparable communities. The Union's argument is flawed, the City urges, by the fact that cost control measures are a tradeoff for lower premium costs. It is further flawed, the City argues, by the fact that the Union does not show why the cost-control measures it complains of justify a freeze in employee premium contributions for another three years.

The interests and welfare of the public criterion, the City contends, favors the City's offer. The City cites figures showing burgeoning increases in health insurance premiums during the past ten years and notes a statistic that the average premium for family coverage increased nine percent between 2010 and 2011. It quotes a forecast that health care expenditures are "expected to grow faster than national income over the foreseeable future." The City argues that the employee share of premium costs in Galesburg has risen by only approximately 47% between 2001 and 2011, while total premium cost during that time has climbed by about 50%. Moreover, the City asserts, premium increases have been kept down because of the City's willingness to subsidize its medical plan as it did in the form of a \$425,000 subsidy in 2011.

The interests and welfare of the public of the City of Galesburg, the City contends, are best served by maintaining the solvency of the plan. "An award that is based on the assumption that premium contributions that have remained unchanged over

three years should continue to remain unchanged over the next three years," the City argues, "is simply not founded in reality." Galesburg employees, the City asserts, must continue to be counted on to contribute proportionately to their own medical plan costs. "The interests and welfare of the public, and the financial ability of the unit of government to meet those costs," the City maintains, "combine with the internal and external comparability factors to favor, overwhelmingly, the City's offer on medical plan coverage."

Arbitrator's Findings and Conclusions on Health Insurance

The situation in this case regarding health insurance is similar to the circumstances before Arbitrator Malin. Arbitrator Malin, as noted, in his 1997 decision, selected the City's offer primarily on the basis of internal comparability even though the external comparability factor favored the Union's offer. Arbitrator Malin's analysis of the City's bargaining history with the three unions and his reading of Arbitrator Doering's award involving the firefighters unit caused him to conclude that "in the past, the City was willing to trade off dependent health insurance contributions that were considerably in excess of what it made for other units to bring the pay scale in one unit into conformity with the other two." Malin Award, p. 15.

Based on the foregoing history of pattern bargaining among the three Galesburg unions, Arbitrator Malin decided that where, as a result of pattern bargaining, one of the three units suffered in wages in comparison with its comparable external communities, it was appropriate for the City to make more favorable health insurance contributions for that bargaining unit. Arbitrator Malin expressed the concept in his award as follows:

Second, the parties' history of pattern bargaining on wages compels the Union to receive an increase which lags behind virtually every comparable community. Arbitrator Doering's award makes clear that, in the past, the City was willing to trade off dependent health insurance contributions that were considerably in excess of what it made for other units to bring the pay scale in one unit into conformity with the other two. So too, it is reasonable that the city provide a quid pro quo of more favorable dependent health insurance contributions to maintain parity in increases in base salaries. Malin Award, p. 15.

In the present case, too, as a result of pattern bargaining the police unit has been awarded a wage increase for the years 2012 through 2014 that lags behind every comparable

community's wage increase that has thus far been negotiated or awarded for the period in question. These include the communities of DeKalb, Granite City, Quincy (all at 2.5%), and Urbana (3.0%) for 2012 and Quincy (3.0%) for 2013. The arbitrator believes that we have here a situation parallel to the one before Arbitrator Malin in that the police unit has been compelled by pattern bargaining on wages to receive an increase which trails behind what has been, and likely will be, received by the comparable jurisdictions for the term of the new contract. It is a situation where a quid pro quo of more favorable health insurance contributions is reasonable.

The arbitrator has taken into consideration the City's argument regarding internal comparability. The same argument was made by the City before Arbitrator Malin, who commented as follows:

. . . On its face, it is readily apparent that the pattern of parity is not as strong as it was with wages. Indeed, as City Exhibit 10 makes clear, it was rare for the City contributions to be the same for each unit.

The evidence also indicates that the amount of the City's contribution has, at times, been influenced by factors peculiar to one of the units. . . .

This arbitrator also is of the opinion that when one considers the entire history of collective bargaining between the City and the other three bargaining units, there have been many departures from parity with regard to premium contributions. At the time of the Malin Award the parties bargained the amount of the City contribution towards health insurance. Since 2000 they have bargained the amount of the employee contribution, with the City paying the difference. The matter in issue is the same, either way, however, namely, what portion of the premium is to be paid by the employee.

Parity as to the structure and content of the health insurance plan has probably been as longstanding as parity in wages. But that is not true with regard to the question of contributions. The arbitrator believes that there are sufficient examples of departure from parity regarding contributions so as to provide ample precedent for not awarding parity in this case. The Malin award is an especially good example in that he selected the Union final offer on health insurance, requiring an increased premium contribution beyond what the City proposed and had negotiated with the other units, because the City's wage offer, which he adopted on the basis of internal comparability, resulted in the police unit receiving an increase which lagged behind virtually every comparable municipality.

Arbitrator Malin also tied his award of the Union's offer on health insurance into his view that interest arbitration should attempt to replicate the agreement that reasonable negotiators would have reached had their negotiations succeeded. Thus Arbitrator Malin stated, ". . . I find that had the parties reached a negotiated agreement, it most likely would have followed the pattern of the other units, but that the lagging behind comparable jurisdictions most likely would have influenced negotiations on health insurance. . . ." Malin Award, p. 11.

Apparently in an effort to minimize the fact that its wage offer for 2012-2014 was low in relation to the comparables, the City argues that in the last contract term the wages for police officers in Galesburg increased by 10.25%, whereas the largest increase among the comparable communities was 9.5% over three years, and the average increase among them was 7.6%. The arbitrator is not persuaded by the argument because of City testimony at the hearing that the 10.25% increase was a quid pro quo to all three of the unions for their agreement to relieve the City of liability for paying for retiree health insurance premiums (Tr. 164-165). What served as quid pro quo for allowing the City to get out of responsibility for a multimillion dollar contingent liability to its employees cannot also serve to enhance a future wage offer.

The arbitrator selects the Union's final offer on health insurance as the more reasonable of the two. In free collective bargaining it would have been reasonable for the City, after having negotiated with the police officers Union on the basis of pattern bargaining a wage increase that was significantly lower than what was being negotiated or awarded for police officers in comparable communities, to make an appropriate adjustment in its negotiations on health insurance. There is no indication in the record of any adjustment on the City's part, either with respect to health insurance or any other aspect of the Agreement, for its below-par wage offer as compared with the wages in comparable communities. That is a reasonable basis for choosing the Union's offer on health insurance over the City's.

EDUCATION PAY

Union Final Offer

The issue which the parties have called Education Pay refers to Section 17.6A APPROVED COLLEGE WORK and Section 17.6B COMPENSATION of Article XVII - WAGES of the 2009-2011 Agreement. The Union proposes to reverse the order and renumber the two sections so that the section entitled COMPENSATION will come first and be designated SECTION 17A COMPENSATION. The section entitled APPROVED COLLEGE WORK would follow and be designated SECTION 17B APPROVED COLLEGE WORK.

The Union's final offer proposes to retain the language of the COMPENSATION section unchanged, except for its new designation, 17A. It also proposes to add language to the APPROVED COLLEGE WORK section, newly designated 17.6B, to provide that an employee shall receive an additional five percent increase in base salary for obtaining an associate degree, or a higher degree, from a college or university in criminal justice or a B.S. degree in one of the courses of study listed in the section. The section provides that an employee may receive a maximum of 10% increase.

Employer Final Offer

The City's final offer states as follows:

SECTION 17.6A - EDUCATIONAL INCENTIVE PAY. The City rejects the Union's educational incentive pay proposal and proposes to retain the status quo.

Union's Position on Education Pay

The Union asserts that "[t]he current maximum education pay incentive which PSEO employees can be eligible for is 5%." It notes that seven of the 38 PSEO members in the bargaining unit presently do not qualify for any 5% education pay incentive, including two officers with a bachelor's degree. The City, according to the Union, applies Sections 17.5A and 17.5B as "mutually exclusive" since no PSEO officer currently earns a 10% education pay incentive. There are 23 officers in the bargaining unit with a bachelor's or master's degree, the Union asserts, who do not receive more than 5% education incentive pay.

The Union asserts that only the police officers Agreement caps maximum education pay incentive at 5%. The firefighters and AFSCME agreements, the Union states, allow an additional 5% payment for educational incentive. Of the 37 AFSCME employees eligible for any education pay incentive, according to the Union, all but two are paid the full 10% increase. The Union points the arbitrator to the 1972 Personnel Rules (City Exhibit 59), which provided in Section 3.9 as follows:

3.9 COMPENSATION FOR APPROVED COLLEGE WORK.

City employees' base pay will be increased by 5 per cent for completion of college course work which is approved by both the City Manager and the College for the equivalent of one academic year of work above and beyond the minimum academic requirements for the position and the securing of a certificate and/or a

transcript of subjects from the College stating that the employee has met these requirements. Such City employee's salary will be increased by an additional 5 per cent of base pay for completion of a second academic year and the securing of an Associate Degree.

The Personnel Rules for the City of Galesburg as revised on September 30, 1985, contained the following provision, which removed the additional five percent educational incentive for uniformed police personnel:

City employees' base pay will be increased by five (5%) for completion of college work approved by both the City Manager and Carl Sandburg College for the equivalent of one academic year of work above and beyond the minimum requirements for the position held by the employee. Except for uniformed Police Personnel, the employee's salary will be increased by an additional 5% of base pay for the completion of a second academic year. A transcript of subjects from the college stating the employee has met the requirements must be submitted before the pay increase will be approved.

The Union acknowledges that in their pre-impasse bargaining the parties, on February 1, 2012, TA'd the following proposal by the City:

Section 17.6B

The City agrees that Section 17.6B is duplicative and should be deleted from the Contract. Section 17.6A should be renumbered, therefore, as Section 17.6.

"In this case," the Union asserts, "the tentative agreement to strike contractual language does not carry much weight. The agreement reached in February to strike §17.6B was based upon what the Union later found to be a false, or at least inequitable, premise." The Union argues that in any event the City's last offer on education pay is to retain the status quo, and it is not proposing to strike any contractual language. Therefore, the Union insists, there can be no doubt that education pay is an economic issue before the arbitrator for determination.

The Union disputes what it understands to be the City's contention that a 5% educational pay benefit was rolled into employees' pay in 1992. The Union asserts that 5% was added to starting pay only but that no additional pay was added to any other steps of the pay schedule. The Union further disputes the City's position that the police unit went from a six-step A to F wage schedule to a nine-step A to I schedule in exchange for

rolling their 5% education pay incentive into their base salary. The Union quotes from Arbitrator Malin's 1997 interest arbitration decision involving the parties in which he stated, "As a quid pro quo [for the police unit to agree to an A to I wage schedule], the City agreed to a one-time payment of \$550.00 to each member of the bargaining unit."

The Union argues that Arbitrator Malin's omission of any mention of education pay incentive as part of the negotiations makes sense because the change to a nine-step pay scale "was no quid pro quo for their giving away the perpetual 5% increase." If the parties agreed to do away with the 5% educational pay, the Union contends, they would not have continued to mention it in all collective bargaining agreements from 1992 forward. The Union notes that even in its final offer the City proposes to continue both \$17.6A and \$17.6B in the new Agreement. The Union adds that "if the members of the bargaining unit sold their 5% education pay increase to move to a longer nine-step wage scale, and lost on both ends of that deal, the City has long since exhausted the fruits of that one-sided bargain."

The Union argues that its proposal to reverse the order of \$17.6A and \$17.6B and renumber them is logical because the Agreement has two 5% education pay provisions. The Union asserts, "At present, an employee with one year more than the minimum requirements earns the same incentive as an employee with a Bachelor's Degree." If both education pay provisions are to have meaning, the Union reasons, "then 5% plus 5% should equal 10% and not 5%." The Union contends that both the AFSCME and the firefighters units are able to obtain a 10% educational pay incentive and that it is only the police officers unit that cannot. Its offer, the Union asserts, "is directed at leveling this playing field by using current contract language, with slight modification, to end the current inequity of 5% plus 5% not totaling 10%."

The Union argues that its proposal on education pay is supported by the §14(h) factors. Internal comparability supports its offer, the Union asserts, because the AFSCME group gets 10% without any requirement of a degree and "[t]he firefighters can earn a 5% step increase for completion of one year of college and a second 5% if they obtain a degree, for a cumulative 10%."

The Union acknowledges that the external comparables do not support its offer because "[t]he evidence clearly shows that no external group of employees earns a 10% maximum education pay bonus." The cost-of-living factor, the Union contends, favors its offer on education pay incentive because cost of living has historically risen in excess of the 2.0% proposed by the City as a general wage increase. The City, the Union argues, has offered no quid pro quo for its low wage offer, and the education pay

incentive is the only monetary quid pro quo available under the parties' offers. "Should the Employer's wage proposal be adopted," the Union urges, "then it stands to reason that the Union's Education Pay offer is the operative quid pro quo to keep these low paid Galesburg officers in pace with the rising cost of living and with officers in comparable communities."

Also favoring its proposal on education pay, the Union argues, is that, overall, the Galesburg police officers are poorly compensated. Because the City provides a poor group health insurance benefit, the Union asserts, "the low-paid Galesburg officers receive a poor overall compensation package in comparison to the external comparables." Therefore, the Union contends, should the City's 2% wage offer be awarded, there should be some other pay increase to keep these officers from falling even further behind with respect to their overall compensation package.

The Union also urges the arbitrator to do something about "the problematic language" in the collective bargaining agreement. Adoption of the City's offer, the Union asserts, will carry forward Sections 17.6A and 17.6B into the new Agreement. For example, the Union points to the fact that a particular officer with a bachelor's degree is denied education pay incentive even though, according to the Union, both the City attorney and the police chief agree that this officer should qualify for the current 5% education pay incentive. The Union suggests that not awarding the officer the incentive pay could result in a grievance. "Granting the Employer's 'status quo' proposal will not resolve the problematic language at issue," the Union asserts, "and will only invite more conflict. . . . Consequently, this factor favors granting the Union's proposal."

Employer's Position on Education Pay

The City notes that the first collective bargaining agreement between the parties for the police unit after the enactment of the IPLRA effective January 1, 1986, was the Agreement for the period April 1, 1986, to March 31, 1989. That Agreement provided that "base pay will be increased by 5% for completion of college work approved by both the City Manager and the accredited institution involved for the equivalent of one academic year of work above and beyond the minimum requirements for the position held by the employee."

The City's understanding of the present situation involving education pay incentive for the three bargaining units differs from the Union's understanding. The City summarizes the current situation regarding education pay in its brief as related to the three bargaining units as follows:

The next relevant negotiations [after the City-PSEO 1986-1989 Agreement] occurred in 1992, as related in the Doering Award. The police accepted a nine-step pay schedule that rolled a 5% educational step into the base salary in recognition of the fact that one year of college was a condition of hire. In 1991, the firefighters also had rolled one of two 5% educational steps into the base, but agreed to do so at the end of the scale, making it a condition of movement to Step F that the firefighter have one year of college work. Both units retained the educational step providing for 5% for one year of college work beyond the minimum requirements for the job (in the case of police) or one year of college (firefighters).

Both the police and firefighter units now have one educational step that is built into the schedule and another 5% increment that represents a separate pay item. The AFSCME unit, on the other hand, continues to have the two external five percent educational increments initially provided to all employees as early as 1972.

The City contends that the Union's internal comparability rationale for its educational pay proposal is factually unsupported. Both the police officer and firefighter units, the City asserts, have a second five percent educational increment. According to the City, the police regained the second five percent increment in 1992 and agreed to its incorporation into the salary schedule. The firefighters, the City asserts, agreed, in 1991, to incorporate one of two educational pay steps into the salary schedule. The City acknowledges that AFSCME has retained both educational increments as pay items external to the pay structure but argues that "[s]ince all units have two 5% educational steps recognized in different ways, and since the police unit variation is a product of collective bargaining, the City is at a loss to understand the Union's position that a second 5% educational step, outside the wage structure, is necessary to gain internal comparability."

What the Union is seeking, the City argues, is not an educational incentive, but "simply a proposal for 5% more pay for police officers, and it should be recognized as just that." For example, the City points out, nine officers were hired during the term of the 2009-2011 Agreement, and seven of them would receive a 10% increment (up from 5%) immediately, and the other two would receive 5% even though they do not qualify for educational incentive at all since their respective BA and AA degrees are not in criminal justice or any of the other courses of study listed in Section 17.5A of the Agreement.

Of the 38 officers presently on the force, 31 receive a 5% education pay increment and seven receive no education pay. Of those seven, five have BA or AA degrees, but not in criminal justice or any of the approved courses of study. Under the Union proposal those five employees would receive a 5% education pay addition, and the 31 employees who presently receive a 5% increment would get a 10% education pay addition to their salary. The City calculates the Union proposal as a 4.74% pay increase. The Union offer, the City asserts, in terms of maximum salary, moves Galesburg from last in rank to eighth among the comparable communities. With respect to median pay, according to the City, it moves Galesburg from last in rank order to sixth. There is nothing in the evidence that justifies such a jump in the rankings, the City declares.

The Union's education pay offer, the City contends, is not supported by any statutory factor. The City notes that the Union conceded at the arbitration hearing that external comparability does not support the Union's 10% proposal. The City agrees that the external comparables do not support the Union's offer but goes on to point out some of the specifics of how Galesburg would match up with the other jurisdictions. Under the prior contract, the City asserts, Galesburg ranked 4th out of 10 in maximum education pay available to an officer. Under the Union's offer, the City notes, Galesburg police officers would jump to first, receiving over \$1,800 per year more than Alton, the second-ranked city. At the median service level, the City asserts, Galesburg climbs from third in education pay rankings to first, and, in dollar amount, the Galesburg officer would get more than double the education pay of Alton, which would be ranked second.

Internal comparability also does not support the Union's position on education pay, the City contends, for the reasons discussed above. The cost-of-living factor, the City argues, does not support a wage increase under the guise of education pay that has the practical effect on the bargaining unit of raising salaries by nearly 5%. Nor, the City maintains, would such an increase support the interest and welfare of the public, given that it is not an incentive to attain a job qualification that almost all officers and incoming candidates already have.

Arbitrator's Findings and Conclusions on Education Pay

The Education Pay provisions in the 2009-2011 police Agreement provide as follows:

SECTION 17.5A APPROVED COLLEGE WORK An employee who has received an associate degree, or a higher degree, from an accredited college or university in criminal

justice, or a B.S. degree in one of the following courses of study:

Law Enforcement/Police Science/Police Administration
Forensic Science/Criminalistic
Criminal Justice/Criminal Justice Administration
Criminal Justice Planning/Evaluation
Administration of Justice
Criminology
Law
Judicial Management/Court Administration
Corrections/Correctional Administration/Probation
Parole

shall receive a five percent (5%) increase in his pay provided:

- (a) the increase becomes effective upon the employee's submitting his appropriate certificate and transcript to his department head.
- (b) the employee may only receive a maximum of five percent (5%). Thus, if the employee receives a second associate degree, he is not entitled to a second five percent (5%).

SECTION 17.5B COMPENSATION Each employee's base pay will be increased by 5% for completion of college work approved by both the City Manager and the accredited institution involved for the equivalent of one academic year of work above and beyond the minimum requirements for the position held by the employee. A transcript of subjects from the college stating that the employee has met the requirements must be submitted to the employee's department head before the pay increase will be approved.

Sections 17.5A and 17.5B are interpreted by both parties to mean that an employee may not receive more than one five percent increase in wages because of college work. (Tr. 37, 51). That interpretation is a reasonable one in view of the provision in Section 17.5A which states that "the employee may only receive a maximum of five percent (5%)" and that "if the employee receives a second associate degree, he is not entitled to a second five percent (5%)."

The Union proposes language that would permit a second five percent education pay increase to wages. It would accomplish this by reversing the order of Sections 17.5A and 17.5B to make clear that the employee would be entitled to the first 5% education pay wage increase upon completion of an

additional year of college work besides the 29 semester hours of college study that were a prerequisite for hire. It would then add language to the new 17.5B (formerly 17.5A) section to make clear that with receipt of an associate's degree or higher in criminal justice or other specified courses of study the employee would be entitled to a second five percent education pay increment up to a maximum of ten percent.

The Union argues that its proposal is supported by the internal comparability criterion in that both the firefighters contract and the AFSCME agreement permit an employee to earn up to an additional ten percent for college work. The City disputes that the firefighters agreement permits an employee to earn a 10% education pay increment. It is important to see what is written in that agreement. The 2012-2014 firefighters agreement provides in pertinent part as follows:

SECTION 17.6A APPROVED COLLEGE WORK.

The City shall provide an incentive for full-time employees covered by this Agreement to obtain a level of education beyond that of a high school diploma and the minimum requirements for the positions held by the employee. A proposed curriculum must be approved by the City prior to the start of classes by the employee to be eligible for the educational incentive pay. The educational incentive pay will be applicable for the completion of the first and second year (Associate Degree) at an accredited institution. A transcript of subjects from the college stating the employee has met the requirements must be submitted to the employee's department head and then to the Human Resource Coordinator before the pay increase will be approved. Except in extraordinary circumstances, as determined to exist by the City, educational incentive pay will not be approved for the first time for employees with more than fifteen (15) years of service; provided, that this limitation shall not apply to employees who have or will have fifteen (15) or more years of service as of December 31, 2014.

SECTION 17.6B EDUCATIONAL ATTAINMENT.

Each classification of employee shall have five percent (5%) of base pay added to his annual wages, to be paid bi-weekly, for completion of an Associate Degree in Fire Science in accordance with Section 17.6A.

The arbitrator believes that the foregoing language provides for only one five percent addition of education pay on an annual basis. Section 17.6A provides for educational incentive pay for obtainment of an Associate Degree but does not mention how much incentive pay allowance may be paid to the employee or for what field of study. Section 17.6B states that

five percent of base pay shall be paid "for completion of an Associate Degree in Fire Science in accordance with Section 17.6A." The arbitrator is of the opinion that the two sections are plainly complementary and provide for a single 5% educational pay increase to wages on an annual basis.

Any doubt on the score is removed if one peruses Employer Exhibit 12, the spreadsheet showing the names of all IAFF members in the firefighters bargaining unit, their annual salary, and all components of the salary, including longevity and education pay. No firefighter, including those with more than 25 years of service, earns more than 5% in education pay. There is no evidence that a grievance was ever filed protesting inadequate education pay in the firefighters unit. Thus the practice under the agreement matches what to this arbitrator appears to be the plain language of the agreement; namely, that firefighters are not entitled to more than 5% education pay.

The situation is different under the AFSCME agreement. Section 16.5B states as follows:

SECTION 16.5B - COMPENSATION City employees' base pay will be increased by 5 percent for completion of college work approved by both the City Manager and the accredited institution involved for the equivalent of one academic year of work above and beyond the minimum requirements for the position held by the employee. The employee's salary will be increased by an additional 5 percent of base pay for the completion of a second academic year. A transcript of subjects from the college stating the employee has met the requirements must be submitted to the employee's department head before the pay increase will be approved.

Unlike the other two contracts the AFSCME agreement clearly provides for "an additional 5 percent of base pay," making a total addition to wages of ten percent for an employee with the requisite amount of college courses. The police and firefighters contracts, on the other hand, allow for only one five percent addition of education pay.

In its brief the Union argues that "the internal comparables support the Union's proposal." It asserts that "[t]he AFSCME group gets 10% without any requirement of getting any degree" and that "[t]he firefighters can earn a 5% step increase for completion of one year of college and a second 5% if they obtain a degree, for a cumulative 10%." Union brief, p. 32. The Union has misread the firefighters agreement since, as pointed out above, that agreement plainly permits only one five percent addition to wages for completion of college courses.

Nevertheless the fact that the AFSCME agreement permits up to 10% additional pay for college coursework raises the question of whether that should be a basis for awarding the Union's offer on education pay. The arbitrator does not believe so. First, the more natural comparison would be with the firefighters unit because both units perform hazardous work and many municipalities attempt to maintain parity in wage matters between police officers and firefighters. Second, both police officers and firefighters in Galesburg are in the same pay range, 19. Many AFSCME-represented employees are in much lower pay ranges. Third, since 1992, the firefighters and police officers units have been allowed only one education pay increment separate from, and not built into, their wage schedule. The AFSCME unit, by contrast, has been permitted two education pay additions separate from the pay schedule since at least 1972. For these reasons the more reasonable comparison for the police unit would be with the firefighters unit rather than the AFSCME unit on the issue of education pay. The arbitrator finds that the internal comparability criterion does not favor the Union offer on education pay.

In its brief the City states, "Both the police and firefighter units now have one educational step that is built into the schedule and another 5% increment that represents a separate pay item." The arbitrator believes that statement to be factually accurate. It is a paraphrase, with regard to the police, of the following sentence in Arbitrator Barbara Doering's interest arbitration award of December 6, 1994: "Police remained at range 19, but their educational incentive step was rolled into their base at the beginning, since 1 year of college was a condition of hire, and police were therefore hired, at least after 1992, at what would have been the B step on their old schedule."

The Union is correct, however, that because the 5% was added to starting pay only, and not to any other step of the pay schedule, the police officers who reach the top of their pay scale enjoy only a five percent enhancement to their base pay from the educational pay increment as opposed to the AFSCME unit which enjoys a ten percent enhancement from education pay. Stated another way, the education pay benefit in the police Agreement does not permit a police officer to earn more than five percent above what his top salary would otherwise be. The education pay benefit under the AFSCME agreement, however, permits an employee to earn ten percent more than what his top salary would otherwise be.

This is made clear by the spreadsheets of employee annual earnings introduced into evidence as Employer exhibits. Employer Exhibit 11 shows that employee C., a police officer with 22 years, 3 months of service at the top step in pay range 19, had annual earnings in 2011 of 59,385.92. Employer Exhibit 13

shows that employee F., a heavy equipment operator with 22 years of service in the AFSCME unit in the top step of pay range 18 (one level below the police officer), had annual earnings in 2011 of 59,049.71. Both employees received 8% longevity pay increment and .5% training increment. The police officer's hourly rate at the top step of pay range 19 was five percent higher than the heavy equipment operator's hourly rate at the top step of pay range 18. Yet the AFSCME-represented employee's annual salary was within approximately one-half percent of the police officer's. The reason for this is that the police unit is entitled to a five percent annual increment above base salary, and the AFSCME unit is entitled to ten percent above base salary. At 22 years of service, police officer C. was no longer deriving any benefit from the five percent enhancement of his salary at step A since the five percent premium was not carried over into any subsequent step.

The situation with the firefighters unit is exactly the same as with the police unit. Because the firefighter is able to receive only one education pay increment separate from any built-in increment in his pay scale, the maximum enhancement to his top pay from the education pay benefit will be five percent as opposed to ten percent for the AFSCME unit.

The foregoing being said, the fact is that the present situation regarding education pay incentive is the result of free collective bargaining. It is not this arbitrator's function to change by fiat, and unrelated to the factors of Section 14(h) of the IPLRA, what was freely negotiated by the parties. Joint Exhibit 5 shows, and the Union notes in its brief, that the pre-impasse proposals of the City included an offer to increase the education pay incentive to 7.5 percent provided the Union agreed to certain other changes in the education incentive provisions.

Other than the proposals and the tentative agreement regarding Section 17.6B of the 2009-2011 Agreement there is nothing in the record regarding the parties' bargaining on the education pay issue in the current negotiations. The Union is requesting a doubling of the amount of the education pay increment that has appeared in collective bargaining agreements between the parties since 1986. Employer Exhibit 54. In their 1992 negotiations the parties increased the wage structure to nine steps but nevertheless limited the police officers' education pay increment, separate from any built-in increase at step A, to five percent of their base salary. Any effort to change so longstanding a term should be subjected to serious efforts at negotiation by the parties before it is brought to an interest arbitrator for determination. That has not happened in this case.

In addition to the facts that the Union offer on education pay is not supported by internal comparability because

the City offer is consistent with the firefighters agreement and that the record lacks evidence regarding the negotiation efforts of the parties on the issue, the Union proposal is not supported by the factor of external comparability. Not only is there no other comparable jurisdiction that pays its police officers a ten percent education pay benefit, but, as the City points out, such a high percentage of the police officers would receive an immediate increase of five percent in their salary (36 out of 38 officers) that the effect of awarding the Union's final offer on this issue would be to raise the wages of the bargaining unit as a whole by 4.74%.

Because almost all bargaining unit members would immediately receive an addition to their base salary of at least five percent, over and above the two percent wage increase awarded in this case, the arbitrator agrees with the City position that awarding the Union's offer on education pay would result in an overall increase in wages to the bargaining unit beyond anything that could be justified by the Section 14(h) factors of external comparability or cost of living. It would also result in an education pay benefit significantly superior to that of any of the other comparable municipalities.

The foregoing discussion, the arbitrator believes, shows that the City's last offer on education pay is the more reasonable. The Union proposes a major change in the education pay provision without any evidence of a prior serious effort to negotiate a change to the longstanding existing provision, and its proposal is not supported either by the internal or external comparability standard. The arbitrator selects the City proposal on education pay.

PERSONAL DAYS

Union Final Offer

The Union proposes to increase the number of days off each year for personal reasons from three to four.

Employer Final Offer

The City proposes that the number of personal days continue at three as under the prior Agreement.

Union Position on Personal Days

The Union notes that the parties are in agreement that the AFSCME unit receives four personal days per year for a total of 32 hours and that "shift" firefighters on a schedule of 24

hours on and 48 hours off receive 24 hours of personal time per year. The Union asserts that the shift firefighters have at least a limited ability to accumulate their personal leave in accordance with their contract provision that states, "A personal day may be taken off or taken in salary, and may be carried over for a maximum of one (1) year." Police officers, the Union points out, are not allowed to carry their personal days over from year to year and are paid for days not taken.

Four of the comparable jurisdictions, the Union asserts, do not allow any personal days, and, including these communities, the average among all ten comparable communities is two days or 20 hours. Excluding communities that grant no personal leave, according to the Union, the average number of personal days granted is 2.83.

The Union concedes it cannot meet the requirement of a "breakthrough" analysis to justify its proposal on personal days. It asserts, however, that to the extent that "[j]ust as the Employer offered no quid pro quo to achieve a change to insurance, the Union offers no quid pro quo to change the Personal Days provision." The Union argues that its offer on personal days should be adopted on the basis of parity bargaining. It explains that it means by this that it be given the same benefit enjoyed by the AFSCME unit, who accrue four personal days per year. The firefighters also, the Union asserts, to the extent that they can carry over a personal day to the next year, are able to take four personal days in one year. "If all Galesburg employees are to be treated as equally as possible, to promote fairness, establish predictability and prevent whip-saw bargaining," the Union argues, "then the PSEO employees should have at least the same Personal Days benefit as enjoyed by the AFSCME employees."

Employer Position on Personal Days

Regarding internal comparability the City agrees that shift Fire Department employees get 24 hours of personal time off, equivalent to three eight-hour days in the Police Department. It notes, however, that employees in the Fire Department who work 40-hour weeks get two personal days, one less than the police get now. The City asserts that 40-hour firefighters work a schedule closer to a police schedule than shift firefighters work. The City also calls attention to the fact that under the new firefighters agreement personal days exist as an independent grant of time off only for 2012 and are subsumed within the larger grant of time off called "consolidated time off" beginning in 2013.

A more telling argument against the Union position, the City asserts, is that "the PSEO once again complains of elements

of administration of a benefit without introducing evidence of attempts at the bargaining table to change the administration in a way more attractive to the membership." As for the AFSCME provision for four personal days, the City asserts that the days may not be carried over and not subject to compensation. "So," the City reasons, "even though AFSCME employees get one more personal day than the police and shift firefighters, and two more than 40-hour firefighters, the personal days provision in the AFSCME contract is less advantageous from an administration standpoint than is the personal days provision in the PSEO contract." Further, the City contends, "the comparison between protective service units is considered to be more compelling than comparisons between police officers and non-protective service units."

The City agrees with the Union that external comparability does not favor the Union proposal. The City data on comparability, however, are stronger for the City's case than the Union data. Whereas the Union's information showed an average of two days or 20 hours of personal leave for the other jurisdictions, the average number of personal days among the comparables other than Galesburg according to the City's figures was 1.4. The City concludes that internal comparability does not favor the Union proposal; external comparability clearly does not favor it; and that no evidence was introduced at the hearing that would justify an award of an additional personal day.

Arbitrator's Findings and Conclusions on Personal Days

The Union has not shown that the current provision for three personal leave days has created a problem for members of the police bargaining unit that is in need of remedy. The party seeking a change in a working condition has the burden to show a need for the change. The Union's comparison with the health insurance issue is misplaced. First, the Union's offer on the issue was awarded. But apart from that fact, the City did show a need to increase the employees' share of the premium cost because, based on expert opinion, it is reasonable to expect insurance costs to increase substantially during the term of the new Agreement; and there is currently a substantial accumulated operating deficit in the insurance fund's assets. City Exhibit 46.

The City's offer on health insurance was not selected by the arbitrator because, so far as the record shows, the City did not provide any offset to the Union for its sub-par wage offer in comparison with the comparable communities. This arbitrator followed the precedent of Arbitrator Malin's award in a prior interest arbitration case involving these same parties where the fact that the City's final wage offer based on pattern bargaining lagged behind virtually every other external

comparable's wage settlement was relied on by Arbitrator Malin as a basis for awarding the Union's final offer on health insurance premium contributions.

In the present case not only did the Union not provide evidence of a need to change the condition of employment regarding personal days, but the existing provision is more similar to the provision on personal days in the prior firefighters contract than in the current AFSCME contract. No change was negotiated in the number of personal days in the new firefighters contract. Instead the parties included what is the equivalent of personal days in a new concept regarding time off called "consolidated time off." There is no evidence that the Union attempted to negotiate a similar benefit for police officers but was turned down by the City. In addition, the existing provision of three personal days significantly exceeds the average number of personal days available to employees in the comparable jurisdictions. In the absence of a showing of a need for changing the personal days provision and in light of the fact that the external comparability factor strongly favors the continuation of the status quo, the City's offer regarding personal days is selected by the arbitrator.

Finally, it should be stated that all statutory criteria to the extent applicable were considered in the determination of every issue in dispute even though express mention may not have been made in the opinion in discussing a particular issue.

A W A R D a n d O R D E R

1. The City's final offer on Wages is adopted for the parties' collective bargaining agreement effective from January 1, 2012, through December 31, 2014 ("the Agreement").

2. The Union's final offer on Health Insurance is adopted for the Agreement.

3. The City's final offer on Education Pay is adopted for the Agreement.

4. The City's final offer on Personal Days is adopted for the Agreement.

5. All terms and conditions of employment on which the parties reached actual agreement are hereby incorporated into and made part of the Agreement. All provisions of the collective bargaining agreement between the parties effective January 1, 2009, through December 31, 2011, shall remain in full force and

effect except as altered, modified, or changed by this Award and Order or agreed to by the parties.

Respectfully submitted,

Sinclair Kossoff
Arbitrator

Chicago, Illinois
December 17, 2012