

BEFORE  
ROBERT W. McALLISTER  
ARBITRATOR

In the Matter of the Arbitration	)	Interest Arbitration
	)	
between	)	S-MA 12-254
	)	
VILLAGE OF ROSELLE	)	
	)	
and	)	
	)	
ROSELLE PROFESSIONAL	)	
FIREFIGHTERS ASSOCIATION	)	
LOCAL 4051 (IAFF)	)	

APPEARANCES:

For the Employer:	Karl R. Ottosen, Esq. Ottosen, Britz, Kelly, Cooper, Gilbert & Dinolfo, Ltd.
For the Union:	Martin P. Barr, Esq. Carmell Charone Widmer Moss & Barr, Ltd.
DATE OF HEARING:	June 18, 2012
PLACE OF HEARING:	Roselle, Illinois

## I. FACTS

The Village of Roselle and Roselle Professional Firefighters Association, Local 4051, IAFF are parties to a Collective Bargaining Agreement (CBA) effective January 1, 2009, through December 31, 2012. Article XIX, Wages, Section 19.1. It states:

Both parties agree to negotiate wage rates for 2011 and 2012, if either party provides written notice at least 60 days prior to December 31, 2010.

The Union gave the required notice, and the parties met to negotiate, but reached an impasse that led to the mutual selection of the undersigned to serve as Arbitrator in this interest arbitration. The parties have waived the tripartite arbitration panel provided in Section 14 of the Illinois Labor Relations Act and agreed the undersigned would serve as the sole arbitrator. The Firefighter Union consists of 13 employees. There are 3 lieutenants/shift commanders; 1 additional lieutenant; and 7 firefighters, category III, 2 of which are paramedics. Since the unit was certified on November 30, 2000, 3 labor agreements have been executed: (1) May 1, 2001, through December 31, 2004; (2) January 1, 2005 through December 31, 2008; and (3) January 1, 2009, through December 31, 2012.<sup>1</sup>

On October 5, 2009, Jeffrey D. O'Dell, the Village administrator, sent letters to the Unions representing the patrol officers, firefighters, and Public Works employees requesting these units engage in concessionary bargaining based on projected revenue shortfalls. The record shows the firefighters were willing to make concessions to avoid a layoff. After several drafts, a Variance Agreement was entered into on or about December 21, 2009. The same day, the parties executed the January 1, 2009, through

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<sup>1</sup> The parties began negotiation for the 2009-2012 contract in July 2009.

December 31, 2012, CBA. (Emp. Ex. 12 and Un. Ex. 6) The executed Variance Agreement provided for \$93,300 in reductions: (1) a credit for \$8,600 in furlough time; (2) \$28,000 (3.25%) for January 1, 2010, wage increase; and (3) \$56,800 from the Foreign Fire Fund. (Emp. Ex. 15)

In return for the above referenced concessions, the Variance Agreement provided: “The Village shall not layoff any bargaining unit employee through and including December 31, 2010.” The Variance Agreement was entered into contingent on the parties agreeing on the terms of successor CBA effective January 1, 2009, through December 31, 2012. Failing to do so rendered the Variance Agreement null and void.

It is undisputed the Union took the position that the Employer was required to reinstate the January 1, 2010, 3.25% wage rate it agreed to forego, effective January 1, 2011. On June 20, 2011, the Union filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board. (Emp. Ex. 24) On December 14, 2011, the Executive Director of the Board stated the Union’s charge “involves dispositive issues of law or fact and issue this complaint for hearing.” (Emp. Ex. 25) A hearing was held before Administrative Law Judge Eileen Bell on May 24, 2012. Post-hearing briefs were to be postmarked July 13, 2012. A decision has not been issued.

## II. RELEVANT STATUTORY PROVISIONS

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

- (g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable facts prescribed in subsection (h).

Pursuant to Section 14(h), the Arbitrator is required to base his 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 employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization.
- (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.

### III. STIPULATIONS

1. The tripartite panel is waived allowing the Arbitrator sole authority to issue the award in this matter.
2. The Arbitrator may award retroactive pay in accordance with Section 14(j) of the Act.

3. The statutory timeframes provided for in Section 14 of the Act and the Board's Rules and Regulations have been waived for the purpose of this proceeding.
4. The Village is not making an inability to pay claim under the Statute.

#### IV. POSITION OF THE UNION

The Union holds its proposal of two alternative options dependant on the outcome of the litigation before the Illinois Labor Relations Board over the Variance Agreement complies with the requirements of the statute. The Union asserts it has proposed a single final offer that is comprised of two options. The Union argues that because the options are dependant on the outcome of litigation, the Arbitrator is not forced to determine which option is better. The Union maintains the offering of alternative wage proposals contingent upon unknown outcomes does not amount to inappropriately attempting to negotiate with the Arbitrator. *City of Danville and Policeman's Benevolent Labor Committee*, Case No. S-MA-07-220 (2010).

The Union states Option I calls for a 3.25% wage increase effective 2011, and a 3.0% wage increase effective 2012 and should be implemented if the Union prevails in litigation. The Union states Option II would raise those percentages by 1.625% each year to recover the lost 3.25% wage increase waived for calendar year 2010 and should be implemented in the event the Union does not prevail in litigation. The Union emphasizes the Arbitrator is not being called upon to determine the outcome of the Board litigation.

The Union argues adoption of its offer is supported by a comparison of the wages paid the Village's Police Unit. The Union holds it is accepted practice for arbitrators to give more weight to the internal comparison between protective service employee units

than the comparison to other bargaining units. *City of Rock Falls and Ill. FOP Labor Council*, Case No. S-MA-10-238 at 23 (2012). The Union insists the Employer has historically maintained a financial balance between the Fire and Police Units. The Union states both units were granted 3.25% wage increases for 2009 and 2010 and share the same health insurance plans and attendant costs. The Union states the Public Works Unit is provided health insurance coverage at no cost to its employees. The Union asserts the internal comparables between the Fire and Police Units should be given the greatest weight due to the Units' similarities.

The Union states the Employer has agreed to a 3.75% wage increase in both 2011 and 2012 for the Police Unit. The Union holds its lesser proposal of a 3.25% in 2011 and 3.0% in 2012 is appropriate in light of the economic changes that have occurred over the past 4 years. The Union further holds the protective services are essential in maintaining public safety and welfare. *Jefferson County Sheriff's Dept. and Ill. FOP Labor Council Lodge #241*, Case No. S-MA-95-18 (Briggs 1996). The Union contends it is consistently held that the payment of public service employees is justified even in the event where an increase in wages will add to the existing deficit. *Id.*

The Union asserts the Employer has granted Firefighters wage increases each year despite budget imbalances dating back to 2002. The Union argues the Employer most likely negotiated wage increases with the Police Unit after the economic downturn of 2008 began. The Union concludes the Employer's cannot now claim the economic climate diminishes the internal comparable between the Fire and Police Units.

The Union rejects the Employer's use of the Public Works Unit as an internal comparable. The Union holds the Public Works Unit receives a more generous health

insurance coverage plan than the Firefighters Unit enjoys, thus skewing the wage comparables. The Union states the Employer paid the entire cost of the members of the Public Work Unit health insurance coverage in 2011. (Un. Ex. 2, Tab 2 at 23 § 151; Em. Ex. 49 at 22, § 15.1; Un. Ex. 2, Tab 6 at 6)) The Union argues Public Works Unit employees are required to pay \$200 less in deductibles for individuals and \$300 less in deductibles for families than their Firefighter counterparts. (Un. Ex. 2, Tab 6 at 34 and Un. Ex. 1, Tab 9) The Union maintains Firefighter Unit employees are required to contribute annually approximately \$600 for employee-only coverage and \$3,000 for employee plus dependents PPO coverage. (Emp. Ex. 37.)

The Union holds the Firefighter and Police Unit employees share the same health insurance coverage plans. The Union maintains the Employer has treated the public safety units differently than the Public Works Unit and, therefore, cannot use the Public Works Unit as an internal comparable. The Union contends that even if the Arbitrator accepted the 1% wage increase accepted by the Public Works Unit for an internal comparable, the Arbitrator must consider that the Public Works Unit receives free health care coverage. The Union asserts that the \$3,000 family contribution required of members of the Firefighters Unit amounts to 4% of the average firefighter's annual salary.

The Union holds each member of the Fire Unit effectively contributed \$2,906.25 to meet the requested targeted budgetary concessions. (Emp. Ex. 15) The Union asserts each member of the Public Works Unit bore the lesser loss of \$2,142.86 to meet the Unit goal. The Union argues the Public Works Unit's agreement to a larger number of furlough hours in 2010 amounts to a one-time loss per unit member. The Union

maintains it did not agree to permanently waive the negotiated 2010 wage increase. The Union insists basing any wage increase against the 2009 wage rate will amount to a lower percentage raise in 2011. The Union further insists permanently waiving the 2010 wage increase will produce lower dollar value increases for firefighters for the remainder of their employment. *Univ. of Ill. Springfield and Ill. FOP Labor Council*, Case No. S-MA-04-269 (McAllister 2006).

The Union argues in the case where the parties cannot agree on a list of external comparables, the Arbitrator will normally determine the comparable communities based upon the data presented by the parties. The Union contends the historical inclusion of communities in past negotiations carries significant weight. *Village of Elk Grove Village and MAP, No. 141*, Case No. S-MA-95-11 (Goldstein 1996). The Union asserts the parties agreed upon one of four proposed lists of comparables for the purpose of the 2005 negotiations. (Un. Ex. 1, Tab 11) The Union further asserts the Employer proposed the same list for use in the 2008 negotiations. *Id.* The Union urges the Arbitrator to adopt the historical comparable communities in the instant case. *See Village of Elk Grove Village and MAP, No. 141*, Case No. S-M95-11 (Goldstein 1996).

The Union holds the Employer chose its proposed list of external comparables based upon the content of each community's relative CBA rather than by traditional criteria. The Union insists the Employer has "cherry picked" its proposed list to favor the Employer's wage proposal. The Union argues the Employer has the burden to prove a change to the parties' historical benchmarks and has failed to do so. *City of Rockford and City Firefighters Local 413*, Case No. S-MA-11-039 (Perkovich 2010).

The Union notes the Employer has chosen to include Streamwood in its list of comparables despite Streamwood having a population 75% larger than that of Roselle with three times the number of firefighters, more than double the budget and an EAV just barely within 50% of that of Roselle's. (Emp. Ex. 34.) The Union states the Employer has also proposed to include Hanover Park which has a population 67% greater than Roselle with nearly three times the number of firefighters and more than double the budget of Roselle. The Union questions the Employer's motivation to exclude Rolling Meadows which, the Union holds, has a population only 6% greater than Roselle with a handful more full-time firefighters than Streamwood, a budget closer to Roselle's than either Streamwood or Hanover Park and an EAV only 4% higher than Streamwood. *Id.*

The Union stipulates, despite the disagreement over the proper wage base schedule, both parties propose a 3.25% wage increase for 2011. The Union holds it is appropriate then to focus on the difference between the parties' proposed wage increases for 2012.

The Union states only three of the external comparable communities proposed by either party have completed their negotiations for the 2012 fiscal year. (Un. Ex. 1, Tab 15 at 10) The Union states the three communities agreed upon an average wage increase of 3.17% for 2012. *Id.* The Union notes the average of these three communities is greater than the 3.00% raise increase proposed by the Union for 2012. The Union further argues that even in the event that only communities agreed upon by both parties may be considered as external comparables, the two applicable communities that have completed negotiations for 2012 wage increases agreed to a 2.75% average raise. The Union

contends the 2.75% average is closer to the Union's proposed 3.00% increase than the Employer's proposed 1% increase.

The Union asserts its offer will allow it to better maintain its standing among bargaining units of comparable communities. The Union states the majority of employees in the Fire Unit are firefighters. The Union holds its Career Wage Analysis for the rank of Firefighter under Option I will result in a Difference From Average of Negative 3.15% in 2012. (Un. Ex. 1, Tab 15) The Union insists adoption of the Employer's proposed 1% wage increase for 2012 will result in a difference From Average of negative 5.03%. The Union further insists the results are similar under a Top Base Salary Analysis for the Rank of Firefighter which the Union claims will result in a Difference From Average of negative 3.38% in 2012 per the Union's Option I proposal and a negative 5.43% per the Employer's proposal. *Id.* The Union argues the Differences From Average remain almost identical under the Union's proposed Option II.

The Union holds Section 14(h)(5) of the Act requires the Arbitrator to base his findings and opinion upon the "average consumer prices for goods and services, commonly known as cost of living." The Union states complete Consumer Price Index (CPI) evidence for 2012 was not available at the time of the hearing. The Union further states the CPI for the first four months of 2012 was 1.96%. The Union maintains the CPI data available for 2012 falls almost in the middle of the Employer's proposal of a 1% wage increase in 2012 and the Union's proposed 3% increase in 2012.

The Union urges the Arbitrator to consider "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." 5 ILCS 315/14(h)(3)("Factor 3). The Union asserts the Employer must make a strong showing

that it does not have the financial ability to pay what the Union offers. *City of Granite City and Granite City Firefighters Assn.*, Case No. S-MA-93-196 (Edelman 1994). The Union argues the Employer must demonstrate that meeting the Union's offer will result in the elimination or harmful diminution of essential city services, or extensive layoffs, or both.

The Union acknowledges both parties have stipulated the Employer is not claiming an inability to pay the wage increases sought by the Union. The Union insists the Employer has made substantial efforts to demonstrate financial hardship. The Union holds the evidence of budgetary deficits over the past ten years and the Employer's desire to balance its general operating fund does not meet the burden of proving the imminent reduction in city services or wide spread layoffs in the wake of adopting the Union's offer.

The Union rejects any attempt by the Employer to claim its is taking "prudent" steps in handling the Village's finances. The Union emphasizes financial "prudence" is not expressly listed under Section 14(h) of the Act. *County of Tazewell and Tazewell County Sheriff and Ill. FOP Labor Council*, Case S-MA-09-054 (Meyers 2009).

The Union maintains the Employer offered to pay Firefighter wage increases of 5% over the two-year period of 2011 and 2012 in a letter to Union President Kapfhammer. (Un. Ex. 6.) The Union concludes this demonstrates the Employer has the ability to pay more than it has offered. The Union contends its Option II would cost the Employer more than Option I, but would still amount to .2% of the Employer's total budget over the two years in question.

The Union argues the Employer has agreed to wage increases despite budgetary deficits over the past ten years. The Union further argues evidence demonstrates the Employer's economic situation has begun to improve, revenues are increasing, and the Employer's 2012 budget projects a slight surplus. (Emp. Ex. 42)

#### V. POSITION OF THE EMPLOYER

The Employer holds the Arbitrator is bound by Section 14(g) of the Illinois Public Labor Relations Act to adopt the "last offer of settlement which, in the opinion of the arbitration panel, more clearly complies with the applicable factors prescribed in Subsection (h)." 5 ILCS 314(g). The Employer holds the factors in subsection (h) are: (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 wages, hours, and conditions of employment of other employees performing similar services and with employees generally, in both public and private employment in comparable communities; (5) the average consumer prices for goods and services; (6) the overall compensation presently received by the employees; (7) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and (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. 5 ILCS 314(h).

The Employer asserts the Union's presentation of two alternative wage scales violates the purpose of the Illinois Labor Relations Act. *Elk Grove Vill. And Metro. Alliance of Police, Elk Grove Vill. Police Chapter, No. 141*, ISLRB No. S-MA-95-11

(Goldstein, 1996). The Employer contends that in interest arbitration each party must submit “its last offer of settlement on each economic issue.” 5 ILCS § 315/14(g). The Employer argues the Act calls for economic issues to be resolved through a single hearing. *The City of Metropolis*, ISLRB No. S-MA-92-172, p. 10 (Gruenberg, 1993). The Employer further argues that the Arbitrator must adopt the final offer of one party in the absence of a final offer being presented by the opposing party. The Employer insists an alternative offer, by definition, is not a final offer. *Elk Grove Vill.*, ISLRB No. S-MA-95-11 p. 26. The Employer urges the Arbitrator is bound to adopt the final offer presented by the Employer as no final offer was proposed by the Union.

The Employer contends the 2010 wage rate was not submitted by the parties for arbitration and cannot be revived per the Union’s Option 1. The Employer maintains the bargaining history demonstrates it had no intention of reinstating the 2010 wage increase in 2011. The Employer holds both parties agreed to a wage freeze in 2010, and any attempt by the Union to bring this issue in front of interest arbitration is regressive bargaining.

The Employer holds its final offer maintains its historic ranking among external comparables. The Employer states the Employer and Union agree upon four of the Employer’s seven proposed comparable fire departments. The Employer maintains three of the Union’s comparable departments are located in villages with EAVS over one million and at least four times the number of full-time firefighters than employed by Roselle. The Employer rejects these three departments based on their size, revenue streams, and day-to-day operations.

The Employer states Roselle is the smallest department on its own list of comparables. (Emp. Ex. 34.) The Employer maintains it is not the lowest paid department on its list at any firefighter rank. The Employer holds Roselle has historically been at the lower end of its proposed group of comparables and was the lowest paid department in a separate comparison done by the parties in 2005. (Un. Ex., 1, Tab 11) The Employer maintains its offer is 2.3% above the average starting salary for the Employer comparables and less than 1% below the maximum salary on the same list. (Emp. Ex. 35.) The Employer argues the Union's offer of a 4.875% wage increase in 2011 would increase Roselle's ranking over 10 steps, and a second increase of 4.625% in 2012 would propel Roselle further from its historic position in comparable rankings. (Appendix A.)

The Employer rejects the Union's position that the Union's proposal is less than 1% higher than the proposal of the Employer. (Un. Ex. 1, Tab 14) The Employer insists the Union's offer is a 9.5% wage increase over two years while the Employer has offered an increase of 4.25% for the same period of time. The Employer contends the Union improperly placed the Employer's proposed 3.25% increase on top of the Union's Option 1 scale, which includes a reinstatement of the 3.25% increase waived in 2010. The Employer concludes that over two years, the Union's proposal will cost the Employer 4.28% more than its own offer. (Appendix B.)

The Employer states all the firefighters in the Roselle department are at the Firefighter III pay scale level used in the Employer's comparables. The Employer contends the Union's use of the Firefighter II base in its comparables falsely lowers Roselle's ranking and associated average. The Employer further contends neither party

included the paramedic stipend received by two of Roselle's firefighters in the comparables. The Employer maintains four of the comparable departments include paramedic compensation within the Firefighter wages, thus misrepresenting Roselle employees as being lower paid for the same job. (Emp. Ex. 35; Un. Ex. 1, Tab 16) The Employer holds it did factor in contributions by the Employer and employees into health insurance premiums but did not include the fact that it reimburses up to \$4,000 per employee.

The Employer holds Hoffman Estates, Rolling Meadows and Wheaton are not valid comparables due to the different economic climate despite their inclusion in the 2005 comparables. The Employer states the parties did not agree in 2005 or 2008 to a final and conclusive group of comparables nor was there any agreement to use the same list of comparables during the 2011 wage re-opener. The Employer maintains it was still reducing staff in 2011 and had moratoriums on cost of living increases and step increases for non-union employees. The Employer contends, in light of the fiscal hardships, there was no discussion of external comparability during the 2011 negotiations. (Emp. Exs. 23 and 27.)

The Employer again appeals to the Arbitrator to reject the Union's list of comparables based on the size of the included communities. The Employer insists the three contended communities have more than twice the population of Roselle, up to four times the number of full-time firefighters, and receive more than half to a third of fire and EMS response calls. The Employer asserts communities with more than double the financial resources or perform a different quantity of services; namely, less than half, cannot be considered comparables. *County of McHenry and Local 73, Service Employees*

*Int'l Union*, ILRB Case. No. S-MA-10-103, p. 9 (Goldberg 2012). The Employer argues its list of comparables is more appropriate, because the communities included are within 50% plus or minus in terms of population, EAV, size and budget.

The Employer argues its offer is consistent with the wage increases received by other Roselle bargaining units. The Employer states it reduced full-time personnel levels from 116 to 104 employees in 2009 and placed a moratorium on 2009 performance bonuses and required all non-union full-time employees to take one furlough day per month for up to 15 months, forego a cost of living increase in 2010, have step increases frozen or eliminated, and placed a moratorium on the annual sick leave buyback program. (Emp. Ex. 3)

The Employer states it also engaged in concessionary bargaining with the full-time firefighters, Public Works employees, and patrol officers. (Emp. Exs., 3, 4 and 5; Emp., Ex. 27) The Employer maintains the firefighters met the requested \$93,000 in personnel reductions by waiving a 3.25% wage increase agreeing to both 24 hours of furlough time per employee amounting to \$8,600 and a \$56,800 payment from the Foreign Fire Fund. (Emp. Ex. 15) The Employer states the public works unit also made financial concessions to avoid any layoffs. (Emp. Ex. 13.) The Employer states the police officer's unit did not agree to the requested concessions, and two patrol officers were laid off in December 2009 as a result. (Emp. Ex. 27)

The Employer maintains the patrol officers agreed to a 3.25% wage increase for each 2009, 2010 and 2011 with a .5% market adjustment for 2011 and 2012. (Emp. Ex. 47.) The Employer further maintains the public works unit finalized wage increases before the economic downturn of 3.25% for each 2009, 2010 and 2011. (Un. Ex. 2, Tab

2, Appendix A.) The Employer insists the more significant internal comparable contract the subsequent public works contract negotiated after the economic downturn that resulted in only a 1% wage increase for 2012 and a 2% increase for both 2013 and 2014. (Emp. Ex. 49, Appendix A.)

The Employer holds its wage proposal is in line with the other Village bargaining units and therefore appropriate. *Vermillion County and Illinois FOP*, S-MA-03-087 (Meyers 2006). The Employer further holds its proposal both controls costs, and establishes a level of compensation that will attract and retain personnel. *Id.* The Employer contends its wage proposal maintains public safety and is consistent with the internal comparables. The Employer asserts internal comparables should trump external comparables.

The Employer rejects the Union's assertion that there is a significant discrepancy in the health care coverage packages provided to Public Works employees and firefighters. The Employer maintains that although, unlike Public Works employees, firefighters are required to contribute up to \$3,000 toward their health care premiums, the Employer also reimburses up to \$4,000 per firefighter for co-insurance and deductibles.

The Employer argues its final wage proposal is appropriate due continued economic hardship. The Employer holds the economy has not recovered. *Sheriff of Cook County and AFSCME, Council 31*, ILRB No. L-MA-098-003 (Benn, 2010). The Employer contends that in a distressed economic climate, cost of living considerations and other change factors must be given greater weight than external comparables. *City of Danville and Policemen's Benevolent and Protective Assn, Unit #11*, ILRB Co. S-MA-09-238, pp. 22-23 (Hill 2010).

## VI. DISCUSSION

In its opening statement, the Union referred to the current dispute over comparable communities and urged the Arbitrator to adopt the same comparable communities the parties agreed to in 2005 to govern the comparisons undertaken in this matter. The Union then immediately turned to the subject of internal comparisons and most specifically to the CBA between the Employer and Metropolitan Alliance of Police Roselle Police Chapter #258 effective January 1, 2009, through December 31, 2012. (Un. Ex. 2) The Union argued the wage rates set forth at page 52 of that Agreement are a more apt comparison for internal purposes than reference to the Public Works employees represented by Local 150 of the Operating Engineers. (Un. Ex. 2, Tab 3)

The Employer, in its opening statement, initially addressed the economic downturn that began in 2008 and essentially continues in the form of a slow recovery. The Employer pointed out the police contract was entered into effective January 1, 2009, through December 31, 2012. The Employer asserted the wage increases granted in that round of negotiations” were not wage increases that could be granted “to other employees, and the Village engaged in concessionary negotiations with all of its units.” (Emphasis added)

The record, however, shows Local 4051 and the Employer entered into a four (4) year labor agreement effective the same day as the MAP Agreement, January 1, 2009. The percentage wage increases for the two respective units are as follows:

	<u>1/1/2009</u>	<u>1/1/2010</u>	<u>1/1/2011</u>	<u>1/1/2012</u>
Police	3.25%	3.25%	3.25% +.5% MKT	3.25% %.5%MKT
Firefighters	3.25%	3.25%	Reopener	Reopener <sup>2</sup>

The third bargaining unit the Employer deals with is Public Works and, as indicated, represented by the Operating Engineers. That Agreement is effective January 1, 2009, through December 31, 2011, and was executed on December 10, 2008, and called for across the board annual increases of 3.25%. The succeeding labor contract between the Operating Engineers and the Employer is for three (3) years effective January 1, 2012, and calls for annual across the board increases of 1%, 2%, and 2%.

Despite the fact the Firefighter Union filed an unfair labor practice charge alleging the Employer violated the Illinois Public Labor Relations Act, 5 ILCS 315 (2008), as amended, and despite the fact a hearing before Administrative Law Judge Eileen Bell was held on May 24, 2012, decision pending, both parties introduced evidence relating to the negotiations and proposals that led to the Variance Agreement between the parties. (Un. Ex. 1, Tab 7) This litigation is not to be confused with arbitration. The Variance Agreement appears to be a key piece of evidence in the unfair labor practice charge. There is no evidence the Union challenged the Employer's refusal to implement the deferred January 2010 wage increase of 3.25% through the grievance procedure. Clearly, the merits of that dispute are not before this Arbitrator, nor are the arguments and evidence submitted relating to the pros and cons of the Employer's basis

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<sup>2</sup> The Firefighter Agreement was executed on December 21, 2009. The Police Agreement contains no ascertainable date of execution..

for not reinstating the 3.25% wage increase bargaining unit employees agreed to “forego . . . for the period January 1 through December 31, 2010.” (Union Ex. 1. Tab 7)

Both parties expended considerable space and time arguing over the selection of external comparables. Notwithstanding, the Employer pointed out that “bargaining between the parties in 2011 had a significantly different tone than the bargaining had in 2005. (The parties agreed upon the external comparables.) Due to the significant economic downturn and revenue shortfalls that began in 2009, the parties’ focus for negotiations in 2011 was exclusively on internal comparability with the Police and Public Works departments.”

As for the Union, its final offer consisted of two options directly linked to the pending decision of the ILRB’s administrative law judge. The Union also maintained comparison of its offer with the wages paid to the Employer’s Police unit favors adoption of its offer because arbitrators “tend to single out the protective service employee units to assess internal comparability and give less weight to other bargaining units.” (*City of Rock Falls and Ill. FOP Labor Council*, Case No. S-MA-10-238 at 23 (2012).

The Union further argues the record shows the Employer has maintained a balance in financial terms between the Fire and Police units. Coupled with the fact there is no evidence the parties conducted any discussions about external comparability during the limited negotiations of 2011, the undersigned concludes the essential focus of negotiations over the 2011 and 2012 reopeners was as described by the Employer “exclusively on internal comparability.”

Before undertaking an analysis of internal comparability, the Employer challenges the two (2) alternative proposals submitted by the Union as not constituting an

appropriate final offer. As stated above, the issue of whether the Employer violated the contract or committed an unfair labor practice when it declined to reinstate on January 1, 2011, the 3.25% deferred January 1, 2010, by reason of the Variance Agreement is not before the Arbitrator.

The Employer cites 5 LLCs § 315/14 (g), which states in pertinent part:

At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.

The Employer argues the Arbitrator is:

. . . then constrained by statute to choose between the offers and adopt the one, which in his opinion, more nearly complies with the applicable statutory factors.

The Employer maintains that by definition an alternative offer is not a final offer. Accordingly, the Employer contends that where one party fails to make a final offer on an economic issue, the other party's offer must be adopted. *The City of Metropolis*, ISLRB No. S-MA-92-172, p. 10 (Gruenberg, 1993).

In order to put the Union's two proposals into perspective, one is required to consider that a dispute arose between the parties over the terms of the Variance Agreement. Specifically, the Union held the 3.25% wage increase unit employees agreed to "forego" should be reinstated effective January 1, 2011. The Employer disagreed. The Union did not file a grievance challenging Roselle's denial, but, instead, filed an unfair labor practice charge against the Employer.. The Arbitrator reiterates no aspect of that case is properly before me.

In entering the disputed four year CBA, the parties agreed upon wages for 2009 and 2010, but left the wages for 2011 and 2012 open and subject to negotiation. Those negotiations produced no agreement and this arbitration is over the wages for 2011 and 2012.

Union proposal #1 anticipates a favorable Award by the Board. Despite its acknowledgment that this Arbitrator has no jurisdiction over the Board case, the Union revised the salary schedule set forth in the CBA found in Appendix B. That revision adds 3.25% to the January 1, 2010, to December 31, 2010, salary schedule. That 3.25% wage increase is before the Board, not this Arbitrator. Also, the revision of the January 1, 2010, and December 31, 2010, salary schedule is not a matter provided for in the parties' labor contract, but rather is at the core of the case before the ILRB. There are but two issues before the interest arbitrator. (1) What is the wage increase to be for the period January 1, 2011, to December 31, 2011, and (2) what is the wage increase to be for the period January 1, 2012, to December 31, 2012?

Union proposal #2, which it terms Option II, anticipates an adverse ILRB ruling. To account "for this potentially adverse outcome," the Union proposed a 3.25% and 3.00% wage increase for 2011 and 2012 plus one-half of the 3.25% increase waived for 2010 (or 1.625%) in 2011 and 1.625% in 2012.

Union proposal #2 specifies it seeks a 3.25% and 3.00% increase in 2011 and 2012. But with the reintroduction of the 3.25% January 1, 2010, wage increase unit employees agreed to forego, the Union again asks the Arbitrator to undo potential Board action. In its own words, the Union wants a ruling on a subject solely before the ILRB, and, in its proposal #2 offer, seeks reinstatement of the foregone 3.25% wage increase

albeit half in 2011 and half in 2012. This is just another way of calling upon this Arbitrator to retrospectively determine the Board's decision was somehow wrong. Union proposal #2 intertwines a subject matter strictly before the ILRB. The old saw is one cannot have it both ways. The Union selected to solve its dispute over the deferred 3.25% through the ILRB. It cannot reasonably expect this Arbitrator to interfere with that process. Accordingly, I find Union proposal #2 to be improper and not in compliance with applicable statutory factors.

The Employer submits the Arbitrator cannot correct the Union's offers. Simply put, the Employer seeks a ruling no last offer was submitted by the Union, thus nullifying both Union proposals. The problem with this position is that the Arbitrator would have to find the totally improper Union proposal #2 offer somehow nullified Union proposal #1. The logic of this approach is flawed. Union proposal #2 at no point met the statutory provisions of Section 14. Section 14(g) read as a whole requires a "last offer on each economic issue." Clearly, this language is singular. This conclusion is reinforced by the statutes' requirement that the Arbitrator must "choose between the offers and adopt the one . . ." The plural "offers" is specifically restricted to choosing or adopting the (singular) "one."

Union proposal #2 is, likewise, not a proper last offer because it implicitly requires the Arbitrator consider the underlying merits of the case before the ILRB; namely, the revision of Appendix B of the CBA. That revision is not contemplated by the parties' labor agreement and, at its core, is the very issue the Union joined when it charged Roselle with an unfair labor practice by reason of its refusal to restore the deferred January 1, 2010, 3.25% wage increase.

The above analysis eliminates Union proposal #2 from consideration and also bars consideration of Appendix B. This conclusion brings one to the realization an identifiable Union last offer remains and that is a 3.25% wage increase effective January 1, 2011, and a 3.00% wage increase effective January 1, 2012.

Turning to internal comparables, the Employer argues the more “telling” labor agreement is that of the Public Works unit. The Employer maintains the wage increases for 2009, 2010, and 2011 were finalized before the severe economic turndown. The Employer stresses its succeeding contract with the operating engineers runs from January 1, 2012, through December 31, 2014. The Employer contends this negotiation took place during bad economic times, and the wage increases “were decidedly more modest at 1% for 2012, 2% for 2013, and 2% for 2014.”

The record establishes Public Works employees received wage increases of 3.25% for 2009, 2010, and 2011. Adding the 1% wage increase for 2012, the total for those four years is 10.75%. It is undisputed the operating engineers engaged in concessionary bargaining in late 2009 and entered into a Variance Agreement that ended up in a cost reduction of about \$152,000.00. (Em. Ex. 13) Employee wages effective January 1, 2010, remained in effect. The Employer agreed not to lay off any Public Works employees in 2010.

In the instant case, the Employer’s last wage offer to the firefighters is 3.25% effective January 1, 2011, and 1% effective January 1, 2012. If the arbitrator adopts this offer, a comparison for the four years involved with the operating engineers shows the firefighters receiving wage increases for 3.25% in 2009, 0% in 2010, 3.25% in 2011, and 1% in 2012. This totals 7.5%;

Unless the ILRB rules in favor of the firefighters, the above comparison means the operating engineers received 3.25% more in total wages for the comparable period January 1, 2009, through December 31, 2012.

Citing *Vermillion County and Illinois FOP*, S-MA-03-087 (Meyers), 206) and *City of Carbondale and Illinois FOP*, S-MA-04-152 (Briggs, 2006), the City points out that Arbitrator Meyers and Briggs found that internal comparables are a driving force in interest arbitration. The Employer then stated “so too in the [sic] case, internal comparables should trump the external.”

It is reiterated the Employer stressed there were no discussions on external comparables during the parties’ 2011 negotiations.

The third bargaining unit in the Village is the police unit. It is undisputed the Employer requested the patrol officers to also engage in concessionary bargaining in 2009. It is also undisputed that if those efforts failed, the Employer anticipated reductions in staff (layoffs). The record establishes the police unit refused to make concessions, and two (2) patrol officers were laid off in December 2009.

The percentage wage increases for the police unit are set forth at page 19. It is also reiterated that for the four comparable years involved herein this unit received wage increases of 3.25%, 3.25%, 3.75%, and 3.75% beginning January 1, 2009, through December 31, 2012. Those increases total 14%.

Summarizing the comparable results of adopting the Employer’s last offer of 3.25% in 2011 and 1% in 2012, the firefighters would receive a total of 7.5% in wage increases for the years 2009-2012. For those same years, the operating engineers actually received 10.75% in wage increases, and the police unit received 14% in wage increases.

It is evident the Employer's last/final wage proposal acts to uncouple the balance between the two protective services units and attempts to use its Public Works unit as the more apt comparison.

The Employer also maintains the economy has not "bounced back." It points out that in 2011 it reduced its full-time work force from 103 employees to 99 and continued to insist on 12 unpaid furlough days and a moratorium on cost of living increases and step increases for all non-union employees in 2011. Despite these reductions, the Village states it still had a budget deficit for 2012. The Employer avers it therefore reduced its full-time workforce by another five to 94 full-time employees. (Em. Ex. 15)

The Employer has cited examples of its fiscal caution too numerable to repeat. Suffice it to say, the Village of Roselle has actively pursued a course of fiscally prudent financial management. The Employer's continued prudent handling of its finances does not, however, serve, in any manner, to modify the statutory factors set forth in Section 14(h). Moreover, inability to pay is stipulated not to be at issue.

As determined above, the Union's last wage offer for the 2011 and the 2012 reopener is 3.25% and 3.00%. Thus, the parties agree on the wage increase for 2011. If the Union's last offer is accepted, the firefighters would receive a total of 9.5% in wages for the years January 1, 2009, through December 31, 2012. The Public Works employees received a total of 10.75% for the same years, and the police unit received a total of 14%.

The Employer claims its last final offer is consistent with the wage increases received by the two other bargaining units is simply not accurate. The Employer alone determines the level of manpower employed. That level has nothing to do with the wage comparison being undertaken in this interest arbitration. Firefighters are generally linked

to the other protective service employee unit (police) when internal comparability is assessed. See *City of Rock Falls and Ill. FOP Labor Council, supra*. In this case, it is clear the firefighters fell behind the police unit as well as the Public Works employees for the years 2009 through 2012.

The arbitrator has also taken into consideration the Consumer Price Index for all urban consumers. Through November 2012, it is less than the midpoint of the parties' proposals of 1% and 3%. But, given the clear evidence a second year increase did nothing to close the gap between the wages received by the firefighters and the Public Works unit and police unit, I find the Index was not helpful.

Based upon this analysis and consideration of the Section 14(h) statutory factors, I find the Union's final wage offer is more reasonable and should be adopted.

VII. AWARD

The Union's final wage offer is adopted.

December 27, 2012

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Robert W. McAllister  
Arbitrator